Constitution Review Commission

Collated Oral Submissions Presented at Level 9, Suvavou House

(In-person and Virtual Presentations)

Prepared by the Legal and Policy Secretariat Team

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Summary

This document contains a compilation of all oral submissions presented at Level 9, Suvavou House, either in person or virtually. The compilation comprises transcripts and written submissions. Due to the volume of the material, it has been divided into six volumes.

The information contained in this document has been compiled from submissions received from government ministries, departments, agencies, statutory bodies, other stakeholders and members of the public, together with the records available at the time of preparation. While every reasonable effort has been made to ensure the accuracy and completeness of this compilation, there may be instances where a submission has been omitted or where the record does not fully reflect all submissions received.

Should any omissions or discrepancies be identified, a supplementary list may be prepared, where necessary, to ensure that the record is as complete and accurate as practicable.

Oral Submissions Presented at Level 9, Suvavou House

(In-person and Virtual Presentations)

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Great Council of Chiefs (GCC) – Opening

GCC PRESENTATION
1/4/2026

Mr. Valenitabua: We acknowledge your presence this morning in accepting our invitation this morning. We welcome you today and thank you for kindly accepting our invitation. Your group is a paramount group to the iTaukei and we're happy that you can join us. The Constitution Review Commission is an independent commission appointed by His Excellency the President of the Republic of Fiji in accordance with Cabinet's decision of 6 March 2026. And we were appointed under Section 2 of the Commissions of the Inquiry Act 1946. I have introduced the members of the commission and as a commission we are tasked to undertake a comprehensive inquiry into the 2013 Constitution. We are to consult with people of Fiji and we are to ensure that the Constitution reflects their values, their needs and aspirations. And we are to submit our findings and recommendations to His Excellency the President of Fiji. The timeline given to us is 6 months, which will expire on the 31st of August 2026. In accordance with our terms of reference, we are embarking on nationwide advocacy and consultation. We will be embarking on that. We will be consulting members of the public. We will also invite members of the public to make written and oral submissions, of which you are the first today. And I thank the Chairman of the Great Council of Chiefs for having forwarded your written submissions, which I have also forwarded to the members of the CRC. Gentlemen, we are interested to hear, relating to the 2013 Constitution, what you would like preserved or maintained, what you would like to change, and what your aspirations are for the constitution of Fiji. We hope that we will be able to discuss under those headings this morning. We will be available, or we can give one hour for this consultation. However, if time demands, or if circumstances demand, then we might have to extend the Constitution, which should be a paramount law or foundation, and it is important that we spend time on it. So that we can come up with a good and an acceptable Constitution for the members of our nation. With those three words of introduction, I now open the discussions in relation to this consultation this morning. We will hear from you first, and then we will just exchange questions and answers. Or we will discuss in general. There was a point which we were discussing yesterday. I see here a delegate from the Great Council of Chiefs. I note, or we know, that the Great Council of Chiefs is a council which comprises chiefs from our 14 provinces and from the various vanua. Could we be enlightened this morning whether the submission which you have prepared and which we have received reflects the views of the whole council? That is important to us because of the numbers. We will need to state numbers in our report. Since we are in a democracy, numbers matter. However, I leave that to us. I leave that to you,

gentlemen. And that can be clarified as we start with the discussions this morning. With those few words, I won't hold you much longer. I can, or I now pass on the, and I open the consultation, and I pass it to you, gentlemen, to start with your submissions. Just a matter of housekeeping, please. The mics, we can only use four mics at one time. So, I suggest that once a mic is not in use, has been used and is not in use, that we turn off on the right of the mic. Now I'm going to turn off the mic, and we will listen to maybe the chairman of the GCC. Thank you.

GCC Chair: The chairperson of the Constitution Review Committee Mr. Valenitabua. Ladies and gentlemen, members of the committee. Very good morning to you all. If I may introduce the members of the council and the group this morning. Sitting on my immediate right is one of the Deputy Chairman of the Great Council of Chiefs Gone Turaga Bale na Tui Namosi Ratu Suliano Matanitobua. To my far left is the Deputy na Gone Turaga Bale na Tui Nayau Ratu Tevita Uluilakeba Mara. To my far right is the Vunivalu of Rewa he is also the member of the Great Council of Chiefs Ro Naulutoa Mataitini. To my left to the rear is the Gone Turaga Bale na Tui Levuka Ratu Etonia Seru member of the Great Council of Chiefs. And to my immediate back is the Gone Turaga na Roko Sau member of the Great Council of Chiefs. We are here supported by our two legal advisors who have assisted the council in the preparation to the outcome that we are here to produce this morning. If I may, Mr. Chairperson, the process in preparation of the submission that we share that we will present to you this morning is the product of a series of meetings, a concern that was raised at the first meeting since the re-establishment of the Great Council of Chiefs on February 28th in Deuba, where the members of the council first raised their concerns about the constitution that was put together in 2013. In three other consecutive meetings since then, the constitution or the concerns with regards to the constitution was discussed at length in all those meetings.

At the last two meetings in February 2025, November of last year, the council started to go into detail and the task was passed on to the subcommittee to go and put together a submission based on the views of the members of the council as raised throughout the years since the re-establishment of the Great Council of Chiefs. The work that we have before you today, that we shall present to you today, is the product of what was put together by the subcommittee in November, presented to the entire council on the February 28th this year, and then that was endorsed and recorded in the minutes of the proceedings of that particular meeting. The approval or the endorsement of the members of the council for this submission to be presented to the Constitution Review Committee once it's in place. We have endorsed that before the swearing in of the committee we

already had together, the views of the council, and that's what we have before you. That's in brief, Mr. Chairperson, the process that was followed in preparation for this submission. If I may, the members of the council, contrary to what has been the views of some members of the public, and it's an unelected group or council, members of the council were appointed from within the provincial councils.

The provincial councils where all the tribal leaders of the respective provinces sit and they appoint the three members they believe will best represent the interests of the provinces in the Great Council of Chiefs. And that is the discussion on the Constitution went down to the provincial council of the Bose Vanua of the councils, back up to the Great Council of Chiefs, to the subcommittee, to the document that we shall be giving you today. Mr. Chairperson, the Bose Levu Vakaturaga, I think last year we made it very clear our views on this constitution, to be known as, our view as representatives of the iTaukei people that it does not like the 2013 constitution.

And the reason is simple, because in our belief it has taken our principle provisions of the protection of the iTaukei interests and rights. The net effect is that the document marginalizes the iTaukei in their own country, where we have been welcoming migrant races, welcoming hosts, since the governance under the colonial rule, some 152 years ago. The document that we shall present to you this morning signifies the principle areas where the chiefs of the Bose Levu Vakaturaga, what changes to want, changes to be done.

And this may be summarized as follows. The deed of session to be included to import our unique history into the constitution, whether through a preamble or by a separate new section. As 2013 constitution is written, this country has no history, only the recording, the immigrants into this country, refugees leave.

Protection in alteration laws affecting the iTaukei proprietary rights, these needs to be entrenched by the inclusion of the senate in the parliament akin to that found in the 1997 constitution. Customary laws and customary rights. It is the belief of the Bose Levu Vakaturaga that this protection is to be re-included into the 2013 constitution amendment.

Fijian Land tenure and entitlement to chiefly titles are dictated by customs. Fijian communal system is progressed by customs, and yet customary laws are ignored in our supreme rule. The Bose Levu Vakaturaga ladies and gentlemen, is to be included in the constitution. This was done in the past constitutions, but excluded in the 2013. In section 4, the secular state in 2013, the view of the Bose Levu Vakaturaga that the session be repealed.

Section 26, sub-paragraph 3, sub-paragraph alpha, the right to equality and freedom from discrimination based. The words sexual orientation and gender identity and expression are to be deleted from these expressions. All major religions in this country, rather, frown upon this immoral behavior. In section 28, to amend the section as prescribed re-rights of ownership and protection of iTaukei, Rotuma, and Banaban lands.

The new section 28 alpha states to recognize and protect iTaukei proprietary and economic rights. The new section 28 bravo, development involving extraction affecting ITaukei land and water resources.

Section 41, sub-paragraph 1, sub-paragraph delta, the rights of children. Protection from punishment needs to be amended to be made discretion, discretion of parents and teachers. Section 84, to amend, to be amended to make the Bose Levu Vakaturaga the appointing authority of president and vice-president. The text of the submission, Mr. Chairperson, ladies and gentlemen, put forth the areas of concern of the chiefs and members of the great council of chiefs. Here this morning, members of the sub-committee to present to you our views on the review of the 2013 constitution. Mr. Chairperson, thank you, sir. If I may add here with us, we will be happy to take any questions since you've had the chance to have a look at the documents. And I'll open the floor to our colleagues, members of the council, and our legal board this morning to respond to any questions that you may have for us.

Mr. Valenitabua: Gentlemen, we will ask questions later since our term of reference is to hear from the members of the public. We note that this is a summary, what has been given to us this morning is a summary of your submissions, of the GCC's submissions. We would appreciate if there is any other, if there's any other matter which the GCC might want to raise at this point in time. Or is this a closed document that you have sent us?

GCC Chair: Mr. Chairperson, thank you for that. We request to reserve the right to make further submissions as we proceed with your review. This is an initial submission from the great council of chiefs.

Dr. Fatiaki: Thank you. Honorable Chairman and members of the GCC, first let me extend on behalf of our members here our sincere appreciation to you for being with us this morning for your presentation. I realize that you all realize that we have terms of references. And under those terms of references, the 12 presented ones, I think if they haven't been made public, they will be made public. I want to assure you that four of these terms of references of the 12 that we have been given relate specifically

to Fijian and Rotuman indigenous rights. I think that should be pointed out immediately. Because addressing the, what we call the democratic deficits of the 2013 constitution, this was asked in the media in our first press conference. And the overriding one was the lack of consultation. I think amongst ourselves after discussions we recognized, I won't say the illegitimacy, but the method of decreeing a constitution, making consultations after the constitution has been drafted, is not in keeping with what we would normally consider the way that a constitution is produced. Where in fact you reach out to the people, you get their rights, their ideas, their input, and then you draft the constitution. These democratic deficits are the reason we have been asked to review the constitution. I won't say that our hands are tied in so far as I think if we're asked to review it, we can't obviously just throw it out. Because we are bound by the terms of reference that are very specific to us reviewing the current document. That's not to say that we can't go through every single line, other than section 10, which we have been directed, we understand, to the supreme court. Chapter 10, which the supreme court has not permitted us to review. But essentially everything, I think there was 12D as well, but every other single line in the 23rd constitution can be reviewed. And our chair has pointed out that that means it can be revoked, repealed, amended, it essentially can be changed. And I guess that's where we're coming from. We can't start off by obliterating it, by virtue of the fact that we have been given very specific guidelines to review the constitution. But I want to assure you that every line of it, other than the standard chapters, chapter 10 pertaining to humility, and chapter 12D pertaining to the president, are all areas of the constitution that can be reviewed, and in so doing can be repealed, dispensed with, amended accordingly. I would also like to stress, in addition to the four terms of references of the 12, that specifically ask us to look at Fijian and indigenous rights, that by implication indicates the importance that the government has placed upon us in asking us to review the 23rd constitution. I think your presence today, you are our first people we are hearing from. No one else has made a presentation to this committee. Our chair and the rest of the members felt that before we listen to anybody else, we would listen to yours. I make these in general comments without any specific questions. I have a list of questions. I thank the chairman for his summary. I have no doubt that my colleagues have, amongst ourselves, discussed the various aspects. You will realize that we are in the very early stages of the review. I think this is week two, week three. What we have done is try and familiarize ourselves intimately with the 2013 constitution, line by line. In addition to that, we have, in our deliberations, looked at the 1970, the 1990, the 1997 constitutions and tried to compare them, as has been pointed out by the chair, in respect of various aspects of it that have been taken out.

I have a number of questions that I think may not have been covered in your submission. I tend, for those colleagues that know me, I tend to be very blunt and ask very straight questions. I will ask them as representatives of the Fijian iTaukei people.

The term Fijian, used for all races in Fiji, as a generic term, was input into the 2013 constitution. It did not exist before that. All people in Fiji, prior to the 2013 constitution, were known under different ethnicities. There were Fijians, there were Indians, there were Rotuman's, Chinese. In the 2013 constitution, we were deemed to all be Fijians. My question is, how do you, members of the great council of chiefs, view the use of the word Fijian as a generic term for every person in Fiji? And if you are not supportive of such a name, what would you suggest that be used for all people who are citizens of Fiji? Thank you.

GCC Chair: Mr. Chairman, ladies and gentlemen, thank you for your question. Something that we have discussed at length within the great council of chiefs, as well as the sub-committee. In fact, as late as yesterday, we were still discussing it. And the reason why it went wrong for such a long time is because we were trying to see if we can come to some sort of consensus on the use of the term. The majority of the members of the Bose Levu Vakaturaga would like the term Fijian to be reserved. For what is currently known as the ITaukei, as it was in the past, and not as written in the 2013 constitution. I think up until 1987, if we think about it, it was a term that everybody growing up knew what it was. If those of us who have travelled overseas and who have worked overseas would understand that. Anyone who was a foreigner asking us where you're from, you would say you're from Fiji, and you're Fijian. And that was well understood. If you said the term iTaukei, you would have to explain yourself. If you said the term Indo-Fijian, or Chinese Fijian, or Rotuman, they would understand. And it is not something that we're trying to introduce as new. It is something that, as I've said in the past, you cannot legislate something like what you're called. It has to be here. And so, that's a wrong way of answering your question, Dr. Fatiaki. I think the consensus amongst the majority of the members, members of the Great Council of Chiefs, is that the term should be reserved for what we now know as the iTaukei. Thank you.

Mr. Valenitabua: Moving on, from the question asked by Dr. Fatiaki, the constitution as it is, the 2013 constitution, I believe that most of you gentlemen have read it, have looked through it. How do you say its setup, its format? What I mean is, there is a section in the constitution, and then we have subsections, and then we have paragraphs in one section, which makes the contents so extended, or so stretched, with particular constitutional laws set

out in the constitution. Yesterday, we were discussing section 31 of the constitution. And this is the right. The right to life is a one-liner. The right to education, it specifies education at preschool. Education means education at preschool, education at the primary level, and education at the tertiary level. In your view, should we have only a one-liner which says right to education, and we exclude all those other details? Like the right to life, the right to life is just a one-liner. Every person has a right to life, full stop.

GCC: Thank you. Thank you, Mr. Chairman. I think the one-liner attributed to the species of rights is what we do in section 3[182. I think the intention is that they will be supported by regulations in the various acts that come after. But the fact that it's mentioned, I think for the purposes of architectural coverage, that is, I think, a consensus by the GCC. That's enough, because it's not limiting anything. It allows us to expand on it, because time and values in society over time change. Thank you.

Dr. Fatiaki: Gentlemen, my second point to for the answer, I apologize. I haven't had the opportunity to read your submission. I understand it appeared in our computers as I walked in this morning. And I understand that there was an answer to the question of the use of the term Fijian. And I thank you for the explanation and the answer. I have a number of other questions. I'm very clear about the secular state statement, about the removal of the secular state. I want to add on to that and ask beyond that. My review of other constitutions in the preamble is a very obvious inclusion of a belief in God, in the role of God in guiding our decision making, and in the role of God in whom we place our trust in bestowing upon ourselves the 1997 Constitution. This is well stated in the preamble.

I noticed that is also alluded to in the 1970 Constitution, in the earliest part of it. And I guess what I'm asking is, how do the members of the Council feel, in addition to your stated request that the Constitution repeal the secular state section, how do you feel about the inclusion of God directly, as has been the case in the 1970 and the 1997 Constitution in the preambles, as an acknowledgment that government is not a thing of man, but that there is a divine influence. And I say that because the removal of the secular state paragraph does not actually necessarily include the inclusion of an acknowledgment of God. How do you feel about that? And I'll take it a step further. If the acknowledgment of God is part and partial of what the members of the Great Council of Chiefs would wish us to include.

The second question is, what are your feelings about the use of the term Christianity? I understand that in some of the previous Constitutions, there have been references to Christianity

specifically. And your feelings about its inclusion in our amendments to the Constitution. Thank you.

GCC: I think the start point to that is that when we talk about secular state, we look at our code of arms right there in front of us it says ' Rerevaka na kalou ka doka na Tui'. So, if we fear have God, we have it on our code of arms, you never do something else.

GCC: Thank you, Chair. You've answered my question. Just for the record, that was brought up in our conversations over the last two weeks.

Mr. Kohli: I think regarding the first one about reference to Almighty God, you already have in your preamble, at the beginning of the poem as well, and that was missing from 2013 when we had the discussion yesterday. So, I think that is well covered. Thank you very much.

Mr. Valenitabua: The Bill of Rights. Is there anything in the Bill of Rights you would want to comment on, in addition to what we have here, the sexual orientation one? You have the sexual orientation provision, and the right of equality and freedom from discrimination, and then the rights of children. Is there anything you would like to comment in relation to that, please?

Mr. Bukarau: Chair Ni bula vinaka, bula vinaka colleague, and the rest of the committee, I thank you sincerely for allowing us to come this morning, and just to add to the question of Dr. Fatiaki, in relation to the inclusion of God, there is history in this country, through the Deed of Session, where Christianity has been expressly written, but because it is absent in the Constitution, the issue becomes alive for constitutional reviewing personalities. When the Constitution says what the chiefs, they fear is Christianity, that should ring a bell. But at the same time, whilst Christianity has been given our precedence over other religions, it does not stop us opening the door for all other religions to freely express themselves in the way they want. But just to answer the question, that is why the Council of Chiefs is actually saying you should include the GCC, the Deed of Session, in the Constitution. The reason is, is a few folds. The creation of the Council, who are before you this morning, was created by their deed. The chiefs who handed Fiji to Great Britain are the predecessors of this particular Council. So, it is important for members of this country to acknowledge their beginnings. Hence, some of the important pillars, constitutional pillars, which drafters should actually have mindful in the back of their mind, is what has transpired in history. What we are here before you to do is an extension of that, basically to advise government in relation to its governance. There are issues, as you will hear the chair this morning, he said, we reserve the right, because there is a principal issue that we

will need to also raise before you. And we will leave that to come out from the provinces, because you will see where we are coming from through that process. And I'm very happy that you are going to open your doors so that they can be useful to you in your deliberations and also fact-finding to base your decision. But in relation to the rights of this country, as mentioned by the chair, we've already highlighted the portions which we feel should really be zeroed on by the Commission. But there are others which only in relation to the children. In fact, you will hear from the provinces that they do not like being stopped from disciplining the children. What is that tied to? That is tied to their belief system, because their scripture actually expresses that the only way to discipline a child is to smack them. And when the law comes to say, don't do that, you actually are stopping them from what they want to do, they have been doing since birth. But that's why we've just opened it a bit so that you can make it discretionary to the teachers and to parents to discipline their children to that extent if they need to. But in relation to other rights, the only other one is the sexual orientation which you will find already submitted before you. The reason why we specifically object to this is because the major religions in this country frown upon this particular behavior. For instance, if you live in a community and it's happening next door to you, how would the community feel? It brings dissension. It's the practice. So, that is why the chiefs discussed now before you in relation to those findings. But whether we do come across other rights issues when we hear the provinces speak, that will come back to you soon. Thank you.

Mr. Valenitabua: Thank you very much, Mr. Bukarau. One question. What is the view of the GCC as you are here today on the counting system for the elections? Should that be changed or retained? We know that this is a de-honk or whatever system. What is the view of the GCC on this?

GCC: Thank you, Mr. Chairman. I think the view of the GCC is that the de-honk system, as you are aware, is a practical application. It's not about voting for a person. It's about voting for a party. And when you disperse the numbers according to an entire state as a whole, I think the view of the GCC is that it disempowers the provinces in inventing who they think is best. And therefore, I think the problem of the GCC is that the system will be changed.

Mr. Valenitabua: Thank you very much.

Ms. Nailatikau: Thank you, Chair. Gentlemen of the Council, I reiterate my colleagues' appreciation for your presence and contribution this morning. I am of the generation that is one of the last to remember what it was like to have a Senate as part of our governing architecture. And many young Fijians have likely never

lived under such an arrangement, which makes your contribution about the role of chiefs in the Senate a very pertinent one. And I would really be interested to hear you expand on what you see as the role of chiefs and what the role of the Senate is in securing the proprietary and collective rights of Indigenous Fijians. Thank you.

Mr. Bukarau: Thank you, Chair. Specifically on the role of the Senate, it was noted in the last get-together meeting of the Council that what if we sit and we think that we need to veto a legislation, which do not rhyme well with the aspirations of the talking or runs cross-brain in relation to the issues that touch us. And when we consulted with the Solicitor General's Office in relation to the way they're acting on the radio, basically he said, I think it would be better that you would recommend that it not be exercised, because it's not normal that an institution within an act has veto rights in relation to certain issues. But there are life-wide issues before the Council where they say they should not legislate on this, but there is no way of stopping it. So, the only way is to bring back the 1979 format, which was taken out by the 2013, and that is for the GCC to sit, for the Senate to sit, but within the Senate there is a number of chiefs from the GCC who are members of the Senate who will speak specifically, and they will either pass or not pass legislations in relation to talking interests and rights. So, that is why that's the only way a veto may be exercised, and because it's slanted that way, it's factually that way, we see that the only way a veto can be exercised is through the Senate. And so, we are also asking that the Senate come back to maintain that ability to be able to change legislations at that level of law-making. Thank you, Chair.

GCC: If I can just add something to what Mr. Bukarau has just said. One of the things we've been discussing within the big conferences, and I'm glad that Ms. Nailatikau mentioned being one of the generations that remembers the Senate, is that the difference between the previous Great Council of Chiefs and the re-established Great Council of Chiefs is that we realized that to sell, if that's the right word, the Great Council of Chiefs- Bose Levu Vakaturaga, the new generation of Fijians, anybody who's 40 years old and below right now in Fiji, which is the majority of the population, have no idea about the Great Council of Chiefs. And so, the way we're looking at it from the Great Council of Chiefs' perspective, is that when we talk about the Senate coming back and there being representation from Great Council of Chiefs in the Senate, we're not talking about ourselves. We're looking at ourselves being outside. And that we need to pick those Fijians, if that's okay, who have the attributes that we think will contribute to indigenous populations sitting in the Great Council of Chiefs. And so, when I look at you, for example, I see four people that could be members nominated by the Great

Council of Chiefs sitting in the Senate. And those that are younger, that will bring what we think is a new generation to understand what is required in terms of meeting the iTaukei aspirations.

GCC: if I add, just to explain on the role of the Senate, my understanding and I think the intention going back to the colonial phase, when you transport law into a new colony, there's only two ways to do it. Either you do it by reception or adoption. And I think it goes to the crux of the context of the people that have been colonized. And because in Fiji we have a plurality of system in existence, democracy cannot handle that. And that will go to the lower house, and therefore I think the upper house or the Senate was designed specifically for that purpose, to see what is wrong and specify the matter so that it goes to the context of the people who are making the decisions in the Senate. That's all I have to add on that. Thank you, Chairman.

Mr. Valenitabua: Now we have Dr. Gounder, who wishes to ask a question to the GCC members.

Dr. Gounder: Thank you very much for your presence this morning. We respect the knowledge and the wisdom of the great Council of Chiefs. Many of the non-iTaukei people that I interact with and I know have a lot of respect for the great Council of Chiefs and the wisdom of the great Council of Chiefs for the future of our country. My question is related to the electoral system. If you have any comments at this stage, as you are fully aware that there is a single constituency in the 2013 constitution, do you have any comment at this stage on the mechanics of the way our elected representatives should be elected, and any other comments in relation to that? Thank you.

Mr. Bukarau: Thank you, Dr. Gounder. Mr. Chair, through you, there are some great reservations within the Council on the way the current and existing electoral system, which does not really represent the wishes of all members of the community, in the sense that those elected for government cannot be held accountable to any part of the society because they do not have to leave any part of the provinces or the electorates. I thank you for that, and I offer my word to the rest of the committee group to share their views with you in response to your question. Thank you, Dr. Gounder.

GCC: Thank you, Dr. Gounder. If I may add, the constituency as it is designed now, I think it pays not enough respect to the level of what is democratic, because I think the GCC is of the view that every single vote is a property that ought to be respected. So, if someone goes through with 300 votes and then gets to represent the entire of Fiji, then there are some questions underpinning that process to the level where it is at. Thank you.

GCC: Vinaka, Dr. Gounder. I think when we look at the constitution, the term constitution is normal. It was meant for two people, and it was made for two people. It is a strong man's constitution. It wasn't meant for anybody else. I asked, we had a meeting with Justice Fatiaki and the team last year during one of our meetings of the great Council of Chiefs, and I think it was, and I hope now when you think about it, even if there were five constituencies, not just one, even if it was five, it would dilute the power of the one person that it was meant for. And so, when it's meant for one person, it is not a democratic constitution. The term constitution hides the fact that it is an autocratic make-up with a lipstick called constitution. Thank you.

Dr. Fatiaki: Thank you through you chair, I think this discussion about the electoral system is probably driven as probably one of the members of the senate sitting here alive I probably make some comments. I was the youngest. would have been the next in terms of our age. I was definitely in the 40s at that date. And I could say when I sat there, I think at that time the constitution had, the Senate had something like eight members from the GCC. I think there were seven or six from the Prime Minister and the Leader of the Opposition. And the one thing I noticed was every minority community was represented. If not in the House of Representatives, it was certainly in Senate. So, we had the Chinese, we had the Kai Loma in the Senate, and obviously I was there too. So, there was that representation I saw in the Senate. In addition to that, as the youngest, I would listen to the chiefs that were from the different provinces. I know many of them would have passed by now. But let me say, in all the deliberations we had in Senate, I thought I was a smart fella when I walked in there. I actually learned so much. I won't say knowledge, but I learned a lot of wisdom just listening to older people. There was something about Senate that was not political. I know that there were members from the, appointed by the different parties under the Prime Minister and the Leader of the Opposition. But the general consensus every time we said this, even those people didn't speak on behalf of their party. Most conversations in relation to bills were really just individuals representing the well-good. I can't say that they were elder peers because obviously I wasn't an elder peer to the members of the House of Representatives. I'm relatively young. But the general feeling was that the Senate was almost removed from politics. And having that as a, I wouldn't say necessarily a veto mechanism, but I think certainly as far back as the initial Senate from the 1970 Constitution, it reflected that role of a body that would be, would have the ability to review. I'm not sure whether they actually had veto powers, but that they would be able to influence greatly in returning legislation that was being proposed back to the House of Representatives. That was my

experience. Toned down, very disrespectful, very non-partisan and with a sense that everybody just had the well-being of the country at heart. And so for what it's worth, I think your proposition for a return to the senate is something that certainly our committee will be considering and discussing further. Just a few reflections on members of the GCC. Thank you.

Mr. Valenitabua: Thank you, Dr. Fatiaki. To members of the GCC present here this morning, we'd like, there's a question that has been passed to me. We need confirmation. Does the GCC want the senate to be back in the constitution? We know that you have said it. We want a confirmation.

GCC Chair: Mr. Chair, it is the unanimous belief of the great council of chiefs that the senate will be returned to carry out its functions as it was in previous constitutions. But the very reason, Dr. Fatiaki, I like it. There's wisdom in the group of, of the members of that, of this house. And we believe it is, we all know they care for all races, very equally. When they come, when they put together, when they come up with their decisions, their views is always full of wisdom. And that's what we believe. It's very, very important. It is fundamental that we bring back the senate. It's more than I used to bring our community together.

Mr. Valenitabua: Thank you very much, Chairperson of the GCC. We have one more question from Professor Baba.

Dr. Baba: Kind of not a question, but interested again in the senate and your, your, your profound influence over it and other leaders of other societies as well. For those of us, Chair, who've lived a few decades, a few of us who are here, it's, it's the essence of dignity that we don't always see in the lower house, if you like. Children today, I think, as an educator, I would say that the senate role, if you like, are full of lords. They are not everyday persons who feel free to use language and hum the population more than anything. And that's what I'm afraid of today. Because children are only looking at one house, if you like, and that's not leadership necessarily. So, from an educator point of view sitting here, Chair, and a mother, it was the senate that kind of, as Dr. Fatiaki is saying, kind of gave us the wisdom we need to live together. You know, one house is hot, the other house brings temperament, brings wisdom. So, I think it's in the way we would probably write it, now that you've said you were all for it, the kind of the lords, if you like, who care for everybody. I think that's what's coming through. And some of us also have been worried about the lack of that wisdom that is distributed, because when children look at the parliament house, they are assuming that it's the best of us. Whereas those of us who are a little bit older, we know when the hot house is hot, the upper house, if you like, the house of lords, temper. Because we still have to live together, no

matter the differences. So, thank you. I'd like to then say that Dr. Fatiaki and your extensions of the senate probably is what's strong, coming through strong today. The only other question, Chair, that I have, maybe when we read your submission today, I know it's only 11 pages. You've intimated that we might receive a lot more, and maybe in different ways, towards maybe middle and end, while the provinces speak. You've intimated that you want to see in the preamble, or a separate chapter. That's the deed of session. Is that what you're saying today, Chair? You want a separate section, yeah? After the preamble, or what will be the preamble? The preamble kind of holds all our values, yes? So that's chapter one. I want to hear a little bit more of your suggestion. You've done two things. Either we have that as part of the preamble, might be too long, but then you said we could also have it as a separate section. Where? In the beginning? Thank you, Chair. Thank you.

GCC: Thank you very much Doctor Baba. GCC, the reason why we want it at least expressed in the preamble is because, like I said, as you see now, the preamble only mentions about those who came in and those who accepted as being part of the country. It does not say anything else. So, because it is minus that history, we seem to have this, but we need to record that we had started at some place without governance, and we are going somewhere in the preamble. But in relation to whether it's a separate section, it had been a separate section in the 1997, although it was mentioned also in the preamble. And in relation to Mr. Gounder's point on representation of one constituency, that that is indeed a problem, because we cannot hold the members of the house accountable to that specifically, because we represent iTaukei, we connect with the provinces, and there is no link within parliament that represents the province. Everybody does. So, from that point of view, in relation to representation, which we heard a bit Dr. John say, is that the representation becomes an issue. And when the, when we finish Bose ni Yasana and we want government to be part of it, the first thing we do is mention it to the member of the province who sits in parliament. So those are some of the facilities that are now not there. Just to answer the question, sir. Vinaka Saka Vakalevu.

Ro Naulu: Mr. Chair, just to ass to what Mr. Bukarau said. I think if we look at, we tend to forget that the deed of session, I think of it was actually the first constitution we ever had. But when it was signed, sealed, delivered, they were only the, it okayed that way. And if you look carefully into what is written into the legal session, it's part of the problem that we are now faced with. All the instability stems out of what was written into the legal session, not having been returned to the iTaukei. This is going to be part of an ongoing discussion. But to go back to what Dr. Fatiaki, Dr. Baba said, we see that *'na yalo vagonegonea'* that we

see in parliament has permeated our society. Last month, we had a couple of senior civil servants, including Minister for Tourism, who came with his team to talk to us in the Kuma Bill, the PS for Mineral Resources, and Lance come to talk to us about the Mining Act, Fijian Affairs, iTaukei Affairs, talk to us about release by laws. One thing that was shocking to us, we knew the subject matter, but there was a lack of wisdom in the way it was delivered to us. And this is something that we're beginning to see across the civil service. Now, if we have only one house, and we see it because now it's on TV whenever they sitting, and if that is the standard by which we're going to judge leadership by, we have a serious problem in Fiji. Hence the reason for the constitution for the senate, and why we are off with it, because what we begin, well what we've seen in the civil servants that we deal with, I think that the Tui Nayau and the people of Lau have a saying for it '*a vuli ga a ta sukulu*', they've all been educated, but there's a lack of wisdom there. And if this is the leadership we see at the senior civil servants, we have an issue that I think collectively we will need to deal with. Thank you.

Dr. Fatiaki: Just in the way of background, honorable members of the GCC, I'm speaking a lot more than my colleagues, I'm sure that at later sessions they will be speaking a lot more, because we have just started our review of the constitutions, and in this process I have been allocated the first three sections, which is a preamble, the first part to do is state, and because of that, obviously a lot of our questions and discussion this morning has been related to that, because I'm supposed to be the one in this panel who has reviewed it, and discussed it, compared it to the previous ones. It's along those lines that I've been talking so much, and I apologize for that. Let me just allude to, when we talked about the democratic deficit, which was the initial basis on which we were asked to review the constitution, I mentioned to the lack of consultation before the drafting of it, the lack of formal recognition to our parliamentary process, and acceptance of this constitution, because it says we forgive ourselves this. And the third part that I didn't state as part of that democratic deficit was what I think alluded to, which was the consolidation of power in the two people. For those who also remember, when the 2013 constitution was agreed, and I think there were two ministers who were responsible for three quarters of government, I admit, I'm serious, you know, and there was concerns about whether they would be paid seven salaries, or that sort of thing. That consolidation of power in the hands of two people was what I think, you are alluding to, and we recognize that in terms of one of the deficits that became rise to the need for us to look seriously at the 2013 constitution. I have two other areas that I would like you to, maybe not necessarily answer now, but to take back from the area that I have addressed with my colleagues over the last two weeks in

discussing the 2013 constitution. One is the 1997 constitution has a thing called a compact. It's an entire chapter, chapter two. It comes after the preamble and the initial part. I'd like you, honorable members, please go back and read that compact, because in three of the 11 provisions of this compact, and the compact was basically a saying that we, the people of Fiji, in making laws and in going forwards, had this agreement amongst ourselves, but basically, we all shook hands and agreed that this is how we wanted this constitution to be. I will read to you three of them, specifically in respect of the indigenous people of this country, because I think it may have relevance for your discussions as representatives of the iTaukei. Compact B says the ownership of Fijian land according to Fijian custom, the ownership of freehold land and the rights of land, is the issue of the ownership of Fijian land according to Fijian custom. That's a compact that everyone who's writing this constitution recognizes and accepts. The second one is the rights of the Fijian and Rotuman people include their right to governance through their separate administrative systems. Everything, law and everything after this, compact, we do on the basis that this is an understanding that binds it before we do anything further. That the rights of the Fijian and Rotuman people include their right to governance through their separate administrative systems. I think part of your submission relates to provincial laws. I think that compact is a statement of that at the very beginning of the 1997 constitution that I think is to encapsulate that. J says in these negotiations, you obviously need to read it all, but it says in these negotiations the paramount you see of Fijian interests as a protective principle continues to apply. So, as to ensure that the interests of the Fijian community are not subordinated to the interests of other communities. When this constitution was written that was an agreement, a compact, a solemn, I won't say vowed, a solemn undertaking that in accepting this constitution these general understandings that undergird it are things that, I mean they're not a law, they're a principle on which every discussion that we have subsequent to this, whether it's the Bill of Rights, whether it's the Construct of the Parliament, should be underpinned by these. And I refer you to these because we discussed this at length. And I hear in what you're saying and the need to incorporate into the preamble for instance very solid statements that recognizes what Naidu attributed to in terms of the deed of cession of the history in the first 1987 constitution. And I wanted to point this out as an area that I notice you don't allude to it, whether you think that's useful, whether it should be included, whether we should consider something like that, and I'd like you to look at that.

The third and my last question this morning relates to the issue of multiple citizenship, multiple nationalities. This is something that was introduced in the last constitution that did not exist in

the three previous ones. Whether you answer it now, whether you answer it later in a later submission, I'd like the GCC to think about that because the issue of granting people multiple citizenship does have implications upon the sovereignty of this country, the voting rights I guess of this country, because by definition if you're a citizen you can vote whether you live in China, India, wherever, and its impact upon I guess the country. So, I'd like to refer these matters to you as not necessarily questions, but areas that maybe if they're not addressed in your submission at a later time you might address. Thank you. Chair, thank you.

Dr. Baba: Chair, if I may, just going back to Ro Naulu, I'm Una, just like John is saying, Dr. Fatiaki, I would like to just pick up on what you're saying, just in terms of forward moving from today, because you are our first through the chair. You made a mention of something I've always worried about, and that is the point you've talked about here, but very briefly. Chair, this is the point of the deed of session. If we were to look at the New Zealand equivalent, the Treaty of Waitangi, and the Treaty of Waitangi, so if we did through the Council of Chiefs get a revisit to them before we include it further, could we revisit that very important point, please? Because when we translate the Tiriti and it became Treaty, this is what the Māori are bothering about today. Could the GCC, the August Party, please look at that? When you re-look at the deed of session, and if we did translate it, could we make sure the lawyers are very powerful on your side? Could you look at that particular point? Because today, I think it makes a lot of difference the way things are translated. A lot of loss and lots of gains that were not meant to be. That is one. The only number two was when I think the chair of GCC, when you made the references to your, when we were looking now at the preamble, maybe you could do a bit more than that. I'm asking, you know, if 65% of the population you play oversight of, I would ask that you deal with what John is saying, because this is John's homework, by the way. That's why John has to be only one, really. We should be talking today about the beginnings, because it's how we really look at the people. We start with the preamble, and if you just touch on that a little bit more, I'd like that, if it could be done by you.Thank you, Chair.

Ro Naulu: Thank you. Thank you, Dr. Baba. On that, we've had long discussions in the Great Council of Chiefs on this, and for us, it has to be a foundational document, the legal session. You will have noticed that in the last 18 months, almost two years, the Chair and colleagues from the Secretariat and iTaukei Affairs have been travelling down and meeting with Māori leaders, and I let the Chair elaborate a little bit on that, but it is part of it. Just going to what John has said, I think, you know, part of the constitutions we've had, the courts have played a negative term,

you know, constitution, because rather than amending the constitutions, we've come up with new constitutions. But it's how we look at constitutions that I think is part of the problem. It is a living document. We've never looked at it, in my view, as a living document that can be amended as we go along. From the 1970 constitution, it's like, now you have it, it's like the Bible, it's there. And whether you like it or not, there's been no discussions about amending any of the constitutions. We've come up with new constitutions, and so if you look at the US Constitution, I don't know how many amendments they have, but you know, for a document that began all the way back then, they've come up with amendments, after amendments, after amendments, and perhaps by changing our mindset to look at constitutions as a living document that can be amended to suit the times we're in, rather than to think of it as the Old Testament, will bring that mindset change to see how we respect and reveal a constitution, because it is there to guide the country as we mature. We evolve, and so should the constitution make it suitable for the generation that it's living with. And so, I think, I don't know how well you're going to be able to pass this message on, but I think it's important that the government and every Fijian look at it as a living document. We don't like it, we want it out, but the Supreme Court have adjudicated on it. We're now going to test how to amend it, but that is part of, I think, the growth of Fiji, and we should be looking at it as a living document, and I think that's something that's missing in the discussions amongst Fijians in general. But I'll pass on to the Chair to talk about the Maori portion a little bit more. Vinaka.

GCC Chair: Vinaka, Dr. Baba. We will thank the Chair and the members of the committee for giving us the opportunity to make further submissions, and we will look into that in the future.

GCC: Chair, just to add on to my colleague, the point raised by Dr. Fatiaki regarding the compact, I think it highlights what afflict the constitutions that followed after 1997. What we have in Fiji, and I think this goes to the 40 OR that you specifically mentioned addressing customary property rights and interests, what we have is not the lack of recognition in the constitution passed, but the lack of clarity in the how. Why is it very clear, the why part is very clear, but the how. So, if you look at all the constitutions of Fiji, this is something that's afflicted every constitution since 1970, and I think the biggest challenge is to try and come up with something that can balance and identify the existence of a very unique application of democracy in Fiji, given the plurality of the registers that we deal with every day. Whether it's mining, or it's property, or it's timber, or it's election, everything is burdened with this plurality. So, the challenge for us is to come up with a balance that needs to address this clearly. And just a point on Dr.Baba raised about the treaty, I think that's an issue that is very

central to the discussions that we have at the GCC. Every country has a different context, and we can certainly learn and contextualize that in the application of Fiji's case.

Mr. Valenitabua: Thank you. I think we have just one more question from Mr. Conway Beg.

Mr. Conway: Thank you Chair, Chairman of the Board of Council of Chiefs and Honorable Members. I wanted to have me in your presence here today, thank you. I just have one question to Ro Mataitini. Thank you for your comment about public service. I've been tasked with chapter, so I'm glad you brought some points out. My only comment is, are we going to hear back from you further on this in your discussions, in your further submissions? But yeah, I look forward to it.

Mr. Valenitabua: Thank you. Mr Begg, the last question, that is if you allow us to ask the last question. We have a task to look at the possibility of amending the constitution, the 2013 constitution. There is a sensitive issue which you have not raised, and that deals with the amendment to chapter 10 of the constitution and part D of chapter 12. This addresses immunity. What is the Great Council of Chiefs stance on the immunity provisions? If you can answer now, you may answer. If you want to think about it and then contact us later, you may do so.

GCC chair: Mr. Chairman, the Great Council of Chiefs have discussed the clause, I believe it's immunity clause that we're talking about here. It is a great belief that we shouldn't have such a clause in a constitution. But of course, the High Court has made its decision, it's passed its judgment and that's where we are. But to answer your question, as a Great Council of Chiefs, we don't believe there should be such a clause in any constitution. If a person commits a crime, the person does the time. Simple as that. Thank you, Mr. Chairman.

Mr. Valenitabua: Thank you very much, Chairman. That is all from us, ladies and gentlemen Vinaka saka Vakalevu for our consultation this morning, we have read, we have heard the GCC and we've heard and read from the submissions delivered to us this morning by this honored or Honorable delegation. The door is open. If you need to make further submissions, we are open. Here or at your office, we are open to that. If you wish to convene a special meeting for the GCC so that we can discuss things there, we are open to that. But it's up to you.

GCC Chair: Mr. Chairman, ladies and gentlemen, members of the Constitution Review Committee-Vinaka Saka Vakalevu, thank you so much for giving us the opportunity to come and present, give you our presentation, our initial submission, should I say,

this morning. On behalf of all members of the Great Council of Chiefs, our colleagues who have joined us this morning, please accept our sincere appreciation for giving us an opportunity. In summary, Mr. Chair, you asked a question about the Constitution, what we think of it, and the wording, the way it's written. To be brutally honest, I have two copies of this Constitution on my dressing table at home, and they smell brand new as they came out of the printing press, because I've never opened them, nor paid attention to the details of the Constitution. Now, let me qualify that statement. It may sound silly, but I'm joined here this morning with six members, five members of the Great Council of Chiefs, and Mr. Bukarau, but we were members of the Defense of the Military, the Republic of Fijian Military Forces, we all joined before 1987. We all took an oath to defend the rights of every citizen of this country, regardless of race, ethnicity, religion, or gender, and we believe in that oath. The reason I didn't like to go any further than reading past the first two pages of the Constitution, because I can't find deep in my soul to defend something that's indefensible, something that did not represent the rights of the citizens of this country, regardless of ethnicity or race. They did not choose, so it's hard for me to believe in such a document. The task before you, ladies and gentlemen, is to say important is an understatement. It's crucial. We wish you well in the charge as you go through the review, but we will continue to pray that at the end of it all, you'll come up with a document that this nation can look up to, so that when our sons and daughters take the oath either to teach or to stand by the doctor's table with somebody's life in their hands, or when we send our children to the battlefields, that the oath they will take is something they believe in, because it's linked to a document that represents their wishes. We wish you well.

Mr. Valenitabua: Vinaka Saka Vakalevu. I would kindly request that we present our sevusevu this morning. Vinaka Saka. *[Presentation of Sevusevu till ends]*

----------*End of Sessions [09/04/2026]*----------



BOSE LEVU VAKATURAGA

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Bose Levu Vakaturaga Submission on

Review of 2013 Constitution

PROVISIONS PROPOSED FOR AMENDMENTS BY THE BOSE LEVU VAKATURAGA (BLV)

25 Feb 2026

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PROPOSED ALTERATIONS/AMENDMENTS/REPEALS

Constitution 2013 Silent

1. ***Deed of Cession to be included to import our unique History into the Constitution*** *(Whether through Preamble or by a separate new section)*

   a. Unique place of the Deed of cession in Fiji's constitutional history needs to be recognised in any Constitution of this country.

   b. Secondly, the relevance of this Legal Instrument in reflecting the dealing of the proprietary interest of the iTaukei is a prominent live issue.

      1) The Deed explains the gift of iTaukei proprietary interest to the Queen to assist governance.
      2) The history of whom it was given to, & what was given.
      3) How it was dealt with by the Colonial Government
      4) History of Independence explains where gift is at. i.e. to whom it was returned to,
      5) Where gift are currently held;
      6) How are they are dealt with between independence and now.
      7) The live issue of its return of what was gifted to the original owners - the iTaukei is a matter for this house to deliberate upon at appropriate time.

   c. In respect of iTaukei proprietary rights, the Deed of Cession of 1874, is the legal instrument that keeps these issues alive and preserves the original intent that mirrors the goodwill of the chiefs to the(colonial) government in the governance of their country.

   d. Because the Bose Levu Vakaturaga (BLV) was undone during the term of the former administration, the entity's existence was also deleted in the 2013 Constitution. It is felt that we should use the principal wording in the 1970, 1990 and 1997 Constitution as a basis for a draft to inclusion in this proposed amendment to the 2013 Constitution. A draft may read as follows:

"PREAMBLE

WE, THE PEOPLE OF THE FIJI ISLANDS,

SEEKING *the blessing of God who has always watched over these islands:*

RECALLING *the events in our history that have made us what we are, especially the settlement of these islands by the ancestors of the indigenous Fijian and Rotuman people; the arrival of forebears of subsequent settlers, including Pacific Islanders, Europeans, Indians, Chinese* and other races*; the conversion of the indigenous inhabitants of these islands from heathenism to Christianity through the power of the name of Jesus Christ; the enduring influence of Christianity in these islands and its contribution, along with that of other faiths, to the spiritual life of Fiji:*

ACKNOWLEDGING *our unique constitutional history:*

(a) Colonial governance began with the Deed of Cession of 10 October 1874 when Ratu Seru Cakobau, styled Tui Viti and Vunivalu, together with other High Chiefs, signifying their loyalty and devotion to Her Majesty, Queen Victoria, and their acceptance of the divine guidance of God and the rule of law, ceded Fiji to Great Britain, which cession was followed in November 1879 by the cession to Great Britain of Rotuma by the Chiefs of Rotuma;

(b) Fiji became an independent sovereign state when Her Majesty Queen Elizabeth II promulgated the Fiji Independence Order of 1970 under which the Fiji Constitution of 1970 came into being;

(c) That political turmoil in Fiji deteriorated culminating in the following events:

(1) the abrogation of the 1970 Constitution on 1987 by the Constitution Abrogation Decree 1987;

(2) the giving to Fiji of the 1990 Constitution by then President, Ratu Sir Penaia Ganilau, with the blessings and approval of the Great Council of Chiefs;

(3) the review of 1990 Constitution undertaken by the Reeves Commission under its provisions; whereupon the High Chiefs of Fiji in their abundant wisdom and blessings, approved 1997 Constitution;

*(4) the latest Constitution of Fiji was promulgated in **2013**, when it was signed into law by President, Ratu Epeli Nailatikau.*

RECOGNISING *that the descendants of all those who chose to make their homes in these islands form our multicultural society:*

RECOGNIZING *the rights of iTaukei and Rotumans to their inalienable rights to the property in these islands; and further recognizing the rights of others to own property in Fiji.*

AFFIRMING *the contributions of all communities to the well-being of the Fijian society, and the rich variety of their faiths, traditions, languages and cultures:*

TAKING PRIDE *in our common citizenship and in the development of our economy and political institutions:*

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

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

WITH GOD AS OUR WITNESS, WE GIVE OURSELVES THIS CONSTITUTION

1(a) New Interpretation Section.

Interpretation and Definition

In this Constitution, unless the context otherwise requires—

"Fijian" *means the native, indigenous people of Fiji, who possess inalienable customary ownership rights and interests to land and seas as recorded under the book of living descendants(VKB) for the respective ownership units, and may be also referred to as* ***Kai Viti*** *and these terms may be used interchangeably.*

Rotuman *means the native indigenous people of Rotuma who possess inalienable customary ownership rights and interests to land and seas as recognized and recorded on the island of Rotuma in accordance with Rotuman culture*

"Fiji" *may also be expressed as* ***"Viti"****, and both terms shall be understood as referring to the sovereign State of Fiji.*

Section 5 -Citizenship -Proposed amendment

*"****Citizen of Fiji****" means any person who holds citizenship of Fij, including the island of Rotuma in accordance with the law.*

All persons who are citizens of Fiji but who are not encompassed within the definition of "Fijian and "Rotuman" shall be recognised as non-native citizens of Fiji and shall enjoy full and equal rights, privileges, and protections under this Constitution, without discrimination, and subject only to such distinctions as may be expressly provided for under this Constitution or any written law.

2. Protection in Alteration of Laws Affecting iTaukei Proprietary Rights.

Alteration of certain Acts

F.--- (1) A Bill that alters any of the following Acts, namely:

(a) Native Lands Act 1905, Cap 133;
(b) Rotuma Act 1927, Cap 122;
(c) Native Land Trust Act 1940, Cap 134;
(d) Fisheries Act 1942, sections 14 – 20, Cap 158
(e) Fijian Affairs Act 1945, Cap 120;
(f) Rotuman Lands Act 1959, Cap 138;
(g) Banaban Lands Act 1965, Cap 124;
(h) Fijian Development Fund Act 1966 Cap 121;
(i) Agricultural Landlord & Tenants Act 1967, Cap 270
(j) Banaban Settlement Act 1970, Cap 123;
(k) ITaukei Trust Funds Act 2004;
(l) Indigenous Rights Act 2025; and
(m) Bose Levu Vakaturaga Act 1925

including a Bill prepared in consequence of the enactment of this Constitution:

(n) must be expressed as a Bill for an Act to alter the Act concerned:

(o) must not be presented for the President's assent unless it has been read three times the House and motions for the second and third readings are carried in the House of Representative; and

(p) is deemed not to have been passed at its third reading in the House of Representative-

(2) A Bill that alters the Agricultural Landlord and Tenant Act:

(a) must be expressed as a Bill for an Act to alter that Act; and

(b) must not be presented for the President's assent unless:
- i *it has been read three times in House of Representatives and motions for the second and third readings are carried in the House of Representative; and*
- ii *at its third reading it is supported by the votes of at least two-thirds of the members of the House of Representatives.*

(1) The President must not assent to a Bill referred to in this section unless it is accompanied by a certificate of the Speaker to Parliament certifying that, in relation to the House of Representatives, the approval required by this section has been given.

3. ***Customary Laws and Customary Rights.***

All references to Customary Laws and Customary Rights were taken out by the 2013 Constitution, this proposal recommends that section 186 of the 1997 constitution be reinstated as a BLV proposal because the iTaukei and all other communities in Fiji are cultured and governed by customs of old that have formed the basis for conduct within these communities.

Customary laws and customary rights

***G.**-(1) The Parliament must make provision for the application of customary laws and for dispute resolution in accordance with traditional Fijian processes.*

(2) In doing so, the Parliament must have regard to the customs, traditions, usages, values and aspirations of the Fijian and Rotuman and other communities that forms Fiji's populace.

(3) The Parliament must make provision granting to the owners of land or of registered customary fishing rights an equitable share of royalties or other moneys paid to the State in respect of the grant by the State of rights to extract minerals from the land or the seabed.

(4) A law fixing amounts under subsection (3) must require that account be taken of:

(a) any benefits that the owners are likely to receive as a result of the mineral exploitation;

(b) the risk of environmental damage;

(c) any legal obligation of the State to contribute to a fund to meet the cost of preventing, repairing or compensating for any environmental damage;

(d) the cost to the State of administering exploitation rights; and

(e) the appropriate contribution to the general revenue of the State to be made by the person granted exploitation rights.

4. ***Bose Levu Vakaturaga to be included in the 2013 Constitutional Amendments.***

a. *The Bose Levu Vakaturaga (BLV), as the most senior of all leadership institutions in Fiji, somehow still finds its place in the Regulations of the iTaukei Affairs Act 1945, Cap 120.*

b. *It did get constitutional recognition when elevated in the 1997 Constitution. It was soon replaced and relegated back to its former position after the promulgation of the 2013 Constitution.*

c. *The entity having suffered suspension and disestablishment during the former administrations, it is now the desire of the Chiefs to have this forum reside in the Superior Law of this country so that its seniority is not only acknowledged but also its contribution to the welfare and well being of the State & its component peoples.*

d. *Further and more importantly, its pendency will not be tampered with by successive governments.*

e. *Having regard to wording of section 166 of the 1997 Constitution 1997 proposed as amendments as follows:*

Bose Levu Vakaturaga

116.-(1) The Bose Levu Vakaturaga continues in existence and its membership, functions, operations and procedures are as prescribed from time to time by or under that Act.

(2) The Bose Levu Vakaturaga has, in addition to the functions set out in the Fijian Affairs Act, in addition to functions conferred on it by this Act or under this Constitution.

5. *Section 4 - Secular State in 2013 to be repealed*

a. The inclusion of secular state in the Constitution is an intrusion to the right that individuals possess to voluntarily practise a religion of ones own choice. It is also a denial of hardship that the country has become since formal governance began; and the immense contribution of church elders of this country in maintaining the faith in God over and during our trying times. Further, it is hence the desire of chiefs want to restore back to our individual and communities their faith in God and the conduct of religion in Fiji.

b. Section to be deleted as Bill of Rights aptly mentions the practice to be adopted.

6. *Section 26(3)(a) – Right to equality and freedom from discrimination based "sexual orientation" and "gender identity and expression" to be deleted.*

7. *Section 28 - To Amend Section as prescribed re Rights of ownership and Protection of iTaukei, Rotuman and Banaban Lands*

a. Discrimination on the grounds of *"sexual orientation"* or "*gender identity and expression"* is a misguided theory of biology that leads to

transgenderism, and it needs to be deleted from the Constitution. This trend gives birth to use of pronoun issues, sex changes & medical operations, definition of a woman problems, male competing in female sports and vice versa, confusion in males wanting to use female latrines, transgender toilets in the workplace and schools etc. Fiji and its communities are not ready for these archaic changes. The reason for this is not only because it is an immoral practice even, if practiced by consenting adults are engaged in this practice, it is counter-productive to the order of nature; and it impairs or stunts reproductive system in concerned individuals. The reproductive system is what the chiefs want to protect from this invasion because the stunting of this system will have a potential ill-effect on the steady increase and continued existence of Fijian race.

b. *The explanatory notes on the reasons for deletions are explained in sub-para a above.*

c. *In respect of this provision, we firstly say that:*

(1) *The 2nd line of sub-section 26 (3)(a) below has the words; "sex" and "gender". We submit that these two terms mean one and the same thing. Either one of them can be deleted. I have deleted "gender" and included "sex" in the above draft.*

(2) The second and more important amendment is to delete the terms that form the basis of this this purported discriminating grounds of *"sexual orientation"* or "*gender identity and expression"*

> *"Right to equality and freedom from discrimination*
> *D.—(1) Every person is equal before the law and has the right to equal protection, treatment and benefit of the law.*
>
> *(2) Equality includes the full and equal enjoyment of all rights and freedoms recognised in this Chapter or any other written law;*
>
> *(2) A person must not be unfairly discriminated against, directly or indirectly on the grounds of his or her—*
>
> *(a) actual or supposed personal characteristics or circumstances, including race, culture, ethnic or social origin, colour, place of origin, sex, birth, primary language, economic or social or health status, disability, age, religion, conscience, marital status or pregnancy; 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*

(c) prohibited by this Constitution.

8. New Section 28A - *State to Recognize and Protects iTaukei Proprietary and Economic Rights*

a. This section protects the proprietary and economic rights of the iTaukei people over their lands, waters, and natural resources

State to Recognize and Protects iTaukei Proprietary and Economic Rights

"28A (1) The State recognizes and protects the proprietary and economic rights of the iTaukei people over their lands, waters, and natural resources.

(2) The use of iTaukei resources for commercial, governmental, or industrial purposes shall be conducted at current market rates, ensuring equitable benefit-sharing with the iTaukei landowners.

(3) The State shall enact laws to ensure the preservation, promotion, and protection of iTaukei cultural heritage, traditional knowledge, and intellectual property, including folklore, traditional designs, and practices."

9. New Section 28B - *Development Involving Extraction Affecting iTaukei Land and Water Resources*

10. *Section 41 (1)(d) – Rights of Children – Protection from Punishment.*

a. Firstly section 41 prescribes – "*Rights of children*". See section below to note the impact of sections 41(1)(d) -" *On disciplining of children in schools. Trite iTaukei teaching that is consistent with scripture is ":O koya e lomana na luvena me kuita taka". This trite old iTaukei cliche which reflects the conduct of custom is reinforced in the advent of Christianity by scripture*[1] *- Prov 13:24: "He who spares the rod hates his son but He who loves him disciplines him diligently"*. The bulk of the iTaukei supports this position. Some fathers have been imprisoned because this matter has intervened their exercising their customary rights over his children. Chiefs through the BLV will lend their weight to support this amendment to allow iTaukei to discipline their children in a way that is in keeping with their culture.

[1] Prov 13:24. "He who spares the rod hates his son but He who loves him disciplines him diligently".

b. A majority of the iTaukei supports this position. BLV submissions in this Review is for an amendment to remove the repugnant portions that will allow parents and teachers to punish our children or students for better behaviour. This is consistent with our duty to look after the Welfare or well being of the iTaukei people in an area so crucial as family discipline.

c. Some trite scripture that reinforces the iTaukei culture of disciplining children are below:

(1) *Prov 3:11-12: "My son, do not despise the Lord's discipline, and do not recent his rebuke, because the Lord disciplines those he loves, as a father the son he loves".*

(2) *Heb 12:8 "If you do not experience discipline like everyone else, then you are illegitimate children and are not true sons".*

(3) *Heb 12:6: "The Lord disciplines him whom He loves".*

Rights of children

E.—(1) Every child has the right—

(a) to be registered at or soon after birth, and to have a name and nationality;

(b) to basic nutrition, clothing, shelter, sanitation and health care;

(c) to family care, protection and guidance, which includes the equal responsibility of the child's parents to provide for the child—

i *whether or not the parents are, or have ever been, married to each other; and*

ii *whether or not the parents are living together, have lived together, or are separated;*

(d) to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment; and

(e) not to be detained, except as a measure of last resort, and when detained, to be held—

i *only for such period of time as is necessary; and*

ii *separate from adults, and in conditions that take account of the child's sex and age.*

(3) The best interests of a child are the primary consideration in every matter concerning the child.

11. ***Section 84 – Amend to make BLV the Appointing Authority of President and Vice President.***

a. This brief acknowledges that all 4 past constitutions nominated different authorities that was responsible for appointing the Head of State:

(1) 1970 Constitution – Appointment of Head of State (Governor General) made by the Queen of Fiji being a dominion.

(2) 1990 Constitution –prescribes that a President and Commander-in-Chief of Fiji who shall be appointed by the Bose Levu Vakaturaga and who shall hold office for a period of five years.

(3) 1997 Constitution – prescribes that a The President and Vice-President are appointed by the Bose Levu Vakaturaga after consultation by the Bose Levu Vakaturaga with the Prime Minister.

(4) 2013 Constitution – prescribes that the President shall be appointed by Parliament in accordance with the prescribed section.

b. In reading the above provision there is merit in the provisions of the 1990 & 1997 Constitutions because it takes the appointment of the Head of State out of political influence and vests it with BLV. With the appointment put in the hands of an apolitical entity like the BLV it will avoid the situation akin to the one involving the stalemate between the changeover of the last governments where the election results were close.

c. *We have considered the wordings in all the 4 constitutions since 1970 until to date. We favour 1990 and 1997 versions as suitable to the posture currently adopted the BLV in it dealings with government and other principal authorities. The proposed draft provision is stipulated below:*

Appointment of President and Vice-President

B (1). There shall be a President and Commander-in-Chief of Fiji and his Vice-President who shall be appointed by the Bose Levu Vakaturaga after consultation with the Prime Minister:

(2) The persons who hold these offices shall be for a period of five years.

BLV

Judiciary

JUDICIAL PRESENTATION
Date: 09/04/26

Mr. Valenitabua: And just housekeeping matters, the mics that we have in front of us, only four can work at the same time. So, it would be best that once we use the mic, we turn it off. The switches appear in front, the white tab. Just press on that, it will go off. Press on it again, it will come on. With due respect, My Lords, this is a consultation. Mr. Kholi and I are barristers and solicitors, as you know. The remaining Commissioners would have to address you this morning, in case they want to say something, or they would want to ask questions. If you may, we will be addressing you, My Lords, as Sirs this morning, instead of My Lords. I hope you don't mind. Now we will hear your submissions. I will not introduce the Commissioners; the name tags are there in front of you. I'm sure you know most of us, if not all. So, I will now hand over, so that we can hear your submissions. Thank you.

Justice Temo: Thank you, Chairperson. Mr. Valenitabua, members of the Constitution Review Commission? We have here a written proposal for the amendment to Section 110 of the 2013 Constitution. That is the section on which the terms of the employment of the judges. Now, 110 of the 2013 Constitution, the heading is titled, Terms of Office. 110, Subjection 1 says, a person who is not a citizen of Fiji, and who is appointed to be a judge in Fiji, serves for a period not exceeding three years. Determined in this case by the Judicial Service Commission, at the time of the appointment, and may be eligible for appointments.

110, Subjection 2 reads, any other appointment as a judge continues until the judge reaches retirement age, which is Subjection 8. For the Chief Justice, President of the Court of Appeal, Judges of the Supreme Court, and Judges of the Appeal, the age of 75. And Subjection B, for the Judges of the High Court, the age of 70. Subjection 3, a person who retired as a judge of the High Court, but has not reached the age of 75, is eligible for appointment as a judge of the Supreme Court or as a Justice of Appeal.

That is the section that governs the appointments to the High Court, Court of Appeal, and the Supreme Court, the superior courts of Fiji. And they possess the judicial power of the state. Now this, the operation of this section since 2013, when the Constitution came into effect, somewhat worked against local judges. You see, as of now, prior to my taking office as Acting Chief Justice and Chief Justice, the superior courts of Fiji, that is the Court of Appeal, starting with the High Court, Court of Appeal, and the Supreme Court, were dominated by Sri Lankan judges. When I came into office, I made sure that we revert back to what we are used to, getting our superior court judges from New Zealand, Australia,

and Britain. At the moment, our superior courts are staffed by New Zealanders, Australians, and English judges.

Now, I think early in May 2023, I wrote to the Chief Justice of New Zealand, and she was kind enough to suggest some retired Supreme Court judges of New Zealand and Court of Appeal judges, which they have given to us to work as Court of Appeal judges and Supreme Court judges. And also, I wrote to the Chief Justice of Australia, of the High Court of Australia, asking them to provide judges to us, and they have provided two judges for the Supreme Court. That ongoing relationship is in train, as of now.

However, the problem with Section 110, Subsection 1, especially with the phrase, a person who is not a citizen of Fiji, works against local judges when they reach 75. The only profession where reaching the age of 75, or more than 75, which is valued in the judiciary, as in our culture, age is supposed to bring to you wisdom. You can be smart academically, with so much degrees, but you haven't attained wisdom for the benefit of society.

Now, right now, we are extending contracts for judges from New Zealand and Australia who have gone above 75, because of the effect of Section 110, Subsection 1. However, when it comes to a citizen of Fiji, we have to tell them, at 75, you have to go, by virtue of Section 110, Subsection 2. Case in point is the former President of the Court of Appeal, Mr. Filimoni Jitoko, the current Speaker of Parliament, and one we just lost last week, Justice Alipate Qetaki. And it's working against local judges. Now, we tend to see that as a discrimination against us, pursuant to Section 26 of the Constitution, which forbids discrimination on the grounds of age.

In the case of Justice Jitoko and Justice Qetaki, when they reach 75, their health seems to have improved. I don't know why. You know, in my view, it's not just because they've turned 75 to terminate their contract, when they still have the capability to act as judges. And that's why we are suggesting an amendment that was drafted by the President of the Court of Appeal that I will submit to the Commission. And our proposed amendment is that to add another Subsection 4 to Section 110. And the terms of that is, I'll read it to you.

Consistent with the spirit of Subsection 1, and not withstanding Subsection 2 of this section, a person who has attained the retirement age under Subsection 2 may, subject to ability to perform the function of the office, may be eligible for re-appointment. Now, I have judges now in the Supreme Court, capable, all experts who have gone above 75. These are judges from New Zealand and judges from Australia and New Zealand, and from England. Amazingly, at that age, they still have got

their maples. They've still got it, even though they've aged. So, I sit with them when we sit in the Supreme Court, and I read the files, and I read their judgments. In my view, they're still very capable. The Lord Justice Deming passed on when he was 100. So, I don't see why locals should be unnecessarily forbidden from occupying judicial office beyond 75.

So, I'm asking for our proposed amendment to be given to you as a commission for onward submission. Can I give a copy of this to the commission? Is there a secretary? That's our main one. At the moment, I am pleading with High Court judges. Young, local High Court judges are coming up. If you want to go to the Court of Appeal, prove yourself. Prove yourself by your ability to dispose of cases within a reasonable time. I tell them the public are crying out for faster judgments. Don't take time when you deliver judgments. We're trying to impose a two-year record from start to finish.

Unfortunately, Fiji, we tend to, and Mr. Kohli knows it very well, and you, Mr. Valenitabua, knows it very well, the technique of milking the cow, prolonging cases. We're trying to discourage that. Right at the moment, we are in the middle of reforming, trying to reform the High Court rules, the Magistrate Court rules, and bringing in mediation to fasten the disposition of cases. That's on the constitutional amendment on the tenure of the offices of the Superior Court judges.

I move on to the role of the Judicial Service Commission. All of us in Fiji have been subjected, in the case of the FICAC Commissioner, and in the case of the DPP's issue that is before the Judicial Service Commission, and ramblings from the role of the Judicial Service Commission.

In our experience, when you look back at Section 104, Subsection 1, which states the Judicial Service Commission, established under the Administration of Justice Decree 2009, continues in existence and shall consist of;

A] the Chief Justice, who shall be the chairperson.
B] the President of the Court of Appeal.
C] the Permanent Secretary of Justice, responsible for justice.
D] a legal practitioner to be appointed by the President on the advice of the Chief Justice, following consultation by the Chief Justice with the Attorney General.

One, has not less than 15 years post-admission practice. And B, has not been found guilty of any disciplinary proceedings involving legal practitioners, whether in Fiji or abroad. Blah, blah, blah. And E, a person not being a legal practitioner, appointed by the President on the advice of the Chief Justice, following consultation by the Chief Justice with the Attorney General. The problem for us, given our experience with the COI, the DPP, is the involvement of the Chief Justice and the President of the Court of Appeal in the JSC.

These are the two most senior legal officers in the judiciary. However, by virtue of this membership of the JSC, they are automatically disqualified from sitting in any court matter that proceeds to the High Court, to the Court of Appeal, and the Supreme Court on challenges to the decision of the Judicial Service Commission, involving appointments in the offices which are laid out in the Constitution. Now we see this as a bit unfair.

Not unfair, the public doesn't benefit from the participation of these two most senior legal officers in the judiciary to participate in the determination of the challenging issues that come to the court. For example, in the dispute over the Malimali case, etc. I'm disqualified from sitting on any issue that goes to the Supreme Court, while at the same time I understand the legal issues under challenge.

I understand the legal debate concerning this, and I understand the difficulties coming from this within the confines of Fiji. Likewise, my brother Judge, the President of the Court of Appeal, we both understand the issues that are being challenged in court. We both understand the problems, and we both understand the possible resolution of the issues in furtherance of the public interest. However, because of our ex-official status in the JSC, we are automatically disqualified from presiding on court matters on an issue regarding JSC decisions. We propose an amendment to the composition of the JSC. And it's just the 104, Subjection 1A. We are suggesting the Chief Justice or his or her nominee who is to be the chairperson.

So that gives the Chief Justice, for example, the opportunity to see that issues are coming for the JSC, for him or her to stand away from JSC decision-making and appoint a nominee who may be a Supreme Court judge, who may be a Justice of Appeal, who may be a High Court judge, to stand in for him as chairperson of the JSC, freeing him or her from presiding in the High Court or Court of Appeal or the Supreme Court when a matter comes to court. You see, you can see this happen in the case of Rabuka, when he was taken to a commission of inquiry that was chaired by Justice Kamou in the 1990s. Most of you who were around at that time, you may have heard about the famous four who went to the newly Prime Minister Rabuka at the time and tried to persuade him to advance, to guarantee some large loans from the National Bank of Egypt.

Tony Stevens was, those of you who remember that, and Rabuka at that time, been from the military and straight into being the Prime Minister, hasn't got that experience as Prime Minister, and as a result he delegated the function of their request to the AG at that time. An official commission of inquiry was done on them, and it reached the stage where it came before the Chief Justice Tuivaga at that time, and he

managed to knock it on the head, because Justice Kamou made some very negative comments against the Prime Minister at the time, and Rabuka challenged his decision on the grounds of breach of natural justice and exceeding his jurisdiction. And the Chief Justice Tuivanga at the time agreed with that, and ordered that the negative comments blah, blah, blah be taken out.

So, what I'm saying is this, had we been out of the, had this amendment that we are proposing, we could have avoided this COI inquiry at the High Court stage, alternatively at the Supreme Court level. So that's why we are proposing for you that the Chief Justice, including the President of the Court of Appeal, be given an opportunity to voluntarily get out of the JSC to preserve their status to preside over cases that come into the JSC, to the courts. So, with the President of the Court of Appeal, it's the same, 104 Subjection 1B, the President of the Court of Appeal or his or her nominee.

So, the nominee gives the two officers the opportunity to get out of it and leave it to another judge to preside on their behalf. So, preserving their right to sit in the Court of Appeal in the Supreme Court when the matter comes before those courts. That's on 104. Maybe, President of the Court of Appeal, you may want to touch upon this one, number two. Members of the Commission, I'll pass on to my brother judge, the Honorable President of the Court of Appeal. Thank you.

Justice Mataitoga: Members of the Commission, it's very important for you to understand something and that is the schematics of entire Constitution. In particular with regard to the judiciary, the way whoever drafted this thing was so controlling in the manner in which they managed the various commissions. Now it is clear from Section 104 that the Justice, the FJC or the Judicial Service Commission are to look after the independent commissions. Those are commissions that does not deal with political or semi-political issues. The only two that are not referred to their jurisdictions were the Legal Aid Commission and the FICAC.

Why? Because before the enactment of the 2013 Constitution, they had pre-existed in the form of legislations. So, when you go from Section 114 to 121, the seven commissions that should have come under the JSC was specifically mandated in the provisions of the Constitution. The only one that was left out was those two because they already came in and they were in existence much earlier. Now the point I'm trying to say is that when you look at the way some people are commenting about those provisions out of context, it looks sensible. The reason you protect the independent commission is to take it out of political influence and not to put it in the Constitutional Officers Commission. Now, if you are not careful about the background to this, you will see that the vast majority

of the provisions that needs to be amended in this Constitution, everything is reversed, is what I call a reversed Westminster model.

It starts off Westminster, it ends up by, at the back end, they actually change the whole thing to two people, two portfolios, Attorney General and the Prime Minister. And then the way they allocate portfolios right throughout the period is very interesting. So, you can see that in terms of the Constitution being the guide for political governance, there is something wrong somewhere. I'm not qualified to comment in this context, but there is some issues here. And therefore, it is very important for us to understand why even the JSC were constrained in the manner it is constrained right now. That's the reason why the Honorable Chief Justice is saying that you need to look at this and please give us a little bit more flexibility. The first one is simply in your colonial attitude. No one should be discriminated on the basis of their citizenship. In this country, we are the only one discriminated against local judges. Welcome Fiji. My point, so you have to understand, you have to understand why some of this needs to change. And I know I'm way out.

An example you see in the Bill of Rights. Bill of Rights at the front, Westminster is very nice. Except in the provisions where there are provisions for where they can't do it. They want to take off all the rights that existed before. So, I mean, I'm telling you that when you look at it, don't look at it in the provisions that exist before you. Look at where they come from and see why the whole mechanism, the mechanism to control political power and shift it at convenience. I don't think that's what we're really trying to do for this country. We've got to be looking, going forward. We need to be a bit more strong about those kind of issues. That's why we are saying that when people, this is one of the reasons why I find interesting opinions being relied upon. They come from people who don't live in this country. I remember when we were writing the recent Supreme Court, I said to all the judges who were sitting around the table, remember, Martin Tomlin is the only judge, only lawyer that was here from 87 till today. When people come before me and they say this, I say, that's true. And if they say this, not true. People sing music according to the melodies they hear on the day. But when you see the continuum of constitutionalism, it's changed in a very interesting way that worried me. Because it's an area, of course, where people get their studies in. It's very interesting to see how people just manipulate the word according to the political weather.

So, it's very important for us to please have a look at, when you look at those provisions, the only one that I said that has not come up to me was 1, 2, 3, 1, which is the accountability group and transparency commission. If that one had come in, a lot of the issues that you are facing today won't be there. Because a lot of the things we are alleging as abuse of office is actually an issue that should be banned. That will

be under the commission and not under the FICAC. And I say this because when we were looking at whether we should have a FICAC or not, there were very specific issues we limited to the work of the FICAC. Now there seems to be, here there's general policeman for everything. And then when you are in politics, they play games. So, they issue an interesting claim against Mataitoga just before election because he's a candidate. And then the whole thing disqualifies him. Then comes back and the whole thing is taken out once he cannot stand. It's contrived. The whole process is contrived. This is why I'm trying to alert you to this, to understand why we are pushing for some of these interesting provisions. Because remember, we were talking about separation of powers. Is there really separation of powers? When you want the powers of the judiciary, when you manipulate it in a very interesting way, I find it interesting because as someone who studied constitutionalism, I find this very creative. But it's not what we want. I say that just to appetize yourself on why it's very important for you to understand what we are saying to you this morning. The point is simply flexibility within the JSC. If we alternate, we can stay away. A classic example, the current stated amendment that has been appealed to the court of appeal by the Prime Minister. Since that thing was named, I have actually stopped sitting in the JSC. Because it comes to me first and foremost. You will never see me appearing in any JSC meeting that discusses that case. And more, I take it further, I don't meet anyone who is a friend of the Prime Minister. Because of that, we need to maintain independence, the integrity and accountability provisions. But the lack of flexibility, it means that if you go and look at the JSC record, Mataitoga is absent, Mataitoga is absent. Yes, I am absent for the prime reason of doing my own job, and that is to win the case. Not sitting in a committee. If you give us that flexibility, we might do a job better. Vinaka.

Justice Temo: Members of the Constitutional Review Commission, as you understand, we give you the opportunity to cross-examine us. Thank you.

Mr. Kohli: Honorable Chief Justice and President of the Supreme Court, I've got a few questions only. First and foremost, I would like to know, is there a, for the magistrates and judges, are they on contract? I know the magistrates were, so are they on contract or not?

Justice Temo: To answer that question, the magistrates are on contract. The reason is this. When I first started in 1994, coming to take on as a resident magistrate, the system at the time is that you are given probation for the first 12 months. And once you complete that probation period of 12 months, you are made permanent. I was made permanent as a resident magistrate in 1995. The problem that we had with permanent appointments is this. The case of Mohammed Shah. You know Mohammed Shah. There was an allegation of corruption against him. Yeah, in the magistrates. It wasn't proven, but the allegation was there.

And I understand at the time, the JSC was trying to remove him as a resident magistrate. But it was difficult. Because he was also, the way I was appointed, he was a permanent resident magistrate. And not only that, he was a highly qualified magistrate with a master's of law. Any allegation that was thrown at him, he was smart enough to, like a boxer, bury it this way. We missed him. Missed him. We couldn't get him off. Despite the evidence that was coming to us, the allegation, the complaints that he was allegedly corrupt. That's why they brought in the contract method of controlling the magistracy. In terms of, if we suspect that they are corrupt or not performing, they are not up to par. The contract gives us a mechanism to terminate their contract at the end of their contract period. That is still in train now. Right now, for resident magistrate, if they are not up to par with their performance, their contract is terminated. Alternatively, they are given one year extension with a warning. Produce the goods. Alternatively, we give them three years extension. For the ones that we judge competent, we give them five years. For the judges, it becomes problematic. Because for the judges, you've got to be very careful that you appoint people who come to the post and do their job when they're in the post. Some of them, the utmost respect, there comes a time when they know as judges, when you appoint you to the judges, if you're a local, your retirement age comes at 70. You can't be removed as a judge unless you activate the tribunal procedure in the constitution where allegation of misbehavior is leveled at you. So far, no judicial officer has been taken through that. Only Christopher Pryde has been taken through that. But we cant terminate them. The problem is that some of them, as the years grind on, remember, some of them were appointed to the bench in their 30s, 40s. As the years go by, they become very experienced good judges. But then the Malua fever crops in. Malua fever, as we understand in Fiji, just does affect some of us. So, we can't remove them unless allegation of misbehavior comes in. But that is very difficult to prove. Because you're dealing with officers who are, their bread and butter is knowing how to defend themselves. Yeah.

Justice Mataitoga: In our effort, the JSC effort to try and mitigate the non-production, people sleeping on the job sort of thing. We are now looking seriously at introducing a periodic review mechanism. This is because of the very difficulty of disciplining, particularly high court judge and I, that every so often we will review your performance. Not only because of how many case disposals you're having, but other areas, including your performance in public when you are not a judge. And I have to be blunt, we want to see people, we want to bring back the standards I was brought up in. That's correctly, even if you're going to buy the bread, you can't expose half of your body. That's not what it's there for. That's the old tradition of the bar. And through periodic performance review, we have to identify the criteria we will use, so that we are not subject to judicial review. So, we will say to Justice XYZ, look, you were a very good

producer before you became a judge. Once you became a judge, it went downhill. Because you knew you were guaranteed to stay there for the next 30 years. It's not going to happen, my friend. You get a bad review, you're going home. Yeah. Because that becomes then a disciplinary issue, which we can deal with in appropriate provision. The idea is, at the moment, we lack this mechanism. And the only way we seem to be monitoring people is the, how many cases are disposed? When they put in the thing for review of the appointment. We stick, one appointment. Ah, what is he done? All the cases are done where they're projected from. I don't want to receive that. I say, look, I'm reading judgments that you come. I can't see the connectivity of things, the technical issues of law. Are they being discussed or not? How did you find XYZ guilty of this offense when you didn't address this issue? Those are the kind of things, for me personally, when I'm looking at things that come before me, I want to look at those issues.

Mr. Kohli: But say you have practice overseas as well, a graduate of New Zealand. How does New Zealand manage this? Because their appointment there is for a lifetime.

Justice Mataitoga: They do this. This is taken, this suggestion is from them. We look at their system, the periodic review thing. Because then it becomes a matter that can be taken up to a disciplinary tribunal. Otherwise, it's very difficult. And that's one of the reasons we were trying to also at some stage, if it's not part of the, if to put in this constitution the idea of a code of conduct with judicial officers. That one is even more stricter. Because it sets the standard. And if you go somewhere and say something stupid about sitting judges, hello? You're going to be in for a glance. And people will say, but aren't you? Yeah, but if you're not going to be a judge, the judge appointment, you're not paid only for 8 hours. You're paid 24 hours, 24 hours a day. So, the way you perform is that even when you're asleep, perform like one. I don't know how that happens, I try it every now and then.

Mr. Valenitabua: Yes, Chief Justice and President of the Court of Appeal. Deputy Registrar. Chapter 5 of the 2013 Constitution. Section 106. Section 106, subsection 1 and subsection 2. If I may read, subsection 1, the Chief Justice and the President of the Court of Appeal are appointed by the President at the advice of the Prime Minister following consultation by the Prime Minister with the Attorney General. If I read subsection 2, the judges of the Supreme Court, the Justices of Appeal, and the judges of the High Court are appointed by the President on the recommendation of the Judicial Services Commission following consultation by it with the Attorney General. Again, the Attorney General. Please permit me to take us back to the 1997 Constitution. Section 132.1. Section 132, subsection 1. Sub section 1 states, the Chief Justice is appointed by the President on the advice of the Prime Minister following consultation by

him or her with the Leader of Opposition. Subsection 2, the judges of the Supreme Court, the Justices of Appeal, including the President of the Court of Appeal, and the puny judges of the High Court are appointed by the President on the recommendation of the Judicial Services Commission following consultation by it with the Minister and the Sector Standing Committee of the House of Representatives responsible for matters relating to the administration of justice. My question, sirs, from that we can see that there has been a change. In the 2013 Constitution, consultation is to the Attorney General. My question is, is that provision all right, considering the separation of powers? Judges to be appointed in consultation with the Attorney General.

Justice Mataitoga: Neither provision supports separation of powers.

Mr. Valenitabua: So, can I say that that would need to be amended?

Justice Mataitoga: If you're going to do that, then under the 2013, you need to take out the reference of going to the Attorney General. You either trust the JSC and make sure you get the right people to be in those positions, or you don't. I'm against having any politician telling me who my judges are going to be. Really derogate that. So, if you want to really go Westminster for that separation of powers, yes. It's enough for the President, the Prime Minister and the President to get the man in to be Chief Red. But I don't believe that you can't go half way in this matter. You either have to trust the Justice, the Judicial Service Commission, after they have appointed the President of the Court of Appeal and the Chief Justice and the man has stated in their provision to be Chief Red, and let them run their show. Hold them accountable. After all, they have to actually move resolution against them if they misbehave, or they can't do their job. You can't start the trouble with this here, is that not only did they provide the Constitution as a framework, it has to be subsidiary legislation that itemize the various provisions with it. A lot of these, the JSC has no stake in legislation. It has loaded it with 21 provisions. This is usually the case when you want to control power. I mean, I study of course the Constitution on these issues. When they want to control power, they create nice-sounding good things but don't give them any realness. As a result, they keep on going around in circles. So, I suggest you either go the floor or leave it as it is. Because at least it's just going to the Attorney General, I hope they know enough floor for us to be able to exchange on ideas. But otherwise, you just remove as JSC. And then maybe increase the members of the JSC to reflect a lot more about the society in which you live in. I'm willing to go with it. But the idea of separation of powers, either we're serious or we're not. Because otherwise, we're going to start having people who we know, like I went to church with, appointed because he's always appointed me. We are human beings. Those kind of influence exist in the community in which we live, particularly this community. So that's the reason why the separation of powers was

introduced when the English were thinking about it. But we are now manipulating it to suit political agendas, and that's the problem. It's going to be the problem.

Justice Temo: You can see where you're coming at, Chairperson. The difference between the 2013 constitution and the 1997 constitution. As to the choice of who becomes the Chief Justice. The 2013, as you rightly say, that decision belongs to the Prime Minister after consulting the Attorney General. With the 1997 constitution, that decision belongs to the Prime Minister after consulting the Leader of the Opposition. So, there's a presumption that the people choose their Chief Justice through the office of those two offices. But the Prime Minister is always there. If you look back at New Zealand, I think they do the same thing too. The Prime Minister is involved in the choosing of the Chief Justice as representative of the people through Parliament. As you can see, in New Zealand, ladies were appointed as the first Chief Justice when female Prime Ministers came into New Zealand. And that was during the time of Helen Clark, and the last one. You see, that's when female Prime Ministers made it into the Chief Justice position in New Zealand. For me, yes, both systems are, I can say, I leave it to the people. The people has the right to choose the mechanism in which they choose their Chief Justice. But I think, if you look at President, the Prime Minister is always involved. Whether it's the Attorney General who has to be consulted or the Leader of the Opposition, I leave that debate to the people. As to the Standing Committee, this one, the 1997 Constitution, instead of consulting the Attorney General in the 2013 Constitution, this one you have to consult the Sector Committee in Parliament. There is a problem with the Sector Committee. And the case in point is, and I've looked through the files when they gave me this job as Acting Chief Justice and Chief Justice. I've looked through the file because to find out what is the precedent regarding the appointment of judges or the choosing of judges. And I looked through the files how my predecessors have used to choose these offices. And I found out in the case of Justice Gates, when he was recommended to be a High Court Judge, at that particular time, the Sector Committee in Parliament has to be consulted. But they took a long time to come up with the decision. Whereas the Attorney General, you give them the advice, tomorrow the reply comes in. Executive Committee, they were, politics always go that way, time. And as I understand, in those days, the file, Sir Tim went directly to the President, with the Executive Committee not making up its mind. And the President, the late President Ratu Sir Kamisese Mara, made the appointment. That was it. In terms of efficiency, time-wise, the present system works. But whether, on how, which one to go with the 2013 criteria, or the Sector Committee criteria in the 1997 Constitution. Again, I leave it to the people to decide then. Thank you. Thank you, gentlemen.

Dr. Fatiaki: My questions are just small modifications, just general, very small. The issue of the age that you asked to be altered by the insertion of the fourth paragraph in your first amendment. If the issue of the age, as in the Bill of Rights, specifying that one should not discriminate on the basis of age for employment, why don't we just remove the defined ages of 70 and 75 to make it easier, and work on the basis that if you are capable for the job, medically, and able to perform the function, then there isn't an age, and then you don't have to address the issue of it conflicting with the Bill of Rights requirement that you do not discriminate on the basis of age. That's just a generic question that I ask you, rather than we add on that you can do beyond, why don't we just remove those ages and rephrase it, otherwise we just add an extra paragraph.

Justice Mataitoga: The reason why the subsection 4 is provided is because it takes into consideration the manner in which it is currently provided for in the 2013 constitution. If at the end of the day what you're suggesting would achieve that, all I'm against is discrimination in any form or shape. When I found out I was even discriminated in my own country, I don't know why I'm still doing it. It's very important, you've got to remove discrimination all along, even against women. No, even procedural discrimination which is often not written law, that needs to be dealt with as well.

Dr. Fatiaki: Thank you. My second comment again is just a very generic one. Your second amendment, the Chief Justice or his or her nominee, I presume that's from the bench.

Justice Mataitoga: Yes.

Dr. Fatiaki: So that it's set up that way because obviously we want at least the seniority of judicial officers as your nominees. The third one is a very general comment and I thank Justice Sikeli for bringing it. In terms of a general approach to looking at a constitution, not just paragraph by paragraph, about the whole setting up of this constitution. I think we alluded to it in our earlier discussions with the GCC in terms of the identified, in our terms of reference, what we call the democratic deficit. In addition to the lack of consultation, one of the ones was what I think you alluded to, which is the consolidation of power into the hands of particular individuals. I think that's a critical part because as we, our members of this commission have gone, it's too big a task so we've divided ourselves chapters and each of us in each chapter recognize facets that might be the areas of democratic deficit in terms of the consolidation of power. Unreasonable consolidation of power. So, I thank you for that in terms of just reminding us about the set up of the constitution in terms of our task of looking at amending it in the context of how it came about and its purpose. My question in respect of that is, I mean, and again I leave this to you, but because you are the judiciary and I think it was alluded to that the issue of FICAC and the possible

weaponization, which I think is very topical in social media, in the media, over the last 5, 6, 7 years. I wonder if the judiciary or yourselves have an opinion or recommendation in respect of, for instance, the need for FICAC. I mean, if it's going to come from anybody, we'd like to hear probably from the judiciary. If you might have an opinion, I'm not suggesting you make an amendment now, but, you know, we are open for the next 4 months to taking submissions.

Justice Mataitoga: May I suggest that we don't address that particular issue because who knows, someone might challenge one of their decisions and then this thing is very public that we made this view at this hearing. We are gone. We can't see it. But I think a few of us are going to make a submission which is much wider than this, which covers the issue to try and make it a lot more palatable in the constitution that we must have. But going back to the earlier issue, you know, this problem started way back in 1974, I think, when the DPP then challenged the power of the Attorney General in dictating to him what to do at the policy level. When there was a conflict of the separation of powers, it went so far to the Privy Council and, yes, the Attorney General won on that occasion. But in deciding the issues, the Privy Council was very clear as to what must take place before they can claim it. And that's very important for us to keep in mind that we do have, and I'm beginning to see these things coming through when, for example, in the recent context, there was some statement that, oh, if that is good, we just move this decision. No, it's not. The things that are granted under the constitution, you see, is not a political portfolio. It can't be moved to Jack. It stays there. When I see people making that kind of statement, I say, what is this? It shows that a lot of people are very, they don't understand why the constitution is structured the way it is. The things that are already granted by the constitution for the JSC, it's for them. You can't just wake up one morning, I don't like these guys, I'm going to move it so that I can control. You can't do that. You can do it because you think you have the powers, but you'll come back to the Court of Appeal or to the Supreme Court, they'll tell you, you shouldn't have done that. Those are the things you need to watch because creeping in during the last several years is nonsensical. Once I'm in a political position, I can do this. No. That's the reason why I said in one of my earlier comments, be careful that we talk about what the law says, that procedurally the fairness issue is maintained. Otherwise, you'll be jacking up issues. Let me give you a good example. I want him to be my next judge. Go in the court, tell him all the things he needs to do, and remember this is discriminatory action. The other two who applied for it didn't have the same advantage. But on the face of it, it looks good. They all applied, they were given the same opportunity. No, someone had more. It was a very recent case in the Supreme Court of South Africa. They actually addressed this issue. So, I'm saying to you, make it more palatable. When the young people of Fiji look, it's what they're looking for.

Dr. Fatiaki: Thank you, Justice Mataitoga.

Justice Temo: To answer your question, Mr. Fatiaki, I think for a start, the mandate of the Review Commission is far reaching. You're looking at the Constitution, the foundation of the law of this country. And I don't think subjudice matters can affect your jurisdiction to look at the whole Constitution. The task given to you is very important for the people of Fiji. The question you said about FICAC. Yeah. I'd like to address that. The Constitution says, regarding the service of the Judicial Service Commission, 104, 104 subsection 8. Yeah. It says, in the performance of the function or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or otherwise prescribed by written law. When, Commissioner Aston Lewis came to see me on a greet and meet. I emphasized to them this action. Emphasized to them the need to respect the Constitution. That our decision on our appointment, our independence, has to be protected. He completely ignored it. You see. And then I looked at the Constitution again. The Constitution at the beginning says, every branch of government, this is the supreme law and you comply with it. But it threw it away. It moored it and continued with our judicial function. And I'm saying the choosing of the FICAC was given to JSC because we assess people's capability as a lawyer. Not as politicians. Now, I understand there's moves now to put it to COC. In my view, that will be the biggest disaster because politicians will be choosing who comes in to be the fight in force. And that will be worsening the situation. Because politicians, they haven't sat in a courtroom to assess lawyers as they argue cases in the courtroom on how they prove themselves as lawyers in the courtroom. We are the only ones who assess that. Not them. And the move now is to give it to them. And if the decision is given to them, that it won't be based on the ability of a person to prove themselves in the courtroom. For us, when I made my decision, I spent 31 years in the courtroom. I've seen lawyers come in and go. My working life, five days a week, is looking at lawyers. How they argue in the courtroom. How they survive in the courtroom. It's a battleground. And on the basis of that, we choose who becomes the commissioner. And when we made our decision, the commission came in and totally disregarded it. Aston Lewis hasn't spent 31 years in the judiciary. He has only spent three years as a judge in the high court. In Lautoka. He hasn't been a judge in Australia. Hasn't been a judge anywhere else. Only three years in Lautoka. Are you going to leave someone to judge us with three years of experience? So, this is why I'm saying it's a matter for the politicians to look at their FICAC act. The problem with the FICAC act is they don't have an objective. What is their statutory objective? What are they supposed to combat? It's not specified in the legislation, like say for example the Police Act. Police Act, they have a specific objective there.

Commanding the commission of police and all the police on what to do. So that's why any act by the commission of police or any police officer that is inconsistent with the objective laid down in the Police Act, they're committing an unlawful act. Which otherwise FICAC. So, for me, the resolution of that problem, I leave it to the people. Through the legislation. To answer your question on age for the judiciary. Why should we leave age limit? If someone is capable, leave them in. Part of me agrees with you and part of me disagrees with you. But we agree with you, yes, merit. If a person shows merit, let him continue. It's good for everybody. Merit includes good health. Good health, yes. Merit. But I believe in cutting off at 70, 75. There comes a time for me, already when they gave this position to me, I'm already looking at the exit time. When your time is up, leave it to the new one coming. The institution must survive, irrespective of you. So that's the way I see things. But in Fiji, president says, the oldest judge who has served in Fiji reached the age of 92. That was during the colonial era. There was a judge from New Zealand. He reached the age of 92 and was contributing. As of now, two judges of the Supreme Court have reached 80 and are going on. But they are on their last extension of their contract. One judge of the Court of Appeal has reached 80. And when we grant them extension, we see how well they are still going on. Some of these judges, as they age, their judgment becomes better. In our culture, wisdom is rewarded in the village. The oldest person, when there is a crisis in the village, we go to the oldest person to seek advice. I think that's still maintained in the judiciary. But when we see that the standard of work is going down, we politely tell them to go. Thank you for your questions. Thank you.

Justice Mataitoga: Background to FICAC and why FiCAC. When we were looking at specialized area of law enforcement, the problem affecting Fiji at the time was economic crime. Basically, money laundering. So, I was then in this building. We were tasked with the responsibility of finding a way in which we could deal with it. So, we sent a team to Auckland and to Sydney, New South Wales, to look at the way. Because in those days, the only FICAC that was existing outside of Hong Kong is the one in New South Wales. And the Serious Fraud Office in Auckland. Team came back, looked at their recommendation, taking the political environment into consideration, recommended that Fiji should have a similar office like the Serious Fraud Office. Went up to people who make decisions, FICAC. Why did we not support FICAC? Because what became the characteristic of FICAC-Fiji was what we saw in New South Wales. It became weaponized. And every guy who was going to beat you, they just report him to the FICAC. It's not serious. We need to be very careful. And that's really roughly the background. And the next thing, we are now in this interesting situation. But now, I remember when the former DPP came, when I first came into this position, he was already looking at how we can tone down their powers. I said, that's not for me. Mine is to look at the constitution. I'm the guy that looks after the constitution. That's

my area of academic interest. I don't really want to get involved with the other parts of it.

Dr. Fatiaki: Thank you, CJ. Thank you, CJ and Justice Mataitoga Thank you for your candid comments, CJ, about FICAC. And I think we realize that these are the kind of questions that are going to come from the floor, from the general public when we go out. And I think in asking the question to you, it wasn't to get you to commit yourselves to a stance. It was really for the purposes of what it achieved. It was for you to clarify for us, in public, the roles that we have, the roles that FICAC has in the constitution, and how it might be addressed by virtue of the people seeking it, and obviously through political means. And I guess that was the counsel that I heard from you, and I think the purpose behind the question was to allow that to be part of our answer when it's raised from the floor.

Justice Mataitoga: I hope that when we make a written submission as individuals, I will try to do this to the issue of one, two, three, section one, two, three. Because too many work that they are doing should be covered up. If that commission was right, then it should be dealing with a lot of those. So, we have now got the situation where a lot of the things that are unearthed by the audit reporters are not being taken into consideration because they are tied up doing other things that should have been done by somebody else. So, that's what's going to happen. And it's very interesting to see why it is developing the way it is.

Justice Temo: I'd like to add another important note. I've served under the 1990 constitution, 1997 constitution, and 2013 constitution. One thing I admire about the 1990 constitution is that in one of their sections they have a review after seven years. And when I saw the 1997 constitution, they took out the power of review. I said, my God, a mistake has been done. They can't amend the 1997 constitution. Why didn't they retain the power for the people of Fiji to review their constitution, say, after 10 years? When I saw that, I said, geez, we're setting the trap for another coup be done. That was before the 2000 coup because they've taken away the review powers of the constitution. So, I'm submitting to the review commission that part and parcel of this 2013 constitution is to give the people of Fiji the power to review their constitution, say, after 10 years, whatever time that you feel appropriate. To give the people of Fiji the power to revise it, if they see fit to do so, rather than prevent it from being amended because you know the people of Fiji. We've gone through coup d'etats and we want to stop that. To give the people the power to review the constitution. Like what you're doing now. Thank you.

Mr. Beg: I have one question to update them. I just want to honor all Chief Justices and My Lords. Thank you for your presence here today. I was very fascinated in Justice Mataitoga's comment about the front end of the constitution and the back end and the creativity in between. Are we

likely to see examples of that or perhaps a submission to that effect? Because I'm beginning to see that as well, that sort of trend through my dissection. I'm not a subject matter expert in law, but I'm not blindsided, to put it that way. So, I was quite interested in those comments.

Justice Mataitoga: When are you people going to finish with your work? Because I have to tell you that next month I'll be away sitting in the Court of Appeal and all that kind of thing. I intend to address a lot more as a person. It's my right as a citizen before it's discriminated against me. But the other issue, I wanted to really come to the example of why I didn't want to comment widely. At the recent Supreme Court sitting on reference, there was objection on my sitting on the bench because of articles, academic articles I've written way back then. I was actually taken by surprise. I thought we encouraged people to do a little bit more thinking beyond what I see. In that sense, this is not serious. Are they objecting me? It's a very subject matter that is the subject of this commission. But that's the reason why I have to hide a lot of the things I've written somewhere else in the world. And it's funny because other people are using it. Because I go to international conferences and they're using it. Only in Fiji I can't content. Because I'm from Gau they don't want me to see it.

Mr. Kohli: Well, I'll ask one question. If I hear you correctly, you wanted to make an amendment by adding subsection 4 to section 110. Basically, you said that you want to add, say, subject to eligibility to perform. Might increase the age. After hearing Honorable Chief Justice and his background as a sportsman, and seeing Mr. Qetaki's health get better after 75, and Lord Denning almost hitting the age of 80, there should be a provision. Do you still want that provision? Eligibility to perform? Or would you see them perform and if they're ineligible, then pull them out? That's my question.

Justice Mataitoga: I think when we... I obviously would love to see that in there. But let's be overall balanced. One of the reasons people don't admit openly and not being honest when we talk about the judiciary, we're not a very easy people to deal with. And by nature, that's the way it should be. But the calamity in which we exist is now changed. It's demanding a lot more accountability. We had a meeting of the commission yesterday and I said to them, look, from now on, anyone who comes in must demonstrate the following capacities. Why? Because there are people outside, apart from the politicians, important as they are, the more important ones are the voters. We need to show them that we are marching according to time. If we start locking these things too and not die on the job, it shows that we are being selfish. So, balance it out slowly. And then again, if you put an inter-sectional review provision and it's adopted, then you can look at it at that stage. It's always best to be driven by actual examples, rather than academically accentuating what you might expect. And a lot of the things we're sharing this morning is actually from personal experience. And that's one of the reasons when I

say that a lot of people can't say no because they don't know what they're talking about. I know what I'm talking about. You can send us home if there's nothing else.

Mr. Beg: I suppose I have one juicy question. Sorry. In the Supreme Court ruling on Chapter 10, again, you said early on that we're looking at the overall constitution. We can't just ignore that. We've got to address the monkey in the house. But I think our chair has given us a good direction on that. I don't know if you can't say much about that, but I guess we have to look at that in terms of, as you said earlier on, a holistic approach to this, because it's something that's personally bothered me for a while. But I guess it's something that we will have to address. Thank you.

Justice Temo: It's about immunity, is it? Yeah. I totally agree with you. I'm surprised the challenge was to move Fiji forward. We have to look at practicalities to move Fiji forward. Yes, a lot of our citizens have suffered because of all the unlawful actions that have taken place since 1987. And for us to disturb that could create problems. And you have to look at two choices. You want to move forward or you want to create problems. The people of Fiji want to move forward. Sometimes in our personal life you are hurt. Unnecessarily victimized. But you've got to move forward. Forgive and forget and move forward. If you want to disturb it, then the chances of moving forward may be compromised. And you end up not moving forward. So, it's like choosing between two wheels. So, for us, moving forward was the determining factor. We have to give the people of Fiji a mechanism to allow them to move. Disturbing, chapter 10, could be a move backwards. But moving forward. The coup that happened in 1987-2000, which is in the nature of iTaukei culture. Coup d'etats. If you look at our history, the 1987-2000 coup, are peanuts. If you look at our history. In our history, sons have killed their fathers to take chiefly positions. If you look at our history. Families fight each other, live over each other to get positions. This is part and parcel of Fijian culture. So, while we recognize the positive aspects of our culture, we also recognize the negative side of our culture. So, the challenge is to move forward. And that's why we did not touch chapter 10. But there's nothing to stop the commission from venturing into that. And you'll have to make a decision about it. I'm not here to tell you how to do it. Thank you.

Mr. Beg: Thank you very much, Honorable Chief Justice. It was how we would frame the question in the consultation process. Those questions will be coming back to us. Thank you, sir.

Mr. Kohli: I have a question for the Supreme Court ruling. Maybe you'll be able to guide us in our future consultations. If I remember correctly, the provisions were, in order to amend the Constitution, require three quarters majority in the House of Reps and three quarters in the referendum.

Justice Mataitoga: Fifty-one? Fifty plus one?

Mr. Kohli: No, no, before the Supreme Court ruling.

Justice Temo: Before? Before the ruling. Seventy-five, seventy-five.

Mr. Kohli: Sometimes they have double entrenchment as well. So, when I look at it, the whole idea was that people do not just come in by simple majority and change the Constitution. That's why they have a provision for review, like Honorable Chief Justice has said. There should be a provision for review. One of the questions that has been asked in the media, I've noticed that, and it will be asked is this. Three quarters, you reduce that to two-thirds. That is not an issue. That is fine. It's been moving forward in practice. However, when it comes to a referendum, you're asking for a simple majority. Was it meaning it not? Like if 2,000 people go and vote in a referendum and 1,001 say yes, but we say we don't want it, we can't move forward. So, what is the rationale of having only a simple majority in a referendum? That's my question.

Justice Mataitoga: Again, go to the schematic of the Constitution. The Constitution is not only a document that lays out the power points and the people who will control those power points. Always remember that there is a voter group that is much bigger and more powerful than any of us. We insist, I personally insist on that provision thing, in that decision. Otherwise, I was willing to write a minority decision, a judgment. The reason was to respect the right. Otherwise, we won't be able to bring it in. They will cut, they use their power, they dominate what they want. The pressure was not to have a referendum at all. If you go back to the submissions that were before us, the main submission was said no need for referendum. We said no, we will put it in. Again, to give the people of this nation an opportunity to say aye or nay to what has been proposed to be the final thing that will become their Constitution. If you take that out, we are no different to those that didn't consult others when they brought the other one in. How do you justify it when you don't have that mechanism? I know it's going to take a little bit more time. It must take a lot of people who can think carefully on what to do, timetable it. The trouble is, in Fiji we seem to think tomorrow morning, he just said, if you don't plan for it, it won't turn up. So that's really the issue behind whether we should have a referendum or not. The vast majority of the, including all the principal participants, they didn't want a referendum. But those are people who hang in the structure of society, they are in the rarefied era of the world we live in. But, you know, when you go to the ordinary people, they want to say, what will be the final bill that comes, bring it to us, we want to have a say too. Because that's what the referendum is doing. Before you go to the third, bring it here.

Mr. Kohli: I think your line of thinking is more in line with the modern thinking around the world. They say that why should you have a constitution made today, which can't be changed by a simple majority and ruling future people's life, who have their right to decide what they want, say 50 years ago.

Mr. Valenitabua: My Lords, thank you very much. We have come to the end of this consultation session. Again, we thank you very much for attending this morning. We have been briefed, I should say, on some of the matters that we need to consider. And we will just take it from here. Thank you very much. There is some tea prepared at the back, at the other hall. We would invite you to please partake in the tea before you leave for your various offices this morning. Thank you very much.

Justice Temo: Thank you Chairperson. Members of the Commission for giving us the opportunity.

Mr. Valenitabua: Members of the press, thank you very much for your attendance.

----------*End of session [9/4/26]* ----------

Ministry of Immigration (MOI)

Ministry of Immigration
Date: [09/04/26] [2PM-4.PM]

Mr. Valenitabua: Thank you Permanent Secretary and your team for availing yourself this afternoon, we await you presentation that you will address us this afternoon.

PS Immigration: Thank you sir. Ni sa bula saka.

We acknowledge your presence this afternoon. We are also thankful to the committee for allowing us to come forward this afternoon to present areas that the Ministry of Immigration needs to address in terms of the Constitution. And this afternoon, we acknowledge the invitation vinaka valevu sir, and also we came in numbers. That shows our interest, that shows our commitment, that shows our dedication in recognizing the Constitution as the highest law of the land. And areas that we enforce, areas that we look after in terms of our functions, our address in the Constitution, in the sections 741 and the Bill of Rights. Some of these areas we want to seek your understanding and probably guidance for us to address areas that are maybe not clear or grey in nature, that limits our authority and powers invested to us under the Immigration Act, the Passport Act, and the Citizenship Act. We continue to face challenges as we try to protect Fiji at the border. Our understanding from immigration that we are making such decisions, and they are sovereign decisions.

We are the first line of defense in terms of travelers and passenger clearing, and we are also the last line of defense in terms of the same nature. This afternoon, we can see we've got Acting Director Immigration, Deputy Director Immigration, and our senior staff who are here to provide some substance on areas that they look after from permits and visas, citizenship, and border security and enforcement. I'm sure we had an earlier discussion prior to the meeting on a suggestion for us to come together as a unit. We are not alone at the border. We have other agencies, immigration, FRCS, we've got border security, we've got health, we've got customs as well, part of FRCS. And our decision to make clearance at the border, we are not alone.

So, I requested earlier if we can retreat, go back, come back as a unit, because our laws are dovetailing in that nature. But I just got to receive an advice that there was no MOU in terms of us taking the lead in terms of clearance at the border. So, we are happy to present our case to the committee. So, for executive summary, sir, the Ministry of Immigration welcomes the opportunity to contribute to the review of the 2013 Constitution. As the lead agency responsible for border management, citizenship, and migration control, the Ministry seeks a

constitutional framework that clearly supports national security, border integrity, lawful migration, and fundamental rights. Key observations from the Ministry of Immigration, the Constitution, and existing immigration laws are generally aligned, providing legal authority for offices and protection of rights. Practical challenges remain in real-time decision-making, detention, removal, and consistency of discretionary powers. Immigration authority implied, rather than explicit, recognized as a sovereign function, creating legal uncertainty and operational hesitation. Critical gaps that we may have identified under sovereign authority.

Immigration control is not explicitly defined as a constitutional power. Courts often default to right-based analysis rather than recognizing state sovereignty. On citizenship by birth, current automatic birth rights, citizenship may not reflect a genuine connection to Fiji. Delegated authority, powers exercised by offices, director, deputy director, and permanent secretary need clear constitutional support. On border control and rights balance, some section on personal liberty and freedom of movement create tension in operational enforcement.

We came up with some recommendations on sovereign authority.

Constitution should clearly recognize immigration control as a core state function, including entry, stay, detention, and removal of non-citizens. Under the citizenship framework, birth rights, citizenship should require at least one parent to be a Fiji citizen, aligning with overseas citizenship rules. Delegation and accountability, the authority to act should be clearly extended to designated offices, director of immigration, deputy director of immigration, and permanent secretary, with accountability mechanisms. Operational flexibility, laws should allow timely evidence-based decisions at the border while respecting constitutional safeguards. Victim protection and traffic in person, constitution should support identification, non-penalization, and protection of traffic victims. In terms of border security and intelligence, it helps us to enable inter-agency intelligence sharing, risk-based screening, and compliance with international obligations.

In conclusion, strengthening constitutional clarity on immigration authority will first improve legal certainty for offices, courts, and policy makers. It will enhance our operational effectiveness and efficiency at the border. It will support consistency, accountability, and decision-making. It provides a better position for Fiji to respond to emerging migration trends and threats.

The Ministry remains committed to supporting a constitution that protects national sovereignty, strengthens border management, and upholds the rule of law while balancing with the rights of individuals. The Ministry is the lead agency responsible for border management and migration control.

The Ministry's submission is guided by the need for a constitutional framework that effectively supports national security, border integrity, and lawful migration while upholding fundamental rights. In our experience during our enforcement, we've been challenged from time to time. There are cases at the moment where our power has been challenged. The Ministry fully respects the constitution as the supreme law of the land. However, with the growing number of immigration-related decisions being subject to legal challenge, it is increasingly important that the role, authority, and functions of immigration are clearly and expressly recognized within our constitution. Immigration has evolved significantly over the years as Fiji continues to position itself as a central hub in the Pacific. The scale, complexity, and risk profiles of cross-border movement have greatly increased. At the same time, migration-related crimes, including document frauds, trafficking in persons, and organized irregular migration have become more sophisticated and traditional in nature. Fiji's borders are increasingly being targeted due to existing legal and operational gaps. Immigration officers are required to make immediate, high-stakes decisions at the border, often under pressure, with a number of flights coming in and a number of passengers. At the moment, on average, we're receiving about 28 to 32 flights a day, full flights. And for us to make quick decisions, decisive and correct, we need to have an empowerment.

In such an environment, any legal ambiguity, particularly at the constitutional level, can impact the consistency and confidence of our staff to make decisive decisions and effectiveness on our enforcement. This highlights the need for a stronger constitutional foundation that clearly recognizes immigration control as a function of state sovereignty, provides explicit authority for the regulation of entry, stay, and removal of non-citizens, supports timely and decisive operational decision-making, and maintains an appropriate balance between enforcement powers and fundamental rights. A clearer and more enabling constitutional framework will reduce legal uncertainty, strengthen border governance, and ensure that Fiji is better equipped to respond to evolving migration challenges while continuing to uphold the rule of law.

Mandates and legal framework, the Ministry's functions are exercised while the framework of the Constitution of the Republic of Fiji, in particular, Section 2 on the Supremacy of the

Constitution, Chapter 2, Sections 6 to 45, covers the Bill of Rights, Sections 5 to 8 on Citizenship and relevant legislation that are included. As I mentioned before, the Immigration Act 2003 and regulations, Immigration Amendment Act 2020, Act No. 34 of 2020, Citizenship of Fiji Act 2009 and regulations, Travel Document Act and its regulations, as well as applicable international treaties and conventions, including UN Conventions relating to the status of refugees, UN Convention against Transnational Organized Crime and its protocols, including traffic in prison, ILO Framework on Labor Mobility and IKO Standards on Passports and Travel Document.

Under the IKO, Annexes 9 and 17, the Ministry of Immigration is responsible for facilitation and security at the border. These constitutional provisions, together with the legislation and international obligation, provides the legal and operational foundation for Fiji's immigration system. In particular, Sections 5 to 8 establishes who is a citizen of Fiji, Section 21, Freedom of Movement and Residence, and Section 9 on Rights to Personal Liberty.

These sections directly impact immigration decision-making, and Section 26, that covers Rights to Administrative Justice, governs the fairness of immigration decision. While these provisions are fundamental, they primarily operate from the rights-based perspective and do not expressly recognize immigration control as a core, sovereign function of the state. As a result, immigration authority is largely exercised through legislation rather than being clearly entered in the constitution.

This creates gaps between the constitutional protection of rights and the state's responsibility to control each border and regulate non-citizens. In practice, immigration officers are required to make immediate and high-risk decisions relating to entry, detention, and removal, often in time-sensitive and complex situations involving fraud, trafficking, and treasonous national crime. The absence of explicit constitutional recognition of immigration powers can lead to legal uncertainty and increase court challenges.

It results in over-reliance on rights-based interpretation, particularly in relation to non-citizens, creating operational hesitation and inconsistency in enforcing action. Given these challenges, this is a clear need for the constitution to go beyond general provisions. We seek recognitions for immigration control as an exercise of state sovereignty.

Affirming the state's authority over the entry, stay, and removal of non-citizens provides a stronger constitutional foundation to support existing legislation and operational practice. Strengthening these linkages will ensure that Fiji's immigration

framework is constitutionally grounded, legally certain, and operationally effective, while maintaining appropriate safeguards for fundamental rights. Some key constitutional areas relevant to immigration are citizenship.

Section 528 of the constitution establishes a clear and consistent pathway for citizenship through birth, registration, and naturalization, ensuring legal certainty and protecting the rights of citizens. These provisions are operationalized through our Immigration Act 2003 under Section 8, Evidence of Citizenship and Identity under Section 9, Determination of Status. Under the Citizenship Act 2009 under Section 5 to 7 on Citizenship Provisions and Section 19 on Evidence of Citizenship, our operational functions are defined by these areas on who is a citizen.

Proposed amendment - under Section 5, all citizens of Fiji should be known as Fijians or Fiji nationals. Under Section 5, on citizenship by birth, (current position under the existing constitution, any person born in Fiji automatically acquires citizenship, regardless of their parent's citizenship or immigration status, except where a parent holds diplomatic immunity, and neither the parent is a citizen). In the constitution, it gives a vague understanding and open to interpretation.

Even though under our Act it is quite clear, but the constitution is the supreme law of the land, that people, or they resort to it as their right.

Proposed changes - to amend (5 3) to limit citizenship by birth to children who are born in Fiji and have at least one parent who is a Fiji citizen at the time of birth and through the permanent residency pathway and not through any form of permits. Currently, Fiji is probably the most lenient nation in the world to give citizenship.

After 5 years under a permit, you have the right to apply for citizenship. Our laws are now being revised. We are going to introduce permanent residency as a pathway to become a citizen, not through any permits.

The rationale and implications, this will strengthen the link to the nation when citizenship will reflect a genuine, documented, connected to Fiji. It ensures birthright citizenship aligns with active familial and society ties. It will align with existing frameworks that mirrors the more rigorous criteria of the 1990 constitution.

It will harmonize this with rules of children born abroad who acquired citizenship if a parent is a citizen. Under constitutional supremacy, ensuring this rule in the constitution overrides any

conflicting provision in the Act, under Citizenship Act of 2009, it will establish the constitution as the primary source for determining citizenship by birth. On national interests and resources protection, it protects the rights, benefits, and resources of an established Fijian citizen. It strengthens the definition of Fijian identity. It ensures citizenship carries meaningful national and social cohesion. It provides clear, unambiguous rules for birthright for citizenship. It reduces legal disputes over citizenship. It reinforces integrity of the Fijian citizenship register. It strengthens sovereign authority over national ID, borders, and citizenship.

The proposed amendment will ensure citizenship is tied to a genuine connection to Fiji, protected established citizens, and strengthen the rule of law, national ID, and the operational integrity of immigration control. Under Bill of Rights, Chapter 2, some key provisions impacting immigration work. Under Section 9 on the Rights to Personal Liberty, under Section 21, Freedom of Movement, under Section 26, the Rights to Administrative Justice, the application in migration context, particularly at the border, that creates operational challenges to us. The Immigration Act provides lawful mechanism to regulate these rights. Under Section 13, Refusal of Entry, Section 16 on Detention, Section 37 on Removal, and Section 50 on Deportation. Officers must make immediate decisions while ensuring legality, fairness, and accountability. Greater constitutional clarity is needed in these areas that will provide guidance on the application of the Immigration Act. On executive authority and delegation, effective migration control depends on the clear exercise of executive authority, support the structure chain of leadership, oversight, and delegation. At the national level, the minister provides policy direction and political oversight for immigration and border management.

The permanent secretary is established under the constitution, served as the chief administrative officer of the ministry, responsible for implementation of government policies, oversight of departmental performance and staff management, and ensures all functions are carried out lawfully and in accordance with the constitution. The director of immigration manages day-to-day operations and enforcement, including strategic coordination across ports, compliance functions, and reporting to the permanent secretary. The deputy director of immigration supports the director, providing operational leadership, supporting of senior officers, and acting as the second-in-command in decision-making, particularly in high-risk, urgent cases.

Immigration officers exercise powers through lawful delegation, particularly at the front line, to ensure timely and decisive action

at the bottom of it. We want to cover some of the areas we can say is working today. The ministry notes that the current constitution and the legal framework provides strong protection of fundamental rights that ensures all individuals are treated fairly and in accordance to law. It provides a clear and consistent citizenship framework that supports verification, naturalization, and registration process. It aligns with the international standard, reflecting Fiji's commitment under conventions such as the UN Refugee Convention, Trafficking Persons Protocols, and AKO Travel Documents Standards. It recognizes rules of law and accountability. These strengths provide a solid foundation for governance, border management, and upholding the rights of citizens and non-citizens alike.

Areas that require strengthening. While the framework is generally strong, operations normally experience several areas that need reinforcement.

One, the balance between rights and border control. Sections relating to personal liberty, movement, and equality, e.g. Section 9, 21, and 26, create operational tension at the border, particularly when applied to non-citizens. There is a need for clear constitutional recognition that will assist us at the border for national security and the lawful exercise of our sovereign function. Immigration decisions, including refusal of entry or removal, are sovereign functions, not a privilege. Non-citizens do not whole inherit constitutional rights to enter or remain in Fiji outside the law. Explicit constitutional recognition will reduce judiciary uncertainty and support officers in making lawful, defensible, and timely decisions.

On detention and removal powers, current provision under Section 16,17 of the Immigration Act requires greater clarity to distinguish administrative detention from criminal detention. To ensure immigration detention is clearly an administrative sovereign function and not a criminal penalty. Prevention of claims of arbitrary detention, safeguarding the ministry from legal challenges.

Efficient and lawful removal of prohibited immigrants will strengthen our border integrity. Such clarity will support both operational effectiveness and compliance with human rights standards. On administration efficiency, immigration decisions frequently require urgency. That includes immediate refusal at the border on high-risk persons. Rapid, risk-based assessment at the port of entry. The constitutional and legislative framework must provide flexibility for officers to act decisively while maintaining fairness.

Procedural safeguards and accountability. On decision-making authority, clarity on the role and delegation of authority, including the Permanent Secretary, Director and Deputy Director, and delegated officers is critical to ensure consistency in operational decisions across all ports and offices. It will strengthen accountability for high-risk or high-profile cases. It improves confidence among officers and the public in the integrity of lawful decisions. On overall note, strengthening of these areas will protect national security and border integrity. It will support timely, lawful and transparent operational decisions, maintaining the balance between fundamental rights and the sovereign authority of the State. It will ensure that Fiji's immigration framework is both rights-respecting and operationally enabled. Constitutional gaps under sovereign authority over immigration. A key issue identified is the absence of explicit constitutional recognition that immigration control is a core sovereign function of the State. So, the current position, immigration authority is exercised by implication, not expressly recognized in the Constitution. Courts frequently apply a right-based analysis when reviewing immigration matters. Sovereign authority over borders, entry and removal is not clearly articulated, creating ambiguity in decision-making.

Some implications. This constitutional silence has significantly affected the operational and legal effectiveness of our functions. Due to legal uncertainty, it makes immigration decisions more challenging in court, creating risk of inconsistency in ruling. It affects our operational in terms of our hesitation. Officers may delay critical enforcement action due to unclear legal authority. Immigration environment of over-reliance on human rights interpretation. Courts may prioritize individual rights over sovereign authority, undermining the effectiveness of our border security and enforcement. Some proposed constitutional clarifications to strengthen Fiji's immigration governance and operational effectiveness. The Constitution, we may request to be explicit that provides the State a sovereign authority to regulate its border. Immigration control includes clear authority over entry, stay, residence, detention and removal of non-citizens. We also request clarity on non-citizens that do not hold an inherent constitutional right to enter or remain in the country. We also seek clarity on immigration control over our constitutional function, not merely on administrative or discretionary process. We also seek clarity on immigration decision to drive sovereign authority, not welfare or humanitarian. We also seek clarity on detention and removal of non-citizens as an administrative action, not a criminal punishment. We also seek clarity on courts. Court system should review immigration matters as an exercise of sovereign authority, rather than primarily through a right-based lens. On the right to personal liberty under Section 9, the current issue at

the moment, we have limitations on the ability to detain non-citizens for operational purposes.

Recommendations.

We need explicit recognition on immigration detention as a lawful administration action and not a criminal one. Permits detention for legitimate purpose should include verification of ID and citizenship, prevention of abscondment and the protection of national security and border integrity. This ensures officers can act decisively while respecting constitutional safeguards.

Rights of detaining a person under Section 13, the current issue at the moment, there is no formal distinction existing between criminal detention and immigration detention, creating ambiguity. Recommendations introduce a separate classification for immigration detention, clarifying its administrative nature. Request to provide operational flexibility at ports of entry and border checkpoints to manage high-risk and non-compliant persons.

On access to courts under Section 15, the current issue at the moment, judicial access may delay urgent operational decisions. Some recommendations that will enable immigration post-decision judicial review for immigration enforcement action to move forward. Request to disallow stay order as part of a judicial review proceedings. Currently, we've got cases on review that comes with stay order and they are prohibited immigration. So, the stay order is limiting us from exercising sovereign functions. This will balance efficiency and accountability. On search and seizure under Section 16, issue at the moment, general constitutional provision on search and seizure may conflict with border control powers.

Some recommendations there. Recognition of border exceptions for search and seizures. Permits warrantless search for persons, goods and documents at ports of entry under clearly defined legal authority. This provides practical tools for border enforcement while remaining constitutionally sound. Under freedom of movement, Section 31, movement of people on entry, stay and removal, including constitutional provisions. Under Chapter 2, Section 31, [5] [8]. Some recommendations and the rewarding of that section. Every person who is not a citizen and is unlawful has no right to remain in the country. Or has any right to challenge the minister responsible for immigration decisions under the prescribed law.

At the moment, the minister's decision has been challenged. Limiting us from exercising and the provision of our role. Under Chapter 2, also on Section 31[5] [B]. Some recommendation and

suggestion for judiciary to observe the minister responsible for immigration decision as final. And cannot be challenged in any court of law in Fiji. Chapter 2, Section 21[6]. And additional to the list under that section, under G, we recommend and suggest to provide for the removal from Fiji of a person who is not a citizen of Fiji in compliance with the Interpol notice. Or a formulation through diplomatic channels on a person required for criminal investigation from the country of the person citizenship. Some issues;

1. Misaligned with immigration authority.

The current provisions are respected and do not fully recognize the operational authority of immigration to control entry, stay and removal. Our act, when it challenges, they go to the area of the constitutions that have some cover on human rights that limit us from exercising our function. Restrictive delegation, it limits us on the powers that are given to us under the act. Some recommendations sir, affirm state authority to refuse entry, regulate stay and deport non-citizen who are under the additional recommendations. Allow delegation of powers beyond the minister including PS, Director and Deputy director and the front offices. It will clearly define national security and encompasses border integrity, transnational organized crime, trafficking person, immigration fraud and document forgery. This ensures constitutional clarity and operational flexibility. Under trafficking, labor and criminal networks under section 10, 11, 19 and 20, some recommendations Sir- request strengthening of constitutional and legislative provisions to ensure protective enforcement against traffickers and criminal networks. Support intelligent led operations, prevent exploitation of victims, protects vulnerable population while remaining a sovereign authority at the border.

Under immigration tribunal, section 102, some recommendations sir – it can establish a constitutional basis for an immigration tribunal to handle appeals against immigration decisions, review of deportation and removal orders and oversight of detention and administrative actions. Sir, the recommendation and suggestion for establishment of immigration tribunal. This will improve transparency, accountability and procedural fairness while maintaining operational efficiency.

Some key recommendations under sovereign authority and enforcement. Under sovereignty authority, the state possesses sovereign authority to regulate the entry, stay, reside, detention and removal of non-citizen. It also covers immigration control as a core function of the state and not merely an administrative task. For rights of non-citizens, non-citizens do not hold an

inherent constitutional right to enter or remain in the country unlawfully. To enter, reside and to stay are entirely subject to law. National security and border integrity is paramount.

On the Bill of Rights applications, fundamental rights apply subject to lawful limitations in our immigration context. Particularly for national security, public order, border protection and the rights should act as a safeguard, not as a source of immigration burden. Under enforcement powers, the state may lawfully refuse entry, detain, remove or deport a non-citizen in accordance to the law. Immigration detention and removal are administrative actions and not criminal punishment. Some of our international obligations. Immigration powers shall be exercised with respect for international treaties and conventions. To name a few, the UN Refugee Convention, UN Protocol on Transnational Organized Crime, TIP, the ILO Labor Mobility Convention and the ILO.

On the movement of people, meaning entry, stay and removal. The movement of people into, within or out of Fiji is a core exercise of sovereign authority and a critical function of the Ministry of Immigration. Current constitutional provisions provide a framework, but they require explicit clarity to support operational efficiency and legal certainty.

Current constitutional provisions, sir some of the recommendation and suggestion and request for clarity be put forward for the committee's consideration. Immigration needs clarity on enforcement powers. While we are performing our functions under the Act, we've been challenged on higher power from the constitution. And I'm sure some have resorted to that level to undermine our immigration act, or take advantage of as a source that they can stay, prolong the decision. Immigration requests that the powers is demarcated, solid for the Ministry of Immigration to make decisive decision in terms of stay, in terms of residence, in terms of removal.

In conclusion, sir, the Ministry strongly supports a constitutional framework that is clear, practical and operationally enabled, ensuring that immigration functions are effectively encrypted in law while upholding fundamental rights. Such a framework must be clear and legally demarcated for enforcement purposes. And we have any legal... This only holds for the border security and enforcement.

Some key benefits of constitutional clarity to us, to the Ministry, give us legal clarity, give us operational effectiveness, provides consistency and accountability, enhance the national preparedness, strengthen our border security and enforcement. The Ministry remains steadfast in its commitment to a

constitutional framework that strengthens good governance across our functions, by enabling immigration authority with clearly some recommendations and suggestions, and as we have highlighted, we stay ready and available to provide further clarification. Vinaka Vakalevu Sir.

Mr. Valenitabua: Vinaka Vakalevu. Your submission have been held and thought-provoking. We have two lawyers here. We have had some cases in relation to prohibited immigrants. And we understand where you are coming from. Regarding the state provisions and what you said about prohibiting the state, challenging the decision of the minister or the immigration officer for deportation. So, we understand where you are coming from and the need to include some provisions in the constitution which covers the immigration department. It's a tough job. I understand that. Everywhere. Had to deal with some of the cases of illegal immigrants in the Solomon Islands. And it's everywhere. I don't know whether we have a lot of refugees here. Had a number of refugees in the Solomon Islands who challenged the decision to be not classified as refugees. And it's a tough job. In any event, we thank you very much for the submission that we have heard. We request that we be provided with a soft copy. If it could be sent to an email which Lia will give you, they can then distribute it to the commissioners. Distribute the submission to the commissioners. Lia is the girl name. She will give you the email address to which your submission can be sent. If there is any other submission you want to add, you can do so. We are open to that. This is our constitution we are looking at and we need to deal with it properly. Having said that, I see that my fellow commissioners have been noting down some letters. And I will now open the floor to them to seek clarification from you and your offices. Thank you very much. That was a very enlightening presentation.

Mr. Beg: It was good to hear what's happening in our border control. I think you're right. There is a wider holistic framework that you mentioned. How they function. I looked at chapter 6 in the public service. The military services, police and correctional services are very defined in their functions. But I hear today that there is a very defined function that's happening in the border. But it also involves all the different departments. But I also hear your voice about how entrenched the constitution finds a way to give leverage to those entering the country somewhere. So, I hear that voice ringing quite loudly. I respect the work and performance of our women and men in the border control. It's a difficult thing. And it's been some of the cases that have been reported. So, I guess the question is that you're saying you want some amendments. Where do you see these amendments appearing in the constitution? I think that's a valid point. I threw it up because I feel that the Bill of Rights is protecting the human

condition. If someone can seek asylum, it's going to be under the international convention on human rights. That's another point. So, I just ask the question, where do you see that? I don't mind you asking. Where do you see that in the constitution? Where do you think that should be placed?

PS Immigration: Vinaka Valevu Sir. My team is ready to provide some clarification. I will take your questions. Thank you, Chair. I would like to report some of the areas. Fiji is a signatory to UNHCR, where we have to receive asylum seekers. So, when they come at the border, they look for an immigration officer. And get an asylum seeker. And from there, because we are a signatory, we start to accommodate. They have to go through the documentation process with UNHCR. And for UNHCR to give us some form of documents and reporting. And for Fiji immigration to provide permitting for them to stay. During the process of their case. But that's for asylum seekers, who are a signatory. But for some of the amendments we mentioned, that we want to put forward Sir.

Chapter 1 on citizenship. I think that word is becoming... Section 5. Section 5, yes. We don't want to... It's a bit of a sensitive word that everybody is discussing. We from us, because we look after citizenship, Fiji nationals. The way that... Section 5, Section 5. Number 3. We are hoping to put some rewarding on that one. It's a bit open and unclear. Because on the constitution it says... sub section 3, Apparently it says, it reads... Citizenship of Fiji shall only be acquired by birth. Registration or naturalization. So, we got a bit of a challenge when it says by birth. It opens the area... If a child is born in Fiji, neither of the parents are citizens. They resort to this way. So, we suggest if you can read... Citizenship of Fiji shall only be acquired by birth. Registration or naturalization. Either of the parents is a citizen.

Mr. Valenitabua: Provided.....

PS Immigration: Yes provided....

Mr. Valenitabua: If One of the parents is a citizen.

PS Immigration: it will take away the openness. People are using it.

Mr. Kohli: I'm just interested to know... First of all, I acknowledge the difficulty you've faced. I've done some immigration training. I'm aware of it. What you are asking here is for clarity. Because sometimes you have to make a spot on decision. Unfortunately, the constitution cannot lay out all those rules. Otherwise, you are a constitutional persona. In New Zealand, they provide it in immigration. All provisions are there. For your interest, New Zealand does not even have a constitution. They don't have a

constitution. But everything is provided. So much so, that if a person is taken in... Here you are saying that Bill of Rights is inhibiting the provision. It's inhibiting it to some extent. You are trying to balance the rights of the individual as to your protection of the border and the country. This is a challenge faced by most countries. But what happens is that... For your information, in New Zealand if a person is detained, questioned, and if the minister says, here you go. The decision is there. You have official information that you have a right to obtain information from immigration as to why he was detained. Over here, we say we protect the whistleblower. We can't tell you who has told you that... But here, in New Zealand, they are asking. They are asking to provide this information. I want the person to be named? Unless it's top secret. They will tell you it was on this particular day. We were dealing and that person went by the radar. And therefore, this is what has happened. So, you see that it's more difficult in New Zealand to deal with it. The other issue is that, you see, under Section 9, the right of personal liberty for purpose of preventing the unlawful entry of a person into Fiji or of effecting the expulsion, extradition or other lawful removal of the person from Fiji. Right? Over here. So, basically it says, a person must not be deprived of personal liberty except for the purpose of preventing unlawful entry of the person into Fiji or of effecting the expulsion, extradition or other lawful removal of the person from Fiji. So, if you are doing it for those purposes, you are entitled to do so. But, you cannot give, if you can't just give a discretion as to, I've decided to remove you and therefore it's lawful because it becomes lawful. You have to justify why you're removing. And, every person has got a right. Every person has got the right to know why am I being removed. And if you leave it to the decision of one single person like the minister, and suppose the minister, government changes, minister doesn't like something. There's no, my decision is final. You can't appeal. Where does it go? So, when you make a decision like this, it's very similar to a decision made by a police officer to detain you, to deprive your freedom, detain you, put you in the cell for 48 hours and put you in court. They are also doing a function similar to yours. But then people are given a right when they come to court to question the decision. So, I acknowledge the difficulty. But what I'm saying to you is that, I think, I totally agree with you, totally agree with you, you require clarity. If you go to some of the jurisdictions, very, very clear, A is this, B is this, C is this, they tick the boxes. Have I done all of those? Goes to tribunal, tribunal says they have taken into consideration the decision is right, goes to court, the court says yes, they have taken into consideration the material facts, they come and say that they have taken into consideration relevant matters, they have not taken into consideration irrelevant matters, and therefore we are quite happy with the decision, we should go. But the process is different. My worry is that Fiji is a friendly country. We are open

to tourism. Yes. Yes, so, you know, we want to, not to be seen as a place where you go is very difficult. But on the same token, you have your issues, which I agree with, and I think, this even was more challenging before, we have some help from Australia and New Zealand now, but still the challenge is there. I would request you to get this legislated. Not in the constitution, but in the Immigration Act, all those areas you have to have clarity, clarity. That is, it. I think from us we totally agree.

Mr. Valenitabua: Any comments from Immigration.

PS Immigration: I think from us we totally agree. Thank you, sir. Because of the challenges, we suggest for the tribunal, to take over that pathway, if its refused, but minister they were challenges, both the tribunal, I think it happens in Australia, they go through a tribunal, a pathway, we receive your comments sir.

Mr. Kohli: We are also taking into consideration what you have said, and see how we can have certain sections that don't contradict the your operations. There is no contradiction. For example, those are things I don't know.

Immigration Officer: Just in addition to what our permanent secretary has mentioned, you were asking Mr. Beg, where do you see this amendment in the constitution? Sir, section 21, subsection 5, there is that word lawfully. So, what happens when the person becomes an unlawful person in the country? And that is where the challenges we are facing in the ministry, because we have been challenged of saying you are a prohibited immigrant, and they have all this, you know how the court works, it just prolongs the process. So ideally, if you are unlawful in the country, we would like you to leave. That is where we come in as keeping the sovereignty of our country, and being able to say you are being unlawfully in country, so you need to go, or you need to depart, or you need to leave. So maybe that is the section, the lawful. When you become unlawful in the country, that is probably where the sovereignty steps in and say because you have breached the conditions of being here, therefore you are no longer entitled to be in Fiji. You were asking where we could probably have a more explicit in wording when you are unlawfully in Fiji, then you need to, that person is no longer warranted in country. And that is, as Mr. Kohli said, there are ticks in the box, so we would have all the ticks maybe legislated, but in terms of where it would be our constitutional right to remove a person, that is what I am saying. That is what we are trying probably, what our PS is saying, is that we would have that constitutional right to remove someone who is unlawful in the country and have ticked all the boxes as Mr. Kholi has mentioned.

Mr. Kohli: Look at 21, subsection 3. Every citizen and every other person lawfully in Fiji has a right to move freely throughout Fiji and the right to leave Fiji. Right, if you are lawfully here. He doesn't say if you are unlawfully here, then you don't have the right to leave Fiji too because you can be arrested and put in the prison. He says every citizen and every other person lawfully in Fiji has the right to move freely. If you are unlawfully in Fiji you don't have the right to move freely because immigration or police can arrest you. And the right to leave Fiji, if you are unlawfully in Fiji you can't leave Fiji because you can be arrested in immigration. There can be a deportation order because you are unlawful. So, when I am saying constitutional rights, you can't write everything. Now what is that? Can I just ask you a question? You are talking about somebody who is unlawfully in Fiji.

Immigration Officer: I think sir that the key word there would be who is not a citizen.

Mr. Kohli: Every citizen. Section 5. Every person who is not a citizen so I think it contradicts probably to section 3 because every other person. So, that's where we are coming in. Thank you.

Mr. Beg: That's what I was trying to say because I hear you loud and clear. I myself am jumping from one section to another. This is supposed to be the supreme law and guidance and then we have the Immigration Act. So that's kind of almost continuing some of the items or like Madam said it pushes that person to tick all the boxes and then we find another loophole here. I hear you loud and clear and that's one of the things we've been discussing as commissioners but I am really grateful. I know it's hard work out there and I wouldn't trade my place with yours but I hear you and I think it's a very strong point. Thank you.

PS Immigration: And I can say I think one of the suggestions from us is well on the on the Interpol notice. We've been questioned from time to time that we become sensitive to people that are from the Interpol notice. Because there is a probability that there is a notice.

Mr. Kohli: Your point is completely I totally agree with you but I don't want to disagree with you because if there is already an order from our court or from Interpol then they should not use a country which is relaxed more relaxed or uses the court procedure to get at us. So I'm in agreement with that. I'll note that down to see how that can be addressed. You have another leave of say?

Mr. Valenitabua: The citizenship section 5 of section 3 in relation to citizenship in Fiji that we acquired by the birth for the use of lawyers and the court. Maybe like we have said we have to add there to provide one of the parents with a citizenship. We do not have anyone a husband and wife to pry in. None of them is a citizen and then

the child is born there and then they become citizens. And then that is how we can remedy that. In relation to the right of movement the freedom of movement and residence section 21. I concur with the lady in relation to section 5. Every person who is not a citizen but is locally in Fiji has the right not to be expelled. Locally not to be expelled. Now that might be a contradiction in rights. Bureaucrats might be but it depends on how that can be argued. If someone is here unlocally then he shouldn't be there or she shouldn't be there. She shouldn't be there. Unfortunately, like you said sometimes it works against the immigration department. People are here unlocally but judiciary are there to take action and there is an application for stay and then things just take off from there. I know that extradition or removing people out of the country is difficult but you want or the immigration department wants clarity in operation and clarity in decision making and you wish to have this constitutional text which I know you have to be filling expressly not in writing. I understand that is your main your main submission today. And we have to look at that. We have to look at the immigration department so the immigration act we look at the citizens act the passport act, now when a foreigner comes into the country this is a question do you entertain them entering the country and then initiating the visa?

PS Immigration: Currently Fiji have some form of visa agreements with other countries that have visa exemptions visa on a regular basis. When they come in at the border because of that arrangement with the country they are staying on a regular basis.

Immigration Officer: Good afternoon chair reference to section 21 subsection 7 the problem that we face in terms of the Interpol that has been shared to the foreign the fact is the definition of national security because of this Interpol notice having pinched national security that is why they have been brought to the attention of the court and we have been issued a stay order from them till now can we have explicit definition clearly for immigration purposes in terms of the removal process determining that some POI having pinched national security-

Mr. Kohli: Can I just add if a person is not a citizen and is unlawful in Fiji cant the minister....

Immigration officer: Sorry I can't hear you.

Mr. Kohli: Sorry, mic is a bit far away. If I may add, even for section 5, it says every person is lawfully in Fiji who is not a citizen but is lawful in Fiji has the right not to be expelled or removed from Fiji except pursuant to an order of court or the decision of the minister.

Immigration Officer: Sir, this is was the decision of the minister. Under section 13 sub section 2G immigration Act when the minister receives any official information from any diplomatic channel from any other information that is reliable minister may deem this person as a prohibited immigrants and any decision cannot be challenge in any other courtroom in the jurisdiction of fiji

Mr. Kohli: Right so he has a right.

Immigration Officer: But still we are being challenged in the court of law.

Mr. Kohli: Yes because the immigration act saying that but the constitution provides the right to be heard.

Immigration Officer: Right to be heard and the clear definition of National Security was challenged.

PS Immigration: If I may add given to section 5, it says every person who is not a citizen but is lawful in Fiji has the right not be expelled from Fiji except. That condition gave some leverage. Except court order. So, they resort to the court to say stay order and all this. Because the order of the court or the decision of the minister. So, the precedents are who takes. Both the minister and the court are given a mandate to expel them.

Mr. Gounder: So, what were the conditions of the challenge that you mentioned? You mentioned two conditions for the challenge.

Immigration Officer: They are challenging the removal order, firstly. And secondly, in classification of national security. We've classified the person, the impeached national security, due to the fact of the criminal elements that was defined from the country that the person had committed offences to.

Mr. Beg: So, the dilemma you're faced with is your action says this and then...

Immigration Officer: Constitution says this.

Mr. Beg: when the posture and the framework is in tension with each other, right? So therefore, you're in this position, a very tangible position.

PS Immigration: Yeah.

Mr. Beg: I hear you.

PS Immigration: Just for an example, when he says through an order of the court or the minister. So, when the court order comes in, we push back.

Even though the minister has given the decision. So, we tend to be in a authority who is correct in that area.

Mr. Kohli: I think the dilemma is this. If the court makes an order for expulsion, only other thing you can do is take it on a bill. Unless it says somewhere, there's no further appeal. But if a minister makes a decision, they can still go to the court. By way of judiciary.

PS Immigration: Because it's oath.

Mr. Kohli: Because it's the oath, that's right, exactly.

PS Immigration: The order that gives us... Yes.

Mr. Kohli: So, the safer thing to do would probably be to run to the court and get an order to expel that person. Because if the court makes an order, they don't have the hurdle of minister meeting and then going to court to override them.

Mr. Beg: Mr. Kholi, I see these are legal frameworks. But what I hear from the group in front of us is a clear direction. We shouldn't be going through layers. And then they end up sitting back there. And their work is diluted. So that's the kind of song that I'm hearing. Or the music that's come in. That's resonating. Why do we have to go through all these different layers? This is what the constitution and the acts are putting them through.

PS Immigration: Because when we exercise the act, we go to the constitution. It says they have the rights to be heard. And limits are there.

Mr. Kohli: Exactly the same thing is suffered by every citizen in a police arrest. The only difference I sympathize with you is that police are living here. Those people are living here. When you make a decision at that time, on the spur of the moment, what shall we do? Especially those people who have been wanted by another jurisdiction. You're not supposed to be caught by me. You know they have committed a crime. They are required there. Your hands are tied. So, I appreciate that. The rest of it, like if you look at police powers too, everything is there. The limitations are there.

PS Immigration: One of the suggestions we want to put forward was on section 21.5. Section 21.5 doesn't have any A and B in it. So, we are thinking just for clarity on our part. And for us to read, like for section 5 it reads, non-citizen, for every person who is not a citizen, but lawfully. So, under 5A we want to put every person who is not a citizen and is unlawful, has no right to remain in the country or has any legal rights to challenge the minister's decision.

Mr. Kohli: I see.

PS Immigration: And the B that we want to add is judiciary to observe the minister's responsibility of immigration. That is the final decision.

Mr. Kohli: Will have to look at it again. I sympathize.

Mr. Valenitabua: National Security. Look at the case Metuisela Rainima vs Commander RFMF. Or, I'm a bit mixed up here, because I did this case in 2004. But it's in that case. Let me say it very nicely. This is the commonality between the two cases. It explains, that Interpol, which I believe is the explains what the national security is. It defines the national security. It's about the CRW case and explains the threat to National Security.

Immigration Officer: Thank you, Mr. Chair, for the information. Just a question across the forum. Is there any possibility to have an independent immigration court, due to the fact that the cases that we deal with, when it's been challenged, it takes years. And the people are still remaining here. And the criminal level is way too high for the sovereignty of Fiji. Why we're requesting this for consideration is because of the fact of we're trying to prioritize national security and protect the integrity of our border. Is there any possibility?

Mr. Valenitabua: The Constitution has got the Supreme Court, which is the highest court of the land, and then the Court of Appeal, then the High Court, and the Magistrates Court, and other courts and tribunals. So that is in the Constitution. Establishment of an immigration court might have to be taken through the judiciary. Look at the Permanent Secretary for Justice and discuss with her.

Mr. Kohli: The other thing is that you've got a very good point, I must say that. People use the system for delaying, and it's costing our country money in maintaining and looking after. What we need to do is probably have a legislation where, say, if a minister makes a decision regarding certain issues, it cannot be challenged. If that becomes a law, that's the end of the matter. A minister's discretion cannot be challenged. Or, basically, you could have a system that it can only appeal to, not right up to the Court of Appeal and the Supreme Court, but only goes to the High Court, and the High Court's decision is final. That's it. And then what the Chair has said, perhaps you take it up with Attorney General and say, give priority to these cases, and maybe have a judge who specializes in that area. Sometimes, you know, it's a specialized area, and somebody does that all the time, you point his finger at them. What to do?

Immigration Officer: Yes sir, currently, let me just enlighten the forum. In some instance, when a judicial decision is called upon to be made for this particular case, so we issue a surveillance operation, and a huge amount of money goes, like it's $50,000 to $60,000 to deploy our intelligence on the ground, because of this person of interest. And when the day of decision comes, and we receive there is another day of the decision that will be deliberated from court. So that is where we stand, and why we are requesting.

Mr. Beg: Is that budgetary restraints that incurred, and if you can't do it, then the person will suffer?

PS Immigration: Just a point of interest, when we go to Section 44, Section 44, the Bill of Rights, on Enforcement, I'm just, sorry, Section 44, Bill of Rights, under Subsection 7, is there a possibility we can resort to that section in terms of some of the limitations we have?

Mr. Kohli: That can be mentioned to the Attorney General. That who can sue, and who can be sued, and therefore, whenever we do a decision that's fit, it's in the interest of the State, the proceedings of the court, we can ask them to do it consistently. So, that's what it is. That is it.

PS Immigration: Just a point of interest, when we go to Section 44, Section 44, the Bill of Rights, on Enforcement, I'm just, sorry, Section 44, Bill of Rights, under Subsection 7, is there a possibility we can resort to that section in terms of some of the limitations we have?

Mr. Beg: So, in your submissions, would it be difficult to ask, if you can put samples of precedence's that relate to this, because I think that would be more believable. If you don't mind, Chair. I know.

Mr. Valenitabua: I know, because I usually apply for duties in Fiji. As for applying for a stay , I understand. It's a private practice.

Mr. Beg: You don't have to worry about the Chair. It's a commission.

PS Immigration: We will provide some cases or scenarios, for example?

Mr. Valenitabua: Do you have any other comments? I think we have come to the end of our consultation for today. And thank you very much for your submission. I do not envy you. I do not envy you, the job you do. Particularly when you have people who are unlawfully here. There's been an order for deportation. And then the court is... An order is sought from the court to stop the deportation. So, we have heard your submissions. As read out by the peers. We request again that the submission be sent by email. So that we can print them out and consider them during our deliberations.

After the consultations. We are collecting all submissions. And then we will deal with them after the consultations. Once again, thank you very much for your time, for coming up here. And we'll just move on from here and try to review this constitution.

PS Immigration: Thank you. On behalf of the Minister and staff of the Ministry of Immigration, we want to say thank you for the opportunity.

----------*End of Session [09/04/2026]*----------

Ministry of Education (MOE)

Ministry of Education

Time: 2.30pm-5.20pm

Mr. Fatiaki: Thank you. My name is Leighton Fatiaki. I'm just going through a few housekeeping rules. Just in front of you there are mics, so you'll just tap on the right side of the mic to turn it on, and the same to turn it off. All mics can be on at one time, so please, after you've spoken, you can just tap it off. Also, when you speak, if you can also introduce yourselves, not just your name. This is for transcribing purposes, because this is being recorded as well. I'll now hand over to Chair, and also, I'll just bring across the attendance sheet. Vinaka.

Mr. Valenitabua: The Permanent Secretary for Education and officers from the Ministry of Education. It is a pleasure meeting you here this afternoon. Greetings to you all, and Ni sa bula vinaka. As chairperson of the Constitution Review Commission, I thank you kindly for accepting our invitation to appear before the CRC today. The commissioners of the CRC welcome you warmly. The CRC is an independent commission tasked with reviewing the 2013 Constitution of the Republic of Fiji. The commission was established, and my fellow commissioners and I were appointed by His Excellency, the President of the Republic of Fiji, in accordance with a decision made by Cabinet on the 6th of March, 2026, and pursuant to Section 2 of the Commissions of Inquiry Act, 1946. That is the legal basis of the forum which we now call the Constitution Review Commission. By way of introduction, there are seven of us commissioners. I am the chairman. With the name tags, you can notice that on my right is Mr. Conway Beg. Next to him is Miss Mere Nailatikau. My immediate left is Labasa lawyer Mr. Ami Kohli. Next to him is USP Dr. Neelesh Gounder. And on the far left is FNU's professor, Unaisi Baba. And the next and closest to me is Dr. John Fatiaki.

As a commission, we are tasked to undertake a comprehensive inquiry into the 2013 Constitution. We are asked to consult widely with the people of Fiji while undertaking that task.

The resulting objective is the preparation of a draft amended constitution based on submissions from the people of Fiji which reflects the people's values, their needs, and their aspirations. At the end of our commission, we are required to submit our findings and recommendations derived from the submissions made to us by the people of Fiji to His Excellency the President. In accordance with our term of reference, your commissioners have embarked on and are undertaking a nationwide consultation process.

In the process, members of the public, I am invited to make written and oral submissions to the CRC. You are here today to present such submissions before us, your commissioners. We are interested in and wish to hear submissions from the people of Fiji about their views on the 2013 Constitution. We look forward to hearing submissions on what provisions you want to be preserved or maintained in the amended Constitution for Fiji, what provisions you want to be changed or amended, what your aspirations are for an amended Constitution for Fiji.

We need to consult widely with our people. We rely on the media to provide wide coverage of the consultations and we thank them for their attendance so far. And the contents of the submissions made during the consultations, we are engaging closely with the media in the belief that they play a vital role in publicity, in promoting transparency, and in fostering open dialogue among the people of Fiji regarding how they wish to be governed under the Constitution.

The CRC encourages everyone to express their views openly, with civility, and with mutual respect, in support of meaningful and constructive dialogue. Vinaka Vakalevu, with those opening remarks, we

now hand over to you to present your submissions this afternoon. Thank you.

PS Education: Vinaka Vakalevu, Chair. Thank you again, Commissioners, Members, familiar faces around the table and in the room. We are very pleased to be here and we appreciate the invitation that has been sent to us. As you know, the Ministry is quite a big Ministry. We have a number of facets and departments that are involved in our working Ministry. However, we have been represented by our team, maybe just for knowing purposes, so that you are aware of who is in the team. May I request the team members just to quickly introduce themselves to the Commissioners and the Chair, please? We will start with our Deputy Secretary on my far left.

Mr. Bure: Good evening, Chair and Members of the Commissioners. My name is Timoci Bure, Deputy Permanent Secretary, Primary and Secondary in the Ministry of Education.

Mr. Metui: Good evening, Mr. Chair and Commissioners, My name is Metui, looking after planning, policy and research for the Ministry. Vinaka Vakalevu.

Ms. Lewaqai: A very good afternoon, Mr. Chair and Commission Members. I'm Ana Lewaqai, and I'm the Head of the Executive Support Unit for the Ministry of Education.

Mr. Toribau: Good evening, Mr. Chair and Commission Members. I am Isoa Toribau, from Mokani Bau Tailevu, Vasu Dravulevu, Kadavu. And I'm the Director of TVET. Vinaka Vakalevu.

PS Education: Members, thank you again. Good evening, Chair.

PS Education: My name is Naveen Raj. I'm the Permanent Secretary for Education. Chair and Members, maybe a clarity for the objective purpose of this discussion. Me and the team, we have been meeting and discussing things that surrounds Ministry of Education that we would like to have sort of aligned into the review and the work that you are doing. Like I

mentioned, the ministry is a very large ministry that holds a lot of operational matters. Looking after more than, say, 50% of the civil service, we're looking at around 13,500 to 14,000 staff that are involved, teaching and non-teaching, and with various departments that is looking after the teachers and the children of the country. So, we thought for this forum, we would start with a few discussions that we would like things to be embedded into the review for your consideration. And maybe for clarity purpose, if you have further questions, then we can continue. As for a formal, proper submission, if I can respectfully ask the Chair and your members if you can give us time to formally submit a written document for the sake of this discussion. Thank you, Chair.

Mr. Valenitabua: That is fine, Permanent Secretary.

PS Education: Vinaka Vakalevu.

Mr. Valenitabua: We can hear you this afternoon. All right. And then finish off your written submissions and then email it to our staff here. We'll give you the email address. Great. Thank you.

PS Education: Vinaka Vakalevu. Maybe to begin with, so we had a number of it. What is our time allocation? Yeah, so we have a number of it.I would like to summaries it just for this purpose of our first discussion, and then maybe we can continue from here.

Mr. Valenitabua: If I may.

PS Education: Yes, Chair.

Mr. Valenitabua: If I may, you are the only ministry which is giving these submissions this afternoon. So, we earmark you for one hour and 30 minutes, but we can go on to two hours if you want.

PS Education: Thank you, Chair. Much appreciated. Chair, as you can see, as they have introduced, we have three Deputy Secretaries in our ministry, and a very

important one is Deputy Secretary, Primary, Secondary, which is Timoci Bure. He is basically in charge or looks after the school, the around 13,000 or so teachers and around about a quarter million of students. So, with those in charge in schools and students, as you can see, there are many pertaining issues. So, it sorts of falls under the Deputy Secretary, Primary, Secondary, Mr. Timoci Bure. So, he is here with us.

Maybe we'll start with maybe our first issue that we would like to discuss is around schooling and teaching and learning within the ministry where the schools and students are involved. Chair, firstly, let me begin with saying the right to educate, the right of education, if I can commence with that first. Chair, particularly I would like to touch on the provision where there is no provision for homeschooling, digital access, inclusive education, learning and management system within our teaching and learning and limited access in rural and maritime areas, just to begin our discussion.

With our 800 or 600 plus and around 200 secondary schools and 600 plus primary schools, around 900 schools in totality, majority of our schools, they fall under maritime and rural sort of areas or divisions where accessibility is a challenge. How we can sort of consolidate, how we can improve our constitution so that we can cater for all these students and all these teachers in this geographical location. That's the first area of discussion that I would like to commence with. Team you are welcome to add on. Deputy Secretary, maybe you can take a lead and then we can pitch in with our comments.

Mr. Bure: Thank you, Chair. I think one of the major challenges that we face with the current constitution is that we saw that there was a wide gap between the legal framework and the government initiatives and program that is run by the ministry. And that has been an occurring problem ever since the constitution came into place. We saw the need to align our programs and initiatives to the 2013 constitution because we

did not see the legal framework and the programs and initiatives talking to each other. I can give a few examples. One is the provision of free education grant which comes under the right to education. That is a program by the government. But in the context of the schools in Fiji, we saw the challenge in trying to fulfill this right because there were schools, there were communities that were disadvantagely located to access those education services. A good number of our early childhood students are unable to access early childhood education because the provision for that is not available in the system. This was the reason why the previous government established what we call infant schools because they saw the struggles parents were facing to send their five-year-old, six-year-old to the closest primary school which required them to stay as boarding students.

And this included early childhood education students. So, for us in the ministry, this is quite challenging. Quite challenging because at this age, these children are supposed to be with their parents. But unfortunately, they have to be moved to the closest education institution or early childhood education center. In many cases, they had to travel across seas. A few in Vanua Levu, a few in Bua Macuata, a few in Yasawa. So that was the challenge. I'm just giving one example. So, when you talk about the right to education, I know the constitution says that where government is unable to provide the resources and the means to, it must explain itself. The constitution says that. But we are talking, we are experiencing a situation which is not going to give us satisfaction if it's going to be just an explanation. Because those children need to go to school. So, what we actually did was establish infant schools, ECE year one, year two, year three, and four, in some small community and villages. That is not clearly reflected in the constitution. And now we are going to the idea of homeschooling. Because there are some communities where we just can't establish a school. Because it would be uneconomical to establish a school in those contexts. So probably

I'm talking about the worst scenarios in the system. That's what I wish to bring to the commissioners here this afternoon.

A couple of other programs in the system, but probably the team can contribute, and I will later speak about this. There was one of the reasons too why we could not review the constitution with the last government, because it was, we saw the challenge that was there, the gaps in the education act and the constitution. So, we put in place policies just as a form of quick address to these issues, one of which I've just shared.

PS Education: Vinaka, DSPS. Just to add on to it, with this challenge that was highlighted by our deputy secretary, the other angle that I'm looking at is also the special trained teachers for these students, which is another part of an item of discussion where we'll be discussing on teacher gaps around the country. For students who are challenged, SIE [special inclusive education], there's a need for special trained teachers to educate these children. Normal teachers that go through the system of primary and secondary education do not have that specific skill, the specific skills to address those challenges. So, somehow in our constitution, if we can give equal opportunity and accessibility in terms of education, in terms of the training, in terms of the allocation, then only we'll be able to educate all the children around the country. For instance, students who are autistically challenged, say disability, and there's a special training that comes with it, a special teacher that is able to educate such students.

Mr. Toribau: Thank you, Mr. Chair. I'd like to add on to what my two colleagues have shared this afternoon in light of the right to education. This is very important for our students to have. Speaking on this topic, the right to education, accessibility for our students to access to education in all around our divisions, despite geographical challenges that we are facing. In one of our gaps that we already discussed is the need to have LMS, the learning management system.

You're all aware of the learning management system. It's a tool that is now, it's a contemporary tool that is widely used overseas in mostly the secondary schools. And in overseas, in Fiji, we are trying to promote that because right now there's a huge disparity in what we are providing to the students in the classroom against the students' expectations. When they come to the classroom, they do not have that interest, that enthusiasm is no longer there because the disparity of learning is quite a very huge gap. That is why the need for LMS, the need for e-learning is very important. I know that most of you agree to this. If you look at our students, our children at home, the first thing when they come home, they will look for gadgets. So therefore, there's a great need for us to focus, to be futuristic, provide this platform for our students so that they are shared equally with this platform when we talk about a right to education.

So, there are a few challenges that come with it. One is connectivity, but we are happy that we have Elon Musk here with us who can provide us with a very good connectivity, but we don't have the funding. And we also have, we need to have the devices so that our students can use the devices. We have gadgets at home, we can use that. They are available with parents. We can also use that. So, the ministry is moving towards that to secure some platforms, some LMS, so that we can be advanced in our learning. One of the challenges is connectivity, yes, but we are trying to get the solution to all those areas, especially the maritime and also the interior, the interior of Naitasiri. Those are some priorities. And we're so happy that our PS is there in support towards that initiative. So that's something that I think that the Constitution should address, looking to address in terms of sharing that right to education, equity, accessibility, so that every student, despite of different area locations, they should be shared with equal distribution of services, education services to them. Yeah, that's all that I wanted to share. Vinaka.

PS Education: Vinaka Director, so basically in conclusion for that item, Chair, I think what we're trying to drive here is we're trying to share the importance of the funding gap for the inclusive education. Because with that inclusivity, then only will that gap, that financial gap, can be addressed through digital learning, as what Director TVET is trying to highlight, so that children and teachers, they'll have all accessibility to teaching and learning. Maybe I'll pause here, Chair, for a minute, if you have any questions for us on this item, before I move to the next item.

Mr. Valenitabua: Section 31 of the Constitution. Do you have copies of the Constitution? Section 31 of the Constitution. It deals with rights to education. Every person in Fiji has a right to early childhood education, to primary and secondary education, and further education, which I will take as tertiary. Now, that is from Section 31.1. Section 31, Subsection 1, A, B, and C. Then there are subsections which follow, Subsection 2, Subsection 3, Subsection 4, Subsection 5. Right on Subsection 5 is the matter which the deputy permanent secretary of the primary and the secondary has referred to. It says if the state claims that it does not have the resources to implement the right, it is the responsibility of the state to show that resources are not available. That state, the word state, I believe reflects the Ministry of Education.

Now, we've been looking at those provisions. Despite that provision, Section 31, which deals with the right to education, you are submitting to us this afternoon that there are challenges that are being faced by the Ministry of Education. And it is being suggested that we add provisions to the Constitution to try and resolve those challenges. Correct me if I'm wrong on that. Now, with those challenges, what are some of the solutions which the Ministry of Education sees which could be added to the Constitution as provision so that the government, that is the central government, could assist the Ministry more? Thank you

Mr. Bure: Thank you, Chair through the Permanent Secretary. Thank you, Commissioners. What we want the Constitution to do is to have some bold statement in breaking those barriers to give us the liberty as the arm of government servicing education to modify what is actually lawful to do. We can be given the liberty to do like homeschooling or infant schools, established infant schools. Because without this, what we have seen is the communities are moving to the urban areas and they are settling in informal settlements and they are contributing to overcrowding in our urban schools. So, we need the Constitution to give us the liberty to go beyond the simple explanation of why we cannot provide resources and to build smaller schools. Not the standard schools that you and I know, but we could come up with anything that could provide educational services to this small community. That is what we try to explain in this bold statement.

The liberty for the Ministry of Education may, through its available resources and capital, establish infant schools or home schoolings to this community so that we can stop that urban drift. That urban drift is really giving us another problem in the urban schools. The teacher-student ratio is very high and then with it comes all those social problems that you and I all know are contributing to our issues, national issues. Thank you chair.

Mr. Kohli: Thank you. Chair, through you, if I may just ask you, what is there in the Constitution that inhibits you or prohibits you from carrying out what you want to do now? Because the Constitution is a supreme law which is for all the people in Fiji. And if you look at Section 31, as Chairman has rightly said, every person has a right to early childhood education, primary and secondary education, and further education. Where does it limit you? How does it limit you or restrict you from carrying out maritime education, early childhood education? Where does the Constitution stop you from doing that? That's my question. Is there anything that prohibits you or limits you?

Dr. Baba: Chair, can I come in please, sir? So, through you, Chair, yes, through you to Mr. Bure. Bure, if I'm hearing you, your suggestions was touted around the Pacific in the 1960s and 70s. The early commissions tried to do that. We were searching for alternatives because things were not working. So, I'm talking about the Tragea Report in Kiribati, 74, that go to education for what in Solomon Islands, where we created area high schools. And in Fiji, the Burns Commission, 69. So what I'm trying to say is, in every decade, we have to think about alternatives because the school is not built to cater access for everyone. I want to base it like that. So, your three suggestions are, maybe I'll just repeat it because it's not in the Constitution, but it may be in your Education Act and your regulations because we haven't seen your Act either, P.S. So, one, in the 1960s and 70s, there are alternatives to what you're saying. But today's alternatives, I've heard you say, infant school, they are not there. Are you telling us, because we can't put everything in the Constitution, but what you're saying is, when you have early childhood, that's not the same as infant school. That is between five, six, or four, even four. Because the ECE educators are telling us now, start with three and four because Japan does that. So maybe in the early childhood, is that what you're saying or would you rather keep it at the Act level, Education Act, and the homeschooling? Because those are alternatives. This Constitution just serves the general. So, I'm interested that you are now talking alternatives. We don't have what you're saying. All I'm asking is, will you keep it at the Constitution level or do you want it at the Education Act level, in which case, P.S., the last time we sent the Act to the Solicitor Mr. Bure: General's office was in 2007. Is it finished?

Mr. Bure: Thank you chair, No.

Dr. Baba: So, is that where we are going to have to look at detail or are you asking us to put it here? Because here we don't have what you're saying. I maybe just clarify, that is not the same as early childhood. And I'm agreeing with you, but you are talking about 31A. B should be the

alternative school, infant homeschool, which will serve all our populations. Right now, some of our children can't go to school. Yeah? You're saying that?

Mr. Bure: Yeah. Thank you. I think you read what I was thinking about. The need for infant school. Infant school is not in the Constitution and homeschooling too is not there. So, we wanted that to be in the Constitution so that it can give us the authority to confidently do this in the system. We have not had a case where a child in the island who does not access education take the government to court. We have not had that. There might be a day somebody is going to stand up and say, I'm here in my native village and I don't have education access. So that's what I'm trying to explain here. That can be in the Constitution. Infant school. Yeah. And homeschooling too.

Dr. Baba: Yeah, and homeschooling too. And alternatives. Yeah. And TVET is not there, and LNL is not there. Were you going to talk about that?

PS Education: We were going to talk about it. Okay.

Dr. Fatiaki: Thank you, Chair. Chair. Yes, please. Just so I understand what we're talking about, and I presume I will defer to whatever you have in the way of a written submission, because we're dealing with a Constitution that we've been asked to amend, and the area that we've been talking about over the last 15 or so minutes is Section 31 of the Bill of Rights, subsections 1 to 5. They're the areas that allude to education. Now, just in respect of what was spoken there, I think we want to understand that this is the supreme law, and by that I mean it's not your Education Act and it's not all the regulations that may govern how you actually run the Department of Education.

These are aspirational things, and I think it's important that we don't get too carried away with inserting subcategories, because I think if you said early childhood education, that does not exclude infant schools. It

doesn't exclude homeschooling. It doesn't exclude anything, because by definition early childhood education is early childhood education. It doesn't say it has to be in the home, in the school, in the kindergarten, the preschool. That's as I read it. I have two lawyers here who can correct me if I'm wrong, but to me that covers everything before formal education. We go to the second one. Primary and secondary has everything, and then if we say further education, that includes everything. TVET, everything else is in further education. So, everything, for the purposes of education, is covered in these three areas. You can get pedantic and name, you know, but you tell me that one of them is not covered under one of these three, I'd be interested, because otherwise we could have 15 or 20 subcategories here and then make this an unworkable document. I think you can subcategorize that in the area of your education act and look at, you know, areas like the infant school, which claims to address the issue. What I'm more interested in is what would you take out of here to solve your problem or add into here to solve your problem? And like I say, I will defer to your written submission, because you have time to put it. I think the other discussions about how you address it, I think like Professor Una's suggested, these are things that the education department and the ministry need to address, the unions need to address, in terms of how you operate it. I'm not sure that the Constitution is the area to be addressing it in that detail.

The second thing I want to emphasize, and I want to ask a question about, particularly because we are talking about the big generic things that we should apply to all of us under the rights, and that is Section 3, which is conversational and contemporary iTaukei and Fiji Hindi languages shall be taught as compulsory subjects in all primary schools. Now, that's been in the Constitution as of 2013. What I'm interested in is have you, the education ministry and department, applied that across the board, ensured that that is enshrined as per the Constitution into your education system, and if so, can you assure me that all the primary

school kids are now speaking the other races' language? Because this is critical. It was put here for a very specific purpose. I'm not convinced that this has been achieved, and I think when we start talking about aspirational things, for me this is fundamental, and that's not a political statement. This is fundamental to how we want our country to go. It was put in 2013. It was seen as important enough.

What I'm more interested in is what has the Ministry of Education done in ensuring that the mandated requirement that all primary school kids, which means by the time they reach class 6, they should all be speaking. All the Fijian students should be speaking Hindi. All the Hindi students should be speaking Fijian, and the Rotuman's and the others can be speaking one or the other. I ask that earnestly because I think that we need to make sure that the things that are mandated here are addressed. I mean, when I say addressed, I mean in total because this is the supreme law, and if we're looking at these in a half-hearted measure, then I would be disappointed. These are just some general thoughts. Thank you.

PS Education: Thank you. Very pertinent, and I concur with you. The Ministry of Education still has that challenge where all our children are conversed with all these languages that is being mentioned here in the Constitution, and it is a challenge that we face. Maybe DSPS, our Deputy Secretary, will further comment to it.

The challenge in hand in schools right now is the number of students who would like to pursue further education in these areas. As we can see, when they proceed their education from primary to secondary, this language, this iTaukei or Hindi subject areas, these specific subject areas and focus drops out as they move towards the latter upper and the latter in the secondary school. That's why the number is so small when it comes to national exams, students taking iTaukei examinations, so

Hindi examinations for that matter. DSPS, maybe you would like to comment further on that. Thank you.

Mr. Bure: Yes, we are actually implementing that requirement of the Constitution, but then again, we are also faced with certain challenges, one of which is the composition of teachers in schools is unable to address that need because we cannot, you know, there are schools that, for example, majority of the teachers are Indonesians or iTaukei. In some schools, all teachers are iTaukei. And to teach students conversational Hindi, you need our Indo- teachers to be part of the teaching staff of the school. So that's where the challenge is, but we cannot actually dictate to the teachers where they should take their teaching posts. That is the liberty of the teacher's choice. So, in some schools where you have a good mixture of the two ethnic races, you have this going on very, very well. But when you move to the schools where the composition of teachers is majority Indo teachers or majority iTaukei, we are unable to teach both, one of these conversations. So, that is something that we have already discussed with the Honorable Minister. It's in our Denarau Deck that we have to deal with this from the recruitment of teachers to the teacher training institution. We need to have a well-balanced ethnic intake from the teacher training institutions. That is the challenge that we are facing with this conversational language. If I could share that with you all. Thank you, Chair.

Mr. Valenitabua: Thank you, Deputy, yes?

Dr. Gounder: Yeah, thank you. Thank you, Chair. Thank you, PS and your team for your presentation. This afternoon, listening to your points, I take the point about homeschooling and the infant schooling. If we are talking about the right to education, then access or lack of access will be an issue when it comes to the right to education. But listening to the other points, I find a lot of those operational issues rather than those issues that we can deal with at the constitutional level. And they may be best suited for

Education Act or more to deal with operations at the ministry level. For example, you mentioned lack of special trained teachers, special inclusive education. That is more an issue that you can deal by liaising with educational institutions. E-learning as well, for example. Those are more operational issues rather than issues that we can deal with at the constitutional level. You also talked about funding gap. Once again, that is more of a financial challenge rather than a constitutional provision. But having said that, do you think having something in the constitution will then provide you access to funding? Because it is an issue across all ministries. Thank you.

PS Education: Thank you, Doctor. Yes, I think that was the idea here, is our emphasis on these areas. Perhaps if it's more pronounced in the constitution, that will sort of help us, help the Ministry of Education to deliver these educational constitutional aspects in operational delivery. And that is the angle we were trying to discuss on this particular point. Thank you.

Dr. Fatiaki: PS through you Chair, Again, thank you. I won't harp on this, but I'll go back to my comment earlier about compulsory primary school. Remember, we're talking conversational. We're not talking about further studies and people who want to go and study it, and the access to it. We're talking about conversational, spoken Hindi, and iTaukei in primary school. Now, with all due respect, we have not specified in the constitution the need to teach math's or English, that it become compulsory.

We have specified one thing only. I appreciate there are challenges, but I don't think there's a single school in Fiji that does not teach math's or English. And if you can succeed to teach math's and English in every single school in Fiji, then I have no doubt that since 2013, and that's 13 years ago, you should have succumbed and overcome the challenges of implementing the one thing, the one subject, that the constitution saw fit

to demand that you do. And anything short of that, personally, I think is an excuse, not a challenge. Thank you.

Mr. Toribau: Thank you, Dr. Fatiaki. That one thing is a big thing for us. Maddy has already alluded to that, having to provide the teachers to be there, especially those who are speaking Hindi, those who are speaking iTaukei If you go around the whole of Lau's, hardly you cannot see any Indian, Indo-Fijian teacher there. It's a big challenge for us. However, we are working on some solutions. Right now, we are working on trying to increase location allowance so that these teachers can be compelled to go there. We are working on some solutions to get them there. We are not neglecting this. This is the supreme law, as mentioned by Honorable Chair. But we are not neglecting. We are trying our best. The Ministry of Education, your Ministry of Education, is trying our best to address all that is articulated here in our constitution.

Ms. Nailatikau: If I may, Chair. Apologies, Mr. Bure. I just wanted to extend my appreciation to PS, DS, and officials for your contributions here today. I have two questions, because I think you've outlined some operational issues that have constitutional implications. My first question is related to subsection 4 of section 31 about how the state may direct any educational institution to teach subjects pertaining to health, civic education, and issues of national interest, and any educational institution must comply with any such directions made by the state. Mr. Toribau, you were talking about curriculum relevance and how there is a need for learning management systems so that curriculums meet the expectations or the realities or context of students.

And I'm wondering about whether there's been an example of this subsection being operationalized, where government directs educational institutions to teach a certain subject, and how you feel about the appropriateness or impact of that, given, I would assume, you would know better than me, there are curriculum development

protocols in place and there are processes for this. I would just be interested to hear you expand on whether that has happened and what is the extent or the appropriate extent of the government's intervention in this subsection.

PS Education: Very good question, and it's very pertinent in terms of curriculum relevance. If I can side track a little, I think for me, from behalf of the Ministry of Education, the curriculum relevance is very critical. We need to teach students a curriculum that is relevant, that is more sustainable, that is recognized, that has quality education, and that meets all those educational requirements. For instance, things have revolved. And in our curriculum, we have missed out on very two important aspects or issues that is evolving around the education. One is climate change, and the other one is AI. Maybe when the curriculum that was designed that we are following did not embed those factors into it, but now it has.

So, I'm wondering, going back to Chair, your question, and Dr. Fatiaki I think you have very clearly outlined we must demarcate the operational matter from what's supposed to be enshrined in the Constitution, but we're just trying to drive our operational issues so that how we can capture it into the Constitution. That's, I think, the idea here. So, on that curriculum, I think these two, how we can include it so that it becomes a focus in the Constitution, because climate change and AI is something to stay now. It's our future. It's something that we can, we have consequences of it right now. We need to embed it into our curriculum moving ahead, and that's how the students will be future-ready. If not, we'll be left behind. And before I'll ask my team to further comment on that, the other clarity I have, Dr. Fatiaki and Chair, is on this Constitution, on Section 31, on 1A, B, and C, do we have, is it specifically if the Constitution can mention about special education, students of need, because these are very special areas. It's not covering only primary or secondary. These are specific set of education required for specific set of children. That would be my proposition in this stage.

Mr. Bure: Mr. Chair, just to let you know that we've been asked to probably put it in education act or policy. We cannot do that, but from experience, there's always a risk with putting this in policy because of the changes in government. The power of the minister in the Constitution is very, very clear. If there's a political minister, the minister comes in, he's not happy with a particular policy, that policy is going to be shelved. I'm talking from experience. When it's going to be shelved, it's going to be quite difficult for us to actually achieve excess equity for those disadvantaged, vulnerable members of our community. That's the reason why we're asking for it to be included in the Constitution so that even if there's a change of government, this will not be changed.

There is a commitment by the ministry to see to the fulfillment of provision of education to even the most vulnerable, disadvantaged members of our community. That's all that we are asking here. If I can share that experience with the last government, the then prime minister visited this school and saw a teacher and a parent pulling the child on the beach. The teacher was trying to pull the child, he's an infant, to the boat to take him across. The child was crying for the parents. He doesn't want to go because he was not supposed to leave his parents.

That's when they asked, what is happening here? He said, this is early childhood children and infant children going to school to the next island on the boat. They'll stay there for one week and they'll have to come back on the weekend. That is taught in the Constitution, this infant school that I'm talking about. This is a special area, special teaching skills, special training for these teachers. Part of their training is well-being, care, it's more towards the care component. It's not simple teaching and learning like we know in high schools and primary schools. That's the reason why we're trying to get it across to our commissioners because we have seen with their eyes the reality on the ground. In some cases, these children, that impression, that schooling impression they get at that age, they don't like schooling. I hope you can understand the point of view we are

coming from. It's okay with policy, but then policy is policy. It can be changed overnight. That's what I want to share. Thank you, Chair.

Mr. Valenitabua: If I may, P.S., Mr. Toribau and Deputy P.S., Now, from what I am gathering from the submissions you have been making this afternoon, it is your request or your submission to the commission to extend the right in Section 31.1. It says, A, early childhood, the right to early childhood education, the right to primary and secondary education, and the right to further education. I have heard that infant school is not included in any of those. Is that right?

PS Education: Yes?

Mr. Valenitabua: And I have also heard that homeschool is not included in any of those. So, you would like that to be included as a constitutional provision. Under Section 31.1.

PS Education: Yes, Chair.

Mr. Valenitabua: And in Subsection 2, the state must take reasonable measures within its available resources to achieve the progressive realization of the right to free early childhood, which is covered in A, to primary education, to secondary and further education, and including that early childhood and infant school so that it can be precise under the Constitution. Whatever government comes in, whatever minister comes in, they can't change the policy because it is a constitutional matter. Am I understanding you correctly?

PS Education: Yes, Chair. And perhaps the emphasis on SIE, special inclusive education.

Mr. Valenitabua: This is in relation to special schools.

PS Education: Correct. All two states. Okay.

Mr. Valenitabua: SIE is?

PS Education: Special inclusive education.

Mr. Valenitabua: So that is what you are trying to get as, I understand it. We are hearing challenges of these teachers and so forth. So, Subsection 31.1 is to include those two categories and two for the state to provide finance, teachers, and schools and whatever else.

Mr. Toribau: Yes. Through you, Chair. Thank you. In addition to that, Chair and members of the Commission, if possible, the recognition of skills pathways. I know that further education mentioned by Dr. Fatiaki is covered there. For me, as the Director-Director, there should be special emphasis on this. Why am I saying this? Close to 80% of our employment in Fiji are TVET. TVET-related. 80% of employment in Fiji. If you can add on that too, because education is broadly defined there. Explicitly, but non-explicitly, TVET is not mentioned there. If that can be added too. I know 90% of the people here can agree with me.

Dr. Baba: Thank you. Chair, can I please address this? So, at every level, maybe it's good to, I want to support that. The reason is this. In the whole Pacific, maybe in the whole of Oceania, only FNU is the dual sector. That means it recognizes further education, but TVET is the path that the Vualiku Program is funding, not further education. The reason is this. Those of us who have studied the literature, all of you have, this is the problem in the Pacific. It's probably our colonization. So, when people see it further, they only fund high ed. That's how people think. The literature that I alluded to earlier is comprehensive on this, that no one really cares for TVET. And I'm afraid I have to say, my friend, it's really only FNU in the Pacific that worries about it. Now, for us, those of us on the Commission, personally for me Isoa, it is only something I've realized now after 40 years of this area that I've worked in and I've written a lot. But TVET for me is just something that's happened in the last 10 years in my head, just

because I've come here. So, I would like to agree with you. If you don't separate the two, most of the world is only doing high ed. But the jobs of the majority of our population, that's why we go community TVET. That's why we're setting up a center in Savusavu. Because the majority of our people do not have, cannot meet, the high education further ed requirement by law. But in having said this, in supporting this in particular, because this is my area, I'm wondering if you, kindly, MOE, peers in your team, if I can ask through my chair, at the moment you are doing your education commission. Make sure the alternatives go there so that we can put it here. See, every decade in the Pacific we've done commissions. I've alluded to the Burns, the Tragea in Kiribati, the Bugotu education for Solomons. Every decade we do that. Out of USP we've influenced the countries. But you need to make sure your commission also support what you're saying. But I'd like to think, not only TVET, but triple L. Because triple L is also covered in the Delors report. We have ratified that. We haven't really seen it here. The problem, I think, is people that write this maybe don't know that. That some of us are struggling. We can't develop the bulk of our people if this is how we write things. Because when we fight for the dollar, it doesn't say it doesn't get the dollar. So, for TVET, but triple L as well. You know, the 1996 UNESCO Delors. UNESCO sir your chair. Your PS is UNESCO chair. Thank you. Thank you through you, chair. That's what I'd like to add. Connected to your education commission. Connected to your act. And why is the act taking long, may I ask? It's from 2007 when we put it in. Sorry. It's a constitutional matter or not? Sorry. Timoci, thank you. Thank you, chair.

PS Education: Yes, thank you. Maybe that was the second thing we would like to discuss, which the director has alluded to. Regarding the dual sector concept, and I think the vice chancellor correctly have identified and expressed on it. How we're seeking clarification, how you and your team chair in terms of this constitution can give a demarcation to it where TVET is emphasized. This is a major skill gap in the market we have at the

moment. We train these special students and graduates. The reality is they leave us. They leave us for better opportunities. And that's a huge gap in this area. And how we as ministry of education can emphasize in this area in terms of the development of TVET education not only from high ed perspective but it's a dual sector like the vice chancellor is alluding to. On TVET education sides of things.

Mr. Valenitabua: If I may ask back sorry about this. I'm not answering your question. I'm asking you a question again. In your education act does it refer to TVET?

Mr. Toribau: No sir. current 1969 does not explicitly explain anything about TVET.

PS Education: We're still reviewing it and it will be formalized I think maybe it's not the right forum for me to say right now until it's formalized and it goes through my minister. But for my point that I was trying to highlight is the demarcation of it perhaps in this constitution in terms of education.

Mr. Valenitabua: Legally it should have been demarcated first before it goes into the act. Because the act has to agree with the constitution. So, if it is being included in the act and it's not in the constitution under which head does it come under? We've got section 31 early childhood. No, it doesn't go there. TVET doesn't go there. And primary and secondary education maybe like in technical schools RKS they had from 3 to 4, 5 tech drawing and engineering and then you have further education. We used to have what was the technical school at Nasinu? Now the technical school at Nasinu. Anyway, further education. Now that might or might not include TVET. Does it include USP? Treasury? So, if we are to have that in the act then it might as well be included in the constitution so that you have the constitutional basis for the law in the education act. And that is what your request is.

In other words, it's SIE, triple L and infant schooling and homeschool all to be included in there. Now believe you me, at our first discussion in relation to section 31, we were thinking that A, B and C are sufficient to

cover all these branches or disciplines in education. Now we are hearing differently so we'll have a think about it.

Mr. Kohli: Can I just say something? PS, I think you quite rightly picked up that under the education section 31 doesn't address the disabled people, whereas under section 30, 42, the rights of persons with disabilities doesn't say about education but talks about accessibility, et cetera. Now as far as what you are trying to say to include in a constitution, sometimes can backfire with greater respect to people. Reason being when you spell everything out in the constitution which can only be changed by two-third majority, you will then have to wait. The other way of thinking is this, everybody has a right to education. That's it. They don't say anything else. Everybody has a right to education. If you put down things here you limit it. For example, you put down education. How do you define further education? PhD., old doctor, double masters. So, some places they leave it to the education department and the government depending on the resources, where to go. So here if you just put down right to education, another story. You can do whatever you like to do. So, this is another interpretation here. New Zealand has accepted that right to education.

Dr. Gounder: Through you Chair. On the flip side I think the timing is good since you are reviewing the education act. Based on the discussions you can go back and see how you can include things in the education act. Some of the challenges you are facing. Reviewing the education act was one of the feedbacks that we got during the NDP consultations as well. So, I think the timing is good. May I just get chair please.

Dr. Baba: May I just add chair please, I would assume that you will finish your commission before you finish the act. Am I assuming right? Make sure the commission is finished. So, you are asking us to cover it. Usually, we finish the commission then we do the education act but I don't know how we are doing. The act is out for 20 years almost. So that needs to hurry

up too. Thank you. Sorry Timoci Bure you are looking at me hard now. Chair. Sorry chair. Chair through you.

Mr. Beg: Chair Through You. Members of the ministry of education. Thank you for the enlightening presentation. A couple of things that kind of bothered me earlier was one of the commissioners said it was operational that early childhood education out in the most remote areas in the axis. My question is I think the solutions for that is you are looking outwards rather than inwards. Because off the top of my head I can think of so many solutions right now that can work. So that is an operational one. I kind of know where that is going and happy to contribute to that. The most important one was I think Dr. Unaisi raise about the Act. Is your frustration with completing the act is contradicting with what is in the constitution. I am trying to understand that. You are saying operational needs in one breath and in the other breath you are highlighting some matters with the constitution which relates back to elected government and the powers of the ministers. In that triangle there is a collision of particles that are causing this uproar and frustration I hear. I am trying to understand that. Correct me if I am wrong. That framework is what I am hearing. I shed a tear because when Deputy PS mentioned that the child was handed over on a boat that should never happen like that. I kind of shed a tear because that thing should never happen. I just wanted some clarity.

PS Education: Thank you, commissioner, for that important question. I believe we would like to see everything synergize. If we are aligned to the constitution that the act is aligned to the constitution. However, maybe the challenge is to align it for us. Things that we think of that needs to be in place needs to be properly aligned. That is what we are looking into. There is a key member amongst us who is driving this education bill and has been going on to forums and trying to represent the ministry. Metui is here, maybe you would like to enlighten a few points that you highlighted from our act that we are trying to align to the constitution. I

understand it still hasn't been finalized but I will leave it to your comments. Metui, if you have something to share.

Mr. Metui: Thank you chair Through you chair, I would like to add to the question posed on the status of our education bill. Basically, our bill is now being handled by the social committee on law, justice and human rights. We have had a series of consultations at the national level and as we speak, we are currently finalizing the bill. Basically, the timeline was supposed to be April but then there were unforeseen circumstances. So, what I can say is I guess this year they will table in parliament. They will table the bill in parliament. The question posed on the TVET, yes, it's included in the bill.

The TVET is primarily addressed to the establishment and regulation of education institutions and the national curriculum. While the bill is comprehensive, TVET provinces are integrated into several key areas rather than being confined to a single TVET section. Just to answer the question posed on the inclusion of TVET in our current education Bill. Thank you.

Dr. Baba: Can I just clarify. I would like to clarify what Commissioner Conway was saying because Timoci and I were from 2006. Timoci, I think we gave the act for review in 2007. This constitution is written in 2013. This is the problem. Maybe it's good for us to know that we have begun the work on the act when we were in 2007. I forget what the world was like. Some of the concerns you are saying now, some of the people my age that may have written the constitution don't know how some of these are the concerns of these ages. The homeschooling and all those in it because we don't have climate change either, so I want to clarify to Timoci you have the exact thing because you were acting Ps. It's being 20 years now, now this constitution only came in 2013 I'm worrying about your commission which finishes soon put some alternatives there. Otherwise, I can't say what I should really say, but the players in the

education market PS have not always had education qualification. They messed us up quite a bit. I'm talking about those that represent government in our institutions, in our education ministries and things. But moving forward, we are worrying about those two documents. Metui, you worked with this gentleman here on national planning. The education comm, the CRC we are doing, the constitution must tangle at all times. They have to talk to each other. Chair, maybe you can talk about this. How do you make sure that those of us that sit and make these things, make sure we are aligning? Otherwise, your problems will not be solved. Whether it's here or there in the commission. I've read some drafts of other commissions, not yours. They need to talk together. I thought I'd bring the ears. It started a long time ago. I forget what we were worrying about in those days with the education act.

Mr. Valenitabua: PS if I may, now we have the bills. Metui now we have the Bill Education Bill I presume and, in that bill, is included TVET. What about early childhood education?

Mr. Metui: It also is included in the draft bill.

Mr. Valenitabua: So, the way to go about it in my view is section 31C. Section 31 early Childhood Education, Primary and Secondary education Further education you have to define what is infant school. You have to define what is home school, you have to define what is TVET. Design it so you are in accordance with section 31. So that way you are covered under constitutional provisions. So, if someone turn around and asked, hey TVET is included in constitution, No TVET is defined as further education as in section 31 [c] of the constitution. Do you get my point. So, for the infant school, it would be hook on early childhood education. So primary and secondary education is hooked on to this one here from class 1 to class 8 from 3 -7. So, you define what is the discipline in the bill and attached it to section 31q. Once you do that than the state is obliged to section 1 [2] to provide for all this. You can go and talk about sit with PS

and your minister and the other 'policy department. It may be included in the constitution but as we are saying you know define it in the Bill so that its attached to the constitution.

Dr. Fatiaki: Chair if I may through you. My comments in respect of some of what I'm hearing, and it's obvious to me that some of the issues are that the Constitution aspires to demand that you provide these things, and I've heard that there are limitations in resources and things like that, which you are obligated supposedly to fulfill, but are unable to fulfill by virtue of lack of resources, etc., etc., lack of teachers, whatever. How do you feel about withdrawing that requirement, going the other way, and saying, well, don't force us to do it, because you don't have the resources to provide it, rather than, you know, find resources, because again, that's an operational matter, but how do you feel about withdrawing the requirement that you must provide it? Because what I'm hearing is that that seems to be a fundamental problem that you're facing at an operational level, is the fact that the Constitution says you must, by definition, provide these, but what you allude to as challenges are there, and you are either unable or unsourced to provide it. My question then is, if that is the case, maybe you should ask us to amend the Constitution to remove the requirement that you should or the state should have to provide these things. Just a thought, again, you're going to have time to write a proper written submission and put some thought into it. I'm sorry, I bring it back to this, because you see there, we've got five subsections here. These are the areas that we're going to have to address. You either add to it, you subtract from it, which is what I suggested you might consider doing, or you change it. These five areas. Okay, so you can, those are the three general things that we have in terms of amending a constitution. We're not writing a new one. Okay, we're taking this one, and we've been asked to amend it. And thank you.

Mr. Kohli: Chair, through you, first of all, I must say that when I first said that why don't you just have education, the idea came from Dr. John Fatiaki. I was

against it; he was for it. In the very beginning, he said, why don't you remove all that and just put education? And now when you think about it, what he's now trying to say is a new advantage. You do according to what you have, your resources. Rather than if you note it down, unable to comply, then you're falling fall of the law, falling fall of the Constitution. So just put it. He's saying, remove childhood, primary, secondary, just say education. So, whatever you can afford to do, you can do it. I think that's, if I hear you clearly, absolutely.

PS Education: Yeah, thank you. Dr. Fatiaki, your perception is very unique, in a way. Yeah, and I appreciate it. Yeah, because perhaps coming into this forum, we were thinking of maybe having it so that it's more pronounced, sort of, you know, give emphasis in the constitutional level, so that sort of states obligation to fully resource it. So perhaps we were looking at that angle. But it comes with a challenge, like from the discussion we have. But we certainly will consider the way you have looked at it. And maybe I can get back with the team when we provide our submission.

Dr. Fatiaki: If I may suggest, my comments are usually very pragmatic, which means what I'm saying is what is actually happening, right? You're asking for things, you want to do these things, you've been told you have to do it by the Constitution, and you are unable to. Yeah, it comes from that. It's not, you know, sort of an extremely unique idea. But thank you for that perception.

Mr. Beg: Thank you. Chair, through you. I kind of beg to differ a little on that, Dr. John. I mean, you can see our commissioners, we all have different opinions. But you've got to be fair to the fact that our system needs to evolve and develop. So, you can't sort of not ignore that completely. If we can't deliver that service, we don't do it. But somehow, I kind of think we're a developing nation. The Constitution isn't like the architecture of state, you know, it's a framework of moving forward. I think we still need to consider things like that. Well, there may be something in the

provisions of the Constitution that tends to dial us up in that direction. I mean, that's my strong thoughts about that. Sorry about that. Yes, thank you.

Mr. Toribau: Through you, Chair, I do agree to both of you. I have something that I wanted to share regarding the LMS. I'm championing LMS. it's part of our E-learning in our ministry which comes under my supervision. So, I'm championing LMS. I'm just raising this. While we have this, we still have all these challenges. I think that because the problem I can see is the methodology. We do not have proper methods. And trying to come up with the most appropriate solutions to address the problem. And we have all these problems. The methodology that I'm talking about here, we're still talking about. But the current era, the current now, the situation now or here now in the world, they are moving towards digitalization. And digitalization is not in the Constitution. It is not there. Maybe something that should be included. Because under digitalization comes LMS. Learning Management System will address teacher shortages. And those in the outskirts and those in the interior will be able to reach, will be reached through LMS. Provided we have all these platforms. We invite Elon Musk to come and talk to us. And he can give us that connectivity. Maybe it's a change of mindset. We have the solution. We can tackle that. But in the 13 years, we've had 10 Minister of Education. I've been 13 years in the Ministry of Education with Mr. Bure. Maybe seven PS's. The seventh is a good number. Number seven. I'm saying there's a solution to every, not there by accident. Maybe we go back to the context on which that clause was developed or derived. Or maybe it was some political influence to that. I'm also a part-time architect, Mr. Conway. I know you 20 years ago. So that is my, what I wanted to share in light of all that we just discussed now. We push through learning management system. That will solve everything. My children at home, they have gadgets. And I take them to all the textbooks that we have in our website. They have tablets. Yes. So, if anything

happened to the ministry, and you know, just even the discontinuity of learning in the last few days, my children, they were still learning. Because of the digital that we have. So that I think that something, digital technologies or digital technology or digital education is something should be included there. Because digital is futuristic. Digital talks about artificial intelligence. And every other, any related elements to it comes under digitalization. That's what I wanted to share. I just want to say.

Mr. Bure: I'm a little bit worried about Dr. Fatiaki's suggestion. I'll be very honest with you. Because infant education and early childhood education, this is the foundation of any education system. It's the foundation. If you look at the funding formula with the free education grant, it tells a lot about the mindset of this government, last government, this ministry. If I tell you how much is given to early childhood education children, it's $50 per term. $50 per term. Primary school is $156 per child per term. Secondary school is around $300, $400 per child per term. That's the perception of this station on infant education and early childhood education. But you go talk to any educator, like Una, like PS, like some of you, which is the most critical level in the system, they will tell you invest in early childhood education heavily. That's why I'm driving this, so that we can change our perception and our mindset on the importance of infant education and early childhood education. Because this ministry and this government and the last government have been trying to fix this literacy and numeracy standards, which is a global indicator of the quality of education that we have. It has never been able to fix it properly. Because of the amount of investment and commitment we give to our infant levels in the system. We're trying to fix the literacy and numeracy at primary and secondary. Una will tell you until the cow's return. We'll fix it at ECE and early childhood education. That's why I'm pushing for this to come out in the Constitution, so that we can have a commitment to infant education. That's why I'm saying. I'm very, very worried about Dr. Fatiaki's comment. Thank you, Chair. Thank you, Dr. Fatiaki.

Dr. Baba: Sorry, Chair. May I just add, because the reporters are here, just last week I was on record saying this, and to PS, maybe you should say this more often. A lot of people don't know that Timoci Bure, a lot of people don't know that between 0 and 8, the IQ of everybody is made, almost. The basic infrastructure of IQ, intellect. This is why in Japan, that's where all the money goes. Sorry, I take back what I said earlier, but we do need educators to lead the Ministry of Education at every level of us. Because what Timoci saying, Timoci and I argue about all the time for the last 30 years. That's how we've been. Because he's been in the ministry, Timoci. But from the top of everybody, we should talk about that. This is why I was interviewed last week. I was telling mothers; every child needs to eat properly. Basic to intelligence, 0 to 8. So, Japan puts all its money between 0 to 5. There is a reason. But in this country, we start with here, 'Sa bera'. There is absolutely nothing we can do when your IQ is made, it's made. We can put painted white, painted red. But the basics of intelligence, like Elon Musk, is made early. Actually, it starts here. That's why mothers should play music to their stomach when they're pregnant. But let's have these conversations elsewhere, maybe Timoci Bure. We need to fight it out in the other seminar. And you must come, USP. You must come. Thank you, Chair of the Commission. Thank you, PS.

Mr. Valenitabua: Is there any other issue which the Ministry of Education wishes to raise? We have heard you. We understand where you're coming from.

Mr. Toribau: Just one more thing, and last, thank you. I would like to go back to Madam Nailatikau. I felt so bad when I directed your question to Pierce. Well, that's the protocol. PS first, and then the loose one comes to us. On relevance, curriculum relevance, I just spoke on LMS, digitalization. So, speaking on curriculum relevance and whatever the intent of the state we fall with. For example, you were quoting from 31.4, which is about citizen education. We are already now implementing citizen education. And also, we are already now implementing digital technology. We have already started, because of the relevance, the relevancy in education.

What is there out there in the market, we have to abide by it. We have to comply to it, because the job readiness will be there once our graduates come out from secondary and vocational centers. And also, we are benchmarking with Finland, with Australia, New Zealand, and Singapore. We have some of the models already implemented. For example, in our TVET section, we're having this dual approach, just like FNU. When student finishes Form 6, they will walk away with FSLC and Certificate II in Carpentry Engineering, or Certificate II in Automotive. That is a dual approach. The same approach from FNU. We have a little FNU at the secondary level. The next thing we will ask some funding from them, and they will support us in the years to come. So, speaking on curriculum levels, we are there. We pick up things that are there, and we have curriculum workgroups, and then we talk to each other, and we bring it to the curriculum. Yes. So, that's all that I want to say. Thank you for the time, for giving me the time, Mr. Chair.

Mr. Valenitabua: Did you want to say something?

Dr. Fatiaki: I just wanted to extend a vote of thanks to you, PS, and your team, DS, and the others. Thank you for your candid discussions this afternoon. We hope that we were able to share some thoughts, and I think this is very useful. I think that a lot of what you brought to us today would be better addressed at an operational level, in terms of your Education Act. I've tried to focus on the constitution part of it, because obviously that's our mandate, but we do appreciate the discussion, and we thank you most sincerely for the work that you do. It's through you, Chair.

Mr. Kohli: You've been talking about digitalization, education. I totally agree with that. We have to move along with AI, but the Chair and I belong to old school, you see. What I want to know is this, and nobody's addressed this, the evil of social media and the effect on the children, in schools, et cetera. Australia, for example, has banned under 16. Sweden, which is a very, what do you call, liberal country, under 13. Do you have any

stance on that? We should put in the constitution that under 13 should not be allowed until it becomes in the constitution, or do you have an education act? Because if you look at it with the greatest of respect, if a baby is crying, mothers give the phone to the child. You know, if a child is crying, I see they're taking in the prayer, and the baby's eyes are this far from the... So, I just want to know what's your stance on it. Maybe not directly, but indirectly.

Mr. Bure: When it comes to education of the children, that's where we can boldly share our ideas. But when it comes to issues such as that, I think the Ministry of Women, Social Welfare and Children, they need to comment on that, because it's better handled by them. Unless the government wants to give us, the Department of Children, to the Ministry of Education, then total care and education of the children will be with us. We don't encourage these devices in the school right now, but it's something that is happening in most homes. So, when it comes to homes, we do our best to stay hands-off from them. It's the Ministry of Social Welfare and Children that needs to attend.

Mr. Valenitabua: I mean, at the moment, we don't have any further comments to make. If you have anything else you want to add, PS, it's open.

PS Education: Thank you, Chair. I think, just in the conclusion, I would like to thank you, Chair, and your very astute team. Personally, I believe this is the right team to review the constitution. Personally, when I read about each member that was appointed, I was overwhelmed with the experience and the diversification the team brings. And as part of Ministry of Education, we are here to look after the welfare of our children, welfare of our teachers, and we're looking forward in working in partnership with all our stakeholders. And I think with your leadership, sir, we're looking forward for a better Fiji in the near future. Vinaka Vakalevu.

Mr. Valenitabua: Vinaka Vakalevu P.S, Vinaka Vakalevu, Deputy P.S. Vinaka Vakalevu lady and gentleman. It's been an exciting afternoon listening to a delegate from the Ministry of Education. As a former school teacher, I know where you stand. The difficulties faced when we have resources from government being limited. And not only a school teacher, a direct school teacher. We have heard you. I think the most important thing here is not what we write down in the constitution. It's what we will be introducing our children and our grandchildren and our great-grandchildren to in the years to come. Are we going to limit the definitions we put in the constitution? Or are we going to expand it? Now that I'm a lawyer, if we just say every person has a right to education, what education? And lawyers can play around with the word left, right, and center, up to the sky and down to the deep blue sea. So those are the things we're going to be thinking about. We can reduce it to just education, but what education? How many people are going to fight out in court in order to define this, what education is? There's formal education, there's informal education, and then we have early childhood and primary and secondary and so forth. But leave it to us. You've heard some of the comments from us or from the commissioners. We'll deal with it at the appropriate time. And thank you very much for your attendance this afternoon. We are looking forward to receiving your written submissions. The email address can be taken from one of the girls, Kesa or Lia. They're sitting there at your right, on the table at your right. Vinaka Vakalevu.

----------*End of Session [14.04.2026]* ----------

EDUCATION-2013 FIJI CRC (Una 4/4/26) Sat

[Below is a substantive, policy-oriented analysis of the 2013 Fiji Constitution's provisions on education, with concrete suggestions for improvement, written in a way that is suitable for a constitutional review, commission discussion, or reform paper]

I focus mainly on Section 31 (Right to Education),

while also noting linkages to equality and non-discrimination provisions.

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1. What the 2013 Constitution Currently Provides (Brief Context)

Section 31 – Right to Education provides that:

- Every person has the right to early childhood, primary, and secondary education.
- The State must take reasonable measures to ensure access.
- Education must be quality and inclusive.
- Religious instruction is protected, with freedom of belief.
- Citizens are not excluded from education on prohibited grounds.

Strengths:

- Explicit recognition of education as a justiciable right.
- Inclusion of early childhood education (progressive by regional standards).

- Emphasis on accessibility and inclusivity.

However, experience over the past decade reveals several gaps and ambiguities that constitutional reform could address.

2. Key Areas for Improvement

A. Clarify the State's Obligations (From Aspirational to Enforceable)

Current issue

The Constitution uses broad language such as *"reasonable measures"* without clarity on:

- minimum standards,
- timelines, or
- measurable obligations.

This can weaken enforcement and accountability.

Suggested improvement The Constitution could:

- Define minimum core obligations of the State (e.g. access, affordability, quality).
- Require progressive realisation with clear benchmarks.
- Place an explicit duty on Parliament and Government to resource education adequately.

Example reform direction:

"The State has a fundamental obligation to ensure free, accessible, acceptable, and quality

basic education, and shall allocate sufficient resources to progressively realise this right."

B. Explicit Protection of Free and Compulsory Basic Education

Current issue

While education is recognised as a right, the Constitution does not clearly guarantee free and compulsory basic education at constitutional level.

In practice, families still face indirect costs (transport, materials, uniforms, digital access).

Suggested improvement

- Constitutionally guarantee free and compulsory early childhood, primary, and secondary education.
- Explicitly recognise indirect costs as barriers to access.

Why this matters

- Aligns Fiji with international human rights standards.

- Strengthens justification for public funding and judicial remedies.
- Protects children from exclusion due to poverty.

C. Stronger Protection for Equity and Marginalised Groups

Current issue

Equality provisions exist, but education-specific vulnerabilities are not well articulated.

Groups facing persistent disadvantage include:

- children with disabilities,
- rural and maritime communities,
- informal settlement residents,
- children living in poverty,
- children affected by climate displacement.

Suggested improvement The Constitution could:

- Explicitly require inclusive education systems.
- Prohibit exclusion on the basis of disability, language, location, or socio-economic status.

- Mandate reasonable accommodation and support services.

Example reform direction:

"The State must ensure inclusive education systems that accommodate diversity and provide appropriate support for learners with disabilities and other special needs."

D. Recognition of Indigenous Knowledge, Language, and Culture

Current issue

Section 31 does not explicitly link education to:

- iTaukei knowledge systems,
- indigenous languages,
- cultural identity,
- or community-based learning traditions.

Suggested improvement The Constitution could affirm that education should:

- respect and promote iTaukei culture, language, and epistemologies,

- value multicultural and multilingual education,
- support community involvement in education.

Why this matters

- Strengthens cultural continuity and dignity.
- Aligns education with identity, belonging, and nation-building.
- Responds to long-standing concerns about cultural marginalisation in curricula.

E. Explicit Link Between Education and Civic Responsibility

Current issue

The Constitution frames education primarily as an individual right, with limited reference to its nation-building role.

Suggested improvement Include recognition of education's role in:

- constitutional literacy,
- democratic participation,
- civic responsibility,
- respect for diversity and rule of law.

Example direction:

"Education shall promote democratic values, respect for human rights, social cohesion, and understanding of constitutional governance."

F. Lifelong Learning and Technical/Vocational Education

Current issue

The emphasis is on early childhood, primary, and secondary education, with limited constitutional attention to:

- vocational education,
- adult learning,
- re-skilling and lifelong learning.

Suggested improvement

- Expand the right to include technical, vocational, and continuing education.
- Recognise education as essential to economic resilience and adaptability.

This is particularly important given:

- youth unemployment,
- changing labour markets,
- climate-related economic transitions.

G. Accountability and Remedies

Current issue

The Constitution does not clearly provide mechanisms for:

- monitoring education standards,
- addressing systemic failures,
- ensuring remedies where the right is violated.

Suggested improvement

- Require independent oversight or reporting to Parliament.

- Strengthen standing for individuals and groups to seek remedies.
- Require periodic review of education implementation.

3. Climate Change and Education (A New Constitutional Imperative)

Emerging gap The 2013 Constitution does not anticipate:

- climate displacement,
- school relocation,
- disruption to education continuity.

Suggested improvement

- Recognise the State's obligation to ensure continuity of education in the context of climate change and disasters.
- Include preparedness, digital access, and resilience.

4. Summary: Key Reform Directions

In a constitutional review, improvements to the education section could aim to:

1. Make the right to education more enforceable and less discretionary
2. Clearly guarantee free and compulsory basic education
3. Strengthen equity and inclusion, especially for vulnerable groups
4. Affirm indigenous knowledge, language, and culture
5. Link education to civic responsibility and constitutional values
6. Recognise technical, vocational, and lifelong learning
7. Build accountability and remedies
8. Address climate resilience and continuity of education

5. Consultation Question (Optional)

This may find this framing useful for public consultations:

"How should the Constitution better protect the right to education so that it is accessible, inclusive, culturally grounded, and responsive to Fiji's social, economic, and climate realities?"

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Electoral Law Reform Commission (ELRC)

Electrol Commission
Date: 15-4-2026
11.am-1.30pm

Justice Fatiaki: Today, I have a consultative session with you. Before I start, I'd like to introduce the members of the commission that I chair, the Fiji Electoral Laws Commission. On my left is Ms. Deidre Brookes from New Zealand and she's done a lot of work with electoral commissions and in fact is presently, to our benefit, is presently working with the Fiji elections office to do with municipal elections. So, I took the opportunity to drag her along screaming to this one. I said no, you don't get beyond this, you can't forget what we did and so thank you very much. The next one I want to introduce is Ms. Seini Nabou. She's a well-known person amongst us and certainly amongst the federation party officials or members. She used to be general secretary of that party and stood in elections. So, I'm the chair of course and I'm surrounded by two women which is wonderful but I'm the rose and they're the thorns. You will find that out as we progress. They all accuse me of being the thorn but actually they're the ones. Professor Narsey has given his apologies. He's presently on the road between Geelong and Melbourne where he lives and he's racing to Melbourne to attend a hospital case for an in-law's suspected brain needs brain surgery. So, he apologizes but true to form as that professor is prone to do, I noticed that he's beaten all of us already with a two-page opinion in the Fiji Times. I'm very glad that the opinion says it's entirely his, has got nothing to do with us but I think those of you who have had access to our report and I understand you received soft copies yesterday and I really would like to express our appreciation because it was an embargoed report after we finished which rather deflated our sales but we hoped against all hope that at some point in time someday somewhere the embargo would be lifted and so I'm very grateful on behalf of our members that you chair.

You're obviously chairing a much more important commission than mine because you were able to get it lifted. I understand it's lifted for the for this consultation purposes and that's fine by us as long as we get to be useful and those who've had an opportunity to skim through what we've done I think you'll appreciate that we have done quite a lot of work and I suspect that some of our work I hope will not be duplicitous with what you're going to do but it gives you a front run on this whole thing. So, thank you very much for that. I really didn't have a long speech to make. I'll hand over to my members after this and ask them to say a few words if they

wish and then we're really in your hands about how you want to handle this. The fact that our report is out there we're more than happy to in fact I suspect that you will get more benefit out of asking us questions than we would sitting here and giving you a spiel about what we did and how we did it. What we did is obviously in the report how we did it and what recommendations we made all there but if you want details about certain specific things then by all means please ask us. With those few words I'll hand over to Commissioner Deidre.

Mr. Valenitabua: Judge Fatiaki, if I may. First of all, I would like to welcome you to the commission. Maybe you have done your duties your task appearing here this morning in response to our invitation is a privilege and we are honored that you're here this morning. As you know before the two ladies enlightened us or speak with us in good company, I'd like to say a few words that is that this is the commission that has been appointed by his excellency the President of the Republic of Fiji to work on a review of the 2013 constitution. We are tasked to do consultations to hear from the people of this country to collect data which we need to write a report in like you have done and to present it to his excellency after 31st of August. You might all know that we have six months to do this consultation and the review and prepare the documents to be presented to his excellency. The members are here sitting in front of you I'm sure you will know most of us but name tags are in front I will not I am in front of the table I will not introduce us individually bearing in mind that you are all experienced you know the personalities that are sitting on this side. You have said that you want to hear questions from us first of all our term of reference says that we are to hear and listen from the people of Fiji and record data. We will ask some questions but we are anticipating or we request that submissions come from your side. We welcome you we hope to have this as a very constructive session since you have been around in relation to the law reform or the law reform commission, the electoral laws reform commission and your report would be very useful to us and should be of assistance too. So, with those few words of welcome I would now pass the mic back to your group and continue from where you left off.

Ms. Brookes: So, I suppose if I kick off a little bit about the electoral system that we recommended and the associated matters so you probably have read a lot of Wadan Narcey's opinion in the paper this morning. I think just to position things we did all our consultations we come up with what we

thought was going to be the best electoral system for Fiji and some associated reforms as well.

We then took a look at that stage this constitutional reform was not on the table and we didn't know if it would ever happen so what we did was we paired back our recommendations to what could we fit under the current constitution. Some of it fits reasonably comfortably and some of it I'll have to say took a little bit of creative interpretation massaging words what have you but we thought given how much the people wanted it you know that creativity might have been accepted and tolerated given that the review is going to go through we're able to enlighten you as to the full aspects of the system as we proposed it. So fairly much as Wadan was talking about in the in the paper this morning but our overarching proposal was a mixed member proportional system MMP as it's known with a closed list.

So, to fit under the current constitution we had to recommend an open list but you will find when you read through our report at appendix one is a constitutional road map. In fact, there's a couple of times the constitution comes up here a constitutional audit of the proposed electoral system that was our explanation as to how we felt what we were recommending could fit under the 2013 constitution but at appendix one was the constitutional road map we lay out exactly what we felt needed to be changed in the constitution to fully accommodate everything that we were recommending. I can come back and say more about that later if you like but I think it would be a good opportunity for Saini to have a chat about our consultations and where we went.

Ms. Nabou: Good morning Honorable chairperson and members of the constitutional review commission. When we discussed this session and what benefit we could add to the commission we sort of like broke it up into you know the main chunks of the work that we planned out for ourselves. As you know this time last year, we were in right in the throes of planning our public consultations but when we came together one of the first things that we recognized was that it would be naive of us to think that going out there people will know about the electoral laws.

First of all, people here were not consulted in those laws and the only things that they would know were things that they would have read in the media so we knew that we were approaching this with a blank sheet of paper and so then we decided I think the chair was very wise to guide us

along this pathway to have questionnaires. I don't know whether you recall seeing them in the papers but those questionnaires were to lead to guided conversations because if you go out there to the communities the urban center's will have some idea but in the urban communities you're asking them to talk about anything and everything to do with elections. Now that's not to say that out there the rural population are out of whack with what's happening.

They are very much aware of what was happening in terms of the election and that's why when we created the questionnaires we tried to be as general as possible but before we did the questionnaires, we said okay let's assume that we don't know anything. How do we generate the discussion? How do we get people interested in what we're doing? Mindful also that the parliamentary committee were out there doing their work on inputting to the various bills that are before them and I know for a fact because of the work that I used to do in parliament that getting public engagement with parliamentary committees is a really hard job unless you're investing the time and the effort to make sure people are interested. So, we made sure with chair we prepared a week or two a media blitz is what we did. So, we got the chair. We bullied him into being the voice. There was only going to be one face and one voice representing the commission.

Often it becomes a bit confusing when you've got too many people talking to the public. So that was what we decided to do. We prepared interview sessions with various media houses. Commissioner Mary would know. She interviewed us for the breakfast show and we tried to get a wide demographic to make sure also that we were touching the languages. There's the Fijian radio stations, the Hindu radio stations.

In hindsight I think when towards the end we got more help, assistance from the ministry of iTaukei who helped us with the questionnaires, the translation and all but in terms of getting the message out there it would have been helpful because radio is still very powerful to get the iTaukei affairs or the equivalent for the Hindi translations. We got Fiji Times to do that for us for a fee. So that was one of the, we did the media blitz and then that of course engendered more interest.

Then when we advertised our public hearing schedules of course the media were also very keen to follow along and it was all public and Chair was also very open to the media for any questions or even the media had

no idea about the various aspects of the law. For example, the blackout period and all that. So, it was quite educational on many fronts.

I think one of the first things that we did when we were planning and I have to say that I noticed I see Mr. Leighton Fatiaki and Ms. Lia Duru from the Law Reform Commission. They're going to be a very good allies because they also accompanied us and they know all the highs and the lows of being on the road together. Number one is get good cushions, get snacks because there are long days, get water and if you're going to get transport to take you here and there might we recommend asking Parliament for their lovely bus. It's more comfortable. Being stuck in a van doesn't help you when you have to sit for long days and long evenings. We wanted to make sure that everything that was said to us was recorded so the Law Reform Commission had very good contacts of Hansard reporters retired who got the audio recordings and transcribed every bit of it. I don't think it's in the report but I think I believe it's in the law reform if anybody wanted to cross-check what we had said in the report. I think that's about it that I can share in terms of the public consultations.

We also wanted to make sure that we recorded everything. You will see it in the report some of the conversations delved outside our mandate like there were complaints about the slowness of development. We did share with the subuties that we that was not really our mandate but of course they're taxpayers so we included that also. The state owns that report they have they also have a right to know what's being said about those aspects not related to elections but this is what the public wanted us to take away so we did that. I believe I'll end there.

Justice Fatiaki: Chair, I was wondering how we would proceed at this point. We're happy because you say you're here to to listen. We're happy to give you a brief presentation of I think probably the best thing we can do is to actually draw your attention to the public requests that we heard very often during our rounds around the country. Some people have accused us of imagining some of those recommendations we made but I'm very pleased to see Mr. Kohli sitting amongst you because we dragged him around all over the place so he knows exactly what we say when I say this is what we heard the villagers say in Naduri or in Somosomo and it's recorded in summary form and in bullet point form under each of those public hearings but most people spoke not from a detailed knowledge of the electoral laws most spoke from personal experience and so

although there wasn't too much knowledge about the law and when you mention words like dehont you know even to qualified lawyers and people like us it was utterly sort of nonsense we didn't understand it at all. Thank goodness for Deidre she had an understanding of it but you know even the great professor had an understanding of it but I'm saying you know you mentioned words like that and it's totally foreign so we relied on our people's experience you know so they may not know what's written in the law or in the constitutional or the electoral act provisions but they do know what they voted how they voted what they liked about it what they hated about it and we got responses.

Now one of the very first requests from everywhere that we went was we want constituencies we do not want whatever they gave us we want constituencies we want to be able to vote for someone from our community who we can identify who we can wake up at midnight and complain to him about the water system. We want that well I call it back because it used to be like that until Dehont arrived and this electoral system arrived and we lost those two very important electoral elements what I believe a democratic electoral system should reflect whereas and so that's certainly one of the very first requests we want constituencies we want to know who our MP is so that we can take our complaints to him right now under this system we know neither.

We need to make voting easier we don't know what this Sudoku thing is I used to call it center vote tick pages others called it Sudoku and Sudoku seems a modern term but you know what I mean it is basically a card with hundreds of numbers on it and you tick or circle or cross the one you vote for. We had many elderly voters tell us they'd get brainwashed by their children and their politicians and into what numbers they should tick then they'd get to the voting booth you know 500 meters away because they weren't allowed anywhere closer and by the time they got there they'd forgotten it.

There was this elderly people who were not numeric just didn't remember the numbers and they couldn't work out the sequence of numbers and I mean it's a huge tragedy you know they're very large percentages of informal bad votes because people couldn't remember and the worst thing is even in an audit you can't work out whether or not the bad votes were actual votes or mistaken votes because you couldn't conduct an audit with each person saying did you actually vote the correct number.

A lot of them when they came out found out that what they ticked was the wrong number but for the electoral counting they still counted even though the person who voted it knows that's the wrong number but that's the kind of system we had. Forget about glitch another famous word everywhere we went people talked about glitch I don't think they understood it but frankly it makes no difference. These are people who are used to a system where they could see the votes and they were counted immediately in front of them and a system which doesn't do that and ends up with glitches loses its credibility. So, credibility of an electoral system is so much more important than having rules about voting so, they wanted the old voting paper names, photos, party all of that on the ballot paper now.

I'm saying these things because we recommended them all of them so sometimes I read the papers I also as you may know contribute to the letters I write letters and I go through the papers every day and I read a letter about the electoral system or something and I tick done that done that and I think you will find if you do read our report that a lot of the demands that the people wanted we have actually recommended. So, the rural areas wanted more direct representation they were sick of being tied and aligned with large mainland provinces where their voice was just meaningless meant nothing and they could never influence how they'd get onto the parliament because they just get outvoted you know Lomaiviti gets tied in with the whole of Nadroga and you haven't got a hope in hell Kadavu gets tied in with Serua, you know the differences in your needs your wants is so fundamental we decided as an electoral commission fine we understand it totally, we have been in the urban areas we have been in the rural we know your wants and needs are different we'll give each of you a seat so what did we do we created five what we call maritime constituencies made up of Lau, Lomaiviti, Rotuma, Kadavu and Mamanucaa, Yasawa. That's the five maritime constituencies guaranteed seats for those people represented and only we voted well voted by anybody but they were guaranteed to those maritime zones. No longer would their voices be lost forgotten or a byline in another mainland politician.

The other major recommendation we made was to deal with women the women have a very forward-thinking profound research abilities behind them and an ability to articulate right and voice their demands especially the women's rights movement uh we're naturally concerned about that

because we experienced it also in the rural areas, we went to. It still maintained the fears that we thought had vanished still existed. The women sat in at the back and very rarely said anything all the men sat in the front and spoke almost all the time.

We actually had to make an effort to call for the women to speak it is changing there's women's groups even in religious rural areas they will speak their requests. Anyway, we had all sorts of arguments back and forth and not easy uh in our thinking because women don't vote for women and that is such a fundamental problem that it's difficult to deal with.

Our compromise situation was we actually decided that we were going to have reserve seats for women we were going to change the entire scenario we were not going to you know do what we've been doing for the last 60 years say no, no, no the women should struggle to get onto the ballot and they should struggle to you know go to the polls and go to campaigning and everything, but you know what we often heard was this playing field is not level it is not equal you can say whatever you want it has never been equal it never will be and we're asking for what they called in UN language temporary special measures.

I suppose in my time we called it affirmative action or whatever so we decided right fine we reserved 25 seats for women and they would represent they would come from all the constituencies so it'd be one for each constituency. Women would really have a voice serious voice and everybody would vote for that person not just women voting for women no everybody so, that that woman knows out of all this constituency. I have the most support both men women and young people of 18 years age.

That was the concessions we made all right we'll give you reserve seats but these are two things that's going to happen men will vote for you not just women men and everybody you'll be just like everybody else and secondly because of the way this proportional system went you will not be part of the open list. The open list is the list that brings proportionality into the system according to the number of votes a political party gets .and so we took women out of it that was it because they had reserve seats, they weren't going to be part of it. Only the men who stood in those constituencies could get in through the reserve seats through the skirts as we described.

They wanted a senate we said yes sure we recommended the senate. We could discuss more about the audit see we were kind of when we started we were caught between the devil and the deep blue sea and what I called the elephant in the room which is what you people are dealing with.

You were our elephant in the room the constitution and I kept thinking we're a bit back to front here you know we're not dealing with the constitution first we're dealing only with the Electrol system and the constitution by the way impacts seriously especially part 3(a) on the electoral system. You know so we had to address the elephant as part of our work and we had to try and think what we would do we obviously would prefer to provide you the people with what they wanted which was basically an entirely new electoral system would have loved to do that and we still did it anyway in our recommendations but what we did do is we also tried our very best to try and make as much of what we recommended uh manageable within the provisions that exist in the 2013 constitution.

So, you could actually adopt maybe 80 of our recommendations and still do it under the existing constitution without breaking it into smithereens. But I'm I spoke well yeah I confess I'm mainly responsible for that kind of interesting reading of provisions, but some of the readings we already knew.

One the word constituency doesn't exist in this constitution right which means the so-called demand that there be one constituency is flawed fundamentally it says one electoral role not one constituency. So, we've decided on our reading you can have one electoral role and 25 constituencies and it's basically I dare it prove us wrong and if you can't you know bad luck so it was that kind of reading but it's not so out of the left field or too far out of the box that people couldn't understand it now likewise .The five percent term what do they call that threshold something we also heard that was a cause virtually of eliminating all minor parties and all independents no more because of this threshold.
This threshold gave rise to a demand the people wanted parliamentarians to be in parliament on the basis of the votes they got. Not on the piggyback stuff so they didn't want to see parliamentarians with 300 votes and people with 5 000 votes didn't get in. They weren't interested in daunt and explanations and you know our people have a

immense common sense about these things and yes an electoral system that allows that to happen is not reflective or democratic.

You can call it whatever you want you can call whatever system you're using you want but if someone with 300 votes sits in parliament and someone with 3 000 votes sits outside parliament there is something wrong. So, how did we fix it we introduced constituencies and we took the five percent and applied it to each one not an entire electoral system each one. So, when you take five percent of 25 constituencies you don't need 35 000 votes no for each constituency you only need two. Two is much more achievable for one politician or one political party than 35 000 and that's how we did it you see. So, we still complied with the five percent it's just we didn't apply it to the whole election we applied it to each constituency election.

Now again does it say it has to be it can't be applied to that no again prove me wrong but so we struggled with all sorts of things hoping that you know our electoral system could come in in time. We have heard politicians say no no it's too late which really doesn't help us but they're all saying we'll have it under the de hunt. Well, that's fine because what we've recommended can also go under that because there are certain assumptions under this so-called de hunt and this electoral system that says that you can't do what you want to do. So, they say you can't have multiple constituencies and i say why not they say well because you're only supposed to have one and i said show me where it says that well there it says one electoral.

I said what it's one electoral roll go and ask if they give you one electoral roll for the whole country no problem what's that got to do with constituencies you mean they're not the same actually no so even under this present system the constituencies can go because it's not forbidden and if it is i've no doubt that you people will find it we'll have an interesting discussion over it but um yeah send it anything else um yeah all right .

Again, this is something i guess I'm responsible for but um when we came to deal with um the qualification of candidates uh we didn't have problems with most of what was written there we had quite interesting discussions with the people about whether convicted people should be allowed to stand or should be allowed to vote. I'll say our commission was quite liberal that way um if you'd served your time we had no problem with you voting or standing we're allowed.

The other thing was we had to face some people especially the academics from FNU uh professor law and justice and social justice academics and even ordinary people said well what about those people who conducted codes. We don't want them to stand we don't think they deserve to stand and it never sort of it's not something you really think about you.

But when you hear it you certainly realize yes we come from a nation that's had four coups and so much immunity is given to these people you know um and the people don't forget and they don't want those kind of people standing and representing them you know. So, we try to address it and this is how we did it well we haven't done it this is how we recommended, we recommended that anyone who wanted to be a candidate in a general election would have to sign a declaration which says he does not rely on the provisions of chapter 10.

You see it's one of those double-edged sword things if you say you rely on it we'll kick you out you're not going to stand we're not going to allow you to stand. If you say you don't rely on it we'll hold that against you until another day because we've got a signed declaration and you can't stand. That's how we dealt with it also in this sort of drug infested country of ours people came up and said well what about politicians taking drugs and all that we said yeah I suppose they do um and so we recommended a drug test during the nomination period. I understand parliament has a drug test after you actually enter parliament but there you are so yes we've got some interesting novel recommendations relative to the qualification of persons. We struggled with the Rotuman's diaspora. There's not too many us Rotuman's around we had to wonder well should we allow because we were going to recommend a seat who should be allowed to stand only those who live in Rotuma or those who live in rotunda in Fiji or diaspora which had most of the Rotuman's . Struggled with that we discussed it talked about it um and it became part of a residency requirement which was already there and we just sort of included it in it to force a residency requirement.

I think we also forced it for you to stay in rotunda that wasn't good enough just to come to feed no you want to represent Rotuma you're going to live there for three months before we allow your name on this thing i think it's something like that. I've forgotten the details but that can happen when your document is embargoed you know you kind of give up

and just you know put it in the too hard box like everybody else puts it in the too hard box anyway but you know so we did quite a lot of struggling thinking arguing with each other we generally finished our meetings you know on a friendly note.

There were some that ended in silence and i was the chair and you know i don't tolerate these people much so i slapped them around and next day we were back again you know I've been called all sorts of names so at my age nothing really fazes me. As long as you get your work done and you think seriously about what we're doing and i can tell you this report is the result of a lot of serious thinking .We could have done with more time i suspect so can you but um you work with what you have we push this thing through in three months and we hope that it's an electoral system that the people well, we know it's an electoral system that the people want because we responded to their call.

When it got embargoed, I thought well obviously government's got different ideas then I thought oh some people said Well i mean I think the women's the problem we shouldn't have done that you know we're not ready for that kind of thing i said well when will you ever be ready and why do we still have fewer women than other places ask yourself those questions.

There is a chapter on the women's and the justifications that we believe we justified besides the call for more women I think justifications in our case we felt the need to try and justify the number but the number just conveniently matches the number of constituencies. So, we didn't want to have 25 constituencies for the normal general election and four huge constituencies divided into divisions with one woman from each. You know that's a much harder election to actually run but if you have 25 constituencies one seat open and one seat reserved for women that's easy because it's the same constituency. The same balance and the same counting it's the one which separates the women because you don't want to do the 25 you want to give them fewer reserves that is very difficult consequences for the electoral office. But did you can speak more about the practicalities of that kind of thing and in fact I don't know why I'm talking about it when I'm surrounded by two women they can talk about the women's seats. I think I've said enough for the time being I hope that i pricked your thoughts enough for you to be in a position to ask questions of us right now.

Mr. Valenitabua: Thank you judge I'll now ask the members of the CRC if they have any questions to ask questions.

Ms. Nailatikau: Thank you chair and thank you Justice Fatiaki for and members for your contributions I was thinking along the lines of um of the topic you ended on about um wondering if um participants in your consultation said anything about voter education noting how let's say controlled voter education has been in uh in past elections and that being such an important part of encouraging civic participation from all kinds of voters let alone young voters which make up a massive part of the demographic So I'm very interested to hear what um recommendations you may have made or what you may have heard about sources trusted sources of voter education all these other aspects given that if a new system is um is undertaken that would make voter education all the more uh important.

Ms. Deidre: Yes that did come up quite a bit um of course it's not something that you'd address at a constitutional level um and we didn't put a lot of detail about it in our report but in the draft legislation that we worked on we certainly opened up the opportunities for voter education coming from much wider group of people removing those restrictions on CSO and what have you to you know participate in that voter education in the delivery of it also political parties .

Mr. Kohli: Thank you commissioners I was I'm glad to say that i participated in your consultations and I can see how valuable it was and how you reached out to the people .To get their views going out of where to tell them please speak we are here to hear you and that was very important .Having said that I read with concern professor Narsey's observations that he thinks it's a waste of time for us to be doing this because he thinks we are duplicating , we are not basically you are only concerned about part of the constitution which was the electoral system whereas we are concerned concerning a much wider spectrum . So, that being that's that I would like to pick your brain since this is private now media is not here , you know guide us about what do you think some of the changes that can be brought in the constitution apart from the electorate.

It is spoken about constituency yes representation of women yes, no issues with that but apart from that if you can assist us because daily brooks we have a lot of experience with someone else about these things and yes so I shall be grateful if you can guide us on that.

Ms. Deidre: Vinaka.so um as I mentioned before I'd refer you to appendix one the constitutional roadmap okay where we set out there um all of our recommendations for changes to the constitution. If that should happen which would broaden what we could bring in in our electoral system . Chair was talking about for example the open list and we're saying no our preference was a closed list with the electoral system. So, um it's all very well set out there uh what we're recommending but in particular um entrenching in the constitution a statement of the principle electoral system. Removing all of the other electoral related provisions from the constitution and reflecting them in the electoral act that's more to make it simple for the people of what they're voting on for a change to the constitution.

Introducing a constitutional provision to avoid changes to electoral laws in the year before an election. introducing caretaker government provisions. Introducing a term limit for the prime minister and a compulsory retirement age introducing a provision to regulate the early announcement of the election date by the prime minister revising the electoral management body architecture entrenching the establishment of the new constituency boundaries commission. Introducing a new apolitical appointed senate representative of cross-cutting issues .Then we go into each of those in a lot more detail we've set out there the sections of the constitution that we recommend uh be repealed and then the things that are replaced in there.

I can do a quick skim through it for you if you like just highlighting some of those things so um as Chair said you know many of the submitters were in favor of you know all of the electoral provisions being removed. In fact, I'll say they're in favor of the whole constitution being removed we didn't hear it once we heard it everywhere we went it came in through the window check it out through the back door but that was not what we were there for we were looking at you know what could we do for the electoral system.

So, there's about 10 sections of the constitution that we believe that could be repealed and all the things addressed in the legislation. So, a new section 53 setting out a mixed member proportional electoral system with a closed list complemented by electoral constituencies including constituencies reserved for women. With further details to be provided in a written law and of course we would add the five maritime

constituencies something to reflect the threshold to be reduced to two percent and a justification for that is because while we were recommending a 71-seat parliament 25 constituencies an open seat a women's seat and then bringing in proportionality from 21 people through your closed list is what it would be. And in a 71-seat parliament each member of parliament represents 1.4 percent of the registered voters so you wouldn't need a threshold applying to the constituency seats but coming in on the party list then you would have the two percent threshold.

The composition of parliament we felt that the number of seats ought to be set in the constitution as a starting point so currently the electoral commission reviews the number of seats in parliament. So, if you have a set number of seats your constituency uh boundaries commission will look at constituencies and sometimes, they will add an extra constituency because of numbers and if so then that could be balanced by one less number in your list seats.

Voter qualifications and registration and chairs have really touched on this but there were very strong views about the rights of people to participate in the election. So, removing the disqualification from voting for all serving prisoners the public were very much of the view that people in prison are still affected by the laws that are made and ought to have a right to vote for their representatives so they shouldn't lose all of their rights simply because they're put in prison. And also, the blanket disqualification from persons of unsound mind which is very archaic again you will see when you read our questionnaire prompts they were deliberately the ones for the public designed very simply very simple questions that they could understand and respond to.

And everywhere we heard that if they understand what they're doing sure they should be allowed to vote so it would be some sort of medical assessment to go does this person have the capacity to understand what they're doing in casting their vote and if so the public were very keen on them being able to vote they should be able to vote people in prison should be able to vote people who have served their time in prison should be able to be a candidate very very strong on that also dual citizens should be able to be candidates. They felt they said a lot of our diaspora bring a lot of strong skills and as long as of course that they would be living in Fiji during the time that they are in parliament.

Candidates who are public officers there is a bizarre well sorry what we think is bizarre in the constitution that included in public officers are trade unions and employers federations but they are not public officers so the removal of those two groups of people from who's a public officer and therefore prevented from standing as a candidate or in fact the way the law addresses it is if you're a public officer and you stand as a candidate then you are deemed to have vacated your public office .

We put some provisions in the draft bill around the date of nomination and the date of polling but as we've said we've kind of touched on that the election date being that if the prime minister's announced the election date three years and three months after the first meeting of parliament which is six months before the last possible date. for the election then the election date is deemed to be three years and six months after the first meeting of parliament. So, three years and three months is nine months before so basically saying if you haven't announced the election date by then it will be deemed to be six months before the last possible date which also allows for if there's sometimes you have to have a postponement due to weather conditions.

Those sorts of things and still meet the constitutional requirements there's a lot of reasons for it or we set out the justification for it but you know there's significant advantages for the preparation of the conduct of the elections all of your international best practice you know recommends you know the early announcement also saves the government an awful lot of money and it deals to the political advantage that there is to the government members knowing exactly when the election is going to be and nobody else does also often that the unofficial use of official funds for politicking a caretaker government. So, a lot of submitters called for a caretaker government and we recommended a model based on the Westminster caretaker government model and that's followed in Australia, Canada, India, New Zealand and the UK and of course these are places that always countries that always rank highly you know on your international transparency international democracy internationals scales for good governance and the key components of the model include the government staying in office until a new government is appointed.

But once the campaign period commences the caretaker government does not make any major policy decisions or significant appointments enter into major contracts or international obligations, but where

urgency requires for it then they have to get the agreement of the opposition. Prime Minister there were a lot of people suggesting that there should be a limit on how many terms a prime minister can have and also a retirement age. So, the recommendation was a maximum of two terms doesn't mean that they can't then be still be an MP or a cabinet member but stepping down from the role of PM succession planning you know so that you don't get into that situation that there's only one person that can meet. And they also recommended a retirement age and we aligned that retirement age with the requirement for judges to retire at 75.

The election management body architecture and we did not only consult with the public on this but also the electoral commission and the Fijian elections office and there was consensus there to follow the model that's used in Australia New Zealand Tonga. I think Vanuatu also does it where you have your election management body is most election management bodies in the Pacific or in fact in the world there is only one and they manage everything.

In Fiji you've got two and there's a challenge with you know where the boundaries are with for some of those things and in a lot of duplication so the model recommended is that the two agencies be merged there be a board of three commissioners, two are part-time the chair and the deputy and full-time is the supervisor of elections is the third member of that board. And then what you have is this board of three people making those significant decisions so the commission then your law just says that's the commission everything talks about the commission and the commission has the authority to delegate and they will delegate to the supervisor what they want to delegate to the supervisor and give the supervisor the power to on delegate some of those functions.

But it does mean that those significant critical things that can become slightly political etc. decisions are being made by a group of three people rather than one person. Constituencies boundaries commission and again we looked at our commissions elsewhere around the pacific and we're following a model particularly used by Australia and New Zealand and I'm sorry i know i come from New Zealand that may be part of the reason that I was on the commission. So, the boundaries commission the beauty of the boundaries commissions in Australia and New Zealand is that they are successful in getting their recommended changes um through that is because unlike other countries in the pacific they set up

the boundary's commissions occasionally not very often but they do the commission does an awful lot of work recommends changes to boundaries to level out the number of people in your constituencies. So, for the equality of the vote goes to parliament and it never gets adopted never I can tell you PNG's been doing it since about the 1960s and they still can't get it changed um the model that we're recommending has on it. Of course, you know it only comes into effect when you need to do your boundaries review which you generally do following a census of course that's often not regularly done in the pacific but in New Zealand Australia every five years a census then every five years a boundaries review and you have on that the chair of the electoral commission would chair it you have the supervisor of elections you have your lands and survey department.

I think it's called here your census population department statistics and I think there was it's in the law, I would have to look at it um the rule of maritime one of those one of your one of your local ministries that we don't have else .Then the icing on the cake why the politicians generally accept it is that you have two politically appointed people on there one appointed by the prime minister one appointed well they were both appointed by the president but on the recommendation of the prime minister and the leader of the opposition .So, that gives the politicians comfort that they've got their watchdogs there everything's being done you know according to the rules and then you can get these revisions of your boundaries as and when you need them and they and the boundaries commission has the authority to put them into effect they simply table their report in parliament for parliament's information but parliament doesn't get the opportunity to say yay or nay.

The senate as chair touched on so there was a lot of call for a senate and also you know to provide the checks and balances on what your elected politicians are doing they favored the senators to be appointed by the president on the nomination of specified organizations to be apolitical and represent the various ethnicities in Fiji as well as cross-cutting issues including those that are in the 2013 agenda .They thought this this is a good way so you're going to be bringing representation in through the constituencies and what have you but also making sure that at the senate level you've got all of those cross-cutting issues being addressed there as well as ethnicities all of your minority groups, including a representative for prisoners it was a very strong call for that as I said and

that aligned with our thinking then if you're going to give prisoners the vote that sort of thing but not be allowed to stand as a candidate.

They thought that was a step too far then yes have them represented their climate representatives' face-to-face groups your national council for disabilities representatives for women and youth your minority groups and your indo-fijian community Malaysian community there were strong calls around them for the Malaysian communities of course the GCC and the council of Rotuma.

So, the powers of the senate would include legislative review and accountability inquiries and they could conduct hearings and also have the power to veto legislation pertaining to customary land matters and native administration along just as we do for the architecture of the electoral management bodies also recommending in the senate that your appointments can be staggered. So, one of the one of the things that always happens if everybody's appointed at the same time is that you lose all of that institutional knowledge all of the education training and capability all walks out the door at the same time so we're recommending for the electoral commissioners that their appointments be staggered. And also, for the senate of course the first one would all happen at the same time but then when somebody resigns or leaves the senate for whatever that their position is refilled. So, that eventually you would create a staggering of the senate and of course the senate would continue to operate all through the caretaker government model.

So, that's an overview of the things that we recommend for the constitution more broadly all election related or democracy related but we didn't go into the other areas we may have some personal individual views on them referendum , well of course the constitution would make provision for referenda for change it's interesting with the referendum bill that's came up at the moment there's been a lot of comment about well apart from the fact that yes it's a very dire bill, but that it makes provision for referenda outside of just constitutional amendment and that's actually the norm.

It might be a good idea to clarify in the constitution not only referenda for the amendment of the constitution and how you'd go about it but of course that the the government has parliament has the power you know to call for referenda on other matters as well. I don't see it as essential

but I think it would put a stop to a lot of that is there something more. You might want to add on to that.

Justice Fatiaki: You probably wonder why we would be involved in that well the reason we couldn't avoid it is that once we address the elephant in the room and the possibility that there would need to be amendments made to the constitution. It was inevitable that we would also investigate the requirements within the constitution about amending itself and obviously those who have been following it realize that there two aspects to amending the constitution.

The first is a parliamentary majority and the second was a referendum. I surprised us when we looked around that this thing didn't exist in our laws there was no law for the conduct of referendums and you sort of wondered to yourself well. I shouldn't wonder so openly because i actually wrote a letter recently asking those fundamental questions about why we didn't have a referendum act in 2014 following a constitution in 2013 which required a referendum if it was to be amended it seemed natural that would have had a referendum act since 2014 otherwise, we have a constitution amendment process that is incomplete in the legislature hence maybe the word impossibility crept into the whole equation. But that's why we got involved in referendum we recommended amongst the work we had we had enough work to do without going down that path.

We recommended that the legislative drafts people look at the Vanuatu Referendum Act that just passed an act in Vanuatu for a referendum and it's simpler easier to understand and doesn't suffer from the kind of things that this cut and paste out of Singapore ended up on our tables and created all that havoc. I thought to myself well obviously they didn't bother to read our report because if they had the first act they would have had to look at is the Vanuatu one which by the way is you know three hours by plane it's not that far and those people also Pacific Islanders and you know have an experience of these things so you know no go to Hong Kong and China where these things from.

So, that's what we wanted to say about the referendum act and how we got dragged into at least some mention about it but we were surprised that you know even now we're discussing an act which should have been passed in 2014 or certainly at the same time as the constitution. I'll say one thing we the GCC didn't address us. They invited us to talk to them

that is different from them addressing us now they invited us to talk to them and we were quite happy to talk to them well at that kind of time we talked to anybody, you know like sort of almost prostituting ourselves and trying to get our report out there so that everybody would know about it and everything. I don't care about that kind of terminology but the important thing is we went there and talked to them and they were very pleased to hear some of the things we had to say especially about the electoral system about constituencies about knowing who your parliamentarian was. We didn't address with them the non-ethnic seats and that obviously is something that I'd invite your commission to think about because you will hear about it .

There will be a request um our approach to it was yes there was a request but amongst us we had an economist demographer Wadan who's sort of lived with this thing for so long it's just blown his mind a bit so he said no no we don't we don't have to go down there we don't need any of those ethnic stuff.

I said why I mean you heard the people say they want you know he said no no they just don't understand so what do you mean he says by the time the next election comes around the number of the demographics would have so changed that you don't need ethnic seats you know it's it's what it is. 60 of the population will be Fijian 30 will be Indian and 10 percent would be the rest. And if everybody votes according to those lines then 60 of parliament will be Fijian.

I thought you know okay nutty professor that he is you know there's a huge if that he introduced this thing with you know. The demographics will turn out like that 60 40 30 and 10 and that will hold and reflect in government if they all stick together. But our experience with our indigenous features is they don't seem to understand that if, and many of our governments and much of the instability in our governments is because the Fijians didn't understand that they're supposed to stick together.

So, thanks to Butadroka Ratu Mara gets the boot you know that kind of thing but so I want you know we skimmed it and said the demographics doesn't require it besides I sort of put my foot in my mouth very early in the system and very early in our review and i said uh we're not considering ethnic seats there was a big push back on that so we never talked about that again but we certainly wasn't going to include it in the

report anyway . So, we have not recommended featured seeds Indian seats and other seats. it's just so unnecessarily complicated yes well yeah uh you know the senate's a different thing, but you will hear it and

I'm hoping that you will struggle uh with the struggles that we decided to avoid by just talking demographics and blaming one but there will be a request and even demand for ethnic seeds that is something you know we have not had a problem with because we believe that it was necessary that we you know drag the country screaming into the future and the unity and i think the latest discussions and letters and social media postings on just one word chapter one feature well including myself i confess but you know should tell you that out there this thing is real it is real so yes you can .

I still firmly believe that the creation of well the bringing back of ethnic seats is regressive for our nation and that you know it's better to educate our people and especially our young who are more understanding of these things. Talk about young qualifications to vote we had huge arguments in our group between 21 and 18 I led the 21 campaign and every now and then i could drag Wadan with me he wasn't interested in but these two women were straight up the 18 you know that was it wadden was in the 18 camps in fact. I was the only 21 camps by myself while these three were happy to go on with the status quo you know and good luck today uh they won out and we didn't change it but we flagged that question.

It has been flagged because the villagers themselves especially the rural you know when we whenever it was raised we'd get men stand up and say these young punks just play rugby you know anything about anything can't make them allow them to vote or allow them to stand they're complete rubbish you know you've got to be 20 .Well I'm delighted to hear that you know being the old school that I am as opposed to this sort of you know CRC stuff that comes out of the rights of the child and all that 18 year olds I said well you know it might be fine internationally but we live in this country and let's you know talk about our country.

Ms. Nailatikau: I have a question in response to that this was something i noticed in the report especially that talked about trying to put something in the constitution that would affect voting behavior. It's like trying to find a technical solution to a behavioral problem right and I think looking within the remit of the of the constitution this impacts exactly the experience

you're talking about as our demographics change. People are still quite attached to certain labels for certain seats because our voting behavior is tied to it and perhaps it's it's a problem that has different solutions but with you know we become stuck on you know a technical one like the like the constitution for example and my question was also going to be about in terms of the representations for candidates for candidate tests in terms because something that usually accompanies the lead up to elections is the policy issues tend to get overshadowed by what parties qualify or don't and what parties are able to register or not um there's is understand there's also a code of conduct bill, that's in in process at the moment or awaiting what were some of the things that you heard about in terms of candidate tests you spoke about drug tests for example again these won't have landing spots in the constitution but um have implications.

Ms. Nabou: I think one of the you know chair has mentioned it and i think commissioner pierce has also is like sometimes we take for granted that the people out there have no idea they're actually quite switched on. Few of the comments that we got back in with regards to candidate standing is in the first instance they must own a house you can't be going to parliament to enrich yourself you must own a house and these are young people. We heard that a few times is that you know you're not so we're not sending you to parliament to you know to get a living .You need to be have something in your pocket and also you know you've got things related to corruption linked to that because when you're making laws you want to make sure that you are without blemish and you know you know you don't have a hook somewhere that you're going to pass a bill that benefits somebody that's going to pay you twenty thousand dollars under the table which is very valid.

So, it was it was raised with us uh those kind and then we thought we thought how do you put that into a law you must own a house because the other side of the coin is that at the at the community level there are a lot of good mobilizers who do things at the community level women especially may not own a house may not have thousands in the bank but they know how to get things done with minimal minimal money they know how to you know barter for assistance here and there so that was a we didn't yeah we couldn't find a solution to something like that, I hope that answers your question.

Dr. Gounder: Thank you thank you Judge Fatiaki and members of the review committee and it's been very enlightening to hear you speak about the approach you took to review the act and the thinking around some of the recommendations that appear in the in the review plus the challenges you faced I mean I can hear you whole day so thank you very much for enlightening us. You mentioned about the constituency and having a simple and clear voting system I mean these are some of the things that we have heard from people time and again and it's good to see that finally it's appearing in the in the recommendation voting for a person rather than a number including a party name also allowing for maritime constituencies etc.

I wanted to ask you about the thinking around constituencies boundaries and it's not only about convenience but also taking into account the economic and social circumstances including the the demographic changes that that happen over time so. I think you explained that the thinking that went within the within the committee towards the last part of your speech. I just wanted to pick the brain of the committee on the announcement of the elections where you also mentioned that the government will be limited from carrying out certain functions especially related to policy decisions and money and expenditure related issues because we have a very strong chapter 7 and chapter 8 in the 2013 constitution.

So, I want to make sure that we tie together the constitution as closely to the act that you have there because they need to be in line so if we are talking about big policy issues and spending decisions will we need a kind of fixed parliaments act the one that the UK has which explains more in detail about the activities that government can carry out or cannot because if we live it to the my experience and what I've seen elsewhere .If we live it to the electoral act it might not be sufficient it might still leave large gaps in the way governments behave because governments will find a way to game the system and they will approach things even in concrete water will find its way if there is a little crack so just picking on I don't know I just want to pick on the expertise of the committee to see if we might have to do something more than more than that. And i also agree with the Judge Fatiaki that we don't always have to go to Singapore and Hong Kong there's a lot of experience from within the region that we can tap into for example Vanuatu has a very good electrolyte now that we can all learn from and which was done in a very

inclusive inclusive manner so thank you very much i just wanted to have your view on that.

Justice Fatiaki: If I might start start off our discussions on constituency boundaries well when we started hearing everywhere we went we want constituency we want us naturally we had to think about constitutive boundaries we were also constrained by the fact that we were we had three months to deal with this incredibly complex field. So, you know we a lot of people said well we're going back so we yeah we went back and had a look and had a look at what sizes of parliament they were and how the constituencies were written uh we went back to 1970 and 1990 and obviously 1997 .And 1997 seemed to be the easiest for us so rather than reinvent the wheel and go down a huge draft legislation again you know our law we didn't have a constituency boundaries commission or act which predetermine those kind of things. We had one provision in the constitutional which says the electoral commission determines this according to this formula and can't go beyond well they apparently sat and changed it twice I believe illegally but you know that's their business but they changed it over two years and it went from 50 to 55.

And yet these things are supposed to apparently reflect our demographics you know even their formulas stuck with the demographics anyway long story short. We decided okay for our purposes because we were going to say your constituencies and if government was going to implement, we'll tell them listen as a transition thing we suggest you take on and just adopt 97 constituencies because you already have 71 created already maps boundaries the whole lot.

If you look at the if you look at the report you will see that we have actually done it and taken what we can from each constituency and filled in the dots that which matches we spent two days giving the electoral officer headache but we had a foot in the door so that's helped but yes over two days we did all of this all of this because we were hoping you know if they were going to go down that path then this is how we suggest you do it .And even the Maritimes we did it the same way and we realized that for the last elections well the 97 one certainly well the last three elections they had um what do they call these things voter yeah they had polling venues. They had polling venues and so using that information we just basically adopted that and drew the boundary around it in what I believe was much more sensible boundaries than existed when they grabbed maritime and shoved them into Serua and shoved them into

Nadomo or whatever and I thought no the boundaries that we actually founded for them and worked over two days to create is actually more workable than the boundaries that the 97 created. And that's without a boundaries commission I don't blame any I don't claim any knowledge about these things other than voting and having been born and lived here but you know Kadavu does not belong in Nadroga that's it that's why as far as I'm concerned and that belongs by itself likewise returner. We've got no business being stuck with none at all or Taveuni and Savusavu. I mean none at all you know and yet they were stuck with them really i mean mama nuda's got dragged into Lautoka and you know all that kind of thing.

It just you know if you lived here common sense tells you and helps you to see things that maybe demographers and demarcators you know who create boundaries but I suspect the boundaries that were created as part of gerrymandering by politicians see we have no politicians so we're able to actually create sensible boundaries and do away with the political rubbish that's crept into the system and I don't know. But when we took it up to the actions office they looked at and they said yeah that is so sensible where did you get that from, I said well I lived here for 70 years and that told me what is sensible and what isn't he said yeah we all knew that I said well um okay and I said can you do it he said yes because it's based on polling booths and we have it all. The addresses the names of the people who are registered on it in fact it's on your card you're pouring both you know so that's what we did.

Ms. Nailatikau: If i may chair um my final question I am selfishly asking this question as a mixed methods researcher but it is very clear that the centering the work the people's voices it also went through rigorous debate and discussion amongst you all as you pulled the review together. I would really love to hear your reflections on your on the process you used in that very vital link between people's voices and how you worked together to write this this review that you've that you've submitted were there right shops robust debates and discussions giving and divvying it up based on your important you know expertise, but also comparing to best practice regionally globally or within Fiji's own history. I would really love to hear that um your reflections on the process of writing the review as you analyzed and and took into place people's voices.

Ms. Nabou: I suppose I can start but which is one of the first reasons why I suggested get a comfortable van is because after every session that you sit through,

you're talking through what you heard and then it's going through your mind so having comfortable seats and before you get to the venue you're talking through and reflecting on what you're hearing that that helped.

Also, uh for I think the four of us will come well I mean I I knew professor warden I had only heard of justice as somebody who's quite distinct in the judiciary and I'd never met Diedre before but I think the way we walked into this in terms of our conversations you can ask the staff Leighton and Leah .The law reform commission is usually very quiet and it's a law office it's a government office and we would have a lot of very robust discussion very robust they probably never they were probably thinking to themselves my god where are these people from, but that was all valuable part of the relationship building and the trust building of trust among each other that we all had a valuable input .

You know different perspectives but it all did come together and of course um chair had between uh we started off with a skeleton of terms table of contents um and then that refined as we got on yeah but but basically having having the space to have the debates and allowing it do it because it'll come out richer because when you have to defend it later you know that each of you have put into it and that you can you will defend it equally because you all have debated vigorously . It's a process but uh very character building I reckon chair.

Justice Fatiaki: I'll speak last and I suppose.

Ms. Deidre: Just to add to that so so from that yes, we did split up um parts of the report to draft each but um we didn't exclusively own them we were simply the starting point yeah to put to put together the information and then we all collectively reviewed the entirety of it we often moved stuff around change things. We need to say it differently but uh in the end we got to a draft that we're all reasonably comfortable with the lack of mediation you know might not be that everybody's totally happy but they can live with it and that's where you need to get to but I would certainly endorse what Nalini said about um having the space and the trust to have those robust discussions because if you can't you're going to have a report going out that some of you go no I don't I don't want to associate with that so you've all got to be able to own the entirety of the report not just the little bit that was your passion to write about .

Dr. Baba: Chair if I can just continue from the Mere's report you know the table of contents was the chair the one that drew it up number two when we are moving around in the sorry this one is not later this one is not okay right now when you're moving around because we will have team one team two. A few times we'll amalgamate a few times I'm thinking of the process that man is talking about because I suppose because I'm such a this is what professor is worried about it's not the talking it's the final report so I've been burdening over it.

When you're all over the place you know moving around how does the report get written the transcriptions are done by the ladies yes Judge Daniel and then sorry I'm looking at right now the transcriptions are done when do you get to write do you write as you go because the table of content is already there that's what Nilesh is doing right now for us for the chair. I think the table of content just the drafted so and then how does the transcribed reports get to that format, do you actually take one month off like the education commission to write two months or do you write as you go.

Justice Fatiaki: Thank you I'd like to answer your question by saying I wish we had three months yeah from start to finish uh what and i we didn't really know each other at all actually until we jointly put in a joint submission for application for the joint tender for the commission the only relationship I had with Wadan was that Wadan got disallowed to stand as a candidate in some election. One of the years and john acted was the one who disallowed him he judicially reviewed john in my court and I said John you're wrong what a new stand and he became the minister of finance for I don't know how long that's the relationship we had obviously we understood each other's writing and the way we think and talk and Wadan and I are on a pretty even playing field we came with all our different baggage's our women .I don't mind saying that

Seini was maybe the sainest of all of us Deidre is a strong cement eating kiwi woman Wadan of course you know he lives in the stratosphere and I am firmly on the ground so between us like I said, we had vigorous discussions .We assigned the writing to where we believe the strengths were having said that the assignments were very good the writing was very good and Wadan carried the electoral part very well Deidre is legally qualified and worked quite well with the elections office great experience so Deidre would look after that part of it certainly the legislation, the management electoral management systems um and the

logistics of carrying out elections which drive me and wadden nuts you know. Seini handled our PR and also the consultations was her draft part and we would share the drafts with each other and I read the whole lot and had a very firm grip on the language that we would use so I vetted everything that went through this chair not an easy job dealing with professors strong-willed people you know English a second language and all that kind of stuff lawyer you know to boot so we had between.

Deidre and I we had vigorous legal discussions what would happen is these two women would go off and conspire cigarettes smoke cigarettes on the veranda and come up with all sorts of quirky sort of , you know when you're a goth or a cricket person they bowl you googly so whenever they finished their cigarettes and came back smiling you knew well you know the s is going to hit the fan now sure enough I said now what do you think of this where did that come from no no no what do you think of it.

I mean you know let's I said well let's talk about it so we had some pretty vigorous discussions and I'd like to say one thing that you know we often knew like every good family we knew how far you could go and we knew what triggered you and what didn't trigger you and we were willing to make concessions and accommodate each other. So, Deidre and I had vigorous legal stuff but I think Deidre is uh you know respectful of the fact that I was who I was but I also I think occasionally.

I let ideas slip and it would hit her and she would be bounced off you know thinking about it especially the the readings she would come and say no impossible you can't possibly read it so well let's discuss this thing you know and then I'd grab her twist her brain twist her words and by the time I'd finished she'd come around you know she could live with it but um obviously it isn't an easy exercise I don't envy any of you .

As far as these things yes I from a very early start I began to start thinking about how this thing would be assembled and what the contents would look like the the chronology of it and you know we struggled with where her papers would fit kind of thing .In the end I think we've got something that and also her paper where it fit in the end i think we came up with something which is readable logical chronological um and you know hopefully helpful um yeah so that's basically no we did not have the luxury of taking a month off to write the report this was a sort of work in progress it just well we had three months what can you do if you spent one month touring the countryside you know it it's hard as hell you know

and I mean was and couldn't believe it when he came to me and he said so how are we doing the public consultations. I said well how else do you do it he said I don't know you tell me I said well we get on a blooming bus and we go around the whole of Fiji he said what I said well how else do you do it he said well you can sit behind your computer write a little sort of questionnaire and send it around and get the answers and tick that box and say we did consultation.

I said Well I'm sorry I'm old school the only way I can do this thing is to get on a bus and go to the village sit cross-legged on the bloody ground and listen to them so and that's why they talk about cushions. You know at our age the backside's a bit lean so it's bone on wood so in the end I got cushions for all of us and it was quite hilarious stole the chairs from future law reform, stole the van from parliament or FEO office and I just came along with my cushions. You could see the commissioners walking up carrying their cushions and they were lime green bright but it was yeah it was just that's just how it happened but yeah that's how we did it I don't know I don't know how we pulled it off but we pulled it off.

Mr. Valenitabua: May I? Judge Fatiaki, Ms. Brooke and Ms. Morgan, Mr. Ami Kohli needs to leave us now. He's asking to be excused.

Justice Fatiaki: I have absolutely no problem with that Mr. Chairman. Mr. Kohli is a member of the Electoral Commission. This is, you know, Deja vu for him.

Mr. Valenitabua: Thank you.

Mr. Kohli: Before I leave, I'd just like to thank you and I must say that one of the advantages which you've had and we didn't and Professor Narsey didn't have is because of your experience as a judge you always knew people you were dealing with were very difficult people argument pros and cons and you all always listen and I think that's made a difference so thank you very much if you may be excused. Thank you.

Ms. Deidre: So if I could just add a little more to the to the drafting, yes we didn't have we didn't have sufficient time and we knew that and so we worked nights and weekends and an extra week that we weren't paid and all sorts of things. But I mean unfortunately you know I've had that view from the start anybody who's tone a lot of research of any type whether it's public consultations or not .You'll know that your your drafting and your reporting will take as much time as your research and your gathering of

your information and I think you know that's a useful rule of thumb so think about how much time you are taking getting your information that would be my recommendation and be putting aside at least that much time for drafting and then working out how in your busy life you're actually going to find that you know and it probably will be you know until two o'clock in the morning then get up at four o'clock again and start drafting as we did but hopefully you'll have a bit more time. Thank you chair.

Mr. Beg: Thank you, chairman and the reform commission, and the members I'm very enlightened in the report. I must say I've I just read through it quickly and but one of the three points that I have when was the the last election of the 2022 elections you know we have a we had registered voters about 693,000 that were registered in about 473,900 you know casted their votes so that's about 68 percent turnout right. So, our current population is about 930,000 so when you look at the voters that were or that voted within just half the population. Did you have any thoughts around how you address that during your ,that was one question and the other one was

I really appreciate the proposed hybrid model that you're suggesting in your it's called Pulse I think it is P-U-L-E-C you're sort of combining the contingency based proportional representation of elements in your. The problem is that one of the things that I think there's a risk in the institutional ambiguity with the parliamentary system and I notice you address that as well in your how can you can you talk a bit more about it, because I think it's entrenched in the constitution and yet when I hear you saying earlier that you you'd like to see that portion of that in the constitution. I mean you talk about constitutional basis of representation territorial versus proportion and then you talk about differential role and accountability of members of parliament. I like to hear your views on that in the constitution yeah because there's some institutional ambiguity within the parliamentary system.

The third was a great thing that you've done with the map I looked at your maps I can't help it as an architect I looked at it and I feel that there was some about I've seen the old boundary division maps but that's a very good point that needs to be honed in and entrenched in the constitution because I strongly Greg thank you for bringing that up because that's very very strong thank you

Ms. Deidre: So, the concept around proportionality and it's not new so currently your constitution says that you have a proportional system and yes it does because you have these open lists in there but the hybrid model as you call it makes member proportional. That's actually common throughout the world that you will have constituencies complemented by a list either an open list or a closed list of members who fill those seats.

I can speak strongly on the New Zealand model Australia is similar except I've got federations and things in there as well which confused me so basically your people stand in the constituency they get elected to the constituency and they will always be that representative in that constituency for the for the period of the time.

There are two votes in fact because we suggested a reserved seat for women it would be three but if we take the simple concept of your voting for your person in your constituency and then you're voting for the political party that you want to lead the country. Now, often people think it's the same thing but if I give you an example and nothing real about this but if we say that chair because he's bright yellow he's representing the pineapple party and just party whatever so we've got a pineapple party and a yam party okay.

So, I'm voting casting my votes and I say to myself I really want Seini for my constituency because she works really well in the constituency and I love the things she does okay that's fine. So, constituency vote I'm voting for Seini when it comes to my party vote for leading the country I may want to vote for the party that she's with or may want to vote for another party and my thoughts are whilst. I love Seini and her work in the constituency I'm not all that keen on the yam party and what the overarching policies are I really like the policies of the pineapple party and I want them to lead the government.

So, what is often considered splitting the vote some consider that's bad in New Zealand we consider that our voters are getting sophisticated when they do that and often it will be also because they think okay yes I want this candidate but they're from a very small party there's no way they're going to lead the parliament so I'm going to give my vote to one of the bigger parties that you know is more likely to lead as simple as that so. In doing that you then say okay so the people in the constituency those are elected they are the representatives and the party at the time of nominating candidates also puts in a party list this is a list of their

candidates. Their list if you like in a closed list system those people are not voted for but you declare it and everybody knows who's on your list they can in fact put on the list the people that they're standing in constituencies as well but if the person wins a constituency seat then you ignore them on the list when you come to allocating seats. So, you count up the number of votes that each political party gets and then you use a formula to work out how many seats they get and this is where the simplicity comes back in. You use a formula your constitution says that a formula has to be used internationally recognized and this is the de hondt system that nobody understands.

I even struggle with there are a few others that are well known out there as well so currently not even stuck with as the formula but what introduced the here formula or the sun blog formula which we use in New Zealand, which I can't even pronounce let alone understand how it works okay it always has to be a computer-generated thing so for with our system what our recommended system.

We actually landed on just using percentages okay if you if your party gets 40 percent of the votes the party votes you get 40 percent of the seats in parliament and then what you do of course is you'd say okay so um cheers pineapple party yep got is eligible for 30 seats and his candidates won 18 seats in the constituencies so, he gets another 12 seats off his list the people at the top of the list going down taking out those that have already won a seat yeah and then those people are allocated the seat.

If a constituency seat becomes vacant, please ignore what we say in our report because we had to comply with the current constitution and said that those seats would have to be filled from the open list but the idea is that your constituency seats will always be filled by by-election but your list seats it's the next person on the list. So, it's a combination of what you currently do with your open list yeah like always having the by-election back in the constituency so it's always a constituency representative there.

I would just add a wee bit about the um about the using the percentages because it is addressed quite a bit in the report one of the reasons that these complex formulas that we can't pronounce and don't understand are created is because using your Nmp systems you will often come up with an overhang an overhang is an extra seat.

So Saini's party uh is allocated on its percentages proportion gets eight seats but in fact her candidates actually won nine constituency seats you don't take one off them okay but on that percentage of the number of seats in parliament they got an extra seat now that's a genuine overhang with using your percentage but you can create unfortunately underhangs or overhangs, because normally it's the percentages it's the it's the fractions of the percentages and whether you round them up or round them down and the norm as you know is that anything at 0.5 or more is rounded up and less than 0.5 rounded down.

So, that can create another sort of overhang and it was only last night when i was thinking of coming here that it dawned on me that there is actually a solution for that that could be addressed. When you don't have a standard rule about rounding up or rounding down you do your percentages how many seats have you got and so ignore the fractions and then if you're a seat less it would always be an underhung not an overhang if you're a seat less then you just go down the highest of your fractions okay so anybody with 0.9 gets that seat if there's no point lines what is it is it 0.85 is it 0.75 is it whatever and that would avoid that artificial overhang and under hang that just using the percentages .

The reason we use percentages they're not as perfect except for what i thought of last night as these other complex formulas but the people wanted simplicity, they wanted what they can understand and a percentage they can understand they might not understand what creates an overhang and what have you and that would take a bit of education but they understand a percentage they understand his party gets 30 of the votes he gets 30 of the seats, yes okay.

They hate to haunt in fact most people think to haunt is the whole electoral system it is not it is simply a nasty little formula that is applied at one point of it.

Justice Fatiaki: Before i hand this over the discussion to say me let me just say this in summary or briefly proportionality is actually expressed in the constitution itself in describing the electoral system. It comes from the list aspect of the electoral system. There are open lists and closed lists and you can find all sorts of literature on the benefits for either one in our particular case in presently the open list is chosen and put into the act inside the constitution our recommendation is that it should be a closed

list. I think partly why we've opted that way is because of the reserve seat for women and that needed to be addressed um proportionality is also a much smaller margin of this of the of the seats that's involved so on our recommendation because of the 1997 having 71 we went with 25 25 21, but it could be 55 in which case it would be 20 20 10, but it's just that it's all the same but there will be more there'll be more seats than actual constituencies. I mean now more parliamentarians than actual.

Mr. Beg: Just a question chair according I mean because you've done the groundwork sorry you've done the groundwork which which is resonating you feel it needs to go back to the 71.

Justice Fatiaki: That's to be decided by the electoral commission obviously they're the ones who actually have you know that particular elephant to deal with and struggle because they're actually mentioned in the constitution and the power for the creation of boundary the creation of the the size of parliament is the composition of parliament is with them.

Let me say also if I could draw your attention to appendix 12 appendix 12 is a simulation validation exercise, we conducted which is the more practical and that's what we had at the elections office with actual voting paper and counting and it's described. And I notice um that there's a there's a small paragraph there 11, where when we said reserve seats for women suddenly we had this huge sort of pushback and what's a woman and all that kind of stuff and you know, it's not the kind of thing you think about sort of naturally so we dodged it as the too hard basket and we said no this thing comes out of the birth certificate and whatever is left is a problem that parliament should decide . Who gets on to that thing as far as we're concerned as electors' recommenders you come out of a birth certificate you know we're not into transition.

Ms. Nabou: That's how we dealt with it because it's quite

Justice Fatiaki: Well, I think i can read you there were robust discussions about the inclusion of transgender persons as candidates in the RSWC the commissioners have determined that such a controversial question needs to be decided by parliament and not indirectly as a side wind determined by this review. So, it's a duck but we said it's this thing is more important than a little commission dealing with it no this is a parliamentary thing so that's i mean yeah but this is the simulation

exercise which i think will address you know if you follow it and I wish Wadan was here because this is pure nasty you know

Mr. Beg: I couldn't help I couldn't help I couldn't agree any further because the grievances that I hear from you sorry I feel the grievances that I hear going resonating back is addressing the electoral system and how that affects the constitution and all the elements that we have to deal with I'm like you are we all been given different chapters to address and chapter six is my chapter which is the public service.

Justice Fatiaki: Yours is chapter six is it yes sir no it's inevitable that that's got to be done but uh you know um my brother will tell you I give him a headache I love it because because i only had to deal with elections and I struggled like hell with it and he's got a whole constitution so I just love it. I find something else to think about.

Mr. Beg: Your question about turnout.

Ms. Nabou: Yes, sorry how did we address turnout, well obviously we struggled and said we could make voting compulsory we had very strong views about that. I don't know saying so before I answer the question by commissioner Conway about the low vote to turn out. I just wanted to also just quickly squeeze in and just suggest very strongly. I know you pressed for time but try as much as you can don't split up as a commission. It was put to us also at the law reform commission you know we don't have time split up, and we were very adamant is that when they when the public receives you, they want to know that you've given them the respect by coming as a full force not half a commission. I don't know whether you see this also with the TRC you know when they're halfing up half here it doesn't look as wholesome. I don't know optics I mean it's just very and there was the fact that each of you is going to visit every spot and hear the same thing. You will hear different things and when you do discuss it you fill each other's gaps so that was one of the things I just wanted to just briefly suggest very strongly uh also if you want to suggest if you want to um you know the time that you spent with each group keep it to two hours at a minimum.

You will understand that the conversation starts to taper off uh but you will get a lot a lot in done especially when you have a questionnaire and the conversation is more focused. Also, if you Mere will know also that we if you do have the funds uh try and get some somebody from the

media house to actually follow you we had ministry of information. The quality of the audio wasn't that great the Hansard reporters struggled with the audio quality so.

Also, if you want to do video cutaways because you are answerable to the public of what you're doing out there you don't think about these things until right at the end you know the people want to see what are you doing. So, you need a proper agency to do that somebody ministry of information is really good, but they have all their work cut out for them. They're already assigned to do this this government events so if you do have the funds, you know get somebody. So, just to address the matter about the low voter turnout if you look at the stats itself progressively from 2014 to 2020, they have been getting lower and lower so we in the actual report. There is a I think an addendum with the actual law changes that we had suggested to make sure that that doesn't happen.

If you recall by 2022 was more and more draconian, we had the birth certificate the woman's birth certificate I mean I was party to that with the other woman who took it to court and then FICAC the threat of FICAC for political parties was becoming more and more loud you know and jail term was becoming very real so those are things that you can just strike out in the law. I think we've done a very good job of that knowing what we had experienced just on the on the maps and stuff the voter registration system what we found out during our consultation is that a lot of the voters had said I was assigned to vote here at this polling venue I was not. But I was a different polling venue of the same name that kept coming up you'll see it in the report and that continues I think to this day it's the voter registration system that is so rigid we've paid a lot of money for in 2012. It's so rigid you can't make any amendments to cost the people in constituencies so that's why we had to come up with a map.

We grouped polling venues together which are logistically together yeah on a map try to make the numbers as equal as possible 30 000 voters 30 000 and that's how we got the maps. Ideally that's not how you want to run elections you need to have a proper voter registration system I don't know FEO or EC might tell you that but that. To me is a red flag that's what gave birth to the glitch the last time because the baseline data is the voter registration and you know it's only when people raise to say.

I went there but it didn't I wasn't registered to vote there that's when it's picked up hopefully it will be it'll be better this time around so and um

commissioner talked about the caretaker government i think there was a provision in 97 constitutions so that's where we came up with because it also came up, I think at FNU. Once the writ is issued it's not that they're going to have a free reign it's only about two months at best and you're not they're not going to be certainly not going to be preparing a new budget. Thank you.

Justice Fatiaki: We would forbid it now the other the other point about proportionality is that we decided as a commission because of the requirement of simplicity we would go with first past the post first past the post everybody knows about everybody knows how it's counted. you know. The only disadvantage of first past the post one of the very major disadvantages is quite often the person who actually gets elected doesn't get more than may not get more than 50, maybe less but that's why we needed the proportionality To actually deal with that aspect because it was important that you recognize that that was one of the shortcomings of the first past the post whilst we love the first past the post everybody knew about it even voters told us about it .

We want first past the post and it's like well okay we've had this since the 1970s everybody knows about first past the post said yes, they just put all the votes there, counted all like that done. We introduced and that's why we looked carefully at proportionality to try and balance some of those shortcomings so that's all I'm going to tell you about that but please read certainly read parts of the report that would interest you

Dr. Baba: Chair, i still have one last one for the judge is it okay to ask this is you might not want to answer but I would like to ask anyway so your report is will be going to parliament. I hope we can't say whether but we are looking at that being used in the elections my question is. You also think that we are on time because the election if I don't know the right word for it the lawyers have it, between August and February something is happening. I'm just looking at the practicality that you guys went through and every time you're talking, I'm feeling you from here no because. I do a lot of the work that you do you know really just on the road it gets really tiring um do you think we will be done by August and the elections will be guided by it because I thought something can also happen between August and February.

It's not nice to ask but it's bothering me and because you Judge Fatiaki could you please answer that because the doors are closed yes certainly

Justice Fatiaki: I'll answer that I have no problems thank you I am such an opinionated person I'll answer anything thank you uh you have two aspects to your question the first is will this be made a parliamentary paper the answer that is no very simple no .This report was embargoed by government yes I know we also refuse to hear it Wadan banged his head against it got slapped around because of banging his head against it but the answer is no and that's why I was so happy that for this particular session the embargo got lifted so we could talk about it and we have much to talk about there is much in the report that would benefit our people if they could get it . But that is a decision that we don't make so the answer to your question is no, the other reason why I say no is because if the news is anything to go by I thought the prime minister said we're going to have an election under this 2013 constitution our next election.

I mean that's just public comment but as far as time i sort of smile to myself I'm thinking well they pushed us to do it within three months because we thought they were aiming for February 2026 and or 2027 You know if we finished ours within the time frame they'd have all this time to think about it you know bring in whatever but you know our report wasn't easy particularly when we tried to accommodate the 2013 constitution continuing and the election coming in that was our struggle whether you have time. I mean if they can't meet our time, I'm pretty confident they won't meet yours there's no way.

Dr. Baba: So, it's not probably it's through your chair so whatever we find and whatever is embargoed could live after the new government possibly because if you are embargoed, I'm hoping we are not going to be so that's the scenario. We it's still important the work you do I think because what you said today is really refreshing although now it's embargoed. In a university an embargo is 30 years so I hope there's nothing enough in the constitution that talks about embargoing 30 years so that all the participants die. For university PHD's yeah there's more good to Morgan Tuimalevano we embargoed his thesis at university yeah so yeah well .

Dr. Fatiaki: I hope I hope they're reading a different book uh and that embargo in their sense is about power as opposed to actual time.

Dr. Baba: Thank you Judge Fatiaki thank you chair I don't know if we're allowed to ask that but I did think I wanted to just have some clarity around our work and just do it and finish it on time thank you, thank you chair.

Ms. Nabou: it's not to say that you can't use if you wanted to take a certainly a big chunk of your work

Dr. Baba: The appendix one seems like our work we you know I already thought you know it can fit there here.

Justice Fatiaki: That's a small chapter and you have more power it's still 12 hours

Dr. Fatiaki: Chairman and members thank you I thought that i would not say anything here because uh obviously there's a conflict of interest in us sitting across the table from each other and I know that we will be meeting this evening over a bowl of kava where a lot of my questions can be addressed. However, I don't have any specific questions i have reflective ones generic reflections about our various roles you mentioned that the constitution was your elephant in the room i guess for us your report is the elephant in our work and that may explain why yours is embargoed I don't know that they can embargo ours because ours is from the President' office it's not from a solicitor general's office. I'm sorry the AG's so I I'm not sure that they can embargo this in reference to what Professor Nabobo was mentioned but, you can rightly understand that for us your report is definitely the elephant in our room.

If it were to be released to the public, I understand various snippets of it have been released by members of your commission and I think that goes to the to our respective roles. Now our terms of reference is to review the entire constitution which includes the composition of parliament that the methods of election the appointment of you know the speaker which would encompasses basically the entire 2013 constitution other than the directions we had in respect of section chapter 10 relating to amnesty which we understand that the supreme court indicated that we should not be reviewing as part of this review process. And again, we've posed questions to that effect in these in-camera sessions and they've been answered candidly by various participants. Having said that our terms of reference are significantly different to yours from what I can read obviously there are areas that we've been asked to address specifically in our terms of reference, that maybe your report doesn't really reflect because it's completely from different a different genesis and different intent in terms of what they're hoping to get from us versus what they hope to get from you.

I allude for instance our terms of reference we specifically requested to engage significantly the people of the republic of Fiji in meaningful consultations on the constitution which if I read that as a layperson and not as a lawyer, it means that we come up with is a product of we the people and reflects that not our collective wisdom on this panel, but really should for the bulk of it reflect that. I hear contradictory statements in terms of how you approach that issue you, hear the public say something , you hear a lot of it being said but you've decided that it's not an issue to be addressed because we've moved beyond that.

I don't want to get down like I say to specifics I for instance I hear in our terms of reference very specifically we have four or 30 to 40 percent of the terms of reference here specific ones alluding to our in addressing aspects of indigenous protection in our constitutional review. 30 percent of the question of the terms of reference ask us to do that , whereas for instance we have nothing asking us to comply with CEDAW requirements or women's representation in our terms of reference when we are asked to review the constitution whereas I see in yours for instance you're asked to do that . Rightly so and you come up with a recommendation you can understand that from our point of view. I mean comments such as women don't vote for women that's a problem i don't understand that if women don't vote for women, women don't vote for women.

For me to think otherwise is essentially to socially engineer the outcome of the election to reflect what i consider to be a progressive move I don't know how people i don't know whether the what you tell us is genuinely reflective of what the people want in all instances .Now i take for instance the issue in our terms of reference and ask us to address aspects of protecting indigenous rights what are your thoughts about communal voting I understand that that was dispensed out very early in the piece but what did the people say to you what did the people actually say to you, because obviously if you've dispensed with that at the outset then how on earth do you represent the views of the people again your terms of reference are different if you're going to comply with the UN requirements as far as democratic elections are concerned then maybe dispensing with ethnic considerations or communal representation would be appropriate.

In our terms of reference, it isn't we have to take that into account I think also the idea that we live in this society that is completely devoid of

ethnic considerations is really quite silly. I think you've heard from the outset comments made to the effect that in social media today one of the most topical issues was raised for instance by the GCC the issue of a common name that's very emotional a lot of people are talking about it .It relates to the people of this country and so therefore, I think that the whole idea that you know communal representation which we had incidentally for the first from 1970 until 1987 should be dispensed with because it wasn't in keeping with the times therefore, then doesn't reflect what we are asked to do which is that we become a constitution written for the people of Fiji by the people of Fiji to be used for the governance of the people of Fiji .

Those are just reflections that i have in respect of some of the things that you've talked about. I'm sure we'll be talking about a lot more but I understand this aspect of the elephant in the room for you and for us. Secondary secondarily the complete approach to the issue of our review in the constitution in terms of our requirements under our terms of reference which I can tell you significantly differ from yours and, if we're to address our terms of reference then obviously there are aspects of your terms of reference that have affected how you've presented this report to us that will completely and utterly not apply because they actually contradict the requirements of our terms of reference.

Those are just some reflections there are no specific questions I guess the only question I had was really what was the feedback as far as the public was concerned in terms of communal seats my understanding from what you were saying is that they demanded it before first across the post you know my understanding is it was simple it was done we did it all the time we understood it they wanted it but you chose not to because we're with proportional representation.

I say these things because for us number one in our terms of reference is the need for us to engage the people in meaningful consultations which means we write our report it will be reflective of what they say and not what we as a panel decide is good for the country. Thank you .

Ms. Nabou

Commissioner Dr. John just to I'm sorry if we come across as giving mixed signals that was not our intent but on the way where you might have found that so for the for the bulging of the 18 year old .

You remember the chair said we had mixed views should revert to 21 years old 18 year the reason why we had to go back to 18 despite what many of those in the rural sectors told us was because as you know the EC chair is a high court judge and he would continually remind us about our obligations under CRC [convention of the rights of the child] which included that so that's why we had to give way to that. In terms of the women. I think women don't vote for women I think if you refer to page 86 of our report you could see quite clearly there the results speak for itself women if women did vote for women, we'd have 50 of parliament with women MPs.

Dr. Fatiaki: My comment there was what is the problem it's not what the outcome is the question is what is the problem is there a problem?

Ms. Nabou The problem is the voting system itself which was what we were we heard a lot the big man syndrome. The fact that in one constituency it's one person who's going to pull everybody up, the big man you know and the coattails that's why so everyone is going to vote for the big man.

Dr. Fatiaki: But along similar lines we're talking about not voting communally because we're moving away from this want us all to be uniform and you know vote for the best candidate and then at the same time you're telling us reserve seats for women because they're a special category that doesn't get represented. I'm not going to argue this I've got five daughters who will disagree with me okay but the point I'm making is that's confusing. You're saying remove communal considerations because we don't want Fijian ethnic and again i take you know the idea that i mean this was dispensed off with the idea that somehow the demographics are going to correct it

I can tell you categorically in 1970 where we had weighted communal seats the constitution of the government and parliament was significantly better representative than it is today where supposedly we should be fully represented. I think at that point in time we had something like five Indian ministers three part European and European ministers and maybe 16 or 17 iTaukei Fijian ministers.

Today it's 95 percent ITaukei, no minority and three and this is a supposed system despite the demographics. What does that say? Obviously, the system is not representative of what actually comes out and the idea that demographics is just going to take care of it doesn't

work because if demographics is going to take care of it care of it then we would have those representations. We don't.

The 10 percent of the people of this country are not represented in parliament right now and certainly 30 percent of the indigen- sorry the ITaukei, the Indo-Fijian population is not represented in parliament right now. They probably represent only five percent ten percent even though their numbers are 30 percent so, the fact that the demographics are there no the engineering of this electoral system is what's produced this result. It's actually worse off than the results that we used to get before which was more representative even though it wasn't supposedly as progressive as the one that we have right now.

Ms. Nabou

Sorry chair you know on the on the issue of rights which are mostly you know to ensure that the state does not I'm not a lawyer but the state doesn't abuse its power it's more individual.

One thing that did drop off from the 2013 constitution that dealt with that ethnic component is group rights which catered for all our and it just totally I mean the guy draft did try to bring it in but the fact that it got totally you know which I think is a bone of contention among the ITaukei especially.

Dr. Fatiaki:

And Commissioner Deidre just in respect of you know aspects to do without drafting so we've given ourselves a month to go through the past constitutions including the 2013, a month to have in camera the sort of invited and then we disperse for two months and the last two months is spent drafting with people who are. I understand we have seconder drafters that have come by assistance from abroad as well as consultants and specialists and that's our timeline that we're working on. In respect of our divisions, we agreed like you that we should stay together as a panel so for all major consultations that we will have in every major center we will all be together.

We will only split up when we go out for instance to the islands to much smaller population center's and we only split up into two for those but every we will all be together as a group all seven for those consultations to the point that you made in respect of our public consultations. Thank you.

Mr. Valenitabua: Well, it's 1.30 now we've been here two and a half hours we had allocated two hours for this consultation. Is there any other NATO which the commission of the chairman would like to raise?

Justice Fatiaki: Mr. Chairman thank you very much. I'm pretty much exhausted everything I want to say. Obviously, I'm going to pick up with my brother where we left off this evening and I think the big bowl is definitely deserved the very big bowl but no yeah that's the important I think I think the importance of it of our work in your work became clear today.

I have told him I am your elephant he said nah we are no elephants you know being the hunter that he is he said we shoot all the elephants. I said no we are the elephant you will find out. I think today's session has opened his eyes to exactly how big we are an elephant in this room relative to that particular topic and, if the availability of our report is able to provoke your thinking assist your writing .There is much in here that is uncontroversial and um you know I would urge you because writing something as important as you're involved in if you can get as much help as you can you know then I suggest you take advantage of that.

So, thank you very much for your patience thank you very much for giving us more than the time slot I requested but you know when discussions are interesting time seems almost irrelevant yes and you know unless you shut me up, I'll speak all day. So, thank you very much.

Mr. Valenitabua: If I may thank you very much for today's session. First and foremost, I have to thank you Judge Fatiaki for asking for this report through the commission our commission if it was not for your request, I would not have gotten this so I thank you very much indeed for sending me that email if I could get a copy of the report for today's discussions. Going through the report last night I haven't asked any questions today because I realized the work that you have done is applicable to us and very important to this commission here and most of the things that have been done here it also affects what the Constitutional Review Committee is going to deal with.

The recommendations I have seen the recommendations and I don't want to ask questions about those right now we'll have to discuss with the commission so thank you very much for having taken that or having asked me or directed me to get this report. Fortunately, the SG was agreeable and then we had to get the report from the Law Reform

Commission yesterday afternoon. Each commissioner now has an electronic copy which was sent to us by one of our staff Leighton and I'm sure they're going to read it properly and then it will assist us a lot.

I was listening to the discussions and it has been a lot of assistance and I thank you and your team for it. Matters have been raised by my colleagues we'll discuss those as we go along and we'll take into consideration what we have heard from you and what we will read and then we'll decide what sort of things we are going to recommend to his excellency the President of the Republic of Fiji. With those few words I thank you very much indeed for the consultation today.

It has been enlightening, it has been eye-opening and it has been very very very good I can say that. So, with those few words thank you very much and if there is anything else if there's anything else from your side or from our side we will be in touch. We will definitely be in touch if we need any opinion particularly you, your lordship, our judge.

Now I have one last question please pardon me. This was asked to Mr. Judge Mataitoga and Judge Temo in relation to the separation of powers. As a former judge I'd like to hear from you in relation to this.

Section 106 the appointment of judges. We are talking the constitution here not only the electoral commission. Section 106 the appointment of judges.

It says that the attorney general must be consulted. As a former judge, Judge Fatiaki, what is your view in relation to this? Section 106 the appointment of judges. Particularly subsections one and two. That one there, that limp of it, the consultation by the AG. What is your opinion on the separation of powers? If you may.

There has been talk that there's a lot of power given to the attorney general and it's sort of he's in control of every ministry.

Now we have here the judiciary or the judicature which should be independent. If we have the attorney general coming in and to be consulted on every appointment of judges, does that leave the judiciary impartial? Is there a breach of the separation of powers?

Justice Fatiaki: I think it is something that has happened in former during my time. It was never written into the constitution. I think the writing into the constitution is problematic. Why? Because whilst it would not appear extraordinary, prime ministers do consult their legal advisors for advice. That's totally understandable but it's the writing into the constitution that presents problems.

What are they? They're problems of perception and that's what it is. It's the perception that independence has been compromised. And so, my short answer to you is that that should be taken out. It is unnecessary. It has never been necessary. It has occurred.

Everybody knows in the past but it's never needed to be written into the mother tongue that does present a perception of compromise which I think is unfortunate.

Mr. Valenitabua: It is the duty of the attorney general anyway to advise the prime minister

Justice Fatiaki: But it doesn't have to be written in the constitution. In fact, it shouldn't. Forget about the fact that too much power is given to them. But people are saying that because it's written but informally AGs are very powerful people. They are. I mean the only problem is, the only other problem is, I'm sure it's in the constitution but it doesn't, you're in the constitution and they tell you well it's just consultation. You don't actually have to accept it. And that would be written. Consultation means blah blah blah but you don't have to accept it. But it's not necessary. The important thing is the perception.

And if it presents a perception that you know the AG has a direct involvement, has a constitutional involvement, I think that's unfortunate. Because it's never needed to be in previous constitutions. But we all know attorney generals speak to their prime ministers and vice versa. We'd be just pretending if it didn't happen. It does. But it doesn't have to be in the blue book.

Ms. Deidre: I think that the additional thing that yes it will happen in practice but what you've got here is a constitutional obligation on the prime minister to actually consult with his AG, his or her AG.

Mr. Valenitabua: Because in the 1997 constitution it was not that case. It was not the case. The appointment would go to the standing committee, parliamentary committee, not the attorney general.

Justice Fatiaki: You know it certainly, definitely, I would strongly recommend that that particular consultation be removed for the reasons that I've seen. Very well.

Mr. Valenitabua: Thank you very much Judge Fatiaki, Ms. Brooks and Ms. Qoro. It's been a pleasure. If we have something to talk about, please check your emails.

----------End of Session [15-4-2026] ----------

Jioji Kotobalavu

Presentation of Mr . Joji Kotobalavu & Mr.Emitai Boladuadua

Date: 16/04/2026

Time: 2.00PM-4.05PM

Mr. Valenitabua: It is a pleasure having you gentlemen here today. We really appreciate your attendance.

Mr. Boladuadua: Can you hear it?

Mr. Kotobalavu: I can't, so he'll translate for me because that's why I have him here. But the important thing is for you to hear me. And if you ask questions, he'll take them down and then I shall answer.

Mr. Valenitabua: We welcome you. We know that you know why we are here, the Constitution Review Committee. We have received your submissions and we await your oral submissions this afternoon. I will not say more. I will now pass the mic to you, Mr. Kotobalavu, to make your submissions to the Commission. Thank you.

Mr. Kotobalavu: Can I begin? Alright, well thank you so much for giving us time to appear before you. Now I had asked for an in-camera session with you because I did not want the media to be present when I talk about some of the concerns of the Great Council of Chiefs. It is better that we discuss in confidence. And secondly, thank you so much for giving us this time because I wanted to be of help to you in identifying key issues of the Constitution, which in my view must be covered in any review of the 2013 Constitution. So, hopefully, in the summary of issues I have identified, that will help you in your wider consultations with the public. Because you go with particular topics. Don't ask the public for any submission because you'll get all kinds of rubbish. It has to be focused. Focus on particular topics, subjects. So, I hope that in the process I will be helping you in identifying some of those topics.

So, what I'm talking to is this briefing paper, Summary of Recommendations. So, we begin with, I am suggesting, some improvements to the preamble of the Constitution. This is important because it reflects some of the concerns conveyed to you by the Great Council of Chiefs.

The preamble. What is the preamble of the Constitution? It says, the preamble is essentially the introduction. It is to explain who we are as the people of Fiji. It is to point out significant events in our history and

then to declare our common and collective aspiration. That's the purpose of the first part, the introduction. So, the preamble is structured into two parts. General recognitions. The first part, general statements of recognition. The second part are declarations.

Now, in my review, the declarations in the first page of the Constitution is okay. Very good. There is no need for any name change. But, the recognition part, we need to make some very important additions.

And hopefully this will satisfy the Great Council of Chiefs and the Christian Churches. Very important. If you want to counter any proposal for declaring a Christian state, you must state this in the preamble.

To satisfy the Methodists especially that the arrival of Christianity has been recognized. So, I'm suggesting the recognitions part in the preamble needs some additions. To begin with, paragraph one in the declaration must recognize expressly that the iTaukei and Rotuma communities were the first to arrive and settle in Fiji. And by virtue of that, they are entitled to be referred to and respected as indigenous communities. Okay? So, that's paragraph one. And the rights conferred to them in the Constitution. Because the current statement simply assumes that we are the iTaukei and the Rotuma are the indigenous people. What we need to say, how, how, how, why, what is the basis of that? Because they were the first to arrive in this country. Very important. And that will help with the argument about the name. Because, in my view, it satisfies the requirement iTaukei because they were the first to arrive in this country. So, that's paragraph one.

Paragraph two, it is very important that the preamble recognizes the arrival of Christianity in Fiji. And the profound impact of this on the way of life of the people. Remember cannibalism? Okay? All that came to an end. And the explanatory part explains. Three Tahitian catechist teachers arrived in Oneata, my island. They're buried there. And not far from where they're buried is a water hole which never runs dry. It's amazing. You know, this island is blessed because these catechists were the first to arrive. They arrived in Lakeba and then they transferred to Oneata. That's 1830.

And then in 1835, two Western missionaries arrived at Lakeba. You know, this is very important for the Methodist people to recognize. The Constitution recognizes the arrival of Christianity. So, here, they were Western missionaries, Reverend William Cross and Reverend David

Kagil. They arrived at Lakeba in 1835. So, I trust you will recognize the significance of recognition of this in the preamble. The arrival of Christianity and its profound impact on the way of life of the people thereafter.

Okay. Number three. This is what the great Council of Chief was after. And you must put it in. Recognition of the significance of the iTaukei of the Dead of Session of 1874. Okay? Very important. Because, let me explain. Recognizes great significance to the iTaukei of the Dead of Session on October 10, 1874. When, in reciprocation to the High Chiefs of Fiji, ceding sovereignty over their islands to the British Crown, Great Britain recognized their rights under English common law. You know, the lawyers know this. Under English common law, to their ancestral tribal land. See, that's the first. That's the first thing the British granted in return. Okay? Ownership in common by the ITaukei, under British common law, of their ancestral land together with natural resources.

Number two, you know, based on the custom, usage, and tradition. Number two is reciprocation to the dead. Great Britain recognized the right of self-determination of the ITaukei to administer their governance through their provinces. You know, sometimes you question, why is it that in the governance of Fiji, we have a separate Ministry of iTaukei Affairs, and they administer the 14 provinces. It starts from this. It must be recognized, right? It's their right of self-determination. So, there's a connection. Because if people ask, you know, why, you know, we used to have advisory council for the non-iTaukei. They're gone. So why are the iTaukei being privileged? It derives from this. It's their right of self-determination to govern themselves through their provinces.

Number three, in reciprocation to the deed of cession, sovereignty over Fiji to the British Crown, Great Britain recognized the authority of the chiefs over their people, provided they exercised that power, authority, according to law. That's why the GCC has to go back to the constitution. They have to come back to the constitution. They're right, as individual chiefs, as a collective, the GCC is the apex body of the iTaukei. So, it must be recognized in the 2013 constitution. It was taken out by the Bainimarama. So, it's very important that this is recognized right from the beginning in the preamble.

And then, next paragraph, very important. John, where's John? John here? Very important for the Rotuman's. Because I always feel that the Rotuman's have not been justly and fairly treated. You see, at the time of

the deed of cession, the Methodist Church, they always referred to "Viti kei Rotuma" Fiji and Rotuma, because they were separate. They were separate jurisdictions. The high chiefs of Fiji ceded sovereignty over Fiji to Great Britain. Separately, that was 1874. In 1879, some say 1881, the chiefs of Rotuma ceded sovereignty over the islands to the British Crown. And in reciprocation, Great Britain did the same with them.

It must be recognized in the preamble, because I will further argue that in the body of the constitution, there must be, in addition to the express recognition of the ITaukei, the right of self-determination of the GCC to be in the constitution, the right of Rotuman people to be recognized. Because their right of self-determination is registered in Rotuma, the Rotuma Act. The iTaukei, their right to their lands is recognized in the iTaukei Lands Act, together with Section 28 and 30 of the constitution. Rotuma needs to be recognized. So, to begin with, it has to be stated in the preamble. So that's Rotuma.

And for paragraphs 5 and 6, it's okay. We just cite what is there at the moment. The recognition of the arrival in Fiji of descendants of indentured workers from British India and Melanesia, meaning Solomon Islands and Vanuatu. You know, this is another forgotten community. You know, when I was a child, I was attending school in Lautoka. Many of the students were from this Solomon Islands settlement in Navutu, in Lautoka, here in Suva, in Wailoku. You have a Melanesian community. They're forgotten. They have no rights. So, it is time that they are recognized. And so it's there. So that's all about in the preamble. Needs improvement by the insertion of those paragraphs. It's all about recognition. Does anybody have any questions?

Mr. Valenitabua: Just carry on, sir. Just carry on.

Mr. Valenitabua: Okay, now we move on to the second subject, which is, okay, just on my proposals, improvements to the electoral provision of the current. Number one, you must impress support of government, parliament, in your report that before the general elections, which must be held between August and the first week of January 2007, okay, the Electoral Act of 2014 must be altered, must be amended, so that the design of the voting form. Remember, okay, currently the voting form consists of numbers. Candidates are listed as numbers. Very confusing. That's why one or two people have got in, because they thought they were voted for by Bainimarama. So that needs to be altered so that the voting form lists the candidate in terms of name, party affiliation, and a photograph.

Makes it easier for a candidate to pick, you know, the candidates of their free choice. So that's one.

Number two, the 2013 Constitution itself, the electoral provisions of the 2013 Constitution. Now some of you may, you know, might have read that long article by Wadan Narseys, Professor Wadan Narsey, in yesterday's paper about their report. You know, that's utter rubbish. You know, I tell you, you ignore, there must be a reason why the government has not released their report. They have gone into so much detail about the fairness of the system of election. Make sure that 25% are women. You know, when you study an election system, there are two aspects that you need to take into account simultaneously. First, the voting system of citizens voting for their members of parliament. Second, the impact of the voting, the system of elections on the kind of government that will result. Okay? My concern with what they have recommended is that we will end up like New Zealand. Okay? Endless, okay, coalitions, and, you know, there's no majority government.

You can't have an effective government unless you have a majority government. No witness. After the 2014 elections, 2020 elections, when the government won with a clear majority, very good. They govern with clear decisions because they will not be challenged. That's what I mean by majority government. That's the kind, so in other words, we have an election system that produces that.

Now, right now, Rabuka's government started with a big mess in that they needed Sodelpa with their three to give them the majority. They demanded everything. They demanded the key ministries of education and business affairs. They demanded ambassadorships. But all that has gone in ten former members of the Fiji First crossed the floor and joined Rabuka's party. So, now we have a majoritarian government.

So, the point I'm making is that when you consider, okay, the efficacy of the election system recommended by the judges for the election commission, and the current one in 2013, always bear in mind not just the system of election, but the impact of it on the kind of government it produces. We want an election system that is fair in terms of its representation of individuals and communities, but also fair in terms of the kind of government it will yield. So, I'm all in favor of retaining the system in the 2013 constitution with some minor adjustments.

Minor adjustments needed for two fundamental reasons. Because currently, the election system is resulting in the election only of iTaukei and Indo-Fijian MP. And what you're going to see with the rise in iTaukei population from 57% to, I think, 68%, the number of iTaukei MP's will continue to rise. he Indo-Fijian population is coming down. Indo-Fijian MP's are coming down. So, we need to make some amendments to make it possible for other minority communities to be elected. That's one. Okay?

Another current, very unfair aspect of the current system is the 5% threshold. The 5% threshold on the basis that the whole Fiji is one undivided constituency. So, 5% at the last election was set at 23,000 votes. So, in other words, Mahendra Chaudhary's party and Savenaca Narube failed to reach that target of 5%, the 23,000. So, we need to address it because it's very unfair to small parties and independent candidates. So, on the basis of that, all that I'm suggesting is we go back to what Professor Yash Ghai had recommended. Very good. Because Professor Yash Ghai had taken into account the recommendations of, you know, the John Sami, those who voted that Mahendra Chaudhary. And essentially, Professor Yash Ghai recommended that instead of one single undivided constituency, you create three regionals. Central Division, Western Division, Northern Division. Okay? And the seats will be allocated accordingly.

In addition, the Eastern Division, because of its scattered nature and the low population, should be allowed to elect their members on simple majority votes. So, I stick to that. Very simple. I don't go into other details. Now, why the Wadan Narsey team went into dealing with other women? See, my view is that when you look at the election system in the 2013 elections, don't just look at the electoral provision. Also look at other provisions.

Now that we're going to restore the Senate in the 2013 elections, we're going to restore the Senate. Okay? Where the Bose Levu Vakaturaga will nominate 14 members, the Council of Rotuma will nominate one, the Prime Minister will nominate eight, and the Leader of the Opposition will nominate seven. You know what? Those 15 nominated by the Prime Minister and the Leader of the Opposition can make up for women representation.

In fact, by that method, you know, women selected will be, you know, much better calibre to go and contribute in Parliament. People like the

Vice-Chancellor of the FNU, the University of Fiji. Okay? See this Chinese lady? Who's the Chinese lady? She's done so much for this country. We've never had a Chinese. She's a woman. She's a wife of...

Professor Baba: Seeto. Yeah, yeah. Jenny Sito.

Mr. Kotobalavu: Jenny Sito. Yeah, Jenny Sito. Jenny Sito. She's a woman. That's the kind of woman. Yeah. You, see? We're now bringing to the Parliament quality women, not just, you know, women who got in last time and who cheated on their dresses.

Secondly, you need to take into account culture. You know, in the iTaukei culture, the women have their place. They sit at the bottom. The men does all the decision-making. So, what if you elect so many women? Where do you get your ministers? And if you make six women to be full ministers, you know, a lot of people is going to be very uncomfortable with it. You know, when they perform the iTaukei ceremony, you're welcome. You know, men presenting the award to women, we need to be sensitive. So, my view, the increased representation of professional women through the Senate is much better. And their role is to contribute to the debate on bills and policies in the Senate. And so don't just look at the electoral provision for the representation of women. Look also at the Senate.

Does that make sense? Right. So that's the election system. By the creation of the three regional constituencies, Central Division, Western Division, Northern Division, hopefully we're going to see some, in addition to the iTaukei and Indo-Fijian, some from the other communities. And also, the 5% threshold will be brought down from circa 23,000, 25,000 to about around 15,000. That's more manageable. That's fairer. Very simple. And Rabuka knows that the current system is very favorable. And I'm sure he will resist any fundamental change. Because last election, he got 79,000 votes. This time around, he's going to exceed that. So, bear in mind when you make a recommendation. I'm sure this is why the result of the other commission has not been published. I don't know why it has not been released. But I suspect because people have calculated the impact on election results and system of government. It will lead to instability. Okay. It's the system of election.

Now we move on. Restore the Senate in the Constitution. There are various specifications. Restore the Senate to allow the GCC to nominate

14 members, allow the Council of Rotuma to nominate one member, and to allow the Prime Minister and the Leader of the Opposition to, in their nomination of 15 members, to make up for the gaps in representation in the House, lower House. For example, more women, professional women, okay, from the different ethnic groups. You make up for that. Since there is a third couple representing from the minority communities in the lower House, make up for that by nomination. So that's why the Senate is very important for restoration. Okay.

So, it's the upper House. And it will satisfy the great Council of Chiefs because it gives them an opportunity to review legislation, policies, and then the Rotuman's likewise, to ensure that nothing ever harms the well-being and interest of their community. Because under the iTaukei Act and the Rotuma Act, the responsibility of the great Council of Chiefs and the Council of Rotuma is to look after the good governance and well-being of their communities. That's their role in that Senate. So that's it. Restore the Senate for all those reasons.

Now, restore the GCC. This is a big issue because without consulting anybody, Bainimarama abolishes them, they have a right to be restored. They are the apex body of the iTaukei administration. They have a right to be restored because their duty under the Act is to look after the good governance and well-being of the iTaukei. By restoring the GCC in the Constitution, that will then provide the legal basis for them to make nominations to the Senate. You see, the two go together.

Likewise, for the first time, I am strongly urging upon this Commission to recommend that in addition to the recognition of the great Council of Chiefs, the Council of Rotuma be also recognized because they have their own separate legislation. How do you justify the Council of Rotuma nominating a member of the Senate? The legal basis must be recognition in the Constitution of the Rotuma Council itself. It's set up in the Rotuma Act that just like the ITaukei Act, the role of the Council is to look after the well-being and good governance of their community. So, they must be treated equally. It goes back to the preamble, remember? There's a paragraph there to recognize the legal session of Rotuma. You can see the linkages.

It starts from the preamble, and now we see it in the body. Okay, so that's restoration of the Senate, great Council of Chiefs, and now Council of Rotuma. This is going to be a very interesting subject for you.

You will need to consult again with the great Council of Chiefs because who? Who appoints the President? Under the 1997 Constitution, the President is appointed by and the Vice President is appointed by the great Council of Chiefs. But under the 2013 Constitution, the President, like the Office of Prime Minister and Leader of the Opposition, are all appointed by comparative elections in the House of Representatives. So, we have to decide.

Do we go back to the great Council of Chiefs deciding who our President should be? Or should we leave it, we continue the current function together with the qualifications for appointment as set out in the current Constitution? Now obviously some of these young chiefs who are making submissions to you have in mind, you know, their ambition. They can't get to high positions through elections, so they're hoping that by virtue of their position as Vice President of the Great Council of Chiefs, that one day they're going to be appointed by the GCC as President of the Republic of the Fiji. Okay, we now live in a parliamentary democracy. We have to stand firm. So therefore, my strong recommendation is that the GCC no longer has any role in the appointment of the President. The only role of the GCC is to, in the Senate, to make sure that no legislation, no policy in the House ever harms the interests of the Fiji. The same for Rotuma. Okay, now this is going to be a very important one for you because I'm sure the GCC will have very strong views on it. But democracy, you know, let me tell you about a little bit of history.

When you go back to the 1930s up to the coup of 87, political leadership amongst the iTaukei has always been through our traditional chiefs. You know, I joined the Colonial Service in 1968-69, and I was taken to the Prime Minister's office. And there I used to attend, as a junior secretary, a meeting of the Council, the equivalent of Cabinet, chaired by the Governor. Okay, the members of all, you know, high-ranking 'kaivalagi', officials of the colonial government. The only local representation were the paramount chiefs Ratu Sir Kamisese Mara ,Ratu Sir Edward Cakobau, Ratu Penaia Kadavulevu and Ratu George. Amazing. And I know that leadership. Then the coup of 87 happened. A few years later, in 1999, the Chiefs of Fiji and the people say, let's set up our own political party to ensure that the interests and the rights of the iTaukei are well protected. So, they decided to found a party, the SVT, [Soqosoqo Vakavulewa ni iTaukei]. So, there was an election competition. And the two candidates were Sitiveni Rabuka, the coup leader, who was declared a hero by all in iTaukei, and Adi Lala Mara, the wife of the Prime Minister, Ratu Mara. And who won? Rabuka. From that moment

onwards, okay, political leadership amongst the iTaukei has been through democratic elections. No longer through chiefly succession, chiefly status. So that was a key moment. Rabuka was a, he broke the tradition. So that today, the iTaukei accepts political leadership. It must be by a democratic election, no longer by chiefly status. So those in the GCC who are aspiring to restore the arrangement in the 1997 constitution that they should appoint a president, I think they're out of date. We now live in a system of parliamentary democracy. That requires a lot of courage from you. Stand firm. That's what I want to say on that.

So, on the common name, now everybody knows about that. I believe that the iTaukei economy captures the rights of the iTaukei interest. Because first, they were the first to arrive in Fiji. The iTaukei. They were the first nation. You know, the iTaukei and Rotuman communities. They were the first to arrive and settle in Fiji. Therefore, they are British indigenous communities. They are the iTaukei.

Second, they are the iTaukei for another reason. Because of their deductions. Through that, the British government recognized their right to their lands, their natural resources, the right of self-determination, the right of the chiefs. Very important. So, iTaukei, this is if we are referring to ourselves as a society. You know, sociologically.

Who are we as a society? We are made up of multi-ethnic communities. And so, within that, to me, it is proper for the iTaukei to be referred to as the iTaukei. Because of what I've explained. But, if we are referring to ourselves as a state, it's different. We're not talking about ourselves as a society, but as a state. The sovereign democratic republic of a state of Fiji The state republic of Fiji. Okay? The foundation of our identity is our citizenship. Irrespective of our ethnic, religious, or cultural background, as citizens, we are equal in our fundamental rights and freedom. We are individuals. We are not members of a community. So, in looking at identity names, we need to look at the context.

If you look at the context of we as a society, then iTaukei has every right to be called iTaukei. Okay? The others, Indochina, etc. But, if we are looking at ourselves as a state, the republic of the state of Fiji, then we, as a political community, we are made up of individual persons with equal fundamental rights. And what we have in common is our common citizenship. And what that confers upon us, equal rights. Therefore, it is only natural that we should all be called Fijians.

Now, if the GCC still don't have the way we are, you have only one other option to consider, and that is to recommend that we change the title of Fiji instead of, as a state, instead of calling ourselves as a sovereign, democratic republic of the state of Fiji, we call ourselves the Republic of the Fiji Islands. Then, everybody, all the citizens of the state of the Fiji Islands can be called Fiji Islanders. Thus, reserving the name Fijian to the iTaukei, if they want to. So, my suggestion to you, just present these two options. Let the government and parliament decide.

Last one. The procedures to be followed when government and parliament consider your report. And I ask for this in-camera seating because I don't want to discuss this in the presence of the media. And also, because I feel that on this particular issue, Chairman, I would recommend to you that you call personally on Prime Minister Sitiveni Rabuka and ask for his views, his guidance. Okay? You are required to submit your report by the end of August. The supervisor of elections already announced that elections must be held between August this year and the first week of January next year. There just isn't time for government and parliament to process your report. Okay? Get it through parliament and then the referendum. Okay? It's unrealistic. And also, in order for your report and recommendations to be given fair and just treatment, I would respectfully suggest, Chairman, that you call on Prime Minister Sitiveni Rabuka and suggest to him. Okay? Because of time constraints. Okay?

And second, in order that the report of the commission is dealt with in a non-partisan, okay, combined government and opposition approach, you proceed this year with elections in December. Go ahead. Under the current constitution. That would be very good for him because he'd want re-election. No problem.

It will also give us an opportunity to gauge, okay, the effectiveness of this constitution in producing the results of the election of MP's and the kind of government that flows from that. But, so essentially, for Rabuka to agree that, okay, they receive your report. Okay? Because you are required to submit by August. They table it in Parliament and ask the Speaker, Mr. Speaker, okay, we're tabling this report. Okay, we request, can you hold on to this until after the election? When the government and the opposition are elected following the German elections, okay, this report should then be considered. So, in the meantime, hold the elections within the time frame already set by the Supervisory Election.

In other words, as of latest by first week of January, 2027. And then, after the elections, after Parliament has elected the Prime Minister, the leader of the opposition, they should then, as was done by Rabuka and Jay Ram Reddy in the formulation of the 1990 constitution, adopt a joint united approach. And that is, for the Prime Minister and the leader of the opposition to jointly move a motion to establish in the House a Joint Select Committee on the Review of the Constitution with the PM as Chair and the leader of the opposition as Deputy Chair. It is a joint committee that looks at your report as a unified body, as a constituency body. See, not partisan, not just the government. You know, it's a combination, government, opposition.

And the aim is to secure, in looking at your recommendation, is to secure unanimous support for what they would have to produce, the 2013 Amendment Bill. That bill, the aim, the objective, is to have it approved by the House of Representatives by unanimous vote. Wouldn't that be wonderful? Because we're acting as one nation.

In other words, that's very important because in our constitution, requires two kinds of actions. First is to establish its legality. By going through the constitutional process, the process set up in the constitution, first reading, second reading, third reading, so on, that's legality.

So, by processing the 2013 Constitution Amendment Bill through the process, that satisfies the legality requirement. In order to satisfy the other requirement, which is democratic legitimacy, it requires, okay, the Constitution Amendment Bill requires the support not only of the general public that you will be consulting, but all the members of parliament, because all the members of the House of Representatives will be acting as representatives of the people. When they put all of them, irrespective of their party, put their signature in favor of that bill, they are establishing the democratic legitimacy of the new amendment constitution. And then after that, the ratification in the referendum will be an easy process. And thereafter, when the constitution bill is promulgated, you know what it is going to be called? It's not going to be called 213 Constitution, so and so. It will be called Constitution of the Republic of Fiji or Constitution of the Republic of Fiji Island 2027.

Does it make sense? Okay? It will be a new constitution. And it will fulfill, okay, what is stated right in the preamble. Remember, the beginning of the preamble, we are the people of Fiji. Then that usage is then justified.

If a unified approach is adopted in looking at your report and your processing of it, and the 2013 constitution amendment bill. Okay? That's all I have to say. Thank you. Okay. Thank you.

Mr. Valenitabua: Vinaka Vakalevu Mr. Kotobalavu. Very enlightening. The commissioners might want to ask a number of questions.

Mr. Kotobalavu: Yes, yes, yes. Would that be all right? You can ask questions now. Yes, yes, yes. He will write down the questions for me because at an old age, I can't hear properly. So go ahead, please.

Mr. Valenitabua: I'm reaching out for the 1990, for the constitution prior to Mr. Jai Ram Reddy and Mr. Rabuka. That was the 1990 constitution. The amendment process in the 1990 constitution what I'm trying to get at, what I'm trying to get at is the bi -partisan suggestion. In the 2013 constitution, there is a provision, there is a provision for amendment in chapter 11 of the constitution. That is the amendment provision. It does not say anything about a bi-partisan process. Could you please enlighten us on how we can go around that constitutional provision?

Mr. Boladuadua: In the 2013 constitution, there is an amendment provision in chapter 11. Chapter 11. There is no mention of a bi-partisan process. Can you suggest a way of coming up with a bi-partisan process?

Mr. Kotobalavu: Okay, it's not written anywhere. So, it's a parliamentary process. They meet after the election following the appointment of the Prime Minister by election and the leader of the opposition. They consult. You know, it'll be an act of restatement by the Prime Minister. He's acting about being a political leader. I am doing this in the interest of the nation. And this is what happened in the formulation of the 1997 constitution. Prime Minister convenes a meeting with the leader of the opposition. They talk, right? For the amendment to the constitution.

Let us adopt a national approach, a united national approach, a bi-partisan approach. Let js agree jointly moves a motion to propose that the House establishes a joint select committee on the review of the constitution. The objective is that this joint committee with the Prime Minister as chair, the leader of the opposition as deputy chair, is then to be tasked with the duty to critically examine your report and recommendation. And then, maybe with the assistance of the Law Reform Commission, draft the 2013 amendment bill. That's how it's

done. It's a parliamentary process. t's not written anywhere. That's why I'm suggesting your consultation with Mr. Rabuka. First, for him to agree that we must proceed first with the election because of a time constraint.

Second, for him to strongly suggest to him, okay, you and Jai Ram Reddy very successfully, outstanding, produced the 1997 constitution via a joint united approach, government opposition. Can you do the same after the election? After the election of U.S. Prime Minister and the leader of the opposition, can the two of you agree to table a joint motion in the House proposing the establishment of a joint select committee on the constitution review? The purpose of the joint committee is then to consider, scrutinize your report and draft the 2013 amendment bill. And then, the aim, because you are working together, is to secure unanimous approval for this bill.

Just as they did with the 1997. This is what I'm saying. If they secure unanimous approval for the bill, then that fully satisfies the other requirement of constitution making, full democratic legitimacy. Justifying what will come out after the referendum, justifying the statement right at the beginning of the preamble, we the people of Fiji, this is our constitution. You can't, you know, we the people of Fiji cannot be used unless, unless the bill is unanimously approved. So, that's the process. It's not written in law. It's an act of statesmanship. This is why the consultation with the Prime Minister is very important. He knows. Softened him up by telling him, you know, no doubt he will win the next election because already in the last election he got 79,000 votes. Please turn him around. He'll be even more. And he's already, his party already has a two-thirds majority in the House. Right now, they have a two-thirds majority necessary for amendment. But they shouldn't do it. They should not adopt a bi-partisan approach. So, I'll come again. You know, your consultation with the Prime Minister is going to be very, very important. The sooner you go and see him, the better. To guide the work of your coalition.

Mr. Valenitabua: Thank you, sir.

Dr. Gounder: So, I just want to thank Mr. Kotobalavu for coming here and for your presentation. It's been very enlightening. And you have been a civil servant for a very, very long time. And we thank you for your service. And thank you for the wisdom that you have shared with us today. Thank you very much.

Mr. Kotobalavu: I think you should thank Mr. Emitai because I think he was the teacher of most of you, right? I should say, Mr. Fatiaki, he and I, when we were together at QVS, your father was our biology teacher. So, it's a long connection. And some of you were when he was at RKS. So, he's a very old man with big connections. Thank you, thank you,

Dr. Baba: ` Thank you so much. Through you Chair Of course, today has been very good for us. We've heard a few suggestions so far. But today we were also talking about what you've just answered us. As of yesterday, a number of us were worrying about the process. How do we move, eh? So that this, what we are doing, will become a map to the future where we all live together comfortably. But I'd just like to also add in terms of your work at ESCAP that we want to recognize the weight of your contribution, both of you today. Because not only did you head ESCAP for young lecturers like Nilesh, may not know that you were advising economic development for the Pacific. That some of us don't know.

I'd like to recognize the weight of your suggestion today. Not only that, but you do, you have worked under how many Prime Ministers of the country, where you are telling Sir to go and talk to the Prime Minister. I think that one, even if everything else is taken on board, is written, that's the step that we needed to be told today, I felt. So, thank you. Thank you for your wise counsel. When you two were coming, I thought personally, having worked with you, the both of you, that this is going to be fascinating. And thank you for making it here. Thank you, Ambassador, for coming with Sir. Thank you.

Ms. Nailatikau: If I may, Chair, Mr. Kotobalavu and Mr. Boladuadua as the youngest, I won't belabor the point of this commission, I want to convey my sincere gratitude to you both. It has been a very moving experience to hear your contributions. We look at you and see our parents and ourselves in future years, and if in future we remain as passionate and as involved in the future of this country as you are, I think we have much success to look forward to.

A shared future, as Professor Baba has mentioned. Something I also wanted to extend gratitude for is also an opportunity to move from politicking to statesmanship or states personship, and I think that's all, it's become all the rarer in the current generation, something that we have a great appetite to see, and something that we also have an opportunity to encourage with your kind suggestions to us today. So, I

just wanted to extend amongst many things, give gratitude to you, Sirs, for advising us today.

Mr. Beg: Chair, through you, Mr. Kotobalavu and Master Emitai, thank you very much for your deliberations today. I thoroughly enjoyed it. Mr. Kotobalavu, can you hear me? Shall I shout a little bit? Can you hear me? Can you hear him?

Mr. Boladuadua: Can you hear him?

Mr. Kotobalavu: No.

Mr. Beg: That's alright. I just want to say thank you. I will make it later on. The part I liked the most the part I liked the most was your talk around the Senate, in how that could be a reinforcing foundation for stability, also bringing back some insanity as well, the way you put it. Insanity, sorry. My apologies. But yeah, I kind of found that very riveting in the way you stress that across. And to you, Master Matai, thank you very much for being the right-hand man you are and I really appreciate you being here today and thank you for your presence.

Mr. Boladuadua: I just reiterate the point that, you know, in order for you to achieve enormous success in what you will produce and the way it's going to be used by the government and the opposition, hopefully after the next election, the hope is that they will adopt a united bi-Partisan approach so that the end product of what will emerge constitutional PD 2027 was promulgated with the unanimous support of the House of Representatives and a very high degree of support in the referendum to ratify the bill.

I think that should be your aim, you know, that for all your hard work, you know, it should not be dealt with on a bi-partisan, because it will flop. But if you're able to persuade the Prime Minister that after the next election they adopt the same approach he adopted with Jay Ram Reddy in the preparation formulation of the 1970 constitution, you will achieve tremendous success and he'll take credit for it. He'll take credit because it's an act of impeachment by him.

But you as a commission, you know, you say, well, we did it all. Okay? Because not only did we get the views of the people, we were then able to persuade the government and the opposition to act together and to bring about the newly amended constitution by unanimous support, bi-

partisan. So, that's all I'm hoping for, that you're going to be very successful in your mission.

Mr. Boladuadua: Do you want to say something, Master. Thank you, Mr. Chairman. A few just comments. Would you have any terms of reference for this work?

Mr. Valenitabua: Yes. Would you have a report for that later, please? After this we'll provide a report.

Mr. Beg: I was interested in Dr. Reagan's comment at FNU about the number of times the AG and the PM appeared in the constitution. And I went ahead and did the count myself. And I came up with these numbers. For the Attorney General, 1997 constitution, the Attorney General came up 19 times, and in 2013, came up 62 times. For the Prime Minister, 1997 constitution came up 71 times, 2013, 97 times. Now I noticed why A.G wanted to have his name mentioned many times. I'll quote you one example. Section 115 on FICAC. It says that the FICAC shall be independent, and body and shall not be subject to the directions or control of any person or authority. Subsection 9 says the commission, the FICAC, shall provide this is the punchline, shall provide regular updates and advice to the Attorney General on any matter relating to its functions and responsibilities. I believe that- that section allows the A.G to tell FICAC what it should do. So FICAC is normally independent. And the thirdly, subsection 12 says on the remuneration.

Dr. Baba: Sorry sir, we are just trying to find section 152, which part?

Mr. Boladuadua: FICAC section 115 115? Oh, not 151. Sorry, 115. I think it's page 100. Page 100? Okay, wait sir. 100 100

Dr. Baba: I was looking at 152.

Mr. Boladuadua: Page 100 115

Dr. Baba: Page 100, what does it say?

Mr. Boladuadua: Page 101 subsection 6 says the commission shall be independent and shall not be subject to the direction or control of any person or authority Are you looking at the small one, sir?

Dr. Baba: We got the big pages. Check down Check down 67 on the big page Okay, 67, sir. Mere's got the page for you, sir. Mere, 67 on the big one.

Dr. Baba: Alright. 67, sir. Yeah, we have 67. Oh, sorry.

Mr. Boladuadua: And subsection 9 the commission allows the Attorney General to influence FICAC because subsection 9 says the commission shall provide regular updates and advice to the Attorney General on any matter relating to its functions and responsibilities.

Ms. Nailatikau: That's subsection 12 in our copy.

Mr. Boladuadua: And even furthermore regarding remuneration it has to be agreed to by the Attorney General. This is subsection 12 on my page 102. That's the kind of control this person tries to do in that constitution. That's why he's mentioned how many times? 62 times when in the 97 constitution he's only mentioned 19 times. This is just an example of a control freak that we see in that constitution. So that's why I suppose BLV is saying we should throw the whole thing out the window. TOR, that's what I wanted to ask and the process for anybody to make submissions to the commission. How do we go about that? If I may ask.

Mr. Valenitabua: We are inviting submissions from members of the public. From the members of the people of the country. We have advertised twice already I believe. A third one will be put up on the newspapers on Saturday. Now I understand that Mr. Kotobalavu came through Dr. Fatiaki through email and then Dr. Fatiaki forwarded the email to me and then I contacted Mr. Kotobalavu directly. Now there is one way of doing it. The other is just to give us a call inform our team that someone wants to make a submission and then we'll give a time and a date. Or a date and a time. If we still have them.

From the 2nd of May we will be going out to the country. So, there will be 2 teams traveling different directions visiting various places for this purpose. So, if someone has been inquiring maybe the easiest question to tell him or her is to contact us and then we can give him or her a date for him to appear here before us. But that would be after we come back from the public consultations around the country.

Mr. Boladuadua: Thank you. Chair.

Dr. Baba: Can I, Mr. Boladuadua because I know that you have a big following behind you. Today I gave to FNU the whole so if I get your email, I used to have your email I'll send you the public consultation so it's easy for you to forward to FTA, FTU and retired teachers because I know that's your intention maybe. So, if I just find that email, I've sent to FNU, I'll send to you. Is it still EB Boladuadua sir? Chair, through you.

Mr. Boladuadua: EL Boladuadua.

Dr. Baba: OK, so it's... I'll help the chair answer to you because I know you want to just forward that elboladuadua@gmail. I'll also send what chair Boladuadua was sending out. It's easy. At gmail.com Alright, sir. We'll send you now so you can send to your constituent parts. I have it.

Mr. Boladuadua: The last point is I went to a inaugural seminar in commemoration of Sir Moti Tikaram. I don't know the year. That is School of Law at the University of Fiji. He was present. Attorney General Tony Gates was present. All the lawyers were present. And he Justice Moti he has since died. He analyzed the 1970 Constitution 1997 Constitution 1990 Constitution and the 2013 Constitution. And he dwelt on 2013 Constitution to say that to try to bring out the fact that especially the preamble saying we the people of Fiji, etc. t's all a load of hogwash kind of thing. And he ended his lecture by saying that this supreme law is therefore a supreme lie. That was his conclusion. I thought I'd mention that this afternoon. It's a pretty it's a good summary of what the whole process is. We've been fooled and he's been imposed on us and we've been having problems with it. So, we we're happy with the work of the Commission and hopefully better things will come out of the result of your work. Thank you very much.

Mr. Valenitabua: Mr. Kotobalavu and Mr. Boladuadua what we have been discussing today is recorded. And the copies will be available to us at the latest tomorrow morning. So now that we have your email address, we will be able to send you the transcript of what had transpired here today for your reading and if you need to or if you wish to add to what you told us today you are welcome, sirs. In addition to that the term of reference the term of reference is with the staff our support staff we are going to have that term of reference attached together with what Professor Baba is preparing and then we'll send them to you. Apart from that thank you very much indeed. Thank you very much indeed for the paper and the oral submission. I was reading through the oral submission Mr. Kotobalavu very very helpful. And I was expecting you know I was waiting for your attendance today with Mr. Boladuadua so that we can hear from you personally. It is going to be helpful the Senate yes, a lot of people are saying we have to bring back the Senate GCC , yes people are saying that we have to bring back the GCC and some other provisions but your submissions will be very grateful will be very helpful to us and we are grateful for that. Thank you very much.

Mr. Boladuadua: Thank you very much on our behalf. Thank you very much. Good luck.

Mr. Kotobalavu: Can I just raise one issue, eh? Which is it's created a lot of legal controversy. Who advises the President when he exercises his executive authority? It's a very important question. Because all these legal problems we've seen of late arose from this. Because under section 82, it is made out very clearly. The president, in his exercise of his executive authority, receives advice from cabinets and so on. Essentially from the Prime Minister.

But there is a minor law, not the Constitution, there is a minor law which says, in exercising his executive authority, the president acts on the advice of the Judicial Services Commission. That is ultra-vice. An ordinary act, whereas the Constitution says, section 82, the president, in the exercise of his executive authority, acts on the advice of someone in cabinet, essentially the Prime Minister. So, I think that it's a point of law. It has created a lot of controversy. But I am absolutely clear, and this was pointed out in the Commission of Inquiry, that because the requirement that the president acts on the advice of the Judicial Services Commission comes from an ordinary act of Parliament, not the Constitution. Section 82 of the Constitution overrides that. Therefore, that law has to go. That's all. Thank you very much.

Mr. Valenitabua: Vinaka Vakalevu.

----------End of Session [16/4/26] ----------

SUBMISSION TO FIJI 2013 CONSTITUTION REVIEW COMMISSION

BY JIOJI KOTOBALAVU [A FORMER LONG SERVING PERMANENT SECRETARY IN THE FIJI CIVIL SERVICE AND CURRENTLY A LECTURER IN PUBLIC LAW AND IN INTERNATIONAL RELATIONS AND DIPLOMACY AT THE UNIVERSITY OF FIJI JDP SCHOOL OF LAW]

[1] THE MANDATE OF THE 2013 CONSTITUTION REVIEW COMMISSION IS TO RECOMMEND AMENDMENTS TO THE 2013 CONSTITUTION, AND NOT TO REPLACE IT.

The Commission's mandate is to make recommendations on amendments to be made to the 2013 Constitution. These amendments are to improve the efficacy of the Constitution as our country's supreme law and the various provisions it contains for a parliamentary system of democracy and government, the protection of the fundamental rights and freedoms of every person in Fiji, the administration of law and justice, and the system of executive Government to serve the people of Fiji.

I understand that the Bose Levu Vakaturaga [BLV] or Great Council of Chiefs [GCC] has very strongly recommended the total replacement of the 2013 Constitution. This is not surprising because all provisions in the 1997 Constitution relating to the GCC were excluded from the 2013 Constitution.

However, the complete replacement of the 2013 Constitution is simply not possible. The 2013 Constitution itself makes this impossible. Let me explain.

This is in light of the following decisions and declarations by the Supreme Court of Fiji.

[1] The Supreme Court expressly declared in its advisory opinion to Cabinet that the 2013 Constitution is legally in effect as the supreme law of Fiji, and further, the 1997 Constitution is no longer valid.

[2] The Supreme Court also declared that any amendment to the 2013 Constitution has to be in accordance with procedures as set out in CHAPTER 11- AMENDMENT OF CONSTITUTION, but with the following adjustments—

(a) For a 2013 Constitution (Amendment) Bill to pass in its second and third readings in the House of Representatives, the required affirmative vote of MPs present is reduced from the affirmative vote of three-quarters to a two-thirds majority, and

(b) in the follow up public referendum to be held, the majority vote required for the Bill to be ratified is adjusted from "three-quarters of the total of registered voters who have voted" to a simple majority of valid votes cast.

In addition to the above, section 160-(1) of the 2013 Constitution makes it very clear that:

"160-(1) A Bill for the amendment of this Constitution must be expressed as a Bill for an Act to amend this Constitution."

So, we can assume that after its approval by the House of Representatives, and its ratification by the people in the public referendum to follow, the Bill is promulgated as

"An Act to amend the 2013 Constitution of the Republic of Fiji"

"Act no – of 2027 (or year of promulgation)"

The short title will be:

"2027 (or year of promulgation) Constitution of the Republic of Fiji"

[2] THE 2013 CONSTITUTIONAL REVIEW COMMISSION SHOULD STRONGLY RECOMMEND THE ADOPTION BY GOVERNMENT AND PARLIAMENT OF A BI-PARTISAN OR JOINT GOVERNMENT AND OPPOSITION APPROACH IN CONSIDERING AND ACTING ON THE COMMISSION'S REPORT AND RECOMMENDATIONS

In appointing the Constitution Review Commission, it would appear that the Peoples Coalition Government has chosen to adopt a "partisan" approach where it will itself consider the Commission's report and draft and table a 2013 Constitution (Amendment) Bill.

If this is true, this partisan approach will severely undermine the democratic legitimacy of the newly amended 2013 Constitution.

This is because the parliamentary Opposition could opt to oppose the amendment Bill, and its public supporters could choose to vote against the Bill in the referendum. This is simply to show their displeasure at not being directly consulted and be given the opportunity, as elected representatives of the people, to be involved in the drafting of the amendment Bill.

Adopting a bipartisan or joint Government--Opposition approach would be consistent also with the view that in the preparation of Fiji's Constitution, our supreme law, the House of Representatives should consider itself as a National Constituent Assembly, to carry out this national undertaking.

As already stated above, the end result of a partisan approach is that the newly amended 2013 Constitution, even if passed in both Parliament and in the public referendum, cannot claim to truly represent the democratic will of "WE THE PEOPLE OF FIJI"!

Accordingly, I strongly recommend to this Commission to impress upon the Peoples Coalition Government to refer the Commission's report to a Joint Select Committee of Parliament on the Constitution Review [JPSC], appointed by the House of Representatives, with the Prime Minister as Chair, and the Leader of the Opposition, as Deputy Chair. The JPSC is then to consider the recommendations, agree on what is to be accepted, and then, with the help of the Law Reform Commission, draft the 2013 Constitution (Amendment) Bill for the Prime Minister and the Leader of the Opposition to jointly table in Parliament for its unanimous approval.

This was, in fact, the outstandingly successful bi-partisan approach adopted by Prime Minister Sitiveni Rabuka and Leader of the Opposition Jai Ram Reddy in the preparation and unanimous approval and promulgation of the 1997 Constitution.

If this bi-partisan approach through a JPSC is also adopted when the Commission submits its report, I have no doubt that the 2013 Constitution (Amendment) Bill will be unanimously adopted by the House of Representatives and will easily pass in the referendum. The "new" Constitution that emerges from this will fully meet the requirements of legality and democratic legitimacy. And it can truly claim to represent the expressed democratic will of "WE, THE PEOPLE OF FIJI"

[3] WHICH COMES FIRST? REVIEW THE 2013 CONSTITUTION AND THEN HOLD THE 2026 GENERAL ELECTIONS UNDER THE NEW CONSTITUTION, OR HOLD THE 2026 GENERAL ELECTIONS FIRST UNDER THE 2013 CONSTITUTION

THE 2013 CONSTITUTION REVIEW COMMISSION IS REQUIRED TO SUBMIT ITS REPORT BY THE END OF AUGUST 2026.

THE SUPERVISOR OF ELECTIONS, ANA MATACIWA, HAS ALREADY ANNOUNCEED THAT IN ACCORDANCE WITH THE 2023 CONSTITUTION, THE NEXT GENERAL ELECTION MUST BE HELD BETWEEN AUGUST 7, 2026 AND FEBRUARY 6, 2027

THE PEOPLE'S ALLIANCE PARTY [PAP] AND ITS LEADER, HON. SITIVENI RABUKA, HAD PROMISED IN THEIR 2022 GENERAL ELECTION MANIFESTO TO UNDERTAKE A REVIEW OF THE 2013 CONSTITUTION.

SO, IT IS TO HONOUR THIS PROMISE THAT THE PEOPLES COALITION GOVERNMENT IS SEEKING TO UNDERTAKE AND COMPLETE THE REVIEW OF THE 2013 CONSTITUTION AND THEN HOLD THE 2026 GENERAL ELECTION UNDER THE NEW CONSTITUTION.

THE PROBLEM, HOWEVER, IS THAT THERE IS SIMPLY NOT ENOUGH TIME TO CARRY OUT THE WHOLE REVIEW PROCEDURES AND PROCESS REQUIRED UNDER THE 2013 CONSTITUTION, BEFORE THE 2026 GENERAL ELECTION.

AND FURTHER, EVEN IF THE PEOPLES COALITION GOVERNMENT HAS ENOUGH TIME TO COMPLETE THE WHOLE REVIEW PROCESS, AND IT NOW COMMANDS THE SUPPORT OF MORE THAN ENOUGH MPs TO ENSURE PASSAGE OF A 2013 CONSTITUTION (AMENDMENT) BILL [IE, 37 OUT OF 55 MPs], IT IS NOT POSSIBLE TO CARRY OUT THE 2013 CONSTITUTION REVIEW AS A JOINT GOVERNMENT-OPPOSITION NATIONAL UNDERTAKING, AS STRONGLY RECOMMENDED ABOVE.

IN LIGHT OF THIS, I AM RECOMMENDING THAT THE CONSTITUTION REVIEW COMMISSION'S CHAIRMAN SHOULD CALL ON PRIME MINISTER HON. SITIVENI RABUKA AND SEEK HIS ADVICE ON THE WAY FORWARD.

A POSSIBLE SOLUTION OR APPROACH IS AS FOLLOWS:

[1] PROCEED WITH HOLDING THE 2026 GENERAL ELECTION UNDER THE 2013 CONSTITUTION

[2] AND THEN THE NEWLY ELECTED GOVERNMENT AND OPPOSITION TO JOINTLY CO-OPERATE THROUGH A JPSC IN CONSIDERING THE REPORT OF THE 2013 CONSTITUTION REVIEW COMMISSION, AND IN INITIATING THE PREPARATION AND TABLING OF A 2013 CONSTITUTION (AMENDMENT) BILL.

THE FUNDAMENTAL OBJECTIVE OF THIS UNIFIED APPROACH IS TO SECURE THE PASSAGE OF THE 2013 CONSTUTION (AMENDMENT) BILL BY UNANIMOUS VOTE IN THE HOUSE OF REPRESENTATIVES.

THE PEOPLES ALLIANCE PARTY CAN PUBLICISE ITS COMMITMENT TO THIS BI-PARTISAN AND NATIONAL APPROACH, TO ITS POLITICAL ADVANTAGE, IN THE LEAD UP TO THE 2026 GENERAL ELECTION.

IN FACT, THE ADOPTION OF THIS BI-PARTISAN AND JOINT GOVERNMENT AND OPPOSITION APPROACH WILL, IN MY VIEW, ELEVATE HON SITIVENI RABUKA'S LEGACY FROM BEING AN ELECTED POLITICAL LEADER AS PRIME MINISTER AND HEAD OF GOVERNMENT, TO A STATESMAN. HE MERITS THIS BECAUSE HE PLACES THE NATIONAL INTERESTS OF FIJI AND ALL ITS CITIZENS AND COMMUNITIES FIRST AND FOREMOST, ABOVE ALL OTHER CONSIDERATIONS.

[4] RECOMMENDED AMENDMENTS TO 2013 CONSTITUTION

HEREWITH IS A SUMMARY OF MY RECOMMENDATIONS

[1] SYSTEM OF ELECTIONS AND ELECTORAL PROVISIONS

It is a such a great pity that the Government has not publicly released the report of the Justice Fatiaki-led Electoral Review Commission.

So, I make these recommendations without the benefit of knowing the recommendations of the Justice Fatiaki-Led Commission.

ELECTORAL ACT 2014

Amend this legislation to achieve the following.

Re-design the format of the voting form. Remove the Sudoka-style numbering to identify election candidates. Replace it with individual candidate's name, party affiliation and photograph

Allow political parties to erect sheds at a reasonable distance from the polling station, and to organize transport to bring in their voters. We should encourage

voter turnout. However, restrict or prohibit parties from offering free food, T-shirts and other hand-outs to influence voters. Harassing and bribing voters should not be allowed. Yaqona can be freely shared with party members and supporters at the party shed

2013 CONSTITUTION

(1) Retain voting age at 18 years of age and above

(2) Change the current use of the whole of Fiji as a single undivided constituency, for all seats in the House of Representatives, and replace it as follows [as recommended by the Yash Ghai Commission whose report was trashed by the Bainimarama Military Government, the author of the unilaterally imposed 2013 Constitution]:

Create 3 regional multi-member constituencies based on Government's administrative divisions: Central Division, Western Division and Northern Division

For the Eastern Division, because of the scattered and widespread nature of the islands, and their small resident population, create 4 single member geographical constituencies, comprising Lomaiviti, Kadavu, Lau and Rotuma

Based on Fiji's population as estimated by the National Bureau of Statistics since the 2007 National Population Census, set the total number of seats in the House of Representatives at 60, and this is to be distributed as follows: Central Division 24, Western Division 22, Northern Division 9, and Eastern Division 5 [with 2 for Lomaiviti and 1 each for Kadavu, Lau and Rotuma, based on their respective resident population]

Total number of seats in the House of Representatives and their distribution, is to be reviewed by the Electoral Commission after each national population census

For the three regional multi-member constituencies, MPs are to be elected by an open list system of proportional representation, and within each regional constituency, each voter has one vote with each vote being of equal value. [This allows for the continuation of the "perfect" voting formula of one person one vote and with each vote being of equal value].

For the 5 single member constituencies in the Eastern Division, MPs are to be elected either by simple numerical majority (?), or by a substantive majority of 50% +1 vote(?)

The 5 % threshold to qualify for a seat allocation in Parliament in the 3 multi-member regional constituencies is to be retained. The move away from a single whole of Fiji multimember constituency makes this more reasonable for small parties and for non-party independent individual candidates. [IN THE 2022 GENERAL ELECTION, THE 5 % THRESHOLD WAS SET BY THE ELECTORAL COMMISSION AT CIRCA 23, OOO VOTES. BUT THIS WAS FOR THE WHOLE OF FIJI AS A SINGLE MULTI-MEMBER CONSTITUENCY. WITH THREE REGIONAL CONSTITUTENCIES THE 5% THRESHOLD REQUIREMENT WILL BRING DOWN THE MINIMUM NUMBER OF VOTES REQUIRED TO AROUND 15, 000 TO 17, 000 VOTES]

The closed list of proportional representation is not recommended for use to promote the election of more women and minority community candidates. [In a closed list, the voter votes for the party of his or her choice. The party chooses the ranking of candidates in the party list. This allows a party to place women candidates and those from selected minority communities high on the party list of candidates. However, the in-built problem is that candidates placed in the lower half of the party list have little interest and incentive to campaign for the party because they know they have no chance of ever winning a seat for themselves. In an open party list, by contrast, all candidates are enthused to campaign very actively because irrespective of where a candidate is placed in the hierarchy of the party list, it is ultimately the voters who elect them. The more votes they secure for themselves and for the party, the greater his or her chances of winning a seat allocated to their political party]

Members of the BLV OR GCC [formally established under its own separate legislation] are not to be eligible to stand as candidates for election to the House of Representatives. [Once elected, very often, their people [ie, Vanua members] expect them to be appointed as Ministers, and to be served by the people, rather than to serve the people] If a sitting member of the BLV/GCC opts to stand as a candidate for election to the House of Representatives, he or she must resign from the BLVGCC]

[2] RE-ESTABLISH OR RESTORE THE SENATE IN THE 2013 CONSTITUTION

Restore the Senate in the Constitution as the Upper House of Parliament. This to be achieved by re-instating the following provisions in the 1997 Constitution.

"64-(1) The Senate shall consist of 32 members, of whom

(a) 14 are appointed by the President on the advice of the Bose Levu Vakaturaga [GCC]
(b) 9 are appointed by the President on the advice of the Prime Minister
(c) 8 are appointed by the President on the advice of the Leader of Opposition
(d) 1 is appointed by the President on the advice of the Council of Rotuma."

The main purpose/justification is to allow for wider participation in national decision-making in Parliament by members appointed by the President and drawn from the Great Council of Chiefs, the Council of Rotuma, and, in addition, by members drawn from ethnic minority communities, women's organizations, civil society organizations, and the professions.

There is to be no stipulation in the Constitution for the representation of the Churches or any particular religion in the Senate. The right of every individual person to choose one's religion is a fundamental human right, fully protected in the Bill of Rights. So, Fiji is to remain a secular State.

The right or entitlement of the BLV/GCC and the Council of Rotuma to nominate their Senate members derives from their right of special recognition conferred upon them by Great Britain in reciprocation of their cession to the British Crown of sovereignty over Fiji and Rotuma in 1874 and 1879 [1881?] respectively. Their right to rule over their people was recognized provided they respected the laws of the British Colony.

This right of self-determination is institutionalized in the following legislation:

[1] The BLV/GCC is established under section 3 of the iTaukei Affairs Act [Cap 120] to serve as an advisory body to the central Government on the good government and well-being of the iTaukei people.

[2] The Council of Rotuma is established under section 12 of the Rotuma Act [Cap 122] to safeguard and ensure the good governance and well-being of the Rotuman community.

Today, the GCC/BLV and the Council of Rotuma are the apex or peak body of the indigenous iTaukei and Rotuman communities in the administration of their provinces. They serve as advisory councils to the central Government on all matters affecting the natural resources rights, and the general well-being and welfare of their communities.

So, their constitutional right to nominate their representatives in the Senate derives from their communities' right of self-determination, and their solemn duty to ensure that any legislation passed by the House of Representative does not harm or prejudice the rights and interests of the indigenous iTaukei and Rotuman communities.

[See below for their right to be expressly recognized in the Constitution]

[3] RESTORE THE GCC or BLV IN THE 2013 CONSTITUTION AND ALSO INCLUDE THE EXPRESS RECOGNITION OF THE COUNCIL OF ROTUMA

Restore in the 2013 Constitution this provision in section 116 of the 1997 Constitution in relation to the BLV/GCC:

"-(1) The BLV established under the Fijian Affairs Act continues and its membership, functions, operations and procedures are as prescribed in or under the Act."

However, for the considerations explained below, do not include the 1997 Constitution provisions under section 116-(2) and section 90.

Under these two provisions the BLV/GCC is empowered to appoint the President and the Vice-President of the Republic of Fiji]

The function of the GCC/BLY to be provided for in the Constitution is the responsibility to nominate the Council members to be appointed by the President to be members of the Senate.

Include in the Constitution provisions expressly recognizing the Council of Rotuma established under the Rotuma Act, and its responsibility to nominate a representative in the Senate to be appointed by the President.

This recognition of the Council of Rotuma in Fiji's Constitution is something new but the Rotuman people fully merits this. It derives from the reciprocal recognition given to them by Great Britain in return for the cession to it of sovereignty over Rotuma in 1879 [?] or 1881 {?]

This is the origin of the right of self-determination of the Rotuman peoples to administer their island's governance with the support of the central Government of the whole of Fiji.

[4] APPOINTMENT OF THE PRESIDENT OF THE REPUBLIC OF FIJI

A crucially important question for the Commission to consider is: who is to appoint the President of the Republic of Fiji? The BLV/GCC [as provided under the 1997 Constitution], or Parliament [as provided under the 2013 Constitution]?

Under section 84 of the 2013 Constitution, the President is appointed through election by Parliament from competing candidates submitted by the Prime Minister and by the Leader of Opposition.

I strongly recommend the continuation of the appointment procedure under section 84 of the 2013 Constitution, and also the qualifications for appointment, as set out under section 83.

The qualifications for appointment of the President of the Republic of Fiji, as set out in section 83 in the 2013 Constitution, should be left as it is, unchanged, in the hope that one day a well-qualified non-iTaukei with an outstanding record of public service can be considered and appointed by Parliament.

For nation-building and national unity, it is so vitally important for all communities to feel firmly assured and secure that Fiji is home to us all. Common and equal citizenship as fellow Fijians is not enough. Fiji is not a single ethnic nation State such as Japan or other Pacific Island States like Tonga or Samoa. No community in Fiji should be denied a fair and equitable opportunity of representation and participation in national decision-making on matters/issues relating to our collective national and economic security and well-being.

I should also explain that membership of the GCC/BLV is based on hereditary status, and not through democratic election. There is nothing wrong with that.

However, given the overall significance of the role of the President as representing the unity of our State in embracing all its citizens and its communities [based on ethnicity, religion and culture], I strongly recommend that for the appointment and qualifications for appointment of the President of the Republic of Fiji, we should retain the current provisions under sections 83 and 84 of the 2013 Constitution, and not to return to the procedure under the 1997- Constitution.

So, this means that all the three national leadership positions of President, Prime Minister, and Leader of Opposition in Parliament, are to be appointed through competitive democratic election in the House Representatives of the people.

I should mention that following the 2022 general election, in the election of the President of the Republic of Fiji in the House of Representatives, the two candidates were actually drawn from the membership of the BLV/GCC. Ratu Naiqama Lalabalavu from the Tovata Confederacy was sponsored by the Prime Minister, and Ratu Meli Tora from the chiefly Vanua of Vuda was sponsored by the Leader of Opposition, as representing the Western Chiefs. This is a much better way to recognize the GCC/BLV than to allow the GCC/BLV to directly appoint the President, as provided under the 1997 Constitution. Our President must be appointed through democratic election in the House of Representatives.

Once again, I reiterate that the GCC/BLV should focus its attention on its statutory function under its founding legislation, the iTaukei Affairs Act. And this is to serve as an advisory body to the central Government "on the good government and well-being of the iTaukei people."

[5] ORGANISATION AND MANAGEMENT OF THE PUBLIC SERVICE: HAVE THE IMPOSED CHANGES IN THE 2013 CONSTITUTION SUCCEEDED?

Under the 1970 Constitution and 1997 Constitution, Fiji followed the British approach and tradition of maintaining a clear separation between the elected executive Government under the Prime Minister, and the independent organization and management of the Public Service by a statutory authority, the Public Service Commission.

The underlying rationale was the importance of having a Public Service that is efficient and effective, independent [objective] and impartial, but, at all times, loyal to the elected executive Government of the day.

The PSC was directly responsible under the Public Service Act for making decisions on appointments, promotion, transfers, and disciplinary action. The only linkage with the elected executive Government was through the requirement that the PSC Chairman was to consult the Prime Minister in relation to all Permanent Secretaries. The purpose was to ensure that the PM was satisfied and in agreement with proposed appointments, transfers and disciplinary actions. This arrangement continues today and it is working well.

Over the years, the PSC began to progressively delegate authority for staff appointments, promotions, transfers, and disciplinary action to individual Permanent Secretaries as the CEOS of their respective MINISTRIES AND DEPARTMENTS. However, the PSC held on to senior management positions in the Public Service from Level or Grade 3 and upward. The purpose was to identify high fliers and to prepare them for appointment to higher positions of responsibility, including Permanent Secretaries and Heads of Departments

However, all this changed under the 2013 Constitution. It was quite clear that Prime Minister Bainimarama and Attorney-General and Minister of Finance, Saiyad-Khaiyum, wanted to see greater political oversight over Public Service appointments, promotions, transfers and disciplinary action.

The direct result is that under section 127-(7) of the 2013 Constitution, authority for all staff appointments, promotion, transfers and disciplinary action has devolved totally from the PSC to individual Permanent Secretaries. And further, in exercising this power, all Permanent Secretaries must obtain the prior agreement of the Ministry's Minister.

I believe that this new arrangement under the 2013 Constitution has inevitably led to the increased politicization of the Public Service, and increased incidences of nepotism, favouratism, ethnic bias, and corruption in staff management.

Section 123 of the 2013 Constitution states very clearly the merit requirements for recruitment and promotion.

"123-(i) recruitment and promotion [must be] based on-

(1) Objectivity, impartiality and fair competition, and
(2) Ability, education, experience and other characteristics of merit."

I should also mention that the devolution of senior staff management authority from a single central body, the PSC, to individual Permanent Secretaries, has led to the creation of "vertical silos." There is now a tendency for Ministries and their departments to create their own salary/pay scales.

Further, senior management staff are now faced with the disadvantage that they can pursue their vertical career prospects only within their Ministry and Department. In the past, the PSC could transfer on promotion high fliers it has identified, to another Ministry or Department.

So, for all these shortcomings in the current devolved management in the Public Service, I strongly recommend to the 2013 Constitution Review Commission to invite the PSC to make a submission on the efficacy of the Public Service staff management reform under the present 2013 Constitution.

The Commission may also find it useful to invite the Prime Minister for his comments as the Minister responsible for the Public Service

VINAKA VAKALEVU

Navneel Sharma

Presentation by Mr. Navneel Sharma
Date: 16-04-2026
10.00am-11.18am

Mr. Valenitabua: Good morning commissioners. Thank you very much for attending before this commission this morning. Thank you very much for your attendance this morning. And on top of that you were attending alone, not as a group. You were attending individually. You are the first one who has attended before us a consultation individually. So, there'll be about another two this afternoon. By way of introduction, you know most of us. I don't think I have to introduce you all of them.

Mr. Sharma: That's fine sir, yes, I know majority of the panel, yes.

Mr. Valenitabua: And the name tags are there in front of you. Our task, our task is to undertake a comprehensive inquiry into the 2013 constitution. That is our task and we are to consult widely with the people of Fiji while undertaking that task. The objective is the preparation of a draft amended constitution for the republic based on submissions we gather from the members of the public or from the people of the nation. We hope to get submissions which reflect values, needs and aspirations of our people. At the end of our commission, we will need to submit our findings. And recommendations derived from the submissions made to us to his excellency the president. It's all towards the theme of we the people of Fiji. This is our constitution. That is why we are undertaking this wide consultation. So, you are here today to give us submissions. And I'm sure you know what you want to tell us. I don't have to spell out what we need to hear from you. Apart from those words, I welcome you and we hope to hear your submissions. And also, we are here to hear that submissions and record what you're going to say. Thank you. Over to you.

Mr. Sharma: Thank you very much, Chair and members of the panel. Thank you very much for this opportunity. Sir Chair, members of the panel, I have a cursory introduction. But before I go into my substantive points, I'll be reading out my submission. And I also will be providing the secretariat a copy of my submission. I've got a hard copy and I'll later forward the electronic copy to the secretariat. Chair and members of the commission, I do not intend to take too much of your time. My presentation is kind of pegged at 15 minutes and no longer. Thank you again for this opportunity to appear before you and make this submission. I acknowledge the diversity, experience and expertise of the chair and distinguished members of the panel. At this important moment

in Fiji's constitutional history, we are called to reflect not only on where we have come from, but also on where we aspire to go.

Our constitution should reflect the richness of Fiji's history, the resilience of its people and the depth of its cultures. At the same time, it must articulate a clear and principled vision for the next 50 to 100 years, grounded in unity, justice, accountability and opportunity for all. In this sense, a constitution is more than just a legal instrument or the supreme law of the country. It is a statement of national identity and shared purpose. We have the opportunity to develop, and I say this to the students that I teach, one of the world's most modern written constitutions, and this is something we should approach with both ambition and pride. At the outset, I emphasize that this commission carries a significant responsibility. Public consultations must be meaningful. The views gathered should not only be recorded, but carefully considered, properly contextualized and generally reflected in the drafting process. A constitution must not merely regulate power. It must command public confidence.

My name is Navneel Sharma. I'm an academic and teach constitutional law at the University of the South Pacific. The views expressed today are my own and do not reflect those of my employer or any organization that I'm affiliated with. I will touch on six areas, Chair. The Judicial Services Commission, the Office of the President, the Status of the Great Council of Chiefs, the Office of the Ombudsman, Emergency Powers, and the Selection of Portfolio Ministers.

First, the Judicial Services Commission. In the constitution, the current version, the 2013 Constitution of Fiji, the name Judicial Services Commission, or JSC for short, appears 45 times. It is established under Chapter 5, which deals with courts and judicial offices. The JSC is chaired by the Chief Justice and performs appointment recommendation and advisory functions within the judiciary. However, its role extends beyond the judicial sphere. The JSC advises on matters, for example, relating to the re-enumeration of the FICAC Commissioner under Section 115, makes recommendations regarding the Solicitor General's appointment under Section 116, as well as the Director of Public Prosecutions under Section 117, and advises on the appointments to the Mercy Commission, Section 119. This expansion raises a structural concern. When a judicial body exercise influence over prosecutorial appointments, anti-corruption oversight, and clemency processes, the separation of powers becomes blurred. The

concentration of advisory authority within a single institution risk weakening checks and balances and may affect public perceptions of institutional independence.

My recommendation.

Sir Chair, Members of the Panel, the Commission may wish to consider whether the JSC's mandate should be more clearly confined to judicial administration, with executive or quasi-executive appointments allocated to appropriately structured and truly independent mechanisms.

The second point, Sir Chair, Members of the Panel, is the Office of the President. The appointment of the President by a simple parliamentary majority under Section 84 of the Constitution is concerning. In practice, this enables the government of the day to determine the appointment, limiting meaningful participation by the opposition. Especially, voting is not based on conscience voting, but along party lines. The President is intended to serve as a unifying and non-partisan head of state. Yet, if the selection process is dominated by the governing majority, public perception of neutrality may be undermined.

My recommendation.

Sir Chair, there are options worth considering. A supermajority requirement in Parliament could be considered. Voting should be done on conscience rather than on party lines to ensure the government does not necessarily get who they nominate. Having said that, and on a cursory note, I think a lot is said when we boast ourselves as the hub of the Pacific and punching beyond our weight when we still have not had a female President as head of state for our country since independence.

My third point, Sir Chair, the 2013 Constitution has disregarded the role of the Great Council of Chiefs. This omission is constitutionally significant. The GCC functions as a central institution of indigenous governance, reflecting the authority of the Vanua and communal leadership within iTaukei society. Its removal singled a major shift in how traditional authorities recognized within the constitutional framework. I support the recognition of the GCC under a new constitution as a paramount body reflecting indigenous interests amidst ever-growing global pressures. However, the question is not simply whether the GCC should be restored, but what role it should perform in a modern constitutional democracy and the balancing of this constitutional

representative body against groups who do not have such chiefly structures to represent them and are at the mercy of the ever-changing executive body. If we imagined, the GCC could contribute to national agenda setting in areas where structural challenges are evident, including school dropout rates, climate change, indigenous land utilization and productivity, rural development, substance abuse, disproportionate indigenous representation in the criminal justice system, bridging the ethnic divide, improving standards of living in rural communities and pressures caused by urban migration.

Recommendation.

Sir Chair. The commission may wish to consider the constitutional recognition of the GCC as an independent advisory body with clearly defined but limited functions. Its role should be consultative rather than political, with a mandate to provide non-binding advice on matters affecting iTaukei interests, including customary land, traditional governance and indigenous social economic development. To ensure coherence within a modern constitutional democracy, its functions should be expressly confined so as not to encroach upon parliamentary sovereignty or executive authority. Consideration must also be given to requiring structured consultation with the council on legislative or policy directly affecting indigenous interests while avoiding any form of veto power.

The fourth point, Sir Chair, is the office of the Ombudsman. For many ordinary citizens, engaging with the executive bureaucracy can be difficult. Administrative processes are often slow, opaque and unresponsive. Where correspondence is unanswered and decisions remain unexplained, public trust erodes. The Ombudsman has traditionally provided an accessible and low-cost mechanism to address maladministration. It offered investigation and resolution without delay. Complexity and expenses associated with court proceedings were avoided. It did not replace judicial review. It complemented it. While judicial review remains available in the courts, it is often time-consuming and financially burdensome. For many citizens, it is not a realistic avenue of redress. The removal of the Ombudsman narrows accessible accountability mechanisms and places great reliance on litigation. In a constitutional system committed to the rule of law and responsible government, there should be an independent and accessible institution capable of investigating executive maladministration. Without such a body, accountability risks,

becomes reactive and court-driven rather than responsive and citizen-centered.

Recommendations.

Sir Chair. The Commission may wish to consider the re-establishment of the Office of the Ombudsman or Ombudsperson, to be more agenda-sensitive, as an independent constitutional office with a clearly defined mandate to investigate administrative conduct across the public sector. Its function should not include power to receive, should include, my apologies, the power to receive complaints from the public, initiate own-motion investigations, and make findings and recommendations on maladministration. To ensure effectiveness and credibility, the office should be institutionally independent, adequately resourced, and accessible to all citizens without undue procedural barriers. Consideration may be given to require public authorities to respond to Ombudsman's findings within a specific time frame, thereby strengthening administrative accountability while preserving the non-binding and complementary nature of the office alongside judicial review.

My fifth and second last point, Sir Chair, is election of ministers. It is concerning that the Prime Minister retains broad discretion in the selection of cabinet members. In practice, individuals who receive relatively low numbers of votes may be appointed to significant ministerial portfolios, while others with substantially higher electoral support remain backbencher members of the party. Similarly, individuals who enter Parliament through replacement mechanisms following resignations or deaths or terminations may be elevated quickly to ministerial office despite having secured comparatively limited electoral endorsement. This raises questions about the relationship between electoral legitimacy and executive appointment and may affect public confidence in the representativeness of the Cabinet. While the formation of the Cabinet is primarily the function of the Prime Minister and the Executive, a complete disconnect between electoral support and ministerial appointment risks undermining the democratic signal expressed through people's vote.

Recommendation

Sir Chair, the Commission may wish to consider reforms that enhance the transparency and democratic legitimacy of Cabinet appointments

while preserving necessary executive discretion. This could include the development of guiding principles or statutory criteria encouraging the Prime Minister to have regard to factors such as electoral support, experience and competence when constituting his Cabinet. Consideration may also be given to requiring the publication of reasons or criteria underpinning ministerial appointments, thereby strengthening public accountability without unduly constraining the function of the Executive.

My last point, Sir Chair, Members of the Panel, is the state of emergency provision within the Constitution. Under Section 154, the Prime Minister may, on recommendation of the Commissioner of Police and the Commander of the RFMF, declare a state of emergency. This formulation appears narrow and rooted in more traditional conceptions of national security threats. Contemporary experience, most notably COVID, the COVID pandemic and the global economic disruptions, demonstrate that emergencies may arise beyond the scope of policing or military advice alone. This raises concerns about whether the current framework adequately captures the range of modern crises requiring urgent and coordinated state responses.

Recommendation.

The Commission may wish to consider revising Section 154 to broaden the basis upon which a state of emergency may be declared and who advises upon it. In particular, the power to advise or initiate such a declaration could be vested in the Cabinet. Rather than being limited to recommendations from the Republic of Fiji Military Forces and the Fiji Police Force, this would better reflect the multidimensional nature of contemporary emergencies, including public health and economic crisis. Any such reform should also retain appropriate parliamentary oversight, including timely approval and review of emergency declarations to ensure that the exercise of emergency powers remain accountable and proportionate. That is my submission, Sir Chair, members of the panel, and that concludes what I have to say. Thank you.

Mr. Valenitabua: Thank you, Mr. Sharma. The GCC, they've been in the headlines in the past weeks. They are currently, or they were established under an Act, a normal Act, under the iTaukei Affairs Portfolio. Now, you are suggesting today that they be included in the Constitution, that their establishment and their functions are to be included in the Constitution. That is, am I correct?

Mr. Sharma: That is correct, Sir Chair.

Mr. Valenitabua: Now, you aired that on and you said that something was to be non-binding. What was that again? The advisory function.

Mr. Sharma: The advisory function shouldn't be binding. It should be working on an advisory basis. The outcomes and the agenda set by them and what emanates from their discussions and deliberations should be advisory only, not binding on the executive.

Mr. Valenitabua: What about- there are suggestions that we bring back the bicameral? House.

Mr. Sharma: Meaning upper house and lower house.

Mr. Valenitabua: House of Reps and the Senate. Usually, or it has been the practice that the GCC has members in the Senate. If you're saying that they are to be advisory only, that body is to have advisory functions, how do you tie that up with suggestions that they have members in the Senate?

Mr. Sharma: That might be a good synergy, Sir Chair, between what they do as a separate body and having that roll over to decision-making capabilities in Parliament. That's, I would suggest that's an excellent idea.

Mr. Valenitabua: So, as they are sitting as the Council of Chiefs, they act as the only advisory role. However, members of the GCC can be appointed, depending on how they would select them to be members of the Senate.

Mr. Sharma: Correct.

Mr. Valenitabua: Right. Thank you.

Ms. Nailatikau: Chair, if I may. Thank you so much, Mr. Sharma, for your contributions this morning. I'm interested in the deceptively short chapter nine on emergency powers that you spoke about, and about broadening the entry points for being able to advise the Prime Minister, for example, on declaring a state of emergency. You mentioned Parliament or Cabinet, sorry, as a potential body for undertaking this. As we've experienced, it's important to be agile and quick when it comes to declaring a state of emergency and balance that with it not being a red button that's pushed too often. I'd be interested to hear you expand on how you might see that working in terms of Cabinet playing this role or broadening this role to include Cabinet.

Mr. Sharma: Thank you, ma'am. What has been recommended is, when we talk about emergencies and how it has been reflected in the current constitution, it's based on this traditional notion of emergencies, where there's civil disruption of some sort, whether internally or externally. Now, we've seen with modern problems that we've experienced, we've seen COVID and during COVID, and certainly prior to that, there was a global economic crisis.

So, what I'm suggesting is that the Cabinet, made up of portfolio ministers, should actually come together and advise. But this doesn't negate the role of the commander RFMF as well, as well as the police. Practically, it may happen where the Cabinet actually presents advice, but I think it should be spelled out more clearly in the constitution, where a body as such is feeding the prime minister before he declares a state of emergency, and that body be recognized under law.

Dr. Baba: Just in terms of COVID, I think if the Cabinet, like you're suggesting, sir, if the Cabinet looks after this, the Cabinet may even choose a think tank that's economic in nature or a health task force. It doesn't exclude calling these other people, but it does give Cabinet the right to adjudicate on what is correct and necessary for any type of crisis. So, I see your point. Maybe you'll help with giving it a sentence. Oh, but we'll get your written submission. That's what I saw in COVID. The military were on the road, blocking the road, you know, in terms of don't access, that's fine. But we didn't really mobilize health from all over the world. You know, like my team of teachers, we were feeding the military and the police, but it's, yeah, we needed health to be mobilized and a think tank that's more economic, you know, to, yeah. So, I see your point. Thank you.

Mr. Sharma: Most definitely, Professor. Thank you for that. When we look at COVID, it was just not health. It had ramifications, economic ramifications, domestic violence ramifications. So, I think there needs to be a body that has a multifunctional role and able to consolidate and provide that opinion.

Mr. Valenitabua: Appointed by cabinet? The body?

Mr. Sharma: Cabinet to advise the Prime Minister on a state of emergency.

Mr. Valenitabua: So, if not the police, remove the Republican, rely on those decisions. And if there's a need, they can call on the military and the police.

Mr. Sharma: Most definitely, sir. Yes.

Dr. Gounder: Chair, thank you Navneel for your presentation. Following on from Mere and your last point about the state of emergency provision, I will focus on very specific emergency provision, for example, utilizing any form of instability as a threat to national emergency, because we saw that immediately after the last elections, a phase during which political parties were negotiating to form a government. It's when the police commissioner declared emergency, saying that the Prime Minister should utilize his powers. And it relates well with the argument that you are making. And I remember having a public spat with the police commissioner who said there has been widespread violence in the Western Division. And I replied to him by saying, I just traveled back from the Western Division. There is nothing of that sort. So, it was clear that there was an effort made to utilize the narrow provision of the emergency powers to take over, supposedly, the negotiation process and perhaps the formation of the government. So, this is just for the information of members of the panel. It's a good suggestion. That's something maybe we can consider.

Dr. Fatiaki: Navneel, thank you, through you chair. And dealing with the same issue of emergency powers, let me just understand this, because my understanding is there is such a thing as a National Security Council. Does that exist? And I'm sorry, I've tried to have a look to find it here. I haven't. But I know from a practical point of view that there is such a body, either mooted in a white paper or in place. And I want to clarify something. I think Chair kind of took it to the other extreme, which was basically to sidetrack the question of police and the army commander, and then they become a secondary entry point.

No, I think the nature of national emergencies are these are the two point people, as in the two-point institutions. I think if we're going to do anything further, it's to add to that in the form of maybe a Security Council, but not to remove them and then have a bunch of, I don't know who, you know, politicians or bureaucrats to try and determine whether this is a national security situation and then bring them in. No, I think they still need to lead it.

And although, yes, we've talked about other things such as COVID and that, the reality is when we talk about national security and we talk about the security and safety of all, we're talking war, we're talking civil disobedience, strikes, strife, that sort of issue, which ultimately is in the reams of the purview of the Fiji Police Force and the army. So, I'd like to think that they continue to be the main people. My understanding is you

are suggesting that they not be the only ones because obviously you need the input of other agencies.

And that's where I think the existing, if it currently exists, I'm sorry, I can't refer you to the particular legislation or whatever, but I know that there is a thing called the National Security Council, which involves the commission of police, which involves and maybe this head and others that are convened for the purposes of these sorts of things. And that the decision making then process then goes to the prime minister and the prime minister then takes it to parliament. I think it's written here.

You know, it goes to parliament actually to then make considerations as to actually passing the necessary legislation to put into effect the national provisions that come into play when a state of emergency is declared. So, my only input in that is to be clear. I don't think Una and, I'm sorry, Professor Baba and Chair intended to sidetrack the police and the army. They're the lead people. I think it's more for the purposes of involving others. As you rightly point out, the scope of the emergency may not just be a civil discord and strife that requires enforcement and policing. It may be other issues such as COVID, which obviously involved health. And therefore, in the National Security Council, you'd have other voices that will be inputting in that respect. That is correct.

Mr. Valenitabua: Thank you. If I may add to that, the state of emergency would arise in a situation where security is a threat and also where safety is a threat. Those are the two circumstances. And in B, if it is necessary to declare a state of emergency, so security, drugs can be security. Yeah, we've got breaches of security in relation to drugs, weapons and natural disasters. COVID was a health thing, safety issue. And we are not going to remove the police. You know, like I said, if there is this body, if it is going to be established, then there is a state of emergency. We have to get the police in for control and regulating the people. Because we all know if there's no police, if there's no army, when there's a state of emergency, people will never bother to follow any rules or whatever advice is given. So, with that, I'm with Dr. Fatiaki. He's not completely sidelining them. No, they are the people who can control people.

Dr. Gounder: Chair, the focus more here is who has got the power or the authority to invoke this condition. That is the focus here, I think. And it should not be left, so to say, in the hands of one or two or three people even, there must be some greater number of people, if need be, some expertise in making the decision as to invoking the powers to utilize the emergency.

Dr. Fatiaki: I'm not sure that you've actually prepared your submission, but for the purposes of maybe guidance in this respect, for instance, it says right now, under 154, the Prime Minister may, on the recommendation of the Commission of Police and the Command of the Republic Military Forces, obviously that limits what you rightly point out, that limits it to two people initiating it. I would suggest that maybe we substitute for that the National Security Council instead of those two.

And then somewhere along the line, you make up the construct of National Security Council, which will be the Commission of Police, the Army Commander, the DISMAC Coordinator, the Minister for Health or whoever the relevant bodies are that will constitute this body who then advise the Prime Minister, please, sir, we need you to declare a state of emergency because this is where we're at right now.

Mr. Sharma: Correct, Commissioner. In that way, it's graduated and it escalates as it goes. You have your baseline advisors. It goes to another body and that body ultimately informs the Prime Minister.

Ms. Nailatikau: OK, if I may. You said something quite thought provoking in your presentation, Mr. Sharma, when you spoke about, for example, publishing the rationale for ministerial appointments, for instance. One thing that COVID brought forth was the effectiveness of how publishing the levels of security is very useful as well. For example, in New Zealand, they color coded their levels of security and they communicated very openly and transparently about what code green means or what level, you know, what level two means, what level three means.

And I'm wondering as well about the application to a declaration of a state of emergency, about being public and open about the conditions for a state of emergency. As Dr Gounder said, it can be quiet, you know, conditions for emergency can be quite elastic, I guess, in terms of the judgment of a narrow group of people. So, I think in the same line as making sure that the rationale for appointments is published, a criteria for emergencies would also be a requirement in terms of whatever body decides it. Just putting that forward, not necessarily for a landing spot in the constitution, but, you know, for consideration.

Dr. Fatiaki: Chair, again, through you. Now, Nick, I thank you for bringing to the four aspects of amongst our discussion, things that we've already talked about. But having said that, we prefer it to come from the public. And these are issues such as you know, the separation of powers issue, for

instance, with respect to the JSC and its involvement in various aspects of the constitution and the need for bodies such as FICAC, the prosecutorial parties to be. What I think we need is in your written submission, very specific directions as to where these bodies might go, for instance, you know, rather than because at the end of the day, the document that comes out in our report will be comprehensive. It's not good enough for us to say, look, we want to separate the powers. We need to say FICAC should come under here or should disappear or whatever. And, you know, and go back to DPP's office. Those kinds of details are important. And I have no doubt that as an academic and as a lawyer, you can spend a bit more time to put in the submission very specific recommendations as to how we might approach that. OK, and along similar lines, I didn't quite understand the supermajority aspect of getting the president voted. Do you want to enlighten?

Mr. Sharma: Thank you, Chair, for that opportunity. Sorry, Commissioner. With the current setup, a nominee for the president for the office of the president comes from the government side and the opposition side. Now, a nomination from the opposition side, it's tokenistic in a sense, because government will win if they have the numbers and they vote along party lines. So, in order to get more widespread support, I think the supermajority should be should increase from 50 to two thirds or 75 percent in order for the president to have that support from the people. So, with the current setup, I feel that, you know, the office of the president or the person elected is really being dominated by the government side rather than being a truly neutral person for everybody.

Dr. Fatiaki: Thank you for that. I only have one final comment. This is more a reflection. You alluded to the GCC. We've received this submission and I hear your comments. My concern, particularly when people tell me, well, or, you know, native lands protected and all indigenous rights are protected under the current constitution is it's almost like you say tokenistic in the sense that we say, all right, where you're there, but you don't have veto powers. You can't, you know, you can't override the decision of the parliamentary majority, because to me, it's like you're giving us a role and then you're making it tokenistic in the sense that I've got no teeth or clause to ensure that you cannot, for instance, change native legislation, native land legislation. So I'd like you to rethink that in terms of, you know, I think it's important that not only do you give them a role, but that it's a meaningful role so that if it's to reassure them that, for instance, land could not be alienated, that it's not, oh, well, you know, you give your advice, but we can just ignore it because that's what

happened in the last government. I think for a lot of times it was, it's tokenistic, it's written there, yes. But at the end of the day, if two people decide no, they have the power to do that. And for me, that's an important fundamental question. Give them a role, but let's not make them a token role. Let's make it meaningful. And I say that in the context of make it meaningful so that they feel assured because that's the important thing if we're trying to avoid the circumstances that led to subsequent calls for which every constitution then attempts to rectify. And hence why we have every constitution.

I've said to my colleagues, I think if you trace every constitution, it's come as a consequence of a coup. Maybe we should address the reasons for the coup in terms of designing the constitution so that we don't have a situation where the uncertainties or the concerns and the anxieties promote the kind of thoughts that might, you know, some army officer might utilize as a means to, you know, usurp another government. Thank you.

Mr. Beg: Thank you, Chair. Through you. I just have one question. Mr. Sharma, thank you for your presentation. Your comment about the ombudsman coming back into the constitution. Ombudsperson, my apologies. Sorry. Thank you, Mere. That's why we've got Mere here. I'm sorry. I was, I was interested in that because Australia and New Zealand in their, New Zealand doesn't have a constitution, but it's statute of law and Australia has one. I was interested in how you'd frame it.

Mr. Sharma: Well, in the Ombudsman's office, my submission didn't go that far, Commissioner, but what I'm saying is that we need, now, I'll give an example. If someone is not processing something for me in a ministry, where do I go? I can drop numerous letters. I can try to get a meeting. I can drop emails, but if someone doesn't want to act, it's very difficult to get them to act. So, with that oversight by an Ombudsman's office to actually mandate them to have a role and to have ministries be accountable to that office, I think that would add a lot in terms of service delivery and the enhancement of service delivery for citizens. So that is the reason why I said that, because if you have a decision or a lack of a decision from a government ministry, it's either an email or a meeting or a complaint or the most extreme matter is taking it to court for review. And that can be quite tiresome and can take years. Yeah.

Mr. Valenitabua: The JSC, from the turn of what you say, that it has too much power?

Mr. Sharma: It's blurring the lines, Sir Chair, between judicial role and executive role. We have them creeping in, in a sense, towards appointments and renumerations for executive officers. And we see this in various facets. My submission actually outlines the various sections in which they are involved in.

Mr. Valenitabua: What about their function in relation to complaints against judges and the other Constitutional Office, where they deal with misbehavior, they appoint tribunals, the JSC.

Mr. Sharma: Correct.

Mr. Valenitabua: Where does that leave?

Mr. Sharma: It's judicial and quasi-judicial then. They act in both capacities. They sit, again, in both capacities. If someone is disgruntled or not happy with the tribunal, where does it go then? Back to them in the courts.

Mr. Valenitabua: So, with the Chief Justice and the President of the Court of Appeal, as members of the JSC, what should their function be? Just administrative? Because if it's judicial, then it has to go to the court.

Mr. Sharma: Correct. Yes, correct, yeah. I would limit them, in a sense, to their judicial role and administration within the judiciary, not the executive.

Mr. Valenitabua: When you look at the makeup of the JSC, they were the two most senior judges in the jurisdiction, the President of the Court of Appeal and the Chief Justice. At the moment, they are members. So, you're going to be demoting them from their judicial roles.

Mr. Sharma: I wouldn't say demotion. I would say pinpointing their role, not necessarily demoting them, sir, chair- I have greatest respect for their office and the work that they do. But no, it's important. You would appreciate it, though, that notion of the separation of powers. It's sometimes blurred, in a sense, in most cases, blurred between the legislature, executive, and judiciary. But I think we should at least strive to make it independent as much as possible. That is the basis from which I'm coming from. It's more theoretical than practical, but in a sense, I think we should be moving in the line of thought of making it a true reality as much as we can.

Dr. Fatiaki: I think point taken through you, Chair. This relates to the issue of the ombudsman. Let me just reassure everybody that the man in ombudsman, it's actually a Swedish word that means like a proxy or representative. It doesn't somehow imply agenda. So ombud -woman would be like a silly sounding thing. And an ombud person is also a silly sounding thing. Ombudsman is a proxy, is a person, and it has nothing to do with whether the person is a male or female. But just that's a side issue. But my question really has to do, again, I want you to put more thought in it. In terms of, you know, I've always thought the ombudsman was underpowered. You know, he kind of just had this role that you could complain to him. But it's, there we go. But I felt like empowering him more, but then against that, all disputes can go through, you know, they've got tribunals in the labor where people can address their complaints. And the last thing you want is for every guy who's going to complain to rush straight to the ombudsman. It's like FICAC.

You know, you've got every man in his dog accusing the other fellow of corruption and they rush straight to FICAC. There should be a cutoff point where if you give him more power that somebody has to, how should I put it, go through the processes of addressing his dispute or his complaint, whether it's within the ministry complaints box and then to the tribunal before he arrives at the ombudsman. And he or she will then obviously address the issues that go beyond that, independent of the courts, because ultimately the courts are the arbiter, you know, irrespective of what complaint or issue you have.

If you don't get redress in the particular area that you pursued it, then you can go straight to the courts. The idea behind the ombudsman is he's that person who can act as an agent, a proxy with some power to deal with these issues without necessarily taking it to the courts, which is the final arbiter. And I think you can empower them, but at the same time, you don't want every man in his dog going with, you know, that clock did not get to my call within five minutes. Mr. Ombudsman, could you look into it? I think that that's the area that we need a bit more thought in terms of the submission, in terms of the detail about how we would do that. And that, you know, those would then be the basis upon which we might make recommendations as to changes. Thank you.

Dr. Gounder: Thank you. I think on the same note and for purposes of not taking, I think we could also consider some threshold level for which complaints can be made. And also, that there needs to be a process followed before a complaint will actually be looked into. For example, Fiji Human Rights

Commission has a set procedure. If the threshold is meet, then only they go and investigate. So, if we have something like that, we could always factor in your good argument. So, I think this is important for note taking so that when we come back, we have something to refer back to. Thank you.

Mr. Valenitabua: The point is that we got to get it with the constitution first and then work from there but recommendation as to be the re-introduction of the ombudsman, I don't know why they remove it ,It used be an office.

Mr. Sharma: I think at one point we had John Apted as a... Was he an ombudsman? But long before him, Justice Moti Tikaram was I think the first ombudsman for Fiji. And I mean, that's, you know, that's about as high as you can get in terms of, you know, ongoing.

Dr. Gounder: Chair, also a lot of complaints I mean the banking system also taken up by the ombudsman. Actually, the inquiry into the banking services in the 97 or 98, I think when I was a student at USP was actually initiated by the ombudsman. Yeah.

Dr. Fatiaki: Oh, man. You've really hit the note on the head here. Any of you with online banking, go and have a look at your statements. I guarantee you 60, 70% of the line items will be fees. Every time you do a transaction, there's the fee beside the transaction. It is just... Forget the ATMs. I mean, this is just ordinary online banking. And where do we go? You know, they used to have a banking ombudsman at one point.

Dr. Gounder: Now in Australia, the commission is through the ombudsman's office in Australia. Commission into the financial services.

Mr. Beg: Through you, Chair. Can I just answer that quickly? There is a process. I've just done it recently with the FCCC Act. It's very clear the FCCC Act protects the consumer. And you're right. The banking institutions are a law to themselves. You don't need a lawyer. You need the Act to protect you. It works, and I've tried it. Thank you.

Ms. Nailatikau: Chair, if I may, further to what Conway was saying and relating to your role, Ms. Sharma, as a teacher of constitutional law and as a lawyer yourself. Your constitutions, there is constitutions about what you call the mother law, for example. And then there is the national legislating, making process, procedures and protocols, for instance.

And every country has its own balance in terms of how much is in the mother law and how much is the business of national legislation making. Fiji has been quite unique. I'd really be interested to hear what, you know, what your views are on someone who's teaching future legal practitioners in this country in terms of the right size is the wrong word, but the level with which you can have a mother law in a constitution that works, but a healthy national legislation making environment as well.

Mr. Sharma: Thank you, Commissioner. The constitution in Fiji is written. It's a written document. There's been a lot of debate as to why our constitution is thick or content heavy. And I think it really boils down to the fact that we're a new country. We're still in a baby phase of growing, even though we got our independence in 1970. And there's been a lot of discussion. And there's been a lot of problems with our constitution and the respective cause that have emerged. So that's why a lot of people are still very comfortable with a written text that guides rather than having a more aspirational sort of constitution.

And it being left to the legislation and rules and sub legislation to actually give it teeth. So, I think that's really where the argument comes from as to why our constitution is very heavily on content because people love the guidance. And I think something that we have become used to in a sense.

Now, the comment from Mr. Commissioner Beg is about New Zealand and Britain, Australia. Australia has a written constitution. New Zealand doesn't have doesn't have a written constitution, but doesn't mean that they don't have a constitution. Similar with the British. They don't have a written constitution. They have a system like New Zealand. I think it's just a matter of semantics and how they have evolved with with their laws and with their history. Yeah, but I think we still like to be guided.

Mr. Valenitabua: Your recommendation in relation to the appointment of ministers.

Mr. Sharma: Yes,

Mr. Valenitabua: you are concerned with the persons who have low voter numbers. Getting into parliament and then being appointed ministers. Now, I may be wrong, but the appointment of ministers is the prerogative of the prime minister. How can we overcome that? Should we tell the prime minister what he should know?

Mr. Sharma: What I meant, Sir, Chair, is that it should be transparent. And how can we increase that transparency? Now, you got someone who has 5000 votes, amassed 5000 votes, and then you have another person who has 200 votes and that 5000 votes doesn't get a seat, a cabinet seat. The person with the 200 votes gets a cabinet portfolio.

Now, what does this do to democracy and what the people have had to say? They've had their say and then it goes to the prime minister and then the prime minister makes his decision as to who he wants to hold that high office. How can we balance this better? How can we make it more transparent? How can we give that sort of that symbiotic relationship between the numbers that that person has brought to the table to get the government appointed and the recognition that he should hold high office?

Dr. Fatiaki: Chair, through you, let me just throw a spanner in the works in terms of how we think about this. One would be the issue of separation of powers. If the legislature, which is the parliamentarians, become heads of the various government departments, as is the current Westminster model, then invariably you've just made the legislature basically run the executive. You know, technically, the minister should be in charge, but not be too involved with thePS is meant to do that. But the reality is he's the head of that department and he's a legislator.

He's a parliamentarian and he's part of the legislature. So, the American system, for instance, where basically the prime minister or the president then gets to appoint from anybody in the world, literally, I mean, American citizens, people to run the various departments in his executive. They don't need to be parliamentarians.

Yeah, your thoughts about that? Number one, is there some way that that can be done in our setting where the prime minister is not limited to choosing one of his parties, how should I put it, candidates to be the minister? Could he appoint ministers like he currently has the power to do with the AG? He's allowed to appoint the AG from outside. Wouldn't it be wonderful if the prime minister could come out and appoint people from outside who are obviously very competent? He has the wide array, irrespective of political affiliation, he's not tied to that because I agree completely with you. I know you're saying the idea, but at least if he's going to appoint from parliament, appoint the guy who's got 5,000 votes who's the guy who's got 200 votes.

But I think take it outside of that and separate it completely. If they can do that for the AG, why can't they do that for every other ministry? And how would we do it in the context of amending our constitution? Thank you.

Mr. Valenitabua: If I may just comment on that, if the prime minister is going to be pulling people from outside to hold ministerial positions, then what's going to happen to the vote that was cast? People voted for people to be in parliament to do the job in parliament.

And in addition to that, it may be an argument in favor of changing the voting system completely. From what we have now, where you have people with 200, 300 votes being there as members of parliament because of the voting system. Do you agree?

Mr. Sharma: I agree with that, sir chair. Taking on board both your comments right now, what is happening is the prime minister is selecting who he wants to work with as opposed to who the people said that he should work with. So that is currently happening. So, I don't have any radical ideas in terms of how that can be managed.

But what I did mention is that it should be transparent and there should be a certain level of transparency to actually show why he picked a particular person over the other. Now, say, for example, you have a doctor who has come in. He's elected. He would be the best person in most senses to be the minister of health. But you select a person who comes from a different background to be the minister of health. Now, where is the sense in that? That person wouldn't know the difference between a virus and a bacteria, with all due respect, Sir Chair. Whereas you have someone who knows the job, who's been in the field, who knows the people around them, who knows how the structure works. So that is inherently the problem that I'm trying to show.

Dr. Baba: Can I come in, please? You know, I don't know whether I totally agree with you. In the fact that I'm a professor of education, I declare my conflict of interest, but it is within that that I speak. We in education have been wondering about what you're saying for a while, and I see the value. Say a chair is prime minister in another setting, and there sits in that corner John Fatiaki, who I prefer to be the minister of health because he's got 3,500 votes, but not in my party.

As prime minister, I think he should get him to be the minister. He don't care, he belongs to another party. But where's the legislation that tells

the prime minister to use more than just his party? Because the people have put him in. Doesn't matter the party. I totally agree with you, and I will not make the, you know, I will not point to the Ministry of Education, but people think in this country that because they go to school, they understand education fallacy. We also, like you have a lawyer in the AG's office, you have a doctor in the medical office.

Education is central to everybody, but then you don't want to put an educator there? Weak. So yeah, I totally agree with you, but we're, you lawyers must help us because if he is the prime minister, he should be able to navigate and represent, get the representative, which is John, not in his party. It don't matter. You know, what, that's how do you make it happen? That's, that's for you lawyers. So please don't fight further. Just do the work so that we can do it. I see your point. It is so limiting what we have right now. There's somebody with 300 votes just because he's friends to Nilesh, gets to be in government. That is not good. Sorry. Yeah, that's my two cents.

Dr. Fatiaki: Chair, through you, to answer your votes, Professor Nabobo, the 1997 constitution. Well, after, after the elections are done, I think the prime minister was mandated to offer ministries across to, depending on the proportion of seats they attained. OK, we know how that worked out. It didn't quite work out too well because he made up all sorts of funny ministries, you know, minimum, you know, 50 staff ministries and gave it to the opposition because that requires a person to act in good faith. But I think the principle behind it was to force a sort of a government of national unity. I take it again a step further and I'll answer chair's question or chair's comments. I think the prime minister as the person who wins already will have his policies. Now, who actually implements the policies at the executive level will be of his choice. It doesn't mean he's deserted the party. I don't necessarily think that the guy who got elected into parliament, he's elected into parliament by definition to make laws. He's not elected into parliament to run an executive because that's the whole idea. He's the legislature. Parliamentarians are legislatures. They're not meant to be executives. So, they should come into parliament and make laws.

Right now, we're making them make laws, but we're also making them run ministries. And unfortunately, it becomes an issue of what I need to reward you because you came on my party and therefore, you know, he has a high-status position as a minister for whatever. But if you were to choose from basically open the field so he could choose whether it's

from another party or whether it's the general public, competent people to become part of the executive and that they run the country independent of political machinations.

So, the simple answer, Chair, when you asked that was the policies will still be the party's policies. The platform will still be the same. And the people that he puts in place, I presume will do what the prime minister wants them to do in terms of the policy, which would be the party's platform. But the individuals who are doing it are doing that. I don't think that because somebody got elected into the party, that somehow that translates into him becoming a good advocate for, you know, for implementing policy. I think, you know, a cynic might suggest that once he's there and got his car and his overseas trips and his per diems, he forgets the policy that they stood on.

And I don't mean to be a cynic, but definitely if you did not limit it to the ministers, right now you're limited. They suggest we include the opposition members, but you're still limited to 50 people. If you have 500 people you could choose from, it'll do two things. One is you will separate the executive from the legislature. You don't have any parliamentarian running a ministry for better or for worse. And number two, you will then probably have the pick of the crop in terms of the best people to do these things. Thank you.

Dr. Gounder: I'll just, do you want to make a comment? No, thank you. I think I've seen how this works at first hand, the allocation of ministries and who's selected and so on. And I take your point. I have the same issue as well. The difficulty that I see in legislating something of this kind, the challenges. But, what usually happens is over time as political parties mature, they try to bring in people who have the relevant expertise and know-in, know-how in terms of the ministerial portfolio that they are assigned to. So that is an issue. One of the ways we can fix this is by changing the electoral system. The electoral act, if it changes the boundaries and if we have those, we can change the system slightly. But the challenge will always be here. We may not elect a person who has the right mix of expertise. It's difficult to legislate in my view, but it's worth something considering looking at what can be done. And I also understand the point. If you select 50 people, elect 50 people, you may not always have the right expertise. But your point is taken. You know, yeah, good point. We'll take that on board.

Mr. Valenitabua: It's meant to be difficult. You know, we've got a party system there. And then maybe change the constitution to the condition of a government of national unity. I don't know. Because with a party system on, what we are trying, what we are commenting on, just won't work. Right? Look at the condition. Have they improved?

Mr. Sharma: Everyone is fighting for survival.

Mr. Valenitabua: So, if you keep appointing people from outside of the party, you'll lose your support from your own party.

Dr. Fatiaki: You only need to worry about that when you come to the next elections. But for four years, you can govern with competent people. And the chances are that if you govern with competent people and produce the goods, you'll probably get reelected, irrespective of the guys that you didn't appoint from your party.

Dr. Gounder: Other countries have dealt with this by strengthening the bureaucracy to ensure that we have enough technical expertise within ministries. Something which we have in Fiji is weakened over time. I experienced two years with dealing with all the ministries. The bottoms-up approach of highlighting the actual problems and then filtering it through the ministry systems and processes and getting the expert opinion, finally, is lacking. And that's where... Some of the provisions, I don't want to preempt anything, in the constitution provides more powers to the ministers in decision-making, which has created a lot of these challenges that you have highlighted.

Dr. Baba: Sir, could I be just a loud cheer? In terms of what Dr. Navneel has just said, could you comment on the concurrence that thing that says that PS's need to concur? Because if we have to go by his logic, then we expect the expertise to comment on the running of matters in the ministry. Those that are educated to the point where the bureaucracy has collected them because of their brains, not because they belong to party A or party B. A minister comes in and then he tells the legislation tells the PS's to concur with the minister. Can you please remove that? Or what are we going to do about it? Because then it weakens what Dr. Gounder is saying. So, I'm not a PS, but from my level, I only deal with PS's And if they cannot be allowed to act with their brains, because that's why they're there, because of that one word, because we can't... John's got a better word, chair. We can't make the ministers behave professionally. They are political. I mean, what Nilesh is saying is, we

have a good group of workers. Let's allow them to do their work. In this country, it's called the PS's. They should be allowed to operationalize. But now with that word concurrence, it's not working. I know this because I deal with the PS's. So yeah, that's a good position to be at. But take out the word. Thank you.

Dr. Gounder: Sorry, on the same gist, what I've experienced is that under the democratic convention and the system that we had, we had different layers of decision making, starting from commissioners and then district officials and then commissioners and then flowing through ministries, etc. In the last 20 years or so, that structure is essentially broken. Ministers tell the people they will solve all their problems. So, it's been driven from top down rather than the bottoms up. So, if we strengthen the systems, the way in all these civil service mechanisms are supposed to work within our democratic convention, then only we'll be able to strengthen the way expertise decision making filters through at the ministerial level. And then to cabinet, and then to parliament, and also policy making. That has been weakened over time. And that's why I think I see your point. If you don't have a minister who has the expertise and is selected based on political grounds rather than expertise or some understanding or know-how, you see the mismatch between the minister's roles and the ability to carry out those roles. Because the minister is no longer relying on the expertise or technical expertise of the ministry.

Mr. Sharma: Thank you, Commissioner. I've been around the block in my limited life. I've seen how governments work. The real experts that come from ministries are the directors and deputy secretaries. The permanent secretaries sometimes, but most times maybe not. Look at Fiji's examples. We've got a handful of permanent secretaries who have no knowledge of the ministry that they are in. Similar with ministers, obviously. So that bulk of expertise and knowledge base is really at the director and deputy secretary and principal officer as well. So that is some of the problems that I've seen working in various ministries as well.

Dr. Gounder: Through administratively, one of the strategies that we did last time is to have strategic planning officers back in the divisional offices, Commissioner Division, Commissioner Northern, Commissioner Central. So, there's a direct link between the planning ministry and the feedback that we get from the different divisions. So, this was taken away in 2007. That's something that we appropriately saw. There is a lot of administrative work that needs to be done as well to ensure that we

sharpen the way problems and issues are identified on the ground and the way these issues are then taken up into policy making through expertise advisory processes. I totally agree with you. It's the deputy PS, the director, all of these down to commissioners' level, etc. But district officers should play an increasingly important role. We have completely seen the disempowering of the district officers. That's why we used to have these divisions here. Yeah, because they have the government on the ground. We're still collecting data based on the four divisions, but the decision making does not flow on through these processes that we used to have. There's a clear breakdown of how this system was supposed to work in our democratic conventions.

Mr. Sharma: I would like to just thank the chair and the members of the panel for this immense opportunity. The comments I will take on board and thank you very much for your time as well, sir, chair and members of the panel.

Mr. Valenitabua: Thank you very much for your attendance today. You have created very robust exchanges here, not even between the commissioners. But thank you very much. You have raised some really pertinent points. I liked your idea about the GCC, but we'll have a look into that. The ombudsman, when you mentioned the ombudsman, I thought, why did they ever take away that office? So, we look into your submissions. Please hand over a copy of your written submissions to the policy team on your left or on your right, sorry. And if you have any other submission which you can help this commission with, please don't hesitate to send them to us. You can get our email address after that, if you haven't got it already. And thank you very much.

Mr. Sharma: Thank you, sir, chair. I wish you all the best with the important task ahead. Thank you.

----------*End of session [16-04-26]* ----------

Submission to the Constitutional Review Commission – 16 April 2026

By: Navneel Sharma

Chair and Members of the Commission,

Thank you for the opportunity to appear before you and to make this submission. I acknowledge the diversity, experience, and expertise of the Chair and the distinguished members of this panel.

At this important moment in Fiji's constitutional history, we are called to reflect not only on where we have come from, but also on where we aspire to go. Our Constitution should reflect the richness of Fiji's history, the resilience of its people, and the depth of its cultures. At the same time, it must articulate a clear and principled vision for the next fifty to one hundred years—grounded in unity, justice, accountability, and opportunity for all.

In this sense, a constitution is more than a legal instrument; it is a statement of national identity and shared purpose. We have the opportunity to develop one of the world's most modern written constitutions, and that is something we should approach with both ambition and pride.

At the outset, I emphasise that this Commission carries a significant responsibility. Public consultation must be meaningful. The views gathered should not only be recorded, but carefully considered, properly contextualised, and genuinely reflected in the drafting process. A constitution must not merely regulate power; it must command public confidence.

My name is Navneel Sharma. I am an academic and teach Constitutional Law at the University of the South Pacific. The views expressed today are my own and do not reflect those of my employer or any organisation with which I am affiliated.

I will be brief. I will address six areas: the Judicial Services Commission, the Office of the President, the status of the Great Council of Chiefs, the Office of the Ombudsman, emergency powers, and the selection of portfolio Ministers.

1. The Judicial Services Commission

In the Constitution of the Republic of Fiji, the name "Judicial Services Commission" (JSC) appears forty-five times. It is established under Chapter 5, which deals with courts and judicial officers. The JSC is chaired by the Chief Justice and performs appointment, recommendation, and advisory functions within the judiciary.

However, its role extends beyond the judicial sphere. The JSC advises on matters relating to the remuneration of the FICAC Commissioner (s 115), makes recommendations regarding the Solicitor-General (s 116) and the Director of Public Prosecutions (s 117), and advises on appointments to the Mercy Commission (s 119).

This expansion raises a structural concern. When a judicial body exercises influence over prosecutorial appointments, anti-corruption oversight, and clemency processes, the separation of powers becomes blurred. The concentration of advisory authority within a single institution

risks weakening checks and balances and may affect public perceptions of institutional independence.

Recommendation:
The Commission may wish to consider whether the JSC's mandate should be more clearly confined to judicial administration, with executive or quasi-executive appointments allocated to appropriately structured and independent mechanisms.

2. The Office of the President

The appointment of the President by a simple parliamentary majority under s. 84 of the Constitution in concerning. In practice, this enables the government of the day to determine the appointment, limiting meaningful participation by the opposition. Especially if voting is not on Conscience but along party lines. The President is intended to serve as a unifying and non-partisan Head of State. Yet if the selection process is dominated by the governing majority, public perception of neutrality may be undermined.

Recommendation:

There are options worth considering. A supermajority requirement in Parliament could be considered. Voting should be done on Conscience Vote and not along party lines to ensure that the government does not necessarily get who they want. Having said that and on a cursory note, I think alot is said when we boast ourselves as the 'Hub of the Pacific' and 'punching beyond our weight' and we still have not had a female President as Head of State for our country since independence.

3. The Great Council of Chiefs

The 2013 Constitution has disregarded the role of the the Great Council of Chiefs (GCC). This omission is constitutionally significant. The GCC functions as a central institution of indigenous governance, reflecting the authority of the *vanua* and communal leadership within iTaukei society. Its removal signalled a major shift in how traditional authority is recognised within the constitutional framework.

I support the recognition of the GCC under a new constitution as a paramount body reflecting indigenous interests admist ever growing global pressures. However, the question is not simply whether the GCC should be restored, but what role it should perform in a modern constitutional democracy and the balancing of this constitutional representative body against groups who do not have such chiefly structures to represent them and are at the mercy of the ever changing executive body.

If reimagined, the GCC could contribute to national agenda-setting in areas where structural challenges are evident, including school dropout rates, indigenous land utilisation and productivity, rural development, substance abuse, disproportionate indigenous representation

in the criminal justice system, bridging the ethic divide, improving standards of living in rural communities, and pressures caused by urban migration.

Recommendation:
The Commission may wish to consider the constitutional recognition of the Great Council of Chiefs as an independent advisory body with clearly defined and limited functions. Its role should be consultative rather than political, with a mandate to provide non-binding advice on matters affecting iTaukei interests, including customary land, traditional governance, and indigenous socio-economic development. To ensure coherence within a modern constitutional democracy, its functions should be expressly confined so as not to encroach upon parliamentary sovereignty or executive authority. Consideration may also be given to requiring structured consultation with the Council on legislation or policy directly affecting indigenous interests, while avoiding any form of veto power.

4. The Office of the Ombudsman

For many ordinary citizens, engaging with executive bureaucracy can be difficult. Administrative processes are often slow, opaque, and unresponsive. When correspondence is unanswered and decisions remain unexplained, public trust erodes.

The Ombudsman traditionally provided an accessible and low-cost mechanism to address maladministration. It offered investigation and resolution without the delay, complexity, and expense associated with court proceedings. It did not replace judicial review; it complemented it.

While judicial review remains available, it is often time-consuming and financially burdensome. For many citizens, it is not a realistic avenue of redress. The removal of the Ombudsman narrows accessible accountability mechanisms and places greater reliance on litigation.

In a constitutional system committed to the rule of law and responsible government, there should exist an independent and accessible institution capable of investigating executive maladministration. Without such a body, accountability risks becoming reactive and court-driven rather than responsive and citizen-centred.

Recommendation:
The Commission may wish to consider the re-establishment of the Office of the Ombudsman as an independent constitutional office with a clearly defined mandate to investigate administrative conduct across the public sector. Its functions should include the power to receive complaints from the public, initiate own-motion investigations, and make findings and recommendations on maladministration.

To ensure effectiveness and credibility, the Office should be institutionally independent, adequately resourced, and accessible to all citizens without undue procedural barriers. Consideration may also be given to requiring public authorities to respond to Ombudsman findings within a specified timeframe, thereby strengthening administrative accountability while preserving the non-binding and complementary nature of the Office alongside judicial review.

5. Election of Ministers

It is concerning that the Prime Minister retains broad discretion in the selection of Cabinet members. In practice, individuals who receive relatively low numbers of votes may be appointed to significant ministerial portfolios, while others with substantially higher electoral support remain backbench members. Similarly, individuals who enter Parliament through replacement mechanisms following resignation or death may be elevated quickly to ministerial office despite having secured comparatively limited electoral endorsement.

This raises questions about the relationship between electoral legitimacy and executive appointment and may affect public confidence in the representativeness of the Cabinet.

While the formation of Cabinet is properly a function of the executive, a complete disconnect between electoral support and ministerial appointment risks undermining the democratic signal expressed through the vote.

Recommendation:
The Commission may wish to consider reforms that enhance the transparency and democratic legitimacy of Cabinet appointments, while preserving necessary executive discretion. This could include the development of guiding principles or statutory criteria encouraging the Prime Minister to have regard to factors such as electoral support, experience, and competence when constituting Cabinet.

Consideration may also be given to requiring the publication of reasons or criteria underpinning ministerial appointments, thereby strengthening public accountability without unduly constraining the functioning of the executive.

6. State of Emergency

Under section 154, the Prime Minister may, on the recommendation of the Commissioner of Police and the Commander of the Republic of Fiji Military Forces, declare a state of emergency. This formulation appears narrow and rooted in more traditional conceptions of national security threats. Contemporary experience most notably the COVID-19 pandemic and global economic disruptions demonstrates that emergencies may arise beyond the scope of policing or military advice alone.

This raises concerns about whether the current framework adequately captures the range of modern crises requiring urgent and coordinated state response.

Recommendation:
The Commission may wish to consider revising section 154 to broaden the basis upon which a state of emergency may be declared. In particular, the power to advise or initiate such a declaration could be vested in Cabinet collectively, rather than being limited to recommendations from the Republic of Fiji Military Forces and the Fiji Police Force.

This would better reflect the multi-dimensional nature of contemporary emergencies, including public health and economic crises. Any such reform should also retain appropriate

parliamentary oversight, including timely approval and review of emergency declarations, to ensure that the exercise of emergency powers remains accountable and proportionate.

Rajesh Singh

Rajesh Singh
Date: 16-4-2026
11.30am-1.10pm

Mr. Valenitabua: We welcome you. The consultations which have been done, we have informed people that this is an independent commission, appointed by the President, His Excellency the President, and through a way cabinet decision. We have a term of references, and the term of reference spells out that we are to listen, hear, and then deliberately draw a report on what the people of Fiji submit to us in relation to the 2013 constitution. With the objective of reviewing it, and preparing an amended constitution. That is our term of reference. We have 10 other, or 11 other matters which are included in the terms of reference. And your presence here today, I believe will assist us very much in relation to our work as the review commission for the 2013 constitution. I will not say any further than that. We welcome you. Please make yourself at home. Let's make this, it's not a formal setting, so we'll just exchange questions and answers, and maybe some comments. But we pass it on to you to please make your submission here.

Mr. Rajesh: Thank you. Thank you, sir. Thank you, Mr. Chairman. First of all, we'd just like to congratulate all of you for being appointed in the commission. And I was so delighted, I think, since the day your swearing-in happened, and I met Dr. Baba at a dinner function, I guess. She was there, and then I was surprised when she told me, and I was so happy. Because this is one thing in my life that I fought for, was the legal 1997 constitution. And until today, I know a lot of people ask me, will you contest the election? I've been offered by other parties, even PM asked me, and other parties. I still have my reservation, and I'm a believer of the law.

And I always said, no, I will never support a constitution that was enforced, the 2013 constitution was enforced on the people of Fiji. And it was not the will of the people. And as we know, the 1997 constitution, there was a court ruling, and there was very clear in the Supreme Court ruling, and that was from the judges that came from Australia and New Zealand in Qarase versus and Bainimarama's case, April 9, 2009.

And they said that the 1997 constitution was the legal constitution, and it cannot be abrogated by the military coup or anybody else. They said the President has reserved powers and all that, that was very clear in those rulings that it cannot be abrogated. So, my simple presentation is

very much, and I will say that the 1997 constitution, even though, Chair, you were there with us when we went to the appeals court, and when I was very disappointed, but when Justice Temo said that the 1997 constitution is finished.

But I still believe it's not finished, honest to God. And that's my opinion. I'm not a lawyer, but as former MP and others, I believe the 1997 constitution is still alive, and it's just sleeping somewhere.

So, for me, for today, I came here, and I'd like to thank you for giving me this opportunity. First of all, what I want to say is we want a constitution that is like 1997. And first of all, I would say to start off is that Fiji, in the preamble, we acknowledge, like America and other people, that at the moment we don't have God in the constitution.

And I would very much say that Fiji needs a constitution that we have God, we acknowledge God. As our chief who accepted Ratu Seru Cakobau when he accepted Christianity, and he declared and accepted Christ, and then that is very important to have God in our constitution, and I will be very open here in saying that I would prefer Fiji to be called as a Christian state. And every other religion, even though my Misis is Hindu, my mom is Hindu, we, my brothers, we are Christian, my sisters are Christian, some follow other Hindu religion, we all respect each other's religion, and they be given opportunity, like everywhere in Australia, in Fiji, everybody has freedom of religion, so that's it, but I think it's very important to have in our primal that we acknowledge God, and that is very important.

The second thing is we want, been fighting for this too, great council of chiefs to be legally restored in the constitution, yes, it was in the 1997 constitution, so the GCC can sit and appoint a president and a vice president, yes, it was in the 1997 constitution. And then we have senate, and same thing, prime minister appoints, GCC appoints, and opposition appoints, and then we have one reserve seat for the senate, I know it comes from Rotuma, so same thing as 1997 constitution, that's what I'm talking about is 71 seats, senate, GCC, and all those things to come back as it was in 1997 constitution. Because if you really look at 1997 constitution, it's really promoted multi-party government, multiracialism, everybody to work together, and I was surprised, and I can share this with you, I was called by our patron Turaga Na Qaranivalu, I went and visited him, he was in jail, and then he spoke to me and then

he said the party president will speak to you, to Kalo and the prime minister, and I said okay.

So, what is this, he said, I won't say, but they will talk to you, and we've already discussed things. So, I was surprised, and I never even read that part, it was, it touched me, and I still today, as you saw it was, even Bainimarama called me and said, do you know that I saw a file that you named was to be appointed future vice president of Fiji. And I laughed and I said yes, that was true, because I told them I will only serve two terms, what I wanted to achieve in sports and other things, I'll achieve it and then I'll retire in 2011, just only two terms in parliament, that was my plan over the 2016.

And they said oh you can become the vice president because the indigenous people like you and you are very multiracial and you understand the culture, you respect the people and both sides of the house will be easy to convince them. But for me I would like to say the same thing in the future, it's not about me but in the future, I would love to see a vice president of Fiji come from an Indian origin or any other race, and the president has to be a paramount chief, that I will be very much aligned with that, that will be my submission. And actually, then I was just doing some research and looking at Singapore with a population of about 300,000 plus, and they had three Indian presidents came from, and at the current there's an Indian president too who's been nominated and they said it is, when I was reading all this article it was talking about how the president is a symbol of unity.

So, that's the thing on those things, and like the 97 constitution I was saying is about we should have, I know people will say oh you want to go on the ethnic line again, I would prefer we go back to the same thing, go back to the constituency boundary, we go back to the reserve seats for the indigenous people, and then also we go for the Indian people and also I know there's reserve seats for the pat European and also for the Rotuman, but I would like to add another two, because I've been going around and watching this load of our brothers from Rabi, Rabian heritage and Kiriban's, so if we can do that, and I know our Indian population has decreased, they had 19 reserve seats, I would make a submission, okay we can take four seats out from there, and if we can divert the seats to Rabian, Kiriban's, and also even to the Chinese, you know. So, when we go to Parliament and when we talk about multiracialism, we can see people in Parliament with all races that live in Fiji that call Fiji our home,

they are all represented in Parliament or in Senate, and when people look at it, the younger generation or people from outside world, they will look oh yeah, Fiji is a real multiracial country. The other thing about the citizenship, and this is what I brought, this is my diplomatic passport, 2006, that is my current Fiji passport that got renewed, and this is my New Zealand passport.

So, when I look at it, this is one thing that I was not supportive and I will never support, when you know they said oh we call everybody Fijian, honestly it was an identity theft by Banimarama and Kayum, and I will never support it. Honestly speaking, we should be proud of whatever race God created us in, so that's one thing I would like to very emphasize that we shouldn't mock God, if God has created us as an Indian heritage, a Fijian heritage, a Rotuman heritage, a Rotuman, or a Chinese, or Rabian, or a Kiribati in Fiji, or anywhere in the world, I think we should respect that, very important. So, I would prefer that a common name be called, a Fijian name reserved back to our native original Fijians, Indian can be called Indo-Fijian or Pacific Islanders, like in the passport I can see that it was called before.

So, that is something that I want to very much emphasize on that, because I always write in the Facebook, I'm proud, it's not even like boasting, but what I'm proud of is my God given race, and that I should respect that, because I am someone that we cannot mock our creator, if our creator has created us in that race, we should respect each other's race and follow that, rather than trying to become something that you are not trying to, like for example, in Australia and New Zealand, I talk to my Indian friends and others, and I always tell them, we have to respect the First Nation people in Australia, the indigenous people, aborigines, and same thing in Maoris, and in Fiji. This is one thing I would like to educate my Indian community, and I've been saying that, and this is what I was brought up with my parents, and when my two uncles were ministers with Ratu Mara, one was the Minister for Health, James Shankar Singh, Mum's elder brother, younger brother, Uday Singh was a member of Parliament, and later he became a Senator, and Mr. Chaudhury for the first election against my two uncles in Ba, and that was James Shankar Singh and Uday Singh and Chowdhury in 1984, and that's where Uncle Uday, Mum's younger brother came up and became the thing, and he also, later in 87 he lost, but then he became Deputy Chair of Public Service Commission.

Yesterday I met Mr. Rokovada and he said, oh, that's your uncle? I said, yes, Mum, younger brother. So that's something that I always cherish in my life, and both of them passed away, even my dad was a unionist and he was a founder of the Labour Party, and people said, when was the Labour Party formed? Oh, this time, I said, no, no, no, I correct you, I was a 12 year old kid, I saw it very clearly, I was running with a flyer, it was called the Fiji Labour and Country Party, back in 1977 it was formed by my dad, who was a unionist at that time, Freddie Archibald and Michael Columbus and them.

So, that's something that I cherish, living in the village, brought up in the village in Qauia village, and that is my love for my people, for everybody that developed there, and that's why I joined the church. As a small kid I would go to the Methodist Church, hey, Rajesh, we go to this church, okay, we go to LDS Church, Catholic Church, everywhere I would go, and then later I got converted to LDS. But that's something in my life that, you know, when I look at people now, and I was hurt just about two weeks ago, I was recently abused in our office at FNRL, and I was called a 'kaidia', you're not needed here, we don't want 'kaidia 'here, get out of this office, because when I was trying to do something good, you know, and I just looked at them and I just shook my head, and the police officers were all sitting down there.

I said, these guys have done so much damage to those institutions, have, you know, stolen money and all this kind of thing, mismanagement, and now you call me 'kaidia', why am I called a 'kaidia', but I just took it on my chin, but it hurted me, honestly. All my life I went through these schools, it never hurted me that much, because people, I was walking in town and people were hitting each other, but I'm just still walking, they all know, and hey, you know, my nickname, and so, I was not hit, but yes, I was hit, but this is something that I would like to say that we, another, why I'm bringing this topic, I want to say that we have to take immunity out, no more immunity, honestly. From now on, we shouldn't grant any immunity to anybody, or military people, or anybody, who come in school.

So, from now on, if this new constitution is written, from onwards, we should say no more immunity, you know, because to be fair, we see the civilian people, when they do coup, they end up in prison. When the military do coup, they become prime ministers, and presidents, and whatever, you can call it, and everything they become. So, the law has to

be fair, it has to be one law for everybody, not, oh no, military do the coup, they can rewrite the constitution, and they get immunity, so immunity has to be out.

And the other thing is, because we are facing this problem in Fiji at the moment, is drug raids, and all this kind of thing, I would also like to encourage, if we can, the government can have it in our constitution, that we have to have a strict penalty for all these people that are the drug lords, or that are committing crime, and I know there's a law already there, under procedure of crime. The assets can be all taken, and it comes to the state, so there's something that has to be really enforced, and this drug issue has to stop, because I know there's a lot of people are facing this problem now, and we have to safeguard our country, and safeguard our youths from these things, and we have to bring stiffer penalty, stricter penalties, even, honestly speaking, I would even say, we just have to be something like Indonesia, or, you know, if they need to face the firing squad, let it be, I know they're going to say, oh, in the Ten Commandments, I shall not kill, no, it is there, I shall not kill, but if you break the law, then what are you going to do, even like, in the 97 constitution, another constitution, I know when you commit coup, treason, it was hanged to death, but it never happened, that's why, then we had another coup, if we would have done that in 2000, that's it, then there wouldn't be a 2006 coup. Those people would have been scared, you know, deter from what is happening.

The biggest problem we're facing in Fiji now, I got a call from one of my cousin, is another problem we're facing now, is about the land lease problem, and you must have seen videos going around, and other things, and like I said, my family side is, most of them are farmers too, and they're retired, teachers and all that, and they're into farming and all that, and when the lease is about to expire, they get worried, and you know, they cry, and all this kind of thing, oh, what's going to happen now to us, and all this, so I always just teach them one thing, you have a good relationship with the Yavusa, the landowners, and all this, because they are the people. I tell them, the government can't do much, anybody, everybody blaming the government, no, government doesn't have a say, honestly speaking, the land belongs to the chiefs, and the mataqali, so if you want to work nicely, you be good friends with them, you pay your dues, your rental, and everything, and then they'll be able to renew your lease.

I mean, I know, I've been offered so many times, by Turaga Qaranivalu, and other people, I said, no, no, thank you, I've got enough, if I need it, I will follow the traditional protocol, and I'll come and ask for it, and I'll pay for a fair rental on the lease, and all this kind of thing, so that's one thing, I think, so we have to, our lease is another issue of the sugar farmers, and not only that, but I think so, we have to look at a fair return, because at the moment, when you look at the lease, that some people have, and what they're paying TLTB and the landowners, and what they're getting is not a fair return, so that's why we're having this problem with the lease, because that's one thing, the people need the security of the lease, but at the same time, I tell them, you pay a fair return. For example, you have a house, you rent your house, so if somebody wants to rent your house, they come and talk to you, so you decide how much to pay and all that, so there's something, I think, so we have to look at it in the constitution too, about a fair return that has to be inbuilt for the landlord and the tenant, and then we have a 99-year lease, and then you can have a renewal, but everything is, all has to be a fair share of the game.

It's not like one side only, it has to be both sides, that you can sit down and agree on a thing, on a good amount, and then move forward, I'll give you an example, I got a friend, so we wanted to buy a land for rugby league, and I said, how much, so this guy, I showed him his lease document, he took it as an agricultural lease, right, so he paid only 1,500, then he did a little bit, okay, built it up, 10 acres, up, now he told me, he's going to sell that land, if you want it, for 18 million dollars, and I go, what, 18 million for this land to us, when you pay only this much, come on, you have to be fair, and see, but then he turned that land, agricultural land, kept it for three years, and then he turned it into a commercial lease.

So, that's one thing I think, so this constitution, and TLTB, and all these people, I think so, we have to factor this kind of thing, because then here, he gets the money, but what if the poor land owner gets, you know, we have to be fair, I think so, that's something that we have to be very fair, then they can turn around and say, no, it's a commercial decision, or I've invested this much in it, okay, that's fine, but come on, be fair.

The other thing I would like to suggest is in civil service, I remember before it was 60-40, something that we have to, once again, introduce those kind of things in civil service, like every race, everybody is given a fair on their merit, like 70-30, you know, those kind of things for indigenous people, 70%, others 30%, you know, look at the community

ratio, how much they are, that kind of thing, that's one thing I would like to suggest, that's very important, and that multi-party government. I already spoke about it, and the parliament term, I think it's good to go back to five years again, instead of four years, five years, and another thing, it was before in Fiji Trade Investment Act, now they've changed it to Fiji Investment, it was some business that was reserved for local people only, and now you can see everywhere things are happening.

I would like to encourage the government, even put it in the constitution, about uplifting our indigenous brothers and sisters, is about the government should help, in a way, is when they get their lease money, and other things, like for example, in the west, where those land are suitable for tourism, we need a lot of hotels and all this, if government can encourage FNPF, and the landowners to go on a 70-30 partnership business, not only in that, but in hotels, industry, and other business, you know, and we like to also encourage government.

If you really want to uplift the standard of our brothers and sisters, indigenous brothers and sisters, it's to uplift their, the way they're living, the standard of housing, housing is one thing, and all this kind of thing, because they get, I asked one of my friends, how much you guys get in lease, he said 38 million, I said, what do you do with that money, oh, everybody gets the share, party, do you save any money, nah, we're going to go, that week the liquor shop going to get empty, that's it, so I said, man, just imagine, if you take 50% of that money, and you put it in FNPF, or somewhere you going to get that return and in 10 years you going to double your money. You invest in some kind of this.

That is some kind of thing I would like to put it in constitution someway you are the expert that can help in uplifting of our indigenous people because they got the land they got the resources they got everything. I tell everything you can get to be the richest people because you guys got the land. 90% of the land is native, if you use it wisely you can be very rich. I t think those are the kind of thing the government is to teach people and we are not teaching people that's why I'm saying in the constitution if we can put this how are we going to uplift people. See I was very much like India, see India like the 4th economy in the world and they can go number 2 in the world. It's all about these visions.

How you wanted to hello the people. Just uplift each other, like how you can build forty million houses . I think so there is a lot of monkeys in the

civil servant has been misused. If you can plan things wisely everything can be and all this kind of things like drugs. For me my personal view if government can build up sports facility. Every youth would like to play all this kind of things youths etc. Lot of money in the civil servants or in the government has been misused. Lot of money in the civil service have been mis-used. And if you plan things nicely. And if government can allocate money and build up facility. Everybody wants to play sports youths and all. Instead of going to drugs the youths can use all these kinds of things so that they can go away from drugs.

Sports is a big thing now. Sports is something that can bring people 'out from this think. I was talking to Madam Baba like things like life after sports and help our future youths. Sometimes we all don't have to go to school but then I went and talk to my Fijian friend hey, go talk to my future friend, okay, I'm going to pay your fare this side, from this side, so simple terms in English was, okay, if my future friend is going to pay my fare, okay, we're going to go to school in the morning so we can finish and then after that we can walk down from Navesi Primary School, we'll shortcut and then we go to your village.

It takes two hours but you know, when you're young, we're laughing, we're joking, we're stories, but there's that kind of thing that I cherished in my life and I never forget all these things, because living in peace and harmony and multiracial society that Fiji can be, now our kids, our schools, they get $200 fees, I mean, that allows, and I saw people abusing that money, I'll give you an example, I was talking to Isaac yesterday and Isaac was telling me that his cousin in Ba, he was in Ba too and he said, I went there, he got $1000, five kids, $200 was used on the kids, $800 was on the bus, and then they called Isaac, hey Isaac, can you help this and this and this, so he said, I have to help, but he said, you know, honestly brother, I wanted to punch him, but you know, we can't, but this kind of other things that government is giving adults, but then people have to take, be responsible, I said, why can't government in the $200 subsidy they're giving for schools, why can't they just give it to, okay, you get a voucher here, go and buy things from post Fiji.

It's a government entity, public enterprise, the money comes back to government, and then they will buy books and all this kind of thing, so I'm talking about, I know I'm talking about constitution, but I'm going out a little bit out of the way, but those are the things that I see, the problem

that is out there, how in the constitution can we factor this kind of thing, social obligation and all this kind of thing.

I think we already have a bill of right, so those kind of things will be protected, but that's what I wanted to say, and I think, so just to round it off, and mostly if you have some questions that I can answer, I would like to see, like I said, Fiji is a Christian state and all this kind of thing, but the most important thing is we need all our race to be in parliament, and make voting compulsory, make voting compulsory, even the town councils to local government, at the moment we didn't have any local government election since 2006, or 2005 I think, so it was the last one, and after this there's no local government election, so we should go into local government, things has to happen every five years.

I would propose, and also general election every five years, and then common role, open seats, and reserve seats for all races in parliament, so that will be my submission for today to the constitution commission, and if you have any questions, madam, and sir, I'm happy to answer it, and even if you can give me some advice, that some things are brought up, that you think that I can go and share with our friends and community, that will help our brothers and sisters out there, thank you very much.

Mr. Valenitabua: Thank you Mr. Singh, you raised some points, I ask the commissioners if there are any questions, or any comments, in relation to what Mr. Singh has raised to us this morning.

Dr. Fatiaki: Thank you Jay, through you, Rajesh, I apologize if I can call you Rajesh, thank you very very much for your thoughts, and your sharing's, and reflections, I know exactly where you're coming from, because I know you for a long time, for our colleagues who don't know, Honorable Rajesh Singh was a minister in 2006, so just in terms of administration, you can't get higher than that, so you're talking from a place of knowledge, and experience.

I reflect on a lot of the things you say about the nature of the relationship between the races, growing up in a village speaking Fijian, playing with the boys, you know, he, whatever, that is something that I lived through, and I have no doubt that there are colleagues of mine who are old enough to remember that, and even the younger ones, I have no doubt that they have very fond memories, and I think those sentiments are shared amongst all of us.

The thing though, with these sort of things, is to try and figure out how to, you know, bring those things back, and I hear a lot of the things that you've reflected on, and I think, as I said, I think the basic sentiments are shared, how we do it is another question.

I think for the purpose of our discussion in respect of our role as a Constitution Review Commission, you alluded to the 1997 Constitution, and the ruling by the High Court in respect of the Bainimarama Qarase case. I agree completely with you. I think it was a very clear-cut ruling that the decision by the Appeals Court the year before, that's Gates and them, to give the President prerogative powers to abdicate the Constitution were null and void, and that was illegal.

Having said that, after that decision was reached, and I think for those of us who remember, this is near Easter, April, I think it was, Frank, Mr. Bainimarama and the boys went back to camp, and then they abdicated the Constitution by force of arms. They ruled by decree from 2006, well actually before, continuously until 2012 when they attempted to ratify this by making some form of parliamentary democracy reinstated. They tried to do that by instituting a citizen's constitutional forum, supposedly to legitimize the idea that we're all back together, and Yashgai's commission that subsequently was thrown out and burnt as he walked out of the printry at Vatuwaqa.

Subsequent to that, he then decreed a constitution. To this day we don't know who wrote this constitution. I have ideas, I think everybody has ideas about who might have written it, but the reality is we don't know.

They supposedly, there were consultations, that's absolute rubbish. The only consultations that happened before 2012 was the citizens constitutional forum and Yashgai's group, and the fact that Yashgai's findings and recommendations were trashed tells us what they thought of those. So, to then use it as somehow that's the consultation upon which they wrote the 2013 constitution is ludicrous.

After they wrote it, they then went to the public and selected people and gave the constitution and said what do you think. Not what do you think to write into the constitution, but what do you think of what we've written, and somehow legitimized it, got it promulgated by the president, and became law. That's what we're dealing with now, okay.

There's been a lot of saying around, came in through the back door, out the back door. You realize that the only way that it'll go out the back door is by another coup, by definition. That's the only way it can go out the back door.

We don't need any more coups. I'm a victim of the coup, you're a first-hand victim of the coup, but I don't think this country needs any more coups. We're at the end of our lives and we don't really want to hand over to our next generation, my children and my grandchildren, a country that is formed with a new constitution in 2026 by another coup.

So, our role, I think all of us here, is to try and avoid that, and I think you know we owe you credit to government. I mean many people thought they would bring it in 2023, because everyone said, every single party in coalition government said on their manifestos that in the first hundred days they were going to do what we're doing now. They didn't, but having said that they're doing it now, and the legal process was followed as per what is an imperfect constitution, it was done, and I think now we've reached a point where the legal people have actually ruled.

They tried to amend it last year, and they failed in parliament. That's the easiest way to do it. They sought the opinion of the Supreme Court, who have now given us a legal means to, I won't say throw out, but amend, and by definition our chair has, as a legal person, said to us that I mean can mean review, can mean amend, revoke, repeal, and then essentially the court's told us you can do all of that except for immunity.

They sort of hovered away from us touching it, because it's not written into chapter 11, but everything else, you know, can technically, you could have one line in the beginning of your report that says we, the Constitutional Review Commission, recommend the repeal of the 1997 Constitution. That's the first line, then we have a new constitution. Now many of us as part of this process have looked at the 1997 Constitution, 1990, 1970.

If you want to look at the deed of cession, then we've also looked at that too, trying to understand all of the pros and cons. When we come to the 1997 Constitution, the legal way to do it, you're aware of this, is to, for us to do it now, put that body, and I, you know, I appreciate what you said the 97, but the reality is the only way that's going to come back is the

same way that it came in and that we don't need. Okay, I would be saddened if that were to happen.

We have the means legally to approach it now and that's what we're doing, you know, as a wide group with different experiences, with a hope that we bring together something that will probably have lots of elements of what you like, which is the 1997 Constitution. I have no doubt. I'll allude to the first one in the preamble.

If you look at 1997, this is my particular area that I discussed amongst my colleagues, there's God mentioned. You brought that in, in 2013, it's literally erased. Not only do they state the secular state but it's completely erased, there's just no mention and I find that ironic given that if you walk down the street and ask every second person there, I suspect 99.9 percent of people will tell you I believe in some kind of God, you know, call him what you want, but that would be the feeling.

I disagree with you in terms of calling Fiji a Christian state. That's taking it, I'm a Christian, but that's taking me and imposing my beliefs, say of 60 or 70 percent of this population, or to be able to 30 or 60 percent of the population who also believe in God, but they don't call him Christ, and for me that would be an imposition which only my God can answer that with me, and so I would have an issue with that and I'm sure that if you thought about it. I want God there, that we will be guided by God, and I want it stated, but I wouldn't want him to be a Christian God, because I don't know enough about the other gods to decide whether they were valid or not. So, I support that, but I would not support the Christian part of it, and I think you as a rational person understand where I'm coming from, and may well be amenable to having that, but I agree with you completely.

If we don't acknowledge a creator and a higher being, then we're just humans, you know, fallen humans, and we're not going to get anything right without that, so I support that part of it. Aspects that you have referred to, the GCC, this is a very emotive issue. Our panel thought that the first people we would listen to formally in life was the GCC.

We were glad we did it. I alluded to that when we saw them, their presentation was very, how should I put it, very forthcoming. I have no doubt that the idea that the GCC is a bunch of uneducated chiefs was dispelled at that presentation. These were very educated, smart people

who talked to us. Some of their requests, I won't say demands, the media would like to say they demand, and it said, I think it recently, yesterday, I said an Australian, I read an Australian thing that said that they demanded a Christian state. I can't remember that in the submission.

I can't remember that. I think they asked for the removal of the secular state part of it, but I don't remember anything in the GCC submission that said Christian state. They acknowledged the failures that they had had as a body in the past in supporting, you know, extremists in terms of imposition after the first coup of a Christian state, you know, but this GCC representation that came to us is very conscious of this, and I think they share similar sentiments to me.

They like the idea of God, they don't like the idea of making ourselves devoid of God, but they didn't feel strong enough to say that, and the media would have you still play on that. Yesterday, Australian media, I think, said, oh GCC demands a Christian state. I sat here and listened to it, I can't see it, I can't hear it, and I'm looking at my colleagues and my understanding is none of them heard it either, already, so you know this is the unfortunate thing about the media in some instances where they want to, whether it's intentional or otherwise, those are dangerous things to suggest, but again, the issue of the legality of it, I think we have a process now.

If we come up with something, it may end up being 99% of the 97 constitution, I don't know. We're going to get the people to tell us what they want, but when it is ultimately taken and completed, we will hand that to government. We have a legal process, not a cool process, but a legal process, and if we follow it to its rightful conclusion, government sees fit to make a bill to amend the 2013 constitution, it's passed in parliament, and it's passed in the referendum, and it's then brought in.

All the things that you've mentioned, we are all starting to hear. A bicameral house, I support the idea of reserved ethnic seats. We had a very robust discussion with the Electoral Commissioner and his group yesterday, you know, about whether there should be communal seats and things.

I think if you want to guarantee that the Chinese and the Rabi and the Europeans are represented in parliament, you're guaranteed. Right now,

they're not, and I think those kind of sentiments, how we actually do it, how the next government does it, we're still in that process, so I'm not going to preempt anything. A part of my chapter is to look at the composition of parliament, the voting system, and we're going to listen to lots of input from people and see how we can achieve, I think, are some of the things that you have touched upon.

The senate, the re-introduction of the senate. I was a senator, and I shared this a number of times, I'll say it again. When we sat down in senate to consider anything, it was the most civil body. Nobody screamed at anybody else, even though they were opposition senators. We had a mix. We had, I think, Rickman, what's his name, was there. Tom Rickards was there. Lanny Dixon Seeto was there. I mean, as well as a lot of GCC, and we were very led by those elder statesmen, and it was a very civil body.

When we discussed a bill, nobody took it on party lines, you know. I remember I was discussing the employment relations bill, the original employment relations bill, and people were discussing it like, you know, about employers, employees. It wasn't, you know, the government gave it, so let's take it on.

I know because I sat on that subcommittee, standing committee. The point being, the senate, I think, served a stellar purpose, and I think certainly the protections as far as the inherent protections that the senate had in terms of the ability to veto any bill that touched upon Fijian land was a critical part of reassuring, you know, extremists on all sides about the fact that their lands are protected. I mentioned that in respect of the senate.

I apologize to my colleagues for going through all of this because I'm sure that there are areas and they will talk to you about, but because the nature of your presentation, I want to sort of adjust it, address it in that form. I agree we have lots of problems in the country. We talked this morning about a national security council and emergency powers.

You know, I ask myself when I keep listening to the to the HIV and drug epidemic, well you, you expressed how you feel. I think that's a sentiment all of us share. When does it become a national emergency? Now we have lots of committees, lots of task forces, and lots of this.

The closest thing that someone has said to me that makes sense is what you said to me or kind of what you said is what the commandant of the Black Rock facility said. Get serious about this, make me the drug czar, and I'll solve this problem. Well, I mean they obviously cautioned him about talking out of line.

You know exactly what I'm talking about, but the point I'm making is when does that become a national emergency? When all our kids are walking around like zombies. I mean you look at the pictures of people in LA with fancy drugs. Exactly what point does one have to go extremist and go that way? I mean I brought that in because we talked about the National Security Council.

Who should call a national emergency? These are the kind of things that governments have to do, not our group, but I share that because I think we all think about that and I think if we get our work right, get the right balance of right people. I know your uncles very well. I was a little kid in the subdivision when he was living in Tamavua up there, Ramzan, when he was held.

I know Uday's sons, we were in Tasmania together, you know, and so I share your sentiments and these are, you know, Indo-Fijian politicians were very much part and parcel of the fabric of our society in terms of governance and it was a good, we got on fine. We didn't have these racial issues and I'm sure that at heart we all are exactly the same and we can get there. So, your thoughts and sharing's are much appreciated, Honorable Singh, and you know the fact that you're here despite the fact that you hold a New Zealand passport says a lot about obviously how you feel about this country and I thank you.

Mr. Valenitabua: Thanks. Thank you, Doctor. You talked about leases and the expiry of leases that will be followed by applications for renewal of leases and their consent from the landowners and then for agricultural leases the issue of Alta comes in. Now, what is it that you suggest to be in the constitution about leases of, I believe it's iTaukei lands, leases of ITaukei lands. When we have the iTaukei Lands Act, the iTaukei Lands Trust Act and their regulations and these regulate leases, there are provisions for renewal of leases and there are provisions of leasing iTaukei land where the land has to be de-reserved with the consent of the landowners and then put on lease. There can't be any lease of a reserved land without the consent of the landowners.

Lands which are already on lease, they have their expiry dates and what is happening is that the TLTB renews leases without going back to the landowners and it's hurting the landowners. It just adds to the sadness it has raised. It adds to the injury caused by that unfair return of leased land.

I'll give you an example, a very well-known company running a very big operation here in Fiji, exports within Fiji and around the Pacific, regional exportation, making millions every year and you know how much the landowners are getting? Two mutton gullies getting $206 per annum. Two mataqali getting $206 per annum. Members of the mataqali's would be around 100 each so there's 200 people sharing $260 per annum for return on the use of part of their land for big operations which is earning millions of dollars a year.

I concur with you, there is a lot of unfairness's on the returns of the leases. Companies, hotels and whatever industries that they are making a lot of money but with very little return. What do you suggest we can do there? If the landowners refuse to renew leases, we can understand them because they're not getting anything out of it.

On the flip side of it, on the flip side of it, most of the leases which are returned to the landowners never get used. Most of them, so bushes grow there and so forth and so forth. Is there any suggestion from you which can assist both the lessees and the landowners considering that, what I've just explained?

Mr. Rajesh: Thank you, sir, thank you Chair. I think so it's very important, like I said it has to be a fair return on both parties, like for example landowners and the lessee. So, if you have given a very good example and like what I was saying about this land owner that he was leasing the land, same thing 400 something a year and then now he wants to sell it for 18 million. So, what does the landowner get? Is it fair? This guy makes all the money but the landowner doesn't.

So, something I think we have to factor, something like this is even like I said about, that's for the landowners like when they have those land that has, where the project can be done on tourism sector, that FNPF can go partner with them and help the landowners. Okay, even 51-49, I'm looking at minimum 70-30 or max 51-49, 51 FNPF for the investor, 49%

landowners. If you really want to uplift the standard of our indigenous people in business, that's what we have to look at it and the other option is like 51-49, 70-30.
But this leasing, honestly speaking, this is very outdated, I think so, very outdated. It has to be come; you do it on the current market value. Everything has to be reassessed.

Even I, I'll give you an example of this one, very quick one, is I help the Indian government and this thing was going on and when Turaga na Qaranivalu came and they called me and they said oh, this is an issue about having this hospital land. So, in Nasinu, so I called Turaga na Qaranivalu and you know very close brother and son relationship and he said son, come pick me up. I came, pick him up, called the Indian High Commissioner, they came home, at home, hosted a dinner and I told him protocol, one tabua, everything, so indigenous gentleman sitting down there, brother, did this service to Turaga Qaranivalu, everything, had dinner, everything and he told me, he said, where's Prime Minister? I said, he's in Tonga, in Samoa.

He said, who's directing Prime Minister? And I said, we're still eating and I said, oh, Honorable Gavoka, DPM, call him. I called him, same time Mr. Gavoka answered the phone and said, hey, how are you? Good, good. I said, I'm here with Turagaqaranivalu and Indian High Commissioner, this is the land issue we're facing and he laughed and said, wait, wait, I said, Ratu is here, so Ratu spoke to him and he said, okay, no problem, I'll call you back in half an hour, but you call your tau, because if I take my Nadroga side, but I'm going later, but I'm originally from Nadroga.

He said, call your tau, minister and talk to Vasu too, so we have a meeting tomorrow morning. So, I called Vasu straight away, man. Next morning, we were having a meeting in 8.30 at Minister Vasu and then we sat down, Indian High Commissioner there, the GM, the TLTB, CEO, everybody there, Turaga Qaranivalu and Uncle Peniasi Kunatuba.

So, we were able to sort those things in like half an hour, it was all sorted. And then, this is where I want to come, so it was a fair thing and then the landowners were paid three million dollars goodwill for that land. That's about 12 acres of land, three million dollars goodwill was paid.

And then the Indian government, High Commissioner said it straight, we want to pay, be a fair one, what is a fair thing, we want to pay, but then it

was negotiated and then I think so then the government said no, we'll pay. So, the government paid them three million. Indian government said, okay, we'll build a hospital, now it's coming to the last stage now, we're going to start soon.

So, I was looking, so the three million was given, so Turaga na Qaranivalu called me and said, okay, can you pick me, we're going to go to the research station, I said, where? I said, okay, let's go. So I went, pick up in the morning, seven o'clock, we were driving, then the TLTB staff, this is before Christmas, and they called and said, oh, sir, we got the money here now and how you want it to be distributed? Then Turaga na Qaranivalu goes, if people don't know, he's accounted by a professor, related, and he said, son, what do you think I should do? I said, Ratu, invest half money, half, you know, for your plan and half share it with Christmas, it's a very good idea. So, I asked the lady, she's on the phone now and Turaga na Qaranivalu said, I'm driving and Turaga na Qaranivalu is sitting and Turaga na Qaranivalu said, okay, me and Ratu are just discussing, you go on the speakerphone.

So, I said, okay, what is the return on future holding? They gave this amount, what is in unit trust, this amount. So, I was just looking and they're thinking, and then we made the decision, but this is Turaga na Qaranivalu claim, but then he said, son, what do you think? I said, okay, let's, what do you think is right? Okay, 1.7 million out of the three million went into the investment of the Mataqali. So, some things went to unit trust, some amount went to future holding, to buy shares.

Mr. Valenitabua: That is the result of legislations. Now you are presenting to us today in relation to the provisions, in relation to this. Well, the legislation is outdated, honestly speaking, the legislation is outdated.

Mr. Rajesh: I think so, and it has to be reviewed like the constitution. If you really look at the constitution, every constitution says like within seven to ten years it gets reviewed, right? So, I mean, for example, if we go and buy another, I mean, just for example, a house, right? So, if my house, like I bought a house 20 years ago, if it cost me $10,000. Now that same house is worth $200,000. So, the value goes up.

The same thing, why is our poor landowners or anybody, honestly speaking, or freehold land or ground land or government's land, ground or native and freehold, it has to go according to the market value, of the

current market value. So, see, every current market value, so I would prefer that the leases has to be adjusted like once the lease expire, okay, what is the current rate? Let's be fair, what will be the for the landowners and what will be the thing for the tenant? It has to be a fair return. If it's not a fair return, honestly speaking, Fiji will keep having problem.

It has to be a fair return. And now, like I said, if that legislation is outdated, I feel I'm not aware, but you are the chair, with due respect, I would prefer that there should be a legislation or a law be enacted, so this fair return has to be on the current market value. Because if you don't give a return to a current market value, I mean, Mr. Conway, I know he's an architect and all this, even he will agree with me, I think so. On this point, we have to have a current market value. It has to be a fair return. I mean, like, for example, I'll give you another example quick, just our family. We have a house. This house was rent for $6,000 just three years ago. Now American Embassy came, same house, they pay $12,000.

See, just in three years. So, okay, it's a freehold land, so we okay, but our city rate is going up and all that, you have to pay all that, pay the tax, pay city rate, okay, that's fine. But what I'm saying is this native land, and this is one thing, and I say, even my business get, like, a little bit agitated, but I say that's fine with me.

And my simple question is, how come, this is a question, is how come my land is freehold? My next land is native. How can it be? So, there were this, honestly, I'm not a fan, I'm going to be straight up here, I'm not a fan of the British Empire. I am not.

And I, even if I get charged or anything, I can, I care less, but I'm not a fan of them, because they came and did a lot of wrong things everywhere, in Fiji, India, and everywhere, Australia, and Israel, and everywhere, you look at it. You know, so those kind of thing, I think that that kind of land, you know, so how can be my next door is native and I'm freehold, when it should be, you know? But, and even my good friend, former Speaker of the House, former Director of Lands and all this, he was telling me a story about what happened to their land in Korotogo. Korotogo, their land, became freehold land, where outrigger and all that, but he's the chief of that place, and then I said, and I said, how can it be, brother? And even my own first cousin, my Talevu's son, he's got a land there, it's freehold, and then this, and I told him, it cannot be freehold, no, no, it's freehold.

I said, bro, honestly, you're joking, but, but he showed me the title, but you know, this one thing I can't understand, and this is something the Constitution Review Commission, and I think the government has to really seriously look at it, because some land has been, even now, one lease, I think it was going in the media around 999 years, lease in Tavua or somewhere, and people were arguing about it.

I told my Indian friends, I said, hold on, the act is very clear, it's 99 years, so there must be a typing error, or something must have happened, but how can you give 999 years lease, when the act, like you just said, sir, if there's an act there, it's 99 years, how can it be 999? And then people want to take, come on to court, and all this, this is so ridiculous, I will say ridiculous, I mean, if there's a law, there can be a typing error, we can make mistake, but it has to be fair.

Mr. Valenitabua: Yeah, okay, we take your point, we take your point, just before. Section 28 of the Constitution addresses the rights of ownership and protection of iTaukei, Rotuman, and Banaban lands.

Now, as it is, it is wide, you know, and the interpretation in relation to returns of leases and things like that does not appear here, so the TLTB and the landowners would have to rely, and citizens of Fiji, would have to rely on the legislations before them, the iTaukei Lands Trust Act, the iTaukei Lands Act, and their regulations.

You still have not answered my question, I understand where you're coming from, but how can we make this a provision, a constitution provision? I'll hand over to Dr. Fatiaki.

Dr. Fatiaki: Chair, I'm not sure that this really addresses the issue, but let me just say that the areas that are written here in 28 section, 28 subsections, 1, 2, 3 is the Rotuman land, 4, 5, Banaban, 6. I think are the areas in the constitution that allude, for instance, to the aspect of the ownership of iTaukei land, Rotuman land, Banaban land, that does not allow it to be alienated, supposedly.

What you are telling us, and what I think is obvious to all of us, is that in the administration, meaning that the actual administration, the executive management of these areas has been left open, and it's like Swiss cheese, lots of homes in it, whether it's a 990, 90, at least that shouldn't exist, whether it's 'Mataqali 'land that's become freehold land,

or whatever it is, obviously that's where the problem is, and it's beyond the, I guess, the gamut of this constitutional review body to legislate, or not legislate, to make recommendations, to insert into the constitution the management of these lands. So, I guess in the case of iTaukei land, that is an issue for the iTaukei people, and the ITaukei management of their lands, whether it's the TLTB, TTFB, TTLC, whatever, to address. That's something that only the iTaukei people can address.

This protects them from anyone else alienating, but how the TTFB or TLTB manages their land is a problem for me, personally, as a farmer. No one else can solve it, and how they give leases and make sure that the security of tenure for, you know, for farmers, cane farmers, or whoever, that's an area that I see. I don't want to comment on iTaukei management of their land, because I don't think it's my place, but that's where it would happen, at the executive.

Same with us, on the island of Rotuma. I think the precautions, I should put it, the provisions are, that are written into the constitution are more for the purpose of saying we don't want anything, any provision that may allow you to alienate it, but we haven't gone into detail into this, but for instance, we know that there is now a land bank. Well, what does that exactly mean? You know, there's a land bank that iTaukei land can be put into, where basically the landowners have nothing to say.

Now, I don't know, we may get to the point where we actually start discussing that, but this protection, so-called protection of a iTaukei land, well, how do you protect your land if it can go into an iTaukei land bank, you know, supposedly with the consent of one or two chiefs, and therefore they can write it and give it off to any man and his dog without any concerns about how fairly it's done. Those are areas that, again, I emphasize, we need to look at the constitutional provisions in terms of not allowing it to be alienated, but at the same time, our role is not to write into the constitution how the iTaukei Trust Fund manages the land and how they work out the formulas of how much they don't charge and how long the period of tenure is. I think those things are better dealt with at the executive level. Thank you.

Mr. Rajesh: Just my, just a question to the chair. So, if there's an act, right, DLTB Act, like you told me, so, I think, if I'm wrong, please correct me, the parliament makes the law. And then when we're going to have a senate, then senate is approved. So, if we can have the law amended, the act

can be amended, right? Or can it be amended or it cannot be amended? Under this constitution, you know, honestly speaking, I'm going to be straight up here.

I don't, I always call it Khaiyum corn constitution. That's what I call it. Every time I write Khaiyum corn constitution. That's what it is. That's what my question is. Can we do that?

Mr. Valenitabua: Yes, that is, that is what will eventually happen. That is, yes, you're correct, right? In short, yes. If this is amended, then the legislation will have to be amended. So, that it is in line with the constitution.

Mr. Rajesh: So, that's what my question was, because honestly speaking, I've got friends, good friends, you know, very good Fijian, Fijian friends. I'll call them Fijian, no ties, okay? They are native people, my Fijian brothers. Even I go with my great-grandma is Fijian, right? So, we got Fijian heritage families in Ba.

So, even some of my friends, like I'll give you an example about this guy, and this is the one when you're talking about the land cannot be annihilated. This is just one of my friends, he is with us in the rugby league. So, Vulagi State.

So, Vulagi State has become a ground land, honestly, and they are the land owners, right? And it was ground land, and then I think so when, if Mr. Conway will be able to correct me and say, yeah, then when they get a development lease, is it for what, you have to do something in five years or ten years? Is it five years?

Mr. Valenitabua: Yeah, build a house. Two years from what we call our unplanning. Okay.

Mr. Beg: So, nothing has happened for ten years, right? Nothing has happened in ten years. And later, when they wanted the land back, suddenly the lease got renewed by the former Fiji First Minister, Jone Usamate. And I told him straight, when they showed me, I said, bro, take it to five weeks, yeah.

But renewed, and the land owners doesn't know about it because they were thinking, okay, we're going to get our land back so we can do something. It's nice for a resort and all this kind of thing. They even had some investors ready to come in.

But unfortunately, the poor guys went back to, no, the lease has been renewed without their consent, like, and because it's ground land. But honestly, if I can recall, the ground land only happened when there was, ground wanted the land for public use or for government use, right? Then native land was given to them, okay, here's native land, you use it for the Crown. If you don't use it, then those land was supposed to be reverted back to the native land, to the native owners again.

Wasn't it, say, if I'm wrong or if you can correct me?

Mr. Valenitabua: Come again, come again. If, like, for example, when the land was, became Crown land, was because if, when Crown wanted to use it for Crown purposes, right? But if the land is not used, I thought, because it was, original land was native, remember? Then it became Crown land or Crown. So, if it's not used, it was supposed to be reverted back to native.

Mr. Valenitabua: Going back to the native owners. Yeah, native land.

Mr. Rajesh: So that's why my question was, this is my poor friend, brother, I call Tai Siti, and the land is still Crown land, and I thought it was supposed to be reverted back, but it never went back to them, and nothing, it's not Crown, no, somebody, highway stabilizers got it, and aquifer families, and they wanted to do something there, but in all these years they've been waiting.

But they were, when they had investors ready, and that was the land, even he showed me a letter that the iTaukei Affairs wrote to them and said, yes, your land will be given back. But it never, suddenly it's gone back to these investors. So, that's where my concerns are.

Mr. Valenitabua: You are saying that in order to change the legislation, we've got to put a provision in the constitution which protects, you know, which can then be used to change the law down the legislation. Yes, yes, that's where I would love to see it.

Mr. Valenitabua: That is where you're coming from.

Mr. Rajesh: Yes, and also to be a fair return, say, a current market value, not that. And the other question, say, I have, sorry, this other quick question, is I asked

my friends, I said, how do you know how much of your land is leased? Whatever TLTB give them, that's it.

There's no statements of account. Like, for example, if you own a business or if you have houses or property and it's on rent, you will exactly know, okay, this property is getting me $10,000. Okay, this one is getting me this one. Or even if the land is leased. So, I don't know if a TLTB has that, but these guys are not given. Only they're just given the second one, oh, that's your lease money.

But they don't exactly know if everybody is paying the lease or no. So, there's another thing that we have to really, I think, so in fact, I don't know whether law or the act, there's something that has to be.

Mr. Valenitabua: Two points. TLTB has got those records. The landowners, they tell the landowners every January, if they go to TLTB, they can collect the list of their lands which are under lease. And they can also see how much they're getting out of that. The landowners have to go there. The lawyers, sometimes we are barred from that. Okay. But I get the information from the landowners themselves.

Secondly, that Crown land, which you have been talking about, it was a native land used for public purpose. Instead of being returned to the landowners after the use for public purpose, it was registered under Crown lands, right?

Mr. Rajesh: Yes, sir.

Mr. Valenitabua: Okay. Section 29.1. I don't know which year that happened. But section 29.1 is the key provision here which has been used for securing land which were used by CSR and those sort of, you know, entities at the time.

Section 29. Ownership of land which came into or which were in existence at the start of this constitution, 2013 constitution, they continue, shall continue to exist under this constitution. So, here's an example.

I did a case for the Natadola Hotel. There's a piece of land there which was given to CSR. As we started the cases, we were moving. Housing Authority was involved. And then this provision came in. The court

stopped the case. This is the provision which was put in place to stop all those lands being returned to the landowners.

Mr. Rajesh: That's unfair, sir. Sorry to say that, but that's very unfair. Yeah, it is unfair. It is.

Mr. Valenitabua: So, just to give you an idea of what this constitution is doing. When you're talking, I'm thinking along that line. Because, I mean, if you really look at it, sir, even like Rakiraki Mill has closed down, right? And even I saw some of the land was in the paper, it was standard, like Labasa and Lautoka and all this FSC, right? So, who gained the money, right? So, it was okay. But then, if FSC is not using, that land was supposed to be returned to the landowners, like what we were talking about, and it never did.

So, who benefited? So, now, who's benefiting the money? FSC is getting the money. But in original, that was supposed to be the landowners. Why the poor landowners are not benefiting? I'll give you another example. I'll just highlight it. It's just in front of us here, Princess Road. Yeah, telecom building, you know, telecom was crowned.

This is crowned land, I'm saying. Telecom sold a portion of the land to American Embassy. I think the amount was six million, if I can really correct it.

It was about six million, right? The land was sold. So, who benefited it? Originally, the land was supposed to be, if I really look at this thing, and I saw it in my eyes, some people showed me, it was all Naitasiri land, but then it became a Rewa land now. So, instead of money going to, okay, the river people and Native Cedar people, now the money has gone to telecom. But honestly, it was a commercial deal. This is where I look at it. It became a commercial deal.

And when it's a commercial deal, why the money is not given? Because, remember, when the state take everything, crown, they will say, oh, no, no, no, we're not going to pay you much because this is for crown. This is for public use, right? But this is not for the public use. Remember, you're selling the land to, like, giving it to American Embassy, or Ford, or whoever.

But that was a commercial decision. Then why that money is not given to the landowners? That's where my question is. Why it's, if it's a commercial deal, come on, give a commercial rate.

If it was for their purposes, public purposes, okay, that's fine, this might be $100 for that, but there you made millions, this is commercial decision. Why the landowner just gets $100? Why can't you go and split it up, okay, at least 50-50? That's where my question is. I'm just saying, to be honest, it has to be a fair return.

And this is something that is really bothering me. Because I see all my friends, right, and this is my indigenous friends, and these guys are suffering. So why can't we change this law? Because if we don't change it, honest to God, this is coming from my heart.

If we don't change it, we will keep having this problem and the mistrust between the two races and other people. But we have to be fair to the landowners. This is why something that we have to really look at it.

Mr. Beg: Chair, through you, thank you, Rajesh, for those enlightening comments. The issue with the state land, it's perpetual, it's fixed. It's perpetual, it's fixed with state land. Once it's in state custody, it's fixed. I agree with you. If the purpose of the land, for the development, like for instance, the telecom site, if you want to use that as a reference, is specific for that purpose.

Now, for them to embark on a commercial development, then that needs to, that whole case, selling the piece of land, should not be, I agree with you, should not be in their hands, because that still belongs to state. It was given, it was fixed by Crown. So, Crown, historically, Crown became state.

And then the state lands became perpetual. So fixed. So that whatever they do, that land must not be sold for commercial, but for purposes specifically for state and for development.

I hear you. You've got some very interesting points, but I'm just trying to go back to the law and what the law framework is around that, and how historically land that was given by the word native land was transferred, was when it became Crown, it became state, and that legislation. Yes, correct.

So, but I agree. What the problem is, I feel, is the management of that, those lands, by TLTB. Maybe that, again, that's something that needs to be looked at, because I've had some interesting cases like yourself, where those things become very interesting, to say the least.

So, you make a point, because the lands is a, or what you're trying to say is something that we need to look at, but the constitution is not silent. It's very kind of dormant, because it respects the laws, the land acts in the land laws. So I hear you.

Maybe that's something we have to align the Lands Act, the constitution, and also ITLTB in that manner, and it is causing a lot of riffraff. I agree. So, I hear you. But I just wanted to clarify the point about state. It's perpetual. You can't, there's no expiry date.

Dr. Gounder: Chair, if I may, thank you, Rajesh for your comments. I think, you know, I'm a strong believer in fair returns to landowners, the same time protection of tenants' rights and responsibilities as well. Most of the things that you have mentioned is basically, it's a failure of coordination between TLTB, landowners, and the tenants.

I think, in my view, the Act is well designed, except that there must be a call by landowners themselves and TLTB in what they want to see changed in the Act. I'll give a quick example. In the 2024-2025 budget, government allocated $2 million to pay for lease renewals.

And at that time, I was in the planning office. We worked together with TLTB in renewal of the leases, and one of the things we made sure reflected into was the market rates. So, it's more to do with coordination failures within TLTB rather than anything to do with the Act itself.

And I'm not sure how much we can change in the Constitution. And as Mr. Beg has said, if the Constitution is silent, that gives a lot of flexibility for the Act to be able to deal with those kind of changes. And if we leave it to the Act, the benefit is that we don't have to go through a constitutional provision of changing the Act.

So that's the advantage of that. And I completely agree with the challenges you have highlighted. My experience is more to do with the coordination failures and the fact that TLTB is the custodian of all iTaukei

land, but they're also required to consult landowners, which I think is the real issue at stake.

And yeah, so I think that if we address those issues, a lot of these issues that you have highlighted can be taken care of. Thank you.

Dr. Baba: Just to say something before I think I thank you for today. The insights you are throwing to us and you are sharing with us, it's bothering me a lot in my conscience. Because while I'm a scholar of the area, I probably am the one that has written about land gifting. If I recall, there's only two. The other one was Nayacakalou my mine came out of Scotland in a book in the FNU. I kept thinking about all the gifts that we've received. We are in 17 places in this country, all gifts.

And this year alone, in the last three months from January to now, through me, I personally have received just about six more pockets of land from high chiefs. Now, when I listen to you, and this is something I've written about the Tuisuva and his people being squeezed to one side. That is why you have the Suvavou house that we are in today.

People don't know that. It's because I argued so much my husband couldn't go to sleep. That's the Labour Party that did this. I think that goes, you know, people forget, you know, that we, I agree with the panelists here and you. I think this is something that bothered me personally. As of late, at FNU, take for instance, the Ba Campus, that's Tui Ba, Lautoka campus, shared with Namoli, the Maramana Taukei Veitarutaru.

Now, they have a campus, Namoli. Did we give back a cent in all the years we've existed? Not a cent. So, okay, it's not regulated by law, but it's regulated in custom that when a land is given by a high chief, presumably it's given to another high chief.

They have an understanding that it's reciprocal, but law does not identify with land understanding by the native's people, by the indigenous people. So, I find a lot of loopholes. As a vice-chancellor, slowly we are trying to get into this area, if you like, to resolve this, and this is a long-standing problem.

When I look at FNU only, because that's the only place that I can work in, lately my team, the management, has been given my land, Chitta,

from Scotland, from Byrne and Graham. It's the first time it's written too, on land gifting, 2015, Scotland. It had to be done in Scotland because they thought it was useful.

The publication. So, Koronivia is a Turaga na Qaranivalu, and I'm very conscious when I see you, I see him, because you are the one that helps him to get economic value. It doesn't matter what anybody says, that's what I know, because that's what he tells me.

When he came back from prison, I want these constitution commissioners to know, we got him back to Koronivia because I feared he was already sick. What did we do? After 70 years of sitting free, when he came, we did a big presentation, probably cost us 30,000, we still haven't given him a cent. So, I'm going to regulate at FNU, at our level, that we do not sit free.

There's got to be some scholarships, there's got to be some things, and if we build something of value, they need to take a cut. Now, when he came, he would not believe this, he behaved like a chief. So, I sat there and I was almost frustrated, because what he did was to give us more.

I mean, as it is, it's more. I mean, who would give real estate like that? Yeah, so that's Navuso. So, right now, we are doing something at FNU, might get the help of chair and the people here, because they, I know now that they can help.

And you look at the Nasinu major campus, Matanikorovatu people, the youth have come to see me, just to say, can you help us? And I almost cried, because it is not something they should ask for. It was given because they assume the one on the other side is a chief, and you know what? It's called reciprocity, but the law is quiet on reciprocity, or even equal gifting, because that's the assumption the chiefs give for free. Yeah, the other one is Tuisuva, the direct campus, free for 80 years.

The whole of Tamavua nursing school, I'm waiting to go and see Ratuloki. Laucala Tuisuva, and I'm, you know, I'm getting into Tuisova, trying to do things for him for free, because at the back of my mind, we've sat here for free. So, I would like the lawyers among us, and you too, that maybe moving forward, we could, it's not the duty of the commission maybe, but I'm sure the lawyers will find some place to stick this into the biggest rulebook of the land, because there's got to be something about fairness.

And I must tell you, every time I see your face, that's all I'm reminded of. It's kind of a painful reminder, because I am a writer in this area, but on land gifting alone. So, when two chiefs meet, like my people, they give 72,000 hectares of our land in Vugalei free to the government, to Ratu Penaia, from one chief to another.

When they made the company, they did not include the landowners. I've written about this. Yeah, there's so many disconnects with law and regulation and acts, and land.

I could probably look at an international funding to make it a consistent work after the constitutional review for people like you and me to actually have this, and make sure there is fair return, because my view, the land, when it's not fairly done, we are not going anywhere. Thank you for your contribution. And I'm afraid if it's not constitutional, sir, here we'll make it somewhere. Thank you.

Mr. Valenitabua: The constitution, section 29 [4]. Parliament must ensure that all land leases and land can protect the rights of land leases and landowners. So, it's already here, but not yet.

Dr. Baba: What he's saying is market value. Maybe that's the only word that's missing. Fair at market value. I think, sir, that's the one that's really important. We have to highlight it.

Mr. Rajesh: It has to be highlighted, sir. See, that one, thank you so much for clarifying that, sir. I think that is very important. Honestly, I don't support this going on, but I will write and I'll read it. So, there's section 249? Section 29. Page 22.

Page 22. I'll tell you what Mr. Sir about this, it's about native land, right? We are talking about native land. Just do a little bit more heading down.

We'll contemplate. Right now, we're going to section 29.

Dr. Baba: Sir, Honorable Singh, I can help you, send you a person to record you. If you want. I mean, because I know you are running to try to build sports in the country. And I'm one of those that's keeping him busy. I haven't paid him. But if you need help, because it's so important, could I then

offer? You just call me; I'll send a young man and woman to hear you and then give you the submission. Just for that help.

Mr. Rajesh: That would be great. Is that okay? Yeah. Just one more additional comment.

Dr. Gounder: So, if you look at section 29. Sorry. Section 29.4 Section 29.4 It talks about legislation and other measures must ensure that all land leases provide a fair and equitable return to the land owners. And fair and equitable basically captures much more than market rates. And it's better to use fair and equitable rather than market because sometimes market rates cannot be determined especially in rural areas. So, if you use market rates land owners may be in a more unfair situation.

More disadvantageous situation if you use market rates. It's better to use this particular perspective.

Mr. Valenitabua: What's the word?

Dr. Gounder: The fair and equitable. My take is that it's more to do with coordination failures in TLTB rather than to do with the act as it is. Yeah. That's why I highlighted that point. Thank you for making that point. We can always publish some of the feedback that we get. The idea is that the feedback that we get from people like yourself does not stay with us.

That it goes out. People are able to read it, people are able to see it and that others can use it for other purposes as well. Thank you, sir.

Mr. Rajesh: I mean just for me to add I mean in my life as a small kid brought up in a village. I was surrounded by all my like Indian friends and Fijian friends and we were never ever like oh no 'iko na kaidia' and all these things. These cool things brought all these things up and I remember my mum always tried Raksha Bandhan. Raksha Bandhan is a bond between brother and sister to PM Raksha Bandhan because when he was in Marist he would go there and he would call mum because my mum was the elder one and she would make the 'gulgula' and he still remembers that and then he would call her sister so that's why me and Roko Ului we are very close everybody thinks oh even the Marama

I never told her and she said why didn't you tell me that you were the nephew of brother James, brother James Sankar sing I didn't tell anybody

everybody thinks I'm very cuckoo but I'm originally from Nadroga and Vasu I Ba. But that kind of thing like what I'm saying is I remember as a small kid I was lifted on the shoulders because my dad was building a big sawmill and even I think the record is there it's called HB Singh & Sons. He had like he registered the company and he had 50-50 share with the landowners and they were building a sawmill but unfortunately, he had a heart attack and he was given the land from Naitasiri right up to Navosa logging construction

I was a young kid at 6 years old and we always called this guy who was a his son his son-in-law was Rokomeleni is careful Satareki was calling him Nana and he called my mom, daughter Setareki Nana I remember he's calling me every time on his shoulders every morning he comes, he carries me on his shoulders and we're going to go to the river we're going to swim in Visari and then come back and he cooks good food. My mom was sick and I'm just sharing this story and I did share this in Fijian and it was a heading and who was registering and I'll cry for this and this is, every time it touches me because when my dad and they were building that sawmill when he had a heart attack he ended up in the hospital.

I was a 6 year old kid I don't know anything about it that ok, dad had a heart attack and when he was admitted in the hospital our mill manager was Vijay Maharaj who's the lawyer, his father and he went and this is the story we got when we were growing up he went and did.

My father had a heart attack in the hospital he did his thumb print and he put it on the thing and he sold our land told like it's a freehold land where the mill was building to ley lands so that land just went there was a freehold land where the sawmill was just about to be built and they had some, all the things coming and we lost that land and so he didn't know he even didn't know .

He came back out of the hospital after 2 weeks we were home and the court sheriff came right, oh you have to vacate and my dad said why, this is my land no no, your land been sold and my dad said what who sold the land. They took the documents he had a debt because it was there, I don't know, heart thumb print power attorney, bang, sold, gone we lost it and my mom.

My mom snapped the thing in front of me I was a small kid and my sister was crying because she didn't have a daughter she didn't have a

daughter and I was his favorite grandson and we were we were vacated all our things were taken out of our house and it was blaze of the road we were literally on the road and my mom was taken by they called the police she was black Maria and I was crying she was taken to St. John's hospital.

It's from the day of the lava and for the speech and she said people, I remember my dad went and called Ratukarawa and he was still in Lami and they came with the carrier and they carried all our luggage we were taken to Qauia village and that's the day we were given a house in Goya village where there was also a mill and I said we stayed in that house for 11 years.

I'll never forget all this that's why I'm so close with the Fijian people because my mom, my dad always taught us you stay close with these people, they'll be loyal they will always help you and all my life .Sir, I know and I know that because my mom was my hero it's not my dad, my mom was my hero and every time I think about it I cry every day and I think of how teaching that she taught us and my dad that's why you're going to even like my brother we both, we are so close with the indigenous people because we saw what happened to us and not against the Indian community or anybody but just imagine.

I lost my mom, I didn't see her like I was, as a small kid I was spending time with my mom and like Setareki never confronted me, even when we moved to Qauia village he always come there he came and looked after us he carried me on his shoulders, same thing same thing, never changed.

I remember all the and then Christmas time, he puts all this black thing, bowed down to me and we go to Waiqanake village and I remember everything but like I said, in my life I've seen this is a proven record it was a big headline who is Rajesh Singh. Then Bainimarama called me when he read all this article he called me and he said, Rajesh where you are, I said, come to Me went, and he said, who is it and he starts swearing, you know, typical of him who is this fella, tell me, I'm going to bring them, I'm going to look them up I said, that guy is dead man his wife is dead, he is dead, but the son is alive but don't do, my mom and dad told us they passed away when they said let God be the judge but they said.

Look at our brothers and sisters, look at your Nana look at them they gave us a place they gave us a place this one thing I'll never forget, sir until the day I die, sorry sir until the day I die, this thing in my heart.

Mr. Valenitabua: I understand I understand and I just want to say, sorry to cut you off sir I understand your experiences and how sad it would have been but please pardon me we have heard you and we have identified a provision in the constitution, which needs to be changed or amended that is 29.4.

If you have any other submissions Professor Baba has told you that she can send one or two of the students there for you to take your statements and then they will be forwarded to us but, we are short of time now, we have another session at 12 o'clock

Mr. Rajesh: Thank you so much thank you for allowing me sir to come and give my submission, sorry whenever I talk about this it recalls me. I always cry even not here, even at home or anywhere I come because I'll never forget those days what had happened in our life so once again.

Mr. Valenitabua: Thank you very much we have to end here it's not that we don't want to hear you more, but we are we've got time I understand thank you so much thank you very much we have heard you we have recorded what you said we have identified a provision which needs amendment and we'll take it from there. Thank you

----------End of Session [16-04-2026] ----------

Fiji Women's Rights Movement (FWRM)

Fiji Women's Rights Movements
Date: 17-4-2026
Time-2.10pm-4.20pm

Leighton: *I'd just like to thank you for coming. Just a few housekeeping matters. Just to let you know, the session is closed, so there's no media present, as requested. Also, when you speak, if you can just press on the right side of the mic in front of you, just to turn it on. And once you're done speaking, you can turn it off. There's also an attendance register which is going around, so please, everyone, fill in your attendance. Just to show that we've actually gone and met people and spoken to people, and not just sitting in this empty room. I'll hand over now to the Chair to introduce the Commission. Vinaka.*

Mr. Valenitabua: Thank you, Leighton. Ladies and gentlemen, it's a pleasure receiving you here this afternoon. We had made communications with the Fiji Women's Rights Movement, and eventually we are meeting here today. We thank you very much for turning up to meet with us and to make, I believe, submissions in relation to the 2013 Constitution. As you would be aware, the Constitution Review Committee was appointed by His Excellency, the President of the Republic of Fiji, and he appointed seven of us. There are five of us present this afternoon, and two are away. It does not mean that we don't hold you as important, it's just they have some matters to attend to, and one is travelling overseas. So, your five Commissioners who are present here this afternoon will hear you. We've got Mere on my right, all of you would know her. I've got Mr. Conway Beg on my right. Next to me on my left is Dr. Fatiaki, a well-known person. And on the far left is Dr. Nilesh Gounder from USP. And I am Sevuloni Valenitabua. Our task is not to try to tell you what we have to have in the Constitution. We are to review the 2013 Constitution, and part of the task is to hear from the citizens of this country, or the people of this country, what they want to be included in the Constitution, or what they want to be removed, or what they want to be changed, or the new provisions to be added. It is our task to listen, record, and then consider what is submitted to us at the end of our timeline. We have six months, a timeline of six months. So, at the end, by 31st of August 2026, we should have completed our report and presented it to His Excellency. Now, I know that women's rights is a big issue. I know that you are a strong body, a strong forum, a strong association. And we are ready to listen. So, with those few words, I now invite you to please make your submissions to the Commission. Thank you.

Ms. Nabalarua: Thank you very much, Chair and members of the Constitutional Review Committee. My name is Akanisi Nabalarua. I am the Board Chair for the Governance Board for the Fiji Women's Rights Movement. It's my task this afternoon to introduce the members that will be submitting today and what their roles are within the organization. I will start from my far

right. My far right is Laisa Bulatale. She is the Program Director at Fiji Women's Rights Movement. Next to her is Shayal, who is the Team Leader for Gender and Transitional Justice, the Gender Transitional Justice Program. To my immediate right is Nalini Singh, who is the Executive Director for the Fiji Women's Rights Movement. To my left is Adashni Bikash, who is also a board member. And we also have another board member in support today, Ms. Luzanne Sahib. But of the presenters, last but by no means the least, is one of our founding members, Ms. Imrana Jalal. Just in terms of our submissions today, we won't be going in order. We'll be just going in order of the clauses that we've highlighted and speak to it very briefly and then have questions at the end. At this juncture, I'd like to pass on to Ms. Nalini, our Executive Director.

Mr. Valenitabua: Thank you, Akanisi.

Ms. Nalini: Thank you. I would like to just provide a brief synopsis of FWRN's work. This year we mark our 40th anniversary. The Fiji Women's Rights has worked for women based on substantive principles of democracy, feminism, human rights and the rule of law. We believe that we have legitimacy and credibility proven by hard work and significant achievements. We have never supported any coup because that would not be true to the rule of law. That is what we are known for, being steadfast to the rule of law.

We have never stopped reminding all governments of their duty to 50% of the population, the women of Fiji. And we are not aligned with any political party or government. Our greatest achievement is staying true to our foundational principles.

We have never wavered from our stance on human rights, good governance, rule of law and democracy. I'd like to highlight some hard-won achievements over the last 40 years. Some of the more known campaigns have included changing the law on Citizenship, the Fiji Family Law Act, Employment laws, looking at CEDAW provisions being incorporated in our legislation, etc.

However, some of our lesser-known campaigns include changing the common law to get rid of the sexist corroboration rule in rape laws, first through new legal precedents long before legislation was passed and lobbying for better sentencing guidelines for sexual assault and child molestations. One of our first achievements was spearheading the Women's Coalition for Women's Citizenship Rights, which brought together equal rights and affirmative action into the 1997 Constitution, including sex, gender and sexual orientation as prohibited grounds of discrimination. We then undertook the massive 12-year campaign and

mobilization on the Family Law Act 2005, giving women equal rights in family law.

Our publication Laboring Under the Law created enormous awareness and one direct result was putting sexual harassment in the workplace on the national agenda. We provided the intellectual leadership for that. During the early years, after pushing various governments, we got the Ministry of Women established.

Our CEDAW work has been consistent, providing support to government reports while always being clear about our parallel shadow reports. FWRM's staff and members have been well trained and their subsequent employability at SPC, Pacific Women, other regional organizations, the United Nations and international NGOs is living proof that we hire and train strong feminists and gender equality advocates. FWRM is also a good training ground.

Regionally, we are movement builders and supporters. We now convene the We Rise Coalition, the Pacific Feminist Forum and support national feminist forums all over the Pacific. We took the former government to court for forcing women to vote in their birth certificate names, a policy that would have potentially marginalized 100,000 women from voting.

Now, just a little bit on some triggered debates and impact of our research. One of our strengths is that we remind the government of all the shortfalls and we never let up. We keep at it, dogged resistance and tenacity.

We have triggered national debates, often making ourselves unpopular, but we hope one day those debates will lead to policy changes. Right now, we have made menopause and menstrual hygiene a national conversation. We have blown the lid on early marriages happening in Fiji despite the age of marriage law and the failure of our systems.

Through research and hard data, we highlighted the absence of women on boards, which led to government action to encourage more women to apply, moving from 19% to over 25% now. We are not there yet, but we hope for incremental change. Our research is appreciated.

Our 10-year trend analysis on rape cases is being used by UNICEF and they are using our research and other videos on these issues. We are now building a pool of future leaders to take over. Our new Young Feminist Network is our latest effort.

Our Feminist Intergenerational Leadership Program follows a lifecycle approach. We have girls, young women, women in mid-career and older women. Our mentorship program, Paid Forward, has mentees aged 35

to 40, where we mentor women in the private and public sector who are heading towards piercing the glass ceiling. Our young women's age range is 18 - 35. ELFA, or the Emerging Leaders Forum alumni, has now about more than 100 members. This submission is therefore not just about law.

It is about securing a future where a new generation of feminist leaders inherits a constitution that includes them and is worth defending. So having summarized our movements for 40-year history, our hard-won achievements, the debates that we have triggered and our commitment to building the next generation of feminist leaders, I now hand over to my colleagues. Each one of them will speak to specific articles of this submission.

They bring not only legal expertise but lived experiences and decades of advocacy on the front lines of human rights struggles. They have been part of the fights we have won, and they have felt the losses when wins were stripped away. I invite you to listen to them not only as distant experts, but as women who have argued, organized and persisted for a Fiji where the rule of law truly protects every Fijian.

Ms. Nabalarua: The first submission I will make – there are 10 submissions altogether. The first I will make is the discretion to apply international human rights law, and I particularly focus on Section 7.1.b of the 2013 Constitution. Forty years ago, when Fiji ratified the Convention on the Elimination of All Forms of Discrimination against Women, also known as CEDAW, we made a promise.

The promise was not to the United Nations, it was to the women of Fiji. It was a promise that their rights would be measured against the highest international standards. The 1997 Constitution honored that promise.

Section 7.1.b of the 1997 Constitution said that the courts and tribunals must apply international human rights law when interpreting the Bill of Rights. Not may, not sometimes, must. That word meant that a judge in Fiji could look directly at CEDAW, or the Convention on the Rights of the Child, or any other treaty Fiji had signed, and use it to protect a woman's right to equality, dignity and freedom from discrimination. It was binding, it was enforceable, it was a shield that women could rely on. The 2013 Constitution changed the word must to may, and now courts may apply international human rights law.

The one-word changes everything. May means discretionary. May means optional. May means a judge can choose to ignore CEDAW if they wish.

Fiji cannot abdicate its international responsibility, nor its duty to the women of Fiji. CEDAW is not a suggestion. It is a legal commitment by the state of Fiji when we ratified it. We promised the world, and more importantly, we promised our own women that we would be bound by it. A Constitution that says may breaks that promise. We are asking for one word to be restored. Must. Because the women of Fiji deserve more than a maybe. They deserve a must.

The second submission I'll be speaking on today is around Section 65C of the Bill of Rights, and the limitations of those rights and freedoms. Essentially, rights cannot be tampered with unless reasonable and justifiable in a free and democratic society. We have witnessed this country go from coups, constitutions, and crises.

The one thing that protected ordinary Fijians, especially women with no power and no connections, was the ability to go to court and say this limitation on my rights is not reasonable. The 2013 Constitution took that away. It says rights can be limited because someone in power decides it is necessary.

I ask the question, necessary for whom? Necessary for what? And then it says some laws cannot be challenged at all. That is not democracy. That is not the rule of law. That is a door being locked from the inside, keeping, excluding people, especially the vulnerable and the marginalized. We need the 1997 standard back. Only restrictions that are reasonably justifiable in a free and democratic society.

The 1997 phrase, reasonably justifiable in a free and democratic society, is a standard that has been tested in courts around the world. It requires evidence. It requires justification. It requires the government to open its books and say, here is why we had to limit this right, and here is why no other option would work. That is the protection our women need. That is the protection our democracy deserves.

To restore that 1997 standard and restore full jurisdiction to our courts. No exceptions, no ouster clauses, no hidden corners when the rule of law does not reach. The courts, not elected politicians, are the final arbiter of lawfulness. A court's jurisdiction cannot be ousted. And we need the courts to have jurisdiction over everything. No exceptions.

At this juncture, I would like to pass on to Laisa, who will be speaking on the third submission. To Imrana, my apologies.

Ms. Imrana: Thank you, Akanisi. I'm not sure whether you would like to ask questions of my two colleagues, or at least on those two different points of law, before you'd like to hear from me on the next point. Or would you care, Chair-Commissioner, to ask questions later? We're very flexible. These

are quite complex matters, obviously. And so if you would like to ask questions of Akanisi, I'm happy to wait to talk about the issues that I'm going to be talking about.

Mr. Valenitabua: Thank you, Imrana. We will hear all of you, and then we'll ask questions later.

Ms. Imrana: Thank you, sir. So, first of all, let me say what a pleasure it is to be here. I'm possibly one of the few people in the room who made submissions to the BT Commission, to the Reeves Commission, and written submissions to the Yash Ghai-led commission as well.

And it's quite sort of surreal to me to be here again looking at this issue. But as I look upon you, I would say there's some huge improvements. For example, the first two commissions I appeared before had all men, including the commission who produced the 1997 constitution, which I'm a big fan of. So, I'm not saying that men can't produce good constitutions. I'm just saying what an improvement. And I understand that of the total of the commissioners, there's at least three women.

Am I right? Two women. Okay. So that's an improvement on none.

But, yes, for me, that's quite poignant and quite kind of starkly apparent. So, I congratulate you on that. Of course, it should be noted also that it's because of lobbying from women's organization's like ours that there are women on the commission because we put a lot of pressure on government to remind them of their responsibility to 50% of the people.

So, I'm going to talk about a very tricky and thorny subject, and in a way the commissioner chair has already mentioned it, which is I'm going to look at very briefly, I won't speak for long, section 26 of the 2013 constitution, which purports to carry on the rights granted in section 38 of the 1997 constitution. Now, I think it's probably public knowledge that I am not a fan of the 2013 constitution, nor is actually anybody here as part of the Fiji women's rights movement. We worked very hard to get certain prohibited grounds into the 1997 constitution and to ensure that the protections that are universal are in that, and then it's been very sad for us to see some of those rights whittled away in the 2013 constitution.

One has already been mentioned by our chair that the 1997 constitution, every single right in the Bill of Rights had this limitation. Rights can be limited as long as it's reasonable and justifiable in a free and democratic society, which does not exist in the 2013 constitution. So that has a direct bearing on what I'm going to say now, which is this.

That 1997 constitution and section 38 of the old constitution aligned with 85% of the constitutions of the world. In fact, to be fair to the 2013

undemocratic constitution, it also contains rights that align with 85% of the world, because both constitutions protected sex and gender. And then the 2013 constitution, of course, extended it to no discrimination on the grounds of marital status and no discrimination on the grounds of sexual orientation, which we agree with and support.

But as I said, I have my reservations based on that reasonable and justifiable point. So, given that we align with best practice and 85% constitutions of the world, why is it that some groups in our country have made submissions to you to remove sex, gender and sexual orientation?

When a constitution modernizes, the last thing it should be doing is rolling back the rights or regressing on rights that have been granted, because the rights were granted by the 1997 constitution, and now there are people who are saying they should be taken away. We place our confidence in you that you will not do that, that you will make a recommendation to Parliament that says we must align with international best practice, we can't roll these rights back.

So, that's the first point that I wanted to make. Why align with global excellence and then roll it back? You know, those provisions in the 1997 constitution didn't appear simply out of the goodness of people's hearts in Parliament, no. We lobbied for them, Commissioner Chair.

We lobbied for them for 11, 12 years, over 15 years, actually, when you think about it, to get those provisions in. It's of great sadness and great poignancy for us to think all that hard work in time, poverty, energy, resources that we put in to get sex and gender into the constitution to protect us, that there's a possibility it might be rolled back. So that was my second point.

My third point is that I don't think that it is clearly understood how important sex and gender are. And maybe the best way of illustrating it is to give you an example. There are many people in this room who have invested a lot of money in our children's education, our daughters' education.

Removing these provisions means this. If you invest in your daughter's education, she becomes an accountant at FNU. She gets five years of experience in some accounting firm in Fiji. She then applies for a promotion to a more senior position or maybe to partnership. All of a sudden, she doesn't get the job because another person, a male person with much lesser experience of two to three years, gets that promotion. Let's assume that they're equal in almost everything.

Now, under the 1997 and 2013 constitution, she could challenge that decision. She could say, I have the experience and the skills and the

quality to take this job. Why have you given it to my male colleague who has two- or three-years' experience? If that provision is moved, there's nothing that female accountant can do about it.

In fact, if that provision is removed, people like Ms. Nailatikau would not necessarily be on this commission because if it was an all-male commission, we could not challenge it and say, that's discrimination. You haven't included our female representatives. So, I think that needs to be clearly understood.

There are consequences for women and for gender and for minorities if those provisions are taken away. It would mean that we are condemning our daughters, our sisters, our children and family members and minorities to discrimination in employment, wages, violence against women, family law, decision-making, FNPF, pensions, access, housing and land ownership. All of it would be affected.

So, my final point is to, in a way, put a plea before you for you to recognize that you have an enormous responsibility. Your responsibility, may I say with the greatest respect, is to ensure that the rights that you grant us are the same as the rights that you grant men and other groups. And so, you have a duty to protect and defend our rights and we are asking you with the greatest respect to please remember that enormous responsibility. Thank you.

Ms. Laisa: My presentation, this speaking point this afternoon, will be around still on Section 26 and that is the inclusion of temporary special measure in legislature. My first point is the situation of Fiji women as a group compared to that of Fijian men is of significant historical disadvantage.

Women are latecomers to political arena and to being able to participate in modern public and political life. It is difficult to compete with men when there is no pre-existing level playing field and therefore no fair competition. The historical and systematic disadvantage needs to be acknowledged so that women status as a group is addressed by the adoption of legally permissible temporary special measures as you may also be familiar with as affirmative action to progress women into similar situation of that of men as a group. When a level playing field is reached, women are able to compete in open seats in decision-making positions in the same way as men.

Under Section 26.7 of the 2013 Constitution, it is provided that treating one person differently from another or any of the grounds prescribed under subsection 3 is discriminatory unless it can be established that the difference in the treatment is not unfair in the circumstances. This section means that it is legally permissible for temporary special measures to be imposed as long as the special treatment is justifiable in

the special circumstances of women in the current overall situation in Fiji.

In the current special circumstances where there is no level playing field between men and women as a group, TSM for women in this does not constitute discrimination against men and different treatment is fair in the circumstances. It is widely accepted that TSM's are necessary to promote women's equality, to bring about a level playing field between men and women. This is not a measure against men, but it is rather a measure to bring women forward to enable them to participate more fairly in a legislative process.

In the 1997 Constitution, Affirmative Action on Temporary Special Measures was specifically permitted and allowed so that disadvantaged groups could catch up with others to create a level playing field. We would like to see similar provision in the 2013 Constitution. Therefore, we respectfully of the view that this Constitution should enable subsidiary legislation to be passed to allow for provisions for minimum quotas for women as a form of Affirmative Action, not only in Parliament but in all public bodies to accelerate progress towards equal representation in political and public life and eradicate historical systemic under-representation.

Ms. Shayal: Just a continuation from the same point on quotas for women in decision-making generally. We all know that women comprise approximately 50% of Fiji's population, yet their representation across leadership and decision-making spaces, they remain critically low. While the 2013 Constitution guarantees equality and prohibits discrimination on the basis of gender, this has not translated into substantive equality in practice.

Women hold only 25% of board director positions and just 11% of board chair roles, with minimal presence in deputy chair positions that typically serve as pathways to senior leadership. At the executive level, women occupy only 13% of CEO roles, many of which are concentrated in branch offices and private non-listed companies. These patterns demonstrate that structural and systematic barriers continue to limit women's progression into positions of power across political, corporate and public sectors.

We need to introduce gender quotas across all spheres of leadership in Fiji. Quotas are necessary to accelerate progress towards gender parity and correct historical structural exclusion. They are not preferential treatment, but a legitimate and evidence-based mechanism to achieve substantive equality.

Increasing women's representation in decision-making spaces has shown to improve transparency, inclusivity and the responsiveness of institutions. Without such deliberate interventions, progress will remain slow and inconsistent, undermining Fiji's constitutional commitments. Thank you.

Ms. Adashni: Thank you, Chair, Commissioners. I will be addressing two points, one after the other. One is in particular reference to legal standing in courts to protect rights and the other one is the limitation of powers. Before I commence with my part of the submission, I'd like to offer the following disclaimers. I make the submission on behalf of the FWRM as a board member. These are not the opinions of my employer.

I would also like to state that the submission only addresses the constitutional provisions with respect to the concentration of power in the official capacity of these roles. This part of the submission does not serve to criticize any individuals past and present. We will also be submitting detailed data-backed submissions in due course and join in with other women-based organizations in a separate submission.

I'd like to go on to legal standing to protect rights. On the face of it, the Bill of Rights appears to be extremely progressive. That is a fallacy. There are many issues with it. However, the one that I am addressing today is Section 44, specifically subsection 1. That, in summary, only stipulates individuals to raise constitutional challenges in court. It is only extended to another person when the person whose rights have been contravened is detained.

We submit that this does not provide Fijians with all possible mechanisms for seeking redress. It is, therefore, an incomplete mechanism. Section 44 does not allow public interest groups such as non-government organizations to file matters of constitutional redress on behalf of those whose rights have been contravened.

These types of organizations act as the crucial mechanism in bridging the gap between those whose rights have been violated and their ability to access justice. This includes minority and marginalized groups as well, not just individuals. Barriers like poverty, fear of retaliation, lack of knowledge, or geographic isolation prevent many victims from seeking justice.

NGO's and CSOs often work directly with these communities and understand their circumstances. By allowing them to file cases, the legal system becomes more accessible to those who would otherwise remain unheard. It transforms rights from abstract promises into something people can claim.

As an example, this was clearly demonstrated when an FWRM took the government to court for the women's name case. In that case, we actually had to actively search for seven women who could be plaintiffs in that matter. This should not be the case. It is simply not right.

In this time of uncertainty and great change, the protection of human rights must be our shared responsibility. It cannot be an individual burden. This is crucial to citizens' fundamental and equal rights to access to justice. For far too long, not only has this right been unfairly limited, it has been enshrined in the 2013 Constitution. This wrong can be righted by amending Section 44 to allow public interest organizations such as NGOs and CSOs legal mandate to assist aggrieved individuals and groups in seeking redress.

At its core, this is about recognizing that justice is not always something a victim can pursue alone. Sometimes it requires someone else to stand beside them, behind them, in front of them and say this is wrong and it must be answered for. Allowing NGO's and CSO's to file cases affirms that human rights are a shared responsibility and that no one should have to fight for their dignity in isolation. That was the first part of my submission.

The second addresses the separation of powers. In particular, it looks at the concentration of powers in one particular office. At the heart of any strong democracy is a simple idea. No one is above the law. And the system that protects this idea is the rule of law, which is supported by the doctrine of separation of powers.

But when those lines begin to blur and when one office holds too much influence, we risk sliding towards something far less, something less than a democracy. Separation of powers means that the three arms of the government, the executive, the legislature and the judiciary, each have their own rules. They act as checks on one another.

That is simply the purpose of separating the powers. This is the legal safeguard against autocracy. It ensures that people who make the law are not the same ones enforcing it without restraint and not the same ones judging it without independence.

Without this balance, power becomes concentrated. And history shows us that concentrated power, regardless of how well-intentioned in the beginning, does not end well.

Under the 2013 Constitution, the Attorney General in particular holds significant and far-reaching authority. This one role carries sweeping influence across different areas of governance. It has caused legal, political and executive influences to overlap in one office. It weakens the

very system designed to hold power accountable. And when accountability fails, people begin to question whether decisions are being made fairly, independently and in the public interest. We have seen this happen. This is the entire reason we are here today, making these submissions before you.

Current provisions in the 2013 Constitution demonstrate that the role of the Attorney General are far-reaching. And just to give a very basic example, the Constitution of India, which is a very progressive constitution, a very voluntary document in fact, mentions the Attorney General no more than a dozen times. Ours does so approximately 70 times.

And that itself is a demonstration of how pervasive the powers are and how centralized they are. And that is the opposite of what democracy demands. Limiting powers is about protecting democracy.

This is why the role of the Attorney General must be clearly defined and limited. This is what will strengthen the system. It reassures citizens that no single figure can dominate the legal or political landscape unchecked. That must never be allowed to happen.

Further, the role of the President must be clarified. This is Part B of this submission. When constitutional roles are vague or open to interpretation, it creates uncertainty. This is why the role of the President under the 2013 Constitution of Fiji should be more clearly defined as a ceremonial role. Respectfully, the President is meant to be a symbol of national unity, above politics, above division.

A clearly defined ceremonial role removes that ambiguity. It ensures that everyone understands that the President can only act on the advice of a lawfully elected government, not on personal discretion. For example, the President cannot nominate public officials but can officially endorse the nominees of the government without suggesting his own candidate.

Section 82 must be amended accordingly to reflect this. In a democracy, real executive power must rest with leaders chosen by the people. That is where the political mandate is derived from. Unclear powers can lead to standoffs between the President and the government. These conflicts have a destabilizing effect on governance and erode public confidence in institutions. At the end of the day, democracy is not self-sustaining.

It requires constant care, vigilance, and sometimes difficult reform. We must ensure that the rule of law prevails, and that means being willing to question where the power sits and whether it has grown too large. And it has. We respectfully submit that this must be rectified.

Ms. Laisa: My next submission is around Section 45 of the Constitution, which establishes the Fiji Human Rights and Anti-Discrimination Commission. It's a mandated body under the Constitution designed to promote, protect, educate on human rights, including investigating violations and providing some level of redress.

One problem to note here is that the clause seems to allow the Commission to only make recommendations to the government but not to tribunals and other bodies and not to the private sector or to challenge state decisions. Under the 1997 Constitution, the Commission could make recommendations to anyone, including the private sector. Therefore, we submit that Section 45 of the Constitution must be strengthened so that the Commission can make recommendations to the government, tribunal, private sector, and other bodies about matters affecting compliance with international human rights laws, existing and proposed new laws.

The Constitution gives powers to the Commission to not only make recommendations but to monitor whether the government, tribunals, private sector, and other bodies are actually complying with the recommendations from the Commission.

Section 45 (5) of the Constitution also allows any person to lodge a complaint with the Commission alleging that a right or freedom has been denied, violated, infringed, or threatened. As my earlier colleague also highlighted in her submission, we are proposing that the new Constitution include provisions whereby civil society organizations are able to file complaints to trigger investigation into human rights violations, especially for vulnerable groups like women, persons with disabilities, children, and women human rights defenders.

And my last point on this is that Section 45 is silent on who the Commission reports to but references the Human Rights Commission Act 2009 to articulate this. So, if you look through the Act itself, the Commission reports to the President in Section 44.1 and it must submit a copy of the annual report to the Prime Minister. To ensure true independence, credibility, and effectiveness in holding the government accountable, we recommend that the Constitution include provisions whereby the Commission is mandated to report directly to Parliament and not to the executive branch.

This is best practice everywhere. Reporting directly to Parliament acts as a transparent process because it is an elected body by the people and it also underpins the notion that the Commission is ultimately responsible for the public. Thank you.

Ms. Nabalarua: I'll be speaking on the seventh point. Myself and Shayal will be interchanging. There are only ten points, so we're at number seven. And I'll be speaking on no small topic, which is the role of the military in civic society, particularly Section 1312. And I say this having relatives and friends, former colleagues who have served with the military. I say this with respect but with absolute clarity.

The military is not a social welfare agency. They are not a development organization. The military is not a substitute for an elected government. When you put the words, well-being of all Fijians into the constitutional mandate of the RFMF, you have given soldiers the power to decide what is good for civilians. That is not democracy. That is a guardianship state.

I have seen what happens when the military believes it is responsible for our well-being. Rights are suspended. Women's human rights defenders are silenced, and the voices of elected representatives become optional.

The 2013 Constitution must be amended to state explicitly that the military is under the direction and control of the civilian government at all times. Its role is external defense, disaster response, and nothing more unless the Parliament declares a state of emergency with strict time limits. We respectfully submit that the Section 1312, again, should contain an explicit clause that the RFMF is at all times subject to the direction and control of the civilian government. And I'll pass on to Shayal.

Ms. Shayal: I will be presenting on point 8, which is on immunity, immunity for coup makers, which is under Section 156 to 158. Although the past cannot be changed, it should not define the standards of our future.

Sections 156 to 158 of the Constitution, they grant sweeping and irrevocable immunity to those involved in the 2006 school and interim government, shielding them from any form of legal accountability. Such provisions, they weaken the rule of law by placing individuals beyond scrutiny. Moving forward, there must be no provision for future immunity as accountability is essential.

As young women, we refuse to be shackled by the legacy of past coups. We want a constitution that reflects equality, the rule of law, and inclusion for all Fiji citizens. Do not condemn us to an uncertain future shaped by past instability. Give us the opportunity to build a better one. Thank you, and I'll pass it on to the next speaker.

Ms. Nabalarua: I think, you know, it'd be, I should have, as a lawyer, I should have also had the disclaimer, but it goes without saying that, you know, what we

do say here is not a reflection of our employees, as we are volunteers on the board.

I'm so grateful that Dr. Nilesh Gounder is here because we both work for the same school at the University of the South Pacific. But, you know, it's, and I was thinking about it today sitting at graduation, is we still have to cover ourselves because that trauma, that fear still exists and we could potentially, that our livelihoods are at stake. But what we're doing here is trying to set boundaries and guarantees and fight for the freedoms that have been so easily, that's so fragile, that can be taken away or can be limited at any time, at the whim, and it can still be legal. When we're giving up the parts, I think I, I don't know whether I was, I attract all the hard, the hard conversations, but none of these are easy.

My presentation on the ninth and tenth point, the first is about FICAC. And essentially, it was set up to prosecute corruption, but is being used politically.

Corruption, as we know, is an infection that spreads. Every Fijian wants it fought, but as the good doctor, medical doctor would agree, the cure cannot be worse than the disease. When an anti-corruption body is used to silence political opponents or intimidate critics, it stops being a guardian of justice and becomes a tool of oppression. So, when power is wielded selectively against some people and not others, that's not accountability. That's fieta. The solution is simple.

We submit that FICAC be abolished as a separate entity and return its prosecutorial power to the Director of Public Prosecutions. The DPP has constitutional independence. It's already responsible for criminal prosecutions. And corruption is a crime. Let the DPP prosecute it without political interference, without selective targeting, and without the appearance of a political weapon.

The last submission I'll be making, we'll be making today, is the concentration of powers in the executive in relation to judicial appointments and removals, thereby undermining the independence of the judiciary.

As a lawyer, we are always taught that we are servants of the court, first and foremost. And so, I say this as a servant of the court. The 1997 Constitution got it right.

Under Sections 131 and 132, judicial appointments were made by the President on the advice of a Judicial Services Commission, a collective body of senior judicial and legal professionals with no role for the Attorney General. Section 136, 2 and 3 of the 1997 Constitution was equally clear. A judge could only be removed for inability or misbehavior.

And the President had to appoint a tribunal on the advice of the JSC. The JSC acted as a filter, ensuring that removal proceedings were based on merit and proper grounds, not political convenience. That is the standard we should maintain.

We respect our judiciary. We honor the difficult work that judges, magistrates do every day. But we must be honest about the constitutional framework within which they operate.

The 2013 Constitution places them in an impossible position. Section 107[2] requires the JSC to consult with the Attorney General when appointing judicial officers. 114[.3] requires the same consultation for the appointment of the Commissioner of the Independent Legal Services Commission.

Section 122 repeats the pattern for the Public Service Disciplinary Tribunal. The Chairperson and two other members appointed by the President only after the JSC consults with the AG. The Attorney General is a senior political appointee and a member of the Executive Branch.

Previously, the JSC acted as an independent filter for removals. Now the AG is directly embedded in the chain of appointment and approval.

This is not a criticism of any judge or magistrate. It is a criticism of a constitutional design that forces judicial and disciplinary officers to be appointed and potentially removed through a process that involves a political figure. No matter how independent our judiciary may be, the very existence of these provisions creates a structural vulnerability.

When the law requires the AG to be consulted at multiple points, it creates an unavoidable impression that appointments and security of tenure depend on executive approval, undermining the public confidence in impartiality of the courts and tribunals through no fault of the judges themselves.

We therefore submit that the Constitution should be amended to restore the 1997 model. Judicial appointments and removals to be made by an independent Judicial Services Commission on the advice of that Commission to the President with no role for the Attorney General.

Specifically, Sections 107 [2] 114 [3] and 122 [2] must be deleted. The removal process must return to the 1997 standard, removal only for inability or misbehavior with a tribunal appointed on the advice of the JSC alone.

Our judges, magistrates and tribunal members deserve a constitutional framework that protects their independence and insulates them from any suggestion of executive influence. A judge should never owe their position to a politician. A magistrate should never be placed in a position where litigants could reasonably doubt their impartiality. That is not an attack on the judiciary. It is a defense of it. Vinaka.

Ms. Nalini: So, there we have it. The 10-point submission that we have made is therefore not abstract legal commentary, provided by my colleagues today. It is a defense of our collective lives' work.

It is a demand that Fiji returns to the path of genuine constitutionalism where human rights are real, justifiable and enforceable. International legal obligations, especially CEDAW, are binding and not optional. The military serves the civilian government, not the reverse.

Women in marginalized groups have the legal tools, including TSM's and quotas, to achieve substantive equality. And no one is above the law. And no future immunity will be granted to the overthrow of democracy.

We submit this not as opponents of Fiji, but as its defenders, where the respect of human rights, the rule of law and equality is a stronger, safer, and more prosperous Fiji for all its citizens, especially its women and girls. Vinaka Vakalevu.

Mr. Valenitabua: Vinaka Vakalevu Nalini. Thank you very much, ladies, for those submissions. Deep, strong, they will be considered. Now, before I ask my fellow commissioners if they have any comments or questions, may I request at the outset that if you have soft copies of your submissions, please send them to us so that we can consider them, we can print them, distribute them to the commissioners, and then we can consider them later on. Thank you. Now it's time for comments from your commissioners. Like CJ said, it's time for us to cross-examine you.

Ms. Nailatikau: Thank you, Chair, and thank you for your presence here this afternoon, Laisa, Shayal, Nalini, Agnesi, Akanisi, and Imrana, and, of course, your colleagues. I was a high school student sitting on the floor during school assembly when Ms. Jalal appeared at my school to talk about the progress towards the Family Law Act. And then later, as a research assistant at the Legal Aid Commission, I got to see the Family Law Act in practice, and that was around 2005 or 2006.

I wanted to thank you for the grace and calmness with which you delivered your submissions, but with uncompromising clarity, I must say. And I moved beyond description to see the intergenerational makeup before us, something I hope our commission might also reflect, and I know it's something that we all live in a walking dream towards. My

question is about the very important point you made about making evidence-based policy advocacy that FWRM has done for as long as I've been around, for the 40 years of its existence.

You spoke about the 10-year rape statistics analysis. You spoke about the evidence gathered on women's presence on boards. And because one of the responses that I'm sure many of you also deal with when it comes to speaking for things like temporary special measures and affirmative action is says who or who said that, evidence and research becomes all the more important.

And of course, it will be in the massive responsibility in terms of the work that we do. I would just like to invite you to expand on FWRM's work in research and in evidence gathering that is quite substantial, I understand, over your 40 years. I'm sure it will be something we come to refer to a lot in our work.

Ms. Imrana: When we make our submissions in writing, which we will definitely give to you, we intend to preface it with the data on women's ratio in employment, women on boards, women in the judiciary. All the gender data, sex disaggregated data will be provided to you so that you can see that our submission is based on actual data.

Over the years we have done various points research. One recent research I think you already know about is in 2020. We did research to show the public of Fiji that women, although we had equality, legal equality, that de- facto equality did not exist in terms of decision making. That's only one. And Nalini will give you other examples. We have always based all our submissions on hard data. And not only do we have sex disaggregated data, but we also collect anecdotal evidence, qualitative evidence, from the women that we talk to, the women that we train in our workshops, our membership.

We have 100 women who are young women who have graduated from our training program. So as Nalini said, we are building a future pipeline of leadership, not just for us, but also for government and decision making. Nalini, I think maybe, I mean, I'm thinking about the first 20 years and the research we did then, but we've become better.

And now that we have research people employed full time, we've become better at collecting information. So rather than give you 40 years of research, why don't you just highlight one or two of the things that we've done over the last decade. And can I say, Mr. Commissioner Chair, that I should have also said that I took leave today to come and speak.

I do not speak on behalf of the Asian Development Bank. And I just want to be clear that I'm here as a board member of the Fiji Women's Rights Movement. So just to clarify, thank you.

Ms. Nalini: Thank you, Mere, for that question, and rightfully so. The reason why we do research is what Imrana has talked about. There's disparity and limited understanding of how we need to look at data. It's taken us a long while to actually get to the appropriate desegregations, and even in the most simplest way, looking at sex desegregated data. So, we have given ourselves a mandate that we are going to be looking at any topical issues with the gender and sex lens, because we would like to show how, when we look at gender in a very neutral way, where the cracks and gaps are and where women are slipping off. So maybe just to highlight a few examples.

This work actually began in the 1990s, and it was around women in the economic sector. And one of the key issues coming out was sexual harassment in the workplace. And one of the first researches we did was around prevalence rates.

I think it was as early as 2012, and the data was something around one in three women were experiencing sexual harassment in the workplace. Then began the whole lobby to have our legislation include the clauses and to get organizations, companies, private sector to become more compliant. And again, when we repeated the prevalence study in 2016, the data showed one in five women as prevalent.

And we could see where the hotspots were, and this was in our food and beverage hospitality industry. And one common issue coming out as a barrier was not knowing what sexual harassment actually was. So then began a whole effort from our side in terms of educating institutions, corporations, whoever would want to understand this and put in better policies for their workplaces.

And we should be looking at doing another prevalence study to see where we are now, because this is a significant issue for us. In relation to the plethora of work that has happened in legislative reform, including Family Law Act, the Enactment of Domestic Violence Act, looking at the revisions in the Crimes Act, where we're looking at rape and sexual assault, etc. So much progressive changes have been made.

But when we did an evaluation of how well is access to justice for women, working out with all these reforms, then we find some stark realities. Again, we find that for women, it takes an average of 268 days to seek formal justice sector response. And within that two-and-a-half years, women are trying up to an average of six times to reach out.

And one of the biggest barriers is women in communities everywhere not knowing the justice pathways. So, we are working with different organizations, service providers, including government. Now we have our national action plan on the prevention of violence against women and girls.

So that's where we are bringing in this data and recommendations to ensure that the disparities and the gap that we see are eliminated. And I think to look at the more recent studies we have done, as we have explained, we have analyzed that we have child early marriages in Fiji, despite having marriage law which says 18 is the legal age for marriage. But in reality, we actually have younger women in traditional or customary unions.

And there are reasons for that as well that we have to find out why. And it's a failure of our systems when it comes to providing comprehensive sexuality education in schools and sexual and reproductive health services and information. And that is resulting in unintended adolescent pregnancies and leading to customary marriages.

And nobody has ever been taken to court for that, which is quite astounding given the number of marriages that we have seen. What another recent research is, it's around, well, we've done 10 years of rape case analysis. And this was premised on the fact that we wanted to build a profile of who the victim survivor is and who the perpetrator is and essentially also try and understand how long does the justice sector or the case in court take.

And what we have found is that majority of victim survivors are children because they are under 18 and the perpetrators are from mid-20s to mid-30s. And we also find that the home, the community, is the most unsafe place for victim survivors. And we also find that it takes up to about 2.5 to 3 years on average for cases to be processed in court.

And it's also a stark realization that we do not provide any support for psychosocial issues, mental health issues to the victim survivors as they go through the process. So, this is a new analysis that we are finding and we will be looking at what do we do in that regard. Another ongoing research we are just working on that is looking at the Sustainable Development Goals and looking at Goal 3 on health and Goal 5 on gender equality to see how well is Fiji faring.

And we know that the progress on those goals, we are either stagnant or we are regressing. And we are not progressing in the ways in which the SDG's were designed. So, research is very important to us and everything that we advocate for and lobby for comes from that

background. 40 years of knowing where we are, especially for women and girls in Fiji, is what we bring in our submissions.

Ms. Imrana: Thank you, Nalini. May I just add two data points that I think is very relevant to how you situate us when you are talking about women's rights in your report.

One critical piece of information is that women make up 36.2% of women are in the paid labor market. Compared to between 61 to 75% of males. So, it's almost a double gender gap when you are thinking about access to paid work.

Of course, that does not take into account the amount of household work that women do, unpaid household work. Nobody is saying that they should be paid but that it should be recognized that it is real work even if it is unpaid work. So, women do 73% of household work.

So that's quite a massive amount of work that women do apart from those 36% of women that do paid work. In addition to that, one of the features of the labor market in Fiji is that women have horizontal segregation. Meaning that women in general are concentrated in the lower occupational groups because of the lack of skills and education.

So, one shouldn't look at the women here or the women in government and say, well these women represent all women in Fiji. And that education is dispersed fairly over the whole labour market. It just isn't.

One of my favorite topics, and it's something that I was involved with at the World Bank and the ADB, is trying to get women into the TVET sector. We know that in terms of future employment, the TVET sector is a huge potential employer of women. And women should be getting training for that so that they can, because that is one sector that is highly gender segregated.

It's something like only 11% of technical and engineering people are females. So that's obviously a future sector. So that's one important piece of information which gives you a kind of a snapshot of how women are situated in the labour market. Thank you.

Ms. Nalini: Just a correction, I think I'm getting a little dyslexic as I progress with age. Women, it takes them 868 days, two and a half years, not the other way around.

Mr. Valenitabua: Ms. Baravilala, your submission in relation to Section 7, subsection 1A of the Constitution. Section 7, subsection 1A, and B. The use of the word must, which is mandatory, and may, which is discretionary. Sorry, Ms. Nabalarua.

According to the 2013 Constitution, the words used are, in 7.1A is must, and in 7.1B is may. A is mandatory, B is discretionary. What was your submission again? They should both be mandatory. Both of them, A and B should be mandatory.

Ms. Nabalarua: Yes, Section 7.1B should be amended to say must.

Mr. Valenitabua: Thank you.

Mr. Beg: Through you, Chair. Thank you, ladies. Very enlightening presentation. I have a different view, I'm not a lawyer. I come from the vocational sector, and I'm glad that Ms. Imran has just mentioned the TVET section. But, you know, I hear you, just the Constitutional Declaration of Rights. You know, you talk around the human rights section of the Constitution. It appears that it's top-loaded and then watered down. Just hearing the voices across the table with your stories, very compelling.

But, you know, just the point about the military one was quite interesting. However, my paper that I've been asked or tasked to do is to look at the State Service, Chapter 6. And that's a sticky subject, and that's something that I share your compliments and your feelings around that subject.

Just before you came in, we had the nurses, a group of ladies that came in. And, you know, we're losing close to 1,500 women. I mean, the figures that I picked up in 2024 was about 1,500. I don't know how accurate that is.

That's driven by, again, how, as you quite rightly framed it, the Bill of Rights, the rights section, which hurts me a lot, too. Sorry, I get kind of emotional around this subject because they should not be in a position like that. And I didn't hear that come across. So, I think we're losing a lot of women. Most of the nurses, 90% of them are women. And they are finding that subject space very difficult, hearing from them this morning.

Sorry, Chair, I might be just elaborating a bit more. Their concerns are very interesting. But there's a huge group of women that are affected, and it's coming back to this Bill of Rights. But anyway, I just thought I'd just throw that in. It was nice to hear that because it's resonating with the other consultations that we're hearing. So, I thought I could just pass it on. But very compelling, and thank you.

Ms. Imrana: Sorry, if I could just comment on that, Mr. Commissioner Beg. When I refer to gender-segregated occupation, that's the perfect example.

Nursing is 90% female. They're also highly employable abroad. I have two sisters-in-law who left the nursing profession. One of them is a sister in an intensive care unit in Cairns, and another one is in the U.K. They got jobs like that with the training that we give them here, earning an enormous amount of money, to be frank. I mean, why would they stay around here if they can make the lives of their families better? But here is where employment law must address. There is a legal solution for a start.

There's a massive gender gap between nurses, highly trained, and other professions which are consisting mainly of men. But the same kind of like skill value levels, it's quite interesting. But if you did a survey and you looked at the wages and benefits, you would find a huge disparity.

So, unless we can recognize how highly skilled and trained nurses are and ensure that there is a wage that attaches to their profession, we are going to see this erosion of highly trained female staff. But I don't know whether by protecting equality in the Constitution, we can tackle that issue as well. But if gender and sex is going to be removed, then we don't have a constitutional basis to challenge gender-segregated occupation, which attracts lower decent work and salary. Thank you.

Mr. Valenitabua: In relation to the concentration of power, which was submitted by Adashni, we have been considering that. We have questioned the two top judges in our jurisdiction, the CJ and the President of the Court of Appeal.

And we have also questioned former judge, I still call him judge, Daniel Fatiaki. And yes, everybody notices that. And it has been a subject of comment around awareness or workshops that have been undertaken around the country.

And the figures you have given us was given to us by, I think, Mr. Emitai Boladuadua yesterday. The number of times the Attorney General is mentioned in our Constitution. So that is a matter that we are taking into consideration. And the comment has been that we have to water that down.

Secondly, Section 44, reading it, any person can use Section 44. Now, that would imply that it's the person affected who is to use Section 44?

Ms. Adashni: Yes.

Mr. Valenitabua: Except if a person has been accused or detained, then a third person can get involved.

Ms. Adashni: Yes, sir.

Mr. Valenitabua: Is that what you mean?

Ms. Adashni: Yes, sir. That is precisely the meaning of that. And what it does is it places the burden of filing constitutional redress matters and constitutional challenges in the courts on an individual.

And that is a massive burden to bear. Because not only are you in many instances going up against – the opponent is always going to be a more powerful figure, in this case the state.

Mr. Valenitabua: Yes.

Ms. Adashni: And the interest of the individual citizen must always be protected in the Constitution against the state. Because that is where – A, that is where the political mandate comes from. But that is also the social contract between the citizen and the state.

I apologize. I feel like I'm speaking to the choir because you're so senior to me. And I've seen you in court. And it just feels a little bit intimidating.

Ms. Imrana: And he was a human rights commissioner. Yes.

Ms. Adashni: I was getting to that point. I wasn't sure of my memories. I'm so young. I don't know so many things. But it really seems like such an unfair burden. It was demonstrated in the women's name case, which eventually didn't end up – because the law was changed before a judgment could be made by the courts, which was also a separate matter, just the abuse of Standing Order 51. But that's not part of the submission. Apologies for digressing. Yes.

Mr. Valenitabua: So is it your submission that that is to be amended, that third parties can give instructions?

Ms. Adashni: Yes, absolutely.

Mr. Valenitabua: Can give instructions on behalf of other people?

Ms. Adashni: There must be legal mandates that allows public interest organizations to pursue that line of work. And it must be reflected in constitutional redress rules as well.

Mr. Valenitabua: Okay. And I get your point. Because the only third party who can appear would be the lawyers. But to give instructions, you need a person.

Ms. Adashni: Yes, absolutely. And lawyers are also expensive, goes without saying. And not everyone – I mean, there's legal aid available, but oftentimes – but also, sir, and if I may elaborate, it places a lot of emphasis on

individuals. When we also have group rights of minority people, and so sometimes when a group is affected by the same contravention of rights, the NGO or a CSO, any public interest organization that works in close contact with them would be the best avenue, would be the best way to help them, would be to go through that particular public interest organization.

Ms. Imrana: Commissioner Chair, when we fought that case in 2023 – 4, can't remember – I don't know – I'm sure you followed it closely.

We had to find seven female plaintiffs who were directly affected. We had to file an affidavit showing how their passport, their birth certificate, their FNPF, their visas, all of that was affected because the state required that they vote in their birth certificate names. But all of these women – and actually there were 100,000 women affected.

And we know this because the then Attorney General gave us the numbers in Parliament. And so, we fought that case for the 100,000 women without getting a specific mandate, but we were lucky to find seven women. And we had to find them because they were scared to be plaintiffs because they felt that they might be victimized.

And so that is the perfect example. Organizations like us, we should be given the right in the Constitutional to file a court case that says 100,000 married women who've had their names for over 20 years are being told that they should only vote in their birth certificate names. You can't discriminate against them because they chose to get married and adopt their husbands' names.

So that effectively – and we had to fundraise to pay for the lawyers for that. We should have been able to file it on behalf of those 100,000 women. Thank you.

Mr. Valenitabua: Yeah, I know that because that was the repo cation of Nawaikula case that is why I was interested in we were the lawyers at that time.

Dr. Gounder: Thank you. Thank you, Chair. And thank you, WFWRM, for your presentation.

On behalf of the Commission, I'd like to recognize your work, not only in the area of women's rights, but human rights, rule of law, and good governance. And I think I've said this in other forums as well. A lot that we have achieved on the ground in terms of women's rights is the hard work of organizations like FWRM and also because of your lobbying over time.

And it's good to see Madam Imrana Jalal here. Your presence here is testament to your interest in women's rights and also your contribution to a better constitution for our country. So, thank you for your very sharp presentations and very specific focus on what aspect of constitution you would like to see reformed.

One of the issues that I want to pick on is the gap between what we actually have on paper in terms of laws and the outcomes on the ground, which is a challenge. And one of the things that you mentioned is women's rep in boards and particularly in public enterprises. And in the National Development Plan, Nalini and I worked together to ensure that we have women reps in boards.

And in terms of the implementation of National Development Plan, I've seen firsthand the challenges. You need a lot of political will to achieve this actually. And I was, through my influence, managed to push women in FRCS, FDB, and FNPF.

But it can only happen if there is some level of political will. So, my question is, and I just need to pick your expertise in your brains, whether we should have something of this kind in the constitution or push it through the acts. Because one of the things we have been discussing as commissioners is how do we sharpen the constitution and reduce some of the information that the constitution has.

For example, you say people of academic freedom, and then you list a lot of qualifiers. And the constitution then becomes very broad and long. And my colleague here, Dr. John, is not a fan of qualifiers.

So, I just want to know, what shall we do? Because I have a keen interest in this. I'm working really hard to ensure that we have more women on boards. But the practical challenge is, how do we achieve this? Should we have this here? And how will it work then? Or should we? Because my thing is that it might be a good idea to have it in the acts.

So, FRCS act, FNPF act, FDB act. We might be better suited. But I'm just suggesting I want to pick your expertise, Imrana and others, please.

Ms. Laisa: Maybe I start first, and then Imrana and the rest of my colleagues can also share. So, under the 2013 constitution, if you look at section 26-7, it already provides a provision where it says that the section, it allows for legally permissible TSMs to be included in substitute legislation. Because section 26-7 already allows for it.

And maybe I can reiterate, treating one person differently from another or any other grounds prescribed under subsection 3 is discriminatory unless it can be established that the difference in treatment is not unfair

in the circumstances. So, this section means that you can create substitute legislation. So, the constitution already allows for that affirmative action to be in acts in other substitute legislation.

Because you're able to justify special circumstances which requires women to have some sort of temporary special measure to be at the same level playing field, whether it's in boards, in health, in public sector, private sector. So, the constitution already allows for that.

Dr. Gounder: But this is how it happens before you come in. So, say there are five board members. When the time for nomination comes in, only if you get this push for a woman candidate, then only you'll get someone. So that's my practical issue that I was trying to highlight.

You know, we made a lot of attempts, but it mainly is to deal with the political level, the ministerial level. Sometimes they just can't seem to see the need to have. So how do you fix this problem? I mean, one of the targets in the national development plan is to at least have 50% of women on boards.

We might actually be missing the NDP target because practically we have hit this kind of a drag. So please.

Ms. Imrana: Thank you, Commissioner Gounder. So I'm a big fan of Section 44 of the old constitution. Okay? So, under the 1997 constitution, Section 44 was very clear. Parliament may make laws to accelerate the equality of disadvantaged groups, not just women. It could be poor. It could be people living with disabilities. So, it was very clear.

It's not so clear in 2013, and as Laisa pointed out, it's embedded right there amongst 26.7. So that's not good. We need a clear provision. But exactly as you said, Commissioner Gounder, I don't think the constitution is the place where you say all boards must have 30% women because we need to make sure that the women exist to draw from.

And while the gaps exist, it's not wise to put it in the constitution. Having said that, Malaysia, India, Vietnam, and many other Asian countries have passed legislation requiring that, and not in the constitution, but subsidiary legislation, requiring women to constitute a minimum of 30% on boards. But not just that. Malaysia took a further step. It said, actually, it's not just public organization's that have to have 30% women. Private sector boards have to.

So, the multinationals that exist in Malaysia have to have 30% women. And what it's shown is that, actually, it has not decreased the profits

because there was all this stuff about putting more women in boards. You know, they don't have the skills.

They don't have the education. We'll put them on board, and what will happen to the profits? And actually, the research done by Thornton, which is a highly regarded international accounting firm, did the research. They looked at seven countries, and they said, actually, it improves the bottom line.

And they even looked at the Vietnam Stock Exchange and found that it did not affect negatively the bottom line. And in fact, one positive benefit was that companies that had a minimum of 30% women on boards, actually, the employees in those organization's benefited in terms of wellness. So that was a side effect that wasn't intended, but it occurred.

Now, I'm not sure. I mean, we've debated and argued about this over the years. Should we go for 30%? Or maybe we should start off with 15% or 20% just to get things going. And then in 10 years, we can say, OK, it's working. Let's improve it to 25%, 30%, whatever. But I think I'm a big fan of quotas.

The World Bank and the Asian Development Bank is quite clear. We don't see change unless you have legislated quotas. All our gender action plans in all our projects, whether it's a $1.2 billion loan to India requiring a viaduct to be built, requires that 30% of the workers must be women. And it happens. So, there's a lot of research, a lot of data, a lot of evidence-based information to show that it doesn't affect the bottom line and, in fact, it could improve it. Thank you.

Dr. Gounder: I think there's ample economics research also to suggest that having a more gender representative board improves the financial performance of businesses. Thank you very much. I think we're trying to move in that line.

It might be better off to change the acts. So, for example, in Fiji Revenue and Customs Service, where I'm a board member, you know, we try to remind that, hey, we need to get more women on board. So, if it's legislated in the act, then it might be much more easier because that can be more effective.

That's just a point that I think at this stage. But I take your point that we need to be more specific somewhere in the Constitution, and then we can use that provision to argue that these acts must also then change down the line here. Thank you.

Ms. Nabalarua: If I could just add on to that. I think, you know, in terms of having clarity in the Constitution with regards to quotas or TSM's is important because

at the very basic, every citizen of this country knows that their Constitution stands up for them. It includes them.

And if you make it normal at that level, it should not be hard in terms of legislation to reflect that. And for whether it's public or private sector to feel emboldened by the fact that this is not, they're not acting differently to the Constitution. You wouldn't be allowed to, or you're not in the extreme. But at the minimum level, throughout the submissions that we've given, the Constitution includes them, it sees them, and it makes up for that difference. But also, a level playing field is not achieved until we intentionally level the playing field. And to sit back on a wish and a hope that it will happen, realistically, we can sit here and tell you, in 40 years, change did not come on a wish and a hope.

It was fought for and lobbied until it was achieved, even when the wins were incremental, and this is the minimum that we are asking for. And I think even having that change in the Constitution or providing a bit more clarity is what the citizens of this country deserve from a constitution that includes them. Vinaka.

Dr. Gounder: And I think you have the complete academic freedom from USP to talk about issues. Yeah, I have experienced that first hand, so please, you know, feel free to talk on issues that is within your expertise and domain, yeah. I haven't been hanged to death, so I'm still here.

Mr. Beg: Sorry, through you, Chair. Akanisi, are you saying you want it in the Constitution?

Ms. Nabalarua: No, I was just saying in terms of our submission, we had outlined that we, you know, just how Imrana had phrased it, it's like tucked into Section 26-7 as a, you know, as a clause there. But just to, when we're talking about the debate of whether we should start from X or the Constitution, I think that at the minimum, we need it clarified, is that the word, in the Constitution?

Ms. Imrana: Enabling legislation. Enabling legislation to, yeah.

Mr. Beg: Okay, that's really good, because, you know, I hear 40 years of hard work. I agree, totally. I think it should highlight that instrument very clearly. Thank you.

Ms. Nailatikau: If I may, Chair, I am also reflecting on your submission relating to FICAC and about how the past decades, citizens have watched the roles of public institutions evolve and mutate, perhaps, if that's too strong a word, and how so many of Fijians today have known no other arrangement under which they've lived.

And I'd really love to hear you expand on how this has also affected the lobbying environment for you all, in terms of what directions to advocate in, in terms of the freedom or lack of freedom, in terms of electioneers, as we all know how such institutions have been used or have operated.

And, you know, evolving back, sometimes when one speaks of abolishing something or removing something, it doesn't necessarily mean, as you state, that we don't believe that corruption is an issue and shouldn't be addressed. I mean, I would just really be interested to hear you expand on that from the position of a 40-year advocacy institution like FWRM, in terms of having to operate in these ever-evolving environments. The reverberations of which are still happening around us.

Ms. Imrana: To be fair, she was only three years old. Fiji woman's rights movement, stop! I would have been around the same age.

Ms. Nabalarua: You know, I can speak on my limited experience, on, yeah, just the scope here in front of me, and hopefully my colleagues will expand or pick up the ball where I may have dropped it. You know, I was thinking about the FICAC and how these institutions were almost thrust upon us and we had to pivot as and when it happened. And also understand what that meant from, you know, from access to, you know, the ability to bring cases, how you affect these people, members that were personally sort of taken to task through these institutions.

And it's not, it's both a, not an academic exercise, it's both that discussion and it's a personal discussion for people in the movement. And, you know, just to go back to, whenever I see the word FICAC, my word association is fatigue. Like, I'm really tired. I don't know how to, this was, you know, there was conversations before the previous government came in that it would be absorbed within the police. And then now we are submitting that it should, there's no need to reinvent the wheel. There might be some minor changes that need to be made.

But again, I go back to the fact that the medicine seems harder than the actual infection of corruption, of solving corruption. There is no qualms about whether corruption exists and it needs to be fixed. That's a given, right? But it's the mechanism that exists in place that allows it to be fair and transparent and not to be weaponized against our own citizens. Yeah, I feel like Nalini wants to add to this.

Ms. Nalini: Yes. This has direct correlations to when we look at number of women standing for elections. Because the precedent that we have does not provide any confidence or add to that because they're too scared. What to declare their assets? If they don't declare, what's going to happen?

You know, the FICAC cases that are ongoing at the moment. And we are hearing from those organizations that are doing workshops with potential women candidates that this does come up quite regularly as one of those barriers that stops them from standing up for elections.

We have renewed interest with the local level municipal elections now. But looking at setting the pathways for national elections, this is one of the reasons why women are hesitating. Because of how what they declare, don't declare, through error or not, they could be targeted.

And a potential for them to go into prolonged cases. They don't have the finances, but the political party support is not there. So, all of these things are adding to that limitation.

Dr. Fatiaki: Thank you, ladies. I should just point out from the outset that as a father of five daughters and two lawyers, I was advised not to say anything at all. Not to ask any questions from this particular group.

And I have refrained from saying anything. But as all my colleagues have spoken, I think it would be inappropriate. I did declare a conflict of interest, as I said, opposite the chairman of the electoral commission review panel who sat there three days ago.

And we had an interesting discourse. I don't have any specific questions. I thank you for the presentation. It's clear, it's forceful, it's fair. And I think many of the points you have made are very relevant. My comments really are just generic reflections in the context of our role as commissioners.

And for that, I refer to our terms of reference. There are particular aspects of our terms of reference that I think are relevant to some of the issues that you have brought up that I should maybe talk about. We're asked to engage with the people of the Republic of Fiji extensively.

Obviously, this was one of the so-called democratic deficits they referred to when the Supreme Court alluded to it in the 2013 constitution. The lack of consultation before they wrote this constitution and then supposedly consulted after the event. The lack of legitimacy in not going through a parliamentary process and getting that legitimacy, you know, standing committees and that.

And the consolidation of power, which I think many have eminently addressed in respect of the need to consult with the AG. So, there's that aspect of it. And in so attempting to address that part of it, we would be having extensive consultations with the public.

And part of that process involves, and I read, seeking input and evaluating key aspects of the constitution to ensure its provisions reflect the values, I emphasize, needs and aspirations. Now, my reflections in this respect, particularly in regards to some of the things that have come out in your presentation, again, I emphasize, I protest, I'm not agreeing or disagreeing with anything. For my safety at home.

But, for instance, we're going to have significant consultations with people who will have different views because our culture is different. And we'll espouse them, I have no doubt, as we extend our consultations outside of the urban centers. That may differ, for instance, from best international practice guidelines and conventions.

And I guess for us, our reflection here is the need to balance the people's views and their values if they in fact conflict or don't go hand in hand with international best practices. And I think that's a recognized thing that's going to come up. And I don't have an answer for it.

I sit, I listen to you, and I can assure you, again, you know, in the interest of my safety, I agree with everything you've said. But having said that, I will be listening to a lot of people who will come from places with different values, different aspirations, a different culture, that will give us conflicting views as to how we should adopt best practice guidelines. And I think this is an area that we obviously will have to address is to juggle the best of the, I guess, western world in terms of the guidelines there and the conventions and their aspirations versus what our people want at this point in time. That's my first reflection.

The second one has to do with, for instance, the issue of temporary special measures, which my brother spoke about at great length. And I talk about it in the context of electoral provisions because that's obviously an area that we will have to address as part of this review process.

And the issue of temporary special measures, I think in the context of what they recommend, which is the allocated seats for women, the so-called quotas, I kind of try to address this in the context of they argued with us that communal voting was out, we needed to be progressive, that we would not reserve, you know, certain number of seats for the Indo-Fijians, that we were moving away from that, we wanted to be universal. And in the same breath, they told us, no, we want you to put in temporary special measures for the purpose of achieving an end. This raises the question of, you know, this issue of equality of opportunity versus equality of outcome.

Is the process to socially engineer an outcome or is the process to make it fairer for everybody to have the opportunity to achieve it? I say that,

again, I'm very guarded. I've been educated by my daughters that it's not a liberal playing field. I argue that they've been brought up very independently and very level, and I pity the guys who will marry my girls, because they've been brought up so level and even and equal.

But having said that, I go again to an example of a temporary special measure that was brought in under the 90, I think it was the 97 Constitution. When Qarase brought in the blueprint, now the blueprint, I understand, came in under that provision, I think 26 whatever, that allowed you, if you could justify, a program to rectify, for instance, an economic disadvantage state of the indigenous Fijian people. So, the blueprint was brought in for that purpose, as my understanding was it was a temporary special measure.

They didn't call it that, but that was the intent. I understand that there were major repercussions in terms of people saying that was racist, that was unfair, you know, and obviously there was a coup to correct it, the so-called good coup. That's the one that brought this 2013 Constitution.

I ask myself, if those kinds of situations arise, where does the temporary special measure end, if we're trying to engineer an outcome? I don't know what the answer is. I know it can be better than where it's at right now, but again, I think that's the role of us when we're considering this, is to balance that. And I emphasize, I know you come from a point of advocacy, you want the pendulum to swing this far.

I suspect there are other people who are going to ask us to swing the pendulum up here, and what I hope to do is get us into that middle sweet zone where we don't have any more coups, where we reassure people that we're on the right track, but we take into consideration these other aspects, which I've given you two examples, where, for instance, these temporary special measures might not be considered as appropriate, or where conventions and guidelines, best practice guidelines, may not concur with the majority opinion. Is it our stance that we're smarter than you, we're wiser than you, and therefore we will give you what we think we should do in this country, or we should listen to you and try and convince you about how we should be looking at these guidelines and try and convince you that way, and maybe reach a middle ground that doesn't please anybody, but people can live with. I think that balancing act is an important thing that I reflect upon, and I think addresses some of the issues that you brought.

I don't have an answer for it. I think those comments are enough to keep me out of trouble. Thank God the media's not here, or I guarantee you I would not have commented. Thank you.

Ms. Nabalarua: Thank you, Dr. Fatiaki. I think I want to, at the outset, say you're welcome for the media not being here. There were so many questions between us in our conversations that we thought it best, just in the interest of having an honest and frank conversation to go in that route. And thank you for your very honest and albeit guarded reflections. I have met your daughters, and I would also be guarded as well. I think, you know, in the balance of people's views and values and best practice, I think a good indicator is to ensure that no one is left out, that everyone is included, the protection of the rights of someone to espouse very religious fundamental views or nationalist views is protected, as well as those that have progressive views at the minimum, that they are included.

We might, I mean, we come from an advocacy background as well, but we are also evidence that we don't agree all the time and that we have honest and difficult conversations and come to a compromise. And sometimes we may not agree, but as long as you feel safe and secure to say what you think without the repercussions, that could be wholly unfair.

Like, we're not about cancel culture, as other people might like to assume. For us, it's that difficult conversation, and I think our Constitution should set a standard where people can also have a difference of opinion, but also in terms of balancing the scales, international best practice is usually the minimum. It's not over, over and above what a country is capable of achieving.

And in that minimum, people are included. They have the right to go to court, to access justice. They are equal under the law, as long as we are all equal at the most basic.

And we, as individuals before you, also have different values, needs, and aspirations. But at the common ground, there are certain principles that we don't digress from. And I think if you would have, the great thing about temporary special measures is that they are temporary.

But it's just to also acknowledge the great inequalities and obstacles that women face just to get to a certain point where they can advocate, where they can put their hand up for positions. Even in the professional workspace, women are reluctant to leadership positions because of the time and the toll that it will take. So even sitting here before you today, we also acknowledge the privilege that we come from, whether it be education, socioeconomic background, the knowledge and experience.

To get here, we come before you not as the only expertise, but the representatives of a movement, of a group of people that have varying backgrounds. We have the ability to come here. But also, we have to ask for leave, and we have to make sure we check all the, cross all the T's

and dot all the I's to make sure that we can come before you make submissions without those repercussions falling on us.

And we just want a society that recognizes that in the difficulties, in the obstacles that you have to face, you deserve the right to be in spaces, to advocate for yourself, to stand in Parliament, or to be a candidate in elections. Those systems are not even, they're not the same for us. It's not the same for every woman.

And if we can put at the minimum, hey, let's have 15% or 20% of women in Parliament, because as the system exists, you won't likely get 20% of candidates or elected women in Parliament. You can't, and it's not, the social engineering is not though, it almost assumes the word social engineering as though we are in a position of power, and we're trying to tinker with the system so that we get spaces in there. No, it's acknowledging it's not equal.

Let's give you a space. Let's make the roads to a position where you can, you know, win your seat, sit in Parliament, and represent, if you're a woman from Labasa represent the women from Labasa so that young girls can see that that's a possibility, that it's not a wish and a prayer and a hope, that the system is there for me as well. That's all I wanted to say, maybe my colleagues.

Ms. Imrana: Commissioner Fatiaki, I wanted to offer you some practical ways forward on the two points that you made. In relation to the temporary special measures and affirmative action, the safest route if you were to decide to go that way is to suggest it based on evidence. For example, temporary special measures for seats in Parliament.

The evidence is that women only make up 11% of Parliament. So let's look at it from a substantive equality point of view. What do we need to do to achieve that outcome? It's temporary special measures.

We know that women only, just a random example, scholarships. For a long time, women were not getting scholarships. We lobbied so hard to ensure that women got 50% scholarships. But we based it on evidence. We presented the data that said women only get 15% of scholarships. I'm talking about 30 years ago, not about now.

Therefore, we have the evidence to justify the policy change or the legal change. TSMs must only be done in the context of evidence. If we know that indigenous Fijians only make up 20% of the labor market because they don't have access to TVET education and training, then if that blueprint was a terrible word to use because it got people so emotional.

If it had been presented based on evidence-based data, you could have sold that concept to the Fiji community. But when it's done in an emotional way, without starting from data, that's when people start to get emotive and think it's racist and so on. That is why we've never been accused of discrimination against men, I don't think ever in the 40 years, because we've been able to show this is the evidence and this is the outcome we want. So, it's a fairly safe thing if you can ground it in data.

The point about the conflicting opinions, the ones about you will go out and you will hear people saying and I did it in the Family Law Act when we were going around you should remove sex and gender and sexual orientation and marital status contributes to the breakdowns of family and women get two up themselves and they want to leave their husbands, you'll hear a lot of it. But if you say to them, where is your data? Where is the information that justifies your submission? You will probably get a response that says, well, we think that this is what's happening.

We feel this way. Say for example, let's tackle this thorny subject of the BLV. The BLV came to you and said we want you to remove sex and gender from the constitution. It's at a very abstract emotional level. But I guarantee that if you said to the chair or one of the chiefs who was making the submission you understand, sir, that that means that your daughter may not be able to apply for a promotion. Or if she does apply and doesn't get it and she knows it's because she's a woman, there's nothing that she can do about it.

That's a very practical question you're putting to them. They may give you an entirely different response because they're giving a submission to you at the level of abstraction. They're not thinking about what it means in practicalities. Probably most lawyers understand that, what it means in practice. But most non-lawyers don't, actually. Unless you're very familiar with discrimination law. I can't believe, for example, that a female chief that sits in the GCC would say, actually, you should discriminate against me. And by removing sex and gender, it will allow this institution to discriminate against me and deny me a seat on the GCC. So, when you're looking at it from a practical perspective, even those people who've made that submission might offer you a different answer.

So, I would suggest that when you go around the community, the country, ask them what do they think it means. Do you agree that women should be discriminated against? Would you like your wife to apply for a promotion? You will get a different answer. Because they're being forced to think, not in abstract terms, but in terms of how it affects them. I'm sorry, I'm losing my voice from last week. Thank you.

Mr. Valenitabua: Thank you, Imrana. I believe there's no other comments from the other commissioners. Just to round off this session, there are a number of matters that you have raised. First and foremost, I see that you are great fans of the 1997 Constitution.

So, we have also got our commissioners who have been referring to the 1997 Constitution. So, your submissions on that this afternoon is of great help. Secondly, the role of the military.

We are awaiting the military to come in and make their submissions, and then we will gauge how we can deal with them. The immunity, you would know that the BLV or the GCC, they are not in favor of having that mutiny provision in the 2013 Constitution. Now, having said that, and with the GCC having said that, we heard from Judge Temo, the Chief Justice, that the opinion given the Solicitor General in the Supreme Court, it was given after careful consideration of the repercussions if immunity was to be taken away.

The way he put it was, do you want to move forward or do you want to have problems? So that is an issue that your commissioners will be dealing with. It's a delicate one. It's a delicate issue.

The FICAC, we heard you on that, and the last but not least, Section 65C, Section 6, Subsection 5, and Paragraph C by Ms. Nabalarua, the limitation of rights. I thought that Dr. Fatiaki going to address you on that. We have heard people complaining about rights. Rights are given to us on the one hand, and then the right hand is used to limit the rights. So, we might as well say we don't have any rights at all. Those have been considered and we thank you very much this afternoon. I believe I should bring that to an end.

Ms. Adashni: Commissioner, just a point of clarity. Our submission was on removing immunity from moving onwards. Past immunity is obviously practically a very impractical thing to do, so ours is moving forward. That was just a point of clarity from us. Apologies for the interruption.

Dr. Fatiaki: Just in the way of a clarification, my comments on all the issue of rights has to do with every single right is a single one-liner, and that's subsequently sometimes they'll have a two or three if it's, for instance, right to employment. But after that there's a basket of seven or eight qualifiers, and it's obviously been written for the specific purpose to make your right meaningless, because the first one, if you were to read every instance in which they could enact a law to limit that right that they just gave you, it encompasses everything. I mean, it's not just emergencies, it's public health, it's public health, it's everything.

You could fit it in there, and my complaint about it, I mean, I didn't have that as my task work. I mean that Ami Kohli other lawyer and he was to look at the Bill of Rights, and when he asked my opinion, I said remove all the qualifiers and keep them one-liners. And then if there's a dispute about limiting your right, then they can go to court and the courts can decide that.

But when you say a right and then follow that with seven lines about all the instances when that right can be limited, just in the way of clarification.

Secondly, in defense of the GCC, I'm not sure that they actually said anything about sex. I think they had an issue with gender. I didn't raise it because it's obviously, and I guess as an advocacy group that started as a Fijian women's right movement, I wondered when you included the gender component to it, whether you did yourselves any service by so doing, because, you know, one of the arguments that they gave was, you know, exactly what is the gender in 73 or 72 at last count. How does that, I don't think anyone's going to argue about whether a woman and a man should have basic rights. When you start extending it to the prediction, I take that point. Likewise, you know, the prediction of minorities and that. They were concerned with that. And I think in fairness to them, I don't think they said anything about removing sex.

Dr. Gounder: I think, sexual orientation, sorry.

Dr. Fatiaki: Yeah, it was, I know that they talked about the gender part of it and the question of how do you define it and that part of it. And thank you.

Mr. Beg: No, just a point on practice of, you know, the practicality of all these things that we discuss, you know, and the point about TVET. I'm pleased to say that in our office, we have 55% females and 45% men. So, it starts really in the workplace down there as a model. So, in the space that you Ms. Imrana has brought up, I think it's great, you know, to see more of that. And if that could be a whole meal on practices like us, we're now considering that because we don't see people as male and female. We see them as equal. So, I just wanted to finish with those words. Thanks.

Mr. Valenitabua: Ladies, I cannot thank you enough. Thank you very much indeed. That brings us to the end of our consultation session this afternoon. If I may, have a good weekend.

----------*End of Session [17-04-2026]* ----------

40 YEARS OF BALANCING THE SCALES
FIJI WOMEN'S RIGHTS MOVEMENT
1986 - 2026

Fiji Women's Rights Movement (FWRM)

Submission on the Review of the 2013 Constitution of Fiji

Introduction

For forty years, the Fiji Women's Rights Movement (FWRM) has worked to advance women's human rights in Fiji based on the principles of democracy, feminism, human rights, constitutionalism, and the rule of law. Throughout this time, FWRM has remained independent of political parties and governments and have consistently opposed coups and unconstitutional transfers of power. FWRM's work has centred on ensuring that governments uphold their obligations to women and girls, who make up half the population of Fiji.

FWRM has contributed significantly to legal reform, public policy, feminist leadership, and regional movement building. We have supported campaigns that contributed to reforms in rape laws, women's citizenship rights, family law, workplace protections, and anti-discrimination protections. We advocated for equal rights provisions in the 1997 Constitution, including protections against discrimination on the basis of sex, gender, and sexual orientation. We played a central role in the 12-year campaign leading to the Family Law Act 2005 and contributed to national discussions on sexual harassment, women's labour rights, and women's representation in leadership.

FWRM has consistently engaged with Fiji's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), including through independent reporting and monitoring. We have also contributed to building feminist leadership in Fiji and across the Pacific through mentorship, youth leadership, intergenerational organising, and regional coalition building.

This submission is therefore not only about constitutional law. It is about protecting democratic governance, strengthening accountability, safeguarding human rights, and ensuring that future generations inherit a constitutional framework that is inclusive, just, and worth defending.

1. International Human Rights Law Must Be Binding in Constitutional Interpretation

s. 7(1) b.

The 1997 Constitution required courts and tribunals to apply international human rights law when interpreting the Bill of Rights. This reflected Fiji's commitment to international treaties, including CEDAW, and ensured that constitutional rights were interpreted consistently with international human rights standards.

The 2013 Constitution weakened this protection by changing the requirement from "must" to "may," making the application of international human rights law discretionary rather than mandatory.

This change undermines Fiji's obligations under international law and weakens legal protections for women and marginalized groups. International human rights treaties should not be treated as optional guidance but as binding commitments.

We recommend restoring the mandatory obligation for courts and tribunals to apply international human rights law in constitutional interpretation.

2. Limitations on Rights Must Be Reasonable and Justifiable in a Free and Democratic Society

Bill of Rights (BoR) S6.(5) c.
Limitations on Rights and Freedoms S.174(3)

The 2013 Constitution permits limitations on rights where considered "necessary" and includes provisions that restrict judicial review of certain laws and actions.

This significantly weakens constitutional protections and reduces the ability of citizens to challenge unjust limitations on rights. The standard contained in the 1997 Constitution — that limitations must be "reasonably justifiable in a free and democratic society" — is a well-established constitutional standard that requires evidence, proportionality, and accountability.

Courts must retain full jurisdiction to review all laws and government actions affecting constitutional rights. Ouster clauses and provisions limiting judicial oversight undermine the rule of law and democratic accountability.

We recommend restoring the 1997 constitutional standard and removing all provisions that prevent courts from reviewing laws or government actions.

3. Equality and Protection Against Discrimination Must Be Retained and Strengthened

s. 26

As of 2017, 85% of constitutions globally explicitly guarantee equal rights or prohibit discrimination on the basis of sex and/or gender, including Fiji (World Policy Centre).

The current constitutional prohibition against discrimination on the basis of sex, gender, and sexual orientation represents a major achievement in Fiji's constitutional history. These protections were secured through years of advocacy and remain essential for substantive equality.

Removing these protections would expose women and marginalized groups to discrimination across employment, wages, political participation, housing, education, inheritance, access to finance, family law, and public life.

The Constitution must continue to explicitly prohibit discrimination on the basis of sex, gender, sexual orientation, gender identity, and other protected grounds.

Temporary Special Measures and Gender Quotas

Women continue to face historical and systemic barriers to equal participation in political and public life. Despite constitutional guarantees of equality, women remain significantly underrepresented in Parliament, public bodies, corporate leadership, and decision-making spaces.

Temporary Special Measures (TSMs), including gender quotas, are internationally recognized mechanisms for achieving substantive equality and correcting historical disadvantage.

The Constitution should explicitly permit affirmative action measures and enable legislation establishing minimum quotas for women in Parliament, public boards, commissions, statutory bodies, and leadership positions. These measures are not discriminatory against men; rather, they are necessary tools for achieving a level playing field.

4. Public Interest Litigation and Legal Standing Must Be Expanded

s.44 (1)

Section 44 of the 2013 Constitution limits constitutional litigation primarily to individuals directly affected by rights violations. This creates serious barriers to justice for vulnerable groups who may be unable to pursue legal action due to poverty, fear, stigma, geographic isolation, or fear of retaliation.

Civil society organizations (CSO's) and non-governmental organizations (NGO's) play a critical role in supporting victims, advocating for vulnerable communities, and holding institutions accountable.

The Constitution should be amended to explicitly allow NGOs and CSOs to bring constitutional and human rights cases in the public interest on behalf of affected individuals and groups. Access to justice should not depend solely on an individual's ability to litigate alone.

5. Separation of Powers Must Be Strengthened

s. 44

The separation of powers between the executive, legislature, and judiciary is fundamental to constitutional democracy and the rule of law.

The 2013 Constitution concentrates excessive authority within the executive branch, particularly through the office of the Attorney-General. The Attorney-General currently exercises influence across multiple institutions and constitutional processes, weakening institutional independence and accountability. The role of the Attorney-General should be clearly limited to avoid overlap between political, legal, and executive functions.

The constitutional role of the President should also be clarified as ceremonial, acting only on the advice of a lawfully elected government. Clear constitutional separation between institutions is necessary to prevent concentration of power and maintain public confidence in democratic governance.

6. Strengthening the Fiji Human Rights and Anti-Discrimination Commission

s. 45

The Fiji Human Rights and Anti-Discrimination Commission plays an important role in promoting and protecting human rights. However, the constitutional framework limits the Commission's powers and independence.

The Constitution should:

- Explicitly authorize the Commission to make recommendations not only to government, but also to tribunals, statutory bodies, private sector institutions, and other entities. (as it did under the 1997 Constitution)
- Empower the Commission to monitor compliance with its recommendations.
- Permit civil society organizations to file complaints and trigger investigations on behalf of vulnerable groups.
- Require the Commission to report directly to Parliament rather than the executive branch in order to strengthen its independence and accountability. Currently, section 45 is silent on who the Commission reports but references the Human Rights Commission Act 2009 to articulate this. The Act states that the Commission reports to the President in Section 44 (1) and must submit a copy to the Prime Minister.

An effective national human rights institution must be independent, adequately empowered, and accessible.

7. The Role of the Military Must Be Clearly Limited

s. 131 (2)

The military should not function as a political or governance institution. The inclusion of broad language relating to the "well-being of all Fijians" in the constitutional mandate of the Republic of Fiji Military Forces creates ambiguity and risks legitimizing military involvement in civilian governance.

The Constitution should explicitly state that the military is at all times subordinate to civilian authority and limited to external defence, disaster response, and functions authorized under law.

We recommend including a clear constitutional clause affirming that the military is subject to the direction and control of the civilian government at all times. We recommend that Section 131 (2) should contain an explicit clause that: "The RFMF is at all times subject to the direction and control of the civilian government."

8. Immunity Provisions Must Not Be Repeated

s156-158

The immunity provisions relating to the 2006 coup undermine accountability and the rule of law. While historical events cannot be reversed, constitutional frameworks must not entrench impunity or create precedents for future unconstitutional actions.

No future constitution should permit immunity for the overthrow of democratic government. Accountability is essential for constitutional legitimacy, democratic stability, and public trust.

9. Anti-Corruption Institutions Must Be Independent and Non-Political

Corruption must be addressed through independent and impartial institutions. Concerns have been raised regarding the politicization of anti-corruption mechanisms and selective enforcement. Anti-corruption processes must be insulated from political influence and operate transparently and independently.

We recommend that corruption prosecutions be returned to the authority of the independent Director of Public Prosecutions, rather than being exercised through a separate entity vulnerable to political misuse.

10. Judicial Independence Must Be Fully Protected

s.107(2); s.114(3); s.120 (2)

Judicial independence is essential to the rule of law. The 2013 Constitution requires consultation with the Attorney-General in judicial and tribunal appointments, creating a perception of executive influence over judicial processes. The involvement of political office holders in judicial appointments and removals undermines public confidence in judicial independence.

The Constitution should restore the model contained in the 1997 Constitution, where judicial appointments and removals were managed through an independent Judicial Services Commission without involvement from the Attorney-General. Judges and magistrates must be protected from both actual and perceived political interference.

Conclusion

This submission is not simply a technical legal analysis. It is a call to restore democratic constitutionalism, strengthen accountability, and protect the rights and freedoms of all people in Fiji.

We submit that Fiji's constitutional future must be grounded in the following principles:

- Human rights must be real, enforceable, and justiciable.
- International human rights obligations, including CEDAW, must be binding.
- Courts must retain full jurisdiction to review constitutional violations.
- The military must remain subordinate to civilian authority.
- Women and marginalized groups must have meaningful legal protections and pathways to substantive equality.
- Temporary Special Measures and quotas must be enabled to address structural inequality.
- Public interest litigation must be available to civil society organizations.
- No future immunity provisions should shield unconstitutional actions.
- Judicial independence must be protected from executive influence.
- Democratic governance and accountability must remain central constitutional principles.

Contact FWRM- info@fwrm.org.fj

Fiji Trades Union Congress (FTUC)

Fiji Trade Union Congress
Date: 20-04-2026
Time: 10.05am-12.00pm

Mr. Valenitabua: Well, Mr. Anthony, Ms. Jyotika, good morning to you both. After my opening, we will be giving you the time to make your submissions to the commission. So as of now, I want to welcome you. Thank you very much for turning up here this morning. I believe the invitation has come across. And we appreciate your acceptance of the invitation to come and be part of this important exercise in the review of the 2013 Constitution.

In front of you, you have four commissioners. There are seven commissioners in total. We've got four here and three are not with us this morning. One is in Australia, I believe. Having said that, we welcome you. I'm sure you would know the commissioners sitting here, if not all, some of us.

Mr. Beg is on my far right, Dr. Fatiaki is closest to me, and Dr. Nilesh Gounder on my left. And I'm Sevuloni Valenitabua, the chairman of the commission. Our task is just to collect submissions, thoughts, views from our citizens, from our people.

Views and submissions which we may use in the Constitution. It is up to you whether you can suggest or whether you want to suggest this should go into the Constitution. This part of our submission should go into the Constitution.

We believe that this provision in the Constitution should be changed or should be removed completely. We are here to listen and to record what you want to tell us. If you have written submissions, so much the better.

If you don't have your written submissions here this morning, we ask that when you return to your office, you can then have a written submission prepared and sent to us. Now with those few words, we welcome you again, and we now give you the mics for you to use to address us. Thank you.

Mr. Felix: Thank you, Chair and Honorable Commissioners. We recognize the huge task that you have before you. When it comes to the Constitution of Fiji and the work that needs to be done to ensure that people's voices are heard and taken into account when the review is carried out.

Let me on the outset try and encourage the Commissioners to also revisit the submissions that were made to the Yash Gai Commission on the Constitution. I think there was a fairly widespread views that were stated at the time, which we still believe may be relevant today. And more particularly in relation to ensuring that we have true democracy in this country.

And so, I will start with that, but let me then go on. What we have done, Chair, is that we have just made some dot points, but we take your point that we can then write in and give a full submission to you. Chair, on the current Constitution that we have, there are certain areas of concern that we have, which we will highlight to you and see how we can better this Constitution moving forward.

We will refer to Chapter 5 of the current Constitution that deals with national identity. I think that's the first bit. And we will support a clear common identity for all Fiji citizens.

These identities must not be based on race or traditions or customs. They can be dealt with otherwise. So, we submit that we retain that provision that is in the current Constitution. It's Section 5, I think. Yeah.

I will move on, Chair, to the Bill of Rights. It's quite comprehensive in the current Constitution. What we see is that while we support the Bill of Rights, what concerns us is that there is a widespread exception being given, the huge extent of exceptions that are given in the Bill of Rights. That makes it discretionary on part of government whether to actually give those rights or those rights can be exercised.

And I will just give you a couple of examples why we say that. You will recall with the previous government, we made about eight or nine applications for a march in Suva, freedom of assembly, and all those rights were denied. All those applications were denied and we were not free to march.

No reasons were given. So, if we were to look at the freedom of assembly, which is Section 18 of the current Constitution, the rights are there, stated. But then you have this law may be limited or may authorize limitation of rights mentioned.

Then you have A to F, which basically gives the government discretion to say, we will deny you those rights. And this is not what, you know, if it's

a right, it should be a right and it should be exercisable, not being denied for no reason. And of course, the more recent, just last weekend when we had some people unhappy about the new incinerator being put in Vuda, they applied for a march. And they were denied without reason, without reason as to why that was denied. That is not what a democratic society should look like. The other reason I give is freedom of speech.

I think we've learned quite a number of lessons from how the previous government worked under this Constitution. Freedom of expression. I personally spoke on behalf of 2,000 workers who were summarily terminated by WAF in 2019. I was locked up and I was charged for causing anxiety. Yeah, that was the charge. I caused anxiety because I spoke up for those terminated workers under the freedom of speech.

Now, how does that work in a democracy? When we talk freedom of speech, we must give that freedom to people. Of course, the responsibility is that we speak responsibly and not make false allegations. But those were the examples I thought I'd give you to understand why we say that all the exceptions in the Bill of Rights in the Constitution needs to be seriously looked at.

And it should not be discretionary on part of government to interpret that and deny people those rights. I think that is very important in any democracy. Government can disagree with the views of the people in some cases, but that does not justify the denial of those rights.

So, that's the point that we're trying to make is freedom and freedom of association as well. We have the same issue on workers being entitled to join trade unions for that matter. And we face a lot of opposition from employers in this regard.

And again, there is no real recourse to that in the Constitution itself other than saying you have the freedom of association except ABCDEF. So, that's on section 19, is it? Freedom of association, but then you have all these limitations again. So, I want to point that out.

Then we go on to section 24, subsection 4 on employment relations. We have trade unions and employers have the right to collectively bargain. We have this right.

But on the other hand, the government imposes individual contracts on people. That is in direct contradiction to the right to collective bargaining.

If a worker decides to say I want to join a union to collectively bargain, that is a right he must be given.
But then you have government going to impose individual contracts where that right is taken away. The worker has no right to negotiate or bargain for an individual contract. He basically signs on to what is given. If he wants the job, he signs on. If he doesn't want the job, he doesn't sign on. That's how it works.

So, again, you know, we've got those limitations there in five. In the interest of national security, public safety, public order, blah. It goes on to F again. So, on one hand you give these rights, on the other hand you take it away. Make the constitution look good. That's all it does.

But those rights don't seriously exist on the ground. Then on section 23 of the constitution again, political rights. And if you look at section 23, it talks about every citizen has the freedom to form joint political parties. It goes on. Except those citizens, this may limit if, for the purpose of this relating who are not eligible to contest or place parliament office or political set. These are office holders, right? Public office holders.

Right. And then when we go further back in the constitution, the unions, the trade unions are classified as public office holders. Yeah. And if I can, if I can just section 57, if we went on to section 57 of the constitution in comparison to that. And if we looked at the sub-section, section 57, 3F, G and H, any trade union official, yeah, office of registered trade union or any federation, congress, which means the Fiji Trade Union Congress, if I'm an officer of the FTUC or I'm affiliated to any or such organization, I cannot partake in the political life of this country. I'm excluded.

I don't, my rights are taken away. Right. And that is in contradiction to the previous section 23 of the constitution itself. Let me just say the trade unions is, it's not a public office. It's not funded by government or the taxpayers of this country. Trade unions are membership-based organizations and it's the membership that pays. It's similar to a social club, for instance. The defense club or whatever. You pay to become a member of that club.

So, it's not a public office as such. It's a membership-based organization and should never be classified as a public office. And more so not the officers or workers employed by the trade unions must never be classified as public officers and be denied their political rights. There's

simply no justification for that other than trying to shut up the unions in this country. That we can't talk about anything that's politics.

Right. And the fact is that anything in the political arena, everything in the political arena affects workers in this country. It affects workers.

It affects in all their terms and conditions of employment. Like for instance we just, a while ago we were talking to the ministry of finance about minimum wage.

That has to be a political decision that has to be taken at some level. And even in parliament. Why are we not given that right to speak about these issues openly? So, we say that that should be totally removed. In fact, it was never there prior to this constitution itself. Yeah. It was never there.

This is the first time that we've seen this has come in. And this was an effort by the previous government to shut up the trade unions in this country. So, we urge the committee to have a serious look at that.

Then we go to section 33 of the constitution. Which talks about the right to work and adjust minimum wage. Again, I mean if we were to read this, this is not being complied with currently.

What is a just minimum wage? A just minimum wage is a living wage. That's what it is. That people don't live below the poverty line. That they live, you know, with some dignity and respect. But we have total wrong compliance with that. And every time that a decision is made on the minimum wage, it has to be a political decision rather than ensuring that it's just.

And just to who? Just to the workers of this country. But that right, not only that. That the state must ensure reasonable measures are taken within its available resources to achieve a progressive realization of right of every person to work and to adjust minimum wage.

That's what it says. And if the state can't do that, in number two it says, the state must show that they don't have the resources available. We don't have that here. It's never been complied with. So, we need to ensure that this provision is made a bit stronger to ensure that people listen. It says the state must.

It doesn't say may. It says must. And we've pointed this out to the Minister of Finance this morning as well. That they need to comply with

this provision. And we don't see compliance with that today in this country. We have a $5 minimum wage in this country, Chair, which is well below the poverty line.

We believe that the poverty line is much closer to $8 an hour in this country today. So, the $5 minimum wage cannot be said to be just to the worker. It's not just to the worker.

Chair, we'll move on to Section 53 of the Constitution. Section 53 of the Constitution. This is to do with our electoral system.

I think this entire Part B on the composition of Parliament and all that. We submit, Chair, that we ought to revert back to the previous electoral system that we had in the country. And that is by constituencies.

And that we make our members of Parliament accountable to the people that elect them. Unlike now, there is absolutely no accountability. We have people in Parliament with, you know, very little number of votes.

But they ride on the popularity of the leader of the party. Yeah? And that does not make them accountable to the people that actually vote for them. Yeah? I myself have been a member of Parliament before.

And we fought elections based on constituencies where we had our own areas that we were responsible for. And we were answerable to those people. We were made responsible to ensure we delivered for the people who actually voted for us.

That is not the case anymore. Yeah? And it doesn't give any credence to have members of Parliament who sit there with 500 votes or 600 votes. Yeah? We in the trade unions get more votes than they do.

But they are elected to Parliament and they are supposedly representing us in Parliament. Right? So, we need to seriously reconsider the current electoral system that we have. Because we believe that the previous system made members of Parliament accountable to the people who actually elected them.

The second part of that is that we also believe, from experience that we saw with the previous Parliament, is that we need to reinstate the Senate in the electoral system as a check to what the lower house does. And I was also a member of the Senate as well in the past. And this is something that I think also made government more accountable itself.

That they were aware that there'd be a second layer of review of whatever is passed in the lower house of Parliament. If we were to look at the experiences of the previous government, Section 51 was used to just, you know, hammer through any piece of legislation that they wanted. Total disregard for the opposition. Total disregard for what the people wanted. You know, they had absolute power. Whichever party has the majority had absolute power.

All they had to do was make sure their members were sitting in the house on the day of the vote. That's all. And that is not what a democracy ought to be. That is not what the people expect. The people expect their voices to be heard. And that there'd be checks and balances along the way when this is done.

And the Senate provided that. And there was no assurance in the Senate that they would always support government in its legislation. And when I was there, I think there were the number of times where we returned the bill back to the lower house for reconsideration or amendments.

And that was the check and balance that we had. So, you don't have this Section 51 where you can just hammer through anything you want in Parliament. So, we will submit that the committee seriously, commission seriously considers that as well.

Okay, I'll move on to Section 56, G and H, Chair. Yeah, this is to do with candidates for elections in Parliament. The current provision said that if you had a conviction, you can't stand for elections for eight years.

We don't believe that this is fair in any regard. I think that the eight years provision is too long. And I think we need to have a real look at that provision as well.

You know, this unfairly actually, you know, even for minor offenses where the jail term is more than a year, you can be disqualified for standing for elections. And we've seen some real experiences in this regard where people get booked for driving offenses or things like that where the jail term is a year or more. Even though they were, you know, given lesser punishment, they were disqualified from standing for elections.

We don't believe that that is fair. We can understand if there were some serious convictions, you know, for fraud, then those exceptions should stand. But not for minor offenses, despite, you know, jail terms are normally, you know, one year or more.So, everyone gets caught in that. So, we'd want the committee to have a look at that.

Chair, we move on to Section 81 of the Constitution. And this has to do with, I think, the position of the President. Yes, 81, to do with the President. We submit, Chair, that the position of the President should be an elected one and not one appointed by the government of the day as it is now. It's a formality, I think, in Parliament that you put up a name. The name that the government puts will automatically win in Parliament and becomes the government's nominee and he becomes the President. And of course, whatever the government passes in Parliament, he becomes the rubber stamp in the process.

So, what we're saying is that the President must be independent and also that in his own right, he has the right to either sign off a piece of legislation or to refuse to sign it. And not only that, but there is an element of accountability in that position as well and should be an element of accountability in that position. That's something that we believe is important and more so with our history of this country where we've had all the coups.

And we've had Presidents who were in positions who actually were not in a position to do much to try and save democracy in this country as well. So, I think we need to submit that we need to seriously have a look at this and ensure that the office of the President is given some teeth and just not a position that, you know.

Chair, we will move on to Section 120. That's to do with the Public Service Disciplinary Tribunal. 120, this is the Public Service Disciplinary Tribunal. We believe that this is a provision that's an employment matter and it ought to be tripartite.

We agree that there ought to be a judge that chairs this as the government nominee, but what we propose is that it should be tripartite. There should be an employee representative on that tribunal as well since it's an employment issue and it has to do with discipline within the civil service as well.

Chair, we move on to Section 127. This is to do with the position of permanent secretaries. Chair, this is something that again an employment issue that we would like to submit is that previously the Public Service Commission dealt with all recruitments, all industrial relations matters within government itself. This was divested to individual ministries by the previous government where the permanent secretary actually took charge and made decisions in their ministries alone including all industrial relations matters.

And so, this meant every ministry has to have a human resource manager and his subordinates as well. So, we believe that there's a duplication. This case poses a duplication across all the ministries.

Quite apart from that the inconsistencies in decision making when it came to discipline and appointments and promotions and all that. And what we're suggesting is that we revert back to the old system where it's centralized and for the sake of consistency to adhering to policies and appointments and transfers, promotions and so forth. And not only that but for salaries and other benefits as well.

So, currently this constitution, this provision gives those powers to the individual permanent secretaries in each of these ministries. If you were to look at 127 at number 8, subsection 8, A, B, C and D that's where what I'm actually talking about there. Section 131 chair, there's been considerable debate on this issue more recently and in the past as well and there are various interpretations when it came to section 131-2 which means it shall be the overall responsibility of the Republic of the Fiji military forces to ensure at all times security, defense and well- being of the people of Fiji.

And this is one provision that's caused much debate in the country, continues to do so and we believe that there needs to be more clarity in this provision as to what is meant by overall responsibility. Does this mean that they can take over the role of government and replace government in doing so or would they be subject to civil authority or a civil government? This provision needs to be clarified and we believe that any military forces must report to a civilian government. That's how it would work in a normal democracy.

We don't know of any democracy where the military takes over. And there's one interpretation here is that if the military does take over it

would be quite legal for them to do so because the constitution allows them to do so. So, we won't have any more illegal coups in this country.

It will be all legal. That's one interpretation that we've been told. So, every day we get a new version of it but we believe that this is a critical one and needs clarity.

Normally the military would report to the Minister of Home Affairs. That's been the normal thing. And we believe that should be made and be accountable to the government of the day.

We move on to section 138. We are talking about the human more particularly while all those other organizations are there. We are particularly concerned about the Human Rights Commission and Anti-Discrimination Commission.

Human Rights and Anti-Discrimination Commission. We believe that this commission must be entirely independent. We haven't seen much of that independence of this commission in the past and I think we need to have further provisions within the constitution that actually gives them that power and remain independent and not be subject to government directives.

And we haven't seen the Human Rights Commission defending human rights in this country under the previous government as well even though this is their constitution. So, I think there is room for improvement in that area and this is a very important organization. If we are to ensure democracy in this country, real true democracy by the people, this commission I think plays a very critical role and should play a critical role.

I move on to section 146 chair. It talks about public monies be accounted for. This provision while we agree that all public monies must be accounted for, it doesn't say by when.

There is no time frames in this. Often, we hear in parliament of annual reports being submitted some years later. You know four or five years later even more. And by the time it is submitted to parliament for examination it becomes irrelevant. It's too old. It's gone.

We believe that there must be a time frame where all government owned enterprises and public officers must be given a deadline to say within six

months of the year ending that the reports must be submitted to parliament for examination. Something like that. Not five or six years later.

No one is interested in those reports after five or six years. They become irrelevant. So, the accountability aspect of that lapses. So, we believe that something must be done to ensure that reports are submitted on time. And this is more so when it comes to even municipal councils where the reports are years old and submitted. Chair we move to 156 This has to do with immunities.

Again, I am sure that there has been much talk about this one as well. This provision merely actually encourages future schools knowing that you know there will be immunities given. Immunities given for all three before. All two before. Anyone doing the same thing in the future will also be given the same immunity and sends a very wrong signal to people. Again, we must do away.

There must be zero tolerance for any military coups in this country. Period. And the constitution must say that. No one can come and throw this constitution out just like that because it suits them. And I think we need to make that very clear. And we are not doing that with the immunities clause in the constitution.

This only encourages someone else who thinks we will get away with immunity again. Sir if we can go to section 150.- freedom of information. Again, we have noted that there has been non-compliance with this provision. There has been a bill in parliament I understand on freedom of information but it is languishing there for some reason or the other.

Again, I think this is very important. And Chief I may submit that all these provisions that the commission looks at the provisions of this constitution with a view to strengthening democracy, accountability and transparency within the government itself, the public officers and all the other statutory bodies that we have. That must be the overall view of the commission to ensure that we live by the principles of democracy and true democracy, not half democracy.

And we state that elections itself does not qualify Fiji to be a democracy. There is more to democracy than just elections. Chair we will stop there. I think that those were the observations we made from the constitution

but we are happy to put all that in writing in way of submissions to the commission at a later date.

Mr. Valenitabua: Thank you very much Mr. Anthony. It is a very good submission from you this morning having to go through those provisions of the constitution one by one and giving your views in relation to them and what can be done in order to improve the provisions.

Dealing with rights, we have heard a lot about the limitations, the qualifications. Like you said, leave a right on your right hand and remove it with your left hand. Eventually we have no rights whatsoever.

We usually ask questions to persons who appear before us to make submissions. I am now going to ask my colleagues, fellow commissioners whether they have any comments to make or any questions to ask. So we will be asking questions from the commissioners.

Mr. Felix: Happy to answer sir.

Mr. Beg: I suppose I have been tasked with the first question. Thank you very much. Very enlightening perspective. I made a few notes. One of it is in review of the constitution. I was tasked with chapter 6, quite interesting, the state service commission. You make some very compelling arguments and also the rest of it but I will just focus on one which you make a point about centralization of the state service. I would like you to clarify that because when you say centralization, it could mean, are you saying it is with PSC or with government or do you want that independent? I wasn't too sure how you were framing that.

That is just a question and I am sure I have others as well but if you can enlighten me, please.

Mr. Felix: Thank you for that question. Chair, if I may.

Mr. Valenitabua: Please, carry on. Yes, in the past all industrial relations matters, human resource matters were dealt with the public service commission. There was one central HR body at the PSC that actually dealt with it across all ministries.

What happened with this change, this constitution, each ministry then had to have their own human resource departments to deal with any

issues that arose, both human resource, industrial, everything. So, what I am saying is this duplicate this whole thing in all departments and what we see is the inconsistencies that arise because different departments, different ministries would have their different standards, different policies and this causes a bit of a problem for consistency. What we are saying is we should revert back to the public service commission and have a centralized human resource department that can be consistent and deal with all human resource matters altogether and so we avoid duplication. Thank you. It might save government some money as well.

Mr. Beg: Through you Chair, thank you Mr. Anthony. In that response are you saying that in back to the PSC it needs to be independent as well, so any negotiations, you talked about salary, contract agreement, how does it fit in the framework because it's interesting how you framed it but I was trying to understand it a bit more from the trade union perspective in your instruments of how you operate.

Mr. Felix: Thank you. Yes, in the past where we had any issues regarding workers, for instance like you say wage negotiations or any terms and conditions, the unions would deal with the PSC directly, that's it, one stop.

We would not have to go to different ministries and talk to another 10 or 15 ministries on the same subject. So, everything was centralized and the PSC was independent, yes, and it actually made decisions of course. They had a chairman and their own board, how they sort of work and they would make one decision that would apply across the board.

So, it was also easier for trade unions to deal with government when it came to wage or working conditions or any of these issues. Thank you very much.

Dr. Gounder: Thank you, Commissioner Beg. Thank you Mr. Anthony for your submission you have taken us in a chronical order from first page to last page. Thank you very much for that. My question is similar to what Mr. Begg mentioned, the centralized system which is section 127.

So, I'm just, I just want to ask how will it work in practice for example the appointments or how it used to be in the past. My apologies for not knowing the previous system. This afternoon I will be in a panel in one of the ministries for an appointments committee meeting.

So, this is organized by the ministry where they have two people from the ministry and a third from an external member which is IAM. So, if this is centralized how will the system work in contrast to what is happening now?

Mr. Felix: If it's centralized then the PSC will actually carry out the process of recruitment. They would advertise, they have the MQRs whatever and they would then conduct the interviews and make appointments.

That's how it used to work before. Those powers were never given to the permanent secretaries to make appointments. So, the ministry may well say this is what we need, these are the MQRs and you know the PSC would then act on that and do that.

Dr. Gounder: Thank you. And will we need to then relook at any part of the Employment Relations Act if these changes are made here? It would not affect the Employment Relations Act if these changes were made, no.

Mr. Felix: The Employment Relations Act mainly just covers the minimum conditions and the process that needs to be followed but that was done quite well with the PSC before.

I don't quite understand why they actually changed it to individual ministries.

Dr. Gounder: I take your point about the cost issue when it comes to having an HR section within every ministry. Centralization would actually help.

Mr. Felix: I think consistency is also very important when it comes to implementing policies and you don't have different ministries having their own policies, different standards. I think it's important that there's one rule that should cover across all ministries. Thank you.

Mr. Valenitabua: Something interesting, section 57. Candidates who are public officers. It talks about a person who holds a public office, right? Then, subsection 3, for the purpose of this section, public office means any office in a trade union registered under the Employment Relations Promulgation 2007. It might be the Act now, Employment Relations Act. So, any office in a trade union registered under that Act.

If we go to section 163, this is the definition or interpretation section of the Constitution. Section 163, right at the back, is the interpretation section of the Constitution. Public office is again interpreted there and it

says office created by or continued in existence under this Constitution, an office in respect of which the Constitution makes provision, an office of a member of a commission.

Do you see that? An office in a state service, an office of a judge, an office of a magistrate or an office in a court created by written law, an office in or as a member of a statutory authority, or an office established by written law. Do you see a trade union?

Mr. Felix: Written law. Written law.

Mr. Valenitabua: So, that is under the Promulgation Act.

Mr. Felix: The office of a trade union officer is under the Employment Relations Act. I see. Yeah. And before, under the Ministry of Labour, we report to the Registrar of the Trade Union.

Mr. Valenitabua: So, that last one there, an office established by written law covers the trade unions. Thank you.

Mr. Felix: Section 56 is also very clear in what it says. In fact, if you were to read section 56, no, I'm sorry, 57 G and H. If you look at G and H, it talks about even any person who receives remuneration salary allowances, which means my gardener also can't take part in politics because he's been paid. You, see? If you look at G. So, you know, that we say is just, yeah.

Mr. Valenitabua: You mentioned that Section 81 has got to be modified or changed. This is the provisions we deal with the President of the Republic of Fiji.

And you stated that he has to be elected. Could you please enlighten us further on how that election is to proceed?

Mr. Felix: It will have to be, excuse me, it will have to be a national election. Where he is elected nationally by the people. Yeah. One man, one vote. And, you know, if there's a contender, then there's a contest. But I believe the people should elect and not the government of the day. Thank you.

Mr. Beg: Chairman, through you. In saying that, Mr. Anthony, just because you're saying it's elected process, then there's some constitutional powers. As you're saying previously or currently, powers of non-existent.

So, if we're going through an elected process, as you said earlier on in your presentation, that there'd be some powers for the President to review any instruments before him or her, and the right to refuse or provide recommendations back, either back to the government or those who are providing advice back to the President. Is that the line of thinking?

Mr. Felix: See, the current system makes the President subservient to the government. I put it in simple terms. And I'll give you an example. When the government imposed in this country the essential industries decree, which basically took away the powers of the trade unions, took away the powers of the workers, and the workers were not even allowed to raise any grievance unless the claim exceeded $5 million, the President signed on to that legislation.

And that was not in keeping with the Constitution, the Bill of Rights. But the President signed because he's an appointee of the government. It doesn't give... He can't stand up on his own and say, I'm sorry, I refuse to sign this, because it's not in keeping with the Constitution of the day. It's not in keeping with democratic principles. He doesn't have that power. Because if he were to stand up, he won't be President for too long. Right? Let's face it. Right? But an election would give him that legitimacy to say, no, this is in contravention of the Constitution. We can't go down this road. So that forces the government to behave, to make sure it follows the Constitution. Yeah? Right now, there's nothing. There's nothing.

Mr. Beg: Thank you very much.

Dr. Fatiaki: Firstly, thank you, Felix and Vika, for the presentation. I think you'll find that most of us are very sympathetic to the plight of workers, insofar as particularly in respect of this Constitution, which I won't accuse it, but seemed to take away a lot of the fundamental rights of workers that existed under previous Constitution bargaining rights. And obviously, we're now in the process to review this and can address some of those.

I have some general comments that touches on a number of the things that you brought up. But I'll speak to first this issue of the President. Now, I value what you suggested, but it's almost like we're going to vote for a President like the President of the United States, where the whole country votes for an individual.

The logistics of that, obviously, you know, how does it get nominated? I mean, a thousand people can put their names up to be President. Obviously, another election is a big, expensive exercise. And I guess what I'm asking is, really, is it an issue of how the President got elected, or that we've taken away his powers? Because, I mean, he might be appointed, but if we made it so that he was not subservient, then we could use the current sort of scheme by removing the necessary provisions that made him subservient, for instance.

We've had various people, for instance, get concerned about the consolidation of power in this Constitution, such as, given as an example, in this Constitution, the AG is mentioned 66 times, and he is required to be consulted for the appointment of judges, I mean, just about everything. So, if you remove that requirement, then he no longer has a role, for instance. I mention this because, obviously, the idea of everybody voting for a President is like an American system, and that is, you can see how technically difficult that would be to put into a constitution, because you're basically rewriting the entire electoral system, and how we govern.

But I think your point is taken. I think the President should be able to exercise independent decisions. And although, yes, he might be appointed by a government in power, like they currently do, it doesn't necessarily mean that once he's there, that he should be forced to concur, and that he becomes a rubber stamp.

And I think you can change that in the Constitution by giving him more powers, you know, once he's appointed. So, yes, the appointment process may be dominated by the current party that wins. That may be the case.

But once he's appointed there, maybe we should then give him the discretionary power that he doesn't have to rubber stamp everything that comes as per this Constitution. So, that's just, you know, a reflection on what we're discussing, because I think the idea of... Yes, you know, it appeals, but I think the idea of anybody being able to do that or implement it is really beyond the pale as far as practicality. But I think as we work on this basis, I see what you're asking for.

I think I agree completely with you. Just as the Senate, in your suggestion for a bicameral House, I mean, yes, senators are appointed by different political parties, but you've sat in Senate, I've sat in Senate, I can tell you

very rarely does anybody vote on party lines. You know, you might be appointed by the party, but you don't need to vote on party lines.

And I think that's what we want in the president. We want someone who is independent in the sense that they can, you know, at the highest level, put a restriction or whatever it is that he might play in terms of his thoughts about a particular legislation or whatever.

I only have one other question in respect of, you know, touching upon the issue of the electoral system. You like the idea of constituencies, which I agree. I think people want to see the person they voted for, and if they know that you stood for Ba rural, you know, seat, then all the people who voted for you, you're accountable to them. I have another question, which has been raised at various consultations, including with the recent Electoral Commission.

The one thing people seem to be coming out and telling the Electoral Commission or the electoral review body that just completed its task a few months ago was they wanted it simple. You know, this Sudoku 250 numbers with no name, no picture, no party, they didn't like. And the thing that seemed to come through was this, that they liked the first-past-the-post system.

The simple, you know, very simple name, representation part of it. I just wondered whether you had a thought on that. The actual way that you vote, not the constituency part of it, not the composition of parliament, but the actual voting system.

Because right now, the one that we are using, I don't know how many people really understand it, how it works. I mean, you alluded to difficulties in terms of the representation. Obviously, it's not representative.

And I think the constituency is a good example. But how do you actually want that voting system? And that's really the question I'm asking because the first-past-the-post, we know that municipal council can still do that. It was in 1970.

I think it was in the previous elections all up until, I think, 1997 was the 2001, was on a proportional basis, proportional representation. Still constituency, but proportional, not first-past-the-post. And then the 2013 made this, I won't even try to pronounce the name.

Just for general information, I think there are only 22 countries in the world that have used some form of that system out of the world. So given there's 200, it shows how popular it is. I wouldn't, I know that people talk about representation in terms of, you know, the proportion will be much more representative.

But let me just point out that the U.S., most of the U.S., the U.K., Canada, to this day, still uses the first-past-the-post. So, you know, the idea that it's not, you know, practiced, those are some countries, and India still use that system. Your thoughts, please?

Mr. Felix: Yeah, thank you for that. Yeah, no, I'm in no way advocating the first point you made that our president ought to be something like the U.S. president. No, yeah. All I'm trying to say is that the president ought to be independent on his own, yeah, and with some legitimacy that the people have voted.

You talked about how will those voting's take place. It can take place with the general elections. You just have another ballot paper for the president.

Yeah, that's how it should work. So, I don't believe it's too much of a cost, really. But, you know, if we were to retain the current provisions, then you are limiting the choice of president to the elected government of the day, no matter how you see it.

At the end of the day, if the government likes someone, that's the man who's going to become president, period. So, what we're saying is that we need to move away from that system. On the voting system that you talked about; I'm still inclined to suggest that we have constituencies rather than a national first-past-the-post.

Why constituencies? Accountability to the voters. At the moment, if I live in Lautoka, if I have a problem, which MP do I go to? Unless I have a friend in Parliament or a minister that I know. But I don't have an MP to go to say, this is the problem we have in Lautoka.

Previously, we could do that. And, you know, if the MP didn't perform, we'd have the chance to make sure he doesn't stay there too long. That sort of thing.

But if we had a national first-past-the-post, then we don't have that connection. We lose that connection, the MP and the people.

Dr. Fatiaki: Sorry, just a correction. The first-past-the-post would apply to the constituency. So, you know, if there are five people competing, the one with the highest votes wins in that constituency. It's not a national one .

And I ask that because the other thing about first-past-the-post is, one, it's very visible, you know, you're counting it. Two, you get the results immediately. Once you proportionalise it, then you have to sort of wait and then count your second choice and third and then combine it and then you put in computers and you get glitches.

So, I mention this because you brought up that part of it. Constituency, yes, but how do you vote in the constituency? Do you want five photos? You know, the five people, your name, your photo, your party, and the person just ticks one, you know.

Mr. Felix: You see, this voting system must be made as simplest as it possibly can, right? I mean, I haven't been to school, but I know who I want to vote for, yeah? Because the picture's there, yeah? That sort of thing.

Yeah, I can't even read his name, but I know his face, yeah? So, I'll vote for him. That should be what voting ought to be, right? And the current system, numbers, you know, it means nothing to a lot of people, yeah? And I don't believe that many people actually, those particularly, they'd simply told this number, yeah? They don't know the person, but number, yeah? And that's not, I think, the way to go.

Dr. Gounder: Thank you, Felix. Just one clarification. Section 120, the PSC disciplinary tribunal, you mentioned about the members of the commission. You would like to see a rep from the union to be part of the...

Mr. Felix: An employer. Rep from the union and an employer.

Dr. Gounder: Employer to be part of the three members. Yes. Okay, thank you.

Mr. Valenitabua: The election of a president, as you have submitted, in elections we have candidates. The current practice is that you have appointments whose names are put to parliament. Appointees whose names are put to parliament to vote in parliament.

Now, if we were to take the practice of getting candidates and then having an election to appoint a president from those candidates, how do we appoint the candidates in your view?
From parties or what is your view?

Mr. Felix: Well, Chair, I think this is something that needs to be thought through. I don't really have an answer to that as to how the candidates qualify to be candidates.

It could well be political parties or it could be independents who put their hand up to say, I want to be a candidate. But there could be provisions like to qualify, they would need a certain number of signatories to nominate them to qualify. But I think we need to think through that process to ensure that we get what we want.

Mr. Valenitabua: I see. Thank you. Thank you for that.

Dr. Fatiaki: I have just one other question and this relates to the Bill of Rights and the issue that you rightly point out and has been brought up by other people is this, I give you the right but, and then there's more qualifiers than there were rights. And I notice that you sort of suggested that we should look at it carefully. I'd like more of a commitment from you in terms of exactly what you'd like us to do because the reason I say that is obviously we'll have people, you know, scoping it.

The impression I have here is that if you give someone a right, you should not scoping it. When we talk about Bills of Rights, we're talking about, you know, almost like God-given rights. So, when you give it, you don't qualify it.

And if that way, if somebody wants to question that right in the context of an emergency, then they go to the court and the court adjudicates it. But if you put, you know, 7A to G, as you cynically or rightly pointed out, you can fit everybody into it once you put those qualifiers. And I think, you know, then it demeans the meaning of a right.

When you say it's an alienable right, what you're suggesting is something that we all just have. And you'll notice that many of these rights are actually written as one-liners, you know. And then after the right is given, then you have the, we may limit these rights by a law that is enacted for the 1, 2, 3, 4, 5, 6, 7, 8. And I guess, again, there will be other people making submissions.

You know, one of the ways to approach this, remove all qualifiers. You would take off probably that many pages from it. But I think in principle what you've said is obvious to us and has been raised by other people. Thank you.

Mr. Felix: What I'm basically saying is, yes, remove those qualifiers. Only to say that in exercising those rights, you don't deny others' rights. Yeah, that's basically it. Or any other written law, like, for instance, the crimes decree or whatever, you know, that should be it. You don't break any other law in exercising your rights.

Let me just say, Chair, that most of these rights here are part of international conventions as well. Yeah. Which Fiji has ratified, like the Isle of Convention on Freedom of Association. Convention 87. Yeah. Collective Bargaining Convention 98. All this Fiji has ratified and signed into. So, they are obligated to comply with those conventions. Yeah. And those conceptions don't fit in to those conventions.

Mr. Valenitabua: Mr. Anthony, there seems to be no more questions or comments from the commissioners. Unless there is something else you would want to add.

Mr. Felix: Just one question. What is the kind of timelines that you are looking at with this review process?

Mr. Valenitabua: Thank you. We have been given six months. And that six month expires on the 31st of August this year, 2026. So, this exercise that we are now undertaking is being undertaken, taken, with the objective of completing it on the 31st of August. After that, we will write a report with recommendations on what should go or what should not go into the constitution.

And that report will be forwarded to His Excellency the President. And then from there, the process will be followed where it goes to Cabinet and then to Parliament. We might, not we might, our recommendation will be accompanied by an amended constitution, a draft one.

That is where we are going. However, the constitution is not our, you know, drafting the constitution and all that. We are not looking at that now.

The important thing which we are now doing is to get submissions from the members of this nation on what they believe, what they want, what they think should be included in the constitution. There has been a lot of talk about the 2013 constitution being made without any consultation with the people. And that is what we are trying to remedy here.

If we have to have an amended constitution, it has to be a constitution which has received wide consultation and the most possible submissions from members of this country. That is our task. And back to your question, we have six months to complete that and the due date is the 31st of August, 2026.

Mr. Felix: Thank you, Chair. I thank you for that clarification and I certainly hope that when we say we the people on the first page, it truly means we the people. Yeah?

Dr. Fatiaki: Through you, Chair. If I may just add a few comments in respect to this. One is we've given ourselves a month and a half, two months in here where we basically reviewed the last four constitutions and we've been doing that as an ongoing exercise and consulting with people who have been invited, NGOs, religious bodies, unions and this is what we're doing in the first phase. We have two months of very intense, I mean very intense public consultations.

I think on Saturday's paper there was a notice of where we went and then we have two months after that to work with the experts, the drafters and then to physically write up the report. In any situation, more time is better. Okay, so some took a lot more, some took a lot less.

Let me just say that we and it alludes to something that you brought up earlier. We know that lots of consultations happened from 1997. We have access to that.

We also know that lots of consultations happened on the citizens constitutional forum I think that ended up in the Yash Gai. We have access to that too and so I suspect that as part of this process, we may not reinvent the wheel.

We will also look at that and see what people said. So, although it might not be face to face for this particular lot, that will also be taken into consideration when we start crafting something that belongs to and I rightly, I've emphasized that also to my colleagues on a number of

occasions. It says we the people give ourselves this constitution and it's important that we recognize that that's what it is. Thank you.

Mr. Felix: Thank you Chair and thank you members of the Commission. May I wish you all the best in your task. I know it's not an easy one, but I wish you all the very best and we certainly look forward to your report and for better days ahead for Fiji as a whole. Thank you.

Mr. Valenitabua: Thank you Mr. Anthony. Could we have, would you be able to prepare a written submission? Please. The email address, Jyotika, the email address is with the staff on your left, on your right. If later, if we could have the email address given to Jyotika and we will welcome written submissions. Just email them across. Thank you.

----------End of Session [20-04-2026] ----------

FIJI TRADES UNION CONGRESS
SINCE 1952

Date: 1st May,2026

The Chairman
Constitution Review Commission
Level 9
Suvavou House
SUVA

Subject: Fiji Constitution Review

Dear Chairman,

Please find attached the FTUC Submission on the Fiji Constitution Review.

We look for your kind consideration.

Yours Sincerely

.....
Felix Anthony
National Secretary

All correspondence to be addressed to the National Secretary

Phone : (679) 3315377, 3315402.
Email : ftucns@ftuc.org.fj

32 Des Voeux Road,
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An Affiliate of: International Trade Union Confederation / International Trade Union Confederation Asia Pacific

Key points for Constitution Review Committee from Fiji Trades Union Congress (FTUC)

The FTUC raises the following concerns:

1. **Chapter 1 Clause 5: Citizenship – Citizenship 5.—(1) All citizens of Fiji shall be known as Fijians.**
   – We believe that all citizens retain the right to be called Fijians irrespective of race or religions. That is our main basis of identify as being born or achieved the citizenship status. Dividing us by race and origin may not well reflect that we all are Fijian citizens.

2. **Chapter 2: Bill of Rights - Labor Relations:** there are many restrictions and exceptions/limitation to freedom for expression, movement, assembly etc.
   S18 Freedom of Assembly
   S19 Freedom of Association
   S20-2- Employment relations- Non compliance of the clause 20 (4) - Trade unions and employers have the right to bargain collectively. This needs to be strengthened to be applied in practice. This does not happen. Employers make it difficult to practice this though it's a constitutional right.

3. **S21- 7** is limitations again. It is given right but then the limitations are used to hold back on rights that can be given with safeguards if there is a concern.
4. **S23- Political rights (1)** *Every citizen has the freedom to make political choices, and the right to— (a) form or join a political party; (b) participate in the activities of, or recruit members for, a political party; and (c) campaign for a political party, candidate or cause.*
   This must be changed. It is a breach of human rights to deny trade union staff and officers form this right to express or engage in political activities.
5. **Section 33: Right to Work and Just minimum Wage-** *(1).* ***Right to work and a just minimum wage minimum wage.*** Fiji does not have a just minimum wage and its formulation is on a ad-hoc basis, solely reliable on tripartite debate and on the political will of government mostly tilted towards the employers' needs and preferences and not a just one based on cost of living and the ability to meet basic needs of life.

6. **Section 53:** Contest elections- 8 years is a long time to hold a person back from elections. Sometimes charges are very minor but they should not connect 8 years to that, a minimum of 2 years is sufficient.
7. **Section 57:** 3f- Office of Trade Unions – Public officer. TU must be excluded from definition of public officer.
8. **Section 56 (g) (h) –** Conviction of 8 years is too long.

9. **Section 81-** the Country's President should be elected. He should not be used a rubberstamp to government laws an must be independent to make his own decision.
10. **S120: Tripartite composition –** Employer- Employee rep with the Judge as Chair.
11. **S127-** Permanent Secretary makes all the terms and conditions of employment . This power must be shifted to the PSC a sit was earlier- a central unit in charge of the hire, development and disengagement of civil servants.

12. **S131-** (2)- **Military Forces- there should be an oversight by the Minister**. *Republic of Fiji Military Forces 131.—(1) The Republic of Fiji Military Forces established under the State Services Decree 2009 continues in existence. (2) It shall be the overall responsibility of the Republic of Fiji Military Forces to ensure at all times the security, defence and well-being of Fiji and all Fijians.*

13. **S138** – Human Rights Commission must be independent
14. **S141 f -** Timeframes- is old and irrelevant.
15. **S154- Part B—FREEDOM OF INFORMATION Freedom of information agencies.** Still not enacted.
16. **S156-** Immunities: This must be removed and serves for protection for future coups.
17. Parliament must have a senate.
18. **Elections**- we revert to the constituency systems. MPs will be held accountable and will enter parliament on their right and on popularity vote of their leader.

Fiji Police Force (FPF)

Fiji Police Force
Time:2.00pm-3.20pm
Date:21-04-206

Leighton: Bula Vinaka. Members of the Fiji Police Force, on behalf of the Chair and the Commissioners, I welcome you. Thank you for attending this session today. Before we start, just a few housekeeping matters. If you wish to speak, you will have to press the right side of the mic to turn the mic on, and then press it again to turn it off when you are making submissions. Also, there is an attendance register, if you can fill it in when the session is finished. The Chair will introduce the Commissioners and the team. I will then request if you can also introduce yourselves after the Chair's introduction, just for the transcriber's recording.

Mr. Valenitabua: Thank you, Leighton. Gentlemen, good morning. We welcome you to Level 9 Suvavou House. We are sitting here as the Constitutional Review Committee, or Commission, and we are happy to receive you this morning. You will be the first of the three teams that will come before us today. Before I move on, we've got four Commissioners before you this morning. I'd like to ask the Commissioners to introduce themselves, starting from my right, on the far right. Thank you very much, Chair.

Mr. Beg: Good morning, officers from the Police Force and Honorable members. My name is Conway Beg. I am an architect by profession. I am one of the Commissioners on the Board, and I look forward to hearing your comments this morning. Thank you.

Dr. Fatiaki: Good morning, gentlemen. I am Dr. John Fatiaki, 'Vuniwai', a medical practitioner by profession. I run a medical clinic in town, and I will resume. Vinaka.

Dr. Gounder: Good morning, members of the Fiji Police Force. My name is Neelesh Gounder. I am an academic and economist at USP, and I look forward to your submission this morning.

Mr. Valenitabua: Good morning, gentlemen. Sevuloni Valenitabua is my name. I am a lawyer, and I have a private practice. I am happy to meet with you this morning. Just a matter of introduction. You are appearing before the Constitution Review Commission. It is now a general knowledge that it is a commission which has been established on the calling of His

Excellency, the President of the Republic of Fiji. There are seven commissioners altogether.

We have been very fortunate, honored to be appointed to do or to carry out this huge task of reviewing the 2013 Constitution of the Republic of Fiji. Not with us today are Professor Unaisi Baba of the Fiji National University, Merewalesi Nailatikau, and Mr. Ami Kohli, who is flying from Labasa this morning. In any event, despite their absence, we shall continue with the consultation or submission this morning.

Once again, we welcome you. Our task is to listen to submissions from members of the public, including government ministries and government departments. We have been running this consultation here at Level 9 for the past three weeks.

From the 1st or 2nd of May, we shall be going out to the rest of Fiji. We'll be visiting villages, we'll be visiting cities, we'll be visiting towns and settlements in rural areas. The task before us is to gather as much information as possible to hear the people, to hear their submissions, and then later on, collect all the facts or all the submissions and then compile them into a report which is to be forwarded to His Excellency the President for further action or for further processing towards creating an amended 2013 Constitution.

That is the objective. But before we get to the amended Constitution, it is our job, it is our task to hear the people of Fiji with their submissions on what should be included in the Constitution, what should be removed, and what should stay. That is what we are here for.

So once again, we welcome you. I will now pass the mic to you, gentlemen. We'd like to hear your introductions first so that we can note down your names. Thank you.

Mr. Soko: Thank you, Mr. Chair. Very good morning to a good self. On behalf of the Commission of Police, we bring greetings from the Fiji Police Force to the Commission and members of the Constitution Review Commission. Introducing our team this morning. On my left is the Director Legal of the Fiji Police Force, Senior Superintendent Rajesh Krishna.

And on my right is a Senior Research Officer at our Strategic Planning, Policy Research and Development Unit, Mr. Koresi Davui. Both are legal

officers as well. I'm Acting Assistant Commissioner of Police in charge of Planning, Policy and Doctrine. Name is Viliame Soko. Mr. Chair, before I commence, allow me to present to you our written submission this morning. Thank you.

Mr. Valenitabua: Thank you, Mr. Soko. Thank you for this written submission, Mr. Soko. We're ready to hear you.

Mr. Soko: Honorable Chairperson of the Constitution Review Commission, distinguished commissioners, on behalf of the Commission of Police, we present the Fiji Police Force submission grounded in operational experience, constitutional responsibility and informed by international best practices. The Constitution of the Republic of Fiji 2013 is the supreme law of our nation. It protects the rights of our people while defining the authority and limits of institutions entrusted with maintaining law and order.

For policing and criminal justice system, one principle must guide us. Strong rights protection must be matched with clear, practical and enforceable operational frameworks. Across Commonwealth jurisdictions, this balance is achieved through constitutional safeguards, supported by clear, enabled legislation, defined institutional rules and independent oversight.

Since the adoption of the Constitution, Fiji has made commendable progress in strengthening democratic governance and protecting fundamental rights. However, from an operational policing and criminal justice perspective, several challenges have emerged. Ambiguity in operational application of certain rights provisions, limited enabling legislation to support constitutional intent, application of the use of force, gaps in independent oversight mechanisms and emerging threats not fully contemplated with existing frameworks.

These challenges highlight the need to refine, not replace, the Constitution, ensuring it remains fit for purpose in a modern and evolving security environment. Some of the key areas on operational clarity in rights provisions were referred to Section 24 of the Constitution, which guarantees the right to personal privacy, a cornerstone of democratic society. However, in practice, this presents challenges in digital investigations, surveillance operations, intelligence gathering and cybercrime enforcement.

Without clear enabling legislation, law enforcement faces either oppression limitation or legal vulnerability in court proceedings. When we compare to Commonwealth jurisdictions in the United Kingdom, we have the Investigatory Powers Act of 2016. It provides lawful authority, judicial oversight and strict thresholds for surveillance.

In New Zealand, Certain Surveillance Act 2012 clearly defines police powers with judicial authorization and safeguards. Honorable Commissioners, jurisdictions such as the United Kingdom and New Zealand demonstrate that privacy is not weakened by clarity, it is strengthened by it. On strengthening accountability and oversight, public confidence depends on credible and independent oversight.

Commissioner of Police intent is to win back the respect, trust and the confidence of the people of Fiji. In UK, the Independent Office of Police Conduct. In New Zealand, Independent Police Conduct Authority both provide civilian-led independent investigations into complaints and serious incidents.

Independent oversight does not weaken policing, it legitimizes it. On emerging threats and future readiness, Fiji faces evolving threats including transnational organized crime, drug trafficking, cybercrime and maritime and border security risks. In comparison to Commonwealth jurisdictions, we compare to Singapore, they have a strong legislative backing for cyber and organized crime.

For Interpol standards, which we have been a member of since 1971, intelligence-led, coordinated global policy. Fiji must be constitutionally enabled to respond to modern threats with clarity and confidence. Why reform is necessary.

Without reform, operational effectiveness may be constrained. Criminal networks may exploit legal ambiguity, institutional accountability gaps may persist and public confidence may decline. With reform, we believe that policing becomes more consistent and professional, justice outcomes improve, public trust strengthen and Fiji aligns with international best practices.

Mr. Chair, the guiding principle for reform on submitting this recommendation to the Constitutional Review is based on the following. One is balance. Rights and enforcement must co-exist.

Two is clarity. Remove ambiguity, contradiction in law and rules to ensure the consistency in our operational to make it more effective. Three, accountability, strengthen oversight mechanism to ensure we are in line, integration, aligned police and military and future readiness is to address the evolving threats that we are facing.

Recommendations on specific sections, Mr. Chair, on Section 11, Subsection 3. Proposal for limited exception to Section 11.3 for mandatory drug testing within the Fiji Police Force. Section 11.3 of the Constitution states that every person has the right to freedom from scientific, medical treatment or procedures without an order of court or without his or her informed consent or if he or she is incapable of giving informed consent without informed consent or lawful guidance. The proposal for constitutional amendment in Section 11.3, the rationale is the proposal seeks to introduce a specific narrow exception to Section 11.3 of the Constitution.

The objective is to empower the Fiji Police to conduct mandatory drug testing of its personnel. This amendment is essential to ensure the integrity of the law enforcement, protect public safety and maintain the right to security of the person for the broader Fijian population. The current challenge in Section 11.3 provides an absolute right to freedom from medical procedures without informed consent or a court order.

While this is a vital human rights protection, its broad application creates a legal vacuum for disciplined services. For personal risks, officers under the influence of illicit substance pose a direct threat to public safety and the rule of law. Institutional integrity, the inability to mandate testing hinders the Fiji Police's ability to purge internal corruption and drug-related criminal influence.

On the legal impasse, relying on voluntary testing or individual court orders for every instance is administratively impossible and legally fragile. We propose that Section 11.3 be amended to include a proviso or a new subsection 4 which may be drafted as follows. Not withstanding subsection 3, a law may provide for the mandatory medical

testing of members of the Fiji Police Force and officer disciplined forces for the presence of illicit substance provided.

Provided that such testing is conducted in accordance with prescribed regulations to ensure accuracy and privacy and the necessary proportionate for maintenance of public order, national security and the integrity of disciplined force. For justification and safeguards, to ensure this amendment does not lead to abuse, the proposal is built on the following pillars.

One, public interest limitation. Under international human rights law, certain rights may be limited if the limitation is prescribed by law and the necessary in a democratic society. Policing is a high-stake profession where sovereignty is a functional requirement. On procedural fairness, the exception would not be blank-checked.

It must be supported by a revised Police Act that outlines strict protocols for how samples are taken, handled and contested. For deterrence, explicit constitutional authority sends a clear message that the Fiji Police is a drug-free institution, restoring public confidence in the police. Amending Section 11.3 is not a removal of rights, but a balancing of rights.

The right of an individual officer to use a medical procedure must be weighed against the right of the Fijian public to be protected by a sober, disciplined and reliable police force. I urge the Commission to consider this amendment as a critical step in modernizing the Fiji national security framework. Mr. Chair, on Section 24.1, the right to privacy is to enable to conduct a digital covert surveillance with judicial oversight.

It seeks to balance the fundamental right to privacy with the operational necessity of modern intelligence-led policing. The primary objective of this proposal is to transition the Fiji Police from a reactive model to an intelligence-led policing framework in an era where criminal activity ranging from cybercrime to transnational organized syndicates operates at a speed of light. To achieve this, the law must provide the tools necessary to intercept threats before they manifest.

By establishing a clear constitutional basis for digital covert surveillance, we ensure that policing is effective while remaining firmly anchored in the principle of judicial oversight. Under the current interpretation of

Section 24.1, there is a perceived lack of clarity regarding the boundaries of digital interception and financing tracking. This creates two significant hurdles.

One, operational stagnation. Law enforcement is often hesitant to utilize advanced proactive tools, in this case the digital surveillance communication interception, due to the high risk of legal challenge or breach of rights litigation. Evidently lost or evidentially lost, the current legal landscape does not sufficiently account for the volatility of digital evidence.

The time required to secure a judicial warrant often results in the permanent concealment, encryption or destruction of critical evidence. The Fiji Police proposes an amendment to Section 24.1 of the Constitution to explicitly allow for lawful surveillance and emergency interventions. A police officer may exercise the power to arrest or search without warrant when the officer has reasonable grounds to believe that action is immediately necessary to prevent the concealment, loss or destruction of anything connected with an offense.

Furthermore, the state shall have the power to conduct digital covert surveillance and communication interception, provided such actions are conducted under the judicial warrant or meet strictly defined national security and public safety threshold. The proposal is a police officer may exercise the power to arrest, search without warrant when the officer has reasons to believe that it is necessary to do so in order to prevent the concealment, loss or destruction of anything connected with an offense. On the justification of the proposal, the inclusion of these powers is justified by the evolving nature of the modern crime scene.

Prevention of Frustrated Justice the Search Without Warrant Clause is designed specifically for exigent circumstances. If an officer must wait hours for a warrant while a suspect is actively deleting digital ledger or flashing physical evidence, the judicial process is defeated before it begins. Modernization of the State Explicit constitutional recognition of digital surveillance removes the legal grey area, providing officers with confidence to use modern technology to track financial crimes and terror threats.

For public safety, in matters of national security, the ability to intercept communication can be the difference between preventing a crime and merely investigating one after the damage is done. For safeguards of this proposal, to ensure the powers do not infringe upon the democratic spirit of Fiji, the following safeguards are integral to this proposal. The Reasonableness Test Any warrantless search or arrest must be able to withstand judicial scrutiny post facto.

The officer must document and prove that the risk of loss or destruction was immediate and genuine. Mandatory Judicial Oversight Except in cases of immediate fiscal danger, digital covert surveillance must be predicated on a warrant issued by a member of the judiciary. For strict thresholds, national security and public safety must be narrowly defined by supporting legislation to prevent mis-encrypt into the private lives of law-abiding citizens.

Accountability Mechanisms Any measures of these powers should result in the inclusion of evidence in court and disciplinary action against offending officers, ensuring that the right to privacy remains a respected pillar of Fijian law. Section 1296 The Minister responsible for the Fiji Police Force may, from time to time, issue general policy directions to the Commissioner of Police, and if such a direction has been issued, the Commissioner of Police must act in accordance with it. This proposal addresses the structural independence of the Fiji Police.

It seeks to align the operational autonomy of the Commissioner of Police with established democratic principles, ensuring that law enforcement remains a neutral instrument of law rather than a subject of political administration. Mr. Chair, the fundamental rationale for this amendment is the doctrine of police independence. In a robust democracy, the police must operate as a neutral instrument of law, accountable to the Constitution rather than the shifting priorities of the executive branch.

True independence ensures that, one, neutrality, investigative decisions, and resource allocations are based on objective merits and public safety. Professionalism, personal management and operational tactics remain free from political influence over the perception of such influence and the trust. Public confidence is bolstered when the citizen perceives the police as an impartial body serving the state, not the government of the day.

The current framework under Section 1296 creates a mandatory obligation where the Commissioner must act in accordance with the ministerial directions. This presents several critical challenges. One is the institutional inconsistency.

There is a stark discrepancy between the Fiji Police and other enforcement or security bodies. The Republic of Fiji Military Forces under Section 131, the role of the Commander is very clear. The Fiji Dependent Commission Against Corruption under Section 115, the role of the Commissioner is very clear. In the Office of the Director of Public Prosecution under Section 117, the role of the Director of Public Prosecution is very clear. All enjoy high degrees of personal autonomy. The Fiji Police, which interacts most frequently with the public, lacks this level of protection.

Second, perception of politicalization. The mandatory language must act risks undermining public trust. As it suggests, policing priorities can be dictated by political agendas.

Under operational interference, general policy directions can inadvertently drift into operational matters, complicating the Commissioner's ability to exercise professional command and control. Our proposed amendment, the Fiji Police propose the repeal of Section 1296 and the introduction of new provisions that align the Fiji Police with the independent morals of the FICAC and the Office of the Director of Public Prosecution. In the exercise of each of the powers and the proposed acts and functions, the Commissioner of Police shall not be subject to the direction of control for any person or authority, except as provided by this Constitution or by an Act of Parliament.

Two, overall responsibility of the Fiji Police Force shall be the maintenance of law and order, the preservation of peace, the protection of life and property, the prevention and detection of crime, and the enforcement of all laws and regulations, with which it is directly charged and shall be entitled to have an arm's reach for the performance of any such duties to carry arms. The Minister may issue general policy guidelines regarding the strategic priorities of the Force. However, the Commissioner shall have the final authority on operational command, including investigations, deployment, and internal administrations.

Mr. Chair, in justifying this proposal, the institutional parity, it is logical and necessary for the Fiji Police to have the same constitutional standing as the Commissioner of the FICAC and the Director of the Office of Public Prosecution. As the primary body responsible for criminal investigations, the Fiji Police must be independent as the body that prosecutes those crimes. Alignment with our national security standard, granting the FPF a similar arrangement to the FMF or RFMF, ensures a consistent national security framework where professional heads are empowered to lead based expertise and statutory duty.

Strengthening the rule of law, removing the meditative direction clause, reinforces the principle that the police serve the people and the law, ensuring that no individual or political office is above the legal process. On the safeguards of this proposal, the FPF recognizes that independence is not isolation. From accountability, to prevent the abuse of power, the following safeguards remain integral.

Constitutional oversight. The Commissioner remains accountable to the Constitutional Officers' Commission regarding performance, conduct, and appointment standards. On parliamentary transparency, the Commissioner will continue to submit an annual report to Parliament providing full transparency on how the force has met strategic objectives and utilized its public budget.

On the judicial review, all decisions made by the Commissioner remain subject to the oversight of the High Court. This ensures that independence is exercised within the bounds of the law. On strategic consultation, the Commissioner will maintain a consultative relationship with the line minister.

This allows for the alignment of policing with national security goals through guidelines and cooperation rather than directives and mandates. On the use of force, this proposal outlines the Fiji police submission regarding the constitutional regulation of the use of force. It seeks to codify the principles of necessity and proportionality within the Supreme Law or to provide clear legal protection to officers while ensuring the high standards of human rights and public accountability.

The State holds a monopoly on the legitimate use of force to maintain public order and protect the lives of its citizens. The rationale for this proposal is to establish a unified constitutional standard for the use of

force. By grounding these powers in the constitution rather than solely supporting legislation like the Police Act, the Fiji police ensures that every application of force, from fiscal restraint to the use of arms, is balanced against the fundamental right to life and the right to free from cruel and degrading treatment.

Our current challenge, currently the specific thresholds for use of force are largely defined in administrative standing orders in the Police Act, which can be subject to varying interpretations in the Court of Law. This creates two primary challenges. One is the legal vulnerability of officers in high-stakes tactical situations.

The lack of explicit constitutional seal regarding the lawful use of force can lead to hesitation, potentially endangering the lives of officers and the public. Inconsistency in accountability without a clear constitutional mandate on proportionality, judicial and internal reviews of police conduct may lack a consistent benchmark, leading to public mistrust or perceived impunity in cases of alleged excess.

Proposed amendment, the Fiji police propose the insertion of the new subsection under the provision resulting to law enforcement or the Bill of Rights, to explicitly govern the use of force. We propose that a police officer or any person authorized by law may use force as is reasonably necessary and proportionate in the circumstances for the purpose of effecting a lawful arrest or preventing the escape of a person in legal custody. Protecting any person from unlawful violence, preventing the commission of a serious criminal offences or suppressing a rape or insurrection. The use of lethal force shall be permitted as a last resort where there is an immediate threat of death or serious injury to the officer or another person. In justifying the proposal, standardization of conduct, codifying necessity and proportionality ensures that every officer understands the legal sealing of the authority it removes impunity regarding when force is justified.

Aligning with international law, the proposal aligns Fiji's constitutional framework with the UN basic principles on the use of force and the firearms by law enforcement officials enhancing Fiji's standing in the international human rights community. On public and officer safety, clearer laws lead to better training and more decisive action in crisis situations such as active shooter, scenarios of violent civil unrest where

delayed action can result in the loss of life. One of the safeguards to this proposal is to ensure this power is never abused.

The following safeguards are proposed as constitutional requirements. Mandatory reporting. Any use of force resulting in injury or death must be subject of a mandatory written report and an automatic internal investigation.

Proportionality to test. The constitution shall require that the force used must be the minimum amount necessary to achieve the lawful objective. If a lesser means was available and discarded without reason, the use of force is deemed unlawful.

Independent oversight. In cases involving the discharge of firearms or serious injury, the Fiji Human Rights and Antidiscrimination Commission or an independent police oversight body must have the power to conduct a parallel investigation. The duty of care amendment will include the requirements that once a person is subdued or in custody, the police have an immediate constitutional duty to provide medical assistance if force was applied.

On the delegation of powers, the rationale for this proposal is to safeguard the common integrity of the Fiji police force. This is for the Deputy Commissioner. The Commissioner of Police, as the professional head of organization, is best positioned to determine which senior officer possesses the specific operational readiness and leadership competence to manage the force in his absence.

By establishing this as a sole prerogative, the Fiji police ensures that leadership continuity is a matter of professional judgment rather than administrative or political appointment. Current challenges, external interference, without an explicit sole prerogative clause, the process of naming an acting Commissioner, even for short duration, can become susceptible to external influence or office of the Minister through the directives.

Operational ambiguity, if the selection process is not clear, defined as Commissioner's personal mandate, it can lead to internal joking of uncertainty among the Deputy Commissioner and Assistant Commissioner ranks, which undermines the single line of command essential for national security.

The limited scope of acting appointment, current framework often treats acting roles as mere placeholders. This lacks the constitutional weight required for a delegate to take decisive legal actions across all relevant legislatures. We propose that the Constitution explicitly recognizes the Commissioner's exclusive authority to designate a temporary successor.

So, the proposal is that the Commissioner of Police has the sole prerogative to select and designate, in writing, a Deputy Commissioner of Police or an Assistant Commissioner of Police to exercise the full powers and functions of the Office of the Commissioner during any period of the Commissioner's absence or temporary incapacity. The officer so designed shall have the authority to act and execute all statutory duties, discretions and powers vested in the Commissioner by this Constitution or any other written law, notwithstanding any provisions to the contrary in such law. This power of selection is an internal command function and shall not be subject to the direction or control of any person or authority.

In justifying the proposal's reinforcing independence, this amendment is a practical application of the doctrine of police independence. If the Commissioner chooses their own delegate, it prevents the Executive from installing a preferred officer during the Commissioner's absence. Leadership Trust Effective policing requires a seamless transition of trust.

The Commissioner must be able to delegate officers they trust most with sensitive intelligence and ongoing high-level investigations. Legal Efficiency. By granting the delegate powers to act, not just endorse, across all legislation, the Fiji police eliminate the risk of legal challenges in the High Court regarding the validity of warrants or orders signed by an acting Commissioner. On safeguards to this proposal, on rank-limited delegation, the sole prerogative is restricted to the Deputy Commissioner and the Assistant Commissioner ranks only, ensuring that power never falls below the constitutionally vetted level of seniority.

Documentary record. Any such delegation must be made via a formal written instrument provided a clear legal trade for the judiciary and the public, to know who holds authority at any given time. The prerogative applies only to temporary absence. In the event of a permanent vacancy

or long-term incapacity, the standard constitutional appointment process via the Constitutional Officers' Commission would still apply.

Continued Accountability. The officer exercised the delegated power remains fully accountable to the law and the Constitutional Officers' Commission for any actions taken during the acting period. Mr. Chair, Members of the Commission, in conclusion, the proposals submitted by the Fiji police today are anchored in a singular non-negotiable principle, the doctrine of police independence. For democracy to remain resilient, the police force must function as an institutional cornerstone that is shielded from the shifting currents of political administrations.

We do not seek to operate outside the law, but rather to ensure that we are governed only by the law. The Fiji police is the primary interface between the state and the rights of the citizens. Therefore, it is a constitutional necessity that the commission of police be granted the same structural autonomy already afforded to the Republic of Military Forces, Office of the Director of Public Prosecution and the Fiji Independent Commission against Corruption.

By removing the mandate for ministerial direction and clarifying the commissioner's sole prerogative in matters of command and delegation, we ensure that the policing decisions, from tactical operations to the use of force, are made with professional integrity and objective merits. This submission is a call for institutional maturity. We are asking for a constitution that empowers the force to be a neutral instrument of justice, accountable to the people of Fiji through the judiciary and the constitution rather than a subject of executive policy.

In doing so, we strengthen the rule of law, safeguard the fundamental rights of every Fijian and ensure the Fiji police force remains a professional, a political and trusted guardian of our nation. Mr. Chair, we thank the commission for this opportunity and members of the commission, we thank the commission for this opportunity and we stand ready to provide further technical and legislative support from my colleagues from what we have presented this morning and thank you for your indulgence.

Mr. Valenitabua: Thank you very much, Mr. Soko. First, I'd like to thank you and your colleagues and the staff who prepared this written submission. It's very clear and it will assist us a lot. Thank you very much for that. And

secondly, thank you for the oral submissions that you have, that you will give us after this. It's now time, since you have been reading through, our commissioners have been taking notes. There might be questions which are arising and we will now be asking you some questions to clarify matters that have been raised in your submission this morning.

And we invite you, we ask you to answer the questions which you will be asked. There might be just some comments. I hope you will take the comments. This submission may not be the last one. I say may because we are giving you the opportunity. In the event you wish to add more, please do so.

You can put the additional submissions in writing and send them to us by email. You can collect the email address from the girls on your right and then send us whatever additional submissions you may wish to make. But for the time being, I will now ask fellow commissioners if they have any questions or comments in relation to your submission this morning.

Dr. Fatiaki: Vinaka Mr. Soko and your team. Thank you. I just want to echo the sentiments of our commissioner, our chair, in terms of the presentation.

It's quite clear and you've gone through it in great detail. I'd like to just bring a number of comments and possibly questions in respect of separate areas. I'll allude to one first and then maybe leave it to my other commissioners to allude to others to try and arrive at a point where we can be more concrete about exactly the nature of what you are asking for.

So, I'll take you first to section 11.3. That is the area that pertains to, for instance, mandatory drug testing. At the outset, let me say that the constitution has got to be a document that is supreme but all-encompassing but we don't want to get it too bogged down with too many details. One of the criticisms that people have had in the Bill of Rights, for instance, yesterday we had the Fiji Trade Union Congress was that people would give you a right and after that they would then have a provision of 14 qualifiers where they can take your right away.

And the idea was give the right and then if, for police reasons or whatever, you needed to take that right or limit that right, then you took it to court because that was the safeguard. That way you had the overall

right rather than limit it all because if you limited it all, we found, for instance, that almost every single right could be cut in if we limited it. So, there was a general principle that when we write the Bill of Rights in the constitution it should be all encompassing and not too detailed and that's where I come to the question and your submission in respect of section 11.3. I think the issue of mandatory drug testing, for instance, is a recognized one. There are many occupations. I can tell you I was a doctor for pilots. No pilot gets on a plane without mandatory drug testing.

And that's applied universally in many areas across the world. As I look at it, if I were to read it to you, every person has the right to freedom from scientific, medical treatment or procedures. In this case it's a procedure.

And it says without an order of the court or without his or her informed consent. The point I'm making is with the pilots, if you want to continue to work for the airline, you sign the consent. The people who work in the boats that we do drug testing for, these are the crew.

Part of their employment requirement is to sign the consent and if they sign the consent, then this provision in the constitution would not apply to them and therefore we would not need to change the constitution. Now I don't know what the situation is with the police force, but I would presume that you could probably incorporate into your police act or into your employment contract that every person who agrees to become a policeman signs a consent to have mandatory drug testing conducted on him as part of his acceptance. And obviously if he doesn't want to sign it, then he doesn't become a policeman or a pilot or the captain of a cruise liner.

Now, I say that because if we were to use this, then you wouldn't need to change the constitution, but you can test every policeman. The thing though is you would need to then incorporate it as part of your workplace requirements and for us that would be an easier job rather than specify that section which you, you know, all the conditions where we would mandatorily test it and put it into the constitution applying only to the police force. You understand what I'm trying to suggest there? Because it says with informed consent you can test everybody and they would be excluded from this, which means that if they signed and I say this from experience because we do drug testing on the boat, on the cruise of the boats, the cruise boats, on behalf of an external agency and on behalf of pilots that fly.

And I can tell you that part of that is they consent to it and if they did not consent, then I would not do the test and then it's up to, I can tell you that for the cruise liners, they will take them off at the port, whether it's a captain of the boat, the first officer, they'll take them immediately off the port. They will stop working immediately. They will be flown back to their country of origin and a new captain will take over.

So, that is the requirement. It is informed consent, but it means that the person signs it and I, you know, this could be instituted from the very beginning. If you want to introduce that as a mandatory thing and I understand the rationale.

I don't think there's any dispute about the fact that you want your officers not to be taking drugs or have any traces of drugs in their system. My suggestion is really as to the mechanism. I could take the entire section that you've amended and try and insert it into this constitution.

We can make it very bulky and, you know, if the police came, I mean the army came and asked for the same thing and the nurses and the doctors, it would become difficult. But I can see straight out here that if you were to apply that, then, you know, I don't think any person would dispute that this is not an unreasonable provision for a policeman that the police force requires that you undergo random mandatory drug testing whenever required. That's just my suggestion in respect of that particular request for amendments to the constitution. I leave it to my colleagues. They might want to address others.

Mr. Valenitabua: One question, Mr. Soko. Currently, is drug testing carried out on police officers?

Mr. Soko: Mr. Chair, it's through consent. Officer has to consent. That is our policy. That is what we doing.

Mr. Valenitabua: It's a policy. Is it in the Police Act?

Mr. Soko: It's a policy direction that we are using to ensure that we are in line with what is required. But again, consent is the issue. So, the commissioner does not have the power to direct, understand the point raised by the doctor.

Dr. Fatiaki: Mr. Soko, with the pilots and the captain of the cruise boat that comes on Saturday, if he is listed, he doesn't even have the list. We do 50 tests on their crew. It's sent to us the day before the boat arrives. As soon as the list is released, all 50 are put into a designated area where they have to stay and be tested. If you refuse to undergo the test, you get off the boat. That's it. What I'm saying is, yes, it's the consent. But if a policeman were to refuse to consent, I'm sure that the police has within its powers the ability to terminate his employment. Or if he doesn't have it currently, it could incorporate it into the signing up part of it. So, I presume there's a contract offered to a person.

Part of that contract, it would require that in the nature of the profession, mandatory drug testing may be required and we require that all candidates for employment as police officers sign it. I don't think that's an unreasonable expectation. Technically, I don't think it would be a difficult thing to do and it may be easier for us to do it that way than to do it this way. Thank you.

Mr. Valenitabua: There is a question. There is a question. Under section 11, subsection 3, it talks about scientific or medical treatment or procedures. Can we include drug testing into that? Medical? We just have to think about that. Because I'm sure when the 2013 Constitution was, or I believe when the 2013 Constitution was enacted, there would not have been any thoughts in relation to drugs to the level we are facing now.

I might be wrong. So, are we just looking at injections for COVID, injections for TB, injections for whatever other sicknesses out there and operations and so forth, those which require the consent? Now, drug testing. You have brought this submission in to ask that this particular procedure, if we can call it drug testing, is to be included in the Constitution. Do we understand you? Is that what you're asking us?

Mr. Soko: Yes, Mr. Chairman. Alright.

Mr. Valenitabua: What if, what if, I've been told by my friend, my fellow commissioner, that drug testing is a procedure, medical procedure. What if you just include it in your legislation, the Police Act? Is there a disadvantage there? Which has caused you to bring this submission to the Constitution Review Commission?

Mr. Rajesh: Thank you, Mr. Chair. The guidance is well noted from the chair. The Police Act which does not have the provision the one on the draft stages and the Honorable Ag's office I believe it does include.

And the reason most probably why we thought of having it in the Constitution is we understand the process of Acts of Parliament being amended, and whilst it's in the Constitution, the issue of it being amended, it may take a little time of process to have it amended at the whim of most probably the future governments.

But then again, another reason for that was what we had considered was the individual right versus the public right. Of course, in general, we are talking about public rights. Here we are considering the individual officer's right versus the public right, where the commissioner does want to have an authority to be able to direct the officer to go mandatory drug testing. Thank you, Mr. Chair.

Dr. Fatiaki: Thank you. Just in terms of clarification, I can see that what you're really asking us is there's a conflict in the commissioner and the police's mind as to whether they can mandatorily test a person for drugs, given this particular bill, I mean this particular right, which is 11.3 that says every person has a right to freedom from scientific or medical treatment or procedures, for which a mandatory drug test is, it's a medical procedure. Okay, so this says that every person has the right to be free from that. And what they're bringing to us is that, well, they'd like to be able to test the policemen if they're suspicious of it.

And like I said, we understand that. I give you those two examples that currently exist and are practiced. Okay, so nobody disputes whether Fiji Airways can test its pilots as to whether they are under the effect of alcohol or any drug. They can do it mandatorily. As you walk into the plane, they pull them aside. All airlines have that.

So, all I'm suggesting is what you're recommending is I understand the difficulty. This says the Bill of Rights, the Supreme Law says you can't do it. You can't take it away, except with informed consent.

And that's what I meant when I said I think this is how Fiji Airways gets around it and other employers in dangerous occupations. You know, if you're going to climb up onto the top of the scaffolding, I presume that if you're the owner of that building company, you might want everyone

who's climbing up there to be completely sober. And you may make it a workplace requirement for which you would require informed consent.

And I think the process of asking a person to sign it, whether you did it at the beginning of the job, as part of the employment part of it, he raised the issue of whether that may conflict with the Employment Act. I don't think so. I think you'll find that there's provision that in certain occupations, if it's deemed unsafe for people to be operating it, if they're under the influence of drugs or alcohol, then there is automatically provision for them to be tested. And I hope that helps clarify it.

Dr. Gounder: Thank you, Dr. John. I think on the same note, soccer players are also selected at random for drug testing. Even if they refuse, they're not allowed to play the game. So, if it can happen in other professions and areas, you may want to explore whether that is possible within the police force without the need to change the constitution. We will take this on board, but you can also explore the possibility of doing that without the need to change the constitution, because as Mr. Dr. Fatiaki has highlighted, it is happening in other places and it may not actually contradict your personal right with the constitutional provision, if that is the case.

I'm not saying. I want to take this opportunity to thank you, Mr. Soko and the police force for the very comprehensive submission today. You not only talk about the rationale for the reform you are suggesting, you are also proposing the actual text, you are giving the justification and the safeguards.

So, if you are empowered with the new provision, you not only talk about the benefits, but also the accountability from your side, which is very refreshing and a very positive sign from the Fiji police force. So, thank you very much for this very comprehensive submission. I think this is, in my view, the best submission that we have received.

One of the best that we have received so far in terms of the comprehensiveness. So, thank you very much for this. I just have a clarification. Your delegation of powers number 10. There is nothing in the constitution at the moment regarding the delegation of powers that you have talked about in your submission today. And in the same spirit as the other commissioners, my argument is whether it will be suitable to have this here or in the police act.

Because the constitution contains broad provisions, but the acts and legislations then hound down very specific provisions for different aspects of the regulations that we are making for various areas. So, I am just seeking your view whether this would be better suited for the police act. And as I understand, the police act is currently being reviewed?

So, the timing is also perfect for you to consider having this provision in the police act. Because basically it is talking about if the police commissioner is away for a very short period of time, the appointment of the acting commissioner and the powers which the acting commissioner will then have. So, it is the delegation of powers to the acting commissioner.

That is basically what you are talking about. Usually, the delegation of powers are contained in a policy framework or if you want more authority, you can have that in the police act rather than the constitution. So just a clarification from our side so that when we are discussing about this later, we have more clarity.

And also, to throw something back at your team to consider the possibility of having it in the police act rather than in the constitution. So, thank you. I am happy to hear your views on this.

Mr. Soko: Thank you, sir, through the chair. The reason we bring it up was inconsistent with what we have been referring to the role that was stipulated under section 117 and section 115. It also includes the deputy commissioners of FICAC and the deputy director of public prosecution and the delegation in absence of office.

That is missing in section 129. And we were thinking that is why we brought it up and if you are good self-taught, otherwise your guidance is well noted on that.

Dr. Gounder: The provision that you are recommending is available for FICAC and DPP?

Mr. Soko: Yes, sir.

Dr. Gounder: And you would like to have similar provisions in the constitution for the police force?

Mr. Soko: That is correct, sir.

Dr. Gounder: Okay, thank you. I hear you now clearly. Thank you.

Mr. Valenitabua: I was going to say that since you are reviewing the police act. You are careful that the police act aligns with the constitution because any legislation or any act which is inconsistent with the constitution would be invalid. You are looking at that, Mr. Krishna.

So, I was going to ask you the question whether that was why you wanted to have this drug testing specifically and delegation specifically included in the section 115, is it? Or section 123? 129. That was your reason. Have it in the constitution first before you complete your review of the police act so that the provisions of the police act will be right. That is what you are looking at here. We have referred you to a number of sections, particularly for medical section 11.3. Now you have raised the point in relation to FICAC and DPP.

Do you think that is sufficient? This is why I am asking this. You are not the first one who has raised issues in relation to delegation. Even the Chief Justice and the President of the Court of Appeal came to us and said could we have another provision added to the constitution where the Chief Justice and the President of the Court of Appeal could nominate other judges to stand in their state with the JSC.

That is coming from the two most senior judges. Now here you are asking us to do the same thing also. To try and have your drug testing issue and the other issues which you have raised included specifically in the constitution so that it aligns with your act. I guess that is what you are getting at.

Mr. Krishna: That is correct Mr. Chair. That is our intention and that is our request.

Mr. Valenitabua: Even under section 7 subsection 3 which deals with other procedures, you believe that that is not sufficient to cover your police officers. Is that right? That is correct.

Mr. Krishna: Section 7 of Police Act I believe that is what you are referring to.

Mr. Valenitabua: No, I mean 11.3. I am talking about 11.3.

Mr. Krishna: That is correct sir. We wish to have these provisions included in the constitution.

Mr. Valenitabua: Yes, we get you. Thank you.

Dr. Fatiaki: And the rationale was that in applying mandatory testing they would be conflicting with the Bill of Rights in respect of that. And so, the suggestion was that instead of us putting four more paragraphs because your submission requires you to put four paragraphs into it specifically for the police which will make this book very thick if we were to do that.

Our suggestion was to take the fact that you can have informed consent as the basis on which every police officer has to be mandatorily tested. Now where you put it, whether you put it in the Police Act, whether you put it as part of the employment contract, that every policeman before he signs the recruit, before they sign to get their full-time employment, it says there as part of the conditions that they will require just as you have uniform requirements, you have haircut requirements, I mean you have certain mandatory requirements. I can't imagine, personally I would not want a policeman to be a recruit, to become a policeman if he were not willing to sign thing that says I am willing to be tested whenever you feel like. I mean I don't want that policeman. And I think if he doesn't join after recruit, he can go back to wherever he came from.

So, the point I am making is we support you completely in it. How you achieve that, I think that it will be bulky and cumbersome for us to put it into the constitution because this is something only for the police and it already applies to people. I gave you examples of the pilots and that is not in the constitution but they don't have a problem because it's written into their job, their pilot contract that they must agree to that and if they don't agree to it, then they don't get the contract signed off.

I just want to take you back so I am very clear about this and I appreciate very much your, shall I say your courage in suggesting that you needed the independence of operations.

Just in principle, I think that you have made a very cogent argument for it. It is difficult to be tied to an administrative or executive directive that may not align with operational processes and I think, let me just make sure that I am clear. You have asked that we repeal section 129 subsection 6

which is the minister responsible for Fiji police force may from time-to-time issue general policy directions and if such direction has been issued, the commission of police must act in accordance with it.

I think that that is, you know, we have one of the mandates that we were asked to address in terms of the, what do we call them, the deficits, the democratic deficits. One of them was the consolidation of too much power in certain offices and I guess what I read in this is a requirement or a request that we keep the commission of police's operations independent of directions from other people who may not be aware from the operational point of view. Is that correct?

Mr. Soko: You correct Sir.

Dr. Fatiaki: Thank you. Okay. Along similar lines and related to what was brought up in terms of the delegation of power, obviously we want accountability, we want separation of powers so that we have independence but inherently that is the need for accountability which means who does he answer to if he doesn't answer to the minister and I presume that in the case of his appointment, he is appointed by the constitutional officer's commission.

In the case of appointing his successor, I might suggest that one of the things that we might consider is that maybe the constitutional officers commission should be involved in the appointment rather than for the same argument that you have about keeping him independent and not allowing the executive to select somebody else that they may favor or be partial to. The same argument could be that if the police commissioner were to appoint someone else, then maybe it would be someone that he personally is favoring partial to and just as he can't appoint himself as the commissioner of police when the commissioner of police is from the constitutional officers commission, maybe the constitutional officers commission should be the people to appoint his replacement given that the person that replaces him acting temporary or whatever jurisdiction will have the same powers as the commissioner. Just something for you to think about as an alternative to having the commissioner appointed and that would be the argument for it and maybe you can modify the submission to maybe give us that kind of latitude.

Because I can tell you, we agree that you need that operational efficiency and independence. Our minds haven't been made up. We'll be

discussing this amongst ourselves, but at the same time, the issue of delegation of powers, your argument is that you don't want to be influenced by waiting for the executive to direct you to do it.

The same argument can be then if you allow the commissioner of police to have the prerogative, then he might put his cousin brother or whoever. That would not be desirable and just as he can't appoint himself a commission of constitutional officer's commission does it, maybe they can be the ones to appoint the successor on his advice. I guess most of these are always done in consultation with. Thank you.

Mr. Krishna: Through you chair. All the suggestion are taken note of. We are still waiting for a deputy commissioner to be acting in his place for a Temporary absence from the office. In comparison with the other two authorities, which is FCAC and DPP, which is also consistently recognized where the appointment of the deputy is provided for.

Thanks very much for the guidance which you have given, the doubt which was raised that the commissioner may appoint somebody. I believe the commissioner, once appointed, is of that caliber and is under scrutiny of all the decisions he or she will take to ensure that the appointment is legitimate and also all the procedures have been followed. Under the constitution, I believe the commissioner should be able to recognize the right person to relieve him in the brief absence from the office. Thank you very much, sir.

Mr. Valenitabua: Mr. Conway.

Mr. Beg: In section 1.26, all I hear is the Minister can direct the commissioner. In that framework the issue is all I here is that the Minister can direct the commissioner on the evidence that he or she must act in accordance with language So, there is a constitutional gap. You are saying that it compromises operational independence. That is what I am hearing. So, the direction is to remove the mandatory direction clause? Correct?

Mr. Soko: That is correct, sir.

Mr. Beg: Thank you. So going on, the second issue is inconsistency with other institutions. You mentioned DPP, FICAC and RFMF military are more independent, right? So constitutional gap is there is uneven institutional design.

Isn't that cohesion? Is that correct? So, the direction is you are saying that the police or you wish or your suggestion or proposal is align the police with the independent bodies. That is from what we have discussed. I am just trying to tabilize it. And lastly, the public perception of pollicization is the undermining trust. I think that is the evidence. So, the trust from the public.

In the constitution, very weak public trust. Very weak. So, you are saying replace this with a policy guidance only. Sorry, that is the direction that you want us to consider. But yeah, just reinforcing those points. And then the delegation of commission of powers, I agree with the comments that we are saying and there is a lot of evidence.

I mean, particularly risk of external interference. I think that we have been seeing a lot of that at the moment. And constitutional gap, there is no explicit constitutional clarity. Well, at least to my opinion. I mean, from what I see. So, the direction is to allow the commissioners to appoint the delegate. Is that correct? From what I am hearing.

Second issue, under the delegation of commission of powers, command continuity and risk in this area, right? So, the evidence is the leadership is very uncertain. Is that what I am hearing? A lot of it is coming through this is uncertainty in the direction of leadership.

And then the gap in the constitution is there is no guarantee of like authority of chain of command in this. I mean, that is what I am seeing. But they have reinforced it and I agree with that.

The other point that I think that concerns me is you brought up the use of force. Now, the use of force, there is no explicit constitutional standard that I can see around the world. But you have mentioned New Zealand and the UK.

What about Australia? But the evidence is defined only in the police act and administration orders. Where does that sit? Is that what you are asking for that to sit in the constitution? So, I am saying is that something for us to consider? Two, is the legal risk to the officers. Now, hesitation in critical situations, that kind of risk is also safeguarded, is imposed back onto the officers.

So, that in the constitution, there is a lack of protection framework. So, what you are asking for us to consider that or look at that in that retrospect? Yeah, the direction for us is we need more legal threshold to consider that in my opinion. Then the public mistrust under this force act is the perceived excessive force by the police.

That is the perception of the public. But in the constitution, there is no unified benchmark. But I assume that in your submissions, you may want to include that.

So, that is something for us to look at and consider because we need to be fair. We need to look at best practice policies. But I hear you.

I mean, I thank you for your presentation along these matters. I can go on, but I think most of it is probably the other one was the digital framework. I think you were talking about the digital space there.

Sorry, if I can just go back to my notes. You talk about digital surveillance unclear, right? So, the evidence that you are providing before us is the cyber-crime and the encrypted data challenges that you face, right? So constitutional gap in here is that they are very silent on digital interpretation. Is that what you are asking for us to consider? So that is something we need to look at and discuss amongst ourselves.

The evidence of loss, like loss risk, like the, I guess, you know, the delay in warrants you talk about leads to the destruction of evidence quite clearly. You have presented this as something that I have heard and it is affecting your operations and your work. Again, the constitutional gap, no emergency or interceptions or things are provided in these provisions.

Then there is the legal uncertainty, you know, that the officers are hesitating to act. You know, they are clear on these directions. Again, the constitutional gap here is that the risk of evidence is exclusion in the court.

So, you have to be careful how we present this. So that is something our commission needs to look at and how we present that. But I thank you for your wonderful submission and I agree with my fellow commissioners.

There is a lot to chew on and I don't, it is a thankless task out there that you are going through and I appreciate your service to the country and to the people of Fiji. Thank you.

Dr. Gounder: Thank you. Just a quick one. I just realized this when Commissioner Beg was speaking. On the right to privacy, you know, the proposed amendment that you mentioned, say, for argument's sake, this wish is granted, sir, this wish is granted, where will the safeguards appear? How will you ensure us that these safeguards are written and available? So, the three safeguards that you mentioned, where will they appear? And how will they be linked? And how will they be enforced?

Mr. Soko: Mr. Chair, on the safeguards, it can be included in the Police Act to make it more operational and it is rightly linked, as you mentioned earlier, that we want to link all our work to be effective, to align with the Constitution and also in terms of policies to make sure that there is no abuse.

And ensure the privacy of the general public in terms of ascertaining those evidence. Thank you.

Mr. Valenitabua: Gentlemen, I believe we have come to the end of our consultation this morning. You have made excellent presentations this morning and your written submission. You have heard questions from the Commissioners. You have also heard comments from the Commissioners, comments which point you towards particular matters which need to be discussed by the Police and which we have to consider in our deliberations regarding the 2013 Constitution.

We have heard you. It was our duty to hear from you and record what you say and please entertain, receive and think about the comments that have been made. If you wish to make further submissions arising from the comments which you have heard from the Commissioners, please do so and send those additional submissions to us. But all in all, it has been a wonderful session. We get your point. We get your point.

You want the legislation not to be in conflict with the Constitution. So, we will look at that very carefully. Drugs, privacy, there is a right to privacy and people always shout that out whenever the police officers want to do surveillance, want to enter into compounds.

I understand because those are what are challenged in court most of the time. So, we will have a good look at the matters that you have raised this morning. And I take this time to thank you very much and regards to the Commissioner of the Police and I hope the Fiji Police force well in your duties. Thank you.

----------End of Session [21-04-2026] ----------

Submission to the Constitution Review Commission
By the Fiji Police Force

Honourable Chairperson of the Constitution Review Commission,
Distinguished Commissioners,
Esteemed members of the public,
Ladies and Gentlemen.

1. Introduction

On behalf of the Commissioner of Police, we present the Fiji Police Force's (FPF) submission grounded in operational experience, constitutional responsibility, and informed by international best practices.

The Constitution of the Republic of Fiji 2013 (the Constitution) is the supreme law of our nation. It protects the rights of our people while defining the authority and limits of institutions entrusted with maintaining law and order.

For policing and the criminal justice system, one principle must guide us: **Strong rights protection must be matched with clear, practical, and enforceable operational frameworks.**

Across Commonwealth jurisdictions, this balance is achieved through constitutional safeguards supported by clear enabling legislation, defined institutional roles, and independent oversight.

2. Context and Current Challenges

Since the adoption of the Constitution, Fiji has made commendable progress in strengthening democratic governance and protecting fundamental rights.
However, from an operational policing and criminal justice perspective, several challenges have emerged:

- Ambiguity in the operational application of certain rights provisions
- Limited enabling legislation to support constitutional intent
- [redacted]
- Application of the Use of Force
- Gaps in independent oversight mechanisms, and
- Emerging threats not fully contemplated within existing frameworks.

These challenges highlight the need to refine not replace the Constitution, ensuring it remains fit for purpose in a modern and evolving security environment.

3. Key Areas for review and Reform

3.1. Operational Clarity in Rights Provisions

3.1.1. Section 24 of the Constitution guarantees the Right to Personal Privacy, a cornerstone of democratic society. However, in practice, this presents challenges in:

- Digital investigations
- Surveillance operations
- Intelligence gathering
- Cybercrime enforcement

Without clear enabling legislation, law enforcement faces either:

- Operational limitation, or
- Legal vulnerability in court proceedings

Comparative Jurisdictions

- United Kingdom – Investigatory Powers Act 2016:
  Provides lawful authority, judicial oversight, and strict thresholds for surveillance
- New Zealand – Search and Surveillance Act 2012:
  Clearly defines police powers with judicial authorization and safeguards

Honourable Commissioners, jurisdictions such as the United Kingdom and New Zealand demonstrate that privacy is not weakened by clarity it is strengthened by it.

3.3 Strengthening Accountability and Oversight

Public confidence depends on credible and independent oversight.

Comparative Jurisdictions

- United Kingdom – Independent Office for Police Conduct (IOPC)
- New Zealand – Independent Police Conduct Authority (IPCA)

Both provide civilian-led, independent investigation into complaints and serious incidents.

Independent oversight does not weaken policing, it legitimizes it.

3.4 Emerging Threats and Future Readiness

Fiji faces evolving threats including:

- Transnational organized crime
- Drug trafficking
- Cybercrime, and
- Maritime and border security risks

Comparative Jurisdictions

- Singapore: Strong legislative backing for cyber and organized crime
- INTERPOL Standards: Intelligence-led, coordinated global policing

Fiji must be constitutionally enabled to respond to modern threats with clarity and confidence.

4. Why Reform is Necessary

Without reform:

- Operational effectiveness may be constrained
- Criminal networks may exploit legal ambiguity
- Institutional accountability gaps may persist
- Public confidence may decline

With reform:

- Policing becomes more consistent and professional
- Justice outcomes improve
- Public trust is strengthened
- Fiji aligns with international best practices

5. Guiding Principles for Reform

5.1 FPF is submitting recommendations on the Constitution review based on the following:

1. Balance – Rights and enforcement must coexist
2. Clarity – Remove ambiguity, contradiction in law and roles
3. Accountability – Strengthen oversight mechanisms
4. Integration – Align Police and Military, and
5. Future-readiness – Address evolving threats

5.2 Recommendations on specific sections

6. Section 11(3)

Subject: Proposal for a Limited Exception to Section 11(3) for Mandatory Drug Testing within the FPF.

Section 11(3) of the Constitution of Fiji, states that

> *"(3) Every person has the right to freedom from scientific or medical treatment or procedures without an order of the court or 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."*

Proposal for Constitutional Amendment: Section 11(3)

a) Rationale

This proposal seeks to introduce a specific, narrow exception to Section 11(3) of the Constitution. The objective is to empower the FPF to conduct mandatory drug testing of its personnel. This amendment is essential to ensure the integrity of law enforcement, protect public safety, and maintain the "Right to Security of the Person" for the broader Fijian population.

b) The Current Challenge

Currently, Section 11(3) provides an absolute right to freedom from medical procedures without informed consent or a court order. While this is a vital human rights protection, its broad application creates a "legal vacuum" for disciplined services.

i. **Operational Risk**: Officers under the influence of illicit substances pose a direct threat to public safety and the rule of law.
ii. **Institutional Integrity**: The inability to mandate testing hinders the FPF's ability to purge internal corruption and drug-related criminal influence.
iii. **Legal Impasse**: Relying on voluntary testing or individual court orders for every instance is administratively impossible and legally fragile.

c) Proposed Amendment

It is proposed that **Section 11(3)** be amended to include a proviso or a new subsection (4), which may be drafted as follows:

> *"(4) Notwithstanding subsection (3), a law may provide for the mandatory medical testing of members of the Fiji Police Force and*

other disciplined forces for the presence of illicit substances, provided that such testing is:

a) Conducted in accordance with prescribed regulations to ensure accuracy and privacy; and

b) Necessary and proportionate for the maintenance of public order, national security, and the integrity of the disciplined force."

d) Justification and Safeguards

To ensure this amendment does not lead to abuse, the proposal is built on the following pillars:

- ***Public Interest Limitation***: Under international human rights law, certain rights may be limited if the limitation is "prescribed by law" and "necessary in a democratic society." Policing is a high-stakes profession where sobriety is a functional requirement.
- ***Procedural Fairness***: The exception would not be a "blank check." It must be supported by a revised Police Act that outlines strict protocols for how samples are taken, handled, and contested.
- ***Deterrence***: Explicit constitutional authority sends a clear message that the FPF is a drug-free institution, restoring public confidence in the police.

Amending Section 11(3) is not a removal of a right, but a balancing of rights. The right of an individual officer to refuse a medical procedure must be weighed against the right of the Fijian public to be protected by a sober, disciplined, and reliable police force. We urge the Commission to consider this amendment as a critical step in the modernisation of Fiji's national security framework.

7. Section 24(1) Right to privacy

Subject To enable the conduct of digital covert surveillance with judicial oversight.

It seeks to balance the fundamental right to privacy with the operational necessity of modern, intelligence-led policing.

a) **Rationale**

The primary objective of this proposal is to transition the Fiji Police Force (FPF) from a reactive model to an intelligence-led policing framework. In an era where criminal activity ranging from cybercrime to transnational organized syndicates operates at the speed of light, the law must provide the tools necessary to intercept threats before they manifest. By establishing a clear constitutional basis for digital covert surveillance, we ensure that policing is effective while remaining firmly anchored in the principle of judicial oversight.

b) **Current Challenge**

Under the current interpretation of Section 24(1), there is a perceived lack of clarity regarding the boundaries of digital interception and financial tracking. This creates two significant hurdles:

- **Operational Stagnation:** Law enforcement is often hesitant to utilize advanced proactive tools (digital surveillance, communication interception) due to the high risk of legal challenge or "breach of rights" litigation.
- **Evidentiary Loss**: The current legal landscape does not sufficiently account for the volatility of digital evidence. The time required to secure a traditional warrant often results in the permanent concealment, encryption, or destruction of critical evidence.

c) **Proposed Amendment**

The FPF proposes an amendment to Section 24 of the Constitution to explicitly allow for lawful surveillance and emergency interventions.

The Proposed Text:

"A police officer may exercise the power to arrest or search without warrant when the officer has reasonable grounds to believe that such action is immediately necessary to prevent the concealment, loss, or destruction of anything connected with an offence.

Furthermore, the State shall have the power to conduct digital covert surveillance and communication interception, provided such actions are conducted under a judicial warrant or meet strictly defined national security and public safety thresholds."

d) **Proposal:** A police officer may exercise the power to arrest/search without warrant when the officer has reasons to believe that it is necessary to do so in order to prevent the concealment, loss or destruction of anything connected with an offence.

e) **Justifications**

The inclusion of these powers is justified by the evolving nature of the modern "crime scene":

- ***Prevention of Frustrated Justice***: The "search without warrant" clause is designed specifically for exigent circumstances. If an officer must wait hours for a warrant while a suspect is actively deleting a digital ledger or flushing physical evidence, the judicial process is defeated before it begins.
- **Modernization of the State**: Explicit constitutional recognition of digital surveillance removes the "legal grey area," providing officers with the confidence to use modern technology to track financial crimes and terror threats.
- **Public Safety**: In matters of national security, the ability to intercept communications can be the difference between preventing a crime and merely investigating one after the damage is done.

f) **Safeguards**

To ensure these powers do not infringe upon the democratic spirit of Fiji, the following safeguards are integral to the proposal:

- **The "Reasonableness" Test**: Any warrantless search or arrest must be able to withstand judicial scrutiny post-facto. The officer must document and prove that the risk of "loss or destruction" was immediate and genuine.
- **Mandatory Judicial Oversight**: Except in cases of immediate physical danger, digital covert surveillance must be predicated on a warrant issued by a member of the Judiciary.
- **Strict Thresholds**: "National Security" and "Public Safety" must be narrowly defined by supporting legislation to prevent "mission creep" into the private lives of law-abiding citizens.
- **Accountability Mechanisms**: Any misuse of these powers should result in the exclusion of evidence in court and disciplinary action against the offending officers, ensuring that the right to privacy remains a respected pillar of Fijian law.

8. ***Section 129****(6) The Minister responsible for the Fiji Police Force may from time to time issue general policy directions to the Commissioner of Police and, if such a direction has been issued, the Commissioner of Police must act in accordance with it.*

Subject – Structural Independence of the FPF

This proposal addresses the structural independence of the (FPF). It seeks to align the operational autonomy of the Commissioner of Police with established democratic principles, ensuring that law enforcement remains a neutral instrument of the law rather than a subject of political administration.

a) Rationale

The fundamental rationale for this amendment is the Doctrine of Police Independence. In a robust democracy, the police must operate as a neutral instrument of the law, accountable to the Constitution rather than the shifting priorities of the executive branch. True independence ensures that:

- **Neutrality**: Investigative decisions and resource allocations are based on objective merit and public safety.
- **Professionalism**: Personnel management and operational tactics remain free from political influence or the perception of such influence.
- **Trust:** Public confidence is bolstered when the citizenry perceives the police as an impartial body serving the State, not the government of the day.

b) Current Challenge

The current framework under Section 129(6) creates a mandatory obligation where the Commissioner "must act in accordance" with ministerial directions. This presents several critical challenges:

- **Institutional Inconsistency (Asymmetry)**: There is a stark discrepancy between the FPF and other enforcement or security bodies. The Republic of Fiji Military Forces (RFMF) under Section 131, the Fiji Independent Commission Against Corruption (FICAC) under

Section 115, and the Office of the Director of Public Prosecutions (ODPP) under Section 117 all enjoy high degrees of operational autonomy. The FPF, which interacts most frequently with the public, lacks this level of protection.

- **Perception of Politicization**: The mandatory language ("must act") risks undermining public trust, as it suggests policing priorities can be dictated by political agendas.
- **Operational Interference**: General policy directions can inadvertently drift into operational matters, complicating the Commissioner's ability to exercise professional command and control.

c) Proposed Amendment

The FPF proposes the repeal of Section 129(6) and the introduction of new provisions that align the FPF with the independence models of FICAC and the ODPP.

The Proposed Text:

(1) In the exercise of his or her powers and functions, the Commissioner of Police shall not be subject to the direction or control of any person or authority, except as provided by this Constitution or by an Act of Parliament.

(2) The overall responsibilities of the Fiji Police Force shall be the maintenance of law and order, the preservation of the peace, the protection of life and property, the prevention and detection of crime and the enforcement of all laws and regulations with which it is directly charged; and shall be entitled to have armories for the performance of any such duties to carry arms.

(3) The Minister may issue general policy guidelines regarding the strategic priorities of the Force; however, the Commissioner shall have the final authority on operational command, including investigations, deployment, and internal administration.

d) Justifications

- **Institutional Parity**: It is logical and necessary for the FPF to have the same constitutional standing as FICAC and the ODPP. As the

primary body responsible for criminal investigations, the FPF must be as independent as the body that prosecutes those crimes.

- **Alignment with National Security Standards**: Granting the FPF a similar arrangement to the RFMF ensures a consistent national security framework where professional heads are empowered to lead based on expertise and statutory duty.
- **Strengthening the Rule of Law**: Removing the mandatory "direction" clause reinforces the principle that the police serve the people and the law, ensuring that no individual or political office is above the legal process.

e) Safeguards

The FPF recognizes that "independence" is not "insulation" from accountability. To prevent the abuse of power, the following safeguards remain integral:

- **Constitutional Oversight**: The Commissioner remains accountable to the Constitutional Offices Commission (COC) regarding performance, conduct, and appointment standards.
- **Parliamentary Transparency**: The Commissioner will continue to submit an Annual Report to Parliament, providing full transparency on how the Force has met strategic objectives and utilized its public budget.
- **Judicial Review**: All decisions made by the Commissioner remain subject to the oversight of the High Court. This ensures that independence is exercised within the bounds of the law.
- **Strategic Consultation**: The Commissioner will maintain a consultative relationship with the Line Minister. This allows for the alignment of policing with national security goals through "guidelines" and "cooperation" rather than "directives" and "mandates."

9. Use of Force

This proposal outlines the FPF's submission regarding the Constitutional Regulation of the Use of Force. It seeks to codify the principles of necessity and proportionality within the supreme law to provide clear legal protection for officers while ensuring the highest standards of human rights and public accountability.

a) Rationale

The state holds a monopoly on the legitimate use of force to maintain public order and protect the lives of its citizens. The rationale for this proposal is to establish a unified constitutional standard for the use of force. By grounding these powers in the Constitution rather than solely in subordinate legislation (like the Police Act), the FPF ensures that every application of force from physical restraint to the use of firearms is balanced against the fundamental right to life and the right to be free from cruel or degrading treatment.

b) Current Challenge

Currently, the specific thresholds for the use of force are largely defined in administrative standing orders and the Police Act, which can be subject to varying interpretations in a court of law. This creates two primary challenges:

- **Legal Vulnerability of Officers:** In high-stakes tactical situations, the lack of an explicit constitutional "shield" regarding the lawful use of force can lead to hesitation, potentially endangering the lives of officers and the public.
- **Inconsistency in Accountability:** Without a clear constitutional mandate on "proportionality," judicial and internal reviews of police conduct may lack a consistent benchmark, leading to public mistrust or perceived impunity in cases of alleged excess.

c) Proposed Amendment

The FPF proposes the insertion of a new subsection under the provisions relating to Law Enforcement or the Bill of Rights to explicitly govern the Use of Force.

The Proposed Text:

"(1) A police officer or any person authorized by law may use such force as is reasonably necessary and proportionate in the circumstances for the purpose of:

- Effecting a lawful arrest or preventing the escape of a person in legal custody;

- Protecting any person from unlawful violence;
- Preventing the commission of a serious criminal offense; or
- Suppressing a riot or insurrection.

(2) The use of lethal force shall only be permitted as a last resort where there is an immediate threat of death or serious injury to the officer or another person."

d) Justifications

- **Standardization of Conduct**: Codifying "Necessity and Proportionality" ensures that every officer understands the legal ceiling of their authority. It removes ambiguity regarding when force is justified.
- **Alignment with International Law**: This proposal aligns Fiji's constitutional framework with the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, enhancing Fiji's standing in the international human rights community.
- **Public and Officer Safety**: Clearer laws lead to better training and more decisive action in crisis situations, such as active shooter scenarios or violent civil unrest, where delayed action can result in loss of life.

e) Safeguards

To ensure this power is never abused, the following safeguards are proposed as constitutional requirements:

- **Mandatory Reporting**: Any use of force resulting in injury or death must be the subject of a mandatory written report and an automatic internal investigation.
- **The "Proportionality" Test**: The Constitution shall require that the force used must be the minimum amount necessary to achieve the lawful objective. If a lesser means was available and discarded without reason, the use of force is deemed unlawful.
- **Independent Oversight**: In cases involving the discharge of firearms or serious injury, the Fiji Human Rights and Anti-Discrimination Commission or an independent police oversight body must have the power to conduct a parallel investigation.
- **Duty of Care**: The amendment will include a requirement that once a person is subdued or in custody, the police have an immediate

constitutional duty to provide medical assistance if force was applied.

10. Delegation of Powers

a) Rationale

The rationale for this proposal is to safeguard the Command Integrity of the FPF. The Commissioner of Police (COMPOL), as the professional head of the organization, is best positioned to determine which senior officer possesses the specific operational readiness and leadership competence to manage the Force in their absence. By establishing this as a sole prerogative, the FPF ensures that leadership continuity is a matter of professional judgment rather than administrative or political appointment.

b) Current Challenge

- **External Interference**: Without an explicit "sole prerogative" clause, the process of naming an Acting Commissioner even for short durations can become susceptible to external influence or "office of the minister" directives.
- **Operational Ambiguity**: If the selection process is not clearly defined as the Commissioner's personal mandate, it can lead to internal jockeying or uncertainty among the Deputy Commissioner (DCP) and Assistant Commissioner (ACP) ranks, which undermines the "single line of command" essential for national security.
- **Limited Scope of Acting Appointments**: Current frameworks often treat "Acting" roles as mere placeholders. This lacks the constitutional weight required for a delegate to take decisive legal actions across all relevant legislations.

c) Proposed Amendment

The FPF proposes that the Constitution explicitly recognize the Commissioner's exclusive authority to designate their temporary successor.

The Proposed Text:

"(1) The Commissioner of Police has the sole prerogative to select and designate, in writing, a Deputy Commissioner of Police or an Assistant Commissioner of Police to exercise the full powers and functions of the Office of the Commissioner during any period of the Commissioner's absence or temporary incapacity.

(2) The officer so designated shall have the authority to act and execute all statutory duties, discretions, and powers vested in the Commissioner by this Constitution or any other written law, notwithstanding any provision to the contrary in such law.

(3) This power of selection is an internal command function and shall not be subject to the direction or control of any person or authority."

d) Justifications

- **Reinforcing Independence**: This amendment is a practical application of the Doctrine of Police Independence. If the Commissioner chooses their own delegate, it prevents the Executive from "installing" a preferred officer during the Commissioner's absence.
- **Leadership Trust**: Effective policing requires a seamless transition of trust. The Commissioner must be able to delegate to the officer they trust most with sensitive intelligence and ongoing high-level investigations.
- **Legal Efficiency**: By granting the delegate the power to "act" (not just "endorse") across *all* legislation, the FPF eliminates the risk of legal challenges in the High Court regarding the validity of warrants or orders signed by an Acting Commissioner.

e) Safeguards

- **Rank-Limited Delegation**: The "sole prerogative" is restricted to the DCP and ACP ranks only, ensuring that power never falls below a constitutionally vetted level of seniority.
- **Documentary Record**: Any such delegation must be made via a formal written instrument, providing a clear legal trail for the Judiciary and the public to know who holds the authority at any given time.

- **Time-Bound Nature**: This prerogative applies only to temporary absences. In the event of a permanent vacancy or long-term incapacity, the standard constitutional appointment process via the Constitutional Offices Commission (COC) would still apply.
- **Continued Accountability**: The officer exercising the delegated power remains fully accountable to the law and the COC for any actions taken during the acting period.

11. Conclusion

Honourable Chair and Commissioners,

The proposals submitted by the FPF today are anchored in a singular, non-negotiable principle: the Doctrine of Police Independence. For our democracy to remain resilient, the Police Force must function as an institutional cornerstone that is shielded from the shifting currents of political administration. We do not seek to operate outside the law, but rather to ensure that we are governed *only* by the law.

The FPF is the primary interface between the State and the rights of its citizens. Therefore, it is a constitutional necessity that the Commissioner of Police be granted the same structural autonomy already afforded to the Republic of Fiji Military Forces, the ODPP, and FICAC. By removing the mandate for ministerial direction and clarifying the Commissioner's sole prerogative in matters of command and delegation, we ensure that policing decisions from tactical operations to the use of force are made with professional integrity and objective merit.

This submission is a call for Institutional Maturity. We are asking for a Constitution that empowers the Force to be a neutral instrument of justice, accountable to the people of Fiji through the Judiciary and the Constitution, rather than a subject of executive policy. In doing so, we strengthen the Rule of Law, safeguard the fundamental rights of every Fijian, and ensure that the FPF remains a professional, apolitical, and trusted guardian of our nation.

We thank the Commission for this opportunity and stand ready to provide further technical and legislative support to see these vital reforms realized.

Vinaka vakalevu and God Bless our Beloved Fiji.

Fiji Medical Association (FMA)

Fiji Medical Association
Time: 2.00pm-2.45pm
Date: 21-04-2026

Mr. Valenitabua: Mr. Vakamocea, on behalf of my two colleagues, I welcome you to the Constitution Review Commission this afternoon. First, we thank you very much for your attendance, following the invitation that was sent to the FMA. We are glad that you, thank you for the written submissions which we have just received.

The Constitution Review Commission is being tasked with reviewing the 2013 Constitution. It comments in relation to it, for and against. Despite that, we are moving forward in relation to the review.

And part of the review, or towards the review, is listening to citizens of this country, or people of Fiji, to come and give their views in relation to the 2013 Constitution to this commission. Our task is to collect submissions, collect views, collect ideas, and so forth. After which, we will consider those submissions, and if need be, try to put them into a report.

But that is at the end of the line. As for this afternoon, it is just our task to listen to you. With me this afternoon are two of the commissioners. In total, there should be seven of us. Two have just gone to the FBC for a broadcast session there. We are trying to reach as many people as possible around Fiji.

In addition to this, for the past three weeks, we have been doing consultations here at Level 9, Suvavou House. From the first week of May, we will be going out to the country. We are trying to come up as large an area as possible, and speak to as many people as possible.

We understand that this Constitution, one of the critical points, which has created a lot of criticism, is that we did not know about it. There was a lack of consultation, public consultation, and that is what we are trying to remedy here. Before amendment, let's get these views from the people.

So, we are glad to have you. We've got Mr. Conway Beg on my right, and Dr. Fatiaki, as you would well know, here on my left. I'm told that, no, I

won't go into that. So, with those few words, I invite you to please make your submissions to the Commission. Thank you.

Dr. Vakamocea: Thank you. Yes, on behalf of the Fiji Medical Association, I'd just like to thank the Commission for the invitation to come and participate in this very important consultation. So, I bring you salutations from the Fiji Medical Association, representing the President and the Executive Committee. So, just in summary, the Fiji Medical Association, under the Medical and Dental Practitioners Act, we represent the voice of all doctors in the country.

And we have decided to word our submission to the Commission today around the sections that are particularly of importance to the medical fraternity in the country. We have intentionally decided to stay away from discussions around some of the more controversial bits of the Constitution, like the identity. For us, we feel that's almost a non-issue, regardless of what identity or ethnicity anybody holds dear to them, we will treat you the same.

So, things like that we have decided to stay away from and just focus on the important issues that we feel need to be strengthened in the Constitution. So, basically, we have just five things to discuss.

The first is, particularly under Section 38, the right to health. While the current Constitution guarantees this, we feel that there's some strengthening that could be added to it, and that is mostly around the resourcing. So, the current section talks about the right to health, including access to health services and conditions necessary for good health. The proposed strengthening that FMA would like to suggest is that it includes that the state has a responsibility to maintain competent, ethical, and a supported medical workforce.

And also, to look at professional bodies like the Fiji Medical Association or the Fiji Nursing Association as not merely just stakeholders, but partners. And this would improve things like information sharing between the ministry and these professional bodies. So, that's the first thing, just around Section 38.

The second one is looking at professional independence and clinical autonomy. So, this is with reference to Sections 1, 16, and 38. And our submission is, basically, that the Constitution recognizes that health

professionals need to be able to exercise their independent clinical judgment, while ensuring consistency with law and professional standards, without being influenced by administration.

So, at times, what we've seen on the ground is that even though we have a particular clinical decision, or we've made a clinical judgment, sometimes we get pressure from the administration to adjust our clinical judgment. And we feel that that's something that our doctors, our medical staff on the ground need to be protected against. And we saw a lot of this, some of this during COVID, and there's been many other examples where clinicians have been asked to adjust their decision by administration. So, that's one of the areas that we would like to see a bit more protection around.

The third one is around statutory councils, like, for example, the Fiji Medical Council, and ensuring that they are able to perform their functions, again, independently. A particular reference here is in one of the amendments to the Medical and Dental Practitioners Act, 2010.

It gives the Minister for Health almost veto powers. So, for example, if an application for registration of a doctor comes into Fiji from, say, from an external country, and the council does its due diligence, and does background checks and everything, and at the end of that process, it says that this person cannot be registered according to the standards set by the council in Fiji, the minister then has veto powers according to the Act to overrule that. And that's something that we feel should be protected in the constitution, that statutory professional councils be independent from their ministers.

I mean, obviously, there'll be certain caveats, like, you know, if the issue has a legal issue, or if there's procedural fairness that's there, then obviously the minister should be able to contest that decision. But, yeah, we just want to make sure that those professional councils are protected from issues like that, that can arise. And then this is one you're probably also going to hear from other bodies in health, like the nurses, for example.

And it's around human resources. And what we'd like to see strengthening is reasonable measures being taken by the government to ensure that safe, humane and sustainable work conditions exist for health professionals. And so, like, we've seen this on the ground many

times where our staff need to work, you know, not just long hours, but sometimes even without electricity and water.

And those are, like, basic things that you need in health in order to be able to deliver a standard service. So, we want to ensure that this is enshrined in the constitution, that the ministry needs to ensure, that government needs to ensure the protection of its workers, especially when they get posted out into the health sector.

And the last one is another interesting one. So, under the Act, the Fiji Medical Association has the responsibility of expressing its views to the public when there's issues with the health system. And also educating the public on matters of national importance when it comes to health. Now we feel that at this point, a lot of our doctors are inhibited from being able to discuss this without getting the prior permission of the Permanent Secretary. And we feel that as doctors, this should be a basic right, that we're able to do these kinds of professional advocacy without having to keep securing permission.

So, doctors should have the right to speak responsibly on issues that affect healthcare delivery without having to seek permission from the Ministry of Health. Because sometimes there's a bit of a conflict of interest.

A good example of this is a recent memo released by one of the Permanent Secretaries, which basically tells medical staff to refrain from discussing issues at CWM. And these are important issues that affect patient safety and quality care. Things like that shouldn't be included in the constitution.

So, we'd like to make sure that our medical staff on the ground are able to speak responsibly about issues that affect the public without having to seek permission. So, commissioners, in summary, it's those aspects that we'd like tightened up. And yeah, you have the submissions in front of you. And we'll be happy to take any questions that you have.

Dr. Fatiaki: Thank you, Alipate and Michael. It's a pleasure, first, to have you both here. I thank you on behalf of the commissioners for the work that you do on behalf of the profession. And I thank you for taking the time and the effort to prepare a formal submission to the commission. I declared a conflict of, I wouldn't say a conflict of interest, but I declared the fact that

I was very close to you folks in more ways than not, and that I might not be asking too many questions.

Having said that, I think that all the things that you've incorporated here have in various ways been brought to us by some of the other submittees. This morning, we had the Fiji police force. I understand from my daughter that there's a picture of me looking very animated this morning. She said, who are you attacking, Dad? That was sent to me at lunch hour. And I said, I think that was the Fiji Police Force. And it was an animated discussion.

But we were coming, and sorry, I relate this to yours, and I have a personal thing because I was in the medical council when the issue, for instance, of the registration of doctors in Fiji was taken away from the independent professional body that is not only tasked with, but has the absolute right to, and the expertise to make determinations about whether somebody should practice in Fiji or be given a medical license. I have no doubt that this raises bells with you, Conway, as a professional architect. I'm sure that you would feel that your professional body should.

And the idea that we went to a point where basically there was a committee of permanent secretaries who could decide that in the interest of the nation, they could approve doctors to practice in Fiji, send that list up to the Fiji medical council, and expect us to then say, rubber stamp, yes.

So that aspect of keeping the independence of the profession was something that the police force brought up as a constitutional office of not having to be told by the minister to do this or to do that, given that the minister is a political appointee. And that they should be, after they've been appointed under the Constitutional Officers Commission, be given the opportunity to operationalize their work without these looming overheads.

So, this issue of independence in the Constitution, I noticed that there is very specific mention of these Constitutional Officers Commission's appointments, of the Commission of Police and others. I looked under the public service, which was allocated to my colleague. I didn't have that section, but I noticed that there isn't any specific to the profession.

There is about the public service and public servants, because a lot of the issues that you have raised are pertinent. And as a professional, as a doctor that deals with life and death decisions, I know that we make decisions every day that are hard and difficult, not easy to make, whereas bureaucrats in government offices will often make decisions that don't look at the matter the way that a doctor sees it. My comments really relate to the fact that I couldn't agree with you more.

Given the gravity of the written stuff, I, as an aside, I always tell my Constitutional Commission, when it comes to the Bill of Rights, we found that a lot of them had one line, this is your right, and then about eight qualifiers that basically took away your right, or gave the government the ability to enact a law to take away your right. In this instance, though, I want to suggest to my fellow commissioners that we look at actually including some of your submissions into the right to health. So, where it says right to health, right now they talk about, I think, 1, 2, 3, subsections 1, 2, 3, the reasonable measures within the available resources.

I refer you to subsection 3, they say, well, if the government says they don't have the resources, they must prove, they must provide. It's the responsibility of the state to show that the resources are not available, which means that they can't use, oh, we don't have the resources, therefore we're not providing accommodation for the nurses or the doctors. But I take, like I say, I take back from what I always suggest for the Bill of Rights, because I can't find any other place in the Constitution that I would put it in.

And despite the fact that I refer a lot of the people who bring things to the Constitution commission to include, I tell them, look, you'd be better handled if you put it into your respective acts. For me, this is so important, that some of this can be incorporated under your Right to Health. And I would like to assure you that we will consider that seriously.

I think you've put it in a way and in a form that allows us to selectively, we will have expert drafters who will draft this, that we will caution them about not making this over-encompassing. But I can't see that anything you've asked for could not be included under the right to health and be encompassing. You know, if we included the nurse's body, the FMA, I'm sorry, the Fiji Medical Council, Fiji nurses, and we put them into it as the

recognized bodies represented, I'm sure that we can do that as one-liners.

That somehow makes it extremely difficult for the PS to direct doctors to the blanket, don't talk to anybody about it. I mean, you already have it under the right to information and the right to free speech, but if it's put there specifically for health, I think that's important. I don't, now that the media is here, I don't want to, but the fact that we got a pathologist report released in the last three days that says, you know, I mean for us doctors, we know, you know, it's say at your peril, but I think all of us salute him for writing what he found.

And I think the public of Fiji, when it comes to issues of health and personal well-being, would take the attitude that this, I want to trust you doctor. I want to trust you with my life, and I want to trust you with information and the disclosure of information. So, there's an example where this aspect of, and like I say, I assure you that we will be looking in the context of the right to health, the corporate components of this stated in the constitution.

I don't think anyone would disagree with us. This is not a thing that people will argue over. You know, it's not a right to life or abortion or something. These are things that every person would support, and I think the constitution as a supreme law can afford us the discretion, the protections that I hear you asking for. Thank you.

Mr. Beg: Through you, Chair, thank you very much for that presentation. Again, I echo the same sentiments of my commissioner. I guess, you know, he's a subject matter expert here. I'm just the architect.

I see things through the lens of an architect. So, you know, I always reference in our discussions the constitution is the architecture of state, you know, so we always have these conversations. But I listened carefully to your points and the right to health- section 38, and it says, you know, from what I hear from your presentations, it lacks, and again, this is resonating through the previous submissions, lacks enforceable system obligations.

If I'm correct. I mean, the evidence is it needs the workforce support, ethics, resourcing, resourcing is an issue. I think that's a rule. Again, whether it's constitutional or it becomes an operational thing, but I'm

astonished to hear from my learned friend, Left here about your medical council. I would have thought that, you know, as an architect, we have our own act, by the way, and the act is very explicit and very clear and defines the qualification of a registered architect, and it's very, very clear. No one else has any, no minister or whatever has any interference with it.

So, I'm really surprised that the medical that I'm hearing this is conflicted with this. I guess, and I'm trying to understand, maybe perhaps you can give me an example of where this is occurring, because I had a client as well who was willing to come and help. I won't mention his name, but he's quiet, he's a surgeon, very well-known surgeon, was willing to help in the medical system, but on the grounds of applying was rejected. All he wanted to do was to help and contribute. But that's neither here nor there. I'm just asking when you're talking about resources and the facilities that you operate in.

I think we also heard from your colleagues, the Nurses Association, yesterday, was it, or the day before, the same sentiments about going out in the workforce, protection for those workers in the state, providing medical, private and state are two different options, or providers. So, the same sentiments are being echoed there. And I like your, the fact that you mention the need to come together as bodies, Fiji Medical Council, Fiji Medical Association, the Nurses Association.

I think that's kind of, is it, from what I'm hearing, is it disjointed? I mean, I'm asking the question. Is it disjointed, or is it unorganized, or is it organized chaos? I don't know, so I'm kind of, but I think the problem comes back to your, when I was looking at the clinical independence of administrative control, right? So, administrative interference in clinical judgement, and there's evidence, like for example, the recent COVID we had, the expertise in that area. I guess you were involved, but whether or not executive control, and I think Dr. John, my fellow commissioner, was talking about that earlier on. Maybe you want to reiterate that point again afterwards, John?

Dr. Fatiaki: Just in the way of clarification, fellow commissioner, and I have no doubt that this will be supported by Alipate and Michael. There are two areas that need to be considered. One is that unlike architects, where, what is the percentage, 80% of doctors work for government, so they're government employees, and not only do they have to consider their

professional opinions, but they also have to comply with the requirements of the civil service.

That's an area that is difficult, particularly when it comes to, for instance, directives. I keep emphasizing the profession is, I used to say that the only thing closer to God than the profession is the priest, or the pastor, because our work is very similar to them, and it, you know, when a doctor makes a decision about your health, he has to go beyond the directive from a PS, and many times it will actually conflict with the directives of the PS of the employer, but it's a matter of almost like conscience, and as a professional, you know, we take a, I think we're the only one that actually takes an oath, the Hippocratic oath, that actually, do architects take an oath? I'm not sure, but we actually do, and there is meaning to this.

Mr. Beg: Oath to what? Which oath? Yeah, the medical,

Dr. Fatiaki: All medical doctors all over the world, I think, to all intents and purposes, still practice that, and in that oath is a commitment to a patient, you know, with guidance from God and Greek gods or whatever at that time, with specifically that, you know, you entrust to me your life, I promise you I will tell you the truth, for instance, and it's that part of it that I think often conflicts, because most, many doctors are in the civil service, and do worry about things like that, and that's why their right, for instance, to advocate on behalf of their patients, should be almost constitutionally protected, I think that's what's been asked for.

Mr. Beg: Yeah, I think, but I was, so you're suggesting the constitutional gap is the professional independence with the state services, is what Dr. John or my fellow commissioner, sorry, Chairman, having this bouncing argument, and you, sorry about that.

Dr. Fatiaki: So that's one of it, the independence fund, but all the other parts in terms of sufficient funding, I've alluded to that, they've talked about that in the current act, but in areas like, you know, the need that when you post the doctor or nurse out somewhere, that you actually provide them something to, a place to live, not only the hospital, those kind of things, which they've alluded to at different parts over here, I think are areas that we can certainly address.

Mr. Beg: I just have a couple of more, if you don't mind me, Dr. John, sorry. Sorry, Chairman. I was looking at the independence of the statutory professional bodies, ministerial veto over the Fiji Medical Council decisions, like there's evidence that you're presenting, you know, overrides registration decisions. Constitution, is it an operational?

Dr. Fatiaki: No, you're very kind. It didn't override decisions, it made the decision, and then sent it to you to comply with it. So, they decided who the doctors were that could be registered, and let me say in fairness to government, they were trying to address issues, for instance, they suddenly had a situation where, with our consultation with the medical profession, they sent lots of students on scholarships to Georgia, Cuba, and you know, China, Vietnam, nothing against their respective medical schools.

But the point was, because they didn't send them there, when they finished and came back, we expect them to go through the normal process of looking at their qualifications, the degrees of study, how much hours they spent, and then at the end of it, they go into an internship, and then at the end of that, they get their full qualification. In that process, it found, for instance, I was there when the first Cuban doctors came, and of the cohort of doctors that came, I think none of them passed the internship. Zero out of 12 or 14.

Not because these are not good students, but the medical standards that they received, and the medical training they received, were more along the lines of what I would consider a nurse practitioner might have now. It was, you know, you can post to Africa, and the Caribbean, and places like that, without necessarily maintaining the, I guess, Australian, New Zealand, British standards that we had inherited. And so, the idea was that that was the case. We didn't want to modify that to just accept them into the system, so I think we accommodated them by making the internship a two-year program.

In the process of doing that, we tried to address it. Government then took it upon itself, as with the powers that they had, to then make modifications to the Medical Practitioners Act, to say, okay, we're forming a committee of PSs that will look at professional qualifications, and we will assess that, in the interest of the nation, we need these, then we will approve it, and you guys give them the certificate to practice.

I think, in a summary, I'm very acutely aware of this, because we were there. I said I would not agree to that. I'm sorry. I would resign from the FMC before I did that. And, you know, to hand, it didn't matter, because my term expired anyway. But that's how strongly I felt about it.

Mr. Beg: Sorry, thank you, Dr. John. The other one was the point that you made about working conditions. I think we addressed that with the Nurses Association under Section 38.

So, if you, I think, Jane, we wrote a little instrument there to the nurses. We gave them some hint, so maybe we can share that, but you probably want to look at that when making some suggestions. I strongly feel a lot about this subject, because it's in my chapters. Dr. John said, I'm looking at that. Sorry about that.

And then the last one was freedom of professional expression. I like that thought where you stand tall and face rather than going through executive power. So, to control, I do like that a lot. Thank you for that.

Mr. Valenitabua: Yes, Dr. Vakamocea and Dr. Solomoni. Thank you very much. We appreciate the submissions. Our job here is to, you know, get submissions and then try to add them into the Constitution, like Dr. Fatiaki has said. He was championing not adding too much into the Constitution. Now maybe because he's got a medical background, he's now saying that we should add more to the Constitution. Anyway, we will talk about that.

We have been talking about rights, rights, rights under the Bureau of Rights. So many associations, so many people have come before us talking about rights. This morning, we had the Fiji Police Force. They were worried about rights when they are undertaking their duties, duties of arrest, duties of search, duties of drug testing for their police officers. Now all those require very careful judgment and very careful application of discretion.

Now you stated in your opening submission that health officers to exercise their personal discretion without interference from administrators. I understand that. I do medical negligence cases. I've read medical negligence cases. Now, most of those cases would follow discretionary decisions by the doctors. It's not easy to be a doctor.

I understand that, yes. Now when you are dealing as a doctor, when you are dealing with a patient, let's say with due respect to Jehovah's Witnesses, Jehovah's Witnesses, they don't have blood transfusions. Could you give us an idea of how you as a doctor would go about handling that? I know that patients must give consent.

Now Jehovah's Witnesses, they do not. They do not agree to any blood transfusion at all. In the exercise of your discretion, like police officers, they don't have much discretion.

They have to follow the regulations and all that. But in your case, as in the case of other professions, how do you go about exercising your judgment and your discretion in that instance?

Dr. Vakamocea: Thank you, sir. That's a very specific example and it's actually, it's a little bit, so you divide them into two. You have the adults who have the authority to make a decision on their health. So, for those people who decide, and after we have explained all the medical issues, medical reasons why we need to give them blood, if they still refuse, we will accept their power of autonomy.

For children, it's different. For children, under the Child Welfare Act, we can, through the, I think it's permission from, I can't remember, don't quote me, it's the Minister or the Permanent Secretary, we can, as doctors, become the wards of the child and make the decision on their behalf. Even if the parents are Jehovah's Witnesses and they sign against, we will treat the child, we will take responsibility and do what is in the best interest of the child. So basically, we make the decision on behalf of the child. And if that requires blood, we've usually given that. So that's under the, we have to fill in a child welfare form, something to that effect. So that's the difference.

For adults, we allow them to make their own decision. For children, we sort of take over the rights of the child.

Mr. Valenitabua: So that is the legal, that is the legislation you rely on in relation to children.

Dr. Vakamocea: Correct.

Mr. Valenitabua: And for adults, it's up to the adults.

Dr. Vakamocea: They are, yeah, they are their own power of attorney.

Mr. Valenitabua: Is there any other legislation which regulates that? Not to my knowledge. So, they must be in the right frame of mind for them to be able to make their decision. But yeah, I think that's all we have at the moment. I'm happy to be corrected by Dr. John.

Mr. Valenitabua: Section 11.3 of the Constitution. Section 11 deals with freedom from cruel and degrading treatment. And subsection 3 says every person has the right to freedom from scientific or medical treatment, medical treatment, or procedures without an order of the court or without his or her informed consent. So, for every, for every medical treatment, do you get consent? For every medical treatment. Or there's discretion, apart from the job of surgery?

Dr. Vakamocea: Not for every procedure. Like for major procedures like surgery, for example, we would take consent. But not necessarily for every, like we have minor procedures like cannulation where you're given a drip or things like that. We don't usually secure consent. It's usually verbal, if any. It's usually verbal. Not written consent. Written consent is usually for major procedures.

Mr. Valenitabua: So that is after considering the rights under the Bill of Rights?

Dr. Vakamocea: Yes.

Mr. Valenitabua: Yeah, there's so much trouble, you know, in relation to the Bill of Rights. And we know that we have to hit a balance somewhere. Yeah. Because we've got rights here, and then you've got, like Dr. Fatiaki just said, there's a right and then there are qualifiers or limitations. And we have to be careful about that. When we are adding whatever else, we're going to add into the Constitution.

Dr. Fatiaki: I might just address this in two ways. This is specific to Section 11.3, Subsection 3, which says every person has the right to freedom from scientific or medical treatment or procedures without an order of the court or without his or her informed consent or if he or she is incapable, you know, giving informed consent without the informed consent of a lawful guardian, like a child. Now, I think this raises two issues.

One is the issue of taking away this right and giving it to the state. Because this is the Bill of Rights, and the Bill of Rights says that you can't do that. Obviously, there is a law that allows the children to become a ward of the state, essentially, and therefore takes this right away from you.

Now, I wonder whether anyone's actually challenged it, but I would be very concerned about myself as a doctor if I took that right away, now that I'm aware of it, from the parent, and say, because I think this is the best thing for your child, I'm going to do this because I can see a good lawyer will sit here and say, how dare you? This is the supreme law.

The second area, and this is the exact counter-argument of this, is as doctors, we should also be able to exercise your individual freedom. And there's no question, you as a scientist know as well as I do, that there are many cases where the decision-making process differs, and we come to a consensus as to how we progress.

I say that in the context of this, for instance, this would then, basically, if there is a law written to that effect, not this supreme law, then what it does is it forces the doctors who may, you know, consciously object to this, to not be able to do it. because administratively they've been told, you give the transfusion because the current feeling is the child needs it, and you take it away from the parent. That is something that, I mean, I struggle with.

At a personal level, I would not obey the law. If the parents did not want me to give the child that, I would not take that right away because I know that they have the right under the Bill of Rights. So, I would not do that, even if I'm being pressured.

The other area, also, in terms of decision-making, Chair, if I might allude to, I think you heard very clearly, Dr. Vakamocea is very clear with his words, the clinical people do not like the administrators to tell us what to do. So, what he's saying is it's like the Architects don't want Ministry of Engineering, PWD, to tell them what to do. That's what the doctors are saying.

They will discuss with other doctors what to do, but don't someone from the head office tell us what to do. That's what he was saying when he said administrators because right now, where there is a hierarchy and

you work in the government department, then you have to listen to the administrators. And the decision is a clinical one and I think that's what they're trying to emphasize is he didn't say other doctors, he said administrators, which means, I mean there's no question about it, any decision that's made on a patient is made by many doctors, from the registrar, the intern, the junior resident, even the sister and the consultant. And the decision is made there. And I don't think that's a dispute. No one would dispute that. I think he has an issue if the where administration tells the doctors what to do. Thank you.

Dr. Fatiaki: Thank you Dr. John. I would have thought that that kind of practice at the end of the day would come back to the subject matter expert. I mean you have the authority under the rights in the constitution to challenge that executive control under the constitution because you do not have and that's what I'm thinking. My chair is a good learner in legal and mining so I have to be careful what I say.

But I agree with you Dr. John. I think it's quite an interesting one. But just really quickly looking at Australia and New Zealand systems under the consent, New Zealand is quite interesting because New Zealand says here it's under the care of children's act.

They have a children's act in New Zealand. And New Zealand, well New Zealand doesn't have a constitution so statutes of law and then comes their bill of rights is protected under that.

Australia is kind of slightly different. Can consent, parent primarily authority if the child is not competent so the parent has the final say. Then the doctors has assessment for the competence of that but that decision or the competence certificate regardless of what the parent says whether they don't consent or don't consent is done for the purpose of for court for special medical procedures. So maybe that's something we could look at Dr. John. I don't know if I'm talking out of league here but I just want some clarity around that because it's something we're hearing in this space quite a lot especially in public hospitals and state services. Thank you.

Dr. Vakamocea: If I may be able to give another example. So, I had a patient who the child, I can't remember, is less than one years old. They had malnutrition and they suffered from a burn. It was like a 40% burn.

CWM was full and I had admitted the patient at Navua. Had come to check on them in the afternoon and the mother had taken the child back to the village to go and get massaged and so I used that particular part of the act and went and got police, removed the child from the mum's custody, brought her back to the hospital and treated them. So that's another way that it can be used.

I was acting in the interest of the patient overruling the family based on medical science, I mean obviously. So that's probably another way, for lack of a better word, a more appropriate way of using that legislation.

Mr. Beg: Yeah, I think that's great because then that empowers the medical expertise to act accordingly. I think. Thank you.

Mr. Valenitabua: Is there any Is there any provision in any legislation which covers doctors from negligent claims?

Dr. Vakamocea: No. Not to my knowledge, Chair.

Dr. Fatiaki: If I may respond to that. So, there are two provisions. One is if you work for government you're covered collectively by the government professionally for cases of negligence. If you're working private you have insurance. So, in both instances you are covered.

Let me state though that I think as far as the profession is concerned that's not to suggest that you're not guilty of it. We want and all cases of negligence will be argued by professional witnesses on either side. And the point I'm making is the only way you're going to convict somebody of negligence is if other doctors, professionals who did fell below the required standards or the required practice and therefore you were then negligent by that.

And so, it is the profession taking care of what they know best. But in terms of cover you're covered if you work in government by the government and if you're in private you're covered by legislation that requires you to get insurance.

Mr. Beg: And that chair if you answer that the question is prevalent in all professional bodies professional indemnity covers applies to us, engineers and everyone else.

Mr. Valenitabua: And you're only under cover if liability is proved.

Dr. Vakamocea: Sorry. So, there's two ways. One is through the civil method through the court and that's where you get your professional indemnity. The other way is through the medical council. So, there's a subcommittee of the council called the conducts committee and basically at the end of that pathway you can get struck off the registry if you are proven to be negligent and a couple of other things.

Mr. Beg: Chair, while you're waiting for that I'd just like to use that example that you used because New Zealand had a case very similar to that. It was called Marion's case. Are you familiar with that? Where the parent couldn't decide and the doctor's advice was final and it required court authorization.

I'd like to use your example maybe as a founding principle to this because I find it's important because your passion and your first... I consider you under Chapter 6 we have disciplined services and I think Dr John was saying this along the similar lines and I think you were talking about it. You know why you couldn't be considered as a disciplined force but you're frontline forces are not explicitly defined in the Act because the nurses have the same issues. The medical practitioners I like to use the word medical.

I think maybe perhaps I'm hearing this and I want to have this debate with our fellow group. I can guarantee you when we talk it's heated arguments but nice heated arguments. I would like to think it's really good but the question is whether you are considered frontline workers so it's... but I'd like to think that we can improve that space where you're empowered as a professional practitioner and the question about assessment for discipline and conduct, I think that's equally important that it comes back to the medical profession for assessment and not back to executive power which I've alluded earlier on in my assessment. But yeah, thank you.

Mr. Valenitabua: Well, I believe that brings us to the end of our consultation this afternoon. We thank you very much. We will consider the contents of the submission and with the guidance of our good doctor commissioner on my left we shall see to what we can do with it. Apart from that, thank you very much and we wish you a pleasant evening. Thank you.

----------End of Session [21-04-2026]----------

Fiji Medical Association Constitution Review Submission

Executive Summary

The Fiji Medical Association (FMA) submits that constitutional protection of the right to health is inseparable from the independence, standards, and wellbeing of the medical workforce and the integrity of professional governance institutions established under the Medical and Dental Practitioners Act (MaDPA).

- Strengthen Section 38 (Right to Health) to expressly recognise the health workforce and professional standards as enablers of this right.
- Affirm clinical independence and ethical practice and protect evidence-based clinical judgement from undue interference.
- Recognise the constitutional importance of statutory professional councils and representative professional associations in health governance, standards-setting, and accountability.
- Frame workforce welfare (safe and sustainable working conditions) as a health system requirement relevant to the realisation of the right to health.
- Protect good-faith professional advocacy and whistle-blowing in the public interest.

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1. Background

Fiji Medical Association is governed by the Medical and Dental Practitioners Act (MaDPA) and is:

- A statutory body explicitly continued by law[1]
- Mandated to protect both the medical profession and the public[2]

Formally embedded in national health governance, including:

- Representation on the Fiji Medical Council[3]
- Nomination to the Professional Standards Committee[4]

This gives the FMA legitimate constitutional interest in:

- How the right to health is framed and protected
- How professional autonomy, standards, and ethics are safeguarded.
- How clinicians can discharge their public-interest duties without political interference

[1] Part 12 Medical and Dental Practitioners Act
[2] Section 105 of the Medical and Dental Practitioners Act
[3] Section 5 of the Medical and Dental Practitioners Act
[4] Section 13 of the Medical and Dental Practitioners Act

2. Key constitutional issues relevant to the FMA's mandate

2.1 Right to Health (Section 38 – Constitution)

Section 38 establishes the progressive realisation of the right to health, including access to health services and conditions necessary for good health.

FMA submission position:

The right to health is constitutionally guaranteed, but its realisation is impossible without safeguarding the professional standards, independence, and welfare of the health workforce.

Proposed constitutional strengthening

Explicit recognition that:

- The State's obligation under s.38 includes maintaining a competent, ethical, and supported medical workforce.
- Professional standards bodies and representative associations are partners in realising the right to health, not merely stakeholders.

2.2 Professional Independence and Clinical Autonomy *(Sections 1, 16, 38 – Constitution)*

Under the MaDPA, the FMA has responsibilities to:

- Maintain standards of conduct and competence.
- Promote integrity and status of the profession.
- Protect the public in matters incidental to medical practice.

Constitutional concern:

Currently, the Constitution is silent on clinical independence, despite recognising:

- Lawful, rational, and proportionate administrative action (s.16)
- Human dignity and personal integrity (s.1)

FMA submission position:

Clinical decision-making must be protected from improper political, commercial, or administrative interference, as such interference directly undermines patient safety and constitutional health rights.

Suggested constitutional consideration

- Explicit recognition that:
- Health professionals must be able to exercise independent clinical judgement, consistent with law and professional standards.
- State policies and administrative directives must not compel clinicians to act contrary to professional ethics or evidence-based practice.

2.3 Role of FMA in Standards, Governance, and Accountability

Standards-setting and regulation

Although regulatory authority sits with the Fiji Medical Council, the MaDPA deliberately embeds the FMA in:

- Governance (Council membership)
- Standards development (Professional Standards Committee)
- CPD frameworks and ethical guidance

FMA submission position:

The Constitution should recognise that independent professional institutions are essential components of good governance in health.

This aligns with:

- Section 1 on separation of powers, transparency, and accountability
- Section 97 which requires State institutions to be protected to function effectively.

Suggested constitutional reinforcement

Statutory professional councils and recognised professional associations, established to regulate health professions, shall exercise their regulatory, standards-setting, and disciplinary functions independently, free from undue executive or political direction, except as provided by law for general oversight, appeal on points of law, or procedural fairness.

2.4 Workforce welfare as a constitutional health system issue

Workforce wellbeing and retention *(Sections 20, 31–38 – Constitution)*

The MDPA explicitly makes the FMA:

- The negotiating body for public sector doctors
- Responsible for welfare and integrity of the profession

FMA submission position:

Workforce welfare is not an industrial issue alone; it is a constitutional health system issue.

Poor conditions, burnout, and attrition:

- Undermine the right to health.
- Threaten continuity and quality of care.
- Create inequitable access, especially in rural and underserved communities.

Suggested constitutional framing

Recognition that the State's duty under s.38 includes:

- Reasonable measures to ensure safe, humane, and sustainable working conditions for health professionals.
- Engagement with representative bodies (like FMA) in health workforce policy

2.5 Freedom of professional voice and advocacy *(Sections 17, 18, 19 – Constitution)*

Under MDPA, the FMA is mandated to:

- Represent the views and interests of the medical profession.
- Advocate on matters affecting public and professional health.

FMA submission position:

Professional advocacy in the public interest is a protected constitutional activity, not political misconduct.

Risks to flag:

Chilling effects on:

- Speaking out about patient safety
- System failures
- Resource shortages or policy harms

Suggested constitutional principle:

- Affirm protection for good-faith professional advocacy, whistle-blowing, and evidence-based critique in matters of public health.

3. Requests to the Committee

The FMA respectfully recommends that the Constitution Review consider:

1. Strengthening Section 38 (Right to Health)
    - To explicitly recognise the health workforce and professional standards as enablers of this right
2. Affirming clinical independence and ethical practice
    - As necessary to protect life, dignity, and patient safety.
3. Recognising statutory professional bodies and associations
    - As part of the governance architecture supporting constitutional rights
4. Enhancing safeguards for administrative justice
    - In matters affecting professional practice, registration, and employment.
5. Protecting professional advocacy
    - Where undertaken in good faith and in the public interest

4. Conclusion

The Fiji Medical Association submits that a constitution that protects the right to health should also protect the people, standards, and institutions that make that right effective in practice.

Submitted by Dr Alipate Vakamocea on behalf of the Fiji Medical Association.

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21/4/2026

Seventh Day Adventist Church (SDA)

Seventh Day Adventist Church
Date: 21-4-26
Time -10.00am-11.30pm

Leighton: Thank you for attending. Before the chair introduces the members of the commission, just a few housekeeping matters. Ask if when you speak, just press on the right side of the mic. It will come on, then you can speak. Once you have spoken, if you can press the same side to turn it off. Also, there is an attendance register. After you have finished, if you can fill that in. Our chair will now introduce the team. And after he has introduced the commission and the role of the commission and its members, I also request that before you make your submissions, if you can also introduce yourselves. Let's follow the record so that for the transcription, we can record your submissions. Vinaka.

Mr. Valenitabua: Mr. Waqa, Mr. Tuima, thank you very much for attending before us this morning. Thank you for accepting the invitation to come and give submissions on behalf of the Seventh-day Adventist Church before this commission. Our task is to collect views and submissions from the members of the public for the purpose of reviewing the 2013 Constitution. So, we will be sitting here. We will listen to your submissions. Know that this may not be the end for you. We will be asking you questions. And the comments pass from the table on this side. And if you need to make any other submissions later on, and we suggest that they be written submissions, please do so. Write your submissions and then send them to us. You will be able to get the email address from the girls on your right. So, we welcome you. We'll be all ears to listen to you this morning, listen to your submission. Now, before we proceed further, I'll ask the commissioners to introduce themselves to you so that you know who they are. Starting from my right. Thank you very much, Chair.

Mr. Beg: Thank you for coming in. My name is Conway Begg. I am an architect by profession, and I'm serving on this commission. And as the Chair said, we're appointed by the President. And thank you for appearing before us this morning and look forward to your submissions. Thank you.

Dr. Fatiaki: Good morning, gentlemen. I am Dr. John Fatiaki, medical practitioner, runs the Epworth Clinic in town. I am a brother-in-law to Fonua, Pastor Fonua Hoffa.

Dr. Gounder: My name is Nilesh Gounder. I'm an academic at USP. I look forward to your submission today. When I was the Chairman of Sangam Education Board, we used to work together with the SDA. Because like you, Sangam also owns a number of schools, so we used to liaise and work with the SDA. Good to see the reps. And we look forward to your submission. Thank you.

Mr. Kohli: Good Morning, my name is Ami Kohli and I look forward to the submission.

Mr. Valenitabua: Yes, and lastly, I'm Sevuloni Valenitabua, Chairperson of the commission. May I ask you gentlemen to introduce yourselves and later make your submissions to the commission. Thank you. Good morning, Mr. Chairperson, and also to the commissioners this morning.

Mr. Waqa: Good morning to all of you, and also Bula Vinaka. My name is Senitiki Waqa, I'm a steward of the Seventh-day Adventist Church as the General Secretary of the Fiji Mission for Fiji and also Rotuma. Vinaka.

Mr. Tuima: Good morning, Mr. Chair and members of the committee. My name is Michael Tuima from Oneata in Lau. And I am serving in the Media and Communication Department for the Adventist Church here in Fiji. So, I'm in the support of the General Secretary here today, and it's a privilege. And thank you for allowing me to be part of this program.

Mr. Valenitabua: Thank you. You may proceed now.

Mr. Waqa: Honorable Chairperson, we sit before you today carrying the hopes and prayers, conviction of all the Fijians, Seventh-day Adventists. We as a people, members who may never enter this room, but whose faith shapes the heartbeat of this nation. And Mr. Chairperson, and also to colleagues of commissioners this morning, thank you for this opportunity to present on behalf of the Seventh-day Adventist Church in Fiji. We come with deep respect for this process, and with a sincere desire to contribute to the shaping of a constitution that reflects the values and spiritual foundation of our nation.

Fiji is a nation of faith. In our homes, our villages and communities, people tend to God in times of need and in times of gratitude. Because of this, we respectfully affirm that the constitution should continue to acknowledge God, as the source of moral guidance, while upholding full respect for all beliefs.

We strongly uphold freedom of religion. Every citizen must have the right to worship freely, to practice their faith without fear, and to share their beliefs in a respectful and peaceful manner. This freedom must be protected for all people equally, because true faith cannot exist where there is cohesion.

So, sirs, this morning as a Seventh-day Adventist from the Seventh-day Adventist Church, we humbly highlight the importance of the Sabbath. Observe from Friday, sunset, to Saturday, sunset. For us, this is a sacred commitment.

We respectfully request reasonable accommodation so that individuals are not forced to choose between their faith and their work, education, or national responsibilities. A just society makes room for conscience. In practical terms, we humbly request that constitutional protection ensures that no individual is disadvantaged because of the observance of the Sabbath, Saturday.

This includes protection for students who, in good conscience, are unable to attend classes or examination schedules on Saturdays. Protection for employees who seek reasonable accommodation to refrain from work during Sabbath hours. An assurance that opportunities for employment, education, or advancement are not denied on the basis of faithful Sabbath observance.

For many of our members, the Sabbath is not a preference, it is a conviction. And no citizen should be placed in a position where they must choose between obedience to God and participation to society. True religious freedom must include the right to live out one's faith fully, without penalty or discrimination.

Honorable Commissioners and Mr. Chairperson, behind these requests are real people. Students who miss out exams, workers who lose jobs, faithful citizens who quietly carry the cost of their convictions. We are not asking for privilege; we are asking for protection.

As Seventh-day Adventists, we also affirm the importance of family. The family is the foundation of a strong nation. We encourage provisions in the Constitution that protect and strengthen families, promote moral values, and safeguard the well-being of children.

When families are strong, Fiji is strong. The Seventh-day Adventist Church continues to serve Fiji through education, health services, and community outreach. Our work is grounded in values that uplift lives and build character.

We respectfully encourage continued recognition and support for faith-based organizations as partners in nation buildings. We also emphasize the protection of freedom of conscience, the right of every individual to live in harmony with their deeply held beliefs. No one should be compelled to act against their conscience, especially in matters of faith.

In education, we advocate for the inclusion of moral and values-based learning, while allowing faith-based schools in our church to operate in alignment with their beliefs within national standards. Finally, as we know that Fiji is a diverse nation, we encourage a Constitution that promotes unity without uniformity, where all people are respected and diversity is seen as a strength. Honorable Commissioners, the Seventh-day Adventist Church remains committed to praying for our nation and supporting its development.

We humbly submit that a constitution grounded in faith, freedom, family, and dignity will secure a strong future for Fiji. Sirs, the decisions you make here will echo far beyond this room. They will shape the conscience of our nation and the future of our children.

I quote. If we protect faith, we protect hope. If we protect conscience, we protect dignity.

If we protect families, we protect the very heart of Fiji. As a Seventh-day Adventist member, we humbly appeal to you. Let this Constitution not only be legally sound, but morally strong.

Not only structurally firm, but spiritually grounded. May God guide your decision, and may God continue to bless our beloved nation of Fiji. Vinaka Vakalevu.

Mr. Valenitabua: Vinaka Vakalevu Mr. Waqa, that is your final submission, or Mr. Tuima making an additional one?

Mr. Waqa: Mr. Chairperson, that is the submission, final submission for this one.

Mr. Valenitabua: From the SDA?

Mr. Waqa: From the SDA.

Mr. Valenitabua: Thank you. For that submission, and you will be asked questions, or you may be asked questions. And you may be given some comments, you may hear some comments from the people up here, from the commissioners. So now I'll ask the commissioners if they have any comments or any questions to ask you and Mr. Tuima.

Dr. Fatiaki: Thank you, gentlemen, for the submission. And I'm not sure that I have very specific questions, but I have some, I call them reflections, relating to your comments. And it is in that context that I address you.

Your first statement, which was that we are a nation of faith, and an acknowledgment of God for moral guidance. That is an issue that we as commissioners have discussed, we have been through various constitutions. As a matter of fact, every constitution that has been made for this country, from the beginning, until 2013, incorporated the word God in the first part of the constitution, usually the preamble, I think in 1997 in the compact as well. But there was that acknowledgment, it was stated.

I can state categorically that in the 2013 constitution, it is not stated. The word specifically in terms of the nation, aspects of faith, aspects of moral guidance, is not there. And so, we have a basis on which to look at how we frame this constitution, particularly from the first page, from the outset.

And I thank you for your submission. It echoes what we have heard from other submittees. It reflects what has been written into three other constitutions prior to this one.

And obviously, the framers of that constitution recognized it. At a personal level, and again I am speaking personally and this is just a reflection, I think we lose part of our collective soul when we don't acknowledge it. Particularly, and I thank you for acknowledging it in a very generic sense, and by that I mean very inclusive.

You did not state, I am a Christian, I am a Catholic, but you did not state that Catholicism or Christianity was the God. Because as my friends here are, they have God too, but they are not the same God. I am surprised that this last constitution, well surprised or not surprised, did not have any mention of God as the basis of our values and our moral guidance.

Because, I think if I walked out of here onto the street and asked every person, do you believe in God? Do you believe in God? I suspect that probably 99% of people are going to say yes. Whether he is a Muslim, Hindu, Sikh, Catholic, whatever, Shintoist, Buddhist, I think 99% of the people who live in Fiji actually believe in God or some form of divine entity. So, the idea that we would not have it or we would take it out of the previous constitutions and not include it in this one, I guess states it is ungodliness. No pun- intended.

The second aspect of it relates to the aspects that you allude to in respect of attempting to practice your faith. And in your particular instance, it is the Sabbath, hence the seventh day belief.

This is an interesting one because obviously this is the area that when we talk about freedom of religion, conscience and belief, it attempts to say that no person should be compelled to do anything, to act in any manner or take an oath that is contrary to the person's religion or belief. I am grateful to you for bringing to our attention obviously things that are affecting day to day activities such as going to school, being forced to sit an exam on a Sabbath day, when we could sit it five other days or four other days. So, bringing it to our attention is important.

You might not be a massive majority, but I am sure we could easily accommodate it in the four other days that no other religion, I say that because obviously many Christians use the Sunday as their day of worship. Correct me if I am wrong my friends, but Friday is an important day for the Muslims for instance. And there may be that instance and I would hate to think that we can't accommodate for instance the holding of examinations the other four days so that we don't infringe on anyone and force them not to sit the exam.

This is a particularly important thing because there are instances like you say when you can't get bus transport and so these things are important for us to factor in and consider. But I think in principle the Bill of Rights is

there to protect the individual's right and the right to religious choice and the practice of your freedom. Not only in the practice but in the way the state addresses it.

I remember a while ago that there were lots of conflicts amongst our Catholic schools where we wanted a Catholic principal for instance to be the principal because it was in the culture of the school. I noticed that this constitution actually says that the government must not like force you to, it allows you to make your own schools with a religious component to it. It does guard it by saying that you can't force other people to attend the religious classes but it balances it.

I know that different governments apply that rule willy-nilly and , in some they come down with a very heavy hand and don't allow the religious institutions to have input into the selection of the principal for instance in terms of how they adjust. So, I'm grateful to you for bringing that to our notice. I think these are important practical things that apply to for instance the people who practice the Seventh Day Faith and for that we're grateful because I'm sure that in our discussions and deliberations we will address it. Thank you. Thank you.

Dr. Gounder: Thank you very much for your presentation. On behalf of the commission, I want to thank SDA not only for their work in the area of religion and faith but also in the area of education and management of schools. And I've noted your points about the importance of families within the society and your point about moral values, they're important. We have received that from some other submissions as well and the importance of faith-based organizations.

And you also mentioned about the Saturday Sabbath one and from a personal perspective I want to assure you that at USP where I work if there's any exam that falls from Friday to Saturday students are given a choice. We don't hold exams. If an exam has to be held for some reason then the student will be given an exam on another day as well. A separate paper has to be prepared.

So as an institution USP takes that flexibility and provides that flexibility to students and for other religious reasons and background as well. But I guess a lot of these things will have to be the way it works within societies, within organizations and the more we discuss the more enlightened we will all become.

But it's absolutely clear that respect for other religions and the beliefs of others is really important to create a more cohesive society. And I want to thank you for your submission today. Thank you.

Mr. Waqa: Thank you Dr. Garber.

Mr. Beg: Through you chair, thank you very much for your enlightening presentation and I echo the same sentiments of my fellow commissioners in what they're saying. I probably just to add to that I understand that the relevant section is 22 of the constitution as commissioners have highlighted the freedom of religion.

I suppose when I looked at it there's a gap of practical enforcement. Like you highlighted employment in educational context but I believe my fellow commissioner who's in the education system has acknowledged that. But for one who's grown up through the educational system, my own conviction and my own journey, this was very prevalent in schools where there was always acknowledging.

I went to a boarding school where we observed the rights of these religions or the school and the institution. So, I think it's something what you're trying to say is, I'm trying to understand in the last few years hasn't really been enforced or practiced. So that's the understanding that I'm trying to feel because as we've grown up, as most of us through our journeys, we've been accommodating.

But as you probably tried to highlight is there in the reinforcement of this in the constitution or in through employment, schools, institutions, etc. has not allowed that process to take place. I'm just hearing from you if there are any examples or things that you've experienced that you may want to share with us or share with... Is there an experience that... Because I feel, I think it's accepting but from our point of view as commissioners, addressing the constitution is that it's very weak in the constitution.

Practical enforcement in the constitution is weak. But we're guided by the practicality of acceptance in the institutions. So maybe, can you share or you don't have any examples of where this has happened? If you could... Sorry if I'm being very bold in my request. Thank you.

Mr. Waqa: Thank you. Commissioner Beg. I'd like to acknowledge the contribution made by the other two commissioners today. We have certain instances where our members are denied opportunities. A typical example is employment.

When there is a job interview that has been conducted where certain questions have been asked. You can work, you'll be given if you're willing, if you're committed. But when the response comes that because of... I rest on the Sabbath, on Saturday.

And then basically they share with me could see that the reception is not good during the interview. They tend to feel that just because of that they are denied the opportunity to be given the employment opportunity. Some instance, some of our students, I come through it, where there are Saturday classes being given.

And some of our young people are missed out on those opportunities. That is basically where the Church, the Seventh-day Adventist Church, needs to be addressed. Here in the Constitution.

I know that the Constitution protects freedom of religion, of the faith. I concur what you said, it's just a reinforcement of it. Which is still in the grey areas. Vinaka.

Dr. Fatiaki: Along similar lines, if I may just address that and take you specifically to section 22, subsection 2. Where they try to address this freedom of religion. And they say, sorry, subsection 3. Every person has the right not to be compelled to act in any manner that is contrary to the person's religion or belief.

You see, that basically says you can't be compelled to. But it doesn't tell the rest of society to say that we must not discriminate against you on the basis of your belief. I need my two lawyers, commissioners, to tell me if I'm stating this incorrectly.

So, what I'm saying is this says, every person has the right not to be compelled. Indirectly, if you have to go to class on Saturday, you are being compelled. And that's against your belief.

But in a way it's not being compelled in the sense that you're not being forced to go. You're given the choice. And I think we may be able to reword this section to say that you may not be discriminated against.

Because if they're forcing you to go to class on Saturday or forcing you to work on Saturday against your religious belief. Then they are in fact discriminating against you. And maybe this compelling part doesn't address it in total. I'm not sure whether you could apply the fact that you were forced to go to school on Saturday as being compelled to do something against your belief. They'll say, well it's your choice. You don't go, you don't attend classes. But that's not the case. They should not discriminate against your consideration. Sorry.

Dr. Gounder: Just to add to that. I think the Ministry of Education has a policy which they implemented many, many years ago. For this reason, not to discriminate Sabbath on Saturday. These classes are all optional. And no new curriculum will be discussed or taught or revised on Saturday. Just a revision. And nothing new will be taught. So, to provide flexibility to SDA students. As far as I know.

I'm not sure whether the practice still continues or not. But half of my family are teachers. And from them I know that this practice continues. No new curriculum is taught on Saturdays to provide optional. So that's optional. Sorry.

Mr. Beg: Sorry Commissioner. Just to interject there. Is that option available? Because what I'm hearing you saying is that. Is that afforded the same equal right that you are carrying out that class on a Saturday? Is it afforded to those who are missing out on another day?

Dr. Gounder: This is optional. This is optional. So, whoever may wish to come can come. It's optional, yeah. Yeah. So, if it's optional it does not discriminate against anyone. And the constitution has provisions. I may be guided by my two lawyer colleagues. In my view. That nobody should be discriminated on religious grounds. So, for a job interview for example. Cannot discriminate a person based on his religious affiliation. Or preferences. And if there are cases then they can always raise it. So yeah. I just wanted to let you know. And so, is there anything more we could do? Over and above what is already in the constitution. To prevent discrimination on religious grounds. In the labor market. And the provisions follow through. In the employment act for example. The

discrimination issues. So, if you think there should be anything more than what is there. We are happy to hear you. Thank you.

Mr. Waqa: Thank you very much. Commissioner Gounder. What I'm basically trying to share with the team on the table is. The constitution of the law is very clear. What's down there. The reality is basically totally opposite with the. It's not all but some of the practices that has been ongoing. Which our members of the church have been discriminated. And those are real experiences. That have been shared with us. And I need that to be addressed. And shared with you on this honorable table.

It is very clear. Everybody knows about freedom of religion and no discrimination. But how it has been executed and implemented down there. That is basically where the reality where the problem is solved. That is where the church is coming from. Thank you.

Dr. Fatiaki: Thank you. I just want to reiterate the comments. I think the principles that you are espousing. We understand clearly. What we're going to try and do is look at the current bills. And sorry the Bill of Rights in terms of the freedoms. And see whether we can maybe word it in ways. That takes care of those. That strengthens it and makes it so that the people enforcing. My mind is running between different things right now.

I want to compliment the SDA church. Just as he did in respect of education. In respect of the area of health. I mean I'm a medical doctor by profession. And I can say that your denomination. Is the one that promotes healthy living. And has always done that. To the benefit of your members. And unfortunately, there's not enough of the general public that listen. You know I almost feel like saying.

You want to know how to live healthy. Go and ask your friends who are SDA people. Because it's been a practice. So, I thank you as far as your contribution to the country's health. I wish you would make your voice much louder. And across the whole country.

So that the basic guidelines that you've always observed. In terms of you know sunlight, exercise, eating styles. And things like that. The basic principles I think that you apply for religious reasons. No alcohol, smoking. The areas that the medical profession actually supports. That's one.

The second area and I stress this. In respect of what my colleague Dr. Nilesh has pointed out. And what you've pointed out brightly. Which is that sometimes what we say in principle here. In the supreme law. Does not translate into action on the ground. I give you an example. Under this you know freedom of religion. Some people refuse to get the COVID vaccine. As a choice. Under their belief.

Now there is provision here. Given that in the interest of public health. Governments can enforce. The enforcing of the vaccine. I couldn't come back from Rotuma to Fiji unless I got it. Even though I didn't want to get it. I wanted to come back to Fiji. So, I got it. But having said that.

I noticed that they even took it a step further. And they punished you. Punished people on employment grounds. So not only did they say you have to get it. But if you don't get it. You don't go to work. I mean I understand that some employers. Well government. Now to me that's taking. This provision. That allows us to protect public health. Beyond.

The pay off. And this is you know the issue of. What we say here in terms of the Bill of Rights. And how they actually practice it. You can see the difference. To me that was an inappropriate action. You know it's well and good to say. Choose up to you. Take it at your own risk. If you don't want to take it. Don't take it. But do they punish you if you don't take it. Then I'm not giving you the choice. And that's you know. That's to me taking. What you are saying. Which is the principle of giving people. The ability to be in charge of their bodies. And their rights. And forcing them into a position where. If you don't do it.

I understand the reverse. Because afterwards they found that the indications. They had for doing it. Didn't actually require it. But that's in hindsight. But again, thank you to the SDA church. For your submission. And thank you very much for the work that you do. For the health. What I would like the media people to do. I notice you have programs. Whole programs and that. I watch it occasionally. I would suggest that you get that onto the mainstream media. So that more of your messages. Like I said. He used to be a very avid advocate. And a practicing physician. He used to work in my clinic. Many years ago. He's a good voice. And you need lots of those voices. Resonating. In addition to the Ministry of Health. Thank you.

Mr. Valenitabua: Well, there you are Mr. Waqa and Mr. Tuima You've heard the comments from my fellow commissioners. Section 22 of the Constitution is there. It talks about freedom of religion, conscience, and belief.

And our rights, our freedoms in relation to religion and belief and conscience are set out there. It may be incomplete. Just hearing your submission and hearing my fellow commissioners comes to mind that the right to religion or the freedom of religion is to be taken with the right to education, to be taken together with the right to employment, and all those other rights.

So, it's a balancing act. What we can put in the Constitution we will have to discuss if there is any extra provision which is needed to take care of your concerns. We understand, respect, you respect freedom of religion, the importance of the Sabbath, or the importance of the Sunday, or the importance of Lent, and so forth. We have different religions, different beliefs, so all those have to be considered. But we get your point. We get your point.

If a student wishes not to attend Saturday classes, then that's a choice. It can't stop the other students from attending Saturday classes because they have the freedom of religion. Same as employment and so forth. We've got to weigh all those. Thank you very much. You heard from us. We have heard from you. We have recorded what you have said. Everything is taken down there. I mean it's recorded by the girls. So, we will consider your submission. Thank you very much.

Mr. Waqa: Thank you, Mr. President. Also, to the team of commissioners, this morning on behalf of the Seventh Day Adventist Church, we would like to say thank you for listening to our submission this morning. And also, your reflections in regards to the submission. May the Lord continue to bless all of you, and also the work that you are doing for the nation of Fiji. Vinaka.

Mr. Valenitabua: If there's anything else you want to add, put it down in writing and email it to us.

Mr. Waqa: Vinaka Vakalevu Sir.

---------- End of Session [21-4-2026]----------

CONSTITUTIONAL REVIEW COMMISSION

Submission – Pr. Senitiki Waqa (General Secretary)

"Honourable Chairperson, we stand before you today carrying the hopes, prayers, and convictions of ordinary Fijians— Seventh-day Adventist - people who may never enter this room, but whose faith shapes the heartbeat of this nation."

Thank you for this opportunity to present on behalf of the Seventh-day Adventist Church in Fiji.

We come with deep respect for this process and with a sincere desire to contribute to the shaping of a Constitution that reflects the values and spiritual foundation of our nation.

Fiji is a nation of faith. In our homes, villages, and communities, people turn to God in times of need and in times of gratitude. Because of this, we respectfully affirm that the Constitution should continue to acknowledge God as the source of moral guidance, while upholding full respect for all beliefs.

We strongly uphold **freedom of religion**. Every citizen must have the right to worship freely, to practice their faith without fear, and to share their beliefs in a respectful and peaceful manner. This freedom must be protected for all people equally, because true faith cannot exist where there is coercion.

As a Seventh-day Adventist Church, we humbly highlight the importance of the **Sabbath**, observed from Friday sunset to Saturday sunset. For us, this is a sacred commitment. We respectfully request reasonable accommodation so that individuals are not forced to choose between their faith and their work, education, or national responsibilities. A just society makes room for conscience.

"In practical terms, we humbly request that constitutional protections ensure that no individual is disadvantaged because of their observance of the Sabbath. This includes protection for students who, in good conscience, are unable to attend classes or examinations scheduled on Saturdays; protection for employees who seek reasonable accommodation to refrain from work during Sabbath hours; and assurance that opportunities for employment, education, or advancement are not denied on the basis of faithful Sabbath observance.

For many of our members, the Sabbath is not a preference—it is a conviction. And no citizen should be placed in a position where they must choose between obedience to God and participation in society. True religious freedom must include the right to live out one's faith fully, without penalty or discrimination."

"Honourable Commissioners, behind this request are real people—students who miss exams, workers who lose jobs, faithful citizens who quietly carry the cost of their conviction. We are not asking for privilege—we are asking for protection."

We also affirm the importance of **family**. The family is the foundation of a strong nation. We encourage provisions that protect and strengthen families, promote moral values, and safeguard the wellbeing of children. When families are strong, Fiji is strong.

The Seventh-day Adventist Church continues to serve Fiji through education, health services, and community outreach. Our work is grounded in values that uplift lives and build character. We respectfully encourage continued recognition and support for faith-based organizations as partners in nation-building.

We also emphasize the protection of **freedom of conscience**—the right of every individual to live in harmony with their deeply held beliefs. No one should be compelled to act against their conscience, especially in matters of faith.

In education, we advocate for the inclusion of **moral and values-based learning**, while allowing faith-based schools to operate in alignment with their beliefs within national standards.

Finally, Fiji is a diverse nation. We encourage a Constitution that promotes **unity without uniformity**—where all people are respected, and diversity is seen as a strength.

Honourable Commissioners, the Seventh-day Adventist Church remains committed to praying for our nation and supporting its development.

We humbly submit that a Constitution grounded in **faith, freedom, family, and dignity** will secure a strong future for Fiji.

"Honourable Commissioners, the decisions you make here will echo far beyond this room—they will shape the conscience of our nation and the future of our children.

If we protect faith, we protect hope.
If we protect conscience, we protect dignity.
If we protect families, we protect the very heart of Fiji.

As a Seventh-day Adventist we humbly appeal to you—let this Constitution not only be legally sound, but morally strong… not only structurally firm, but spiritually grounded.

May God guide your decisions, and may God continue to bless our beloved Fiji.

Fiji Independent Commission Against Corruption (FICAC)

Fiji Independent Commission Against Corruption
Date :22-4-26
Time-12.30pm-1.50pm

Leighton: Ms. Rokoika and Ms. Naliva, thank you very much for accepting the invitation of the Constitutional Review Commission. On behalf of the Chair and the team, my name is Leighton Fatiaki. I will just be going through some housekeeping matters. Just with regards to the mics in front of you, if you wish to speak, you can just press on the right side of the mic, and once you've made your submission, you can just press it. Also, I'll now hand over to the Chair to make the introductions to the Commissioners. Please also, once the Chair has finished, for the transcribers, our recording purposes, if you can also introduce yourselves.

Mr. Valenitabua: Vinaka. Ms. Rokoika and Ms. Naliva. Good morning to you both. We welcome you to the Commission this morning. I echo what Mr. Fatiaki has said. Thank you very much for coming here on our invitation to make submissions to us. Before I proceed further with you, may I also welcome the members of the media, gentlemen and ladies of the media, who have been covering submissions during the consultations we've had for the past three weeks. So, members of the media, we welcome you. We thank you for the good work you are doing.

You are covering all these submissions and publishing them, broadcasting them, telecasting them, and we have very good responses from the members of our nation, citizens of our nation, not only here in Fiji, also overseas. So, thank you very much. Ms. Rokoika and Ms. Naliva, as chairperson of the Constitutional Review Commission, I thank you kindly for accepting our invitation to appear before the CRC today.

The commissioners of the CRC welcome you warmly. The CRC is an independent commission. We are tasked with reviewing the 2030 Constitution of the Republic of Fiji.

As you might know, the commission was established and my fellow commissioners and I appointed Vice Excellency, the President of the Republic of Fiji. And that appointment was made in accordance with the decision made by the Cabinet on 6 March 2026 and pursuant to Section 2 of the Commissions of Inquiry Act 1946. By way of introduction, your commissioners are starting from my right, my far right, Mr. Conway Beg.

Next to me is Dr. John Fatiaki. On my immediate left is Mr. Ami Kohli. I'm sure he's well known to you. And on the far left is Dr. Neelesh Gounder of USP. Two commissioners are not with us today. They're both overseas.

That is in Dr. Unaisi Baba and Merewalesi Nailatikau. As a commission, we are tasked to undertake a comprehensive inquiry into the 2013 Constitution and to consult widely with the people of Fiji while undertaking that task. The resulting objective is the preparation of a draft amended Constitution based on submissions from the people of Fiji, which reflects people's values, their needs, and their aspirations.

At the end of our commission, we are to submit our findings and recommendations derived from the submissions made to us to His Excellency the President. In accordance with our terms of reference, your commissioners have embarked on and are undertaking a nationwide consultation process. In the process, members of the public are invited to make written and oral submissions to the CRC. You are here today to present such submissions before us, your commissioners. We have been receiving submissions and doing consultations for the past three weeks, and we will go out to the country beginning in May. We are trying to get as much consultations, as many submissions as we can get all over the country.

We are interested in and wish to hear submissions from the people of Fiji about their views of the 2013 Constitution of the Republic of Fiji. We look forward to hear your submissions on which provisions you want to be preserved or maintained in an amended Constitution of Fiji. In addition to that, we'd like to hear what provisions you want to be changed or amended and what your aspirations are for the amended Constitution of Fiji, particularly on FICAC, not forgetting your individual views in relation to that.

We need to consult widely. That is our task. We rely on the media to provide wide coverage, and I thank them this morning, as I have done, of the consultations and the contents of the submissions made during the consultations.

We are engaging closely with the media in the belief that they play a vital role in publicity, in promoting transparency, and in

fostering open dialogue among the people of Fiji regarding how they wish to be governed under a constitution. The CRC encourages everyone to express their views openly, with civility, and with mutual respect, in support of meaningful and constructive dialogue. With those few words, I thank you for appearing before us this morning. We now hand over to you to present your submissions to us, the commissioners. Thank you.

Ms. Rokoika: Thank you, Chair and commissioners. I am here with the Manager of Complaints and Governance. The premise of our submissions this morning is specifically with regard to Section 115 of the Constitution, which is the establishing section of the Commission. But before I start with my submissions, I would like to advise the commissioners that judgment by the High Court of Fiji will be delivered here in Suva on the 24th of April, which is two days from now, at 2.30pm, on the question of the leadership of collateral, a challenge to the leadership at FICAC.

That was by way of a stay application by three persons, and the decision will be delivered by the High Court on Friday at 2.30pm. I'm conscious of the imminent decision, but these submissions that we'll be making this morning is on a different footing, and I believe I could say that it stems from the problems that we are currently encountering as a country in terms of the leadership at FICAC. I thought I'd put this out to the commissioners first before I start with our submissions. For ease of reference, we have provided some paperwork that I will go through.

What the Commission of FICAC proposed to do this morning is talk about the current problems that we are facing, the gaps in the current constitutional provisions, and we have provided, hopefully, some recommendations in terms of the proposed amendments to Section 115. If the Chair could allow, I have made copies for the members. Please.

Mr. Valenitabua: Please continue, Ms. Rokoika.

Ms. Rokoika: Thank you, Chair. As I've said, the way FICAC proposes to make the submissions would be to identify the... maybe do a comparative analysis between Section 115 and Section 117.

117 is in relation to the establishment of the DPP's office. The reason why we believe there needs to be a comparative analysis between these two sections is because of the nature of the work

that both institutions do. The only slight difference is that FICAC does investigation and prosecution.

DPP, on the other hand, as both the Chair and Mr. Kohli will know, are just prosecutorial work. So, I believe because of the nature of the work that is conducted, the good comparative analysis would be with the DPP's office. I will not go specifically into sections by sections.

You will note that I have provided that at... I apologize, it does not have any numbering. After page 5, there is a comparative analysis there between the office of the DPP and FICAC in tabular form. The table, as you will see, on the fourth column is the comparative analysis between the two institutions.

Both the two provisions, 115 and 117, they establish both the two offices and that is on equal footing. The next one is the core function. The core function of the DPP's office and FICAC are both provided for in terms of institution of proceedings, transferring of proceedings and discontinuation of proceedings.

The problem with the current provision is that it does not specifically focus on corrupt actions. They both talk about the same thing. So, I think there needs to be clarity there in terms of the role of FICAC. It talks about general offences, the institution of proceedings, but it does not specifically state in relation to corrupt offences. So that is the first gap that we have identified. And that goes on to the third area about the core functions. They relate to the same thing that I have just discussed. It is not specific to corrupt related offences. In terms of the independence of both the offices, they have similar provisions. Both inform word for word in 115 together with 117.

The overall independence, which is the next one, there is clear independence in terms of the work of the DPP's office. The work of FICAC, though, is then transferred to a new written law, which is the FICAC Act of 2007. The DPP, as you can see on the status of it, the DPP version is the stronger version in terms of independence. Going down, there is a provision in subsection 9 of the FICAC Act that talks about mandatory reporting to the Attorney General. Comparing that with the DPP's office, there is no equivalent to the DPP's office.

That, we believe, weakens the independence of the commission of FICAC. The next one is the appointment framework. The DPP's provision, it has an express provision in terms of appointment. The 115 in relation to FICAC does not have the appointment provision.

The next one is acting appointment. DPP's office has acting appointment. FICAC does not have acting appointment. In terms of qualifications, DPP's office has qualifications. A person needs to be qualified as a judge. FICAC does not have that provision.

In terms of tenure, DPP's office, I've looked at other jurisdictions. I have not been able to find the basis of the seven years, but we are not talking about seven years.

Our submission is there needs to be a term that is defined in there. Three years is the general position in terms of Australia and New Zealand. There is no basis for us to go for the seven years like the DPP's office.

In terms of the removal protection, DPP's office has specific provisions in terms of removal. FICAC does not have that. Prosecutorial authority, DPP's office is more clearly defined.

In terms of the delegation of powers, we have the same exact subsections. Staff control, same provisions for both the two institutions. Funding, we have both the funding sections in both the two.

Accountability, again, I've talked about the Attorney General. I will deal with this specific provision when I'll talk about the proposed amendments or our submissions on amendments. The DPP's office has a structured appointment framework in place. FICAC does not have that. I thought that I'd start with that in terms of the differences between the two entities.

Next, I would like to talk about the gaps. Over the page, there is section 115 that is the heading of that particular table. Again, this covers section by section the matters that I've just raised earlier on. The issue that we have with section 115 is that a lot is referenced to a written law, which is the FICAC Act of 2007.

Right now, there is no problem with that reference because it deals with operational matters. The issue that we believe needs to be made clear is the institution itself. We agree that there is a

provision that entrenches the establishment of the institution, but just on its independence leadership, that is an issue that we presently face, which I believe that everybody is aware of.

That is the basis of the current proceedings in court. What we've done on this section 115 table is just identify the current provisions and the proposed amendments and the justification on the right-hand side, the justification on the reasons why we believe it is important that this is entrenched into the Constitution instead of just under an Act of Parliament. Over the page, Commissioners, you will note that I have put in there a whistleblower comparison.

I've touched on several jurisdictions, which I believe is important for the purposes. I've touched on Australia, Singapore, Hong Kong and Canada. All these jurisdictions do not have whistleblower protection in their constitutions.

The reason why I'm raising this is because whilst the CRC is mandated to provide for the amendment or doing work on the amendment of the Constitution, maybe it would be an opportune time to have this included just for the purposes of being robust, and so whistleblowers or informers are guaranteed that protection. I know that it's not part of other jurisdictions, but I've left it there for the Commission. You can use it as you please.

The final part of FICAC's submissions, Commissioners, through the Chair, is at page 2, our proposed amendments. What I propose to do is go through clause by clause so that the Commission is fully aware of the basis on which we are making the proposal for the amendment.

Subsection 1 that we have included in there, that's the standard continuation provision. It's currently in the Constitution right now and that needs to be kept in there.

The next one is the composition of the Commission. It talks about the Office of the Commissioner, the Deputy Commissioner, and all the other officers within the Commission.

Subsection 3, our proposal is to incorporate the specific offence, which is corrupt-related offences. The institution and the taking over, which is B and C, are currently in the Constitution.

In terms of subsection 5 on the independence, you'll note, Commissioners, through the Chair, that we have removed references to the Attorney General. The basis of that proposed removal is because we believe that if there is supposed to be an investigation against any of the executives, for instance the Attorney General, that might pose difficulties with the Commission. So, if you see the proposed amendment, we are stating that reporting is to be done to Parliament as a whole, not to a particular office holder, in this instance Attorney General. That is the basis on which we believe that the reporting of the Commission's work is to be in direct line to Parliament and not the Attorney General, just to safeguard the institution.

Further down is the appointment. As I've indicated earlier, the Office of the DPP, the Director Hema herself, is appointed under the Constitution. We do not have the same provision under section 115, and they re-analyze the problem. That's why we have current proceedings in court. So, we believe that the appointment provision for a FICAC Commissioner is to be entrenched in section 115, similar to that of the DPP's office.

Over the page, Chair, I know that there has been, I'm aware that there has been discussions in terms of should the appointment be done by, recommendations be done by JSC or COC. I leave that to the Commission. But there is a new provision in there that I've said that any form of appointment or recommendation needs confirmation by Parliament. The reason why we are proposing that, because for all the states in Australia, this is done by Parliament.

And they've done it in a way that it has, not that I'm aware of, challenges to the leadership. So that is the basis on which we thought that Parliament would be the best institution or body to look after or to scrutinize. I think the best word would be to scrutinize.

To scrutinize the appointment of the Commissioner. The basis of that is because when we have our elections, we elect our members of Parliament. There's 55 Honorable members of Parliament.

So, it's on that basis that we are basing these recommendations for it to go to Parliament. When it goes to Parliament, like everything that is debated in Parliament, they'll be debating and if there be subcommittees, however it's done, at least there'll be

some form of scrutiny in terms of the proposed appointee from JSC or COC. The basis of that is that there is another scrutiny level, so to speak, before the appointment is done.

In terms of further down, we've talked about the qualifications of the Commissioner. Like the DPP's office, we believe that it needs to be a person who is qualified as a judge. There is no equivalent provision currently in section 115.

We've also included in our recommended amendments a dimming provision that's at subsection 9. The reason why we have included a dimming provision in there is so that it can narrow down the time frame in which it's confirmed or it's verified by Parliament. To bring certainty, maybe closure to the appointment, that's the basis of that dimming provision. Further down, at 10, we've talked about, that ties in line with the reasoning that I've just given previously, Chair, the validity of the appointment.

It can only be questioned in terms of lack of constitutional qualification or fraud, and that's the standard way in which appointments are done in similar institutions in other jurisdictions. I've included in there, at subsection 11, the term. We're not going full seven years like the DPP's office. Three is the standard in other jurisdictions, and that is sufficient. And the appointment of an acting Commissioner, same process as the Commissioner above, but the current section 115 does not make provision for an acting appointment.

At subsection 13, we've talked about the removal, and because there is no current removal provision in 115, we've said that it's to be in line with the current section 112, the removal of judges. They have a system in place under section 112, and that can be followed instead of us reinventing the wheel.

In terms of subsection 14, that is currently provided for, but we've just put in the extra provisions 15 and 16 there to ensure the sufficiency of funding. This is an issue that we believe needs to be entrenched this particular way because it'll go to our statutory mandate or our objectives and our functions, so it needs to be specifically done in the way that we have proposed at 15 and 16.

In terms of accountability at 17 and 18, that is currently being done reporting to Parliament through the Office of the Attorney

General, but this is the proposal that we've come up with. The main feature of 17 and 18 is the requirement, because right now, the way the accountability or reporting is done, it's done internally, so in terms of reporting to Parliament, and that is that. There is no public-facing aspect of this accountability, so the proposed provisions of 17 and 18 takes into account our accountability to the people of Fiji, hence the way it's drafted, 17 and 18.

And for 19 and 20, at the moment, we have provisions that the Commission, FICAC, needs to work in line with UNCAC because of our UN obligations that is provided for in the current constitution, but the way we've done it here so that it is clearer in terms of what needs to be done. It also takes into account our regional cooperation because we have signed a memoranda of understanding with a few of our Pacific neighbor's, and we thought that this is something, because we are doing it as an arm of government, it would be proper for it to be reflected in the proposed amendment at 20.

Over the page, I've just discussed the effect of the proposed amendments that I've discussed when I was going through the proposed amendments. We have also included in their conclusions. The main focus from the part of FICAC is that the institution itself is provided for under the constitution, but what we need is for it to be properly secured and protected in terms of our prosecutorial functions. Because right now, because of the challenges to the validity of the leadership, we are being stopped from moving ahead with our constitutional function.

Unless there are any questions from the Chair and the Commission, those are our submissions from FICAC.

Mr. Valenitabua: Thank you. Thank you, Commissioner. Thank you very much indeed for the submission that has been presented to the CRC this morning. Thank you for the written submission too, in addition to your submission. It makes things easy for us when we see and we read material in writing, and that would become handy when we sit and deliberate on the submissions, the total submissions that we will receive from citizens of the country.

Now, your Commission has not been without, what I might say, problems or accusations or queries as to its establishment. I

know that neither of us, not one of us, was involved in this 2013 constitution, and that FICAC was established by the previous government, and it was in use for 16 years. There have been comments from citizens of this country or people of this country in relation to the appropriateness, if I may say, of FICAC, considering that the DPP's office is in existence.

The submission this morning, I see that you as Commissioner, and I believe your office also, your staff and Deputy Commissioner and all staff for FICAC, would be of the view that FICAC continues. And you are asking us that provisions be entrenched in the constitution in relation to your administration and the powers, the appointment and so forth. Now, could we hear from you in relation to two things?

One, a continuity. I know that you have said that, but with members of the public, with people of this country and high-level people like that, saying that FICAC is a duplicity of the DPP. Should we transfer these powers and functions of the Commission to the DPP's office? That is my first question. And the second question is why we should not. Thank you.

Ms. Rokoika: Thank you, Chair. The way in which the question is asked, I believe I will just answer it with one response. In terms of the current work with the Commission, FICAC's position is that it should remain with a specialized entity like FICAC and not be transferred to the DPP's office. Through the Chair, you will note that I've used the word specialized because it focuses on anti-corruption only. The FICAC Act talks about anti-corruption conduct and it only branches out in terms of the electoral offences.

Apart from that, it's focused entirely on corrupt activities or corrupt conduct by public officers. And it's on that basis that we believe that it is specialized in nature and therefore it needs to be kept separate from the work of the DPP's office, with respect.

Mr. Valenitabua: In relation to offences, Section 2A of the FICAC Act, it lists the offences for which FICAC can prosecute. We see that includes any offence under the Penal Code, any offence under the Crimes Act, any offence under the Cybercrime Act. Could you explain to the Commission how these are tied up to corruption?

Ms. Naliva: Thank you Chair for the question. Just to answer your question, you're correct in identifying that Section 2A of the FICAC Act, it

applies to offences to which the Act applies to. And while Section 2A gives the Commission the powers to investigate and prosecute all other offences, our major area of focus is to investigate and prosecute specifically on specialized areas of corruption, bribery and fraudulent conduct.

I understand, that with some of the fraudulent conduct offences, while it's stipulated under our Prevention of Bribery Act, it's also stipulated under the Crimes Act. For example, we also focus on investigation and prosecution of the offence of abuse of office for those who sit in positions of authority. While the abuse of office offence is not stipulated clearly, it's not given out at all in the Prevention of Bribery Act, we refer to the Crimes Act under Section 139.

Mr. Kohli: Through you Chair, if I may, if you look at the FICAC Act as it is, it is too wide. Even though you may be selective in your prosecution regarding corruption under bribery and abuse of office, do you not think that it is only fair to have corruption defined in the FICAC Act and then list the sort of offences you can deal with, rather than giving an all-encompassing power to prosecute under the Crimes Act, for example? Because you are specifically targeting corruptions and there should be a definition of corruption in the FICAC Act.

Ms. Rokoika: Yes indeed. That is an operational matter. It needs to go into the legislation, our respectful submissions, that it should not go into the Constitution, which is what the CRC is doing at the moment, but we acknowledge that. Maybe a point further in terms of what Ms. Naliva has talked about, is in terms of, to respond to the issue that was raised, the preamble of the Act itself, and the specific reference to our UNCAC obligations under the Constitution is the basis on which we operate only on anti-corruption matters and not generally on everything.

You will note, Mr. Conway, through the Chair, that the powers or the functions of the DPP's office and FICAC Act, it's word for word the same thing that's written over here and it's written over there, but there is a specific provision, a subsection of 115 that aligns our work with anti-corruption work UNCAC, our obligations, international obligations to UNCAC, hence our role being focused on anti-corruption work only.

Mr. Valenitabua: The appointment under, sorry, the FICAC is established under the Fiji Independence Commission Against Corruption Promulgation

Act 2007, according to the Constitution, that has become an act. It does not spell out the mechanics or the machinery of the appointment. At the moment, could you enlighten us on how the appointment is done? Is it through JSC?

Ms. Rokoika: Yes, Chair. As I had indicated earlier, we do not have under Section 115 any appointment mechanism like the DPP's office, hence our submissions for the incorporation of that because of the similarity in our functions. Right now, it's under the FICAC Act. The FICAC Act states that the appointment needs to be done by the Judicial Services Commission and the recommendation has to be consultation with the Attorney General before it is signed off by the President. That's in the FICAC Act and it talks about consultation with the Attorney General and there's nothing of that sort, equivalent consultation in the DPP's Section 117 appointment.

Mr. Valenitabua: If I hear you correctly, you are proposing to this Commission that the appointment has to be scrutinized by Parliament, which is not happening now, and which I don't think happens in any other Commission.

Ms. Rokoika: Correct.

Mr. Valenitabua: It doesn't happen in any other Commission and what I'm hearing is that FICAC has to go through that scrutiny. What is so special about that?

Ms. Rokoika: Thank you, Chair. I had anticipated the word special in the question. The reason why we believe that there has to be a scrutiny by a third party, and in this instance, we are recommending Parliament, just so that we can avoid the problem that we are having now. Maybe there's another mechanism that the CRC or the Commission believes is the better or appropriate body to do the scrutinizing, but we believe that there has to be scrutiny done so that the person that actually takes leadership of the Commission is one that has been vetted by any machinery of government because of the nature of the work, we are affecting people's lives because of our obligations to the people, the accountability concept that we have by virtue of the Commission, FICAC. So, we believe there has to be scrutiny done.

Maybe the CRC believes that there's another body that can do it well and good, but the fact that it goes to the Attorney General,

noting that this was done in 2013, that in itself causes a problem in our respectful submissions. So, we believe that it should not, because the current wording is consultation, maybe not consultation or scrutiny, just some sort of scrutiny from a third party before the appointment is deemed complete or finalized by the appointing authority. That's the basis on which we are making the submissions.

Mr. Valenitabua: Thank you. Does any one of the Commissioners wish to?

Dr. Gounder: Thank you Chair and thank you Commissioner for your presentation this morning. I also want to thank your colleague with whom I work together on the National Development Plan and the issues around FICAC have been captured in the National Development Plan as well.

My question is regarding the point you made about removal from office, given the similarity of your office with the DPP and the removal of DPP in the Constitution 117.6 talks about inability to perform the functions of user office, whether arising from infirmity, faulty mind or any other cause of a misbehavior. It may not otherwise be removed. But I see that you are asking for removal, section 112 of the Constitution which relates to the removal of judicial offices.

So, may I understand what is the reason for differing in this case while so far you have been trying to maintain some level of similarity with DPP?

Ms. Rokoika: Thank you Commissioner through the Chair. The basis on which we have formulated it that way was because we did not want to reinvent the wheel as I had said. I leave it out there for the Commission to decide which one they would prefer to use.

Everything lock, stock and barrel from the DPP's provision, that's fine. Or if it's just removal by virtue of 112 as judicial offices are removed. But there has to be a provision in the proposed amendment for some sort of removal. I leave it with the Commission. I've just incorporated that in there because there's nothing presently available for the removal of the leadership at FICAC.

Dr. Gounder: That's very clear. One more question Chair. This is on funding and administration. The submission says Parliament shall ensure that the Commission is provided with adequate, stable and

independent funding to enable to perform its functions effectively.

I'd like to understand better about independent funding because if we do take this into account, it may have implications on the budgeting process and also for the act relating to financial management. If you can clarify that, that would be great. Thank you.

Ms. Rokoika: It was of to mind when we were doing the submission in in terms of word independent. At the moment we get our funding from Parliament and that has to be maintained. If it needs to be removed, it needs to be removed, the word independent. But I was thinking of independence of funding exactly the way the Commission is asking. We are currently being funded by Parliament so we can't have the word independent removed from there. Through you Chair. Commissioner and Manager of Governance.

Mr. Valenitabua: Ms. Rokoika and Ms. Naliva, we have to excused Mr. Kohli, he is flying back to Labasa. Thank you.

Dr. Fatiaki: Firstly, let me say thank you very, very much for the submission. I think the aspects of the Constitution that apply to FICAC in Section 115 and its comparison to Section 117 and other constitutional offers is clear and may serve us well in terms of deciding what amendments need to be done. Having said that, I'd like to take this back a little further and when I say further, I mean nothing to do with you two and nothing to do with us, which is that this body was promulgated in 2007 by decree by the previous government.

It was continued in that form by the current, the last government as well in 2013 under that Constitution, which was also promulgated and is the reason why, as Chair has rightly pointed out, why we have been asked to review it. I think the term was that there is a democratic deficit in the 2013 Constitution in terms of the fact that it did not come from we the people and I guess by extension that will apply to the promulgation and the decree that enacted FICAC. And I guess having said that then what I want to bring to you is what we the people talk about whenever you read about FICAC.

I ask these questions again from the point of view of the people given that we will be going out to widespread consultations with

the public and I suspect that we will get questions related to the institution of FICAC under promulgation because the same questions that were raised about the 2013 Constitution and the need for the review are the same things that apply to the FICAC promulgation. I have three specific questions in respect to that.

One is an accusation that we read about often as to the weaponization of FICAC. Now the first question I want to ask is do you think that is an issue or do you think it is not an issue?

Ms. Rokoika: Thank you Chair through, thank you Commission through the Chair. For us working within the Commission that is not an issue but the issue lies with the public perception. And that in itself is a concern for us because it puts us in terms of accountability and international ratings in terms of what the public perceives as weaponization.

But to answer your question from within and the way that the work is conducted within the Commission it will be very difficult for a person to be able to make a decision by being assisted or promoted from outside because we have a lot of mechanisms in place within the Commission itself that safeguards the officers. And that is in terms of the way complaints are handled and then when it comes up to the Office of the Commissioner when it goes down to investigations there are layers of people within the Commission itself that undertake the work from investigators to the team leaders, chief investigators to the managers and then it comes to the Office of the Commissioner and then it goes down again. There's a lot of layers within the institution itself that prevents a person from being able to make decisions on their whims.

I don't do that in terms of the way decisions are made. There are several officers within. It comes up to the manager and then it comes to me and then it goes down. I'm not the only one that is making the decision in there. And the decisions that are made by the Office of the Commissioner needs to be based on investigations, what the law says. There's a lot of layers within. So, within the Commission, to answer the question, no, it will be very difficult for it to be weaponized. But the issue that we have is the public perception and that we are hoping to be able to improve and that's the work of governance in terms of awareness and outreach to the people so at least it can move up

the public confidence in the institution itself. I'm sorry, did I answer your question?

Dr. Fatiaki: You actually, thank you. You have, but you actually answered what was going to be the second part of my question which is if so, what can we do?

I, again, I ask that because and I'm not so liberal and I don't want to use the word presumptuous in assuming that the public perception is not a consideration because, again, I emphasize this Constitution, this document has got to be what we the people want and if we the people think that, and again, this doesn't relate to your tenure either, either of you, I'm talking about the history of FICAC from 2007 until now and the fact that it has come out of promulgations and decrees which, you know, democratically a deficit and we are trying to address that and therefore the question, I guess, should have been historically, are there cases, if you were to reflect, that the public perception of the weaponization of FICAC would be valid, for instance, or shall we take it that they're all the perception of weaponization by the public in its inception to today is completely just that they've misinterpreted everything that's happened or are there cases in your mind, I don't, I'm not asking for specifics, that there may have been reason for the public perception of weaponization, that's the question.

Ms. Rokoika: Thank you, Doctor. What I'll do is I'll just give a short response and then I'll give it to Manager Complaints and Governance to respond to the public perception aspect that you've raised.

First, in terms of the decree or the promulgation of the 2007 decree, I do not have it at the tip of my fingers but I understand that subsequently in 2014 it was, that there was an amendment that was actually passed in Parliament that was, that in effect, but that was, I believe that that was just a Band-Aid amendment, if I, maybe I shouldn't have said that, in terms of it being a, changed from being a decree to an act, I think there was a 2014 act that was passed. I'll give it to Ms. Naliva to talk in terms of public awareness, public perception.

Ms. Naliva: Thank you. I look after a unit that actually goes out or undertakes the roles and duties of conducting education and prevention training programs to the whole of government and to the whole

of society. Through our experiences on the ground, when we go out to conduct our session, there is a, there is a misunderstanding and lack of knowledge in the work of FICAC. They don't really, they are not empowered in the roles and functions of FICAC, our purpose, so we take it down to the grassroots level and we really educate and empower them on the work that we do, the problem of corruption and how corruption is a bedrock to all social ills.

So, in terms of public perception, there is a 50-50, while our, through our education training programs and our workshops to the whole of government and whole of society have actually had some good impacts because we tend to receive a lot of training requests from the communities as well from the grassroots level for our sessions and our programs to be taken to them. There's still some institutions, some areas where they still are not quite receptive to the work that we do, but nevertheless we continue to do our work in order to change the public's perception towards us. Thank you.

Dr. Fatiaki: Thank you, Manager Governance. I appreciate your answers, very much so, and again, I try to couch these questions in a very generic role because, again, this is not directed at you individually. I appreciate that you have to be candid in your responses because you're employed by government, but I have to ask these questions in the interests of we the people.

If there were no weaponization, in your opinion, or any examples of it, it's just the perception that the public has, then I have a question to ask. How is it that three separate FICAC commissioners could find differing, I'm not going to get specific to the actual cases, but come up with different outcomes? First, one FICAC commissioner decides we should prosecute. Within the space of a replacement commissioner being appointed, we decide within one day that we should dispense with them, not prosecute, no case to answer.

And then within a month, we have a re-institution of the case. Same cases, three different commissioners, three different perceptions and outcomes and rulings. Now, I don't know how you would call that.

I wouldn't call it public perception. That's the reality of what happened. And if that's the reality of what happened, what I'm really asking is, how do we, how do you reassure the public that

that kind of thing doesn't keep happening? Because I don't want to name the ones, but I think we're all familiar with what I'm talking about.

If it were as, like you say, you have systems and checks and balances and assessments that are made by professional people, I have no doubt your staff are coming to decisions. How is it that we get three separate decisions by three separate commissioners in the space of three months or four months for the same case? Again, that's a reflection. That's not a question. But you see where I'm coming from when I ask that question for the public.

Secondly, the issue of duplicity. I think that's, again, something that I hear in the public. And I guess my question is, is there anything that FICAC does that the office of the DPP can't do? That's the first question. Straight yes or no. I'll repeat that. Is there anything that FICAC does that the office of the DPP cannot do?

Ms. Rokoika: The answer to that, Doctor, is yes. The basis of that answer is our obligations to UNCAC on the ratification when the government of Fiji did that in 1994, it was. One of our obligations, international obligations, when we ratified the convention was awareness.

And that's something that we specifically do that is focused on anti-corruption conduct. In terms of prosecution, which I believe is the basis of the question, everything that we can do, the DPP's office can do.

Dr. Fatiaki: Thank you for that. And the third question, I guess, relates to the second question, which is, given that FICAC has been in place since its promulgation in 2007, do you have any data to demonstrate that it has achieved the desired effect in terms, for instance, of our ranking with the corruption perception index, our ranking as a country in terms of, is there any data that you have that it's actually served the purpose for which I presume it was instituted?

Is there any data that demonstrates, for instance, that corruption is much better now than it was in 2007? Because obviously as a constitutional body looking and reviewing this, that's one of the things I'd want to know. Now, if this didn't exist before 2007, and it was brought in in 2007, and in 2026,

corruptions almost disappeared from Fiji, or is improved by 50% or 70%, then I'd be interested to know. And I would think that anybody that's doing any work in that field would want to know that too, that you have concrete data that says we are actually succeeding at what we do.

I appreciate your answer to the question, incidentally, in terms of the differences. For me, that's not much of an answer, because complying with international bodies is hardly what I'd want our constitution to do. I'd want our constitution to address our needs and hopefully achieve solutions to them, rather than comply with the requirements of whatever the international treaty or alliance or body that addresses corruption. I mean, I think the education part is useful. Again, I think for us it's the prosecutorial part that is important, and I think you answered that in your second part of your question. But again, I go back to the issue of data.

Is there any concrete data that you have or that the office has that demonstrates that actually corruption has been improved? Because again, perception is everything, and the public perception, I dare to suggest, may be that we're actually as corrupt, if not more corrupt, now than we were in 2007. I can tell you, I'm old enough to know, we're certainly more corrupt than when we got independence in 1970. Your thoughts?

Ms. Naliva: In terms of the data, we have the Corruption Perception Index that's done by Transparency International, and I believe for Fiji as a country, if I can remember correctly, there was one done in 2022. There was another in 2023 and 2024. I think already, in terms of our ranking, I think we had ranked from 55, and then we had improved with, there was a 50th ranking as well. We were ranked against 180 countries, so that was the only international measure that we had.

Nationally, we don't have any measure, but as part of our national development plan, one of our project activities is to establish or is to actually have or conduct a national anti-corruption survey. We've already started the groundwork and preparatory work on that by having consultation meetings with the Fiji Bureau of Statistics. So that is the only international data that we have, and apart from the Corruption Perception Index, we also had a report that came out, I can't remember the correct year, but it was a global barometer report. Thank you.

Dr. Fatiaki: Thank you. Let me just clarify this. You say that we are ranked 55 out of 185 countries.

Ms. Naliva: 180. 80, in terms of our corruption perception. The higher the number, the better, or the lower the number?

Ms. Naliva: The lower.

Dr. Fatiaki: Okay. And comparatively, what were we before?

Ms. Naliva: I believe in the first year, it was around 55, and then for the second year that the Corruption Perception Index was done, it went to 54, and then the third year, it kind of went back to, I believe, 55.

Dr. Fatiaki: And we're talking about between 2007 and 2026?

Ms. Naliva: Yes, because the Corruption Perception Index, if I can remember correctly, annually, yes.

Dr. Fatiaki: So, I guess my question is, it should be easy to access this data, I just don't want to be doing it right now. So, check what our ranking was in 2007, and check it right now in 2026 or 25, and just tell us that. Thank you.

Ms. Rokoika: Yes, thank you Vuniwai. We'll be able to provide that to the Commission through the Chair. In terms of data within the Commission, we have that within the office itself, it's reflected in our annual reports in terms of convictions and cases pending in court. We will be more than happy to provide that to the Commission through the Chair if that is required. Thank you.

Mr. Valenitabua: Please do that.

Dr. Fatiaki: Thank you again, ladies. Thank you very much for the answers. I know these were not the easiest of questions, and again, I emphasize, these were not directed at you individually. These were just comments that relate to FICAC and its role, and I guess the reason for us to address it, given that it was promulgated under decree, and subsequently in 2013 put into the Constitution and continued. Thank you.

Mr. Beg: Through you, Chair, thank you very much for your presentation, and I think FICAC Commissioner and your colleague, Ms. Naliva, I think the points, my first question is the clarity of your services is very clear that it's corruption that you're dealing with in your

section 115 versus 117, which is prosecution by the DPP in those roles. And then also in the corruption side, that also includes financial corruption. So no, it's just corruption. I think my commissioner to the extreme left there, again, I just was wondering whether that includes financial.

Ms. Rokoika: Yes, that includes financial in terms of procurement tender processes. That's all a part of the work that we do at FICAC, and our investigators are trained in that field in terms of forensic accounting.

They are trained in the field in terms of investigation, and recently our focus has been on procurement and tender processes.

Mr. Beg: Okay, thank you for that. And also on your scale, Fiji is sitting sort of like between 55 at the moment, which is mid-range, top of the number, 85, so New Zealand is looking very low in their index corruption, so is Australia at 75. So, we're sitting at moderate. In terms of improvement, I can't answer that question. I guess the data will probably show that.

But yes, I think it's important that the role that you're doing, I guess as long as it's defined, and that's what I want to hear. And obviously the public perception that my colleague Commissioner Fatiaki is talking about, we just want to hear from the public on that. But I think your presentation and recommendations based on your lived experiences through that is something we will take on board and look at quite clearly and address the areas that you feel strongly about.

But yes, I think I was just trying to understand how better positioned our FICAC is in our current role, because there's a layering of so much in our systems and obviously powers and the delivery of decisions. I think that's what's worrying. But I guess we would need to listen through our consultation process to understand that better. But thank you very much.

Dr. Gounder: Thank you. I think for the purpose of discussion, I just wanted to add to the discussion on the perception index. I'm not a very big fan of the perception index. The name suggests it's based on experts' perception. So, it is useful in some cases, but not totally useful.

So, I'd like to caution the complete use of that by the media present here today. If we are looking at the effectiveness of FICAC, perhaps we can look at the cases as the Commissioner has highlighted, look at in totality how they perform in terms of the issues they have looked at in the cases. Perhaps that would be a better way to go.

And for that reason, for the national development plan, we requested FICAC to come up with a local index that would be more relevant for our purpose rather than the global perception index. Although it's useful in some cases, it's used, it's based on experts' perception, and in many cases I am the expert who provides perception-based data to these indexing agencies. So useful in some cases, but we need to look more deeper than the perception. Thank you.

Ms. Naliva: Chair, if I may, through you, just to add some clarity on the corruption perception index as well. It doesn't only focus on corruption. It also takes into account other areas, like law enforcement and climate change. So, all that affects that overall rating for the country. Thank you.

Mr. Beg: Through you, Chair, hence the whole idea of ensuring that the various bodies are working together as one to try and achieve a better way to work in this space, if I can use that word, Chair. Thank you.

Mr. Valenitabua: Ms. Rokoika and Ms. Naliva, one of the issues which the commissioners, CRC commissioners, have been sort of discussing is how bulky this constitution is. There are so many things included into the provisions, one section, and then you have so many subsections and so many subsections. Now I'm going to refer you to Section 115, and I'm going to ask you to give me your views on this. For Section 115, subsection 6, it says that in the performance of the functions and exercise of authority, the commission shall be independent.

That is understood. And it shall not be subject to the direction or control of any person or authority, except by a court of law or otherwise prescribed by written law. We've got the independence, and then there's a limitation or qualification, or a proviso, although it does not say or expressly say that.

Now, when we go down to subsection 9, Section 115, subsection 9, the commission shall provide regular updates and advice to

the Attorney General on any matter relating to its functions and responsibilities. That we might call a written law. Right? We might.

It depends on how it is interpreted. Then we go to Section 5 of the FICAC Act. Section 5 of the FICAC Act, subsection 5, the provision says the commissioner may seek the assistance and input of the Attorney General. Or has this been amended?

Ms. Rokoika: It's still there.

Mr. Valenitabua: Still there. Right, my point is this. Independence, and then it says in paragraph 9 something else, advice of the Attorney General, and then in Section 5, you may seek the assistance and input.

Now, in your view, first of all, is that not full duplicity, but it's some sort of duplicity? Secondly, does that not take away the independence of the office, independence of FICAC? If we can remove one or two of these, you know, then we can reduce the provisions that are given in the Constitution.

Ms. Rokoika: Thank you, Chair. As the commissioners will note, the proposed draft that we have provided to the commission does not make any reference to the Attorney General specifically for that purpose.

I believe that our proposed amendments that we've inserted reportedly is supposed to be done to Parliament. I believe that the Auditor General's office has something similar. So, we had seen that, and the response to the question was the way we've actually drafted our proposed amendments, the removal of that basically because they are conflicting in terms of this side is saying independence and this side is saying reporting and assistance and advice.

So, both of them cannot work together as being independent whilst the Attorney General reference is specifically provided in the current Section 105. So, I'm sorry, did I answer your question, Chair?

Mr. Valenitabua: Yeah, I think you were suggesting that we might have to amend the three provisions, Thank you.

Ms. Rokoika: Thank you, Chair.

Mr. Valenitabua: Well, Ms. Rokoika and Ms. Naliva, thank you very much for your attendance this morning. We've had an enlightening consultation session, and in case there's anything else you would like to have an additional submission written, you may email them to us. With those words, I thank you, and on behalf of the Commissioners, I wish you well.

Ms. Rokoika: Thank you, Chair. Maybe this is something not for the record of the media.

I was hoping to make reference to a particular work that I had done in my previous life when I was a private practitioner. I was appointed the Chair of the review of the NLC legislation, and we had made some recommendations in there, so maybe that's something that I probably could discuss outside of my work as Commissioner or maybe informally.

Mr. Valenitabua: Are you suggesting that you deal with that now?

Ms. Rokoika: No, no, no, maybe just informally in terms of, yes.

Mr. Valenitabua: Very well. Thank you. We take note.

Ms. Rokoika: Thank you, sir. We'll be in touch, or otherwise, email us when you are available. Thank you, Chair.

Mr. Valenitabua: Thank you.

----------End of Session [22-4-2026]----------

FICAC

Fiji Independent Commission Against Corruption

A Fiji where institutions are corruption-free, justice is swift, and citizens trust that public money is used for the public good

SUBMISSION TO THE

CONSTITUTIONAL REVIEW COMMISSION

Re: Section 115 – Fiji Independent Commission Against Corruption

Prepared by:

Lavi Rokoika, Acting Commissioner

22 April 2026

A. INTRODUCTORY POSITION

The Fiji Independent Commission Against Corruption ("Commission") approaches this submission mindful that a decision of the High Court of Fiji in Suva is expected on 24 April 2026 on the present questions surrounding the office of the Commissioner. These submissions are therefore advanced in the context of the current position and are not intended to pre-empt or undermine the authority of that decision. Rather, they proceed on the footing that, regardless of the outcome, there is a clear need to clarify the constitutional framework governing the Commission to remove ambiguity, secure institutional certainty, and protect the integrity of its prosecutorial mandate. The present circumstances have exposed structural vulnerabilities within section 115, and it is in that context that the proposed amendments are advanced.

B. PROPOSED AMENDED SECTION 115 — FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

Fiji Independent Commission Against Corruption

115. (1) The Fiji Independent Commission Against Corruption, established by the Fiji Independent Commission Against Corruption Act 2007, continues in existence as an independent constitutional body.

(2) The Commission shall consist of a Commissioner, a Deputy Commissioner, and such other officers as may be appointed in accordance with this Constitution and the Fiji Independent Commission Against Corruption Act 2007.

Core Functions

(3) The Commission shall have the constitutional function to;
a. investigate corruption and related offences;
b. institute, conduct, and discontinue criminal proceedings in relation to corruption offences; and
c. take over and continue investigations or proceedings relating to corruption offences commenced by any other person or authority.

(4) The powers of the Commission under this section shall not be limited or abrogated except by amendment to this Constitution.

Independence

(5) In the performance of its functions and the exercise of its powers, the Commission shall be independent. It shall not be subject to the direction or control of any person or authority, except by a court of law.

(6) Without limiting subsection (5), no person or authority shall direct or control the Commission in relation to any investigation or the institution, conduct, or discontinuance of proceedings.

Appointment

(7) The Commissioner shall be appointed by the President

a. upon the recommendation of JSC or COC established by written law, following an open, transparent and merit-based selection process; and
b. upon confirmation by Parliament within 28 days

(8) A person shall not be qualified for appointment as Commissioner unless that person is qualified to be appointed as a judge of the High Court of Fiji.

(9) Where the confirmation process under subsection (7)(b) is not concluded within the prescribed period, the nominee recommended by the JSC or COC shall be deemed to be appointed.

(10) The validity of an appointment made under this section shall not be questioned in any court except on the ground of lack of constitutional qualification or fraud.

(11) The Commissioner shall be appointed for a term of 3 years and is eligible for re-appointment, and shall not be removed except in accordance with this Constitution.

(12) The appointment of an Acting Commissioner shall be pursuant to this section.

Removal

(13) The Commissioner may be removed from office only for inability to perform the functions of office or pursuant to s112 of this Constitution.

Funding and Administration

(14) The salaries, benefits and allowances of the Commissioner, Deputy Commissioner and staff shall be a charge on the Consolidated Fund.

(15) Parliament shall ensure that the Commission is provided with adequate, stable and independent funding to enable it to perform its functions effectively, and any material reduction in such funding shall be justified to Parliament.

(16) The Commission shall have control over its own administration, staffing and internal procedures.

Accountability

(17) The Commission shall submit annual and special reports to Parliament. It shall ensure that such reports are made publicly accessible in such manner as may be prescribed by written law, to promote transparency and public confidence.

(18) The Commission may provide information to any State authority where necessary for the administration of justice.

Standards

(19) In exercising its functions, the Commission shall be guided by international standards relating to anti-corruption, including the United Nations Convention Against Corruption.
(20) The Commission may enter into cooperation arrangements and joint initiatives with regional and international anti-corruption bodies for the purpose of fulfilling its functions, consistent with the obligations of the State under international law.

C. EFFECT OF THE PROPOSED AMENDMENTS

The proposed amendments to section 115 address the structural deficiencies identified in the current framework. However, the Commission's experience also demonstrates that additional constitutional safeguards are necessary to ensure that the anti-corruption framework operates effectively in practice.

First, the continuity of the Commissioner's office is essential to the uninterrupted exercise of prosecutorial powers. The absence of an acting appointment mechanism within section 115 creates a real risk that, in the event of vacancy or incapacity, there may be no legally authorised person to exercise the Commission's functions. This exposes ongoing investigations and prosecutions to delay and challenge. By incorporating a provision analogous to section 117(4), the Constitution ensures continuity of authority and protects the integrity of proceedings.

Second, the absence of qualification thresholds and tenure provisions undermines both the legitimacy and stability of the office. Unlike the Director of Public Prosecutions, whose qualifications, term of office, and removal protections are clearly defined, the Commissioner's position lacks equivalent constitutional provisions. The introduction of minimum qualification standards and a fixed term of office enhances the institution's credibility and ensures that leadership is both competent and free from undue influence.

Third, public accountability must extend beyond formal reporting to Parliament. While the Constitution presently ensures institutional reporting, it does not guarantee public access to that information. The inclusion of a requirement that reports be publicly accessible strengthens transparency and aligns the Commission's work with the broader constitutional principle of accountability to the people.

Finally, the Commission's engagement in regional and international cooperation is an established and necessary aspect of modern anti-corruption work, particularly where corruption transcends national boundaries. While the current section 115 (7) recognises international standards, it does not expressly protect the Commission's operational cooperation with external bodies. Constitutional recognition of this function ensures that such cooperation remains protected and cannot be restricted by future legislative or policy changes.

D. CONCLUSION

The Constitution recognises the importance of accountability institutions, but section 115, in its current form, does not fully secure the Commission in the exercise of its mandate. The proposed amendments do not expand the Commission's powers; they clarify, stabilise, and protect those powers within the constitutional framework.

The present circumstances demonstrate that ambiguity at the constitutional level translates directly into uncertainty in practice. The amendments proposed are therefore intended to ensure that the Commission's authority is clear, its independence is preserved, and structural deficiencies do not compromise its role in the administration of justice.

The issue is not whether the Commission exists. It is whether it is constitutionally secured in the performance of its function.
Submitted by

Lavi Rokoika
Acting Commissioner

FICAC v DPP				
Area	**Section 115 – FICAC**	**Section 117 – DPP**	**Status**	**Legal Significance**
Constitutional Status	Commission established and continued (s115(1))	Office established and continued (s117(1))	**Equivalent**	Both are constitutional institutions
Core Function	Investigate + prosecute, but not specific corruption offences & subject to written law (s115(3)-(4))	Prosecute, clearly defined (s117(8))	**DPP Stronger**	DPP has clearer and more self-contained constitutional mandate
Dependence on Written Law	Core functions prescribed by written law (s115(3))	Core function constitutionally defined	**FICAC Weaker**	FICAC's mandate is variable; DPP's is stable
Independence Clause (Form)	General independence clause (s115(6))	General independence clause (s117(10))	**Equivalent (Form)**	Wording is similar in both provisions
Operational Independence (Effect)	Qualified by "written law" and structural context	Clear independence in prosecutorial decisions	**DPP Stronger**	DPP less exposed to indirect control
Attorney-General Role	Mandatory reporting to AG (s115(9))	Only consultation in appointment/remuneration	**FICAC Weaker**	FICAC structurally aligned to Executive; DPP is not
Appointment Framework	Not provided within s115	Express constitutional process (s117(3))	**DPP Stronger**	DPP appointment is structured and insulated
Acting Appointment	Not addressed	Express provision (s117(4))	**DPP Stronger**	Ensures continuity of office
Qualification Requirement	Not specified	Must be qualified as a Judge (s117(2))	**DPP Stronger**	Higher constitutional legitimacy threshold
Tenure	Not specified in s115	Fixed 7-year term (s117(5))	**DPP Stronger**	DPP has security and predictability of tenure
Removal Protection	Not specified in s115	Judicial-level removal (s117(6)-(7) via s112)	**DPP Stronger**	DPP removal highly insulated; FICAC less tailored
Prosecutorial Authority	Yes (s115(4))	Yes + defined exclusivity carve-outs (s117(8))	**DPP Stronger**	DPP role more clearly structured within system .
Delegation of Powers	Express delegation allowed (s115(5))	Express delegation allowed (s117(9))	**Equivalent**	Operational parity

Staff Control	Full control (s115(10)-(11))	Full control (s117(12)-(13))	**Equivalent**	Both administratively autonomous
Funding – Salaries	Charged to Consolidated Fund (s115(13))	Same (s117(14))	**Equivalent**	Equal constitutional protection
Funding – Operations	Parliament to ensure resources (s115(14))	Same (s117(15))	**Equivalent (Structural Weakness)**	Both exposed to budgetary pressure
Accountability Structure	Reports to Attorney-General (s115(9))	No reporting obligation to Executive	**FICAC Weaker**	Executive linkage vs institutional independence
Finality of Appointment	No constitutional closure mechanism	Structured appointment reduces risk	**FICAC Weaker**	FICAC more vulnerable to challenge and uncertainty

SECTION 115 OF THE CONSTITUION			
Area	**Current Section 115**	**Proposed Amendment**	**Justification**
Core Functions	Functions largely left to "written law" (s115(3))	Functions entrenched in Constitution (investigate + prosecute)	Prevents Parliament from altering core mandate; aligns with need for constitutional certainty
Independence	General statement of independence (s115(6))	Expanded to prohibit direction in investigations/prosecutions	Aligns with NZ SFO model; removes ambiguity in operational independence
Appointment	Not specified in s115; fragmented elsewhere	Independent panel + parliamentary confirmation + deeming clause	Mirrors Australian models; ensures legitimacy and removes executive dominance
Finality of Appointment	No finality mechanism	Deemed appointment if process stalls + limited judicial challenge	Prevents uncertainty and collateral attacks on prosecutions
Removal	General constitutional removal provisions	Express tribunal + parliamentary removal	Aligns with Australian ICAC and judicial standards; protects against retaliatory removal
Attorney-General Reporting	Mandatory reporting to AG (s115(9))	Removed; replaced with reporting to Parliament	Eliminates executive proximity; aligns with independence principle
Funding	Salaries protected; general funding obligation (s115(13)-(14))	Adds operational funding protection + justification requirement	Prevents indirect control via budget cuts
Accountability	Reporting to AG	Reporting to Parliament + committee oversight	Aligns with Australian parliamentary oversight model
Administrative Control	Internal staffing control present	Retained and clarified as constitutional control	Ensures operational autonomy
International Standards	UNCAC reference present	Retained and strengthened	Maintains international compliance framework

WHISTLE BLOWER COMPARISON			
Jurisdiction	**Constitutional position**	**Relevant constitutional provisions**	**Practical position**
Australia	No express constitutional protection for whistleblowers or witnesses in anti-corruption matters	No identified section in the Commonwealth Constitution creating such a guarantee	Protection is statutory, including under the National Anti-Corruption Commission framework and other legislation. (Federal Register of Legislation)
Singapore	No express constitutional protection for whistleblowers or witnesses in anti-corruption matters	No identified provision in the Constitution of the Republic of Singapore creating such a guarantee	Protection is handled through statute and practice, including anti-corruption legislation rather than the Constitution. (Singapore Statutes Online)
Hong Kong	No express constitutional whistleblower or witness-protection clause tied to anti-corruption in the Basic Law	General rights exist, especially **Basic Law Article 35** on access to courts and remedies; no dedicated whistleblower clause identified	Protection is mainly statutory, including informer confidentiality and witness protection legislation. (basiclaw.gov.hk)
Canada	No express constitutional protection for whistleblowers or witnesses in anti-corruption matters	The Charter protects general rights, including **s 2(b)** freedom of expression, **s 15** equality, and **s 24** remedies, but no dedicated anti-corruption whistleblower clause	Protection is mainly statutory, such as under witness-protection and sector-specific whistleblower laws. (Department of Justice Canada)

19. The Commission shall ensure the protection of whistleblowers and witnesses who provide information in good faith in relation to corruption or related offences, including protection from retaliation, preservation of confidentiality, and such legal safeguards as may be necessary to secure their safety and participation in proceedings.

20. A written law shall provide for the enforcement of the protections under subsection 19, including access to remedies for any person who suffers detriment as a result of making a disclosure.

Ministry of Fisheries and Forestry (MFF)

Ministry of Fisheries n Forest
Time: 2.00pm-3.20pm
Date: 22-04-2026

Leighton: On behalf of the Constitutional Review Commission, I welcome the Honorable Minister of the Fisheries, Madam Bainivalu. Just before we begin, I just have a few housekeeping matters. With regards to the mics that are in front of you, if you can press on the right side of the mic to turn it on. And once you've spoken, if you can just tap the same side to turn the mic off. Also, there's an attendance register which will be passed around, if you can also fill that as well. The Chair will then proceed to introduce the Commissioners and the team and the work that they will be undertaking with regards to the review. Also, kindly request after he's made the introductions, if the Honorable Minister and the team can also introduce themselves. This is for the transcription record, Vinaka.

Mr. Valenitabua: The Honourable Minister for Fisheries and Forests and gentlemen, officers from the Ministry. We welcome you this morning, or this afternoon, I should say. We welcome you for attending to this consultation this morning, Madam. The Constitution Review Committee is, as you see, sitting here. The Commission is comprised of seven Commissioners. There are four of us here. We have three others who are in other commitments, so they cannot be present.

I would like to, before I go on, I'd like to ask my fellow Commissioners to introduce themselves to you. And we shall start from my far right at the other table. Thank you, Chair, and welcome, Honourable Minister and delegates of your team.

Mr. Beg: My name is Conway Beg. I'm an architect by profession working in the private sector. What's an architect doing on a Constitution Committee? It's a challenge, but I see things slightly different. I'm hoping to really make some impact in that area, and I'm happy to sit on this Committee and listen to the public and yourselves in your submission. Thank you.

Dr. Fatiaki: Madam Minister and your team, my name is John Fatiaki. I'm a medical practitioner by profession in the private sector, previously in government, and I'm Rotuman and welcome you and look forward to listening to your submission.

Dr. Gounder: Good afternoon, Honourable Minister and colleagues from Ministry of Fisheries and Forestry. I'm Neelesh Gounder. I'm an academic with USP,

and you may also know me from Ministry of Finance where I was Chief Policy Advisor from 2023 to 2025. We look forward to your submission. Thank you.

Mr. Valenitabua: Madam Minister, Minister, gentlemen. I'm the Chairperson Sevuloni Valenitabua from Rewa.I've had the opportunity to meet with one of your officers appearing here today in relation to fisheries in Rewa. Welcome. First, I would like to introduce you to the Commission itself. The Commission is an independent body. We were appointed by His Excellency, the President of the Republic of Fiji. It was the President who gave us this Commission, and I believe that was established in accordance with a decision made by Cabinet, and pursuant to Section 2 of the Commissions of Inquiry Act 1946. Our task is to undertake a comprehensive inquiry into the 2013 Constitution.

We are to travel around Fiji. We are to take submissions from the population of this island, or the adult population maybe I should say, and get submissions on what our people would like to have in their Constitution, or what is to be removed from the 2013 Constitution, or what is to remain in the 2013 Constitution. The ultimate objective would be for us, after our six months' timeline, which expires on the 3ed1st of August 2026, to prepare a report together with an amended Constitution and present those to His Excellency.

And then His Excellency and the Government will take, will follow a process from there, in order, if they think so, to have another, a new, not new, an amended Constitution for the Republic of Fiji. That is our task. We have been receiving submissions during the last three weeks from Government Ministries and other private associations.

And this afternoon we are receiving the Ministry of Fisheries and Forests with you, Madam Minister, and your gentlemen staff members. We welcome you. We hope that it will be a good session, and that you would enlighten us on what affects the Ministries, the two Ministries, in relation to the Constitution.

What you want changed, what you want improved, what you want removed, and so forth. With those few words, I welcome you, and I now take the time to pass on the mic to you for your submissions, if you may. Thank you, Mr. Chairperson.

Hon. Bainivalu: A very good afternoon to you and the Commission members that are present this afternoon. I am Alitia Crikiyasawa Bainivalu from

Nabalabala Saivou, in Ra. And here with me this afternoon are colleagues from the Ministry of Fisheries and the Ministry of Forestry.

To my right is the Acting Permanent Secretary for Fisheries and Forestry, and to my right are the senior officers of the Ministry of Forestry. We are two separate Ministries, two separate heads of expenditures, but we have one Minister and one Permanent Secretary. So, this afternoon we will be making two different submissions, and I will probably give the floor now to the Minister of Forestry to present this submission on behalf of the Ministry of Forestry, before I give the floor to the Acting Permanent Secretary to deliver this submission from the Ministry of Fisheries. Thank you.

Mr. Tulele: Thank you very much. I am the Chairperson of the Constitutional Review Committee and the Honorable Members. My name is Ilaisa Tulele. I am from Sawaieke, Gau. I currently head the Emission Reduction Program for the National Program that is being managed by the Ministry.

I have this great privilege to present to the Committee some of the proposed or the recommended changes to the Constitution. I would like to ask if you have copies of the submission.

Mr. Valenitabua: We can make photocopies if you don't mind. Later, please. Please proceed. Thank you, Honorable Chair.

Mr. Tulele: As you can see from our submission, we have provided the recommendations by sections and it has been in tabulated form. Just to give you some description on the sections that we wish to be reviewed, the first section is on the Environmental and Natural Resource Rights Framework. The proposed amendment is the inclusion of an explanatory provision which states, the state shall ensure the sustainable management, protection, conservation, and restoration of Fiji's forests, biodiversity, watersheds, and other natural resources for the benefit of the present and future generations, while safeguarding the rights and interests of customary landowners and ensuring equitable economic and livelihood benefits to communities dependent on such resources.

The explanatory notes, this amendment seeks to strengthen sector-specific clarity for forestry and natural resources without diluting current legal protection. It emphasizes the state's duty to balance conservation with the rights of customary landowners and community livelihoods.

The second section on Legislative and Regulatory Framework, the inclusion of a supporting clause. Parliament may enact legislation and establish regulatory frameworks for the effective administration, monitoring, licensing, enforcement, and sustainable use of forest resources, including timber and non-timber forest products, climate-related forest services, biodiversity protection, and ecosystem restoration. The explanation, this provision provides an explicit constitutional mandate for Parliament to regulate modern forestry needs, including climate-related services and ecosystem restoration, supporting the expanded mandate under the Forest Act of 2035.

Honourable Chair, as you probably be aware, the Forest Act has been reviewed and is enacted, the Forest Act of 2025. The agenda for this Forest Act is the modernization of forests, forests and its management. We are now moving into an era where carbon trade, emission reduction is very prominent in the world. So, the reviews for the additionalities that we want for the Constitution is to support the newly enacted Forest Act.

We are currently, over the next two years, we'll be developing regulations. So that is the reason why I would like this additionality to the current provisions under the Constitution.

Thirdly, on institutional and regulatory clarification, the inclusion of a recognition clause. Relevant state agencies and statutory bodies may be empowered by law to exercise inspection, compliance, enforcement, and regulatory functions necessary for the protection and sustainable use of natural resources. The explanation, this provides stronger constitutional backing for frontline enforcement and technical administration. It specifically supports licensing systems, seizure powers, and the protection of forest reserves.

Honourable Chair, this additionality is to allow under the Forest Act of 2025, we are looking at also including forest resource owners to be part of our monitoring. And so, this aspect, this inclusion will provide that coverage for the regulations to be developed.

We also have summary recommendations, Honourable Chair. At the bottom of the table, to ensure the effective governance and clear separation of powers within the Fijian Civil Service, the following recommendations are made based on our proposal.

First of all, the decoupling of administration from political authority. The minister remains the head of the ministry and the primary policy decision

maker, while the permanent secretary serves as the key advisor and implementer. However, the employment, employment, and organizational staff must remain strictly within the PS purview to prevent political interference.

Secondly, the legislative realignment, move the functions of the permanent secretary from the constitution to the Civil Service Act of 1999. This allows for a reviewed framework that maintains the permanent secretary's autonomy and clearly defines the relationship with ministers without returning to full control by the PSC.

Thirdly, to protect meritocracy, by removing the constitutional requirement for ministerial agreements, the Civil Service can better manage its size and cost while ensuring that employment decisions are made through an open, transparent, and competitive process.

Fourthly, to strengthen resource stewardship, retain and strengthen existing constitutional foundations, Sections 1, 28, 29, and 40, to provide greater clarity for technical agencies charged with natural resource governance.

Fifth, formalize technical mandates, expressly recognize the authority of state agencies to conduct inspections and enforcement to protect forest reserves, biodiversity, and watersheds.

Sixth, align with modern forestry objectives, ensure constitutional support for the expanded mandate of the Forest Act 2025, including non-timber products, forest health, and climate financing mechanism.

And lastly, Honorable Chair, balance development and rights, and we reformers continue to protect customary land rights and ensure economic benefits from natural resources that reach dependent communities. Honorable Chair, that concludes the submission from the Ministry of Forestry.

Mr. Valenitabua: Thank you Mr. Tulele. May we hear from all of you and then we'll ask questions later.

Mr. Tauvoli: Bula Vinaka, the Honorable Chairman of the Constitutional Review Committee and members of the committee. First of all, I just want to explain myself. My name is Saimone Tauvoli. I'm from Naiserelagi in Ra, currently acting in the position of the Department Secretary for the Ministry of Fisheries and Forests.

My duty today is just to add on to the presentations that have already been presented by the Ministry of Forestry through their senior executives. I'll present on behalf of the Ministry of Fisheries on the presentations on issues that we need to be considered from the committee in looking at the proposed constitutional amendments that's currently taking place. I hope what I present today, on summary, some have been presented by the team from forestry, which I basically want to try and elaborate further on for this afternoon.

I will request that I move straight to the sections that we've identified that need to be amended to make sure there's alignment in the processes specified in the Constitution to try and streamline work within the government, especially in carrying out duties of the respective divisions of work within the government.

We will look at the first one that's on Section 126.1 a and b of the Constitution, which basically looks at the functions of the Public Service Commission. The proposal from the Ministry of Fisheries is to remove the text with agreement of the Prime Minister sitting under Section 126.1 a and b. I request that the body represented in Section 125.2 be the main selection governing body for permanent secretaries.

The reason being, we've noted that the Prime Minister is already the Chair of the Constitutional Officers Commission, which sits and decides on the appointment of the Public Service Commission through its submission to the head of state for the criminal state to nominate the Chair and the members of the Commission. So, it's already in there, and when we want to have separate powers, make sure that the Commission operates independently in making decisions on the role that's been assigned to it, basically in the appointment of former secretaries. So, if it remains as it is, it duplicates the role.

On one side, it's deciding on the appointment through the concurrence of the head of state, and on the other side, when it comes to the personal organization of the Commission on the appointment of the permanent secretary, it's again making a decision on the other side. So, we are looking at if we can remove that clause from Section 1261a and b.

Secondly, on Section 127.1.3 on permanent secretaries, the proposed amendment is to remove the tax, the permanent secretary of a ministry is responsible to the minister concerned for the efficient, effective, and economical management of the ministry or any department under the

ministry. What we've noted is this text contradicts Section 127.1.2, which places administration under the permanent secretary.

The current wording suggests that the minister is administering the ministry, how we look at it. So, it's like it's duplicating that role again. That's how we look at it under what's in the constitution.

So, both the minister and the permanent secretary are doing the same role without any classifications on what needs to be done. When we have the intention, it's already there in the appointments within the ministry and the department's concern. We also noted under the third one, it's under Section 127.1.4, permanent secretaries, still on permanent secretaries, to remove the text with agreement of the prime minister, since we've noted the explanation that it's to be consistent with the first point that we've raised from the first one.

The prime minister already exists as the chair of the Constitutional Officers Commission. So basically, we are just looking at that, if that can be clarified or it can be made sure that there's no duplication of work or reporting or approval on those issues. Looking at Section 127.1.6, still on permanent secretaries, if we can remove the text following the agreement of the prime minister, we already noted the Public Service Commission's role in this capacity should be sufficient without the additional of the prime minister's agreement on appointments. We still noted on those ones.

Section 127.1.7 and 127.1.8, still on permanent secretaries, remove the text with agreement of the minister. Still, we noted again that it's Section 127.1.2 regarding the administration of the ministry.

It incorrectly implies the minister is responsible to day-to-day operations. So basically, that's how we are looking at how those two sections of the Public Service Commission, also the appointments of the permanent secretaries, that we are presenting this afternoon. So, on the summary recommendations, to ensure the effective governance and clear separation of powers, we noted that there needs to be some alignment within what's written in the Constitution.

Within the Fijian Civil Service, the following recommendations are made. Strengthen institutional independence. The amendment seeks to empower the Public Service Commission and the body represented in Section 125.2 as the primary authorities for the selection and management of permanent secretaries.

Secondly, to clarify administrative boundaries, a recurring theme is the removal of limits that suggest the minister administers the ministry. This is intended to resolve legal contradictions with Section 127.1.2, firmly establishing that the permanent secretary is the administrative head while the minister maintains a policy-oriented role. And the third one is to streamline executive approval by removing requirements for the prime minister's specific agreement in various subsections.

The amendments aim to reduce redundancy, noting that the prime minister's influence is already sexually present as the chair of the Constitutional Officers Commission. So, basically, Mr. Chair, that's basically what we, ministry officers, have noted that we presented this afternoon to the committee to consider on the proposed amendments on the sections that I've already highlighted. And this submission is still in alignment to some of the issues that have been presented by the Ministry of Forestry on the administration as reflected in the Constitution, the current Constitution that's currently available today. I believe that's all the submissions from the ministry officers, and I thank you for your attention.

Mr. Valenitabua: Thank you, Mr. Naseralagi. If I may ask, is there any other submission, madam?

Hon. Bainivalu: No, Mr. Chairman. I think that's the submission from the two ministries.

Mr. Valenitabua: Vinaka?

Dr. Gounder: Thank you. The chairman has given me the go-to-go first. So, thank you, Madam Minister and colleagues from the Ministry of Forestry and Fisheries. Thank you for your submission. I must say this is a very bold and honest submission coming from senior civil servants. So, thank you very much for bringing the submission to the CRC. This is for clarity purposes. First is to my colleagues from the Ministry of Forestry. And I agree to your point regarding biodiversity. Fiji has signed international conventions on biodiversity. And so the point about inclusion of an explanatory provision regarding sustainable management, protection, conservation, restoration, etc.

Ideally, if that is a proposed amendment, in this form it will appear in the preamble of the constitution. So, the preamble already contains a provision which I'd like to read to you now. Declare our commitment to justice, national sovereignty and security, social and economic well-being, and safeguarding our environment.

So, do you think that is not sufficient for this purpose and would you like to see more than what's here?

Mr. Tulele: Honourable Member, basically that's the intention. The way things are currently worded, we would like to see that it's understood by those that read rather than interpreted. That it's clear, there's clarity.

Because some of the wordings, when you say environment, it could mean a lot of things. But for forestry the most important thing is the conservation of biodiversity, the protection of forests that are very important to sustaining the growth of forests. Thank you.

Dr. Gounder: I get your point about the need to have biodiversity in addition to the wood environment. Thank you for your clarity. On the second point, the legislative and regulatory framework that you mentioned, and it's good to know that the Forestry Act has been revised, which is one of the KPIs in the National Development Plan as well.

Given that we have, in my view, a very good Forestry Act, do we still need a provision in the Constitution that requires an enactment of legislation and establishing regulatory frameworks for monitoring, licensing and enforcement? Do we still need that provision in the Constitution? Because one of the things we have been discussing at length is how do we sharpen our Constitution and reduce the number of words and pages that are in the current Constitution. I'm just seeking your views, I'm not disagreeing with you, but I just want your views. Because we already have a good Forestry Act, do we still need to have something like this?

Mr. Tulele: Thank you, Honorable Member. Our apologies, we're not lawyers or legal persons.

Dr. Gounder: I'm not a lawyer either.

Mr. Tulele: So we, when we were given this opportunity, we thought we'd like to come in and express ourselves.

Dr. Gounder: Thank you, thank you for doing that. That is fine. Thank you, I get your answer as well. Okay, if you want to add more?

Mr. Tulele:c No, that's basically what I wanted to say. Thank you, I got your answer.

Dr. Gounder: Yes, Madam Minister.

Hon. Bainivalu: Thank you, Dr. Gounder. If I may just probably seek clarification on your question. You don't want it to be repeated again on the Constitution?

Dr. Gounder: Yes.

Hon. Bainivalu: The need for the legislative framework?

Dr. Gounder: Yes, the need to enact specific legislation to explicitly appear here, because you already have a good legislation in place. So I'm just wondering the purpose for it. Usually if you don't have an act, then you put this clause in the Constitution which will force the government in the future to enact a written law in regard to something of that kind.

So, because you already have the Forestry Act, whether we need to have that provision in the Constitution for the need to have a written law relating to those provisions, which is already contained in the Forestry Act, which we have now.

Hon. Bainivalu: Thank you, Dr. Gounder. I think we have a very comprehensive Forest Act. The previous Forest Act of 1992 that had been reviewed, so it had been finally enacted as the Forest Act of 2025. And right now, before the Parliamentary Standing Committee is the Mahogany Bill of 2026, which we hope to enact soon, and that should probably cover the other areas of forestry that is yet to be covered and be recognized by the Ministry and by the nation as a whole. So, I think it should sufficiently, those legislations should sufficiently cover everything about the forest sector.

Dr. Gounder: Thank you, Madam Chair. I have two more questions on the fisheries. Thank you, Acting PS, for your submission and Madam Minister.

Dr. Gounder: Your point about the agreement of the Prime Minister is completely understandable. I don't have any issues with that. I have one question regarding Section 127, Number 2 and 3 that you spoke about.

So, your argument regarding 3 contradicts 2, I see it slightly different, and I'll give you, I'll tell you why. My take is that 3 talks about accountability to the Minister in line reporting, whereas 2 talks about the administration. So, I may be wrong, but I have a good lawyer with us, our chair, who I will concur with during our discussions, but I just wanted to take you through that.

And so, I just have the view that 3 is to do with responsibility in terms of accountability. So, it may not necessarily mean that PS is responsible for the Ministry in 3, but is accountable, so to say. So that's something that,

but if you want to add to what I've said, please feel free to do that. This is just my point.

Mr. Tauvoli: Thank you. I think that's understandable, Mr. Governor. What we're looking at is the wording that's coming out. Talking about the word administration, it's mentioned that's the role of the Prime Minister when it comes again to the Minister. It's more like there's no clear area where the administration component is, whether administering the administration on behalf of the Ministry, on the operations, or looking at from a policy level. That's how you were presenting on that.

Dr. Gounder: Thank you. If I may ask one more question regarding this. So, for the National Development Plan, Chapter 9 of the National Development Plan talks about robust monitoring and evaluation system and the existence of KPIs.

So, one of the tasks during that exercise was, when I was with the Ministry of Finance, was to assign KPI's to Permanent Secretaries. But one of the challenges was, is to link the performance of Feminist Secretaries through the KPI's to the PSC. So, which is a challenge we face because of this particular section, number 3, section 127.3, is the interpretation at that time was that the PSC is responsible to the Minister in terms of accountability.

So, therefore, PSC found it difficult to assign the KPIs that we put in the NDP for the Ministries as the KPIs for the Feminist Secretary. So, for example, contract renewal, which is done through the PSC, by the PSC, they couldn't really assign the KPIs.

So, that challenge was there. So that's when, this is how it was interpreted, but that's something we can look at. I think this provides a golden opportunity, the review, to look into your issue, which I am not totally sure about, and the other issue as well. Thank you.

Mr. Beg: Through you chair. Madam minister and colleagues. Thank you for presentation. Firstly, Fiji Forestry is all about sustainability and that is great. But if I compare that to Forestry Act is moving really well, the fisheries act is a way back in 1941 which is Outdated? I haven't heard anything about that at this stage, but it's alignment back into, I noticed it dusted on Chapter 6 quite well and I've taken on board those and I don't have any issues with that. I think that's a great submission, but I'm more interested in the Acts because I'm finding how that aligns.

Because what we're trying to find out whether the Constitution overburdens itself with some of the operational instruments that sits in the Act, and that's what I was trying to understand. So, these are sort of my initial comments, and I think that I'd just like to hear something more along those lines from, I think, the forestry submission. I really welcome, as an architect in the space of environment, I'm an environmentalist.

I have a different view on climate change, so that's different. I'm not here to preach about that, so let's not talk about that, but I'm more interested in the fisheries because that's sort of, 1941 was still a weak position. I noticed that we've had things that have come in.

How does that sit? I haven't heard that any alignment in the Constitution. I recognize there are gaps, like in the sustainable forestry management, for example, Section 8 state obligations. These are items that, like I said, introduce the sustainable marine resource.

Where is that? Is that coming in the Fisheries Act, or how is that covered? But again, someone who's trying to understand our Constitution and listen to your voices, I want to hear a bit more about that, if you don't mind, sir. Thank you.

Mr. Tauvoli: Thank you, Mr. Beg. Thank you for raising that issue regarding fisheries. We've understood that the current legislation in the Fisheries Act can't be violated. It's 1941, 1942, that's sitting in.

That's something that we're working on. I know that it's part of the national plan to try and review all the current legislations of the Ministry. So far, we've passed the Eco- Culture Act that's already in place.

The current, as you mentioned, the existing Fisheries Act, 1941. There were some amendments that were done this year to try and make sure that it has teeth that can make sure that some of the things, enforcement and monitoring and all those things can be taken on board to make sure that we can do our work. But it doesn't take away the need that we need to review all those.

We already have the Offshore Fisheries Management Act that's already in place. We have the Agriculture Act that's already in place with the supporting agriculture development plan with regulations that we are coming up with. We're still on the consulting stage at the moment.

The third one that's on the table of the solicitor-in-chief is the new Inshore Fisheries Development Act that's basically for this year that can align all those two words currently in the constitution to make sure that whatever is in the constitution we always align and make some sort of alignment. And looking at the different boundaries of operations where the fish is what's in. So that's basically what we have.

I'm sorry that there was nothing in the submissions in reference to the current developments on the legislation at the moment. But that's where we are at the moment. Just in response to the questions that you presented to us.

Mr. Beg: Through you Chair, thank you so much PS. I know it's a erroneous task as you're dealing with a lot of very complex layering issues. And I don't envy you for that. But coming back to the constitution in your, under chapter 6, sections 126, 127, very, very enlightening. We can see the same trends occurring from previous submissions. It's nothing new but it's nice and it's refreshing to hear that. So, thank you for that. I appreciate that.

Mr. Valenitabua: Honorable Minister, gentlemen. I'm hearing that there is a new act, the Forest Act 2025. There is a new one. It would have been enacted last year. Right? 2025, right? It's the Forest Act 2025. When that act was being prepared, you would have had your lawyers consulted.

And this constitution was in existence. What we're hearing now is that you want these amendments or additions to be made to the constitution. Now the purpose of that might be, now I'll rephrase it, I'll rephrase it.

The constitution is the supreme law of the country. All legislations which are made have got to comply with constitutional provisions. Because as Madam Minister would know, anything that is inconsistent with the constitution becomes invalid.

Now the Forest Act 2025 has been enacted. While that was being prepared, what provisions of the constitution was the Ministry of Forest using in order to align this new act, the Forest Act 2025, with the constitution? Would you be able to assist us on that? If not, you can go back and then inquire and then send it to us. Because you are coming to us for new provisions to be added to the constitution whilst a new Forest Act was enacted last year, 2025.

Now what was your guideline? Because the constitution is supposed to be a guideline. Otherwise, someone would end up in court and say this provision of the Forest Act 2025 is unlawful, it is ultra-virus, which is the word for it, for unlawfulness. It does not comply with the constitution.

It does not comply with the section so and so of the constitution. So, my question is, if the new Forest Act 2025 has been enacted, it would have been enacted considering the constitution. What sections of the constitution were being considered so that that Forest Act and its provisions could be in line with the 2013 constitution? That is the question. Because otherwise then we will have to find a way to put these provisions in. We would like to know that first.

Hon. Bainivalu: Thank you, Mr. Chair. I appreciate if we can come back to the Commission on that please.

Mr. Valenitabua: Thank you, Madam.

Dr. Fatiaki: Madam Minister and gentlemen, P.S. Thank you very much for your presentation. I only have two general comments that I would like to make and I guess inherently that would be a question. Our terms of reference given to us in our appointment to the Commission are very specific in terms of particular areas that we have been asked to address and I will read to you term of reference J. because I think this comes into the gamut of the Ministry of Fisheries and the Ministry of Forestry.

And one of the terms of reference specifically stated in our review process is the protecting, guaranteeing and securing under the constitution land and fishing rights and resources of indigenous Fijians and Rotuman's and assuring that registered owners of native lands and customary fishing rights have an equitable share of the income derive from the exploitation of the resources beneath and above the surface of their land, the seabed, rivers, etc.

It's a long one. If you want me to read it again I will but I think you got the general idea. And so, my question to you is now that you're aware of what one of the terms of reference that's been given to us is I would like to invite you to go back, read that provision of the terms of reference because that's an important one and I don't see anything in your submission that attempts to address that.

And I'd like to think that we will be able to put together, particularly because you're a government department, areas very specific for us to

include in the constitution that achieves the stated terms of reference that I referred you to. I think there are areas there that allude to it, they wishy-washy and when I say they wishy-washy they just say oh we look at the protection of but they don't actually tell you how. They don't actually tell you how for instance the owners of the land get more income from it.

They don't tell you how the owners of the fishing rights are supposed to actually get income from it. And I think that's a mandate that we've been given as a term of reference and because they relate to fisheries and forestry, maybe you weren't aware of that and I ask you, I mean we accept submissions until the end of June. I ask you please go because you are the people mostly that know as far as putting a meat onto the bone of this suggestion so that we can put it into a way into this constitution that ensures that this term of reference is in here as a supreme law of the country upon which subsequent acts under your different ministries will need to comply with or at least consider when they're making their appropriate laws. That's the first thing.

The second issue really relates to submissions by UPS in respect of fisheries and I appreciate this because this has been brought up by different departments. Okay, so the commissioner under the constitutional officer's commission, the commissioner of police's role was that they didn't want the minister to say that they must do this operationally.

They wanted the independence as rightly pointed out to you. I guess my counter argument and something for you to maybe think about is obviously the need to refer to the prime minister I agree with you completely. I think that that was one of the democratic deficits in the previous constitution is it consolidated too much power in the hands of the prime minister and AG so I support you in terms of removing that need.

Having said that, the minister for the various ministries, their stated role is obviously policy in terms of giving you the direction and guidance. My question is if they don't have an input into how you operationalize it or implement their policy, then if you choose not to, they are actually acting upon the mandate of the people in terms of their stated manifesto, their stated plans or policies and if you do not implement it, then by virtue of you don't want to implement it, you don't like it, you don't think it's

workable, then how do the mandate of the people in selecting and electing their minister play out in terms of what you subsequently do?

Because yes you operationalize it but I think there's no question about it when a government comes in, they come in with different policies and it may be completely different to the policies of the previous government. So, you can't continue to do the same thing. You have to do something different according to the minister's desires or the party's desires or the government's desires and so if you separate the minister and now you're no longer accountable to the minister except to the PSE, then I don't see how the minister's policies can be guaranteed to be implemented.

Because I think the whole purpose behind an election is that the people are voting in people to implement the policies that they want and therefore I think there's a danger in removing the minister whether it's, you know, you can use language like say in consultation with or in agreement with, you don't need to say you must do this but I would be concerned if you were to remove the minister because the minister is the director of policy.

I understand the removal of the Prime Minister. I don't see why the Prime Minister should be interfering with decisions made by fisheries and forestry. In every case you have to refer to him and like you rightly pointed out, it's already there in the Constitutional Officers Commission. He's the chair and he has the ability to influence the public service and by so doing he has the influence on the PS.

The minister for policy, I think there's a danger in removing that because that is the link between what the people want and what you do and if you remove it and you do whatever you want to do, maybe do what the previous government directed you to do, then there's no recourse for the minister to ensure that the policy that she's promised to her electors or the electorate is subsequently implemented and I would be concerned that the removal of the minister in any language in the Constitution because that becomes the supreme law and I'm fearful for that.

Those are just my reservations. Again, we invite you to look at your submissions again, maybe in a different light and see the argument against the separation of powers that you rightly point out but at the same time I ask the question, your job is to implement what the minister wants and what the minister wants is what the people want because they elected her or him there. Just some general thoughts, thank you.

Mr. Valenitabua: Madam I note that Ministry of Fisheries reference section 127.3. NA the suggestion is the removal of 127.3. Am I reading you correctly? It says section 127, subsection 1, 3. Remove the text, the permanent secretary of the ministry is responsible to the minister concerned for the efficient, effective and economical management of the ministry or any department under the ministry. This is a general provision for all ministries in the government. And then on the explanatory notes, it says this text contradicts section 127, 1, 2 which places administration under the permanent secretary.

So, how I'm reading this is that subsection 3 is to be deleted. Right?

Mr. Tauvoli: Mr. Chair, I think how it's presented is a bit contradicting each other. Basically, what we mentioned in the explanatory note, when you mentioned that the administration of the ministry is under the permanent secretary, how the wording is made in the proposed amendment is the permanent secretary is administration.

And again, it's written that the permanent secretary of the ministry is responsible to the minister. And the presentation is too clear. If one is administration, the ministry is at policy level, that's nonsense.

Mr. Tauvoli: As I mentioned, Mr. Fatiaki, that mandate of the people is still in there. So, this would be some wording made so that there's alignment to clearly identify the roles that they play so that there's a flow in working within the ministry. I think when you said remove the tax, that can be, not remove the tax, but the wording that's been used to be clear so that you identify the roles as a policy maker or a policy decision maker with an operational area that the permanent secretary works in. I think that's where the section 127, 1, 3 basically wants to talk about on this.

Mr. Valenitabua: Subsection 2 is all right. Is it?

Mr. Tauvoli: Yeah, subsection 2 is mentioned that the administration is under the permanent secretary.

Mr. Valenitabua: Yeah, what about the responsibility? The administration of the permanent secretary responsible for the office of the prime minister?

Mr. Tauvoli: Minister.

Mr. Valenitabua: Of the prime minister. One, two, seven. Am I missing something?

Mr. Tauvoli: I think that's on the second, 127, 1, 3.

Mr. Valenitabua: So, subsection 2 is all right. Yeah. Only subsection 3 is to be amended.

Mr. Tauvoli: Yes. Not removed, it's amended. To clarify the roles that they play in those.

Dr. Fatiaki: Chair, through you, if I might be as bold to suggest and you rightly point out but you don't actually come to a conclusion and that is the respective roles, I would suggest to you that the idea behind reporting to the minister and making them is that they are in charge of the ministry.

They're in charge of the ministry and the sole job of the civil servant is to implement the policy that the minister brings. I don't think that discretion should be given, that operationally you just do whatever you want to do because if it doesn't concur with the policy that the minister directs should be implemented, which is reflective of the election results, then you are not really operationalizing it.

And I think if you're asking who heads the ministry, I have no doubt in my mind that the purpose is that the minister heads the ministry because the minister is representative of the people and the people's wishes and the mandate of the people and the manifesto is what they want implemented by the operational people. Okay. And I think they don't want any misinterpretation there as far as authority is concerned. Thank you.

Mr. Valenitabua: Well, thank you Dr. Fatiaki. We got your point, Madam Honorable Minister. We have heard you. Like I said in my introduction, we will be assessing the submissions. We will deliberate on them so that we can write a report later on and also an amended constitution. We will deal with the provisions that you have raised today. In relation to my point earlier, please send me that. What was the provision in the constitution which the ministry used to enact provisions of the Forestry Act so that we know that there is no inconsistency? The word used in the constitution is inconsistency.

The constitution is the supreme law of the country and any provision in any law which is inconsistent with it is invalid' *koya kau kerea ke rawa ni vakau ga mai me keitou raica',*and then we will decide on how to deal with this one that you have suggested. Thank you very much, Honorable Minister.

We have come to the end of our consultation. Pardon us if we have dug into your questions, but I think that is the task that we have been given. We have to get submissions, clarify things, and write our report later on.

Hon. Bainivalu: Mr. Chair, I would also like to thank you and the team for having us this afternoon. I thank you for your very constructive comments. Thank you very much.

I also would like to thank my colleagues for making very honest submissions. I did not want to interfere with the submissions they made, but I am thankful that they were honest to present these submissions this afternoon.

We will probably go back and discuss what we have discussed this afternoon. Again, I thank you for your comments on that, and we will get back to you on some of the questions that you have asked of us. Would you want us to come and do another submission, or we can just have a written submission?

Mr. Valenitabua: You may just write it and send it to us in email. You have got our email address, because you have been communicating. Thank you, Mr. Chair and members of the Commission.

Dr. Fatiaki: Through you, Chair, if I might. Madam Minister, I should point out that you are the first Minister to have graced this Commission with your presence in person. We appreciate that very much. We cannot say the same for the Ministry of Agriculture, who cancelled their appointment this morning at the 11th hour. Your presence this afternoon has made up for that. I thank you and I thank your colleagues for being here in force. We do appreciate it, because you are the first Minister to physically take the time to provide the importance to our work, and we thank you for that.

Hon. Bainivalu: Thank you.

----------End of Session [22-4-2026]----------

Proposed Constitutional Amendments: Ministry of Fisheries

Section	Proposed Amendments	Explanatory Notes
Section 126 (1) (a) and (b): Functions of the Public Service Commission	Remove the text: "with the agreement of the Prime Minister."	Requested that the body represented in Section 125 (2) be the main selection/governing body for Permanent Secretaries. Note that the Prime Minister already Chairs the Constitutional Offices Commission (COC).
Section 127 (1)(3): Permanent Secretaries	Remove the text: "The permanent secretary of a ministry is responsible to the Minister concerned for the efficient, effective and economical management of the ministry or any department under the ministry."	This text contradicts Section 127(1)(2), which places administration under the Permanent Secretary. The current wording suggests the Minister is administering the ministry.
Section 127 (1)(4): Permanent Secretaries	Remove the text: "with agreement of the Prime Minister."	Consistent with the first point; the Prime Minister already acts as the Chair of the COC.
Section 127 (1)(6): Permanent Secretaries	Remove the text: "following the agreement of the Prime Minister."	The Public Service Commission's role in this capacity should be sufficient without additional Prime Ministerial agreement.
Section 127 (1)(7) and 127	Remove the text: "with the agreement of the Minister	This text contradicts Section 127(1)(2) regarding the administration of the

(1)(8): Permanent Secretaries	responsible for the Ministry" in both instances.	ministry. It incorrectly implies the Minister is responsible for day-to-day administration.

Summary Recommendations

To ensure the effective governance and clear separation of powers within the Fijian Civil Service, the following recommendations are made:

- **Strengthen Institutional Independence:** The amendments seek to empower the **Public Service Commission (PSC)** and the body represented in **Section 125(2)** as the primary authorities for the selection and management of Permanent Secretaries.

- **Clarify Administrative Boundaries:** A recurring theme is the removal of language that suggests a Minister "administers" a ministry. This is intended to resolve legal contradictions with **Section 127(1) (2)**, firmly establishing that the **Permanent Secretary** is the administrative head, while the Minister maintains a policy-oriented role.

- **Streamline Executive Approval:** By removing requirements for the Prime Minister's specific agreement in various sub-sections, the amendments aim to reduce redundancy, noting that the Prime Minister's influence is already structurally present as the **Chair of the COC**.

Proposed Constitutional Amendments: Ministry of Forestry

Section	Proposed Amendments	Explanatory Notes
Environmental and Natural Resource Rights Framework	**Inclusion of an explanatory provision:** "The State shall ensure the sustainable management, protection, conservation and restoration of Fiji's forests, biodiversity, watersheds and other natural resources for the benefit of present and future generations, while safeguarding the rights and interests of customary landowners and ensuring equitable economic and livelihood benefits to communities dependent on such resources."	This amendment seeks to strengthen sector-specific clarity for forestry and natural resources without diluting current legal protections. It emphasizes the State's duty to balance conservation with the rights of customary landowners and community livelihoods.
Legislative and Regulatory Framework	**Inclusion of a supporting clause:** "Parliament may enact legislation and establish regulatory frameworks for the effective administration, monitoring, licensing, enforcement and sustainable use of forest resources, including timber and non-timber forest products, climate-related forest services, biodiversity protection and ecosystem restoration."	This provision provides an explicit constitutional mandate for Parliament to regulate modern forestry needs, including climate-related services and ecosystem restoration, supporting the expanded mandate under the *Forestry Act 2025*.
Institutional and Regulatory	**Inclusion of a recognition clause:** "Relevant State	This provides stronger constitutional backing for frontline enforcement and

Clarification	agencies and statutory bodies may be empowered by law to exercise inspection, compliance, enforcement and regulatory functions necessary for the protection and sustainable use of natural resources."	technical administration. It specifically supports licensing systems, seizure powers, and the protection of forest reserves.

Summary Recommendation

To ensure the effective governance and clear separation of powers within the Fijian Civil Service, the following recommendations are made based on your proposal:

- **Decouple Administration from Political Authority:** The Minister remains the head of the Ministry and the primary policy decision-maker, while the PS serves as the key advisor and implementer. However, the appointment, employment, and organization of staff must remain strictly within the PS's purview to prevent political interference.

- **Legislative Realignment:** Move the functions of the Permanent Secretary from the Constitution to the **Civil Service Act 1999**. This allows for a reviewed framework that maintains PS autonomy and clearly defines the relationship with Ministers without returning to full control by the PSC.

- **Protect Meritocracy:** By removing the constitutional requirement for Ministerial agreement, the civil service can better manage its size and cost while ensuring that employment decisions are made through an open, transparent, and competitive process.

- **Strengthen Resource Stewardship:** Retain and strengthen existing constitutional foundations (Sections 1, 28, 29, and 40) to provide greater clarity for technical agencies charged with natural resource governance.

- **Formalize Technical Mandates:** Expressly recognize the authority of State agencies to conduct inspections and enforcement to protect forest reserves, biodiversity, and watersheds.

- **Align with Modern Forestry Objectives:** Ensure constitutional support for the expanded mandate of the *Forestry Act 2025*, including non-timber products, forest health, and climate financing mechanisms.

- **Balance Development and Rights:** Any reform must continue to protect customary land rights and ensure economic benefits from natural resources reach dependent communities.

Office of the Director of Public Prosecutions (ODPP)

Office of the DPP
Time:12.30pm-1.50pm
Date: 23-04-2026

Leighton: Ms. Tikoisuva, and Mr. Vosawale, on behalf of the Constitutional Review Commission, I take the time to thank you for accepting our invitation and attending this session this morning. Just a few housekeeping matters with regards to the mics. To speak, just press on the right side of the mic, and then you can also press the same panel to turn the mic off.

There's also an attendance register in front of you, if you can also fill that out. I've filled in what details I could. Chair will introduce the Commission, members who are present today, and also lay out the work that the Commission is undertaking. Following that, we also request if you can also introduce yourselves, just for the record, as this session is being transcribed.

Mr. Valenitabua: Thank you, Leighton. Ms. Tikoisuva, Mr. Vosawale, we welcome you this morning. Thank you very much for accepting the invitation and coming in this morning to assist us in this big task that has been given us. We've had delegates from various ministries, from various associations and organizations, and they've assisted us a lot. And we don't doubt that this morning your submission will also assist us.

In addition to you, I would also like to welcome the two members of the press, of the media who are here with us. They have been assisting us giving out news every day, informing the members of the public what is happening here, as you might have noticed. The CRC comprises of seven commissioners. You can see four of us here today. The other three are not with us. But we shall have this consultation proceed.

As you might know, the commission was appointed by His Excellency, the President of the Republic of Fiji, for the purpose of reviewing the 2013 Constitution. We were to identify any democratic deficiencies in the Constitution and, more importantly, we are to hear submissions from people of this country in relation to what they reckon or they believe or they think should be included in the Constitution, what should be changed, what should be removed, what should be amended and whatever else adjective we can use there. There has been a lot of dissatisfaction in relation to the 2013 Constitution, so we are having this exercise, the review of the Constitution, in the hope that we can have an amended one which is agreed to or liked by the people of the country.

So, thank you very much for coming in this morning. Your position is an important position in the Government of Fiji, that of the DPPs, and we look forward to hearing from you in relation to what changes, what additions you would like to see in the Constitution. The commissioners in front of you, you might know them.

Before you came in, on my right is Mr. Conway Beg, the far right, and next to me on my right is Dr. John Fatiaki, and on my left is Dr. Neelesh Gounder of USP. I'm the chairperson. We've got three other commissioners, as I have said, who are not with us. Now, with those few words of welcome, I now pass on the mic to you, DPP, and Deputy, to make your submissions to us.

Ms. Tikoisuva: Thank you very much, Chair, for the kind introduction of the members of the commission and the work that has been given to the commission to undertake for Fiji. My name is Nancy Tikoisuva. I'm the acting DPP for Fiji, and along with me is Mr. Meli Vosawale, who's the assistant DPP here in Fiji. We thank you for the indulgence and our request to make some submissions before the commission with respect to the role of the DPP's office, an important role that has existed over time.

Perhaps, if I may, we did have some written submissions put together, but given just five minutes before we entered, we just suddenly remembered another provision, and if you would allow us, we would make that written submission and collate it together and submit it after hearing from us this morning, if that would be all right with the chair and the members of the commission.

Mr. Valenitabua: That would be all right. Thank you.

Ms. Tikoisuva: Thank you, Chair. Just by way of background, Chair and the members of the commission, the office of the DPP is an independent office by virtue of Section 17 of the Constitution. It was first established under the Fiji Independence Act in 1970 and the 1970 Constitution and has continued its existence and purpose in all various constitutions that Fiji has seen.

This year will mark the 56th year of its existence and service to our country and to its people, with 11 DPP's having served in the office. It has also been the training ground for some of the most great advocates in Fiji and litigators in the criminal justice system, some of whom have later joined the bench and also have taken up prosecutorial positions across

the Pacific, including the role of the DPP in Vanuatu, Solomon Islands and currently the DPP of Nauru. A former chief Justice of Fiji was also a prosecutor within the office of the DPP.

From just seven prosecutors in 1970 to now 55 prosecutors, the ODPP has seen significant growth in professional capacity and now boasts as the largest prosecuting body in the Pacific, excluding Australia and New Zealand. Our submissions this morning is predominantly on the sanctity and independence of the office of the DPP and the functions and the roles of the office of the DPP. The sanctity and the independence of the office of the DPP has been one of the cornerstones of upholding the rule of law and maintaining confidence in the criminal justice system.

The constitutional safeguards for its independence has largely remained intact until now with the way in which the 2013 Constitution is being framed. Sections 117.8 of the Constitution provides for the general powers of the DPP.

If you do have a copy, and I see you can have a copy of the Constitution with you, I will take you to subsection 8 that says the DPP may institute and conduct criminal proceedings. Two, take over criminal proceedings that have been instituted by another person or authority. Accept proceedings instituted by the Fiji Independent Commission Against Corruption. Thirdly, discontinue proceedings. Accept proceedings instituted and conducted by the Fiji Independent Commission Against Corruption. And of course, intervene in any other proceedings that raise a question of public interest and that may affect the conduct of criminal proceedings or criminal investigation.

Further, in subsection 10, the exercise of the powers of the DPP shall not be subject to the direction or control of any other person or authority except by a court of law or as otherwise prescribed by this Constitution or a written law.

If I may take you to a similar provision that exists for the Fiji Independent Commission Against Corruption, particularly section 115.3, 4 and 6. The powers of the FICAC do not have the exception that exists in the same provisions in section 117.

The authority and responsibility of the Commission is prescribed by law and by written law similar to that of the Office of the DPP. And if you can

see in articles 115.3 and 4, there are no exceptions that has been created for the functions of the Commissioner of FICAC.

Similar provisions in the exercise of the powers of the Commission is not subject to the direction or control of any other person except to the court of law. If you are to take the provisions as it is, it essentially means that FICAC can take over files or override the decisions of the DPP but not vice versa, creating an imbalance of the powers and functions.

Whilst the DPP has predominantly been viewed as not reporting to anyone except to the court of law in its independent function, the current provisions of the Constitution has created a pathway for possible political interference through the powers of the Commissioner.

The pathway is through article 115.9 of the Constitution where the Commissioner is mandated to provide regular updates and advice to the Attorney General on any matter related to its functions and responsibilities. We are not suggesting in any way that this has been done. However, in our view, the current provision threatens the independence of the Office of the DPP and leaves it vulnerable to political interference through the work of the FICAC that reports to the Attorney General.

No other provision exists for the Office of the DPP for regular updates to the Attorney General. It only exists in the function of FICAC. It is our humble submission in this important work that we ask that the Commission ensure that the exceptions created in its current form on the powers of the DPP is removed to preserve the sanctity and independence of the Office.

None of the provisions that exist currently in its form has ever existed in its years and in previous Constitutions. 2013 is the first Constitution that creates an exception for reporting and for its functions to be subject to another body outside of the Court of Law and any other written law. Before I move forward, are there any questions in relation to the first point of our submissions?

Mr. Beg: I do, but I think perhaps maybe we should wait until you... Yes.

Mr. Valenitabua: We'll wait until the end.

Ms. Tikoisuva: Thank you. Our second submission is in relation to the appointment of the DPP. And if in the course of your inquiry and reading of previous Constitution, the current Constitution, in our view, is, in our view, overreaching in the functions in which the appointment has been made. Section 117.3 in its current form says the DPP shall be appointed by the President on the recommendations of the Judicial Services Commission following consultation by the JSC again with the Attorney General.

As you would note, the JSC is constituted by the Chief Justice, President of the Court of Appeal, a legal practitioner who has been appointed by the President on the advice of the CJ in consultation with the AG, and a member of the public who has been appointed by the President on advice of the Chief Justice in consultation again with the Attorney General.

If the JSC is an independent body, isn't it sufficient that its functions and its decisions for the appointment of the DPP does not need to again be consulted with the Attorney General, if already that the members have already been placed there on recommendations of the Attorney General?

This is an overreach, again, onto the appointment process of the DPP and also subject to political interference. You would see that the appointment has multiple layers of influence, or it can be, at least danger of subject to political interference in the way it is structured. It is a humble submission that the Commission revisit that clause and look at 1997 Constitution that only states that the COC is the appointing body in consultation with the Attorney General. And we humbly ask that also 1990 Constitution be looked at, at least for the appointment of the DPP's office. That was our second point in relation to our submission.

Our final point is in relation to the interpretation provisions of Article 163 of the Constitution that has been recently tested through the courts, particularly on the definition of public service. The definition of public service under the Constitution says, the service of the state in its civil capacity, and it creates another exception, which is service in the judicial branch, service of the office of the member of the Commission, and service in an office created by or continued in existence under this Constitution.

In the course of some recent cases, we've had to ask questions as to why the definition appears to create an exception to some public service holders from criminal liability, particularly when it's been challenged and used as a defense in criminal proceedings. The definition in its current form is not tenable.

Although that the judiciary has the ultimate function to be able to interpret, the Constitution should not be ambiguous in the way that it's been framed. In the current form, it can also suggest that the state cannot be sued, especially when it says in its third name, by or continued existence under this Constitution, effectively meaning that the range of constitutional offices such as the DPP, FICAC, Fiji Police Force, and all other constitutional bodies that exist under the Constitution are exempted by the definition of public service. We are unclear as to the intention behind the exception from civil liability, but it also creates a problem in criminal liability is there is no clarity in this.

We did ask for a handsard report. Unfortunately, there is no handset report in this current Constitution, and it was unhelpful, at least in the briefing notes, as to why this particular definition was put in its form. The reason we say this is because in the offense of abuse of office, which is targeted towards those who hold public office, section 139 says those employed in the public service. There is no definition of public service in the Crimes Act. The only definition that exists, it exists in the Constitution.

In that, we humbly submit, and it is our submission, that the definitions be aligned to other legislation to provide clarity and to remove ambiguity, particularly if there was an intention to create an exception from any civil liability as intended to protect institution. So, if the exception was there to protect some institution, that has to be clearly provided.

This is the respectful submissions of the Office of the DPP, and we hope that in the course of our write-up that we will provide more clarity in relation to all the three points of submissions that we have made this morning. With that being said, Chair and the Commission, if there is any other questions in relation to what we submitted, we are happy to take them.

Mr. Valenitabua: Thank you, Acting DPP. We hope that we can have written submissions from you. We will welcome that to facilitate our consideration into the matters that you have raised this morning.

Now, you have raised comparison between FICAC and the ODPP, and we note that you have raised the powers of the two offices, the DPP and the Commissioner of FICAC. You are supposed to be independent, but then there is an exception, as you have stated. I note that there is an exception in 115, subsection 6, that in the performance of its functions, the Commission shall be independent and shall not be subject to the direction or control of any person except by court of law or as otherwise prescribed by written law.

In 117, you have referred to subsection 10?

Ms. Tikoisuva: 8, Chair.

Mr. Valenitabua: 8. The Director of Public Prosecution may institute and so forth a takeover criminal proceeding, discontinue any proceedings and intervene in any proceedings. Now, how about subsection 10? In the exercise of the powers conferred under this section, the DPP shall not be subject to the direction or control of any other person or authority, which is the same as the FICAC Commissioner, except by the court of law, which is still the same, or as otherwise prescribed by this Constitution or a written law. Is there a difference there?

Ms. Tikoisuva: There is, Chair. It is our submission that there is a difference. The difference is this.

If you see the subsection 8. B and C, the DPP's office can take over criminal proceedings that have been instituted by any other person or body.

Mr. Valenitabua: As in private prosecution?

Ms. Tikoisuva: That is correct, or other ministries or other bodies, statutory bodies, that have taken over prosecution.

Mr. Valenitabua: You mean immigration and all?

Ms. Tikoisuva: Immigration. Everybody that wants to institute criminal proceedings, we have the power to take over those proceedings, except proceedings that have been instituted by the Fiji Independent Commission Against Corruption. So, you see under the Constitution, you have subsection 10, that says we are not subject to the direction and control of any other

person or body, unless otherwise prescribed by this Constitution. So, there is a limitation in the exercise of the powers, except for FICAC.

But the similar provision does not exist for FICAC, to create an exception that they cannot take over proceedings instituted by the DPP, or taken over by the DPP. Do you see my point, Chair, if you see Article 115?

Dr. Fatiaki: Chair, through you, if you may.

Mr. Valenitabua: Yes, thank you. Yes, I think. I get it now. I'll hand over to Dr. Fatiaki.

Dr. Fatiaki: I am not a doctor of law, or constitutional law for that matter, but I think what you are suggesting is very clear. In terms of B and C, obviously it allows you to take over all prosecutions, except those that have been instituted by FICAC. When you look at 115, they are allowed to take over any other prosecutions, and they don't have any limitations as to...

Ms. Tikoisuva: That is correct.

Dr. Fatiaki: And I can understand that. I say this in the background of FICAC presenting yesterday to us, and using comparisons as to why they should have, for instance, more alignment with your office. I can see that there is obviously a discrepancy here, and certainly we can address that.

I have a comment about what you raised in respect of Section 115, Subsection 9, which is related to the independence of constitutional offices, particularly of the judicial branch, and that is in respect of having to report to the Attorney General. That is a requirement for FICAC, but it is not a requirement for the DPP's office.

Ms. Tikoisuva: It is not a requirement. It has never been a requirement since 1970.

Dr. Fatiaki: Just as an addition, I think I would have to go back to the submission, but I think the submission from FICAC yesterday was for us to get that repealed, to remove it. So, if that were to do it, it would address the issue that you raised.

Ms. Tikoisuva: Certainly.

Dr. Fatiaki: I agree, because I think if you read Subsection 6, and then you read Subsection 9 subsequent to that, you are saying, well, you are going to be independent of everything except the court of law or the Constitution,

and then in 9 you say, well, actually you report to Attorney General's office.

Ms. Tikoisuva: That is correct. That is the gist of the concern, because it creates a pathway through the functions and powers of the FICAC Commissioner, because they can take over DPP's matters under the current form and report to the AG under its own functions under the Constitution.

Dr. Fatiaki: Thank you. And to the other point where the Attorney General is required to be consulted in respect of the appointment with the JSC, I think, again, that is an understood point.

This has been raised by a number of different people, and we have been addressing it. It has become evident to us the issue of consolidation of power in the 2013 Constitution in two offices is excessive. People have quoted that there are 66 references to the AG in this Constitution, whereas it was, I think, 17 in previous Constitutions.

So, I think, though, that point that you've asked for in respect of that is an area that has been raised by other people, and I'm sure we will address when we review this. I have one last very generic question. I asked this of a FICAC yesterday, and that was the issue of duplicity, because that's a perception that the public have. Thank you for giving us your history, because that puts things in context. You've been there since 1970. FICAC's been there since 2007.

People can calculate the difference. But the point being, I asked them, you know, the issue of duplicity of services, is there anything that FICAC can do that you can't do? And I guess I'll ask that question of you, because I didn't get a straight answer yesterday.

Ms. Tikoisuva: I'll tell you the difference between the two bodies. The DPP's office is predominantly just a prosecutorial body. We do not investigate. We do not have a prevention measure.

If you see the functions of FICAC, and also globally in terms of functions of anti-corruption agencies, it has two major arms, preventative measure and the reactive measure. The preventative measure is through awareness programs and anti-corruption awareness programs to the members of the public. We do not have that.

That is not our function. We also have a reactive measure in two folds, prosecution and investigation. We do not investigate, have any investigative powers. We are purely a prosecutorial body.

And the work of, if I may say and be frank, the work that currently exists with the Anti-Corruption Commission has been the work of the DPP's office historically. I think there was, because we signed up to the UNCAC, is a recognition of a separate institution that deals predominantly with anti-corruption.

But there are many ways in which anti-corruption bodies can be set up. And some countries globally, if you see the structures, some only have preventative arms, separate from investigative, separate from prosecutorial. Some have both preventative and investigative, and they still submit to the DPP for prosecution. We have all three.

And so, it is up to the Commission and the government of the day as to what the structure should look like. And under our current constitution, yes, that function of prosecutorial body is also with the Anti-Corruption Agency.

And so, I think the hard question would be what does the government want it to look like? Because we have various forms and the various structures. And so, this is where your task, I guess, will be for you. So just to explain the difference, we do not investigate, we do not do preventative measure, purely prosecutorial body.

Dr. Fatiaki: Thank you. That's very clear and lucid. I guess it begs the question of what did we do before FICAC? I presume that that role was carried out by DPP.

Ms. Tikoisuva: It was.

Dr. Fatiaki: The corruption existed for the last 50, 100, 200 years. So, was it inadequately addressed under the DPP's office prior to the formation of FICAC? I asked them also was it better addressed after FICAC was constituted from 2007 until 2026.

Again, I didn't get really an answer on that because they didn't have any data. Other than this Corruption Perception Index, which has not changed in 19 years. Thank you.

Ms. Tikoisuva: I was in the DPP's office in the early 2000's. And at that time, we were also trained on anti-corruption measures with a view that we were to take on the anti-corruption work with specialized units under the National Prosecution Service that was being piloted at that time. And this was a move where we would merge the Fiji Police Force Prosecutorial Arm, which is a police prosecution, under one umbrella of a National Prosecution Service.

It was piloted. It was successful at that particular time. Again, the brain behind it was former DPP, who is now High Court Judge Naigulevu.

And so, we had undertaken some groundwork to address the anti-corruption issues at that time. And again, with the change in government, we are subject again also with different policies, different priorities within the government. But that was how FICAC was birthed.

And also, to comply with our UNCAC obligations for an anti-corruption agency. And so, this is where, as far as I can remember back, but we were doing the work at the time. We were being trained.

We had gone to visit Hong Kong ICAC to see their model. And we were thinking around how the setup was going to be for Fiji. So, I only speak because from my previous experience as a prosecutor in the early years of 2000, if that is helpful in any way to the Commission.

Dr. Gounder: Thank you, Chair. Thank you and Assistant DPP, for your very pointed presentation today. Your presentation is very clear. I just wanted to clarify one of the points that you mentioned. And that is, obviously you don't do education and advocacy and the investigation aspect of what FICAC is currently doing. My simple question is, can you currently do all of the work regarding prosecutor work that FICAC is doing?

Ms. Tikoisuva: Thank you. And I think it's not new. When I had already made the submission, but in a different form, particularly with budget. In the years that we've been doing this work, I make a comparison with 2023, where we had over 50 prosecutors with a $6 million budget.

And FICAC had over 10 million with 14 prosecutors. And our work spans on all areas of prosecution and also civil forfeiture. So, from small crimes to big crimes, fisheries, maritime, environmental, law with Mr. Vosawale prosecuting the first one under the Frisson case.

So, with all those resources, we've been able to successfully prosecute cases, handle its load, and continuously do our work. So even as we are now expanding with a limited budget, we have been working and have been doing so for a number of years.

And so, there is, and I've said it again in budget, there is a disparity in the way that resource has been allocated to the DPP's office in comparison with the Fiji Independent Commission Against Corruption.

There is a disparity in the way the pay is structured and the load that each institution has. And so, we've continuously advocated for that at various forums. And because you've asked this question, I think we can safely say that it's not new to us in this continuous advocacy. Yes, we can still absorb the work of the Anti-Corruption Agency in addition to the additional other work that we do.

Having said that though, there are strategic ways in which we try to mitigate the load through the police prosecution and continuous training. We conduct basic prosecution calls and advanced prosecution calls with the police prosecution. And there's also a regulatory bodies training that we conduct for them, again, with the idea that they might want to take on some work themselves without oversight from the DPP's office, of course. So, for example, fisheries is conducting its own prosecution. And then we step in as and when they need assistance.

Other institutions have called upon us and asked if they can do prosecution. We said, yes, you certainly can. Undergo the training that we have, the packages that we have, and then continue and then we work with them in terms of their investigation and prosecution.

So, there are other ways, strategic ways, in which other bodies can absorb some of the work at different levels. But coming back to anti-corruption, that continues to be the work today. It's no different.

Dr. Gounder: So, I'll take that as a yes. And with some financial resources, support, you might be able to deal with the challenges that you have just outlined. One more question, and that is, you mentioned about the conflict between investigations work and prosecutorial work.

I'd like to hear from the office of the DPP, what is the exact nature of that conflict?

Ms. Tikoisuva: I didn't say conflict. We did not do investigation.

Dr. Gounder: I may have used the wrong word there, but the challenge in terms of one organization doing both investigation and prosecutorial work.

Ms. Tikoisuva: Oh, yes. The advantage of the anti-corruption agency, as I foresee at the current form, is they have a robust set of skill set that may be a challenge with the Fiji Police Force. So, you've got digital analysts, you've got accountants, seasoned investigators that are there in the anti-corruption agencies that we still have a struggle with the Fiji Police Force.

So, if I may take it as that we wish we could have the caliber of investigators that the anti-corruption agency has in the work that we do, particularly on serious fraud and corruption and asset recovery and the financial investigation aspect. So, with their resources, they have far more resources in terms of investigative tools as compared to Fiji Police Force, with due respect. That is our view. So, I hope that sort of addresses your question.

Dr. Gounder: Yes.

Ms. Tikoisuva: So, that's the advantage, that they can investigate with the vast resources that they have, whereas in Fiji Police Force, the investigators are also doing, they're giving evidence in court with everything, in addition to their load, policing and the various functions that they hold within the Police Force.

Dr. Gounder: So, that makes perfect sense from the financial resource angle. I was more focusing on the other aspect, which is what you mentioned earlier in your first presentation, that you don't do investigative, you just do prosecutorial. And you said that's a good aspect.

Ms. Tikoisuva: Yes.

Dr. Gounder: So, FICAC does both investigative and prosecutorial. So that's the angle I was coming from. Is there an issue with that?

Ms. Tikoisuva: There can be challenges.

Dr. Gounder: Yes.

Ms. Tikoisuva: There can be challenges if we do hold the probe, particularly when it comes to giving evidence, and particularly if you're an investigator receiving instructions from the same body that will, person that will make the decision in respect of charges.

So, the dual role in both investigating and charges is a very powerful role, and there is no separation. So that comes maybe in terms of institutional, how do they demarcate and ensure there's no conflict of interest, and so forth. So, with the DPP's office, we are removed from the investigative process.

We can make suggestions as to what evidence we were looking for, and police, they will do their independent work in that regard. So, I can see whether it's going to be an institutional challenge where you can separate the functions and have an independent investigation that is removed from the independent process of the decision-making for charges. So, you have a separate institution that just focuses on investigation and then passes the file to another independent body that then has its own process form.

With both under one army, yes, there can be abuse of those functions if it's the same person making directions of investigation, the same person that will make a decision on the charges.

Dr. Gounder: Thank you. That's what I was looking for. Thank you. Up to you, Chair.

Dr. Fatiaki: Through you, Chair, along similar lines, and that's a good point that you brought up and the potential conflict of interest that you have, I think we recognize that there are areas in the world where actually the two functions merge.

So, I'm thinking about the Americans where a state attorney's office will investigate as well as prosecute. That's commonly practiced. That's not an unheard-of scenario, and it works.

My question in our sort of setting is what will be required for the work that is done for the purposes of corruption, investigation, and prosecution to come under the DPP's office? Would that require a constitutional amendment, or could it be done at the level of administrative, structural adjustment laws from a practical point of view? Obviously, there's going to be a need for constitutional adjustments should that scenario arise.

I'm not talking about that part of it now. I'm talking about if one were to revert yourselves to the situation where you did, for instance, prosecute corruption cases in the past prior to the formation of FICAC, and had a dedicated unit to do it that permitted the unit to also investigate what would be required, constitutional additional powers to be given to the office of the DPP in the Constitution, or could you do that from a structural point of view in terms of how you structure the DPP's office?

Just as I know you have a sexual crimes unit and family law units and specialized areas. I'm not sure that they actually investigate, but I can't imagine that you who are going to be prosecuting would want to separate yourself completely from the police who will investigate it. I would presume you are separate, but you'd have to work hand in hand.

Ms. Tikoisuva: We do. Again, it comes down to ensuring accountability in all the processes related to the criminal justice system just as judiciary is independent of that process. So, coming back to your question in relation to constitutional amendment, it's not a suggestion that we have an investigative arm, and I would request that we remain in its main purpose, which is prosecutorial.

However, if there is a suggestion for, say, repositioning the Anti-Corruption Agency as a predominantly investigative body similar to Fiji Police Force, that is another pathway where they do specialized investigations to do with anti-corruption and financial crimes.

If the idea is to absorb all the prosecution done at the DPP's office, that is also another structure that exists also with the anti-corruption agencies across the world. And as you said, having two under one arm is not a new thing. At the end of the day, it is what we would like to see.

DPP's office can do the prosecutorial work, and if there is a suggestion to readjust the two institutions and to consider DPP's office as the sole prosecutorial body, then the other alternative is to consider Anti-Corruption Agency as a predominantly investigative body similar to Fiji Police Force.

Dr. Gounder: Thank you. I think for us it has worked well, the difference between prosecutorial, that is the role of DPP, and the investigative arm.

If something works well, there is no need to mandate. I know the American system, but it is currently under pressure if we do not have the

right people at the helm. So institutional design, I think, is very important based on country context and society and taking into account cultural characteristics as well. So, I would not suggest that both should be under one organization, just for clarity.

Ms. Tikoisuva: Yes.

Mr. Beg: Through you, Chair, thank you very much. Sorry, I should address you in your own activity as Deputy Director of Public Prosecution and Assistant Deputy Public Prosecutor. I have learnt a lot in this space. I have a different... They talked about corruption perception index out there, but that figure is forced by other factors.

And I was interested in your view about the ICAC model that you studied in Hong Kong, or Australia as well, I think the other model. You said earlier that there was consideration for that being taken on board before ICAC came on board. I was really interested in your thoughts around that.

Ms. Tikoisuva: Yes, it is not a new thing for the separate anti-corruption work. At the time, again, the view was the National Prosecution Service as opposed to the DPP Service. So, it was going to merge all the prosecutorial powers that was given to the Fijian Police Force to also come under the DPP's office and not as a separate... So currently, you have DPP's office, you have police prosecutors still being paid for by the Fijian Police Force, but we give them the sanction to prosecute on our behalf or on behalf of the state.

So, the model was a National Prosecution Service to bring that out of Fijian Police Force under one umbrella and also with the UNCAC obligations, the different special divisions. So, in the DPP's office, we have specialized divisions that focus predominantly on areas of interest. For example, sexual crimes predominantly work with child sexual offences.

They do not do any other work. If they have spare time, they might get in a murder trial as well. We have the General Crimes Division led by Mr. Vosawale. They do most of the robbery cases, murder cases and manslaughter cases, serious crimes.

We have the Serious Fraud that predominantly do serious fraud, money laundering and asset forfeiture. And we also now have the Drugs Division

headed by Mr. Deputy DPP John Rabuku, and they focus only on the serious drugs that we have.

If there's an overlap, the civil forfeiture will work with the drugs unit. And so, you'll have two different divisions working together on a similar case. Usually, the civil forfeiture will work with every other case, serious fraud, drugs and other offences.

So, we already have structurally organizational pursuit of different specialized areas. Anti-corruption was one of those at that time, and so we had undergone the groundwork for it. And we had gone to Hong Kong to see some models of how they've done it, and that was obviously cut short at that time.

But if there's a need for a separate division that will focus on anti-corruption work, absolutely. Currently we just have an ad hoc high-profile case division, and that's predominantly the work of the Assistant DPPs and myself, and Deputy DPP, for special high-profile cases involving high public officials. So, it can be done.

It's just that how do you want the office to function and work is a matter left to the public with their views, and also to the government of the day as to how we want it to be structured.

Mr. Beg: Thank you for that. I was leaning towards your comment about budget and resources earlier on. I was trying to understand how that... Because when I look at the Constitution, I see if I get 115, DPPs move back to 117, you know, I kind of feel the power of that...

Ms. Tikoisuva: Displaced.

Mr. Beg: Displaced. And I find that very fascinating. I don't want to preempt anything at this stage. Mine is to listen, observe, and also listen to the public view on this matter. But it's very, very interesting, and thank you for enlightening me. I appreciate the hard work that you do, and thank you for your service.

Ms. Tikoisuva: Thank you.

Mr. Valenitabua: Ms. Tikoisuva, Mr. Vosawale, thank you very much for the submissions this morning. We have no further questions. May I repeat, or please allow me to repeat the request, your written submissions, if they could be sent

to us. You know the e-mail address? Just forward it to us so that then it can become part of our record and we use them for our deliberations. It has been a fine morning. We heard FICAC yesterday. We heard DPPs this morning. There is undercurrent for some consequences to happen, some access to fall, so we'll deliberate on that. Thank you.

Ms. Tikoisuva: Thank you, Chair. Thank you very much.

Mr. Valenitabua: May I? May I? Yes, yes. Does he want to ask a question?

Mr. Beg: Yes, yes.

Mr. Valenitabua: We've got Mr. Kohli online. He's online, so he might want to ask a question. Go ahead Mr. Kohli.

Mr. Beg: Can you hear me? Can you speak up a bit?

Mr. Kohli: Can you hear me? Can i go ahead? Hello?

Mr. Beg: Yes. Hello? Yeah, we can hear you.

Mr. Kohli: Can you hear me?

Mr. Beg: Yes. Can you speak up?

Mr. Kohli: I'm shouting.

Mr. Valenitabua: Go ahead, go ahead. Ask your question, please.

Mr. Kohli: I just wanted to ask you a question. Given the fact that you are doing all prosecutorial work and investigation done by the police, I can see that people who are doing investigation sometimes can make subjective assessments, whereas when the file comes to you, you always try to be objective. That being so, there is a demarcation between investigation and prosecution.

When it comes to FICAC, if they are doing both, and when they have whistleblower policy, do you think it is fair to the person who is being charged not getting the information as to who is making allegations against you, what the allegations are, so he can answer when he's being questioned in an interview? That's my first question.

Ms. Tikoisuva: If I may just repeat your question, Mr. Kohli and Bulu Vinaka, to you. Are you asking, in our view, is it fair to an accused person not to know who is making an allegation against you? Is that the question?

Mr. Kohli: What is the nature of it? Yes, definitely, that's the question.

Ms. Tikoisuva: Again, as a prosecuting body, our role also is to uphold the Bill of Rights under the Constitution, and this is where the structure of having a separation between the functions of the police force in investigating comes in, because if there is any issues of unfairness or any breaches of human rights that are protected under the Constitution. We can objectively assess and make a determination whether or not to proceed with the case, having looked at how the evidence was obtained, the manner in which it was obtained, whether there was any forced influence or suggestions being made to suspects that could influence their admissions or lack of admissions.

We scrutinize that as part of our objective assessment. I can see where you're coming from in terms of where the same investigative body, in terms of whistleblower, can at least not give the opportunity for accused persons to know what the allegations are, particularly where an accused person or suspect must know what the allegation is, and be able to give an opportunity to answer to those specific allegations.

I can foresee questions or tests on unfairness in that regard as well, Mr. Kohli, and that has been the same with the police. When that gets tested, we go to trial, we thrash it out, and of course we've seen some good outcomes where admissions have been thrown out, charges have been stayed because of that process. And so that's always the danger that the institutions such as FICAC will continuously face, and that is where the internal process is to ensure conflict of interest is addressed, the policies around it is maintained. For example, in the DPP's office we have a multi-layered process.

I got a question from one of the forums in Leadership Fiji, and the question was, how do you maintain independence and ensure that you are not conflicted? And my answer is that the level of scrutiny internally within the DPP's office, there is no way that you will be able to hide behind and have an influence over it, because the process is multi-layered.

One, we do not investigate, so we have no control over the type of evidence that has been collated and how they are obtained. Two, the level of scrutiny of legal advice and research comes up at different levels. So, if you make a decision that is contrary to the legal advice, it will be quickly identified and pointed out. And we also have, it's not a case where files get, say for example, files get hidden, or maybe a danger of files get hidden.

We have a database, and I believe we are the only institution that has a database where the files exist virtually also in our digital platform. So, the decision is locked into the system, and so if you are to go around it, yes, ultimately the DPP can overturn or overwrite investigative suggestions or legal opinions, but our process is heavily guarded with the multiple layers that we have internally.

So, for institutions that have both investigative and prescriptorial arm, the levels of scrutiny internally has to be safeguarded, and they have to have strong internal policies related to each and every layer of that process.

So, institutions have survived this American model, but it will come down to your internal processes to ensure that, and to avoid the conflict-of-interest situations. I hope I've answered your question, Mr. Kohli.

Mr. Kohli: Yes, yes, very, you've answered very successfully, and I'm happy with that. My other observation is that I have been doing criminal law for the last 42 years, and many a times the people who do investigation, because they are involved with investigation, they put in the hard work and hard hours, they feel very passionate about it.

They get emotionally involved, and they say, no, we should be prosecuted. But when we see from defense point of view and send it to DPP, we see that DPP is not involved in investigation, and they come up there and say, no matter how hard the work they've done, your chance of success is zero.

You are just wasting time, you're not proceeding, because they are not involved in investigation. They are not, what do you call, they are objective about it, not subjective. So that is one advantage I have seen over the years. Many of the cases, if proceeded on trial, would have consumed hours and hours of work. But because of the right advice from the DPP, they did not proceed for good reasons.

Ms. Tikoisuva: Yes, Mr. Kohli, and I believe that the DPP, this is where we've always said, is the gatekeeper as to what goes before the court and what doesn't.

And that's why the appointments has that level of scrutiny equivalent of a judge. And so, there are layers in which we have to make an assessment, guided by the prosecution code, on sufficiency of evidence and also public interest considerations. For example, recently, I don't know with members of the public, we've had a policy directive that all cases involving breaches of COVID restrictions to be withdrawn and taken off the court system, because it's no longer a public interest issue.

Yes, it was an offence at a time when we needed it to address a health issue. We are no longer in that time. And therefore, we had withdrawn cases, all the cases that are before the courts, in relation to public health consideration.

And that's where our role comes in, in terms of guided by the prosecution code for public interest. It is in the public interest to pursue this case.

Mr. Kohli: Thank you. Finally, my question is this. Through you, Chair, yesterday we heard from my team that even though there were wide powers to prosecute, their concentration was on corruption cases, which I think is correct, this concentrate on corruption cases.

Now, DPP has a wide range of prosecutions, on the crime set, on the various other acts, together with helping health, fisheries, you name it, they are there. My question to you is that, if I think it's only concentrating on corruption cases, if their expertise, their finance, is given to DPP, will we be able to handle it? Absolutely.

Ms. Tikoisuva: Absolutely. It's a yes, Mr. Kohli. We're already doing that work with our current prosecutors.

Mr. Kohli: Thank you. Finally, just through you, Chair, again, I think the question was posed whether, without changing the constitutional part of it, you can place the two together. I think that is impossible, because Whitehead is the creator of the Constitution, and we really have to change that section, because otherwise we will not be able to achieve. Am I correct in my interpretation of it?

Ms. Tikoisuva: Was the question is that, if to merge it we have to make some constitutional changes, was that the question?

Mr. Kohli: That's correct.

Ms. Tikoisuva: Yes, absolutely, because we are creatures of the Constitution. We exist by virtue of the Constitution, and so if the government and the stakeholder and the submissions have suggested structures, I would encourage the Commission to consider other structures that have been successful, and to see what has worked and what has not worked in other structures that exist globally.

That does not impede on, again, our obligations under the UNCAC for the Independent Commission Against Corruption agency. So, I hope that answers your question.

Mr. Kohli: It does, and finally, thank you very much indeed. It's a pity I couldn't be there. I would have loved to have made that talk with you more. Thank you very much, Chair.

Ms. Tikoisuva: Thank you, Mr. Kohli. We're no longer in trial, Mr. Kohli

Mr. Valenitabua: Thank you very much. Thank you very much, Ms. Tikoisuva and Mr. Vosawale

Ms. Tikoisuva: Thank you.

----------End of Session [23-4-26]----------



CONSTITUTIONAL REVIEW COMMISSION 2026

SUBMISSIONS BY THE ODPP

BACKGROUND

1.1. The ODPP is an independent office by virtue of section 117 of the 2013 Constitution.

1.2. The ODPP was first established under the Fiji Independence Act 1970 and the 1970 Constitution; and has continued its existence and purpose in all the various Constitutions of the Republic of Fiji.

1.3. This year will mark the 56th year of its existence and service to our country and to its people with 11 DPPs serving in the office. It has also been the training ground for some of the most great advocates and litigators in the criminal justice system, some of whom have then later joined the Bench or have taken up Prosecutorial positions across the Pacific, including the role of DPP in Vanuatu, Solomon Islands and Nauru. A former Chief Justice of Fiji was also a Prosecutor with the ODPP

1.4. From just 7 Prosecutors in 1970 to now 55 Prosecutors, the ODPP has significant grown in professional capacity and now boasts as the largest prosecuting body in the Pacific, excluding Australia and New Zealand.

1.5. The ODPP has 11 offices across Fiji in the Western, Northern and Central-Eastern Divisions apart from providing services as and when necessary in the maritime areas on specific maritime court sittings.

1.6. The ODPP hosts a few specialized divisions in its headquarters in the Central Division which focuses prosecution on specific areas requiring special skills and training as follows:

a) **General Crimes Divisions** – which focuses on general serious crimes such as Aggravated Robbery, Murder/Manslaughter, Human Trafficking etc.
b) **Sexual Crimes Division** – focuses on prosecution of Rape and Sexual offences particularly on children.
c) **Serious Fraud Division** – focuses on serious fraud, money laundering, international cooperation and asset recovery.

d) **Narcotics/ Drugs Division** – focuses on prosecution of serious drugs cases.

e) **Appeals Division** – mainly focuses on appellate advocacy at Court of Appeal and Supreme Court.

1.7. Currently, a High Profile Unit (HPU) consisting of senior prosecutors are designated from the various units to conduct prosecution of high profile nature particularly on corruption related offences involving political persons.

1.8. The ODPP also has supervisory role over all other prosecutorial agencies and provide training and advisory support to departments and institutions that wish to prosecute its own cases, for example, Police Prosecutors (Fiji Police Force), Fisheries cases, LTA, FNPF etc. The ODPP provides various courses to regulatory bodies who wish to pursue its own cases.

2. CONSTITUTIONAL REVIEW CONSIDERATIONS

Submission 1 – Ensuring and Securing the Independence of the ODPP

2.1. The sanctity and independence of the ODPP has been one of the cornerstones of upholding the rule of law and maintaining confidence in the criminal justice system.

2.2. The constitutional safeguards for its independence has largely remained intact until now with the way in which the 2013 Constitution is framed.

2.3. Article 117(8) of the Constitution provides for the general powers of the DPP as follows:

> (8) The Director of Public Prosecutions may—
> (a) institute and conduct criminal proceedings;
> (b) take over criminal proceedings that have been instituted by another person or authority (**except proceedings instituted by the Fiji Independent Commission Against Corruption**); 71
> (c) discontinue, at any stage before judgment is delivered, criminal proceedings instituted or conducted by the Director of Public

Prosecutions or another person or authority (**except proceedings instituted or conducted by the Fiji Independent Commission Against Corruption**); and

(d) intervene in proceedings that raise a question of public interest that may affect the conduct of criminal proceedings or criminal investigations.

.....

(10) In the exercise of the powers conferred under this section, the Director of Public Prosecutions **shall not be subject to the direction or control of any other person or authority, except by a court of law or as otherwise prescribed by this Constitution or a written law.**

2.4. A similar provision exists for the Fiji Independent Commission Against Corruption in Article 115 (3), (4) and (6) **except** that the FICAC powers does not have an exception that exists in the powers of the ODPP as follows:

(3) The authority, functions and responsibility of the Commission shall be prescribed by written law, and a written law may make further provisions for the Commission.

(4) Without prejudice to subsection (3), the Commission may—

(a) investigate, institute and conduct criminal proceedings;

(b) take over investigations and criminal proceedings that fall under its responsibility and functions as prescribed by law, and which may have been initiated by another person or authority; and

(c) discontinue, at any stage before judgment is delivered, criminal proceedings instituted or conducted by it.

....

(6) In the performance of its functions or the exercise of its authority and powers, the Commission shall be independent and shall not be subject to the direction or control of any person or authority, except by a court of law or as otherwise prescribed by written law

2.5. If we are to take the provisions as it is, it essentially means that FICAC can take over any files or override any decisions of the ODPP but not vice-versa. There is a disparity in the powers of the both institutions and the ODPP now being affected with FICAC having powers over ODPP functions.

2.6. Whilst the DPP has predominantly been viewed as not reporting to anyone except to the Court of law in its independent function, the current provisions of the Constitution has created a pathway for possible political interference through the powers of FICAC.

2.7. The pathway is through Article 115(9) of the Constitution where the Commissioner is mandated to provide regular updates and advice to the Attorney-General on any matter relating to its functions and responsibilities.

> (9) The Commission shall provide regular updates and advice to the Attorney General on any matter relating to its functions and responsibilities.

2.8. We are not suggesting in any way that this has been done, however, in our view, the current provisions threatens the independence of the ODPP and leaves it vulnerable to political interference through the work of FICAC that reports to the AG.

2.9. A historical analysis of the powers of the DPP over all the constitutions of Fiji from 1970, 1990 and 1997 Constitution indicate that the unfettered powers of the DPP over prosecution of all criminal matters in Fiji has remained intact. **The 2013 Constitution is the first constitution where the unfettered powers of the DPP has been curtailed**.

2.10. It has created and shifted the overall powers to the Commissioner of FICAC whose powers do not have any exceptions.

3. It is our humble submission that the Commission ensure that the exceptions created is its current form on the powers of the ODPP is removed to preserve the sanctity and independence of its office.

Submission 2 – The Appointment process of the DPP

4. It is our respectful submission that the involvement of the AG in the appointment process is excessive and creates opportunities to exploit for political gain.

4.1. Article 117(3) states the following with respect to the appointment of the DPP;

> The Director of Public Prosecution shall be appointed by the President on the recommendation of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General.

4.2. The Judicial Services Commission (JSC) is constituted pursuant to Article 104 of the 2013 Constitution as follows:

i. Chief Justice as chairperson
ii. President of the Court of Appeal
iii. PS Justice
iv. Legal Practitioner appointed by the President on advice of the CJ after consultation with AG
v. Non-Legal person appointed by the President on advice of the CJ after consultation with AG

4.3. If the JSC is already prescribed as being an **independent** body already pursuant to Article 104(8) of the 2013 Constitution, then why is there a need to have the AG consulted again in the appointment of the DPP?

4.4. It is our view that this is excessive and contradicts the independence of the JSC in the appointment process.

5. OTHER LEGAL CONSIDERATIONS

5.1. The Interpretation provisions in Article 163 of the Constitution has recently been tested through the courts particularly on the definition of ***"public service"*** which provides as follows:

> "public service" means the service of the State in a civil capacity but does not include—
> (a) service in the judicial branch;
> (b) service in the office of a member of a commission; or
> (c) ***service in an office created by, or continued in existence under, this Constitution***;

5.2. In the course of some recent cases, we have had to ask questions on why the definition appears to create an exception to some public service holders. The above definition has been used as a defense from criminal liability and perhaps even civil liability.

5.3. In its current form, it appears to create an inference in its meaning that the State cannot be sued, particularly, offices that are created "by or continued in existence under this Constitution". Essentially it means a range of offices such as the DPP, FICAC, Fiji Police Force and all other officers prescribed in the constitution.

5.4. We are unclear as to the intention behind the exception from civil liability but it also creates a problem in criminal liability as there is no clarity on this.

5.5. Whilst judicial interpretation is the independent role and function of the Judiciary, the task of providing jurisprudence is often left to the litigants.

5.6. The offence of Abuse of Office in the Crimes Act, Section 139 states a person "**being employed in the civil service**", however there is no definition of civil service in the Crimes Act. This word was later replaced with "public service" in 2016 however

there is no definition of the same in the Crimes Act. The only definition is in the Constitution.

6. It is our humble submission that the meaning of public service is aligned to other legislation to provide clarity and to remove ambiguity as to any exceptions it was intended for to protect institutions.

RESPONSES TO QUESTIONS BY THE CRC DURING THE FACE TO FACE CONSULTATION

7. *Can the ODPP take over the cases and load of FICAC?*

7.1. Yes it can and it currently handles high profile corruption cases.

7.2. Historically, the ODPP has been prosecuting all the corruption related offences prior to 2007 when FICAC was setup.

7.3. With additional financial resources, the ODPP has the capacity and capability to undertake prosecution of corruption related offences.

8. *What is the difference between the ODPP and the FICAC?*

8.1. The ODPP is predominantly a prosecutorial body with no investigative functions and powers. ODPP heavily relies on investigative bodies for gathering and collating evidence but has oversight over the conduct of investigations to ensure the preservation of evidence.

8.2. FICAC has both investigative functions as well as prosecutorial functions. It also has a significant arm of Community awareness that the ODPP does not have.

8.3. Whilst there is advantages to having investigative powers, it is our respectful view that Prosecutorial bodies should ensure that its internal processes and governance procedures are robust to counter any dangers of conflict of interest and personal interests.

Budget and Disparity in allocations

8.4. The ODPP has seen disparity in budget allocations over the past decade between FICAC and ODPP. This disparity has not affected the commitment of the ODPP, however, it has impacted on its ability to grow, expand its work and services in the criminal justice sector.

8.5. A review of the budget allocations over the past decade is noted below with significant changes occurring upon our return to the ODPP in 2024 until now.

	2016	2017	2018	2019	2020	2021	2022	2023	2024
ODPP	$4M	$5.4M	$6.6M	$7.6M	$6.4M	$6.1M	$6.3M	$6.9M	$8.1M
FICAC	$4.4M	$8.2M	$8.4M	$7.8M	$7.4M	$7.9	$10.5M	$10.1M	$10.5M
TOTAL	**$8.4M**	**$13.8M**	**$15M**	**$15.4M**	**$13.8M**	**$14m**	**$16.8M**	**$17M**	**$18.6M**

An review of the above indicates the substantial amount of money invested in the prosecution body alone where the Staff ratio is also significantly different. The **ODPP 55 Prosecutors vs FICAC 14 Prosecutors** and where the ODPP serves ALL offences all over Fiji together with undertaking the Training of 80(+) Police Prosecutors with the Fiji Police Force.

We pray that the above submissions are considered.

Dated at Suva this 22nd day of April, 2026

.....

Nancy V. Tikoisuva

Acting Director of Public Prosecutions

Semi Tukana (Founder of SOLE Fintech Fiji)

SOLE FINTECH FIJI
Time: 11.35-1.50pm
Date: 23-4-2026

Leighton: Good morning Mr. Tukana and the team from SOLE. On behalf of the Constitutional Review Commission, I would like to welcome you and thank you for accepting our invitation to attend this session this morning. My name is Leighton Fatiaki. I just want to go through a few housekeeping matters with regards to the mics in front of you.

If you wish to speak, you will have to tap on the right tab in front of you to speak and then just tap it again to turn it off. Also, the chair will introduce the team, the commissioners and the work that they will be undertaking and then after that we also kindly request if you can introduce yourselves as well. This is for the transcription record.

Mr. Valenitabua: Thank you Leighton. Mr. Tukana and the team from SOLE, welcome. We appreciate your attendance this morning and we are looking forward to hearing some message from you. The commission is comprised of seven members. You will receive four of us here this morning. On the far right is Mr. Conway Beg and next to me on my right is Dr. John Fatiaki and on my left is Dr. Neelesh Gounder. We sit here on behalf of the other three who were not with us this morning too.

The task that we have at hand is that we are to collect submissions and collect views from members or from the citizens of this country, from the people of this country on what they think we should have in our constitution, which ones should be removed and any changes so that in the end we would be able to prepare an amended constitution to the 2013 constitution.

The task here is a review of the constitution which might culminate in an amendment being made. So, we will be looking at constitutional provisions. We presume that when you make your submissions you will be referring to constitutional provisions which were changed or amended or removed completely.

There are some people who have been saying out there and members of the public that we should have this provision removed, even the whole constitution to be removed. Unfortunately, we cannot do that. So that is what our task is and we've had a number of associations, we've had a

number of ministries of government and even individuals who have come here to Level 9 to give us their submissions and their views in relation to what they want to do or they want us to do with the constitution.

We will deliberate at the end whatever we record, are recorded for the sake of the deliberation, whatever is decided to be forwarded in our report to His Excellency the President, we will deliberate on that. So, the process would be after this, next week in early May, we will be going out to the country, to the rural areas, to the villages, to all over Fiji. We've got schedules for that and we want to hear their views too.

There was a deficiency in the 2013 constitution in relation to the participation of the people of this country. There's been a lot of complaint in that. So, we're trying to remedy that before we think of making an amendment.

We welcome you and now I'm going to hand over the mic to you Mr. Semi Tukana and your team so that we can hear your submissions.

Mr. Tukana: Thank you. Vinaka Vakalevu, the Chairman of the Constitutional Review Commission, the esteemed members of the Commission.

I wish to thank you for the opportunity given me to submit my views in regard to the document that some people refer to as the 2013 constitution, but as I personally refer to as the greatest injustice to the Fijian people.

First and foremost, I acknowledge the sovereign Judeo-Christian God of these islands of Fiji which our forefathers accepted on the 12th of October 1835 at the arrival of the first Christian missionaries to Fiji. Secondly, I wish to acknowledge the traditional owners of the land on which we stand today 'Na gone Turaga na Tui Suva' and the paramount chief of the province of Rewa Na gone Marama Bale na Roko Tui Dreketi.

Thirdly I acknowledge His Excellency the President of Fiji 'Gone Turaga Bale na Tui Cakau', the government of the day, to the Deputy Prime Minister, Cabinet Ministers and Members of Parliament. My name, by way of introduction and for the purpose of recording, this particular submission is made by me as the person, Semi Tukana. It is by no means a representation of SOLE, a fintech company, so it's my personal

submission to the Commission and the people beside me are people who just come to be in support for this submission today.

At my far right is Ratu Seru Rokosuka. He hails from Nayavu, Wainimbuka, Tailevu. Christiana Ravusiru hails from Kadavu, Naikorokoro, Kadavu. And on my left, Alipate Gonerogo from Nabulini, Wainibuka. My name is Semi Tukana and I hail from a small island, a rocky island in the Lau group called Vanuavatu. One island, one village, Tovu Village Tikina Totoya .

I run three technology companies, all of which are software development companies, two in Fiji and one in Papua New Guinea, and the latest one is SOLE Fintech. So just to give you a background, 44 years in the area of software design and software development.

Today I stand before you representing my family and probably the silent voice of the many of the people and friends that I normally get in contact with. My submission to the Commission today are categorized into seven major topics. I just want to look at the preamble that are contained in the 2013 constitution, faith, identity, land and qoliqoli, electoral boundaries and constituencies, the reinstatement of the Senate or Upper house, and the Bill of Rights, something that concerns us, the rights to economic participation.

Just on the preamble of the 2013 constitution, in August 2025, Fiji's Supreme Court made a decision. In quote, while the court reaffirmed that the 1997 constitution was never lawfully abrogated, I noted that events have moved on, and the 2013 constitution has been the practical framework of governance for over a decade. Furthermore, the Supreme Court ruled the recognition of the 2013 constitution would not mean that we think the 1997 constitution was lawfully abrogated. It was not.

The decision by the Supreme Court based purely on the premise that events have moved on is unacceptable in terms of law, and more so in terms of the Bill of Rights of the common people and the indigenous people of Fiji. To me personally, it is a lazy judge's way-out approach, even though it is the law of the land.

The lame excuse is quite an insult to our people. The Supreme Court may have opted for this excuse in its attempt to adopt the doctrine of

necessity. However, it lacks to address the preconditions that necessitate the formulation and promulgation of a constitution.
The doctrine of necessity is the most critical test to the legitimacy of the 2013 constitution. Mr. Chairman and esteemed members of the Commission, if you look at the 2013 constitution, it has failed all four tests. I'm not here to try and change whatever the Supreme Court judgment has made. This is something that I just want to let the Commission know. It has failed the test of legitimacy. Everybody knows.

I've got the details there. It has failed the test of evolvability, which brings to question this very Commission that is being set up, whether we do have the powers to actually change the constitution when it is quite clear that it requires quite a significant number of people and also members of Parliament in a referendum to make any single change. So that brings to question even this Commission.

So, I have outlined there the reasons behind the failed legitimacy, the failed evolvability, practicality, something that I have always said that even in the current Parliament, they only represent 30% of the people of the land. After the deregistration of the Fiji First Party, in practical terms, that means there is a failure in the very constitution and the law of the land that we are now operating under. And right at the end there, it failed the doctrine of necessity.

This doctrine of necessity only kicks in when there is real chaos and it demands or warrants a change in the constitution. But when you look at all the preconditions for the doctrine of necessity, we see the absence of criminal intent, there's necessity, proportionality. Proportionality is one of the preconditions that I see.

Does it really require the whole overhaul to throw out the total constitution and to bring up one whole new constitution? So, the question of proportionality is not there. So we'll go into the actual submission, Chairman and members of the Commission, in regards to the Christian faith. I might not be called a woke or relevant or up-to-date person, a progressive person. I'm a very conservative person.

For the 2013 constitution to declare that this nation is to be a secular state, it is saying that it is a godless constitution, which is godless. As representative, as one of the people here in Fiji knowing our history of the Christian faith that actually came, was accepted by our chiefs and our

forefathers on the 12th of October 1835, I cannot stand and watch that this nation be termed as a secular state.

Secular simply means no god, godless. No. I stand before the Commission today to say that this is one of the recommendations that we are putting forward right there at the bottom, 23, that whatever changes that needs to be made, it must acknowledge the advent of the Christian faith, not just an open statement.

A Christian faith and its acceptance by our Fijian chiefs and forefathers from October 12, 1835 until today. The constitution, our proposal must explicitly state that the nation of Fiji is a Christian nation and that it does not limit the rights of other people to practice their own religion. No.

Freedom of religion is a must, provided that the religion or faith or sect does not abide under or conform under the doctrines that promotes forceful conversion by death or by payment of tributes, as is prevalent in some Middle Eastern countries as we see today. The legislation, our proposed addition to the constitution is legislation to safeguard against faith doctrines that promote extortion of monies and or radical teachings of conversion of face death. This is not negotiable.

The recommendations are the legislations need to be introduced to terminate the rights of a religious organization or religious sect that is actively guided by their holy book, which explicitly states and openly promotes the doctrines of conversion by force or face death or the payment of tribute by force. The legislations need to be introduced to identify and terminate the operations of a religious organization or religious sect which has been classified as a terrorist organization either by the United Nations or World Security Council or the United States of America or NATO member countries.

The new constitution is proposed that needs to be introduced to identify and deport members of religious organizations which has been classified as terrorist organization by the United Nations or World Security Council or the United States of America or NATO member countries.

On page number six, Chairman and Members, it comes to the element item on the Fijian identity and I put beside it, this is not negotiable. The contentious issue on the so-called common identity of Fijian was

recently introduced and enforced in the 2013 constitution. That is a period of only 13 years, not 50 years, not 500 years, certainly not 3,500 years.

In fact, the contention has only been accentuated as more and more Fijians, especially those who live in remote villages are coming to learn about how their identity as Fijians has been removed and how everyone has been assigned the Fijian identity. As of today, Fijians, the Kaiviti's, are still calling themselves and being referred to as Fijians. Rotuman's, the Kai Rotuma, are still calling themselves and being referred to as Rotuman's.

In fact, I have two Rotuman's in my company, sorry. Both of them don't want to be called Fijians. They just want to remain Rotuman's.

Indians, the Kaidia, are still calling themselves and being referred to as Indians or Indo-Fijians. Chinese, the Kachina, are still calling themselves and being referred to as Chinese. Europeans, the Kaivalagi's, are still calling themselves and being referred to as Europeans.

In the 1997 Constitution in Chapter 3 regarding our citizenship, the ethnicities were very clearly implied within the sections and subsections of this chapter. Our common identity is Fiji citizen. Fiji citizen.

The 1997 has clearly identified us as Fiji citizens. The 2013 Constitution introduced the term iTaukei as the ethnic identity for the Fijian people. And this has introduced a lot more confusion amongst the Fijian people and even the non-Fijians.

The term iTaukei is an abstract noun that we use in our own Fijian language to refer to ourselves in the vernacular. On its own, an It being an abstract noun becomes an empty term. You can refer to someone as the *'Taukei ni valenitoa, Taukei ni Koli, Taukei ni Bulumakau, Taukei ni Sitoa, Taukei ni vale'*.

When in Australia, I was asked what was my ethnic origin, my answer was iTaukei. The next question they ask, where is that? But if I had answered Fijian or Indo-Fijian or Chinese Fijian or Euro-Fijian or Afro-Fijian, there would be no further need for clarifications. So being called a Fijian has deep linkages to the land ownership, language, culture, traditions, food, drinks, and history.

The term Fijian is anchored to the land. Taukei is not anchored. Taukei of what? *Taukei of ni Valenitoa, ni valenivuaka.*

When you say Fijian, it anchors my identity to this land, ownership of the land. No longer an abstract noun like iTaukei, which is an empty term that is floating in the sky. The 1997 constitution clearly recognizes the right of every Fijian, every citizen to be called Fijian citizen.

And I quote, the quotes are there, recognizing the descendants of those who chose to make their homes in these islands, form a multicultural society, affirm the contributions of all communities to the well-being of that society and the rich variety of their faiths, traditions, languages, and cultures. Taking pride in our common citizenship and in the development of our economy and political institutions.

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

Re-affirming our recognition of the human rights and fundamental freedoms of all peoples and groups, safeguarded by their adherence to the rule of law and our respect for human dignity and the importance of the family, end quote. That's from the 1997 constitution. So, your right as a Fijian citizen are not jeopardized at all, in any way or form, by being called Indo-Fijian, Chinese-Fijian, Euro-Fijian, or Afro-Fijian, or any other name.

Fiji is the more richer when all ethnicities hold on to their language, cultures, and traditions, and their identities. So, the recommendations are there, Mr. Chairman and esteemed members of the commission, that all citizens of Fiji to be called and referred to as Fiji citizens. The ethnicities of the Fiji citizens must reflect their own ethnic origins, rich ethnic origins.

Fijians refer to the indigenous Fijians. Indo-Fijians refer to Fiji citizens of Indian ethnic origin. Chinese-Fijians refer to the Fiji citizens of Chinese ethnic origin. Euro-Fijians refer to Fiji citizens of European or Caucasian ethnic origin. And Rotuman's refer to Fiji citizens of Rotuman ethnic origin.

Mr. Chairman, we shall go into the next item in regards to native land and Qoliqoli ownership.

This is another non-negotiable. You'll be hearing about the non-negotiable because when the Yash-Gai Commission came along, the previous regime had given them a list of 13 or 9, 9 or 13 non-negotiables. So, the hands of Yash-Gai was tied. It's in the book. It's very clear. They were given 9 or 11 or whatever non-negotiables. And Yash-gai had to work around that. We the people, I as a representative of Fijians, I must say we must also have our non-negotiables. It is our right to also say that.

Ownership of the Qoliqoli. I'm addressing first the Qoliqoli, which are clearly demarcated at the Tokyo Land Trust Board or the Native Land Trust Board, just across the road, must be referred from the state to the rightful traditional owners of the Qoliqoli. Those who utilize these Qoliqoli include beaches, mangrove swamp, open waters, surf and reefs, must pay the rightful traditional Qoliqoli owners the appropriate compensation on a user pay basis.

Our recommendation. The state must release all rights over all Qoliqoli to the rightful traditional owners and appropriate powers to be handed over to the TLTB as trustees for the traditional Qoliqoli owners for the proper administration of the boundaries of these Qoliqoli, the setting up of the appropriate levy royalties to be charged for the use of these Qoliqoli, the collection of these levies, and the distribution of the royalties to rightful owners of the Qoliqoli. In the 1997 constitution, in chapter 4, section 40, item 1, on the protection against compulsory acquisition of property, it states that the need for compensation for land that has been acquired for state use.

Now, while land owners receive lease payments from government for land upon which hospitals and schools are built, the owners of the land where roads and bridge infrastructures are built for the general public use do not receive any lease payments. Now, why? My recommendation. Legislation must be drawn up for the documentation of leases and appropriate annual lease repayment, rental repayments to the land owners where land has been acquired for the profit of the general public, in particular attention to roads and bridges infrastructure.

That's land that has been acquired for the public use. When we go to the electoral boundaries and the reinstatement of constituency, it is of

paramount importance that every Fijian citizen is fairly represented in the House of Representatives. Under the 2013 constitution, the notion of one man, one vote is also supported.

But the non-existence of the constituent representations defeats the very purpose of what it purports to support. As I mentioned before, the current situation in Parliament, only 30% of the whole population are represented in Parliament. 70% are unrepresented.

The 1997 constitution clearly lays out the electoral boundaries and the various constituencies and membership of the House of Representatives in Chapter 6 but to under House of Representatives. However, I am proposing that constituent boundaries to be redrawn with Parliamentary representations be based on population spread rather than ethnicity. So, it's a little bit different from the 1997 constitution.

With the total population count of Fiji being at 864,000 that's from the Bureau of Stats 2014-2019, the total number of seats in Parliament comes to 44. This is our proposal. Added to that number are 6 more seats representing Fiji citizens living abroad.

So that comes to citizens of Fiji, citizens residing in Fiji, 44 seats, New Zealand one seat, Australia, UK, Europe, Middle East, Asia, US, Canada and South America and Pacific Islands one seat each. That comes to a total of 50 seats.

Now you may ask, why do we need to include Fijians living abroad? It is important. The inclusion of Fiji citizens living abroad is important as it recognizes their contribution to the economy. With remittances up to 1.5 billion, we deal with remittances with SOLE. And we know that remittances are increasing every year.

So, they have a lot of contribution, major contribution to our economy. And as the population of Fiji increases, the number of seats is proposed to either increase or increase the denominator, which is the 20,000. Working on a 1 is to 20,000 ratios.

Now comes to the second last item in our proposal, Chairman and esteemed members of the Commission, the re-instatement of the Senate or the Upper House. Now what is the significance of the Senate? The Senate plays a critical role in major decisions that affects the major

stakeholders of the island nation of Fiji. The 2013 Constitution removed the Senate from Chapter 3, Parliament Part 1, Legislative Authority and Part 2 composition. The 1997 Constitution includes the Senate in Chapter 6, the Parliament and Part 3, the Senate.

I propose the reinstatement of the Senate with a membership reflecting the proportion of land ownership owned by the sitting Senators. I propose that the national matters of importance that are sensitive to the stakeholders shall not be decided upon by members of the Lower House, but by the Senators.

If we take an example, let's take Fiji as a company. We can draw parallels between a small country like Fiji to a coffee shop like Starbucks. There are 381,000 employees of Starbucks worldwide, more than the number of employees in Fiji.

We are not a big country, nothing complex in this place. We are the ones who make it complex. In company terms, Fiji is a tiny company, comparable to a coffee shop, even though this particular coffee shop is global.

Now, a company has shareholders, board of directors, executive management and employees. When we draw a parallel, there is actually wisdom, wisdom by the colonialists, irrespective of whether we like them or not, there is great wisdom in the introduction of the Senate. They act as the board of directors for our company called Fiji.

Parliament, the Lower House, acts as the executive management. There are certain matters that only the shareholders must have the final decision on. Not on the Parliament, not the people who are hired, no, only the stakeholders.

And in this case, when we look at Fiji as comparable to a company, shareholders, what is the share? In a company, the amount of money you give, you contribute, you've invested. What is the share in Fiji? We don't have to look far. It is the land ownership.

And I've specified it there. Shareholders to the nation of Fiji are the land owners, including both native land, state land and freehold land. Therefore, the composition of the Senate must be based on the percentage ownership of the land in Fiji, not by the population numbers.

No, it is by land ownership. Why land ownership? Land is the only substantial platform or base upon which a country is founded. It is not imaginary.

Without land, you cannot have a country. Case in point, the founder of Facebook, Mark Zuckerberg, spent $88 billion to build an immersive digital world based on virtual reality called Metaverse. They encouraged users to log in and with virtual reality goggles they were able to take a tour of the virtual world and they actually can buy virtual real estate with real money to buy digital real estate.

It became one of the biggest flops for one country in the world of technology. You can't create a country out of thin air. Land is non-negotiable. Your ownership of the land dictates your number of members in the Senate or the Board because they represent the shareholders of Fiji as a company, as a nation. You need real land to have a country. You need real money to have a company.

The primary role of the Senate is to have oversight on the bills being debated and passed by the lower house of Parliament much like a board of directors in a company when they review management board papers being presented. Now, there are certain things that we would like only the Senate, the landowners, the freehold landowners, represented by one member the state landowners, represented by two members and the others, represented by twenty-two members.

Matters concerning faith, identity land and qoliqoli, immigration electoral boundaries and constituencies flag, national anthem, currency votes at the UN and our alliances to a block of nations must never be decided upon by the lower house.

That is a matter for the shareholders. The upper house or the Senate. The above matters may be debated on at the floor of Parliament or lower house but the final decision votes rest with the Senate with a passing vote of 75%.

So, our recommendation, Chairman and esteemed members of the Commission to re-instate the Senate. This is non-negotiable. We must have the Senate to represent the voices of the peoples that own the land on which we live on.

The composition, as I mentioned before, 22 to the native landowners because they own 90% of the land, 7% of two seats go to the government of the day and one seat go to the freehold landowners. And the bills that only the Senate can pass through a 75% vote are matters concerning listed there.

Chairman and esteemed members of the Commission you have come to the final part something that is probably not in line with the mandate given to you but I just thought I mentioned it because it affects me personally.

The Companies Act of 2015, I believe has a major flaw in that it could easily be weaponized by any sitting government. The flaw in the Companies Act of 2015 refers to the clause of the protection of the shareholders from unfair treatment or oppression. This clause gives the right to any shareholder to wind up a company even if he or she is a minority shareholder.

He or she can file an application in court to wind up a company a very successful company and this is something that is personal to me. It's very easily weaponized by a sitting government that you or your voice is not in line with their policies.

So, the recommendation I don't know how you can do this because this is referring to the Companies Act but this is going on the basis of the Bill of Rights of economic participation when a shareholder seeks court's relief for unfair treatment or oppression that shareholder must pay a bond equivalent to 10% of the value of a company then you file your application.

That will deter people from just filing applications left right and center to wind up a company that is successful no debt and they can file an application to wind up a company that has no debt 25 years no debt a minority shareholder weaponized by a sitting government can wipe up your company and an amendment must be made on that act whereby if anyone wants to wind up a company pay a bond 10% of the value of the company and get your fine. If you are serious pay the 10% of the value of the company and fight it in court.

Our last word Chairman and esteemed members of the Commission this is a watershed moment I hope that this Commission will actually carry through all the views of the people that will be brought to your presence as you go around the country and an opportunity for you to stand on truth right, things that are right and just for the people and for the nation of Fiji .Sir, I wish you and the Commission God's blessings upon your deliberations and the outcomes of your Commission. Thank you.

Mr. Valenitabua: Thank you very much Mr. Tukana. Interesting submission you have given to us today your comparisons between the company's office and other matters in the submissions are really interesting we have never come across anything like it during the consultation sessions which we have undertaken so far you have raised very interesting points.

I am sure my commissioners would have questions to ask you in relation to your submissions later on. Just one point at first your paragraph 1.4 paragraph 14 on page 2 the 2013 constitution states in chapter 11 section 3 that it can only be amended through a referendum of 75% of registered voters in Fiji, maybe you would need to change that to amend it because the Supreme Court has ruled on that 75% and has reduced it to 2 thirds 2 thirds of the registered voters who voted.

Mr. Tukana: Yes okay, so if that has already been amended.

Mr. Valenitabua: Let me I've just had a comment from here please it's a simple majority. I read to you opinion D by the Supreme Court it says 2/3 of all members of Parliament 2/3 of all members of Parliament must support an amending bill at the second and third readings and majority of voters voting in a referendum in relation to the proposed amendments must vote in favor of the amendments. So, it's a majority 50 plus 1 of those who voted and those who voted would be registered voters.

Mr. Tukana: Thank you, excellent so 75% in terms of members of Parliament and for the referendum it's 50 plus 1.

Mr. Valenitabua: 2/3 members of Parliament in the first and second readings.

Mr. Tukana: What is 2/3 in terms of percentage?

Mr. Valenitabua: 66%.

Mr. Tukana: So, it's come down to from 75%.

Mr. Valenitabua: And it's the majority of voters

Mr. Tukana: That vote not registered

Mr. Valenitabua: So that has been amended there should be registered voters in order to vote but those who voted it's 50 plus 1.

Mr. Tukana: Thank you.

Mr. Valenitabua: Just something to add to your submission there is another point anyway there was another point that I had highlighted the amendment provisions of section 159 of the constitution. That is the amendment provision the supreme court has also rewritten in their opinion what that provision should be in section 159. It might be well I, suggest that you look at a copy of the opinion and read what the supreme court has written into the opinion to be how section 159 is to be read.

Mr. Tukana: How section 159 has to be read.

Mr. Valenitabua: I bring this up because you say that even our sitting here might not be legal did you mean that? so we refer to section 159 and the opinion of the supreme court.

Mr. Tukana: Thank you for that chairman I'll have a look at the opinion of the supreme court judgment

Mr. Valenitabua: Paragraph 236 of the opinion of the supreme court there is something for you to reconsider.

Mr. Tukana: Thank you.

Dr. Fatiaki: Through you chair Mr. Tukana thank you very much for your very candid and well-presented submission. I would just like to make some generic comments I think aspects of your comparison of the preamble in the 2013 constitution to the 1997 is very relevant. I think our commissioners have discussed it , it has particular interest to me because I was given chapters of the preamble chapter 1 in respect to the state.

I was the one who had to do the research and talk about it and compare it to not only the 97 but the 1970 constitution.

And it was very noted that any reference to God was removed from 1, 2, 3 and if you took the dee of session cession as the primary document that has any bearing legislatively on the country of Fiji then all 3 plus the deed of cession refer to God the compact, the preamble, the introduction only the 2013 removes it completely.

The issue of faith has been brought up in a multi religious country such as ours obviously where there is a significant number of people who are not Christian and I am a Christian the issue of making the state a Christian state that you have asserted we appreciate where you are coming from.

I guess as commissioners who listen to submissions from other people that is a consideration that we will have to consider carefully and as we go out and listen to the opinions of people. I am sure that we will come to some area that attempts to strike what I call the middle ground in terms of acknowledging god but maybe not to the extent that you would consider non-negotiable. I say that as a general comment because I think the recognition of the absence of God is very worrying to all, I won't say just to all commissioners but to the public at large.

I think when written in that context irrespective of your particular version of God I think that most people in Fiji if you walked out on the street have some belief in our supreme power a God, that actually guides our actions and morality and our values. I think acknowledging that is something that three constitutions and the dealer session have in it, the idea that it would be removed in the 2013 is a novel one, and I am sure that is an area that will look at and be accommodated and discussed and thought upon greatly over the next four months that we have. But that's in respect to the issue of faith.

If it's any assurance we also operate on the basis of the terms of reference and I just bring to your attention that in our terms of reference for this particular commission one term of reference there is a number actually but there is one in particular that alludes to indigenous rights. I will read it to you.

It says, responsibilities will include protecting, guaranteeing, and securing under the constitution. Land and fishing rights and resources of indigenous Fijians and Rotuman's and assuring that registered owners of native lands and customary fishing rights have an equitable share of the income derived from the exploitation of the resources beneath and above the surface of their land, the seabed, rivers, etc.

I read that to you because this is the terms of reference that will be given to operate under one of the terms of reference and I think that addresses some of the issues that you raised in your submission in respect of the land and the colony. Indirectly related to the issue of the bicameral house, the next terms of reference that I have here in front of me, says recognizing the role of the great council of chiefs in national affairs of the state under the constitution.

You'll be well aware that the great council of chief's role in the previous constitutions has been really in the composition of the senate and, so I guess that indirectly relates to the issue of the reinstatement of the senate of the bicameral parliament. Again, that is a stated term of reference under which this commission has been asked to operate and address and I think that addresses that aspect of your request.

I hand over to my colleagues who might want to make some comments.

Dr. Gounder: Thank you chair and thank you Mr. Tukana and your team for the submission. Thank you also for the very detailed written submission which is very clear.

I have a few questions, firstly I start from the last point that you made about the shareholders seeking court's relief should pay a bond equivalent to 10% of the value of the company.

The constitution broadly talks about access to justice as a fundamental right so requiring somebody to pay 10% value of the company before you can go to seek access to justice wouldn't that impinge on your rights to access justice?

Mr. Tukana: Good point, but what about the rights of the majority shareholders or the other shareholders. You are holding a company to ransom if you are 2% or 5% shareholding in a company and you want to wind up a company

that has no debt, has been operating for 20 years, more than 20 years then what is the relief that's...

Dr. Gounder: It requires the courts and avenue to redress the very same argument.

Mr. Tukana: The only point I am raising Commissioner Gounder is there is a real danger in that people of authority may use and weaponize this particular clause in the companies act of 2015, and I can vouch for that it's happening not only to me but to other companies as well that have gone under. I am only here because we don't own any debt, we are debtless so, we need to protect everybody but if you want as a shareholder and you want to exercise your rights to apply to the high court to wind up a company on the basis of oppression not on debt payments, of oppression it's a dangerous term, because it's fairly vague. So, there is a clear danger in this particular clause being weaponized and I must say it was weaponized by the previous administration.

Dr. Gounder: Thank you I have noted your response The other point is number 60 where you talk about the senate making decisions regarding currency. I would like to understand what aspect of currency you are talking about, because under the current constitution and the 1997 constitution and the constitution we have had since 1970 those functions are given to the reserve bank of Fiji. And there are two things I as an economist should not give in the hands of politicians one, data collection and dissemination and monetary policy and the control and availability of credit in an economic system. What aspect of currency are you talking about?

Mr. Tukana: Excellent question. You note the flag national anthem and currency this is just in terms of the printing of the currencies and what is to be printed on the currency the senate must have the overall decision on what is to go and what is acceptable to the stakeholders of this company this nation of Fiji .Nothing to do with controls currency and foreign exchange controls we need to have controls on the flag, they wanted to change the color of the flag no, the owners of the company or the owners of the nation by basis of land ownership must have the final say.

So, that is just to clarify I was writing this very early this morning I couldn't expound we need clarification in some cases you have clarified it .

Dr. Gounder: And that is fine because that is the system we have in Fiji at the moment.

Mr. Tukana: So, in terms of currency it is what is printed just the design of the notes that is very clear.

Dr. Gounder: I just have one more question you talk about the Christian state I hear that a lot as well, I am not a Christian but I just want some assurance if you raise the state as a Christian, are you raising the Christian God over other God's?

Mr. Tukana: very good question basically these are foundational -foundational aspects when you go into a house you don't force your faith onto the owners of the house the house have a faith that they have established their family with in Fiji. In 1835 October 12 the Christian missionaries came them influencing our lives from cannibalism to what we are today.

Actually gave us the ability to accept people other religions to come into our land without being eaten so what I am saying is let's acknowledge the Christian God, nothing to do with the freedom nothing to do with the freedom of your worship, we must acknowledge the very reason why these people are here in Fiji is because the Christian missionaries that came into this land, sacrificed their families and their lives, proselytized the cannibalism that were with us to make it what we are today. And giving you the right to sit there, give us the right to build this building.

Foundational faith is so important we must recognize that we are not going to limit any worship of any other gods have the Hindus come to Fiji in 1835 and proselytize us we have to recognize this country as a Hindu country and Christians you are welcome provided the Hindus welcome the Christians and the Muslims , but it was the Christians that sacrificed their lives changed us and allowed us to accept you and other peoples to come freedom of everything, almost freedom of everything except for the amendments that I am putting on the chairman about any religious sect any religion act, any faith that follows a doctrine that forcefully converts people either by death or by tribute, payment of tribute those must be banned and deported. We cannot allow radicalism to come into our country in that regard.

Dr. Gounder: Yes, thank you, I think that is very clear I will also take your point about radicalism, I just wanted to understand what you mean you know one of the things about the 2013 constitution that people are talking about is in many cases tokenism. It is mentioned but it is actually not practiced on the ground where you don't see the impact.

Constitutional reforms must have an impact and it should not be tokenism so that is the angle I was trying to come from. So, if constitutional provisions are to have an impact what do you think are some of the principles for Christian state that you mentioned. What would be the intersection between the convictions of a state and political governance.

Mr. Tukana: You will recall when the 2013 constitution was promulgated the first thing was the parliament when they pray, they pray to no god they pray to the four winds or something like that no, we are not guided by the four winds. Somebody prayed I think the late speaker of the house prayed in the name of Jesus. The name that actually transformed our lives and she was she was called- that is not acceptable. That is the reason why when we look at the formulation of the senate those are the stakeholders of this land. Anything to do with faith not the parliament must be accepted by the shareholders, not the management and that is the reason why we are saying even prayers in school.

I was a chairman of Nabua secondary school the prayers was prohibited in the name of Jesus that was prohibited why are we doing this? this school is here because of that God. So, just simple things like this start with a prayer in the name of Jesus, acknowledging the God of the people that own the land the people that accepted Christianity into this country nothing else.

We don't prohibit any other worship, any other Gods but it's only that we must be clear on this if we say God nameless God, then people will be praying to the four winds. I'm USP I'm a USP council member, when I joined in 2017 Christian worship was banned for 4 years I didn't know, and I fought for it to make sure that it comes back on campus because I'm a beneficiary of the campus crusade for Christ. My life was changed because of that so, we are just saying let's be explicit, let's be clear by the foundational faith of the people that own the land.

If they decide, change if the senate decides, change then we change if they said, no, my forefathers the chiefs accepted this that remains.

Dr. Gounder: Thank you, thank you chairman.

Mr. Valenitabua: Mr. Tukana I've been listening to this recommendation in relation to legislation to introduce or terminate the rights of a religious organization

or religious sects, this is paragraph 26 on page 5. Now, I'm certain that you know that the constitution has the bill of rights.

Mr. Tukana: Yes.

Mr. Valenitabua: Now if this were to be put into effect that would mean that section 22 of the constitution will have to be amended or watered down or removed, because section 22 talks about freedom of religion.

Mr. Tukana: Yes sir.

Mr. Valenitabua: Now, that I hear that you are a board member of USP what is your view in relation to removing that freedom which Fiji adopted after ratifying the universal declaration of human rights.

Mr. Tukana: Thank you.

Mr. Valenitabua: That is one question that I'd like to ask you there are a few others, but let's hear that first.

Mr. Tukana: Chair, the reason I specifically mention this is the rise of radicalism that is happening in most western countries being infiltrated, radical. And if we look at the holy books of any new religion or sect that wants to come into Fiji, we must re-look at what their beliefs are and what they stand for and if there is anything in their holy books, that purports them to actually do active conversion or death, you either convert to them or they kill you.

That's not religion that's really bringing to question that particular provision in the constitution about the freedom, the bill of rights freedom to religion. They are coming under a cover of being religion but, when you look at their actual statement of faith or doctrine then your life, my life and the life of the nation of Fiji jeopardized. We cannot allow that under the cover of religion.

There must be ways in which you can amend the constitution whereby we re-look at all of this and if it sets up a doctrine of conversion active conversion or death active conversion or pay tributes, then those is unacceptable to this to this nation.

Mr. Valenitabua: And with section 22 in relation to freedom of religion freedom of religion

Mr. Tukana: You need to have subsections to that chairman because freedom of religion is there but then it needs to have some I don't know what you call it in legal terms because I'm a technologist I build systems. This is the last thing I ever look at all I know is do something that will limit any radical any radical faiths coming under the cover of religion, not to be practiced in this land.

So, many people have come under the cover of religion but in this case if it means death conversion or death conversion or pay tributes that's unacceptable to not only to me but to the people of this nation.

Mr. Valenitabua: Thank you for that your submission in relation to the membership of parliament. I know that you are suggesting that we redraw new constituencies new constituent boundaries. You're not the first person to have raised that we've heard that from a few other organizations a few other organizations so that we do away with one national constituency one constituency for the whole of Fiji. So, that is in our books that has been put to us.

Now in relation to the number of seats to be 44 in parliament as you propose or as you submit there are Fiji citizens residing in Fiji 44 seats. I'm concerned with the citizens living overseas how we know that there are citizens living overseas who are dual citizens. And there is a law which does not allow dual citizens to be members of parliament if I remember correctly. There's a law whether it's constitutional or legislative I can't just get my mind to it right now a dual citizen cannot be a candidate for elections to be a member of parliament in Fiji.

How do you suggest that has to be tackled considering that citizens of the country can hold PR over all this citizens of the country would have surrendered or renunciated their citizenship in order to become a citizen of another country. Some people once they are citizens of their other country then as we facilitated it our legislation facilitated it applied for dual citizenship and they were granted dual citizenship how do we tackle that the NEC people who are living British Army and so forth.

Mr. Tukana: Very good question.

Mr. Valenitabua: how shall we set boundaries how shall we set qualifications thank you chair that's a very good question in fact when I was writing this I was thinking about that as well for the 6 members of parliament representing

our Fiji citizens living abroad we will need to for them only not for the 44 members of the 6. Only these people are allowed dual citizens so that doesn't give the freedom of anyone with dual citizenship living in New Zealand for 40 years to become a member of the Fiji parliament representing people which are constituent representatives here in Fiji.

Only for the 6 we need to have some provisions in the constitution that will allow these 6 seats to have dual citizenship it's important because we in my role as the founder of SOLE we go to the ends of the earth talking to people and a lot of things that they tell me would be best dealt with a representative that dwells amongst them rather than somebody, the minister for justice going and then saying yes come back, then you have to do all that .

But it's best represented by people who are residing with them and that's the reason why I said maybe make provisions for the 6 members only not the 44, 44 single citizenship Fiji citizenship the 6 members. Give them the freedom to choose their own representative from the nation they reside in.

Mr. Beg: Thank you very much Mr. Tukana for your presentation some very illuminating items that you presented I think my colleagues have covered quite a bit I just want to focus on point 40 of your presentation on native land and Qoliqoli ownership and customary land. I guess when I look at the constitution, I think this is in section 28 of the constitution are you my question to you is are you wanting an instrument in the constitution or do you want the TLTP Act to be more reinforced in this provision or this point that you're trying to make. I think that's in, if you look at the constitution the current constitution in section 28 and 27, those are the two sections that are impacted by your presentation.

I can think of how it could be put in but that's not my role, my role is to listen to you and take in your points of every relevant point the other one was because it covers. You made a very interesting point about roads bridges and so on, I think that's a very relevant point that, I think our body that sits across the road would have thought that would have been covered. So that's why I'm asking my question to you is do you think it should be enshrined in the constitution or in sitting as a statute of law in TLTB. I think that's about it for me I have some other questions but I'm sure my members would want to ask that. Thank you.

Mr. Tukana: Commissioner you know the reason I brought up, I'm saddened when I go to my islands and my people want to go and fish in a particular area they have to get permission. My ancestors go to that particular reef and fish in that place without any license. We need to revert this back to the ownership of the traditional owners but, the instrument in which we do the administration of royalties they have TLTB across the road.

Our system runs there as well they overlay, we store the coordinates and they overlay. They GIS on top of it the qoliqoli are clearly demarcated this qoliqoli belongs to this Mataqali. Why are we leaving fees for these people to go and fish in their own qoliqoli no, bring back the thing from the state, give it back to the people let the native land trust board minister administer the boundaries administer the levies, administer the payment and administer the royalty payments to the rightful owners.

They have all the data we help them storing the coordinates that's the question in regards to the road qoliqoli. In regards to the roads and bridges every time I travel through a village, I feel sorry for my people. Are they being paid for that road other people are profiting from that road. It's using up our land roads running through the village our people have died and run over on that road and yet that road is free under the cover of this.

What do you call this the protection against compulsory acquisition of property under that cover pay the lease, must be rightfully compensated where the bridge lies they will say, oh but the villagers really like the bridge no, other people are profiting from the use of that bridge they say, oh the road, the villagers no, it's actually disturbing the villagers. Pay the lease where the roads are going other people are profiting from that pay the rightful royalties to the people that own the land on which the road goes and the bridges are going. That's the reason why we need to make sure that this is enshrined in the constitution.

Mr. Beg: Thank you for that my question was, is it ok at the moment sitting there or do you want it in the constitution.

Mr. Tukana: However, you design it as I mentioned before you're an engineer, I'm an engineer as well I don't know these things all I know is when there's injustice we must fix the injustice however the legal eagles do their business let them do it in such a way that it compensates these people properly.

Mr. Beg: Thank you. much appreciated.

Dr. Fatiaki: If I may address that Mr. Tukana, I'm looking at the section 27 that relates to the compulsory acquisition of property. And my understanding certainly for this constitution is that any land that's acquired for the road or bridge has to be adequately compensated. My question really is, are you asking this to be applied retrospectively because I presume that when the road was going through the village that they would have done the necessary consultations at that time you know, in 1940 or 1930 when Kings Road was built, that they would have consulted the villagers and agreed to the necessary compensation are you talking about. This as an ongoing exercise or are you talking about the fact that it's already been done and therefore that's the status quo.

Mr. Tukana: Not retrospective by means of only when these new roads come in that you do the proper thing, no, existing road networks, existing bridges throughout, new leases must be drawn up, but payments not to be gone retrospective, payments starting from the day in which the documentation of all the leases are perfected then the dispayment starts from there so.

I'm talking about the roads existing and the bridges existing leases must be paid on those but only from today, so I'm not saying let's go back and backdate the lease payments all the way back to 1940 from the point where we start implementing these leases, only from that point onwards, that we start paying for the leases.

Dr. Fatiaki: Practically speaking though that's effectively putting a toll on all roads in Fiji, in perpetuity forever?

Mr. Tukana: If you lease a land if you lease a land either for 30 years 99 years you pay a toll on that land. What's so different about that land to the land on which the roads traverse a bridge is built upon no difference, introduce a tax, a road tax or something like that give back the money to the rightful owners of the land they could be planting dal and cassava on that stretch of land, but they couldn't it's been used for the profit of the whole public, the whole nation pay lease money for that.

Mr. Beg: So, just to add to that Mr. Tukana, if you're suggesting that that applies to everyone no one is subjected or no one is relaxed to that provision this

doesn't relate to that but just to answer the query that you raised earlier on.

Dr. Fatiaki: Chair because part of my was to look at the Parliament set up for Parliament it says here categorically in section 56, subsection 2 subsection 2B sorry in respect of, ok sorry, subsection 2A it says a person may be a candidate for election to Parliament only if the person is a citizen of Fiji and does not hold citizenship of any other country.

Now that's the current situation with it which means that that would not apply and those seats could not be activated unless we change the constitution. My concern is if we were to change the constitution to make it so that you remove that section so that you could be a citizen of say two or three countries .

There comes complications that I can see in terms of for instance your oath of office if you're going to swear an oath of office when you get sworn into Parliament as a citizen of Fiji to uphold the constitution or whatever it is that the current oath is. How would you address the issue of a person swearing an oath of allegiance to Fiji but at the same time possibly swearing an oath of allegiance to another country because they're a citizen of that country.

And I presume when they get their citizenship they actually swear that on the bible that they will abide by the rules of that country and bear due allegiance so I guess my question is if we were to change the constitution to make it available and therefore accommodate the seats that you're requesting for the diaspora this issue may arise you know the question of where is your loyalty where is the issue of sovereignty in terms of your loyalty to a particular constitution or a particular country.

Mr. Tukana: Thank you Commissioner Fatiaki, I don't actually see any any problems with that except as I mentioned before in my answer to Chairman of the Commission is that this is limited only to the representatives of the countries that are allocated there.

This is not for general not for the 44 seats. 44 seats you have to you have to you have to live in Fiji you have to your oath here. So, it's only the representatives of the 6 seats from abroad and I don't see any problems with that. If you have provisions for them saying oath to 3 countries or 4 countries to me is okay, I don't see any limitations whereby' *oh au sa*

kaiviti noqu oath qo au sa sega ni rawa tale ni ka' No. In fact you hold 2 citizenship you swore an oath there in Australia and you swore an oath here in Fiji so your allegiance is already being established and some of our values and principles are probably the same .
And so it's only the only the 6 representatives the 6 seats that represents the foreign countries that we allow them dual citizenship to be members of parliament.

Dr. Fatiaki: Just from a practical point of view if you swore allegiance to Fiji and you swore allegiance as a citizen of Australia and Fiji went to war with Australia. There would be questions about who you would serve and if you are serving in parliament as in the powerful governing sort of law-making body in a country. I would like to know that my representative in parliament thinks of Fiji first and foremost in everything he does and does not have any other side allegiance elsewhere because for me.

That's fundamental to issues of treason, sedition, those are crimes if you are operating for the enemy those are sort of the most serious crimes. So, the idea that you can swear allegiance to this country and I swear allegiance to that country you don't see that that can be an issue. I gave you the example of the 2 countries going to war are you a traitor for one and a patriot for the other or are you a patriot for this one and a traitor or a patriot to both or a traitor to both.

Mr. Tukana: God forbid we actually go to war but if the case arises, I don't know that's going to the extreme we will never go to war with this country we are a small coffee shop on the corner. To me let's look at the situation today these are the people that contribute maybe 10% to the economy to the whole economy every single year let's give them a say in the running of parliament if war arises between your 2 countries. I don't know we tackle that when we do come to that already they've swore an oath of allegiance there already they've swore an oath of allegiance here.

Already, it's not like they swore this one and they revoked that one they swore here they swore there they let's look at the situation at hand we solve this problem they are unrepresented in parliament. They have to wait for one minister to come after 6 months or after 7 months to come and address their issues. Why can't they address their issues directly with their representatives where they are.

So, I don't know how to answer the question of war God forbid that we don't actually enter into that all I'm saying is make provisions in parliament for citizens of foreign countries to be represented in parliament.

Dr. Fatiaki: And I guess I'm just pointing out the difficulties we face in terms of for instance the residency requirement that you are required to be a resident for 2 years. That makes it an issue obviously for many people who have lived away for a long time if we were to remove that though are they residents of Australia and New Zealand or are they residents of Fiji.

Mr. Tukana: No, residents of Australia and members of Fiji parliament.

Dr. Fatiaki: So, they would be commuting they have to commute here for which is

Mr. Tukana: how many times per year other than that they are looking after their constituents in Australia.

Dr. Fatiaki: I emphasize again they had issues here with parliamentarians from Vanua Levu being considered by FICAC and placed into jail because they professed to be representing the constituents and be resident in Vanua Levu in the village what you are suggesting is taking this much further than Viti Levu and Vanua Levu.

Mr. Tukana: They live where their constituents are they are giving money every year live and represent the people. But if they say they represent the people of Australia and live in England now that's the issue.

Mr. Beg: sorry through you chair on that point my fellow commissioner you make the point about boundaries Electrol boundaries who these people represent would they be part of the boundaries that we would have to redraw ?

Mr. Tukana: The boundaries have to be redrawn when you are drawing the boundaries you have to make sure that 20,000 is within the boundaries that you are drawing up you are using a ratio of 1 to 20,000.

Mr. Beg: My question was the overseas representatives these boundaries that I am talking about

Mr. Tukana: No, the boundaries are countries

Mr. Beg: So how do we, it varies every year how do we accommodate that ?

Mr. Tukana: One representative that represents the Fiji citizens in New Zealand one is to represent the Fiji citizens in Australia irrespective of the fluctuations in numbers. They represent the people that are there I am just trying to understand the constituents are actually all the Fiji citizens in Australia.

Mr. Beg: So, if they are representing constituencies or their members in New Zealand or the UK, how does that relate back to the constituencies in Fiji, where are they from?

Mr. Tukana: No, they are separate that is why I was trying to understand that

Mr. Beg: We put them as a separate boundary

Mr. Tukana: The 44 members here are represented on the boundaries on the 1 to 20,000 that live here in Fiji

Mr. Beg: So these boundaries so that is what I am trying to understand you define these 1,2,3,4,5,6,7 seats

Mr. Tukana: The constituent boundaries only applying to Fiji I know, that is right

Mr. Beg: Forgive me for this, I am an architect I am trying to understand the proportionality of this equation because they represent the voices of Fiji people outside Fiji so these boundaries will just be defined by seats that means

Mr. Tukana: There is going to be 44 constituents 44 constituents in Fiji you have to design it or draw it in such a way to make sure that there is 20,000 people recorded people living in that constituent. You are asking about the Fiji citizens abroad when you use the word.

Mr. Beg: Boundaries the constitution is for the people by the people the genius of the constitution is amendable by the people the stakeholders, the executive committee. So, I am nervous about that and I am trying to understand a bit more in that space I take on board your comments because if we look at the current constitution the composition chapter B under 53, we hear from our the electoral commission.

Under 53 is proportional representative system this is an area that we would have to look at based on your presentation how are we going to look at that whether it is defined as an electoral system or do we define it as something else that currently sits as proportional representation system.

Mr. Tukana: Yes, based on the population so I am trying to bring back the constituent boundaries in the 1997 but it is not practical, it is based on ethnic and there is four electoral roles that is quite complicated just represent the number of people 20,000 irrespective of ethnic background 20,000 here, draw the line vote for your member 44 boundaries, 44 constituents in Fiji,-the 6 additional ones are based on where you reside overseas.

Mr. Beg: My mind is working like an architect looking for how this would put it in systems thank you.

Mr. Valenitabua: The qualification of land owners' qualification of land owners in the senate 22 seats for native land owners 2 seats, 7% from government of the day yes and 3% from freehold land owners which is one seat when you say native land owners do you include Rutuman's and Banabans

Mr. Tukana: Native land owners since the Rotuman's don't want to be called Fijians that was told to me and I was shocked this is land ownership chairman for the Fiji land the register of land owners.

Mr. Valenitabua: I understand, that was a question to direct you to Rotuman's and Banabana's

Mr. Tukana: In regard to the Fiji land ownership land ownership which is dictated by the register in the vola ni Kawa Bula

Mr. Valenitabua: And the 7% from government of the day what do you mean by that?

Mr. Tukana: The government owns 7% of the land they actually get to choose who are to represent them in the senate and the freehold somehow when we do hold the elections people actually stand for the senate freehold land owners. You actually vote for your representative in the senate one person.

Mr. Valenitabua: Okay, thank you

Dr. Gounder : The last point is perfectly possible that there may be two people you may be voting for both native land and freehold yes,

Mr. Tukana: Only one you have to choose.

Dr. Gounder: As a native land owner, you also own freehold land in the city and then you also own crown land so you are entitled to three votes

Mr. Tukana: Good point; Good point you actually be able to vote you actually be able to vote because as a shareholder as a shareholder you have money in their money in their vote for either this one also vote for this one also vote for your representative on this one so you can vote three times if you own, like me I own native land and I own freehold land, I might buy a state owned land but I can vote for my representative I look and I say this guy, I like him he is going to represent us well as freehold land owners. I choose this guy so, there is nothing spectacular in that regard I see that it is very straight forward that systems can cater for it

Dr. Fatiaki: With all due respect Mr. Tukana I would like to differ greatly I appreciate the basis of what you are suggesting, I just see from a practical point of view and I am not an architect. But I think a bit like him the logistics of trying to put that into play will require a lot of time thinking processing to get it right I will give you an example if you say 22 seats, 90% of the land it sounds simple but then amongst the native land owners you may then have people saying we in Rewa own this amount therefore out of that 22 we want these many seats.

Then you start getting lots of disputes there between the land owners themselves under for instance the 22 seats that are native land unless, you are going to say that the GCC is going to do it if the GCC does it and you are working on the basis of per square foot of land determining your entitlement to a seat. Then you might find a lot of acrimony a lot of disputes amongst for instance the 22 seats that belong to the native of Fiji.

I understand the principle you are making and I think that is taken to heart the question of the country being based what is the country? The country is the land if you didn't have the land of Fiji, then you wouldn't have a country and that associates with your argument about the name.

Now the question of representation is the other question that you are bringing in whether it is right that representation is only determined by the land and the ownership of it or should it be a balance between that the number of people who live there. I am not saying which one is right or wrong, I am saying you have a particular line of thinking which I might not completely agree with it but I understand what you are coming from.

I just see though that if you were to try and implement it it's not like you say simple it will be very complex. I think the issue that he was alluding to in terms of for instance boundaries, where in New Zealand do you start and end what is the population of New Zealand in terms of Fijians who are entitled to vote in the Fiji elections for Parliament. Does that compare equally with the people in Asia and the Middle East and if not is it fair that so many tens of thousands in New Zealand of Fijians vote for one seat and only 500 in the Middle East and Asia vote for one seat That's the complicated part that would need a lot of machinations to bring into play the principles I take it.

I think your statement that leave it to the legal people for instance to sort it out. I am sure there are experts in electoral boundary things that can work those things but , I disagree with you and I think that it's not simple. It will be very complicated and will require a lot of time and resources but it's a refreshing it's another way of thinking about the allocation of seats and I appreciate your answer.

Mr. Tukana: Thank you Commissioner Fatiaki one thing I've always said to my people to my staff, my developers don't ever think that anything is complicated- No. Let me tell you our system that's here at the Native Land Trust Board has all the boundaries of the land in Fiji and we know how much land is in this particular province it's clear and we have the coordinates for that you can actually see the demarcation lines right down to the plot of land to the plot of land right down to that. It's clearly demarcated and the 'vola ni kawa bula' is interfaced to our system here which is called Lands of NCX.

We will know how many landowners owns this particular land we know and we can go by the proportionality of the land that belongs to the Marama Bale na Roko Tui Dreketi. We know the boundaries and we know the people the number of people that are there it must go, whatever we do it must go in proportionality to the size of the land which is your shareholding. Your shareholding into this company called Fiji.

We always complicate things, we think that things are complicated no, it's not complicated Fiji, as I mentioned before let's just take it down, there's only 864,000 people in here. et's not complicate things this thing, we know the boundaries, we know the land boundaries we know the boundaries for the, Gone Marama Bale na Roko Tui Dreketi we know the land boundaries for Rewa, Tailevu Namosi, Nadroga Navosa we know.

We clearly demarcate this land we know the proportionality of this land as far as the whole is concerned. So, I beg to differ with you with your different statement with me.

Mr. Valenitabua: Mr. Tukana we have come to the end of the consultation session this morning just before I close off just looking through or going through your headlines this morning the preamble that is in our book, we can tell you that faith, they have been talking about secular state and particularly the introduction of the word of God into the constitution which is lacking in the 2013 constitution that is in our book.

The identity issue, we have heard in relation to that, the identity issue the land and Qoliqoli you have brought in, it's in the constitution you have brought in something new this morning that is for the lease for the roads and the bridges, first time I've heard about it, considering that bridges and roads are built on land which were acquired by the government for those purposes and compensation should have been paid immediately after acquisition. That is an issue that might have to be looked at together with the TLTB.

The electoral boundaries and constituencies, interesting we are now going by constituency by population if I can call it that. And reinstatement of the senate that has come before us from various submissions and the bill of rights, the rights of participation or economic participation. Those are your -the headings for your submissions this afternoon and we thank you for that.

Nova one in some respects no one would just have to deliberate on it and decide on what to do with your submission as compared to the other ones or as we will also do with the other submissions that have come in and that will come in.Thank you very much we will be going out of Suva from the 1st of May to listen to submissions from the members of the

public out there in Viti Levu, Vanua Levu and the islands so we might get some views like yours but time will tell. Thank you very much

----------End of Session [23-04-2026] ----------

Constitution Review Commission

Date: 23 April 2026
Time: 12.00PM

Submitted by **Mr. Semi Tukana**, 287 Princes Road, Suva

INTRODUCTION

1. The Chairman of the Constitution Review Commission, and the Esteemed Members of the Commission, I thank you for the opportunity given me to submit my views regarding the document that some people refer to as the 2013 constitution or as I refer to as "**The Great Injustice to the Fijian People**"

2. First and foremost, I acknowledge the sovereign Judaic-Christian God of these Islands of Fiji, which our forefathers accepted on 12th October 1835 at the arrival of the first Christian Missionaries to Fiji.

3. Second, I wish to acknowledge the traditional owners of the Land on which we stand today, the Gone Turaga na Tui Suva, and the Paramount Chief of the Province of Rewa, Na Gone Marama Bale na Roko Tui Dreketi.

4. Thirdly, I acknowledge His Excellency the President of Fiji, Gone Turaga Bale na Tui Cakau. The Government of the day, to the Honorable Prime Minister, the Deputy Prime Minister, Cabinet Ministers and Members of Parliament.

5. My name is Semi Tukana and I hail from the Island of Vanuavatu, Tikina ko Totoya, Yasayasa ko Moala, Yasana vakaturaga ko Lau.

6. I run three Technology Companies, specialising in Software Design & Development with two companies domiciled in Fiji, and one in PNG

7. Today, I stand before you representing my family and the silent voices of many of my people and friends.

8. My submission to the Commission today are categorised into seven (7) major topics, and these are;
   - 8.1 Preamble on the 2013 constitution
   - 8.2 Faith
   - 8.3 Identity
   - 8.4 Land & Qoliqoli
   - 8.5 Electoral Boundaries & Constituencies
   - 8.6 Reinstatement of the Senate / Upper House
   - 8.7 Bill of Rights – Rights to Economic Participation

PREAMBLE ON THE 2013 CONSTITUTION – "THE GREAT INJUSTICE AGAINST THE FIJIAN PEOPLE"

9. In August 2025, Fiji's Supreme Court made this decision, "While the Court reaffirmed that the 1997 Constitution was never lawfully abrogated, it noted that "**events have moved on,**" and the 2013 Constitution has been the practical framework of governance for over a decade.

   Furthermore, the Supreme Court ruled "The recognition of the 2013 Constitution would not mean that we think the 1997 Constitution was lawfully abrogated. It was not".

10. The decision by the supreme court based purely on the premise that **"events have moved on"** is unacceptable in terms of law, and more so in terms of the Bill of Rights of the common people and the Indigenous people of Fiji. It is the "lazy Judges way out" approach. This lame excuse is an insult to the people of Fiji. The Supreme Court may have opted for this excuse in its attempt to adopt the Doctrine of Necessity. However, it lacks to address the pre-conditions that necessitates the formulation and promulgation of a constitution. The Doctrine of Necessity is the most critical test for the legitimacy of the 2013 constitution.

11. The normal Villager and remote Dwellers comprising 30% of the population are unaffected by the current constitution. However, they remember the 1997 Constitution because they were consulted widely on its formulation. These people live their lives as though they were under the 1997 Constitution.

12. The 2013 constitution has failed all four tests:
    (1) Test of Legitimacy – **Failed**
    (2) Test of Evolving a living document - **Failed**
    (3) Test of Practicality - **Failed**
    (4) Test of the Doctrine of Necessity – **Failed**

13. **It failed Legitimacy**. A document of this importance should be a "Constitution for the people, and by the people". The Supreme Court in a statement made on the 26 April 2024 made it clear that the document was formulated by a "small group of officials" and imposed on the total population.

14. **It failed Evolvability**. The 2013 constitution explicitly states in Chapter 11 Section 3 that it can only be amended through a referendum of 75% of registered voters in Fiji. This will be impossible to achieve with only 70% The inability of evolving this document is supported by ANU's Constitutional Law Academic, Professor Anthony Regan, in a recent statement stated that it is impossible to change the current 2013 constitution.

15. **It failed Practicality**. Case in point: its inability to resolve the lack of representation of voters at Parliament level brought about by the deregistration of

a major party in Parliament. The current Parliament only represents only 30% of the population.

16. **It failed Doctrine of Necessity**. The precondition for the Doctrine of Necessity are as follows:
    1. Absence of Criminal Intent: The act must not be performed with the intention to cause harm or violate the law.
    2. Necessity: The action must be necessary to prevent a greater harm or to protect the public interest.
    3. Proportionality: The action must be taken in a situation where there is no other reasonable alternative.
    4. Contextual Urgency: The action must be taken in a situation where there is no other reasonable alternative.
    5. Time Limit: The action must be taken as soon as possible without delay.

    The doctrine is only necessary when there is total disorder or anarchy in a Nation. No such events occurred in 2006. Everyone went about their business as though there were no "coup".

    There was no need to create a whole new set of rules, when all they could have done was to review and introduce amendments to the 1997 Constitution which was widely accepted by the populace.

    Everyone went about their business as though the 1997 Constitution was still in force. There were no such National disorder, violent protests or anarchy to warrant a change in constitution and, therefore, the applicability of the "Doctrine of Necessity". The 2013 constitution necessitated nothing, except for the injection of the agendas of the three or four people who designed it.

CHRISTIAN FAITH – NOT NEGOTIABLE

17. We strongly disagree with the Preamble Section of the 2013 constitution regarding the declaration of Fiji as a Secular State
18. To be Secular is to be Godless, and it disregards the Faith of our Forefathers who received Christianity and transformed our lives from Cannibalism to one of the most friendliest, tolerant and accepting peoples in the World.
19. Reference is hereby made to the Forewords to the 1997 Constitution 25 July 1997:

    "WE, THE PEOPLE OF THE FIJI ISLANDS, SEEKING the blessing of God who has always watched over these islands: RECALLING the events in our history that have made us what we are, especially the settlement of these islands by the ancestors of the indigenous Fijian and Rotuman people; the arrival of forebears of subsequent settlers, including Pacific Islanders, Europeans, Indians and Chinese; the conversion of the indigenous inhabitants of these islands from heathenism to Christianity through the power of the name of Jesus Christ; the enduring influence of Christianity in these islands and its contribution, along with that of other faiths, to the spiritual life of Fiji"

20. We cannot allow the Nation of Fiji to be Godless, as the very rights that is allowing us to review this constitution was gained through the sacrifices made by our Fijian Forefathers in receiving and accepting the God of the Judaic-Christians to the Lord and God of our Land, who in Hebrew, is Yeshua HaMashiach (Jesus the Messiah).

21. There is nothing wrong and no one will lose anything by stating that the Nation of Fiji acknowledges Christianity and the Judaic-Christian God as the God of our Islands.

22. The declaration that the Nation of Fiji acknowledges the Christian Faith of our Forefathers as the God of our Nation and our 333 Islands, is NOT NEGOTIABLE

Recommendations

23. Acknowledgement of the advent of the Christian Faith and its acceptance by our Fijian Chiefs and Forefathers from October 12, 1835 until today

24. The Constitution must explicitly state that the Nation of Fiji is a Christian Nation, and that it does not limit the rights of the people to practice their own Religion provided that the Religion does not abide under the doctrines that promotes forceful conversion by death or by payment of tributes.

LEGISLATION TO SAFEGUARD AGAINST FAITH DOCTRINES THAT PROMOTES EXTORTION OF MONEYS, AND/OR RADICAL TEACHINGS ON CONVERSION OR FACE DEATH – NOT NEGOTIABLE

25. The Constitution, though it promotes Freedom of Religion, it must not be used as a cover for the practice of faiths that has in its holy books clauses and doctrines that limits the rights of choice of the people;

Recommendations

26. Legislations need to be introduced to terminate the rights of a Religious Organisation or Religious Sect that is actively guided by a holy book which explicitly states and openly promotes the doctrines of Conversion by force or face Death or the payment of Tributes by force.

27. Legislations need to be introduced to identify and terminate the operations of a Religious Organisations or Religious Sects which has been classified as a Terrorist Organisation by the United Nations or World Security Council or the United States of America or NATO member countries.

28. Legislations need to be introduced to identify and deport members of Religious Organisations which has been classified as Terrorist Organisations by the United Nations or World Security Council or the United States of America or NATO member countries.

(8)

FIJIAN IDENTITY – NOT NEGOTIABLE

29. The contentious issue on the so called "common" identity of "Fijian" was recently introduced and enforced in the 2013 constitution. That is a period of only 13 years. Not 50 years. Not 500 years, and certainly not 3500 years. In fact, the contention has only been accentuated as more and more Fijians, especially those who live in remote villages, came to learn about how their Identity as Fijians was removed, and how everyone has been assigned the "Fijian" identity.

    As of today; Fijians, the Kai-Vitis are still calling themselves and being referred to as Fijians
    Rotumans, the Kai-Rotuma are still calling themselves and being referred to as Rotumans. In fact Rotumans don't want to be called Fijians.
    Indians, the Kai-Idia are still calling themselves and being referred to as Indians or Indo-Fijians
    Chinese, the Kai-Jaina are still calling themselves and being referred to as Chinese
    Europeans, the Kai-Valagi are still calling themselves and being referred to as Europeans

30. In the 1997 Constitution in Chapter 3 regarding our Citizenship. The ethnicities were very clearly implied within the Sections and Sub-sections of this Chapter:

    Our common identity is **Fiji Citizen**

31. The 1997 had clearly identified us as Fiji Citizens

32. The 2013 constitution introduced the term iTaukei as the Ethnic identity for the Fijian people. It has introduced a lot more confusion amongst the Fijian people and Non-Fijians.

33. The term iTaukei is an abstract noun that we use in our Fijian Language to refer to ourselves in the Vernacular. On its own, and it being an abstract noun, becomes an empty term. You can refer to someone as Taukei ni bai-ni-toa, Taukei ni koli, Taukei ni bulumakau, Taukei ni sitoa, Taukei ni vale.

    When in Australia, and was asked what was my Ethnic origin, my answer was "iTaukei". The next question they ask, where is that?

    But if I had answered "Fijian" or "Indo-Fijian" or "Chinese-Fijian" or "Euro-Fijian" or "Afro-Fijian" there would be no need for further clarifications.

34. Being called a Fijian has deep linkages to the Landownership, Language, Culture, Traditions, Food, Drinks and History. The term Fijian is anchored to the Land. No longer an abstract noun like iTaukei, an empty term, that is floating in the sky.

35. The 1997 Constitution clearly recognises the Rights of every citizen to be called Fiji Citizen:

RECOGNISING that the descendants of all those who chose to make their homes in these islands form our multicultural society:

AFFIRMING the contributions of all communities to the well-being of that society, and the rich variety of their faiths, traditions, languages and cultures:

TAKING PRIDE in our common citizenship and in the development of our economy and political institutions:

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

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

36. Your rights as a Fiji Citizen are not jeopardized in any way or form by being called Indo-Fijian, Chinese-Fijian, Euro-Fijian, or Afro-Fijian or any other name.

37. Fiji is the more richer, when all Ethnicities hold on to their language, cultures and traditions, and their Identities

Recommendations

38. That all Citizens of Fiji to be called and referred to as "Fiji Citizens"

39. The Ethnicities of the "Fiji Citizens" must reflect their own ethnic origins; Fijians refer to the Indigenous Fijians, Indo-Fijians refer to Fiji Citizen of Indian ethnic origin, Chinese-Fijians refer to Fiji Citizen of Chinese ethnic origin, Euro-Fijians refer to Fiji Citizen of European or Caucasian ethnic origin, and Rotumans refer to Fiji Citizen of Rotuman ethnic origin.

(4)

NATIVE LAND & QOLIQOLI OWNERSHIP – NOT NEGOTIABLE

40. Ownership of the Qoliqolis which are clearly demarcated at the Taukei Land Trust Board must revert from the State to Rightful Traditional Owners

    Those who utilise these Qoliqolis including Beaches, Mangrove Swamps, Open Waters, Surf and Reefs must pay the Rightful Traditional Qoliqoli owners the appropriate compensation on a User-Pay basis.

    Recommendation
    The State must release all Rights over all Qoliqolis to the Rightful Traditional Owners, and appropriate powers to be handed over to the TLTB as Trustees for Traditional Qoliqoli owners, for the proper administration of the boundaries of these Qoliqolis, the setting up of the appropriate levy royalties to be charged for the use of these Qoliqolis, the collection of these levies, and the distribution of the royalties to the rightful owners of the Qoliqolis

41. In the 1997 Constitution, Chapter 4, Section 40, Item 1 on the Protection against Compulsory Acquisition of Property.

    It states the need for compensation for Land that has been acquired for State use.

    While Landowners receive lease payments from Government for land upon which Hospitals, and Schools are built, the owners of the land where Roads and Bridge Infrastructures are built for the general public use do not receive any Lease payments.

    land acquired for public use

    Recommendation
    Legislations must be drawn up for the documentation of Leases and appropriate annual lease rental payments to the Landowners where land has been acquired for the profit of the general public paying particular attention to Roads and Bridges infrastructures.

ELECTORAL BOUNDARIES & RE-INSTATEMENT OF CONSTITUENCIESS

42. It is of paramount importance that every Fiji Citizen is fairly represented in the House of Representatives.

43. Under the 2013 constitution, the notion of one man one vote is also supported, but the non-existence of the Constituent representations defeats the very purpose of what it purports to support

44. The current situation in Parliament is a clear case in point that the one man one vote without Constituencies does not work. Currently the seating Members of Parliament represent only 30% of the total population, which had resulted from the deregistration of one of the major parties in 2024.

45. The 1997 Constitution clearly lays out the Electoral Boundaries and the various Constituencies, and membership of the House of Representatives in Chapter 6, Part 2 under House of Representatives

46. However, I am proposing that constituent boundaries to be redrawn with Parliament Representations be based on the population spread rather than Ethnicity.

Recommendations

Redraw new Constituent Boundaries. Membership of the Parliament must not be drawn on Ethnic lines but by Population spread. One House Representative for every 20,000 people in a specific Electoral Boundary.

With the total population count of Fiji being at 864,000, the total number of seats in Parliament comes to 44. Added to that number are 6 more seats representing Fiji Citizens living abroad.

Fiji Citizens residing in Fiji	44 Seats
Fiji Citizens living in NZ	1 Seat
Fiji Citizens living in Australia	1 Seat
Fiji Citizens living in the UK/Europe	1 Seat
Fiji Citizens living in Middle East/Asia	1 Seat
Fiji Citizens living in US/Canada and South America	1 Seat
Fiji Citizens living in other Pacific Island Countries	1 Seat
Total Seats in Parliament	50 Seats

The inclusion of Fiji Citizens living abroad is important as it recognizes their contribution to the Fiji Economy with Remittances receipted every year reaching close to $1.5 billion a year.

As the population of Fiji increases the number of seats will increase as well with the representations be worked out on the 1:20,000 ratio.

(6)

REINSTATEMENT OF THE SENATE OR THE UPPER HOUSE

47. What is the significance of the Senate?
48. The Senate plays a critical role in major decisions that affects the major Stakeholders of the Island Nation of Fiji
49. The 2013 constitution removed the Senate from Chapter 3 – Parliament, Part 1 – Legislative Authority and Part 2 – Composition
50. The 1997 Constitution includes the Senate in Chapter 6 – The Parliament, Part 3- Senate
51. I propose the reinstatement of the Senate with the membership reflecting the proportion of Land Ownership owned by the Sitting Senators
52. I propose that the National Matters that are sensitive to the Stakeholders shall not be decided upon by the Members of Parliament but by the Senators
53. Let us take Fiji as a Company. We can draw parallels between a small country like Fiji to a Coffee Shop like Starbucks. There are 381,000 employees at Starbucks globally which, I believe, is more than the total workforce in Fiji. We are not a big country and not complex. In company terms, Fiji is a tiny company comparable to a Coffee Shop.
54. A company has Shareholders, Board of Directors, Executive Management, and Employees
55. Parallel between a Company and a Country are as follows:

Company	**Fiji**
Shareholders	Landowners:
% of Funds invested	90% - Native Land
	7% - State Land
	3% - Freehold Land
Board of Directors	Senate - Upper House
Reflect the Funds invested	Reflect the % Land Ownership
Executive Management	Parliament – Lower House
Employees	Public Servants

"proportion of land ownership. Only landowners in Senate.

56. "Shareholders" to the Nation of Fiji are the Landowners including Native Land, State Land, and Freehold Land. Therefore, the composition of the Senate must be based on the percentage ownership of the Land in Fiji.

A.

57. Why Land Ownership? Land is the only substantial platform or base upon which a Country is founded. It is not imaginary. Without Land you cannot have a Country.

Case in Point: The Founder of Facebook, Mr. Mark Zuckerberg, spent $88billion to build an immersive digital world based on virtual reality called Metaverse. They encouraged users to login and with virtual reality goggles they are able to take a tour of the virtual world, and users can buy virtual real estates with real money. It became one of the biggest flop for one company in the world of Technology.

You need real Land to have a Country. You need real money to have Company.

58. The primary Role of the Senate is to have Oversight on the Bills being debated and passed by the Lower House (Parliament). Much like a Board of Directors in a Company.

59. Senate have explicit powers to decide on the following which are sensitive matters for the Fijian people:
    - Faith
    - Identity
    - Land & Qoliqoli
    - Immigration
    - Electoral Boundaries & Constituencies
    - Flag
    - National Anthem
    - Currency
    - Votes at the UN
    - Alliances to Bloc of Nations

60. The above matters may be debated on the Floor of Parliament but the final decision and vote rests with the Senate with a Pass vote of 75%.

Recommendations
To reinstate the Senate

Composition
Senate membership to comprise 25 Seats, with the following seat allocations to Landowners:

22 Seats	90% from Native Land Owners (Great Council of Chiefs)
2 Seats	7% from Government of the Day
1 Seat	3% from Freehold Land Owners

Bills that only the Senate can pass through a 75% vote are any matters concerning:
- Faith
- Identity
- Land & Qoliqoli
- Immigration
- Electoral Boundaries & Constituencies
- Flag
- National Anthem
- Currency
- Votes at the UN
- Alliances to Bloc of Nations

(7)

BILL OF RIGHTS – RIGHTS TO ECONOMIC PARTICPATION

61. The Company's Act of 2015 has a major flaw in it that could easily be weaponised by any sitting Government
62. The flaw in the Company's Act 2015 refers to the Clause on the Protection of the Shareholders from Unfair treatment or Oppression. This Clause gives the right to any Shareholder to Wind up a Company on the basis of Oppression.
63. The ability of a Minority Shareholder to wound up a company on the basis of Oppression opens up the opportunity for a sitting Government to weaponize and to victimize a Majority Owner of a Company who may not be inline with the Policies of the Government in Power.

Recommendation

When a Shareholder seeks Court's relief for Unfair Treatment or Oppression, that Shareholder should pay a Bond equivalent to 10% of the value of the Company

LAST WORD

You have been given the opportunity to do what is True, Right and Just for the people and for the Nation of Fiji.

I wish you and the Commission God's blessings upon your deliberations and outcomes.

*** End of Submission – by Semi Tukana ***

Soqosoqo Vakamarama Itaukei (SVI)

Soqosoqo Vakamarama
Date:23-4-2026
Time :2.20pm-3.40pm

Leighton: Before the chair begins, I'd like to thank the members of the Soqosoqo Vakamarama ni iTaukei. Thank you, Madam President, and if you know, Tomoko and the team, for making yourselves present here this morning and for accepting our invitation.

It is a great pleasure for us to have you before us to make submissions. Before the chair introduces the commissioners and the work that they'll be undertaking, I just have a few housekeeping matters, if you want to speak. Just press the right side of the mic to turn it on, and then once you've spoken, you can turn it off.

After the chair has made the introduction for the team and the work that they'll be undertaking, we also request if the members of your team can also introduce yourselves. This is for the transcription, so that it can be recorded.

Mr. Valenitabua: Thank you, Leighton. To the ladies, we welcome you this afternoon for coming to this consultation. We had invited you, and we are happy, we appreciate that you have accepted our invitation, which is manifested by your appearance and your attendance before this commission this afternoon. I have to apologize, there should be seven commissioners.

You only see three of us sitting here. The others are traveling, and another one is busy. If I may introduce, busy at USP, sorry, I have to finish that. He's got something to do at USP. Before I move on, I'd like to introduce the commissioners who are before you this afternoon. On my left, on my right, is Conway Beg, and on my left is Dr. Fatiaki, and I am Sevuloni Valenitabua

The other three, other four, who are not with us, Dr. Neelesh Gounder of USP, who left just a while ago, Mr. Ami Kohli, a lawyer in Labasa, Dr. Unaisi Baba, who is in Australia at this point in time, and the same as Ms. Merewalesi Nailatikau also overseas. So, you will have to make do with the three men facing you this afternoon. We heard that you asked for the ladies.

I'm sorry, you have to make do with us. So, we welcome you. We are looking forward that this will be a good session. Now, as a way of opening this consultation, I will address as the chairperson, the Constitution Review Commission is an independent commission. We see ourselves as independent. We were appointed by His Excellency the President of the Republic of Fiji, and our task is to review the 2013 Constitution.

And part of that task is to collect submissions and views and thoughts from our people, the people of the Republic of Fiji, as to what they consider should be in the Constitution. We are talking about amendment, which means some things can be removed, some things can be added, some things are to remain in the Constitution. We don't have any preconceived ideas on what is to go and what is to remain.

We have to listen to the citizens of this country on what they think should be in the Constitution. So, that is our task, and in accordance with our term of reference, we have started on consultations. We have embarked on that, and for the past three weeks, we have been hearing submissions from ministries, from associations, from individuals.

We have come in to give us our thoughts about what should be in the Constitution. From early May, from the 1st, 2nd, 3rd May, we will be leaving Suva, and we'll be going out around Vitilevu, Vanualevu, Lau group, Lomaiviti, Kadavu, even to the west. So, it's going to be a wide coverage in order to get submissions from our people.

We are ready to listen to your submissions this afternoon, and I now hand over the mic to you ladies to start and continue with your submissions.

Adi Finau: Vinaka Vakalevu, I'll be gender sensitive. Vanualevu, Chairperson of the Review Commission, and thank you for your words of welcome.

I also say Vinaka vakalevu to your two colleagues, and it's good to see old faces. It makes me feel comfortable. But I'm not sure whether what I say will make people feel comfortable.

Nevertheless, that's what I'm saying at the outset. And most importantly, we'd like to thank you for inviting us to meet with you and share with you some of our views with regards to the Constitution. And I suppose in the course of the discussion, we'll be also airing some of our

views about this country, some of which are reflected in the Constitution, and some of which are missing from the Constitution.

But before I carry on, I would like to introduce my members from the – I was going to say from the Bose Levu Vakaturaga, from the Soqosoqo Vakamarama ni iTaukei.On my right is Ro Iva, from Namosi. And on my left, far left, is Sala, from Ra.

And closest left is Ana Fine, Ra and Lau. Married to Ra, but she is from Lau. And behind us are two other colleagues, Ana Vesikula, from Tailevu, and Ro Miri from Noco, Rewa.

But I would like to emphasize the fact that we consider it a privilege and an honor. And we really appreciated your letter of invitation, which encapsulates the Soqosoqo Vakamarama, that we didn't know anybody else knew about. I suppose, how do we do this?

Mr. Valenitabua: The practice has been that you give us your submissions, and we will listen. And then at the end, if we have any questions, then we will ask questions. Okay.

Adi Finau: Now, if we may, can we proceed with the question to you?

Mr. Valenitabua: All right. That has not been the practice, but we will entertain that.

Adi Finau: Yes. Because, you know, this is a review commission. And to review the Constitution, what we would like to know is why.

Mr. Valenitabua: And that is your first question.

Adi Finau: Yes. Why are you reviewing the Constitution?

Mr. Valenitabua: First and foremost, there has been complaints out in the public that this Constitution is not the Constitution for the citizens of Fiji, in the sense that no consultation was made to the people of Fiji at the time it was being prepared. That is what is termed as a democratic deficient, which we are trying to remedy here. That is the first point.

Second point, the contents of the Constitution itself, they are contents which were not submitted or presented by the people of Fiji. In the preamble of this Constitution, it says that we, the people of Fiji, and there

has been talk all over the country that that does not reflect actually what really happened. It is not for us, the people, because only a few people prepared the 2013 Constitution. That is another or an additional democratic deficiency. And then, and that was the main reason why the government thought that we should have a look at amending the Constitution.

You would have heard about the Supreme Court making a decision now and giving their opinions. That came about through a reference from Cabinet. The difficulty that was seen was the amendment of the Constitution.

Yes, if we follow the provisions which are in the Constitution right now, it is going to be difficult to amend it. With a 75% majority for the members of Parliament, and about the same for a referendum. You may know that in order to amend this Constitution, there is a process in the Constitution itself which says that an amending bill will have to be put to Parliament, and then it has to be read two times, the first reading and the second reading, and if 75% of the members of Parliament agree, then it goes on to another step which is the referendum.

And again, referendum is just like an election. We have to answer whether the bill, the amending bill, should be turned into law or not. And if in the referendum there would be a question, and either a yes or a no.

If a lot of people say no, then that's it. We will have to just live on with the 2013 Constitution. We have had a lot of submissions coming up on the deficiencies in this Constitution, and we've got those covered.

So, to answer your question, we need to have some amendments to reflect the aspirations, the views, and so forth of the people of Fiji so that the preamble can say we are the people of Fiji and be truthful about it. Not just say we, the people of Fiji, take this as a constitution when the majority do not know anything about it. I hope that answers your question.

Adi Finau: Of course. Thank you, Chair. Now, you know we are the Soqosoqo Vakamarama iTaukei, and we've been called the Soqosoqo Vakamarama iTaukei since 1944, years before Fiji decided that the natives of this country should be iTaukei, should be referred to as iTaukei.

And that's our first point. The creation of a nation-state of Fiji was a result of the deed of cession in 1874, when 13 of our chiefs ceded the country to Great Britain, and that was the origin of Fiji. And therefore, any reference to, it means that it's not just the iTaukei, it's, yeah, the iTaukei whom you are now referring to as the iTaukei are Fijians.

That's something that the Constitution should recognize, because this is our country. This is Fiji. And we created Fiji. Not everybody who now settles in Fiji had anything to do with the creation of the nation-state of Fiji. Because what we're trying to, what you are trying to do here is to call everybody Fijian. You are following the examples of countries like New Zealand, Australia, America, where settlers have decided that that's what their countries of settlement would be called.

In New Zealand, Aotearoa, the settlers decided to call the country New Zealand. And the people who belong to Aotearoa are the Māoris. The same in Australia.The settlers came in and called the country Australia. So, Australians are, the Australians are mainly settlers, people who came in from outside. The same with America.

When Columbus sailed the ocean blue, what year was that, Doctor? In 1042 or something? He discovered the Americas. And the Europeans came and settled there and decided to call Canada, Canada. United States, United States. Mexico, Mexico. And everybody who, these settlers and their descendants became Americans. And they put aside the real Americans.

And that's what's happening in Fiji now. This country has totally ignored the fact that Fiji is only a nation-state because that's what we created, the Fijian people, in 1874. There were settlers here, but they didn't have a say in what this country was to be called.

Now because of principles of democracy and so on, we are bending to the demands of democracy that the majority of the people count. But in this country, the majority are still us. We make up 60% of the population.

That doesn't include the Rotuman's. In the deed of session, the chiefs who ceded Fiji to Great Britain asked for only two things. For the British government to promote trade and industry, which means that our chiefs at the time were already aware of things that were necessary for a nation

to survive and prosper, Trade and industry. And the other thing they asked for was for the British government to promote civilization through Christianity. Because the recognition of the chiefs, it was the missionaries who civilized the country and brought education.

In fact, they established all the educational institutions in the country, not the government. And this was well before anybody else came here. And in the settlement of the deed of session, the queen returned all the land to the Fijian people, except for the lands that have been, you know, legally given, legally obtained and secured by the settlers, which are now known as peace-free lands.

And the other lands, because by that time, we had chiefs who were already enlightened, and some of their sons had gone to school in Australia and New Zealand. They were aware that they too could claim. So, you had your native grants.

These were lands that were claimed by the chiefs at that time that belonged to them and were classified, had the same classification as peace-free land. And the other portion of land was land that government needed for it to run the country. The rest of the land was native land, Fijian land.

That's why in this day and age, Fijians own 90% of the land. Peace-free land is 5%, and government is 5%. That's our first. Not iTaukei ni Waqa, iTaukei ni boto, iTaukei vale. It doesn't refer to the original people. It's a Fijian word that has certain, has very specific meanings.

So, for people to be saying, because you belong here, you are a iTaukei, no. We are iTaukei and Fijian. That's why we own 90% of the land. But being a iTaukei doesn't refer to being what you people are describing, being indigenous. Fijians are indigenous in Fiji. Everybody else comes from a migrant place.

The Indians came here in 1879 as part of the Girmits. And by 1916, they had almost equaled the Fijian population at the end of the Girmits program. And by 1944, they had outnumbered the Fijian population.

And they outnumbered the Fijian population till 1994. Hence, the practice and the beliefs in democracy was brought in to push for this kind of concept to think. It should be in the constitution.

This constitution, and the one before that, and the one before that, and the one before that, all ignored and disregarded what the Fijians want. Hence, the two coups in 1987, the insurrection in 2000, and the military takeover in 2006. This is because of the disaffection of the Fijian people.

Because their interests have not been given priority. You know, the primacy of Fijian interest, which is an important principle you should consider. So long as that is ignored and disregarded, you will continue to have reflections and indications of Fijian disaffection. Not dissatisfaction, but disaffection.

Now, when the iTaukei movement supported Rabuka's coup in 1987, we were all mistakenly thinking that he did the coup so that we could lead in this country. But that didn't happen because democracy was followed, and you had to vote in a government. I'll bet most were Fijians. And Fijians continue to agitate because of this feeling of disaffection. And for a constitution to work in Fiji, and for you to recognize the fact that we are the majority, and this is our country, you have to respect that.

And not the principles of democracy. Because this is our country, we're not running it for the UN or international courts of justice. The constitution has to be ours, and that's what you, sir, had emphasized. This constitution has to belong to us. But Fijians must take priority because this is our country. That's why we didn't like the preamble to the 1997 constitution.

The preamble to the 1997 constitution says we all came here to settle. Everybody. Okay, we think, are you mine? And that we were heathens.It disrespected us. That's why there's been no, Fijians have always been disaffected and agitating. Then this 2013 constitution, which went further than that, and defines us, Rotuman's and Fijians, as iTaukei.

So, because it's in the constitution, it seals who we are. Doesn't recognize us as the owners of these islands. You're probably thinking, sir, what a bloody nationalist she is.

You know, the preamble, this preamble, unlike the 1997 constitution, just ignored the fact that we were Fijians. You know, and talks about everybody coming here to settle. Only we arrived earlier.

Now, the 2013 constitution defines us as iTaukei and seals our, whatever it is. Legally, constitutionally, because the constitution is the supreme law of the land. And furthermore, if we go back to the legal session, you know, our chiefs at the time, maybe uneducated, but they recognized important things, trade and commerce, which would result in the development and prosperity of the country.

And they said that because they, on the understanding that we had the natural resources to do that. And the other one is civilization through Christianity, which this constitution completely ignores and makes us a secular state. And even ignores the fact that the majority of the people in Fiji are Christians.

It's a disaffection of the Fijian people that will continue to emerge. And the, you know, the leaders' inability to consider things properly. Once they become leaders, they think themselves as academics. So, they bring in all these newfangled ideas. Like in 1997, they brought in the new election voting system, the preferential treatment system, on the explanation that academics give that first-past-the-post is not the real majority. And as a result of that system, people who were the least preferred went into parliament.

And the SVT, which introduced the system, lost the election and only came back with five members. Because leaders in this country allow themselves to be influenced by academics. Academics don't run anything. What do you say? They don't run any organization or anything. They just lecture. And from principles they read of.

Not of the things that they do not originate. These are things that the constitution of this country and the supreme law of the land should take into account. Because people are saying, no, Fijian is right because it's democratic. But it's not.

People who call themselves Fijians now are not Fijians. They're Indians, Chinese, Part European. And Part European still know where they come from. The places of origin. From Massachusetts, from London, from wherever. Sweden, Germany. You have to look at these things.

And I would like to go back to the 2013 constitution. Because I was a member of the NCBBF, France's National Council for Building a Better

Fiji. And we produced one very excellent and brilliant report. The state of the nation and economy report.

Based on that report was the idea of creating the, how many, the charters. The charters. You know? What do you call them? The people's charter. For building a better Fiji. And because not one province supported the charter. We decided we'd use another tag.

Go to the community and consult the community. And we developed a questionnaire for those who attended those consultations to fill in and see whether they agree or not. And as a result of that exercise of voting people, voting people, we got a 64% approval.

And I think that's what the French government used to approve the 2013. That there was already public consultation and they already obtained 64% approval. It's my thinking. Two things we want. Fiji is Fijian. We are a Christian country.

And amend the laws that bind us, Fijian people. You know, it's useless. We are owning 90% of the land. But what do we have to show for it? Because we can't do what we want with the land because the government can't solve these things.

There are two systems of law in this country. There's the major, which is according to the constitution. And then the Fijian laws. That tells us, although tells us that we own 90% of the land, what we do with it and what we can do with it and not do with it is determined by government of the day. Even in terms of registration.

Everybody is registered under the birth, death, and whatever law. But with us, we have to be registered in another, the VKB. Which was really an adaptation of the register of native land owners, which they then converted to become the NLC.

These are details that you people should, I'm begging you people to look into. Because until these matters are taken into account, Fijian agitation will always remain. Do you know that although mahogany grow on our land, we don't own the trees? Although pine is grown on our land, we don't own the trees.

These are issues that should make sure that we have our freedom. Even now, the two biggest forest reserves in Emalu and Draubuta, in Navosa, the landowners cannot participate or do not have any say in carbon trading. Because, why? Because government has leased those forests.

So, any negotiation on carbon trading is to do the buyer and the government. These are basic things that, you know, we're talking about a constitution that should give us freedom. But what freedom is it giving to the Fijian people? When we have to live too under systems of laws.

TLTB has, because it is a trustee of our lands, has all the powers. Do you know that any development proposal in this country has to be approved by the Ministry of the Environment? Did you know that, sir? Yes. And that the riparian law gives ownership of everything in our rivers and streams and bodies of water, ownership of which to the government, in spite of the fact that these things run through our land.

There's so many constraints. But from people outside, they think, because we Fijian people have always run this country, you know, we've always provided the prime ministers, the whatever, the speakers, the... But no, we are held in check. Even our foreshores.

Everywhere where there's potential for development and growth, we are, you know, the right to all those things taken away from us. They even extend this to the mangroves. I don't know how much mangrove there is in Rotuma.

Well, there was full of mangroves. You know, they're on our land. They're adjacent to our villages. And it's our source of food. We are constrained. And the best constitution you can come up with is the one that gives us freedom.

You know, the list of, what are these, you know, big public businesses. What do you call them? There's about 20 of them. These are the big businesses, the ones that run this country.

One single Fijian business, Fijian holdings. Only because it has... There's no other business there that belongs to Fijians. The list begins with APP, which stands for Atlantic Pacific Packaging.

Because we've been denied the right to innovate. Because everybody is telling us' *Mo ni vuli na veiluitaki na kaiviti* 'We look at this to create business, to create systems of making money.

APP is so strategic. Look after both coasts of the America, you know, the Atlantic and the Pacific. And their packaging company, they provide all the packaging. But everybody keeps telling us... What use is that if they don't even know how to use their resources? Or they don't know how to access using their resources?

Do you know who logs Mahogany? Certainly not the landowners. And once they get off the log area, who transports them? Who transports the logs to the Somu's? And these are all activities that create money. And we just sit there and they keep telling us, ah, but you own all the land. But we've been denied the ability and the capacity to use those resources and to turn those resources to wealth.

Because everybody's quarreling about, ah, that's not democratic. You know, the majority counts. And us women, we're so full of all this gender equality thing, we're forgetting the things that make one's life matter.

I am sorry, Learned Chair. But I'm just viewing, you know, voicing our views as Fijian women. And we refuse to be called iTaukei. That's the name of our organization. It's a legal entity. Soqosoqo Vaka Marama iTaukei. We registered under the charitable trust law. But we are Fijian women.

The 1970 constitution, 1970 constitution, all its preamble, all that its preamble says, reverence to God, honor the queen, and respect the rights of people. And so did the 1990 constitution. That's what it said. Reverence to God, honor the queen, and respect the rights of people.

But these two constitutions, wow. One is telling us we all came from somewhere else. And the 2013 one is defining Rotuman's and Fijians as iTaukei, as indigenous people. You know the meaning of indigenous, people basically what we're wanting, and I think I've said that over and over again, that Fiji belongs to Fijians. And there should always be, interest of Fijians should always be of primary importance.

And in line with that, the council of chiefs should be reinstated as the apex decision-making body of the Fijian people. And in line with that, the

head of state should be decided by the council of chiefs. Then you should create a new council of chiefs, not the one that kind of *'Vatakilakila koya cici tiko qo'*

And this country should be a Christian country. And we would like also consideration or review of those decrees that were enlivened in this constitution as acts. And we would like the electoral system to change.

That we should return to the, well first the bicameral, but the electoral system, you know, now there's only one national constituency. You should return to the constituency that relate to the seat. If you have 52 seats in parliament, there should be 52 constituencies, which should make sure that every part of the country is represented in parliament.

And that you should change the system from, as is now, to one from th list system. You know, if you continue to use the list system, the list system should apply to each constituency. And that to ensure that there's some representation of women, the first name should be men. he second name might be James. The third name then can be Anna. And that the list should go on that way.

So, at least the system ensures itself that there's gender, some kind of gender parity. And we are proposing that you revert to the old parliamentary system, where you have select committees and not standing committees. Because select committees, with their findings, they ensure proper debate of those subjects.

Now with your standing committees, there is no debate. That's why the last government and this government can go through one bill in one day. There has to be proper discussion. Because these bills turn into laws for the country. And that you might consider a return to the bicameral system, to the legislature and the senate. Thank you very much. Learned Chair, that rests our submission.

Mr. Valenitabua: Vinaka Sara Vakalevu, Adi Finau and members of the Soqosoqo Vakamarama iTaukei. Thank you very much for the submission we have heard this morning. The submissions run in line with some of the earlier submissions we have heard, some of your submissions. Like I said at the beginning, we record those. They are being recorded and we will consider them during our deliberations. I am amazed that the submission from the Soqosoqo Vakamarama, although not written, has

been given to us orally without any, I don't see any reference to any notes.

And I am amazed, from where I am sitting, I don't see any notes being read in front of you. So, thank you very much. Usually, we ask questions or just leave some reflections or comments on what we have heard from the associations or ministries who have made submissions to us.

If I may start it off, the secular state has been presented to us, submitted to us with reasoning that it should stay in the alternative that it should go, should be removed. Reasons have been given to us. You have raised this issue again this afternoon, the secular state, and you have given us your reasons.

We cannot say whether we agree or we don't agree, but we thank you for that submission. In relation to Fiji, for the Fijians, and the identity that is calling us, who are now called in our case Fijians, and for the other races to be either Indo-Fijians or other ethnic groups that has been brought to us. We have received those, so we will concede those with the other submissions.

The references to land, although we own, we are supposed to be owning native land, the Environment Management Act, which you referred to, is indeed there. Any development has to go through the Ministry of Environment, and the Environment Management Act either gives consent or license or not, depending on how good the presentations are. So, if the presentations are good, that's one of them, depending on the presentations.

So, if there's good presentations from large developers, then that is something that has to be conceded. I know that the Rivers and Streams Act gives ownership of waters to the government, and any use of any water from rivers and our streams, we've got to get a license from the Ministry of Land. So, we are hearing you, and I leave the others to my two fellow commissioners. I still have some things here, but let us hear them first.

Dr. Fatiaki: Through you, Chair. Adi Finau and ladies, I reiterate the Chair's comments. For an oral submission to come across with such clarity is a rare occurrence in this setting. Most people come here and they read to us what they've typed out and prepared. To see you, Adi Finau, speak off

the cuff in such a clear, lucid, passionate manner is very much appreciated. Because I think it captures aspects of your presentation that you could not do if you read it out from a script. From the outset, let me just reiterate what our Chair has said earlier on. We, certainly I, and I have no doubt my commissioners beside me, feel that we are completely independent.

I never saw, I speak for myself here, myself coming here to work on behalf of government, to, I won't say implement a constitution. Actually, it was to the exact contrary that I feel I might be of use in this exercise. And by that, I mean, Chair has alluded to the democratic deficits that the 2013 Constitution has.

The lack of prior consultation, the lack of legitimacy in terms of being passed by the people through Parliament, the consolidation of powers into particular ministries. These are all shortcomings. And so, our task was to review it, to give it, I guess, a degree of legitimacy in the sense that it says we, the people of Fiji, give to ourselves this Constitution.

My understanding of the Supreme Court decision is that we are basically allowed to do that. To all of the Constitution bar one chapter, which was the immunity one. Having said that, we have taken it upon ourselves to raise it and to allow the public to raise it with us.

Even though the direction from the Supreme Court was that we could review every part. And by review, our Chair has alluded to the fact that we can amend it, we can revoke it, we can repeal it, we can change it. So, everything in that Constitution is open to us changing it. There is nothing set in concrete other than the immunity part. And I think that part of it is important. We are not here to rub a stamp.

We are actually here to address an obvious illegitimacy in this Constitution and by so doing hopefully right or wrong. I say that because the terms of reference that I have in front of me from the President, which is one of the reasons I signed it, has three areas here that address specific things you've asked for.

As Commissioners, my responsibility will include protecting, guaranteeing, and securing under the Constitution, land and fishing rights and resources of indigenous Fijians and Rotuman's. And assuring that the registered owners of native lands and customary fishing rights

have an equitable share of the income derived from the exploitation of the resources beneath and above the surfaces of their land, seabed, rivers, etc. That is in our terms of reference.

That is a very clear indication of the direction that we are supposed to achieve in terms of rewriting this Constitution. The other area that they have specifically allocated a specific part is recognizing the role of the GCC, the Great Council of Chiefs, in national affairs of the state under the Constitution. I think those are two things that you have raised.

I want to reassure you that that's actually part of our terms of reference. Very specific and we are asked to take that into consideration when we start compiling or amending the Constitution.

Your comments about God and faith, you know, take us to a completely different level. We've heard arguments this morning even from someone who had a particular take on them. But I think your historical narrative is an area that is so important that everybody in this country understands. I think it was the GCC that brought to us the fact that the first Constitution should by de facto be considered the deed of cession because it was the first legal document that actually, I guess, made the country of Fiji exist.

Yeah, as a nation state. And by so doing, it was technically the first legal document and may be considered the first de facto Constitution of the country. I hear your words, your passionate comments about the fact that the intent, I have no doubt of the Queen of Fiji and Rotuma then, no longer now, when we got independence was to return the lands to the people who gave it in trust to the Crown.

How that did not transpire into economic progress and equity, I think you touched upon it. I don't mean any disrespect to the structures of Fijian governance, but we Rotuman's are very lucky we don't have an NLTB. We don't have that.

Likewise, our land act which Ratu Sukuna [bless his soul], tried to change, we did not accept and we do not have anything resembling a Vola ni Kawabula because of inherent issues related to the actual translation of your ownership and your rights into economic benefits. I have, again these are more reflections, similar to your presentation, I am a member of the TTFP, a board member by virtue of secondment from

the Council of Rotuma, and I sit in that board at the end of the year and look at the amount of money that the TTFP has gained from its parent companies and I always ask the question because one of the mandated things is to contribute to the improvement of the lives of Fijians and Rotuman's. Is where exactly do the Fijian villages benefit from the amounts of millions of dollars that we make and that's a question that only your institutions can answer.

I ask that as a solitary voice amongst a board of other people, but I ask that question because obviously that company which owns 52% or 54% of Fijian holdings belongs to you in name. It's the toke, any of what Native Land Trust bought before, Trust Fund Board and yet I don't see that as a board member. Again, those are just reflections, again those are things I think you will have to address at a governance level, in terms of governance, but I think your general reflections about the history is important for us.

I think it's important for anybody discussing the constitution to understand how it came about and I guess our chair has addressed the issue of the name Fijian. I proudly consider myself a Rotuman. I'm a Fiji citizen and I have never considered myself indigenous. Thank you.

Mr. Valenitabua: Ladies, we are dealing with the constitution. We have heard submissions. Submissions which give us a lot of, that will give us a lot of problems I would say, just thinking about it. The reason is this. We've got a Bill of Rights.

That is the greatest, I can't say what would be the best word, the greatest challenge for us. The Bill of Rights. Because every citizen of the Republic of Fiji has got rights spelled out in black and white in the constitution.

So, with the submissions being presented to us, some of the submissions would have to mean that we water down the Bill of Rights, but there are some provisions of the Bill of Rights which won't be easy. You know, these are the basic rights, the right to life, the right to freedom of religion, the right to end belief and all those. So having heard the submission this afternoon, particularly when we say that Fijian should be paramount, we've got equality before the law.

It's in the Bill of Rights and it's in the constitution. Those are the kind of challenges that we will be facing. So, we thank you, we thank you for the submission this afternoon.

For us to be a Christian state, for us to be a Christian state, that is another one. For the secular state, for Fiji to be a Christian country, that is another one. If we are to put this in, or we are to change them, then we've got to change all other aspects, or some other aspects of the constitution which tie in with them.

And this constitution, the way it is written, it was written for somebody who thought that they might be there forever. Yeah. And that is what we are looking at. We've got experienced people, or members of the commission. You will hear Mr. Conway; you've heard the doctor. These are the things that we have been considering. They've been running through what might you be thinking about. So, thank you for that. I believe Mr. Conway would like to add to what we have said, Dr. Fatiaki and me.

Mr. Beg: Thank you Chair. Members of the Soqosoqo Vakamarama Adi Finau. Thank you very much. It was nice to meet up again. I haven't seen you for 20 years. And I remember going back to the days of the GCC design brief that we sat together in. But I appreciate all the comments that you've made. And one of the things that struck me, and I think Dr. John echoed the same sentiments, was that the first instrument in the constitution is the preambles. That roadmap that was established.

And you touched on it quite well in the beginning. It's almost a history lesson of why Fiji. You asked the question right from the beginning.

Why are we reviewing the constitution? And I think the Chair gave some really good answers. But for me, I think in the preambles, and we're hearing a lot, is that deal of session reference and the point that you made about not being the first settlers. You know, being the first ownership of the land people before.

So, those are really good points. And I think it's a roadmap to develop. Even though you make reference to your 13 chiefs, that they had the foresight to cede the UK. I'm sorry, cede Fiji to Great Britain at the time. They had the fortuitous foresight to recognize that, as you said, rightful, Fiji was going through a real, I would say, turbulent, violent times. And I think when the introduction of Christianity, I think the chiefs then

suddenly realized there's some water, by default, brought some water back into their lives. And the point you make about economic trade and industry is written in the deal of session. Very clear. And actually, to be governed by God.

I think that was the clear message in the beginning, which resonates very well with me. But I'd like to hear from the people and what they say. Our job is to listen. We have very good argumentative discussions. We're always in tension, but good tension. But you raised that point.

I think that was a really good point. And the point on, you know, when you say, when Christopher Columbus discovered America. Yes, it was 1942. 1492. Yes. And again, that was the... Yes.

So, you know, and then I love, I welcome the thoughts about the electoral system, because that's, as Chair was saying, that starts to resonate through the people coming forward. We hear it from the presentations that have been brought to us, but I'm sure there's going to be a lot more out there when we get out there. But I assure you that we are now reaching out to all the people.

I'm looking forward to that. Not just sitting here behind a keyboard, getting out and talking to the people. And that point about the word iTaukei and how it's associated with Fijians, you know, I think that was a very valid point.

I think that was something for us to ponder on, but also to hear from the rest of the people. But I salute you, and I echo the same sentiments as Dr. John. You know, it's amazing that you would sit down, if you know, with your supporters just unscripted. I take my hat off, and yeah, it's quite inspiring to hear. And thank you for that, my kind words. Thank you.

Mr. Valenitabua: I'll just close off by thanking you in relation to the reversal to the select committees instead of the standing committees. I know that the 1997 Constitution has got the select committees participating in Parliament. That's good, because there has been submission in relation to the power of the Attorney General in the appointment of certain offices, constitutional offices, where the Attorney General has to be consulted by the Prime Minister in order for the Prime Minister to confirm the appointment by the JSC.

The Judicial Services Commission, there are other provisions in there. And when we looked at the 1997 Constitution, select committee was there, consultation with the select committee, not the Attorney General. So, like fellow Commissioner, Dr. Fatiaki has said, the concentration of power on one person. That is something that we've been looking at.

So, when you brought up the select committee instead of standing committee, it's a good point that we will have to ponder on. There has been bills passed into Act using the standing order number 50 or 51. And that is what you had referred to, that laws are not being debated properly in Parliament. So, some things to ponder on, and we'll see what happens after that. We now have our level for this afternoon and for the submissions.

----------End of Session [23-4-2026] ----------

Fiji Women's Crises Centre (FWCC)

Fiji Women Crisis Centre
Time:10.20am-11.23am
Date:24-4-2026

Leighton: On behalf of the Constitutional Review Commission, Chair and Commissioners, I'd just like to welcome you members of the Fiji Women's Crisis Centre. Just a few formalities and housekeeping. If you wish to speak, just press the right side of the mic in front of you to turn the mic on, and once you've made your oral submission, just press the same side to turn it off.

Following this, the Chair will introduce the members of the Commission that are present here today, and also brief the current work that the Commission is undertaking. And then we also ask that your team, if you can introduce yourselves. This is for the transcription, for the record.

Mr. Valenitabua: Ladies and Delegates from the Fiji Women's Crisis Centre, we thank you very much for your attendance before the Commission this morning. We welcome you, and we hope that we will hear deep submissions from you in relation to the issues that you will raise with us. Just a few words in relation to the Commission.

This Commission is independent, and we are tasked with reviewing the 2013 Constitution. The word review is important because it means that we are not looking at a new Constitution. We'll just have to amend whatever can be amended, remove what can be removed, and add what can be added.

We will still have the bulk, I believe, of the 2013 Constitution. As you might know, we were appointed by His Excellency the President of the Country, and we have a term, or a timeline, of six months to complete this review. The task that has been given us is to hear submissions from people of Fiji as wide as possible in order to cure a deficiency, a constitutional and democratic deficiency, which was apparent in the 2013 Constitution.

The deficiency was that we did not know how this Constitution came about. There were a few people who knew about it. Whether consultations were made, we don't know. And if it was made, who gave the submissions? Now, that is our task. Today, we are going to pass you

the mic after this, after I am finished. And then we will ask you to introduce yourselves and give us your submissions.

The media was disappointed because we had been inviting them to come here and cover the submissions and the consultations for the sake of the general population. We are required to give as much exposure as we can to the general population so that we know, or they know, what is really happening. It is your request. They were disappointed with it. It is not our decision, so let us take it on from there. So, with those few words of welcome, I now pass on the mic over to you, and you may address us now and make your submissions.

Ms. Tarai: Good morning, and thank you, Chair, for the kind introduction, the words. Before we begin, I would just like to introduce myself once more. My name is Miliana Tarai, and I am the Legal Services Manager for the Fijian Women's Crisis Center.

Today, I am joined by my colleagues, Ms. Petrina Fremlin, sitting on my left. She is one of our legal officers, and to her left is Ms. Elina Cagilaba. She is our Counsellor Supervisor, and to my right, I have Ms. Akisi Rokara, who is our Counsellor Advocate.

Firstly, we would like to thank the Commission for extending its invitation to our organization, giving us an opportunity to come and have a discussion with the Commission about this very important piece of work. We would also like to thank the Commission for accommodating us this morning, pertaining to our request.

We would just like to inform the Commission that while we have circulated copies of our submissions this morning to the Commissioners, this is just pointers for today's discussion. This is not our full submission. Our full submission will be submitted after today. We will have a full and comprehensive submission that we will be giving to the Commission, regarding other topics that we will be addressing as well.

Firstly, we would like to stress that we welcome the constitutional reform process, but we also stress that any changes must be grounded in human rights, substantive equality and equity, democratic governance, accountability, and the rule of law. By applying a gendered human rights and development lens, we submit that a constitutional

design and reform process must directly address the structural inequalities that shape women's lives, particularly barriers to political participation, exposure to gender-based violence or violence against women and girls, unequal access to justice and exclusion from decision-making.

Fiji Women's Crisis Centre is a long-standing human rights organization. We've been around for 42 years, working to eliminate violence against women and girls in Fiji and the Pacific. We believe that violence against women is rooted in unequal gender power relations embedded in patriarchy. Accordingly, we submit that a constitution must move beyond formal equality and entrenched substantive equality and equity, so that rights are meaningful and forcible in practice for those who face systemic discrimination and marginalization.

The first point of interest that we would like to submit this morning is to do with the constitutional reform process. We're submitting that the constitutional reform process needs to be participatory, inclusive and legitimate as well. The legitimacy and durability of constitutional reform depends on whether the process is inclusive, participatory, transparent and grounded in the lived realities and aspirations of people across Fiji.

The 2012 Yash Gai Constitutional Commission process provides, we believe, an important benchmark because it involves extensive nationwide consultation, civic education and active engagement with diverse groups, including women, youth, civil society, faith-based communities and rural populations.

In our view, a constitution should not only be legally valid, it must also gain authority through genuine public ownership. We submit that any reform conducted in a limited, top-down or elite-driven manner without adequate transparency or inclusion of marginalized people risks undermining acceptance of outcomes and entrenching already existing inequalities.

Women, especially those in the rural and informal settings, face obstacles to participating, such as economic constraints, social norms and limited access to information. Therefore, we submit participation must go beyond consultation and it must include accessible and meaningful civic education so people are informed and are able to

engage, genuine consideration of public views in drafting, opportunities for public review and dialogue on draft proposals before finalization.

We also recommend strengthening the review process to ensure that all communities, particularly women, youth, persons with disabilities and rural populations are included, transparent procedures, independent and credible review body and structured public consultation on draft constitutional provisions before its implementation.

Our second point of interest is to do with the electoral systems. The 2013 Constitution's electoral model provides for a single national constituency with an openly disproportional representation model, the entire country as one electorate.

While designed around the big-man autocratic model, it has produced structural barriers to inclusive, representative democracy and has also discouraged independent candidates from contesting elections. Because representatives are not tied to specific geographic constituencies, accountability to local communities is weakened and voters lack a clear representative responsibility for their community-level concerns.

The current electoral system amplifies party dominance and leadership popularity, as can be seen from the previous elections, especially the 2014 elections, where voters were heavily concentrated on party leaders, while other candidates entered Parliament due largely to overall party vote totals rather than individual support.

In addition, the constitutional 5% threshold is exclusionary, produces wasted votes when parties or candidates fall below that threshold and receive no representation, potentially weakening the extent to which Parliament reflects the electorate's will.

We submit that the current model can disadvantage independent candidates, smaller parties and new entrants to politics, including men, women and youth, because campaigning is national in scale and resource intensive.

Party registration requirements, including collecting thousands of signatures across the divisions, as additional barriers for grassroots movement and those without established nation-wide networks, is also

an issue. Therefore, we encourage the consideration to be given to a model that is constituency-based, as this can reduce campaign costs by allowing candidates to focus on their communities.

Comparative experiences from Pacific countries such as Solomon Islands, Samoa and Vanuatu demonstrate that multi-constituency systems that strengthen accountability between representatives and their communities, encourage voter engagement and trust, allow candidates to emerge from and be supported by local communities, and it promotes more inclusive and diverse representation.

Therefore, we recommend that the reform to the electoral provision be done, where we would move away from a single national constituency and move towards a multi-constituency or multi-member district system.

We also recommend that there be a review of the threshold that is in place to reduce wasted votes and improve inclusivity. And one more recommendation that we have with this regard is creating a more enabling environment for independent candidates and smaller parties and increasing the visibility of women candidates through measures such as gender balance candidate lists, alternating male and female candidates on balance, for example, on the ballot putting one man, one woman, one man, one woman, or maybe five women or five men across the ballots, and prioritizing women candidates' placement on ballot papers.

Our third point of interest has to do with temporary special measures. The 2013 constitution's failure to clearly or specifically provide for temporary special measures such as legislated quotas or reserve seats for women ignores the structural barriers that prevent women from participating equally in political life.

Affirmative measures as legitimate, evidence-based, and time-bound tools can accelerate progress towards gender parity and can be removed once the critical mass is reached. Fiji's reluctance to recognize TSMs can no longer be justified because Fiji has international commitments, including to CEDAW, the ICCPR, and the Beijing Platform for Action. Drawing on international and regional examples, including quota systems and reserve seat models, we recommend that the constitution explicitly permit and support TSMs.

FWCC also recommends for reserve seats because they guarantee representation and they reduce the risk of women's continued marginalization in male-dominated political environments, while longer-term efforts should support women to compete for both reserve and open seats.

Our fourth topic of interest this morning has to do with non-negotiable constitutional principles. We urge that the constitutional reformers clearly identify and protect core democratic and human rights principles that should not be removed or weakened.

From a gender and rights-based perspective, we identify the following as non-negotiable. Separation of powers between the executive, legislature, and judiciary. A strong, enforceable, and accessible Bill of Rights.

Substantive equality and equity, recognizing that equal treatment alone is not sufficient. Rule of law and accountability, where no one is placed above the law. Separation of state and society, including protection of civil society to operate freely.

We place particular emphasis on separating the state from ethnicity, culture, and religion, and we recommend that the state should treat everyone equally as citizens. This can reduce ethnic politics and division, protect cultures by allowing communities to preserve their traditions without state control, strengthen civic independence, support national unity, and allow civil society institutions to play their democratic role outside the state. FWCC also recommends strong safeguards to prevent erosion of these principles with any limitations strictly controlled and subject to judicial oversight.

The fifth point of interest is on secularism and equal citizenship. Secularism and a common national identity built on equal citizenship, we believe are essential to inclusion and democratic governance. Secularism is a fundamental safeguard in a diverse, multi-faith society such as Fiji.

It ensures that the state remains neutral in matters of religion, protects freedom of belief, and guarantees that no individual or group is privileged or disadvantaged on the basis of their faith. In a country where

communities of different faiths have long coexisted, the constitutional commitment to secularism has been essential in maintaining balance, fairness, and mutual respect. The removal of this protection opens the door to exclusion, discrimination, and the politicization of religion in public life.

This would contradict Fiji's international commitment to the ICCPR, which Fiji has already ratified. Women and marginalized groups can also be disproportionately harmed when discrimination is justified through religious or customary norms.

Therefore, we recommend constitutional protections that would recognize secularism, prohibit any state religion or religious preference, subject laws influenced by religion or custom to strict human rights scrutiny, affirm equal citizenship for all, with rights that override discriminatory practices.

Our sixth topic of interest is on selection and the independence of the president. We submit that the method of selecting Fiji's president should ensure independence, neutrality, and public confidence, given that the president's role as a head of state.

Selection processes closely tied to political actors, combined with limited transparency and public participation, can undermine the perceived impartiality of the office and restrict opportunities for broader presentation, including for women and other marginalized groups.

While acknowledging that countries use different models, direct election or parliamentary selection or electoral colleges, we recommend that Fiji adopt reforms that establish a transparent and independent selection process for the president, and ensure that the president is impartial or independent and not aligned with any political party.

Consider alternative selection models such as direct election by the people, and introduce criteria that promotes diversity and gender inclusion in nominations.

Ms. Fremlin: Our seventh point is on the role of the Great Council of Chiefs or the GCC. We recognize the cultural and historical significance of the GCC to the iTaukei communities. However, we submit that any constitutional

role must align with equality, non-discrimination, and democratic governance. Traditional governance structures have often excluded women from decision-making, and therefore any recognition must be consistent with gender equality and human rights obligations.

We recommend that any constitutional recognition of the GCC be explicitly limited to an advisory role, and that there be separation from formal governance powers and decisions of the state, including appointments of the president or other state officials.

It is further recommended that any constitutional provisions relating to the GCC require compliance with gender equality and human rights standards.

Our third point is on the removal of the Amenity Clause, Chapter 10, in the course of the 2013 Constitution. We submit that Chapter 10 of the 2013 Constitution, which grants absolute immunity for actions connected to 2006 coups and related events, limits judicial oversight must be removed.

Entrenched immunity undermines accountability, equality before the law, and the rule of law, and risks denying remedies to victims of abuse, including women who have experienced violence, discrimination, or other rights violations during periods of political instability. It may also signal tolerance for unconstitutional takeovers, and therefore encourage future coups by creating expectations of protection from legal consequences.

Therefore, we recommend repealing Chapter 10, restoring court jurisdiction to review and adjudicate claims arising from past political events, ensuring access to justice and remedies for victims, affirming zero tolerance for coups, and aligning Fiji's constitutional arrangements with international human rights and accountability standards.

Our ninth point is on a caretaker government during the election period. Having a caretaker government framework during election periods is also important, as it limits a government's actions during campaigns and transitions to essentially routine administration, reducing the risk of misuse of state resources or influence over public institutions.

Fiji's lack of a clear, defined caretaker framework risks undermining electoral fairness and public trust, and may disproportionately affect vulnerable groups, including women. We recommend a constitutional framework that recognizes a caretaker government during the election period that restricts major policy announcements, significant appointments, and major contractual commitments, with urgent decisions made only in the public interest and where appropriate, after consultation with opposition parties. A good example of which is the Belgian caretaker government, that holds a record for the longest caretaker government in history, operating from 2019 to 2024.

The formation of Belgium's caretaker government in 2018-2019 was initiated by the collapse of the coalition government. The extension was due to continued political negotiations and difficulties in establishing a new coalition government. The caretaker government was tasked with maintaining stability and ensuring that essential services continue to operate, while political negotiations took place to form a new government.

The situation underscores the importance of a caretaker government in managing transitions and preventing disruptions in governance. Apologies, that's not in our submission that you have in front of you. It was just an example that we had pulled together to enlighten you.

Our third point is on our constitutional duty to protect women and children. We propose that the constitution include a clear provision recognizing a duty of the state and all citizens to uphold the rights, dignity, and well-being of women and children.

In a country where violence against women and girls and harmful social norms persist, constitutional recognition of the state's responsibility would reinforce zero tolerance for violence and discrimination, promote respect and equality, and support broader social transformation. Therefore, we submit that there be a provision in the constitution that allows the state to make special provisions for women and children.

Our last point is on sequencing of the constitutional review and the national referendum framework. A constitutional review should properly be sequenced with and not precede the enactment of a clear national referendum framework.

A referendum is a central democratic mechanism through which people exercise sovereignty over constitutional change. Without an established and accessible referendum law, participation risks becoming symbolic rather than meaningful.

We therefore recommend deferring substantive constitutional review until the referendum framework is enacted and operational, ensuring the law includes clear procedures for public education, participation in voting, and allocating adequate time for civil awareness, civic awareness, and consultation before any referendum is held.

So overall, across all sections, our central message is that constitutional reform must be people-centered, rights-based, with deliberate attention to those most affected by inequality and violence. FWCC calls for a constitution that entrenches substantive equality and equity, strengthening democratic accountability and the rule of law, protecting secularism and equal citizenship, and removing structural and legal barriers that limit inclusive participation. These are just some of the points that we would like to come and have a discussion with you this morning on. However, our complete submission will be submitted after today.

Ms. Valenitabua: So, I take this as a skeleton submission, and we are anticipating that you will send us a full submission after you leave here. Now, we have read your submissions, we have heard your oral submissions. I would like to raise a first point, something that I would want to tell you now, that is in number one, constitutional reform process, participation, inclusion, and legitimacy.

In the second paragraph, under that heading, in the second last sentence, starting with women, you are referring to obstacles to participation by women, such as economic constraints, social norms, and limited access to information. So, therefore, participation must go beyond consultation and include your suggestions.

For your information, if it might be of help to you, we will be doing country consultations beginning in May. There will be two months of consultations, and notices have gone out, will be published today and tomorrow through the printed media and the radio and television about this exercise. The work of the CRC, where we will be, the venues and the times and the dates.

So, that is just a short answer to what you have addressed here. We understand that there was a difficulty, there is usually a difficulty getting to the message out there. But we are doing our best with our schedules and our travel plans to reach out and get the widest coverage possible, not only to men, to women, to school children, and so forth.

We are looking at our students who are 18 years and over. We are trying to get them into all these consultations. So, women will not be left out.

We take note of that. And your recommendations in relation to that, we take that into account.

The other recommendations which you have raised, some of them have been raised before us in this room. So, we have been notified beforehand, or we have been told beforehand about these issues. Great Council of Chiefs, the immunity clause, and others which you have addressed, and which my fellow commissioners might want to comment on later on with you. Having said that, I will now ask my fellow commissioners if they have any comments or any questions which they might either want to ask to clarify your submissions.

Mr. Beg: Thank you, Chair. Thank you very much for your presentation. Some illumining points, well heard, but as the Chair says, in reference to the sections of the Constitution, we are going to receive a formal response back from you with regards to the sections of the Constitution.

I think there are some really valid points. I see sections 26, section 7, 8, section 16. Okay, so section 26 and 8, the substantive equality that you raised, moved beyond the formal equality that you are talking about in that space.

Access to justice, section 16, you are saying we need to strengthen real access. So, I would suggest that, and I think that is coming in section 16 in your submission. The freedom for violence, section 11 addresses that, but you are saying address the gender balance of violence.

The electoral system, which you talk about the multi-constituency reduction threshold, sections 53 and section 55. Yes, that has been resonating through a lot of the consultations. The TSM that you have

brought through, the quota and reserve seats, interesting and enlightening.

Sections 26, it is the non-discriminative clause in the Constitution that you are going to address. Secularism, you know, like we talked about its strength, that has been coming through in a lot of the consultations. Section 17, I hear you, the presidency, independent direction that you talked about, that addresses sections 83 and 87 of the Constitution.

The GCC, again, we know your comments on that. We also note your opinion and concern around the immunity clause, chapter 10 of the Constitution.

And then I think the other ones that, for me, the rights enforcement. The courts centralized, I think that was kind of interesting, what you were talking about, how that is dealt with in section 44 of the Constitution, rights enforcement. You got to dwell on that a bit more. And then also other parts of your presentation, you made reference to a caretaker government, quite interesting learned thoughts on that.

It's interesting and thank you for raising that. I guess my fellow commissioners will probably debate that further. I just noted these things as we went through.

Another question before I hand over to the other commissioners is the, I want to understand how you're connected with the other women's body that talks on women's rights and issues. And how connected are you in that space? Because we heard from them a couple of days ago and then we hear you as well. I think it's always nice to, I want to see how that, I mean, according to the two bodies, you speak on the same issues and so I think that's something I wanted to understand as well. Thank you, chair. That's about it.

Ms. Tarai: First of all, the Fiji Women's Rights Movement happens to be the sister organization of the Fiji Women's Crisis Center. So, Fiji Women's Crisis Center was established 42 years ago. Two years later the Fiji Women's Rights Movement was established through the Fiji Women's Crisis Center and the women's movement at that time.

So, it is expected that we would be making similar, we have similar concerns and making similar submissions. That is to be expected. But

we are both also part of the NGO Coalition for Human Rights in Fiji that also acts as a watchdog for human rights violations, including violations of women's rights. So that is where we are connected.

But in terms of networking, we have talked about some of the issues that we raised today. But that is just limited to some.

It's not all. But it's really interesting that they had done a similar submission to the one that we're doing today as well. And with regards to something that the chair had raised on point number one about women, and it's actually quite great and heartening to hear that there will be extensive consultation that the Commission has already decided on and planned.

The reason why we had actually raised this issue is because previously in other consultations, the consultations would happen at a time when women are either at work or they are busy at home. So, when they return from work, the consultations usually take in the evenings from 6pm on to 8pm. And that is the time when women arrive at home and they have to do the double burden at home.

So, the cooking and looking after the children, getting their homework done. So, they have been unable to fully participate in those consultations. So, I guess for us, the question that we would ask is on the timing of the consultations that the Constitution Review Commission is planning to schedule. We would be really interested to see the timing of those consultations. Has there been any specific times?

Dr. Gounder: Thank you, members of the Human Rights Movement. I'll just answer your question first. So, we have already provided to media a list of upcoming public consultations. The places and the times, the days of public consultations have already been published. But we can also provide you a copy of the upcoming publications.

In terms of the next two weeks of publications, which are starting on the 4th of May, the exact venues and dates and times have been published as well. It's been given to the media this morning. And our team will be able to share copies with you.

So, in terms of the exact dates, the public consultation schedule from 14th to 15th July is now available, which provides the date, the time, the venue. So, the people in these areas will have this information at least 10 days in advance before we go to these places.

Mr. Beg: Sorry, thank you, Dr. Gounder. I think your question was the time, so when these women would... My concern was that I wanted to hear you about the timing specifics. You're saying that they're not available after 6 o'clock or something like that, is it?

Ms. Tarai: What we are submitting is for the commission to consider the timing in which the consultation is being held, take into consideration the burdens too that women have at home as well to ensure that they participate fully in these consultations.

Based on what we have seen with other consultations, usually by the time the consultation is finished, that is when the women are just making their way over to the consultation venues. So, for us, what we were trying to get at is giving consideration to that.

Dr. Gounder: Yes, so the times are available. So, we are very mindful of that actually. In the National Development Plan consultations, which is I believe one of the most extensively consulted issue in Fiji, we were mindful of that. And our experience is that usually the daytime is better, 10 a.m. to 5 p.m.

So, if you look at the village hall meetings, it's 10 a.m. to 5 a.m. The urban areas is in the afternoon, in the evening, from 5 p.m. to 7 p.m. So, we have been very mindful of the times and the venues and our aim is to take the consultation to the people. Thank you.

Mr. Valenitabua: Just that I have one example.

Dr. Gounder: Do you want to ask?

Mr. Valenitabua: Yes, just one more or do you want to go? I just want another one.

Dr. Gounder: You clarify then, I'll come back.

Mr. Valenitabua: Example. You will have copies of this after this. We can share. On the 4th of May, in our schedule, a team will be in Nukuni Village Hall in One-

i Lau. That is from 10 a.m. to 5 p.m. That's already in the schedule. That is one example.

So, we've got the time and so forth. In Lomaiviti, on the 13th of May, 10 a.m. to 5 p.m., will be a Tobu Village Hall in Nairai. And Nairai people and Batiki people are to meet in Nairai. So, this will go up, giving everybody notice that we are coming there. Just examples. Thank you.

Dr. Gounder: So, once again, thank you for your very extensive submission. I think it's really well written and you make a lot of justifications as to why you are making those points, I think, which is really important. And we look forward to your detailed written submissions.

I have worked very closely with both the women's organizations. I've worked closely with FWRM. And I've also supported Fiji Women's Crisis Center in my capacity at USP, in various ways. And I'm fully supportive of the work that FWRM and FWCC are doing.

And I believe, which I also highlighted, that a lot of outcomes we've achieved for women have been the good work that FWRM and FWCC have done over the years. And I admire the courage of the women who do work with these organizations.

I go back to your number one point, where you talk about that legitimacy and durability of the constitutional reform must be inclusive, participatory, transparent, and grounded in the realities across of people across Fiji. And that's really important. We totally believe in that.

We want to make sure that it's inclusive, participatory, transparent, and based on what people experience. So, from that angle, I want to understand the gist of your submission. If you want participatory, transparent, why would you not allow the media to report on what you have to say today? Because I believe it's in your interest that your submission reaches out to as a wide audience as possible.

Because your views are important. You represent, I would say, women's rights and as well as issues related to gender violence. So, every woman should understand what your views are. So, I was pleasantly surprised today by your decision. So, based on your point number one, if it applies to everybody, why not you? Thank you.

Ms. Tarai: Thank you, Dr. Gounder. Yes, I see the point that you're making. For us, in the past, in the previous consultations that we've done, what we find is that the media tends to take our submissions out of context and the gist of what we are trying to get at gets undermined, which is why for today, since this is a consultative process, we came in to have a discussion with the commissioners, and our comprehensive submission will be then shared with the commission, and we will also share it as well with our networks to be shared with their networks.

So, in terms of today's request, we were just asking for the media not to be here for this initial process. However, because this is not our full submission, and we would not want the media to undermine how it gets shared online.

However, this will be posted on our website and our social media, and the same thing will be done with our full submission. So, you'll be posting this on your Facebook social media today? Sorry, the full submission, I mean.

Dr. Gounder: Not this one. Can I give this to the media after this?

Ms. Tarai: Yes, you can.

Dr. Gounder: In my capacity?

Ms. Tarai: You may, sir. You may make a comment on it. Can I give this whole submission to the media? We ask that we get our clearances first on that.

Dr. Gounder: But it's a copy to us now.

Ms. Tarai: Yes, it's a copy for the commissioners, not for the media.

Dr. Gounder: You know we are a transparent commission?

Ms. Tarai: Yes, sir.

Dr. Gounder: We don't hide anything from the public?

Ms. Tarai: I understand that, sir. However, if that is something that the commission wishes to do, we really cannot stop the commission from doing that.

Dr. Gounder: Thank you.

Dr. Fatiaki: Through you, Chair. Ladies, thank you very much for your presentation. Let me say from the outset, I have five daughters and a wife. So, I have a lot of women in my household. So, any comments I make are generic. They are not personal. And I'm very guided and guarded by the fact that I have so many women in my household.

My concern relates to what Dr. Neelesh-Gounder has brought up. And it relates to it because I think part of this consultation process is what you say and what we try and clarify. And when the media is here, they're able to report that.

If they're not here, they can conjure up whatever they want to think in their mind or they just print verbatim what you've given to them. I'm interested that you need to see clearance because it speaks to my second two points that I want to make here. One is, would you consider yourself an advocacy group?

Ms. Tarai: Yes.

Dr. Fatiaki: Okay, so I think we understand that. The second thing is often, and it was said by the future women's rights movement, that we speak on behalf of women. And I want to ask you that. I guess the first question should have come after this one. But if you're an advocacy group, which means you advocate for a particular position and attempt to influence laws and whatever it is that we're discussing, how representative do you feel you are of women's views? Because often, I mean, we've asked this for other people. They come and they speak on behalf of.

And we say, well, really demonstrate to us that you are actually representative of this Tikina, if they so-called come and claim to be the spokesman for. And I guess my question to you is, how representative are you of the views of women? Or should I just take it that you are representative of your advocacy position in your presentation to us? Thank you.

Ms. Tarai: For us, our submission today is based on the realities of women and girls in this country. It's based on the data and the evidence that we have seen over time. And it's also based on the history of this country as we have

seen it and how women have been affected by it. That is the basis of our submission this morning.

However, as we have mentioned earlier on, the reason why we had requested for a closed submission this morning is simply because we did not want the media to undermine our full submission. Our full submission would come with justifications for the positions that we have taken. What we have submitted this morning to the commission is basically just pointers of that.

Which is why when Dr. Gounder asked if this can be circulated to the media, we were hesitant about it. Because this does not have the justifications of the positions that we are taking this morning. So, for us, there was a reasoning behind seeking a closed submission this morning.

In terms of representative, we speak based on the lived realities of women and girls as we have seen it in our line of work. And also speaking from history as we have seen how women have been affected through the events that have taken place in history in Fiji.

Dr. Fatiaki: If I may just add, you see, this discussion, that question, although I won't say a hard one, I thought you answered it perfectly. And if the media was here to report it, then it would have been to your benefit for the people to hear that. If they're not here to report it and you write it like this and they recognize that you're an advocacy group, then they say, well, you're going to say what is approved for you to say. And I think it's a pity. I mean that. I thought that your answer to my question was perfect. And you should take kudos for that.

And I think if the media was here and they reported it, and by the way, they record everything, which means there's no misinterpretation of what you're saying or what I'm saying. That would have been to your benefit. It would have demonstrated that you have thought about this issue and that although I'm not going to dwell into what your figures are, but they would have acknowledged that you are actually speaking on behalf, like you said, of lived experience.

You people have had experience dealing with women in crises, had to address obviously with your counselors some of the contributing issues that have risen to the crises, and that some of these are inherent and structural in nature. By answering that question, you would have done

yourself a whole lot of good if the media was sitting here listening to you. And I say that I hope that the idea that we ask you questions is not that you want to make sure that you don't answer it wrongly.

No, it's an open session. I mean I'm saying this because there's no media here. But I say your answer to my question, which might have been considered a difficult question, was perfect.

I think nobody could have found fault with that, and I think if the media had published that answer, you know, directly as in a video, or they would have said that was correctly answered, that was appropriate, and makes your case stronger. Thank you.

Mr. Valenitabua: We have heard you in relation to your electoral system, your recommendation about the electoral system. That has been an issue that is a hard one. Temporary special measures, that has come up from various groups, also a hard one in relation to the rights of women to be represented in Parliament. Removal of the immunity clause, a few submissions have mentioned that, and it's one that we will look at very, very carefully. Caretaker government, that is, I mean, interesting. It is interesting. We'll look at that.

And the role of the Council of Chiefs. That comes under paragraph two of number seven. Are you saying there that the Council of Chiefs should not be involved in the appointment of the President? Is that what you're stating?

Ms. Tarai: Yes, Chair, that is what we're saying. We're saying that currently the GCC is not recognized in our Constitution, but we understand that there will be that consideration on whether or not they should be constitutionally recognized.

Our submission is that they should just have an advisory role, considering that that was a colonial imposition on us, and it is continuing as a colonial legacy. So, our view on that is that the GCC should have only an advisory role, but do not interfere in state and governance matters and decision-making and decisions.

Mr. Valenitabua: So, it's an advisory role to the state and to the government.

Ms. Tarai: They can advise on how certain policies and laws would affect the iTaukei people, but do not have any interference in terms of how the state will govern or any decision-making that will happen.

Mr. Valenitabua: My question was advisory role to the state or to the government?

Ms. Tarai: To the government.

Mr. Valenitabua: Their traditional functions, they continue with that. Am I getting you there?

Ms. Tarai: Yes.

Mr. Valenitabua: Because it says here that the traditional government structures have often excluded women from decision-making, and therefore any recognition must be consistent with gender equality. I understand that, but that also signifies or implies, you legal officers, it implies that they can continue with their traditional functions as chiefs, but when they come to the GCC, they do not touch or not touch. They only advise government, nothing more.

Ms. Tarai: Yes, and whatever traditional governance structures or functions that they have, also ensure that it is in compliance with human rights standards as well.

Mr. Valenitabua: Okay. What is your view? We've had submissions in relation to bicameral parliament, parliament and senate. If a GCC is established under the constitution, before in the past constitutions, the GCC used to have members in the senate. Should they be excluded from the senate? Remember, it's advisory role. The senate is a law-making body. If you can answer, you can put it down in your next submission.

Ms. Tarai: Yes, I was just going to say that we have yet to consider having a bicameral system. At the moment, the way we have thought about the submission is just how it is, but fix the electoral system. But that is something that we might need to also give a deep thought on and that we will try and address that too in our submission.

Mr. Valenitabua: It is just something that follows on from your submission. There are submissions which say, let's have a senate, bring the senate back, have

the parliament, and then you pass laws from here, and then have the senate, not the parliament, say they also review the laws.

Now, the GCC has always been part of the senate. Now, that is a law-making body of the country. If it is to be an advisory role, then should they be in the senate? That is my question. You can answer it later.

Mr. Beg: Thank you, Chair. It is what I said previously, so we expect your formal submissions when we receive them. As I said earlier on, I alluded to the various sections of the Constitution, ones that really apply, and I thank you. I appreciate that. My colleagues, we are very timid and aggressive, but in a nice way.

The tension is not to be received. Receive in kindness, because it is good. As my fellow Commissioner said, he had an opportunity there to frame it, but I appreciate your comments, and I thank you for that.

I was just trying to see where it aligns with the Constitution. Some interesting things, as the Chair quite rightly pointed out, the senate, but I think more in line with the Constitution, where women and children's protection sits in the Constitution, sections 26 and 11, that applies to you. So, I think that is kind of where I would like to see more of your contribution in that space. Thank you.

Ms. Tarai: Yes, that is also why in our point 10 of today's discussion, we had also talked about constitutional duty to protect women and children, because what we have seen is that there are laws that are meant to protect women, that the intention behind it was to protect women and girls, such as the Domestic Violence Act, considering that we have high numbers of women being subjected to domestic violence in Fiji. However, that particular law is gender neutral, so it is really hard.

What we find is that for the state to even consider passing gender-specific laws, so for that point 10 that we had raised this morning, it was to do with that, having constitutional provisions that would allow the state to actually give special provisions or special protections to women and girls, basically, and children. And we had cited, just for discussion purposes, we had cited the Constitution of India.

They had a provision under the Anti-Discrimination Clause that allows them to actually pass laws and administrative acts that would have

special provisions for women and children, and that sort of led to how they had their domestic violence, and that specifically protects women and children.

So, you know, it was along that line that our research had taken us, and we thought that was something that we also need to consider too for the review that is currently happening.

Mr. Beg: In response to that, thank you for that, so you need to be adaptive to what is really singing out loudly to us here in Fiji. I think it's nice that you do the research work, but I'd like to hear how it is adaptive to our situation in Fiji. I'm sure you've got all the data, as you said, so I'm really looking forward to it.

Mr. Valenitabua: Well, we've come to the end of our consultation session this morning. We thank you again for your attendance, and we thank you for this.Very well written. Thank you very much. We will consider them, and then we'll see what we can do later on during our deliberations. Remember, we will deliberate after this exercise, and then we'll write a report. That report will go to His Excellency the President, and then the President will give it to Cabinet, and then the parliamentary process will take over from there, hopefully ending up in a referendum. Okay?

Ms. Tarai: Yes, Chair. Just a quick question, Chair. The timeline for the written submissions, is there a specific deadline for the written submissions?

Mr. Valenitabua: For us, yeah, the 30th of June. Well, the sooner the better. Don't leave it too late. Yes. We'll be out of Suva from the 1st of May, or the 3rd of May, next week.

Ms. Tarai: Thank you, sir.

Mr. Valenitabua: But there'll be people receiving submissions, and there is a website which will be set up, and you'll be given notice. Everybody will be given notice. So, the submissions can be sent to the website.

Ms. Tarai: Thank you, sir.

Mr. Valenitabua: Thank you.

----------End of Session [24-4-2026] ----------



FWCC

Fiji Women's Crisis Centre

FIJI WOMEN'S CRISIS CENTRE SUBMISSION:

CONSTITUTION OF THE REPUBLIC OF FIJI 2013

This is a submission by the Fiji Women's Crisis Centre (FWCC) to Fiji's Constitutional Review Commission regarding the 2013 Constitution of the Republic of Fiji. FWCC welcomes a constitutional reform process, but we stress that any changes must be grounded in human rights, substantive equality and equity, democratic governance, accountabiltiy and the rule of law. By applying a gendered, human-rights and development lens, we submit that constitutional design and reform processes must directly address the structural inequalities that shape women's lives—particularly barriers to political participation, exposure to gender-based violence, unequal access to justice, and exclusion from decision-making.

FWCC is as a long-standing human rights organisation (42 years) working to eliminate violence against women and girls in Fiji and the Pacific. We believe that violence against women is rooted in unequal gender power relations embedded in patriarchy. Accordingly, we submit that a Constitution must move beyond formal equality and entrench substantive equality and equity, so that rights are meaningful and enforceable in practice for those who face systemic discrimination and marginalisation.

1. Constitutional reform process: participation, inclusion and legitimacy

It is FWCC's submisstion that the legitimacy and durability of constitutional reform depends on whether the process is inclusive, participatory, transparent and grounded in the lived realities of people across Fiji. The 2012 Yash Ghai Constitution Commission process provides an important benchmark because it involved extensive nationwide consultations, civic education and active engagement with diverse groups, including women, youth, civil society, faith-based communities and rural populations. In FWCC's view, a constitution should not only be legally valid; it must also gain authority through genuine public ownership.

We submit that any reform conducted in a limited, top-down or elite-driven manner—without adequate transparency or inclusion of marginalised groups—risk undermining acceptance of outcomes and entrenching existing inequalities. Women (especially in rural and informal settings) face obstacles to participation such as economic constraints, social norms and limited access to information. Therefore, participation must go beyond consultation and include:

- Accessible and meaningful civic education so people are informed and able to engage;
- Genuine consideration of public views in drafting;
- Opportunities for public review and dialogue on draft proposals before finalisation.

FWCC recommends strengthening the review process to ensure:

(i) inclusive participation of all communities, particularly women, youth, persons with disabilities and rural populations;
(ii) transparent procedures and accessible civic education;
(iii) an independent and credible review body; and
(iv) structured public consultation on draft constitutional provisions prior to implementation.

2. Electoral system: barriers to inclusive representation

The 2013 Constitution's electoral model provides for a single national constituency with open-list proportional representation model (the entire country as one electorate). While designed around "*the Big Man autocratic model*" it has produced structural barriers to inclusive,

representative democracy and has also discouraged independent candidates from contesting elections. Because representatives are not tied to geographic constituencies, accountability to local communities is weakened and voters lack a clear representative responsible for their community-level concerns.

The current electoral system amplifies party dominance and leadership popularity, as can be seen from the previous elections (especially the 2014 elections) where votes were heavily concentrated on party leaders, while other candidates entered Parliament due largely to overall party vote totals rather than individual support. In addition, the constitutional 5% threshold is exclusionary, produces "wasted votes" when parties/candidates fall below the threshold and receive no representation, potentially weakening the extent to which Parliament reflects the electorate's will.

We submit that the current model can disadvantage independent candidates, smaller parties and new entrants to politics—including many women and youth—because campaigning is national in scale and resource-intensive. Party registration requirements (including collecting thousands of signatures across divisions) as additional barriers for grassroots movements and those without established nationwide networks is also an issue. Therefore, we encourage consideration to be given to a model that is constituency-based as this can reduce campaign costs by allowing candidates to focus on their communities. Comparative experiences from Pacific countries such as Solomon Islands, Samoa and Vanuatu demonstrate that multi-constituency systems that strengthen accountability between representatives and their communities, encourage voter engagement and trust, allow candidates to emerge from and be supported by local communities and it promotes more inclusive and diverse representation.

FWCC recommends electoral reform that would:

- Move away from a single national constituency toward a multi-constituency or multi-member district system;
- Review the 5% threshold (including lowering it) to reduce wasted votes and improve inclusivity;
- Create a more enabling environment for independent candidates and smaller parties;
- Increase the visibility of women candidates through measures such as gender-balanced candidate lists, alternating male and female candidates on ballots, and prioritising women candidates' placement on ballot papers.

3. Temporary Special Measures (TSMs): accelerating women's representation

The 2013 Constitution's failure to clearly or specifically provide for Temporary Special Measures (TSMs)—such as legislated quotas or reserved seats for women—ignores the structural barriers that prevent women from participating equally in political life. Affirmative measures as legitimate, evidence-based and time-bound tools that can accelerate progress towards gender parity, and can be removed once the critical mass is reached. Fiji's reluctance to recognise TSMs can no longer be justified because Fiji has international commitments, including CEDAW, the ICCPR and the Beijing Platform for Action.

Drawing on international and regional examples (including quota systems and reserved-seat models), FWCC recommends that the Constitution explicitly permit and support TSMs. FWCC recommends for reserved seats because they guarantee representation and reduce the risk of

women's continued marginalisation in male-dominated political environments, while longer-term efforts should support women to compete for both reserved and open seats.

4. "Non-negotiable" constitutional principles

FWCC urges that constitutional reform must clearly identify and protect core democratic and human-rights principles that should not be removed or weakened. From a gender and rights perspective, it identifies the following as non-negotiable:

- Separation of powers between the executive, legislature and judiciary;
- A strong, enforceable and accessible Bill of Rights;
- Substantive equality and equity (recognising that equal treatment alone is insufficient);
- Rule of law and accountability (no one above the law);
- Separation of State and society, including protection for civil society to operate freely.

We place particular emphasis on separating the State from ethnicity, culture and religion, and we recommend that the State should treat everyone equally as citizens. This can reduce ethnic politics and division, protect cultures by allowing communities to preserve traditions without State control, strengthens civic independence, supports national unity, and allows civil society institutions to play their democratic role outside the State. FWCC also recommend strong safeguards to prevent erosion of these principles, with any limitations strictly controlled and subject to judicial oversight.

5. Secularism and equal citizenship

Secularism and a common national identity built on equal citizenship are essential to inclusion and democratic governance. Secularism is a fundamental safeguard in a diverse, multi-faith society such as Fiji. It ensures that the State remains neutral in matters of religion, protects freedom of belief, and guarantees that no individual or group is privileged or disadvantaged on the basis of faith.

In a country where communities of different faiths have long coexisted, the constitutional commitment to secularism has been essential in maintaining balance, fairness, and mutual respect. The removal of this protection opens the door to exclusion, discrimination, and the politicisation of religion in public life. This would contradict Fiji's international commitment under the International Convention on the Civil and Political Rights (ICCPR) which Fiji has already ratified.

Women and marginalised groups can be disproportionately harmed when discrimination is justified through religious or customary norms.

FWCC recommends constitutional protections that would:

- Recognise secularism;
- Prohibit any state religion or religious preference;
- Subject laws influenced by religion or custom to strict human-rights scrutiny;
- Affirm equal citizenship for all, with rights that override discriminatory practices.

6. Selection and independence of the President

FWCC submits that the method of selecting Fiji's President should ensure independence, neutrality and public confidence, given the President's role as Head of State. Selection processes closely tied to political actors, combined with limited transparency and public participation, can undermine the perceived impartiality of the office and restrict opportunities for broader representation, including for women and other marginalised groups.

While acknowledging that countries use different models (direct election, parliamentary selection, or electoral colleges), FWCC recommends that Fiji adopt reforms that:

- Establish a transparent and independent selection process for the President;
- Ensure the President is impartial/independent and not aligned with any political party;
- Consider alternative selection models such as direct election;
- Introduce criteria that promotes diversity and gender inclusion in nominations.

7. Role of the Great Council of Chiefs (GCC)

FWCC recognises the cultural and historical significance of the Great Council of Chiefs (GCC) to i-Taukei communities, however, submits that any constitutional role must align with equality, non-discrimination and democratic governance. Traditional governance structures have often excluded women from decision-making, and therefore any recognition must be consistent with gender equality and human-rights obligations.

FWCC recommends that any constitutional recognition of the GCC be explicitly limited to an advisory role, and that there it be separate from formal governance powers and decisions of the State, including appointments of the President or other state officials. It is further recommended that any constitutional provisions relating to the GCC require compliance with gender equality and human-rights standards.

8. Removal of the immunity clause (Chapter 10)

FWCC submits that Chapter 10 of the 2013 Constitution, which grant absolute immunity for actions connected to the 2006 coup and related events and limit judicial oversight, must be removed. Entrenched immunity undermines accountability, equality before the law and the rule of law, and risks denying remedies to victims of abuses—including women who may have experienced violence, discrimination or other rights violations during periods of political instability.

It may also signal tolerance for unconstitutional takeovers and thereby encourage future coups by creating expectations of protection from legal consequence. Therefore, FWCC recommends repealing Chapter 10, restoring court jurisdiction to review and adjudicate claims arising from past political events, ensuring access to justice and remedies for victims, affirming zero tolerance for coups, and aligning Fiji's constitutional arrangements with international human-rights and accountability standards.

9. Caretaker government during the election period

Having a caretaker government framework during election periods is also important as it limits a government's actions during campaigns and transitions to essential and routine administration, reducing the risk of misuse of state resources or influence over public institutions.

Fiji's lack of a clearly defined caretaker framework risks undermining electoral fairness and public trust and may disproportionately affect vulnerable groups, including women. It is FWCC's recommendation a constitutional framework that recognises a caretaker government during a caretaker period that restricts major policy announcements, significant appointments and major contractual commitments, with urgent decisions made only in the public interest and, where appropriate, after consultation with opposition parties.

10. Constitutional duty to protect women and children

FWCC proposes that the Constitution include a clear provision recognising a duty of the State and all citizens to uphold the rights, dignity and wellbeing of women and children. In a country where violence against women and girls and harmful social norms persist, constitutional recognition of the State's responsibility would reinforce zero tolerance for violence and discrimination, promote respect and equality, and support broader social transformation. Therefore, FWCC submits that there be a provision in the Constitution that allows the State to make special provisions for women and children.

11. Sequencing: constitutional review and the national referendum framework

A constitutional review should be properly sequenced with (and not precede) the enactment of a clear National Referendum framework. A referendum is a central democratic mechanism through which people exercise sovereignty over constitutional change. Without an established and accessible referendum law, participation risks becoming symbolic rather than meaningful. FWCC therefore recommends deferring substantive constitutional review until the referendum framework is enacted and operational, ensuring the law includes clear procedures for public education, participation and voting, and allocating adequate time for civic awareness and consultation before any referendum is held.

Overall conclusion

Across all sections, FWCC's central message is that constitutional reform must be people-centred and rights-based, with deliberate attention to those most affected by inequality and violence. FWCC calls for a Constitution that entrenches substantive equality, strengthens democratic accountability and the rule of law, protects secularism and equal citizenship, and removes structural and legal barriers that limit inclusive participation.

Fiji Corrections Service (FCS)

Fiji Correction Services
Time: 2.00pm-3.20pm
Date: 24-4-2026

Leighton: Honourable Member, I just welcome members from the Fiji Corrections Services, Acting Commissioner Mr. Moceisuva and his team. It is my pleasure to thank you on behalf of the Constitutional Review Commission for accepting our invitation. My name is Leighton Fatiaki.

I will be going through a few housekeeping matters. When you are making a submission, if you can just press the right side of the mic to turn the mic on, and once you have made your submission, you can press the same side to turn it off. Also, following this, the Chair will introduce the Commission and the work that is being undertaken, as well as the Commissioners will be introduced, and then we will also ask if you can also introduce yourselves. This is for the transcription purposes. Vinaka.

Mr. Valenitabua: Members of the Fiji Correctional Services, gentlemen. Welcome to the CRC, or the Constitutional Review Commission. Before we move on, I believe that we should introduce ourselves to each other. I will start with the Commission members, and I will request the Commissioners who are present here this afternoon to introduce themselves.

Mr. Beg: Thank you, Chair. Good afternoon. Commissioner of Prisons and Correctional Services, and esteemed members of that organization. My name is Conway Begg. I am an architect by profession. I see things through a different lens. Obviously, the Constitution is very important to us, and I thank you for being here. I look forward to the deliberations and your presentation. Thank you.

Dr. Fatiaki: Good afternoon, Commissioner and gentlemen. My name is John Fatiaki, Vuniwai Fatiaki. I am a rudiment and a medical practitioner by profession.

Dr. Gounder: Thank you. Bula Vinaka, Acting Commissioner, Fiji Correctional Services, and colleagues from Fiji Correctional Services. My name is Neelesh Gounder, and I am based at USP. Today, I look forward to your submissions and inputs, and I think we know each other well. We have been working through the National Development Plan, and also the Monitoring and Evaluation Framework. So, welcome.

Mr. Valenitabua: Thank you. Acting Commissioner, may I invite you and your colleagues to introduce yourselves, please. Thank you very much, Mr. Chair.

Mr. Moceisuva: Commissioners, my name is Auta Moceisuva, and I am the Acting Commissioner of Corrections.

Mr. Apolosa: Thank you, Mr. Chair and Commissioners. My name is Apolosa Vere and I am the Acting Deputy Commissioner of Fiji Correctional Services.

Mr. Batiratu: Thank you. Bula Vinaka, Mr. Chair and fellow Commissioners, I am Rusiate Batiratu, and I am the Assistant Commissioner, Administration of the Fiji Correctional Services. Thank you.

Mr. Koroi: My name is Saimoni Koroi, and I am the Personal Staff Officer to the Commissioner. Thank you. Thank you very much.

Mr. Valenitabua: Thank you very much. I've just been reminded to also introduce myself. Sevuloni Valenitabua, I'm the Chairperson of this Commission. Now, like I said, we welcome you. Thank you very much for your attendance. Before, I'd like now to explain what we are here for this afternoon.

We are a Commission appointed by His Excellency the President of the Republic of Fiji. We are appointed under the Commissioners' Inquiry Act of 1946, and we have been tasked to review the 2013 Constitution. If I may stress, it is a review, not a renewal or not a change.

We're not introducing a new Constitution. It's just a review of the old 2013 Constitution. Our task is to gather submissions, views, and thoughts from the people of our country on what they think should be included in our Constitution.

This exercise has been established so that we can redeem the drawbacks, or what we call the constitutional deficiencies, of the 2013 Constitution. Gentlemen, you might have heard, or it might have been your view personally, that most of us did not know how this Constitution was prepared, or how it came about, because there was next to nothing consultation. So, to remedy that, we have been tasked with the function, or with the task of going around the country and collecting these thoughts from our people on what should be included in the Constitution.

We can amend, we can remove provisions, we can also add provisions, but still under the amendment. Now, that is what we are here for this afternoon. We've had about 19 or 20 consultations already here at the Suvavou House.

Next week, or starting from the 4th, we will be going out from Suva. We will be visiting the islands, Lau, Lomaiviti, and Taveuni, Vanua Levu, Vitilevu, Kadavu, and so forth. We are going to take trips out so that we can have a wide coverage of consultations in order to receive submissions from our people. I've given you the name, I've given you the task, so we are happy to have you this afternoon. We are now ready to hear your submissions. Thank you.

Mr. Moceisuva: Thank you very much, Mr. Chair and Commissioners. First of all, we would like to make an oral presentation this afternoon, and then following that we will submit a comprehensive submission. We apologize that we have not submitted a comprehensive submission, but we hope that this is permissible to you in the context of this review.

For us, we now understand your role to review the Constitution, and with us this afternoon we have just come up with nine points which we believe are relevant to the review, which you will consider later in the submission of your report.

On that note, Mr. Chair and Commissioners, the first point is about the delegation of authority. As you know, in the 1997 and the 1991 Constitution, the appointment of the Commissioner and the Officers of Fiji Corrections rests with the Public Service Commission.

And from there, the Public Service Commission delegates the powers to the Commissioner of Prisons and the Secretaries of the relevant Ministries and Departments. The Constitution does not allow the delegation of authority or the powers of the Commissioner, and we would like, for operational purposes, as a discipline organization, that the powers of the Commissioner be delegated to the Deputy or Senior Officer. Because the Commissioner is appointed by the Constitutional Officers' Commission, sometimes there is inconvenience in the schedule of the Constitutional Officers' Commission, but it doesn't stop the fact that operations must be carried out on the ground.

And we are submitting, respectfully submitting, that the delegation of authority be provided under the Constitution for ease of operations.

The second point to that, Chair, is that the current policy on acting appointment for the Acting Commissioner, is the responsibility again, for the COC with the endorsement of the President. For operational purposes, we have a policy in place where every acting appointment must be payable if the period of acting appointment is 30 days and over.

On many instances, the Commissioner is required to travel overseas or to attend official functions, but the period of absence is about 7 days, and that does not qualify him to be paid the acting allowance. What we do now for administrative purposes is to issue a Delegation of Letter, but mainly to look at the mundane operational issues and not addressing Constitutional powers under the Commissioner's power in terms of appointment, discipline, and removal of the officers. So, we respectfully submit that allowance be paid to whoever is acting because of the responsibility contained in the Constitution.

Point number two, again, the Commissioner has the power to appoint, discipline, and remove officers of the Fiji Correctional Service, but the Commissioner basically acts as the prosecutor, the jury, and the judge, because all cases initiated by the Commissioner, heard by the senior officers or Commissioner, and finalized or decided by the Commissioner, there is no avenue for redress if an officer wants to redress internally in terms of the disciplinary process.

So, for now, the only avenue available for the officers is to seek a judicial review in the court, and we cannot dispute or argue against the decision of the Commissioner when it is finalized under the current disciplinary mechanism.

Point number three, Mr. Chair, is that the Constitution is also silent on the retirement age of the Commissioner. As you know, the disciplinary nature of this organization, anyone... We are respectfully submitting that the age be tagged at 65, because this is when the person is physically able to discharge his duties because of the strenuous nature of the work in the Correctional Service, and requires one with good health condition. Right now, the retirement age of the Commissioner is open. There is no age limit for the position of the Commissioner of Corrections. We are submitting that we tag 65 as the cut-off date for the appointment.

Point number four, Mr. Chair and the Commissioner, we are respectfully submitting that the position of the Deputy Commissioner be reflected in the Constitution for constitutional roles, as I have said earlier. The position is important because the Deputy is the most senior officer to perform the functions prescribed for the Commissioner under the Constitution in terms of appointment, discipline, and removal. In the absence of the Commissioner, this will ensure unimpeded operations of the command and control of the Fiji Correctional Service.

Point number five, Mr. Chair and the Commissioners, relates to the prisoners' treatment. As you know, the Fiji Correctional Service has been inundated with a big number of prisoners coming in for HIV and AIDS, and we are constrained because the facilities that we have does not provide for HIV and AIDS, hepatitis, and the mentally challenged.

This has been worsened by the infiltration of drugs into the corrections facilities, and that has heightened the apprehensive attitude of the officers and prisoners alike because of the fear of HIV. We do not have separate facilities for HIV, AIDS, and prisoners, and we are submitting that there be provision for HIV prisoners, according to their medical condition, to enable the necessary treatment in terms of the sickness that the prisoners have. In the absence of the facility, we are not able to separate them because we'll be viewed as being discriminatory against HIV, AIDS prisoners in prison.

Point number six, Mr. Chair, relates to the freedom, cruel, inhumane, and degrading treatment of prisoners under Section 11 of the current Constitution. This section limits the use of force, disciplinary methods, and control methods within the correctional facilities. And while it is necessary to prevent abuse, it can constrain officers from managing violent gang activity, drug-related unrest, and determining what constitutes a reasonable force versus degrading treatment can be legally ambiguous, potentially dangerous, indecisive action, and affect institutional security.

Point number seven, Mr. Chair, and respective commissioners, relates to the freedom from medical treatment without consent. As I have alluded earlier, we are inundated with a number of HIV prisoners. As I speak, in our last test that we carried out, in 2025, there were 173 prisoners affected by HIV.

Today, that figure could be more, in the vicinity of 200 to 250. But we are constrained of the fact that we cannot carry out mandatory tests to the prisoners coming in because of prisoner, medical officer confidentiality about information of health, and so on. And only the officer in charge are privy to that information. We respectfully request that prisoners coming in with HIV be exempted from that provision, and that will allay the fear of the treatment inside, both from the prisoners and the officers alike.

Number eight, Chair, is the right to privacy. Prisoners, this provision impacts on search procedures, surveillance, and monitoring of inmates. As you know, the prisons is there for us to ensure the safety and security of the inmates, and when the rights to privacy are constrained under the Constitution, this constrains the ability of the officers to carry out search or monitor the prisoners wherever they are in the vicinity of the prisons through electronic monitoring mode or physical observations by our officers.

And the last point, Mr. Chair and Commissioners, relates to the access to courts and fair trial under Section 14 and 15 of the Constitution. Now, some of our facilities are overcrowded.

Overcrowded because we do not have any control on the number of prisoners sent in by the courts to our facilities. And so, we have to make do with the space accommodation available. This morning, we have 2,182 prisoners, and the prison at the Remand Center has a capacity of 200, but the actual number this morning is 284. In Suva, our approved capacity is 270, but we have over 300 prisoners there. So, the overcrowding situation stretches the manpower level and also undermines the security situation of the prison.

What we are suggesting is for the courts to agree to our proposal that there be a limit to the number of prisoners sent to us. If not, then alternatives to imprisonment, or if not, put in a virtual court, for example, so that it eases the movement of prisoners, reduces the costs, and reduce the contraband that has flooded our facilities at the moment.

We have had discussions with the judiciary over the last year or so, but we respect the independence of the judiciary, and therefore we cannot control the number of prisoners that are sent to us. So, with whatever space is available, sometimes it is degrading to see the prisoners being

put in a cell meant to contain only 4, but sometimes there are 6 to 8 prisoners inside.

This is a situation that is beyond our control, and we would respectfully submit to the Commission to look into the relevant provision under Section 14 and 15 of the Constitution. With those submissions, Mr. Chair and Commissioner, that is the end of our proposal to you this afternoon. Thank you, and we know that you have questions. We will be able to answer your questions in the question and answers period allowed. Thank you.

Mr. Valenitabua: Thank you very much, Commissioner, for that submission. We request that the submission be written and then forwarded to us, as you have asked for. So, we will be looking forward to receiving a written submission on the basis of what you have addressed this afternoon before us. Now, you have raised nine points.

We usually ask questions or pass comments in relation to your submissions, and I know it is a difficult job that you have in keeping prisoners at our prisons, not only here in Suva, but everywhere else in Fiji. I know also the difficulties in relation to overcrowding. There is a lot of overcrowding, and prisoners complain about overcrowding to the court, bringing up their rights that they have to be treated.

They are not being treated, or their human rights are being breached. So, I understand where you are coming from, that is in relation to the organization and the retention of the prisoners inside the prison. In relation to your acting appointment, we can deal with that, and the delegation of authority.

But, I will ask my commissioners to give their comments in relation to your submission, and then I will cover up at the end. I have your points which I can reach with you now, but I will let my commissioners do the questioning and give their comments before I cover up at the end. Commissioners?

Mr. Beg: Thank you, Chair, through you. Thank you very much for your presentation. I hear some resonating points. As an architect with my hat on, I sympathize and feel sorry that you do not have the adequate facilities. You talk about the overcrowding and the ability to facilitate the

prisoners in your centers. Obviously, out of your control, maybe the judiciary system needs to improve their efficiency.

But I have just looked at all your points. The part about the deputy commissioner in that role is, well, first of all, independent. Being independent is a good point. We have heard this in a lot of the submissions, and it is resonating well with the separation of powers. We thank you for that and where that would sit.

So, in sections 130 and 138, I think that part of our constitution is a valid operational concern. I think the gaps the constitution gives power to the commissioner, but does not expressively clarify the delegation to the deputy senior officer.

So, I think that point is well taken. If we are going to consider an acting commissioner, then subsections 130, 135, 136 and 138 would apply in your case. So, I suggest that we would probably see that in your case. I am just trying to help assist in your direction.

The other one was, I guess I probably would not comment on this, because I am not the subject matter expert. My fellow commissioner to the left here is a doctor. I have a point on the, you raised about the HIV and other infectious diseases, which is a concern. Maybe perhaps I lean on my fellow commissioner. But, for that, I have some other points, but I will really open it up. Thank you.

Dr. Fatiaki: Through you, Chair. Thank you, Acting Commissioner and Chairman. Since it has been brought up, the issue of the Bill of Rights and the specific section is section 11.3. And this was brought up to us by the police in the context of them wanting us to include a provision so that they could test their police officers. So that, you know, at any point in time, the grant of drug testing would be available so they could test their police officers.

I guess my question to you is, do you have a similar situation with respect to testing prisons officers? I know you are bringing up the issue of testing the prisons, but I guess to address that in total, my question is, do you have a policy or do you have a work contract agreement or something that allows you to test the prison officers for drugs or HIV or whatever it is? That's the first question.

Mr. Moceisuva: Mr. Chair, through you, Mr. Commissioner, yes, we have the policy in place, but it applies to the recruits only. For serving officers, we have not made a policy in that respect because it's quite a sensitive issue to deal with.

And we've had a number of officers raising this with the relevant authorities, saying that we might be intruding into their rights under section 11 of the Constitution. That has stopped us from, but we will be respectfully submitting to that there should be a provision for HIV and AIDS. Although we have not officially have an officer suffering from the disease, but we are sure that they will be apprehensive in the community because it's not only the prisoners, it's officers and their families who live in the community and it might be a chaotic situation when we do not have a clear policy on testing for officers.

And maybe follow up to that, we also do not have a policy on the treatment and follow up in the context of the Fiji Correctional Service for both the prisoners and the prison officers.

Dr. Fatiaki: Okay, this is further to the conversation we have. So, the advice I suggested to the police was that instead of them taking and adding to the Constitution, which makes it obviously very cumbersome, that what they should do is put into the employment contract a requirement because we are allowed to do the testing if it is with informed consent.

If they consent as part of your work contract and like you say you do it for the recruits currently, I would suggest that it's something that you should apply across the board in terms of the employment contract. I say this for prisons, I say this for police, I said it for pilots who fly planes. You don't want at any point in time to have a policeman, a pilot, a prison officer under the influence of drugs.

I would presume you would not want that and therefore the right to be able to test them should be maybe addressed at the level of their contracts like you do for the recruits. Because for us to put it into the Constitution means that we could put that for the police and we could do that for the prisons and the idea is to keep this Constitution as brief and generic as possible.

I've looked at this issue with regards to the prisoners and I think you have a valid point because HIV and Hep B and other blood transmitted

diseases are very much part and parcel of the dangers for the people who are attending to them as well as to other inmates. In institutional settings where people live together, they share the same bedding often, they share the same rooms, the same facilities and I would suggest that we would then look at this.

I think that one of the things we could do for instance and my understanding is that when you become a prisoner you lose your rights, well maybe not all your rights and I couch that because obviously you don't lose all your rights but definitely the nature of prison is that you actually lose a lot of your rights and I would suggest that one of the things we could do is to alter section 3 which says every person has the right to freedom from scientific or medical treatment or procedures without an order of the court or without his informed consent etc.

If we were to write every free person or every person except prisoners, if we were to write that we would encompass it which means that in this particular instance for the purposes of treatment or testing they would lose this right if they were a prisoner or not a free person. The lawyers will be the ones to adjust that.

I just put that forward because if we were to write it into the constitution it would be in that kind of setting and that would therefore mean immediately that you would be allowed to test it and that right is taken away because he is a prisoner and because he is going to be living with other prisoners and he is carrying HIV or Hep B or something that that has implications upon him, the staff and by extension their families and everybody else and it's a dangerous environment. I don't envy you. I say in all honesty I can see where you are coming from and I can see a situation where we could make a constitutional provision for that.

I'll have my more learned colleagues who are familiar with constitutions and legality to say what I made it too simple by doing it like that but again that's an area that I would seriously consider taking into account because it would address your concern.

The only other thing I want to bring up is the issue of the age of 65. You know that there's going to be a part in the bill of rights that says you can't discriminate on the basis of age. I think the public service already has a guideline. 60. Okay.

So, can I ask is there any reason why you want to go to 65 if you want to really fit people? It might be easier for you to operate with the PSC guidelines as a civil service guideline even though you're a constitutional office if it's not defined here, you will obviously have your act that makes you a public servant and as part of that process you may use the civil service guideline.

I just again I'm putting these as solutions because for us to put it into the correction service guidelines about constitutional offices in the constitution I can see every other you know the army commander wants to put 65 or 70 and it becomes a bit irrational. We want to keep it consistent across the board but I think your point is taken.

I think it's valid. I'm just suggesting a mechanism that may be different to what you're suggesting change the constitution and write this in. I would suggest that we comply with across the board.

There's medium ground that you can. There's always exceptions even with the public service commission. I know a lot of doctors who are employed beyond 60 if the need is there and the exception is there.

So, the exception exists currently. It doesn't mean you must retire at 65 but it gives like you say a cap so that we don't have people with walking sticks turning to the prisoners. Vinaka Acting commissioner gentleman. Thank you.

Mr. Valenitabua: Just following up on what Doctor Fatiaki have left of, he suggested that we can have the provision or11.3. If you look at section 11.3 where I see it now, there seem to be no exception everybody has to be covered sunder Under section 11. All subsection 2, subsection 1, subsection 2 and subsection 3 and even they are named or the groups of people are named from any source at home, school, work or in any other place.

Now any other place includes prison. So maybe we look at that after our deliberations. Maybe we'll add a proviso provided that this right here is limited something which we have been talking about the limitation of rights is limited to those who are incarcerated or to those who are wherever else they are.

We'll have to look at that but for prison I understand we should include it in the constitution because knowing prisoners and how they argue

about their rights, we cannot suppress their rights until we have that right suppressed by the constitution itself and the courts will look into that and the lawyers will have a field day about that. So, we'll have a look at that. Just adding a proviso to section 11.

After subsection 3 we can then say provided that this group of people are excluded from this if necessary. We might add necessary there if necessary. So, if we didn't say inspection time so that they can be tested for HIV, you come. You lose your right here because of the constitution. Just take it on from where Dr. Fatiaki left us. Thank you.

Dr. Gounder: Thank you Chair. Thank you, Commissioners prisoners and colleagues. So, on that basis I'm just looking at the prisons act, corrections act. So, section 26.1 of the act actually prohibits you from doing that. So, if you can have, so it talks about upon admission and immediately before discharge each prisoner shall be examined by a medical officer but there shall be no program or policy of compulsory testing of prisoners to determine the HIV or AIDS status. So, this is I think the limitation in the act here. So, with the provision that the chair has suggested if that goes through the constitution and then you can then move ahead to modify this, I guess.

The other point is you talked about the retirement age. It might be better idea to include it in the act rather than in the constitution. Similar way is provided for other agencies. Just a suggestion and something for the others to think about. Because one of the things we've been talking about is to make our constitution more linear while containing, maintaining the core fundamental principles.

So, something to think through to include that in the, which is in the normal fashion. For example, the government of the reserve bank, the retirement age is not applicable as the civil service but also not in the RBF act. But they have this retirement age has been fixed by the board of the RBF which has the powers to do that.

So, in your case you don't have a board so it might be, an act would be perhaps a better way to fix the retirement age rather than the constitution because we don't have for any of the independent agencies. What's your thought on that?

Mr. Moceisuva: Thank you very much. The commissioner is appointed by the president of the constitution but all other officers, deputy is appointed by the commissioner.

Unlike the civil service, they are appointed by the ministry of civil service. So, they dictate the retirement ages. So, the Commissioner there is no retirement age as per the constitution. For the Fiji Correction Service, we have taken our ques from the Ministry of Civil Service. We have in our policy ;60 is the retirement age.

Dr. Gounder: So, what is happening, what is preventing you from changing the policy to 65?

Mr. Moceisuva: No, because I'm not the appointing authority.

Dr. Gounder: So, where did the policy come from?

Mr. Moceisuva: The policy comes from PSC.60.

Dr. Gounder: Okay. 60, yeah.

Dr. Gounder: So, they apply the policy to other civil service?

Mr. Moceisuva: Other civil service.

Dr. Gounder: But PSC does not do that for other agencies. For example, the RBF, FRCS. So, I'm surprised they're doing it, you know, in your case.

Dr. Fatiaki: No, they're not doing it. They are not doing it.

Dr. Gounder: Oh, you are adapting. No, if they are adapting, then it should be easy for them to change it. What the acting commissioner is suggesting is that PSC is, is it the PSC or Fiji Correction Service which is?

Mr. Moceisuva: No, it's the Fiji Correction Service. Okay.

Dr. Gounder: So, what is stopping you from changing it to 65 if you are adapting it?

Mr. Moceisuva: No, no, I'm not saying that we, I'm saying it for the, for the commissioner. Okay. Yeah, yeah, for the commissioner.

Dr. Gounder: You can change it to 65.

Mr. Moceisuva: No, no, it's appointed by the president. The Constitutional Officers Commission.

Dr. Gounder: Okay.

Mr. Moceisuva: Recommend to the president.

Dr. Gounder: So where does the retirement age for the Constitutional Services Commission come from? Because for RBF, it doesn't come from.

Mr. Moceisuva: No, the Constitutional Officers Commission doesn't have a retirement age. Okay. We are just suggesting it.

Dr. Gounder: Okay. So, for RBF, for example, the board has fixed the retirement age as 65, sorry, 67, sorry So I'm just suggesting you might have, giving an option to consider. Rather than having a constitutional provision, there may be an easy way out to explore. Just trying to help.

Mr. Moceisuva: Yes. Point taken. Yeah.

Dr. Fatiaki: If I may just touch on that, Chair. Dr. Gounder, I think Assistant Commissioner is very clear about this. What he's saying is that the Commissioner of Prisons is appointed by the Constitutional Officers Commission and, you know, selected, I guess, and then the president actually appoints him. Because he's appointed by him, there isn't like a board that can give you a guidance as to when he retires.

Dr. Gounder: So, I think it's the difference in having a board here because the Reserve Bank of, Governor of the Reserve Bank is appointed under the same conditions as the Commissioner of Fiji Correctional Service. RBF has a board.

Dr. Fatiaki: I'm sorry, does the Correctional Service have a board?

Mr. Moceisuva: We don't have a board. Okay. It's the president.

Dr. Fatiaki: That's correct. And if they don't have a board, obviously they can't make a decision and, you know, they're asking that it be incorporated into the Constitution under the appointment of the Commissioner of Prisons.

Dr. Gounder: The adoption of 60 years of retirement age does not come from the office of the president. It comes from the PSC.

Dr. Fatiaki: Yes. Yes.

Mr. Moceisuva: I agree. That is for the deputy? Down. Down. Okay. It is from the PSC. Yeah. But for the Commissioner, it comes from the president. Through the...

Dr. Gounder: Okay. Now I see the point.

Dr. Fatiaki: So... I want to ask the question about the deputy because I noticed there isn't a comment here about a deputy and I think you've alluded to including it?

Mr. Moceisuva: Yes. If I may ask, the justification for that because I understand from this that the Commissioner can appoint anybody to any rank. Yes, he can. But for the deputy, I can't appoint him to be the acting Commissioner.

It is the COC that appoints the Commissioner or any acting Commissioner. Not the COC but the recommendation of the COC to His Excellency the President. I was just suggesting if some delegation can be given to the Commissioner to simplify operational matters when he goes on leave or goes on official duties.

Dr. Fatiaki: Thank you, Acting Commissioner. And that point is taken and we will consider that. I say that with the benefit of having heard the same request come to us from the High Court where the head of the Court of Appeal doesn't have that discretionary power to delegate it.

It's come to us from the, I think, was it FICAC that wanted the ability to be able to...

Dr. Gounder: Police.

Dr. Fatiaki: Oh, police, to designate somebody because it hadn't been specified and I think we will just along the same lines that we are considering their request where there is a gap, we will consider yours. Thank you.

Mr. Moceisuva: Thank you very much. Might I just add, Mr. Chair, that because of the conditions in the prisons and also some of the shortcomings in terms of the design and layout of the prisons not being compliant with the international standards, most prisoners are using this as ground for bail. You are familiar with this, Mr. Chair, that perhaps there are two ways through which this can be addressed.

One, through a submission to the Ministry of Finance to improve the facilities or through the courts to explore alternative sentencing options and the fast-tracking of the Parole Board, which is now being discussed with the Ministry of Justice, where they will be responsible for the administration and the supervision will be our responsibility.

And that is to say that we will have an extended role, that instead of only looking after prisoners inside, we will also be looking after prisoners through the Parole Board who will be released out in the community. This is just something that comes to mind when we are suggesting Section 11 of the Constitution.

Mr. Beg: Sorry, chair, can I respond to that? So, you are overcrowding the facilities. I guess I alluded to say that in the beginning, but Section 13 also applies for you to look at that as well. There is no explicit obligation on the State to provide adequate facilities.

That is in the current framework at the moment. So, the risk is the potential constitutional breach, as you highlighted. So, I think the recommendation of the State is to ensure humane detention conditions, if I am hearing you correctly.

I agree with you, sir. So, I think maybe you could suggest a line like that as a new clause, because it will force the government to ensure that facilities are adequate. Does that make sense? It makes sense. Thank you, sir. Thank you.

Mr. Beg: This comment is addressed to my fellow Commissioner. I refer him to Section 13, subsection 1J, and it says that every person who is arrested or detained has the right to conditions of detention that are consistent with human dignity, including at least the opportunity to exercise regularly and the provision at State expense of adequate accommodation, nutrition, and medical treatment. So, it is covered

already there. What I am saying, you don't need another provision in the Constitution.

This tells the State you must provide.

Mr. Beg: This is how we interact, yes. My apologies, but I think what I am saying is that subject to 13, but then there is like 11. It doesn't make sense, right? If you go to Section 11, subsection 11, you are saying that there is no explicit obligation of the State somehow. That is why I am confused, and that is why you are probably raising that as well.

Mr. Moceisuva: So, I think the point is valid. Section 11. Yes.

Mr. Beg: That is what I think, but again, I am not a lawyer. I rely on my chairman. But I think like an architect, and I can look for provisions. Thank you.

Mr. Valenitabua: I am taking you back to the appointment of the Assistant Commissioner of the Deputy Commissioner. Now, Section 131, Section 130, subsection 4. The Commissioner of the Fiji Correctional Service is appointed by the President on the advice of the Constitutional Officers Commission. You have told us that.

Mr. Moceisuva: Yes.

Mr. Valenitabua: Now, that places the Commissioner at the head of the Fiji Correctional Services. And then, on Subsection 5, the Commissioner of the Fiji Correctional Services is responsible for A, the organization and administration of the Fiji Correctional Service. This is 5A. And 5B, the deployment and control of its operations. This is the Commissioner I am talking about.

Now, is it not possible, in your experience, I don't know, I am asking you. In your experience, can or can't you, as Commissioner, utilize Subsection 5A, organization and administration, to appoint a deputy whenever you anticipate or when you are about to leave for a long period of time?

Mr. Moceisuva: Yes, I can do that, sir. But the point is, I can't appoint him as Acting Commissioner.

Mr. Valenitabua: He can be deputy.

Mr. Moceisuva: He can be deputy, but he will not be able to exercise my powers. That is why, anyone acting on my position must be appointed by the President through the COC. I can't, I can delegate to him, but he can't exercise my powers.

Mr. Valenitabua: Where does it say that? It is in...

Mr. Valenitabua: The deputy. It has to be, the deputy has to be appointed by the COC.

Mr. Moceisuva: Because he will be the Acting Commissioner.

Mr. Valenitabua: Where does it say that? It's not shown in the Constitution.

Mr. Moceisuva: It's not written?

Mr. Valenitabua: Not written. In the legislation?

Mr. Moceisuva: It's not written.

Dr. Fatiaki: Ah, okay. Which, again, alludes to wrestling with this, and I see exactly what you said. The only question is, how do we write it into it? Like I said, we will have drafters and legal people, but your point that you are putting is a very valid one. You can definitely deputize to him, but we cannot call him to exercise the Acting Commissioner.

Mr. Moceisuva: For example, there are functions that only the Commissioner can exercise. Financial decisions, HR, fire, high-end fire, discipline, appoint and remove. And those functions need to be on-going on a daily basis. In the absence of the Commissioner, they stand still until the Commissioner comes back to the office.

Mr. Beg: So, in that section, you are saying to recognize it in the Constitution or to be written in law?

Mr. Moceisuva: I am not a lawyer, sir, but this is something that I feel.

Dr. Gounder: I got something here that will be useful for the interaction. So, Section 5 of the Prison Act, Section 5.1.E, I am relying on Chair's interpretation. It says, the head of Fiji Prisons and Corrections Service shall be the Commissioner of Prisons, who shall have the power to make

delegations of the Commissioner's authority to any office of a written instrument of delegation.

Mr. Valenitabua: Read that again.

Dr. Gounder: The head of the Fiji Prisons and Corrections Service shall be the Commissioner of Prisons, who shall have the power to make delegations of the Commissioner's authority to any office of a written instrument of delegation. This is in your Act.

Mr. Moceisuva: Yes, that applies to cases of disciplinary matters. Well, my point is exercising of my power under the Constitution, which is to appoint, discipline and remove.

Mr. Beg: I think it's only administrative role only in what it says in the Act. So, I think that's probably why the acting Commissioner is bringing this up.

Dr. Fatiaki: Yes, no, again, I take the point. As the Commissioner, I think you've got a very valid point. I think we really have to, because it's almost like, if we were to adopt that suggestion, it's almost like we're taking the Act and imposing it on top of the constitutional appointment of the Commissioner of Prisons. And I think we need to look at that carefully and see how we can incorporate it so that it's part of the Constitution.

So, there's no misinterpretation of what part of the Commissioner's powers he can exercise, would be disciplined but maybe not for finances. No, I think that needs clarification. And obviously, you're coming from a lived experience. You're not coming from, like us, hypothesizing. You have obviously experienced this in terms of the difficulty in operations. And I think your point is taken and hopefully we'll address it.

Mr. Moceisuva: Thank you, sir.

Mr. Valenitabua: Sorry. We are going to discuss it. I still have something not clear to me. Anyway, we'll leave it at that. Please send us your submissions in relation to that. Yes, do you have anything else?

Mr. Beg: Sorry, Chair. I'm a great advocate for facilities and under the HIV hepatitis thing, Dr. John is the expert in this area, but in the Prisons Act there's no address to adequately look at this, according to, am I correct

in saying that because under sections 11, 13 and 26, you know, the risk is safety versus discrimination. Conflict again, going back to them. So, what do we do there? Do we consider introducing a medical classification protocol? How do we deal with that? It's late in the afternoon.

Dr. Fatiaki: Chair, through you, I think we've addressed it. As far as staff is concerned, we've discussed this. We recognize that your recruits are required by their recruitment process to be subject to the necessary testing.

You pointed out that your other staff that established were not, and I suggested to you that the best way to address that as far as testing for staff would be to put it into their work contract renewal or whatever, make it a policy, and then write it into your policies at that level.

The second one had to do with the mandatory testing of prisoners, who would then fight you on the grounds of their Bill of Rights under 11C, 11.3, and that part of it was what I suggested in terms of, and I haven't come to the end. I think our chair alluded to it, but, you know, from a simple person who speaks English, if I wrote every free person has the right to all these things, then you could make a case that every incarcerated person is not free, and this doesn't apply to them, and they can't demand that they not be treated or tested, because you've changed it.

Or every person except prisoners has the right to all of these things, and that was my suggestion as far as the testing for prisoners was concerned, and treatment, because they brought up the issue of treatment. If the prisoner doesn't want to be treated, and then expose all of them to a risk, well, that's correct, and that's why we took the wardens part and put that into the act, but under the prisoner, we'd be addressing it from the point of view of protesting against the Bill of Rights being infringed, we suggest we put it into the Constitution. Thank you.

Mr. Valenitabua: All right. Commissioner, we've heard your submissions. I see what the submissions are about, the right to privacy. There's no right to privacy inside prison. The access to courts and fair trial. The usual complaints over overcrowding.

The virtual courts. Can you explain to us, please, the virtual courts and the limitation of inmates? How will that work out practically, considering that inmates are convicted persons, sentences have been passed on them, and they have to serve these sentences unless they are released early, and these virtual courts are utilized only when the person is still on remand, I believe. Or when he goes on appeal.

When a person is convicted and goes on appeal, then we use virtual courts. How does it work? How will that assist in reducing the population in prison at any one time?

Mr. Moceisuva: Thank you, Mr. Chair. Perhaps it's not going to reduce the population. It is going to make the life easy for the officers in terms of the safety of the inmates. It's going to reduce costs of transportation in and out. As you know, for maximum prison, when there is a trial in the high court, we have to take the prisoners every day to the court. Naboro to Lautoka. Every day. If it is a one-week trial, or if it is two weeks or so. And it is also going to help us in the reduction of contraband for the remand prisoners, because they are handled by the police.

And there's a whole host of ways through which prisoners bring contraband, some of which include using cavity, body cavity, to conceal contraband, such as mobile or drugs, to come inside. And we have suggested a few times to the judiciary that we use the virtual court or the Zoom court to avoid these things. But I think we respect the independence of the judiciary for that matter.

And I think their favor is for the person to appear in person to the court before the magistrate or the judge. But, Mr. Chair, as you know, during COVID, when the movement was limited, we used to have this virtual court. But then it died out when the operations resumed normal.

And now we are required to bring prisoners back to the court. As you might remember, back in the days, through the reform program of the judiciary, one of the main efforts was to see if the possibility of using virtual court could be applied. That is our suggestion when we say that we adhere to the provision of the Constitution for fair trial. Access to fair trial of the prisoners.

I think the judiciary has other views, that they should be presented physically to the court for the judge or magistrate to hear the case as opposed to the virtual court.

Mr. Valenitabua: In relation to overpopulation, we are talking about here the right to freedom of inhuman treatment and all that. Overpopulation. There was a move by the courts some time ago where they would discourage people being sent in for remand. I remember that time. Is that...

Mr. Moceisuva: Yes, we have also raised this with the judiciary through the Chief Justice, Chief Registrar. And I think it depends on the individual magistrates and the judges. We circulate, at one stage we were circulating the daily master that we had. But it just didn't filter out for them to really help in the reduction of overcrowding. And you know, overcrowding is an ongoing issue in the Fiji Correction Service.

Mr. Valenitabua: Alright, thank you. I think we have come to the end of our session. We have another session after this at 10.30. So, we've heard you. I'm sure my fellow commissioners have recorded what or have noted what you have given us. You have presented to us this afternoon. And we will surely deliberate on it. Particularly the deputy. The deputy post. I've been reading the provision. There might be a point there for addition of that into the constitution. There might. So don't take my word for it. That is it. We thank you very much for attending this afternoon. And we'll be waiting for your written submissions. Thank you.

Mr. Moceisuva: Thank you, Mr. Chair and the committee.

----------End of Session [24-04-2026] ----------

FIJI CORRECTIONS SERVICE

NATIONAL HEADQUARTERS
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In reply please quote C/1 1/2

27 March 2026

The Chair
Constitution Review Commission
Level 09, Suvavou House
SUVA

Dear Mr S. Valenitabua

SUBMISSION ON BEHALF OF THE FIJI CORRECTIONS SERVICE

Introduction

1. I wish to extend our sincere appreciation for the opportunity afforded to the Fiji Corrections Service to make a submission before the Constitution Review Commission. On behalf of the Fiji Corrections Service, I respectfully submit our views regarding Section 130 of the 2013 Constitution of the Republic of Fiji and other constitutional provisions that have, in practice, hindered our ability to fully discharge our statutory and constitutional responsibilities.

2. The Fiji Corrections Service is mandated under the Fiji Corrections Service Act 2006 to provide for the safe custody, welfare, rehabilitation, and reintegration of offenders committed to our care by the courts. In carrying out this mandate, we encounter practical, operational, and legal challenges arising from constitutional gaps or constitutional protections that, while necessary in a democratic society, require clearer wording or reasonable limitations in the correctional environment.

3. This submission therefore seeks the Commission's consideration of amendments or clarifications that will strengthen the governance, command, operational efficiency, and institutional security of the Fiji Corrections Service.

Retirement Age of the Commissioner of Corrections

4. The 2013 Constitution is silent on the retirement age of the Commissioner of Corrections. We submit that the Constitution should expressly prescribe a mandatory retirement age of 65 years.

5. The office of the Commissioner of Corrections is physically, mentally, and administratively demanding. The role not only involves executive leadership and policy decisions but also requires the Commissioner to undertake regular inspections of correctional centres throughout Fiji, oversee inmate rehabilitation programs, and inspect external inmate deployments such as cane-cutting operations and community work programs.

6. A constitutionally prescribed retirement age will ensure succession planning, leadership renewal, and the appointment of suitably qualified individuals capable of effectively carrying out the functions of the office.

7. Further, if a clear retirement age is not constitutionally prescribed, it creates room for exploitation and potential corrupt practices in the future whereby a Commissioner may continue serving indefinitely—potentially until 80 years of age or until such time he or she personally determines they are no longer capable of discharging the functions of office. Such uncertainty may undermine institutional performance and delay opportunities for capable successors.

Position of Deputy Commissioner of Corrections

8. We submit that the position of the Deputy Commissioner of Corrections should be expressly recognized in the Constitution.

9. The inclusion of this office in the Constitution will provide legal certainty and continuity of command and control in the administration and operations of the Fiji Corrections Service when the Commissioner is absent, overseas, or otherwise unable to perform his or her duties.

10. The absence of constitutional recognition creates operational difficulties, particularly where urgent approvals are required for payment processing, procurement of food and medical supplies, emergency operational deployments, and other critical matters affecting the welfare of inmates and the security of institutions.

11. Constitutional recognition of the Deputy Commissioner will also prevent the downgrading or removal of this critical office by future office holders. This has occurred previously when the role was downgraded to Assistant Commissioner level, affecting command structure and institutional effectiveness.

Delegation of Commissioner's Authority

12. The Constitution is currently silent on the delegation of the powers and authority of the Commissioner of Corrections.

13. The Commissioner of Corrections is appointed by the President upon the recommendation of the Constitutional Offices Commission and exercises authority vested personally in that office. In the absence of an express constitutional provision, the Commissioner may not lawfully delegate his or her authority to the Deputy Commissioner of Corrections or another senior officer.

14. This creates serious administrative and operational delays in urgent matters including:

a. approval of payments and purchase orders;

b. emergency security and operational decisions;

c. urgent staff deployment or transfer;

d. disciplinary proceedings against officers and employees; and

e. authorization of high-level institutional actions.

15. The Fiji Corrections Service has an internal disciplinary system in which the Commissioner may hear and determine disciplinary cases involving officers and civilian employees. We submit that the Constitution should expressly permit lawful delegation of such powers to the Deputy Commissioner or another designated senior officer in the Commissioner's absence.

16. We further submit that the wording should refer to "employees of the Fiji Corrections Service" rather than merely "officers" so as to cover both uniformed and civilian personnel.

Segregation of Inmates with Medical Conditions

17. The Fiji Corrections Service increasingly receives inmates with serious medical conditions, including communicable diseases such as HIV. Prisons are closed environments where inmates live in close proximity and interact daily. The risk of disease transmission is heightened due to overcrowding, close contact, and high-risk behavior such as needle sharing and unprotected sexual activity.

18. We submit that the Constitution should provide reasonable leeway for the segregation of inmates according to their medical conditions where necessary for:

a. treatment and monitoring;

b. centralized medical care;

c. prevention of transmission;

d. efficient use of medical resources; and

e. protection of other inmates and staff.

19. Currently, the legal framework limits the ability of the Fiji Corrections Service to separate inmates based on HIV status due to anti-discrimination provisions. While we acknowledge the importance of non-discrimination, the correctional environment requires practical exceptions to protect public health and institutional safety.

Freedom from Cruel, Inhuman or Degrading Treatment (Section 11)

20. Section 11 significantly limits the use of force, disciplinary methods, and control measures within correctional facilities.

21. While this protection is necessary to prevent abuse, it presents operational challenges in managing violent inmates, gang activity, riots, and drug-related unrest. Inmates frequently use this constitutional protection to challenge the lawful use of force by officers to compel obedience and maintain discipline as authorized under the Corrections Service Act 2006.

22. As the Constitution is the supreme law of the land, inmates often classify lawful and reasonable force as assault or degrading treatment and use this as grounds for complaints or legal action.

23. This creates legal ambiguity regarding the distinction between:

a. lawful and reasonable force; and

b. cruel, inhuman, or degrading treatment.

24. Such ambiguity may discourage officers from taking decisive action in dangerous situations, thereby compromising institutional security and discipline.

Right to Privacy (Section 24)

25. Section 24 affects the ability of officers to conduct searches, surveillance, and monitoring of inmates.

26. Institutional security often requires intrusive searches, including:

a. body searches;

b. cell searches;

c. mail monitoring; and

d. monitoring of inmate communications.

27. These measures are necessary to prevent the smuggling of contraband, drugs, mobile phones, and weapons into correctional facilities. Strict interpretation of privacy rights may limit such actions or expose officers to legal challenges. We submit that constitutional wording should provide reasonable limitations on privacy rights in correctional settings where security concerns justify such actions.

Freedom from Medical Treatment without Consent (Section 11)

28. This provision is particularly challenging in light of increasing cases of drug dependency and communicable diseases such as HIV.

29. Correctional institutions are closed environments where there is close interaction between prisoners and prisoners, as well as prisoners and officers. We submit that all inmates should be subjected to mandatory medical testing upon admission and periodically thereafter. Further, confidentiality provisions relating to communicable diseases should be reasonably waived or limited within the correctional environment so that affected inmates may be identified and, where necessary, segregated for:

a. monitoring;

b. treatment management;

c. prevention of spread; and

d. protection of staff and unaffected inmates.

Such measures are necessary to ensure institutional safety and effective medical management.

Access to Courts and Fair Trial Rights (Sections 14 & 15)

30. These rights allow inmates to challenge disciplinary decisions, conditions of detention, and administrative actions of the Fiji Corrections Service. While these protections are essential in safeguarding justice, they also increase the administrative and legal burden on the Service.

31. Frequent legal applications require:

a. extensive documentation;

b. legal compliance;

c. procedural consistency; and

d. allocation of limited institutional resources.

32. We submit that clearer procedural safeguards and internal dispute mechanisms should be recognized to reduce unnecessary litigation while preserving inmates' rights.

Conclusion

33. The Fiji Corrections Service fully supports the principles of democracy, human rights, and the rule of law embodied in the Constitution of the Republic of Fiji. However, the unique nature of correctional work requires practical constitutional provisions and reasonable limitations that enable the Service to maintain security, discipline, rehabilitation, and public safety.

34. We respectfully request that the Constitution Review Commission carefully consider these submissions and recommend the necessary amendments and clarifications to strengthen the Fiji Corrections Service in carrying out its constitutional and statutory mandate.

Yours faithfully,

A. MOCEISUVA
Acting Commissioner of Corrections

Fiji Council of Social Services (FCOSS)

Fiji Council of Social Services
12.15pm-1.50pm
Date: 24-04-2026

Leighton: Members of Fiji Council of Social Services, on behalf of the Chair of the Constitutional Review Commission, I would like to take this time to thank you for accepting our invitation and for making the time to make submissions today. My name is Leighton Fatiaki, I just want to go through a few housekeeping matters. For those of you, when you want to use the mic, please just press the right side of the mic to turn it on, and the same side to turn it off.

Our Chair will begin by introducing the Commission and the work that they will be undertaking, as well as the Commissioners who are before you today. Following that, we request also if you could also introduce yourselves, just for the record, for transcribing purposes. Vinaka.

Mr. Valenitabua: Bula vinaka, members of the Fiji Council of Social Services. Before I go on, I will ask my fellow Commissioners to introduce themselves first, before I make the opening address. We'll start from the far right.

Mr. Beg: Thank you, Chair. Welcome, everyone. My name is Conway Beg, I'm an architect by profession, and I'm certainly looking forward to the consultation process, both inward or narrow, and wide, throughout Fiji, and I welcome you. Thank you.

Dr. Fatiaki: Good morning, FCOSS members. I'm Dr. John Fatiaki, Vuniwai Fatiaki. I'm your neighbor in Waimanu Road. That's my clinic, and I'm Rotuman, and I look forward to getting your presentation. Thank you.

Dr. Gounder: Bula Vinaka, members of FCOSS, and a special welcome to my good friend, Vani. My name is Neelesh Gounder, and I'm with USP. Today I look forward to your submissions for the consultation review.

Mr. Valenitabua: Thank you. Vinaka Commissioners, members of FCOSS, if I can call you that, we are indeed pleased and we're happy that you are here before us this morning. The invitation was sent out.

We appreciate your acceptance, which is manifested by the presence of your members here this morning. We have invited you to come in and present to us your views about the 2013 Constitution. You will

understand that it is our function, our task, given to us by His Excellency, the President of the Republic of Fiji, to review the 2013 Constitution, not to change it, to review.

So, we are looking at review and amendment, not throwing it away and bringing in a new one. We have to differentiate that because some people are thinking that we are trying to create another Constitution. The CRC is an independent commission.

We have to work independently, although we were appointed by the President under the Commissioner of Inquiries Act. The Commission's task is to collect what you might call data these days through submissions and through consultations, which we could use for the review of the 2013 Constitution. We can remove provisions, we can amend provisions, and we can keep provisions intact in the Constitution.

So, that is our work. We have been in consultation with selected groups here at Level 9 Suvavou House for the past three or four weeks. When I say selected groups, we send out invitations to the groups, such as yourselves, to come and assist us in this huge task that has been placed on us.

So, this morning, all we are going to do is to listen at first and hear what your views are. I'm sure you are here prepared, you have come prepared in relation to provisions of the Constitution, which you may want to comment on or make suggestions on. And then later on, at the end of your submissions, we might have questions for clarification's sake and maybe reflections for general knowledge on how we can all support each other in relation to the provisions that you might have discussed.

So, with those few words, I welcome you again, and the floor will be yours. Make use of it. And then I'll pass the mic to you.

Ms. Catanasiga: Thank you. Vinaka Vakalevu, members of the Commission and the Chairperson, thank you for the warm welcome this morning. We appreciate the opportunity to present before you.

I've come with staff and members' representation from what we call the National Executive Committee, which is the equivalent of the Board. We've decided to introduce ourselves at perhaps the segments where

reps will speak. They will introduce themselves before they comment, so I hope that the Secretary is okay with that.

So, I will perhaps commence introducing myself. My name is Waninata Vani Catanasiga, and I'm the Executive Director for the Fiji Council of Social Services. FCOSS, with its long history in development, organizing structure in Fiji, and of course the recent projects we've implemented, we are committed to advocating for community realities within the constitutional framework.

We acknowledge the complexity of constitutional issues, and we appreciate the opportunity to present our submission, even if some points may transcend purely constitutional matters. Our overarching theme emphasizes the critical need to bridge the gap between the constitutional promises enshrined in law and the lived realities of communities across Fiji, whose daily lives are intersected with these broad constitutional aspirations. Generally speaking, the Constitution must reflect the values of we the people, and it is in hearing, capturing, and advancing the views of the people that we can claim a document that is by the people, for the people.

In Chapter 1, we would like to maybe strongly support the current iteration of the 2013 Constitution that affirms the necessity of a secular state that protects all faith, while ensuring social welfare remains inclusive and neutral. This principle is fundamental to fostering an equitable society where all citizens, regardless of their religious beliefs, are treated equally under the law and have access to public services without discrimination. However, we recognize the need for more awareness on what a secular state entails.

There have been a lot of concerns raised on what this means on the ground, and because there were very little discussions on a secular versus a Christian state, the confusion continues or continues to perpetuate fears in the community on these matters.

Mr. Tokoni: Bula Vinaka members of the Commission, I'm Bula Vinaka Chairman. My name is Josiah Tokoni, and I'm the Program Manager for the Fiji Council of Social Services.

In FCOSS, we advocate for the localizations of the responsibility to protect all R2P and atrocity preventions. R2P is an international law

norm that calls on the state to protect its people from all types of atrocity crimes. While these crimes are enshrined in the Rome Statute and involve the gravest of criminal wrongs, there are ongoing triggers such as political instability, discrimination, et cetera, that can lead to the commission of these crimes.

History shows us through Nazi Germany, Cambodia, Rwanda, how triggers eventually escalate to atrocity crimes. This call involves explicitly supporting stronger partnership between the state, civil society organization, faith-based organization, cultural organization, traditional structures of our and international partners. The goal is to prevent the commission of all incitement to commit atrocity crimes in Fiji, thereby broadening human rights protections at the national and specifically at the community level.

Ms. Dilanaivota: Bula Vinaka to the members of the Commission and to Mr. Chair. My name is Seini Dilanaivota. I'm originally from Kadavu. I'm an intern at the Fiji Council of Social Services. Chapter 2, Bill of Rights.

General concerns. The current Bill of Rights contains numerous claw back clauses where guaranteed rights are subject to significant limitations, often based on the availability of the state resources. This undermines the effective realization of these fundamental rights, such as the right of health and environment rights. While rights do not operate in a vacuum, the limitation must be within the values of Fijian society, the democratic ideals that shape it, and international law.

FCOSS, calls on the need to scale back on this limitation clause to ensure fundamental rights and freedoms are generally protected and enforceable. FCOSS, encountering trafficking in person, CTIP projects, has revealed that enforcement of these rights is severely hampered by a lack of awareness in rural and remote communities. We submit that the state must be mandated to fund community-level education and socialization programs to ensure these rights are not merely paper-level education, not merely paper protections, but are understood and actionable by all citizens.

Based on the unmet legal needs research conducted with the Fiji Law Society, we propose a justice pipeline framework. This framework aims to identify and implement projects that address identified gaps in the legal aid, ensuring that justice is accessible, particularly to the most

marginalized segments of society. Joined from the EFES electoral submission, we propose expanding political rights provisions to explicitly guarantee the right to vote and stand for office for all persons, including persons with disabilities.

FCOSS, calls for the establishment of accessibility standards for electoral participation and embedding a constitutional obligation for the state to remove structural and systematic barriers to participation.

Furthermore, FCOSS, advocates for constitutional principles requiring democratic governance of political parties, gender-balanced leadership structures, and provisions preventing indirect discrimination through excessive financial or procedural requirements. Tendency conditions must be reasonable, proportionate, and inclusive.

Mr. Rasili: The Commission, the Chairman of the Commission, *'Miau Sa Bulare'*, I'm Sepesa Rasili, the National President of the Fiji Council of Social Services. Insights drawn from our initiatives concerning black sand and deep-sea mining underscores that the adverse effects, impacts of resource extraction are significantly compounded by climate change and natural disasters. Furthermore, our 'Vakabula Vanua project', which focuses on fostering strong kinship and building resilient communities, emphasizes the critical need to recognize and integrate existing social structures into these processes.

It is imperative, therefore, to safeguard autonomous decision-making bodies such as The Bose ni Mataqali, Bose Vanua, from being undermined or marginalized by quasi-government entities. To ensure equitable resource management.

FCOSS, emphasizes that the ownership of minerals must be restored to the traditional landowners. Additionally, it is essential that the Constitution guarantees the principle of free, prior, and informed consent, or FPIC, for any development projects or extractive activities proposed on their land.

Based on our public finance management and Vakatawa Noke work, we propose defining the social contract within the Constitution. This definition should ensure that poor planning and decision-making by the State do not excuse its failures to provide essential rights such as minimum wage, housing, and health. Thus, constitutionally guaranteed

social protection flaws serve as a critical mechanism for the effective realization and enforceability of these vital socio-economic provisions.

FCOSS, submits that the Constitution must guarantee free, prior, and informed consent for any project that poses a risk of environmental damage. Furthermore, the application of FPIC should not be limited solely to landowners or resource owners. Instead, it must be extended to include all community members who may be environmentally, socially, or economically affected by such developments.

FCOSS, recognizes the push from Pacific States to include ecocide as an atrocity crime under the Rome Statute. In this regard, environment crimes must be emphasized in light of the State's ongoing commitment to address climate change as well as to show regional and global leadership in this area.

The Human Rights and Anti-Discrimination Commission is a vital institution under the Bill of Rights. However, challenges exist regarding its independence and effectiveness, particularly concerning compliance with the Paris Principles.

FCOSS, submits that the Constitution should clarify and strengthen the Commission's role as a watchdog for the protection and promotion of rights, ensuring its independence and full compliance with international standards, especially in the appointment of commissioners, which is one of the current challenges identified by the Accreditation Committee on NHRIS, resulting in Fiji's ongoing classification as a B-State Commission, a drop from its 1997 status as an A-Commission.

FCOSS, proposes formally recognizing and providing constitutional protections for community-based emergency responders within constitutional emergency frameworks. This ensures that local initiatives and responders are empowered and protected during crisis, enhancing resilience at the community level.

Mr. Rika: Bula Vinaka Sir, My name is Laitia Rika. I am the Vice President for FCOSS. FCOSS recommends reviewing sections 52 and 54 to allow flexibility for multi-constituency and mixed electoral systems, which would facilitate greater geography, geographic and community-based representation. Any changes to the electoral system must constitutionally require broad public consultation and consensus,

building to ensure legitimacy and public trust. Reform and provisions governing the Electoral Commission and supervisors of elections are necessary to ensure transparent, merit-based appointments with security of tenure and protection from political interference.

FCOSS recommends that constitutional requirements for gender balance and diversity within electoral bodies should also be introduced to enhance representatives and fairness.

The Executive, the President of Sections 81 and 89, FCOSS proposes setting higher moral standards as prerequisites to the appointment for the head of state. This is important as the HOS represents the moral and unity figure of our nation.

We propose setting constitutional requirements for no criminal convictions resulting in term of imprisonment to 12 months. No past complaints regarding prevention of sexual exploitation and abuse, as in BSEA, and no involvement in coups. Furthermore, the successful nomination of the President should require 65% threshold in a secret ballot from both the government and opposition to ensure broad political consensus.

Separations of power. To uphold the separations of power and protect the independence of the judiciary, FCOSS recommends that the Constitution establish a clause for the appointment of a Vice President to perform functions in the President's absence and not the Chief Justice. This prevents potential conflicts of interest and maintains the integrity of both the Executive and Judicial branches. Parallel can be drawn from the 1997 Constitution on this issue.

Powers of the Prime Minister and Attorney-General in Section 96. The current Constitution grants significant powers to the Office of Prime Minister and Attorney-General. Particularly in appointing constitutional office holders, this concentration of power raises concerns about potential interference and lack of clarity.

FCOSS recommends that the Constitution should introduce clearer checks and balance to prevent allegations of interference and ensure greater transparency and accountability in these appointments.

Mr. Maharaj: Thank you, esteemed Mr. Chairperson and esteemed members of the Commission. My name is Vipin Maharaj. I am currently the board member, a board member of the Fiji Council of Social Services and I will speak on Chapter 5, which is Judiciary and particularly Section 113.

While respecting judicial independence, FCOSS proposes aligning judicial remuneration to a performance management framework to promote efficiency.

This framework should be established through separate legislation mandating the Judicial Services Commission to oversee its implementation without enroaching on judicial autonomy. Further, on judicial independence and appointment of judges in Section 106, to strengthen judicial independence, we submit that the Chief Justice nominations should be jointly signed by the Prime Minister and the Leader of Opposition before being presented to the President. The collaborative approach ensures broader political buy-in and safeguards the independence of the judiciary from undue executive influence from either side of Parliament.

On Sections 115 and 121, we at FCOSS recommend replacing the Fiji Independent Commission against corruption with a preventative approach to address the maladministration or leadership complaints. The 2013 Constitution already envisions the establishment of the Accountability and Transparency Commission. FCOSS recommends resourcing and passing the Bill for the Accountability and Transparency Commission, ensuring its independence and accessibility to citizens across all four divisions.

FCOSS suggestions in dismantling FICAC would mean a reversal to what the 1997 Constitution held. We further suggest that the current FICAC functions of investigation should be distributed to the police, prosecution to the Director of Public Prosecutions, and anti-corruption activities, awareness, monitoring and learning to the Accountability and Transparency Commission. This will strengthen the overall anti-corruption ecosystem. Thank you, esteemed Chairperson.

Mr. Rika: On Chapter 6, on State Services, Sections 123A to 127 on Public Service, FCOS submits that permanent secretaries and ambassadors or high commissioners must meet a clean record standard constitutionally requiring no criminal convictions, no PSEA or Prevention of Sexual

Exploitation and Abuse history, and no involvement in coups. Appointments should be tied to a rigorous performance management framework. Furthermore, citizen oversight on public service delivery and performance, possibly through mechanisms like the Kacivaka Squad Card, should be mandated.

On Chapter 7, Sections 144 National Budget, FCOS proposes introducing a constitutional ceiling cap on government operational costs, mandating that they do not exceed 40% of total expenditure. These measures aim to ensure that a greater proportion of public funds reaches citizens and essential services, promoting fiscal responsibility and community welfare.

Mr. Tokoni: Again, members of the Commission, on Chapter 8, Accountability, Freedom of Information Section 150, based on the Kacivaka Squad Card, FCOSS submits that the scope of freedom of information should be expanded to include private sector bodies performing public functions and government business enterprises.

A dedicated right to information unit should also be established to facilitate access to information and enhance transparency across all state-owned entities. Section 151, the Auditor General, FCOSS submits that the Auditor General's authority should extend to auditing not only central government ministries but all entities receiving or managing public money, including state-owned enterprises, statutory authorities and government-guaranteed debt.

Resources for the Auditor General's office should be significantly boosted to ensure real-time accountability. Referrals to the police and the DPP's Office for Investigation and Prosecution of Abuse of Public Funds should be emphasized and constitutionally entrenched.

Mr. Maharaj: Thank you once again, Mr. Chairperson and members of the Commission. On Chapter 9 and 10, which are Emergency Powers and Immunity, I would like to focus on Sections 155 to 158, which talks about immunity. Fiji Council of Social Services strongly advocates for the removal of constitutional immunity provisions and entrenchment clauses within Chapter 11, which is amendments to the Constitution that will foster impunity. To promote national healing and uphold the rule of law, mechanisms for genuine justice, redress and reconciliation for unconstitutional acts and coups must be established.

This includes considering conditions where individuals involved in coups cannot benefit from their actions, such as by standing for elections, unless they renounce their immunity. And this is only if immunity provisions persist in any forward-looking document. This would ensure accountability and prevent future abuses of power.

Further, on Sections 159, Fiji Council of Social Services suggests that while the Supreme Court has read down the Constitution, the reading down should be reflected within this clause. With the new majority required to do referendum, this should be clearly stated and not just be a precedence in common law and case law. Thank you, members of the Commission.

Ms. Catanasiga: To conclude, members of the Commission, this framework outlines FCOSS key recommendations to the Constitution Review Commission, all aimed at strengthening democratic governance, protecting human rights, and ensuring that the Constitution truly serves the needs and realities of all Fijian communities. By addressing these critical areas, we can bridge the gap between constitutional promise and community reality, fostering a more just, equitable and accountable nation. We, of course, wish to advise the CRC that we may wish to present other aspects of our submissions in a later sitting.

Even with our members out in the various divisions, we anticipate that they will be making submissions along some of what we presented this morning. As we also continue to collate information from communities, if the CRC obliges, our request, we are also happy to provide submissions in writing. Thank you.

Mr. Valenitabua: Thank you, Ms. Catanasiga. I was going to ask, could we have all your submissions, the individual submissions, compiled into a joint one and be sent to us? We thank you very much for your submissions this morning. I see that the submissions came from everyone who has been delegated to come and make submissions here before us, and we welcome that.

What we have been doing is, after the submissions, we can ask questions for clarification, and there might be some reflections shared with you just to discuss whatever has been raised during a certain submission. Now, we will do that again today, and we have to ask

questions because of the wide range of subjects being covered by your submissions, the various provisions, the various sections, the various subsections, I believe, for which we will need to have dialogue with you here and now. I'm sure my commissioners have got those ready, and to start off, some of the things which you had raised this morning have been raised by other parties, so there's a commonality there.

Some parties have been in support of them, some parties have opposed them. Now, that is normally the democracy, and we will be addressing you, or we will be asking you questions in relation to those issues so that you can confirm your position as we have heard it from you. Now, without further ado, I will now ask my commissioners, or the members of the commission, not my commissioners, the members of the commission, if they wish to address you this afternoon. Commissioners?

Mr. Beg: Through you, Chair, thank you. Thank you very much for a wide spectrum of presentation. I only just want to touch one for now, but I have others, and the point or the term Kacivaka Scorecard was used quite a bit. I'm unfamiliar with that, and I was wondering if that has influential positioning, if I can use that word, in your presentation. Maybe perhaps could you just elaborate a little bit more on that for me, please?

Ms. Catanasiga: Chair, if I may, maybe just to provide perhaps a background on Kacivaka Scorecard is a citizen's diagnostic tool. It was developed by our members after the multiple crisis of COVID-19 and natural disasters. One of the things that we saw was because communities were not able to access services during this particular time, the level of vulnerability increased. And so, while we were advocating as an organization here in Suva, we couldn't see any traction in the way government services were being delivered, particularly to those who were affected by disasters.

So, we asked the communities, and one of the things that we get accused of as NGOs is that we're told, you're here in Suva, you don't know what's happening in communities. So, we decided that members come up with a diagnostic tool, we were supported by UNDP, to assess levels of access to information on the services being rolled out by government for disaster-impacted communities. And what resulted was the Kacivaka diagnostic tool.

So, what happens is that members in communities actually choose an agency, a government agency, and they diagnose or perhaps rate the level of openness of the government agency in terms of services that is made available. I think it was to do with how government was rolling out initiatives specifically for rebuilding after Cyclone. There were communities that we visited that didn't know about this information, and the time for application had already elapsed.

And when we were trying to say this to government services, they just perhaps weren't responding in the way that we felt should have catered to that need. So, we asked communities to do their own assessment using that, and we produced a scorecard to tell government, look, communities in these particular areas have said that your information on this particular program is not available on your website. You're not visiting them in communities to tell them this.

To be able to show to government agencies that these are realities that the communities that you are trying to reach are sharing. So, it's influenced the policy work that we've done, of course, to advocate for the passing of the Access to Information Bill, which is still waiting for Parliament to endorse, and that's been quite a while. It's influencing the way we are advocating about the Accountability and Transparency Commission Bill, the Code of Conduct Bill. All of that is based on this diagnostic tool, the scorecard that we've used here. That is basically what the Kaicivaka scorecard is about.

Mr. Beg: Thank you very much.I have some other questions, but I'll allow the other commissioners to comment. Sorry about that. I don't want to dominate it.

Dr. Fatiaki: Thank you, members of FCOSS. Thank you for the presentation, and thank you, people, for the work that you do. I'm looking at a piece of paper in front of me, which is our terms of reference.

C states that we will prepare a report on the findings of the effectiveness, relevance, and implementations. Sorry, take that back, B. Seeking input and evaluating key aspects of the Constitution to ensure its provisions reflect the values, needs, and aspirations of all the people of Fiji, the Republic of Fiji. I bring that up in the context of your discussion of a secular state.

I know this is a contentious issue. I want to clarify aspects of your stance, particularly in respect of the values of this country. We've had different presentations who have addressed this issue. There are some who have been very supportive of it, and some who have been very anti it. Let me say, just as part of our process, we do look at previous constitutions. If I go back for the three previous constitutions, and I take it a step further and look at the deed of cession, in all of these, there is a recognition of the concept of God in a moral guidance.

I think all of us who live in Fiji understand that I think the general population, or the prevailing stance, again, I don't have any figures for this, but I ask you to consider it, and you being FCOSS representatives will probably have access to it, is that most people in Fiji have some form of belief system. I think if you walk down the road, you might find 95% of people you ask, do you believe in a God? They will answer yes. And because of that, in all the preambles of the constitution, there is a reference to God in guiding us.

And I emphasize I'm a Christian, but it doesn't necessarily say Christian God. It refers to God. Now, my concern, and our concern, is that that is in fact the values of our people, as stated in three previous constitutions, and one deed of cession.

The 2013 constitution makes absolutely certain in its preamble that it removes it, and then introduces a new section, the secular state. And my concern is that the secular state, by definition, is godless. It's not just a question of a particular religion, it means that you must not even state any belief in God, because by so doing, you are discriminating against the people who don't believe in God.

I'm trying to reconcile, as a reflection, how that will address actually the values of our society. Now, we don't have any particular stance on it yet. We will go out to the people, and I'm glad that you said this constitution will be a constitution made by the people, for the people, and of the people.

And I suspect we will have a lot of people give us their opinions about this, and I don't know for certain, but I suspect that the values espoused there will actually value some form of guidance from God. We know that in societies where secular states are stated in their constitutions, that people have used this as the grounds on which to stop you praying in

public. Any prayer, forget a Christian prayer, or Muslim prayer, or Hindu prayer, any prayer.

And I don't think Fiji is a godless society. I think this society values God. Not a particular preference for a particular God, but in so making the state a secular state, you make it a godless state. You have to remove it from the preamble. You can't refer to it. And I wonder if that directly contradicts the aspect of the values of the people that we're trying to incorporate into this constitution.

This is a reflection. It isn't a question. I presume your written submission will come later. I'd like us all to reflect on that before we can finalize our thoughts on the matter. We're open-minded. We haven't made any decisions. We will listen to everybody. But this is a reflection I have in the context of our terms of reference, in terms of the previous historic stance of this country in stating their belief in God and the removal of that and the imposition of the secular state, which by definition is godless. Thank you.

Dr. Gounder: Thank you, Chair, and thank you, Executive Director, board members and team from FCOSS. I want to recognize the good work that you're doing for our communities and also your participation in other forums where you have provided the input and feedback that have made our society a better place. Thank you very much for all the work that you do.

My question is regarding the fiscal policy aspect that you mentioned about 70-30, so 40 percent you mentioned. Am I right? So, you are saying that or recommending that the operational expenditures be kept at 40 percent of the total budget? Just for the information, it's a very big ask because at the moment the operational and capital expenditures are in the ratio of 70 to 30, so 70 percent of operational expenditures and 30 percent capital expenditures. That is also kind of seen as a benchmark by most economists, which is to account for, so that would be a huge, huge ask if we have to keep it at 40 percent. Total revenue that we earn, the budgetary provision for, sorry, expenditure, 40 percent would be an extremely difficult ask.

Mr. Rika: Thank you, Dr. Nilesh. Maybe to respond very briefly and also to further clarify, we understand that operational budget or OPEX for any ministry are divided into six special expenditure groups and that is SEG 1 to SEG

6. However, our ask is specifically for the cost for the running of office and that is SEG 1 to SEG 4 to be kept at 40 percent.

We understand that SEG 5 and 6 deals with grants and also with special expenditure and that also includes the fund that reaches the people. That has to be part of the 60 percent, so the 40 percent should be SEG 1 to SEG 4 of the budget.

Dr. Gounder: Okay, so that's more clear. You are just talking about SEG 1 to 4, okay. Thank you. Point noted, but still a big ask, still a big ask given the fiscal scenario we have and our traditional expenditure patterns, but point taken.

The second clarification that I see is on the Bill of Rights and I think a lot of us agree that there are some limitations. Do you have any particular ones that you want to talk about today? Removing of the limitations on the Bill of Rights, any particular ones? If you did mention in more general way, any particular ones from FCOSS perspective or was there more of a general comment?

Ms. Catanasiga: We may have included specific examples in our earlier versions of our presentations, but we decided to remove that from the current copy, but I think one of the things we want to perhaps emphasize is the right to health. I think we were discussing that two nights ago, the right to health. That is assured until there are emergencies or there is a...

Dr. Gounder: You can give written feedback later, written submission that is fine here. So, you do not have to answer, but it will be good to have some more clear submission would be better. So, we can look into that and I would also like to request given the role and functions of FCOSS, if you can continue to consult your members, the public and provide the feedback at a later date would be great because you are an influential CSO and you have contacts on the ground, I think like no other CSO.

So, please you can do some of the consultation with your members and then give us feedback. The due date for written submission is 30th of June, so you can still submit just a request.

Ms. Catanasiga: We note that Dr. Gounder and perhaps just very briefly respond to... I was arguing with our program manager whether we should respond on the question around secular state and, I think that is based on our

experiences during disaster response because, sometimes we have seen where perhaps faith has often become a barrier to accessing humanitarian support and it is not necessarily just based on your faith system, but also about logistical access.

You know, faith-based organizations have clear access into their own communities and have often, you know, despite the humanitarian principles we hold and some of the standards that we often use, some of these services are often prioritized for, you know, members of a particular faith organization.

FCOSS, it is made up of members that are people of faith and that is why they are volunteers during times of disaster and crisis. And this recommendation is based only on ensuring that perhaps that clarity is established so that it does not serve to discriminate those who may not share or have the same faith system as perhaps a dominant development partner perhaps.

But we certainly see, you know, the merits of that argument because, FCOSS, itself is made up of members who express faith, all types of faith, Christian, Hinduism, the Islamic faith, they are members of FCOSS and I think that is primarily why FCOSS is a thriving organization because its members are volunteers and that is driven by faith. So, we will review that. We will go to our members. I am pretty sure you will meet some of our members who may not support that when you go out for divisional meetings.

Dr. Fatiaki: Through you, Chair, if I might because we are talking about this issue. I have, in listening to your rationale behind trying to justify the insertion of the secular state into the 2013 Constitution, I acknowledge, Vani, that you and your members have nothing to do with actually putting this into the 2013 Constitution.

What worries me is in trying to justify it remaining, you have, by stating that faith-based organizations actually venture out into the communities, made the counter argument in the sense that a lot of the people who have been helped in crises are by faith-based communities and to me that is a counter argument to maintaining a secular state where we can't identify faith.

The second thing I want to emphasize and I feel very strongly about this because often the argument is that we are progressive, that we are progressive countries. I would like to just read you, and I have a list here of about 30, but I'll read you 10.

Countries that currently have a faith as a stated national religion. They include the UK, Malaysia, Greece, Malta, Zambia, Denmark, Norway, Armenia, Argentina, the Dominican Republic, and closer to home, Samoa and Tuvalu. All these countries have a state religion.

By no stretch of the imagination would I consider any of these countries to be discriminatory against other religions. I think they exist quite well. I think these are things that are not known by a lot of people. All those countries I mentioned actually have a state religion. Malaysia has Islam as a state religion.

The other question that I really want to address is the issue of how you address the problem of certain faiths discriminating against other people. I think if you are a person of faith, you would never only deliver your parcels to people of your particular faith because it goes against any faith that you would choose. Because I'm a Christian, I'm only going to deliver to Christian households. Because I come from the Sanatan whatever, I'm going to deliver to Hindu households.

I think by faith alone, they would not do that. Quote me if I'm wrong if you had examples. I would think that that would be contrary to any faith that we practice in Fiji.

And then I think there's also the Bill of Rights that can address that as an issue already because it says you cannot discriminate on the basis of religion. And I think it's more a question of enforcing. But to impose a section into our constitution that goes against our values, that is not existent in many countries who actually have stated state religion. I think we need to reflect on this because we want something that reflects, we, the Fijian people. Thank you.

Mr. Maharaj: Thank you, sir. Perhaps just a few reflections from my end as well. Very good points made by you, sir, and also highlighting. Perhaps before I come to secular state, I would just like to address Dr. Neelesh in terms of when he mentioned is there any particular rights and limitations that we want to address.

So, if you go to the constitution, in particular if you see section 43 of the constitution, it mentions that during emergency, certain rights may be limited. So, I would just give one of the examples. Of course, we'll come back with future specifics.

But then if you look at section 43 and then you see what sections are mentioned there, they mention 8, 10, 11, 13, 14, 13, so on, and then it goes to 26. Now you go back to 26 and it talks about right to equality and freedom from discrimination. Why should a state in exercising its emergency powers limit someone's right to equality, freedom from discrimination? So those are the type of contradictions that we are trying to avoid.

So, those are the types of specifics. The claw backs that we mentioned, that's what we are trying to avoid because a state should not have that much power to limit somebody's right to freedom from discrimination or limit their right to equality because then where do we draw the line? If such a claw back exists, where do we draw the line? And then if you go back and look at this, there are so many mentioned there. How come in terms of an emergency you can limit someone's right? Yes, you may be able to limit freedom of movement, but then what about equality? What about the right to life? So there has to be some sort of line drawn that we have to draw a line somewhere that some claw backs we need to remove. So, this is one example that I'm giving and then there are particular sections mentioned.

Now, in terms of secular state, very well pointed out, sir, that there were some contradictions, yes. But you also mentioned that if you go out and ask people, 95% of them will say that they value God and their values, but then what about the 5%? Because then there is the 5% as well who might have different values and we are not saying that we promote a godless state.

You know, when you use the word secular, it doesn't always necessarily mean, to my understanding, that it is a godless state. It's just saying that we are sitting as a neutral, as a country who is neutral, allowing all citizens to practice whichever religion that they want and not have supremacy. Because if you see Fiji's history compared to a lot of other countries, Fiji has had three coups or four coups in the past and there have been a lot of rights violated and faith has been one of the grounds.

So, imposing the word God, we are not against it. It's just that the interpretation of it needs to be clear. Because if we write God, then people might just automatically assume that we are talking about Christianity.

So, using the word God, it is a good term, yes, but then if you solely make it a Christian state, that means you are imposing that value on the 5%. So, while we look at the majority, we really cannot deny and move away or look away from the minority. Because those minority also have rights enshrined under this constitution and particularly under the Bill of Rights in Chapter 2. Thank you.

Dr. Fatiaki: I'll keep this short. I would like to think that as constitutioners, we will reflect the majority. I emphasize it again. As commissioners in the constitutional review, I would hope that at the end of two months of consultations, we will come to write a document that reflects the majority. And that's not to discriminate against the minority, but I think it must reflect the majority. That's my comment in respect of the 5% versus 95%.

The second one is what I stated earlier and you alluded to indirectly as part of my argument, which is that unfortunately when you call something a secular state, it then prohibits people like you and me saying a prayer in here that might, for instance, use the name Christ. Should that be a crime?

I existed at a time when we didn't have a secular state and we had no problems praying amongst each other. Actually, most of the Gujarati boys in Toorak who went to Suva Street when I was in school, they prayed the Christian prayers probably better than many of us did. And we celebrated Diwali and Eid with them as much.

I think the idea that somehow, we need to be constantly on guard because the minority opinion might feel hurt or be discarded. I think it's not a good argument in the context of what we're trying to do, which is to get the majority opinion. But thank you for your thoughts. I share with you my concerns about minority views, that they not be abused.

But again, I emphasize, I think that the Bill of Rights addresses that. And when we can see that a minority is being discriminated against, I'm sure

that the bulk majority of Christian believing or Muslim believing or Hindu believing or God believing people would not tolerate it. Thank you.

Mr. Valenitabua: Ladies and gentlemen, we have heard your submissions. I'd just like to make some suggestions in relation to a number of sections which were mentioned to us. First from Mr. Rika, if I understand you correctly, your submission was in relation to sections 52 and 54. Part of your submission was in relation to sections 52 and 54 and that you wanted a review on that.

What in particular is to be reviewed? Is it the constituency or the number of seats in Parliament?

Ms. Catanasiga: Sorry, sir. We're reading from one document and just divide the sections between ourselves. I think Mr. Rika was recommending reviewing section 52 to 54 to allow for flexibility for multi-constituency or mixed electoral system.

And that's because from our perspective is of course that would facilitate greater geographic community-based representation.

Mr. Valenitabua: And so right now in Fiji we have a national constituency, a one constituency. And you would like that to be reviewed so that we can have multiple constituencies?

Ms. Catanasiga: Yes.

Mr. Valenitabua: Would you put that in your final submission?

Ms. Catanasiga: Yes.

Mr. Valenitabua: Secondly, would you be as bold as some others who have appeared before us to divide up the constituencies into seats? And how many seats per constituency? Please write it down.

The presidency, section 81 and 82, elected in Parliament by the parliamentarians. There's a 65%. What is that 65% about?

Ms. Catanasiga: I think the idea is that the nomination of the president requires 65%, yes, on both sides of the house, 65% government, 65% opposition. We don't

know how realistic this is but I think it is to do with ensuring perhaps buy-in and legitimacy of the person nominated.

Mr. Valenitabua: Okay. Maybe we have that also in your submission explained. Section... I see that next to that it was the position of vice-president to be a new constitutional appointment for vice-president and to replace the chief justice and do the president's job if the president is unavailable. And how do you propose that the vice-president is to be appointed or elected or what other means?

Mr. Rika: Mr. Chair, through you, this particular, our submission seek the establishment of an additional clause. It could be after a section on the appointment of the president to also read the appointment of a vice-president. The rationale behind that is that so that even in the absence of the president, we still have separation of power between the two arms of the state the president and also the judiciary.

Mr. Valenitabua: Just note that down in your submission.

Mr. Rika: Will do, Chair.

Mr. Valenitabua: And I see that Mr. Rasili, you referred to the constitution to encourage free, prior and informed consent from landowners or from the people?

Mr. Rasili: Yes, Mr. Chair.

Mr. Valenitabua: Yes. Does that, is that in line with ILO 169?

Mr. Rasili: Yes.

Mr. Valenitabua: Yes? Alright, okay. Thank you for bringing that up.

Mr. Beg: Sorry, I was just talking to the Chair about the point made by... You mentioned RTI? Was it RTI or RTV? The international language?

Mr. Tokoni: Right to Information RTI.

Mr. Beg: Yes, okay. Can you just elaborate a little bit more on that? You said international protection and, you know, intervening like extremists, like you were making reference to Nazi Germany and so on and things like that. So how does that, I'm just trying to understand what you meant by

that. No, it's an interesting point. I mean, security. You may have a point. I'm interested in that. Sorry, Chair.

Ms. Catanasiga: I think the responsibility to protect is geared towards atrocity prevention and, you know, a lot of people might think that this is really a far-fetched idea but it isn't when we look at the history of coups in Fiji.

It's an international law norm and we did do sort of a partnership with a university, Queensland University, and we are calling for perhaps the, you know, some recognition in the constitution. Of course there's a lot of advocacy around prevention, preventing corruption, preventing atrocity crimes, and that's based on patterns that we've observed, you know, in the history of Fiji. And so, we perhaps, maybe our suggestion is to find some way to embed it into the sort of the chapter one of the constitution.

Although there's been arguments that this cannot happen in Fiji, a lot of things that has happened in Fiji, you know, can actually lead up to atrocity crimes. So that's what we are trying to advocate here.

Mr. Beg: I was trying to understand the framework of that related to your colleague, Mr. Maharaj here, bringing up the point about community.

I don't know whether that sits in what you are talking about. I was curious like how they joined or how they related. Is what you are saying is on the same lines or are you saying something different?

Mr. Maharaj: Thank you. But perhaps to just take a, you know, explain to this. When we said about right, you know, we talk about freedom of information and, you know, the right to information because in our submission we mentioned particularly on the right to information unit. This also comes from the Right to Information Act or the bill that was in the response in 2005 to my knowledge.

And I remember Madam Vani and I, we were in the Attorney General's office in the other room actually discussing about the RTI and from which there was another mention of the Transparency and Accountability Commission.

So, when we mention about right to information, we particularly talk about citizens' accessibility to documents, to information in general.

This is away from immunity because immunity we are talking about in a different context.

When we talk about right to information, we talk about, you know, if a citizen wants to go and get some documents, say for example a report, it shouldn't take a citizen one month, two months, three months to get that particular report. If someone wants to scrutinize the government's activities or Auditor General's report, it should not take a citizen three months to access that. Why should it? So that is where particularly the accountability section and the freedom of information and the particular mention of a right to information unit comes from because this is still a debated topic.

But if it's enshrined in the constitution, then the state is bound by it to have a right to information unit and to make documents accessible to public to scrutinize because by right it is the right of the citizens to have those documents. So, this is where the RTI comes from, away from immunity.

Mr. Beg: Well, that makes sense then. I stand alerted and corrected. Thank you.

Mr. Valenitabua: The other provisions that have been mentioned, Chapter 9 and Chapter 10, there's a lot of issues being raised about those two. We will not comment on that for the time being. We will see what we can do. But with your lawyer, I'm going to ask you a question.

What is your interpretation of the opinion given by the Supreme Court? Can Chapter 10 and Chapter 9 be amended or not? Since it's coming from you. Thank you. Thank you, sir.

Mr. Maharaj: Thank you, Mr. Chair. Yes, we had this discussion before and I had told Madam Vani that this will be a question that is definitely going to be raised. So, I anticipated it. So, your question around my opinion on the interpretation of the Supreme Court, because if we see Chapter 9 and Chapter 10 and if we study it closely, we see that the Constitution itself has a double entrenchment clause which prevents the court, which prevents even this commission itself to amend, to repeal, to infringe, to diminish and for the courts to not be able to look at it.

But then again, we also have to balance that on the principles of constitutionality. The Constitution of principles and the Constitution is

for the people, by the people. So, if you prevent the main system for accessing justice from looking at the document which is supposed to give them justice, then how does it, then doesn't that breach the law of constitutionality or the principle of constitutionality? So having that, so my opinion is that that particular entrenchment should not be there.

It should be removed in its entirety because a constitution should not be a document that is too rigid to amend because the social economic stance, the societal context changes over time. The previous generation should not be allowed to prevent the future generation in deciding what they want to do and that double entrenchment in itself should not have been there from the beginning.

So, while the Supreme Court had looked at the how and the legality of the 2013 Constitution, so by their opinion they said that yes, this particular document is legal but then they also have read it down.

So, if they can read it down, then pretty sure if it's taken back to the court, they can, they can interpret particular sections of those entrenchments. Now the ouster clause there, in general in history courts have narrowly interpreted the ouster clauses but that does not mean that citizens can't get justice and take this to court because it allows, this document itself allows this document to be taken to court. Thank you, Mr. Maharaj.

Mr. Valenitabua: Thank you. Well, that's, do you have anything else?

Dr. Fatiaki: Since we're all smiling, I thought I'd end on a light note. My comment and I will risk being chastised by Dr. Neelesh Gounder relates to your request that 40% is reduced from 75%, is it 70% to 40% operational?

Dr. Gounder: No, he clarified it.

Dr. Fatiaki: No, I mentioned it only in the context of his comment which was this is a big ask. Let me just say that given that every government that I have known in my memory, that's a long memory, has vowed that they will reduce the civil service and expenditure on operational costs, I thank you for that.

It's a big ask, it's an honest ask and I suspect that it reflects the opinion of people of Fiji that we need more money to help the people and less to

operate the government. That's again a reflection. I will be chastised after this.

The second one, was and this is a bit of a double whammy because after saying that you then suggest that we put a right of clause to the President in the interest of separating the judiciary from the legislature but, you are imposing another great expense to have a house and a car and bodyguards and everything else to impose a new position of Vice President.

I would suggest that the times that the CJ has to stand in for the President is few and far between. For the amount of time, they would spend versus the principles of separation of power, I suspect that your argument for economic trickliness and keeping that money in the areas that it should be spent is a better argument than trying to separate the powers and making a new position of Vice President which I would suggest would be just a person who sits there not much doing.

The third one, is to thank you for having the courage to address section chapter 11.10 indirectly by so stating that no coup maker should for instance stand for Parliament or be appointed to certain positions. I can assure you that this sentiment will be looked at very closely. I think the prevailing principle is that nobody who conducted a coup, good or bad supposedly, should benefit from it and I think that's what I understand from you and I thank you for putting it forward to us. I think that's a fair thing to suggest and we will certainly take it into consideration. Thank you.

Mr. Valenitabua: Well, Executive Director and gentlemen, thank you very much. For today we have come to the end of this session of consultation. We have been enlightened and we request please send us your written submissions jointly, not separately. Thank you.

----------End of Session [24-4-2026]----------

Diven Prasad

Diven Prasad
Time: 2.00pm- 3.30pm
Date: 27-4-2026

Leighton: Good afternoon Mr. Prasad and team. On behalf of the Constitution Review Commission, I would like to take this time to thank you very much for coming forward to make submissions before the Commission, sir. Prior to starting, I just have a few housekeeping rules to go through.

If you wish to speak, just press on the right side of the mic and then just press on the same side to turn the mic off. The Chair will introduce the members of the team and also lay out the work that the Commission will be undertaking throughout the review. Following Chair's introduction, I also request if you could also introduce yourself and your team members. This is for the transcribing purposes.

Mr. Valenitabua: Mr. Prasad. Thank you for accepting our invitation to come and present submissions before us in relation to the 2013 Constitution this afternoon. You are one of about five individual persons who have made submissions to us, individuals, not groups.

So, we thank you very much. Before I go on, I'd like to introduce the members of the Commission who are before you this morning. On my left is Dr. Neelesh Gounder of USP, and on my immediate right is Dr. John Fatiaki, a medical doctor. And next to him is Ms. Merewalesi Nailatikau. And further on, last but not least, Mr. Conway Beg. So those are your commissioners who will be hearing you today. There's one, two. The two are not here with us. Mr. Kohli, who's in the back, and Dr. Unaisi Baba who's with Fiji National University. However, we shall continue to hear you. We'd like to hear introductions from you before I open the submissions this morning for the consultation.

Mr. Prasad: I'm Diven Prasad. I'm a legal practitioner, apart from my other business ventures, which is funeral. I run a funeral home, Suva Crematorium, and Suva Morgue Services. With me is my associates. This is Nandini on my right, and on the far right is Shereena. Both of them plus three years or so in legal practice, and they started with me. My firm, we mostly do a lot of commercial work.

I used to specialize in personal injuries in Fiji many, many years ago, and I've done some controversial cases as well in Fiji, which I will highlight today, and how these amendments will assist future generations in Fiji. So that is all.

Mr. Valenitabua: Thank you very much, Mr. Diven Prasad. My apologies for that. The Constitutional Review Commission. We have been appointed, Vice Excellency, the President of the Republic of Fiji, for the task of reviewing the 2013 Constitution.

The main task at hand is to collect data or information or suggestions from members of this country, our fellow citizens, on what they believe, what they think, what they prefer. That should be included in the 2013 Constitution. You might remember that a deficiency, which was apparent in the 2013 Constitution, was that it was not put to the masses, not put to the citizens, to comment on before it was enacted.

That is according to the majority view. So, the task of this commission at hand is to get those views from people of this country. And because of that, we have been receiving submissions from organizations and from individuals for the past four weeks.

By Monday next week, we should be out of Suva, and we'll be at the islands and the other rural areas to collect the same thing, to receive submissions. So, we welcome you this afternoon, and we believe we have received your submissions written on, and we are looking forward to hearing from you to explain what your views are as you have put out in your submissions. With that word of welcome, we now pass the mic to you for your submissions, Mr. Prasad.

Mr. Prasad: Yes, thank you, Mr. Chair and the distinguished members. I gather my written submissions have been read, so I'm not going to sort of go over and over. So, I'm going to be very short.

So, my issue here is that the 2013 constitution as it stands, you have a perfect bill of rights, which I have mentioned on my page one and page two. And this bill of rights allows a citizen of Fiji to take legal action against any statutory bodies, and that means even the government. A perfect bill of rights, that you have a

right to take action, you have a right to be heard in a court, and not to be discriminated.

So, that's a perfect article we have in the constitution. However, you then go and look at the last of the articles in the constitution, which is the immunity provisions under article 173. Now under this particular article, now this is a very sensitive issue, and I have actually mentioned that, so I'm not going to touch on that core issue for now.

See what has happened is article 173 has basically said that any laws or decrees that was created prior to the first sitting of parliament, and the first sitting of parliament I understand was in 2014, in October 2014 or so. So, any law that was passed by then administration, you cannot challenge it in court, no matter what you do, because the constitution has given that provision. So, there were a lot of decrees made, and you will recall, decrees were made day and night, day and night, and we as lawyers didn't even know what law existed.

So, those decrees cannot be challenged. Now I take you, I give you an example. Now when the, one of the examples is, and I've quoted is Fiji Road Authority Act. Under that act, it has been given a blanket immunity. If you look at section 38, it says there that you cannot challenge Fiji Road Authority. Now I give you an example, and if you look at my page, page 5, I have quoted the full version of section 38A, and what it says.

Now in that, it says there very clearly, the authority, or its servants or agents, shall, it says here, any actions, proceedings, dispute or challenge in any court, tribunal or any educating body, for or in respect of any act or omission done in the exercise or non-exercise of powers. So, they are not liable. So, Fiji Road Authority is not liable.

And I tell you, I went to court, and I filed an action for, a claim for damages against the FRA, and this matter was obviously challenged by the defense to say listen, you guys can't bring this action because we got this immunity under section 38A. We went to high court and we argued on the grounds of common law. Now when you look at the constitution, even the 2013 constitution, it says that Fiji follows common law principles.

It's there. However, now this particular law, it's a legislation, has an immunity, and then it contradicts a person's right to be heard in a court of law, a person's right to bring an action against a body. And that is supported by Article 173, which supports this kind of legislation.

So here we are, we're having a nice law, why all of a sudden, we have one particular law, being example Fiji Road Authority, being given a blanket immunity, which means you can't bring any action under the law. What happened, I argued on the basis of common law that the common law principles allow a person to bring an action, and I used the provisions of the 2013 constitution. Obviously, I used a Mauritius case, where Privy Council had a similar situation, and they said that under the principles of common law, a person is entitled to sue and can bring action in court.

But in Mauritius, the constitution did not have what Article 173 has. So, what Article 173 says is that you can't challenge anything that was made back in those, before the first hearing of Parliament. Now the same thing happened when I did the case against Fiji military forces during the mutiny, back in those days.

And there, it was well read cases all over, where this guy, James Pillay was shot, he was standing by the roadside. And we sued the military on the basis, under the common law principles of duty of care. And one of the issues we came out, the role of the Fiji military forces, what is their role? Because they are governed by their own act.

So, in that particular case, we won the case, and the matter went to court of appeal. Now when this matter went to court of appeal, this is the full bench, and the full bench is three judges were sitting, a decree was passed. And a decree was passed and presented in court, open court, whereby they said, well, there you go, thank you very much, but this is the decree.

Any decision made against the Fiji military or against the government of the day is invalid, even to now. And in that decree, it says, ex gratia payment. So obviously we wrote to Attorney General then, and of course you don't get any reply.

So, we then tried to present back in those days to say, listen, there is a common law principle, our laws are there, we can sue. But in those days, it was governed by decrees. So, when you are governed by decrees, anything can happen.

But when 2013 constitution was created, of course, none of the lawyers were invited to make a submission, because in those days we were told to shut up. Because if you do anything, we get charged. So, none of us knew anything about 2013 constitution.

Now, had that been discussed, the article 173, we would have said no, no, no, you cannot support any legislation that has been passed which has immunity. So, when you look at Fiji Laws Authority, if you walk down the street right now, and you, you know, the footpaths are not level, and if you don't look down, you'll protrude and you'll fall. Who do you sue? And you get a fractured leg. Back in those days, we used to take action against Suva City Council, or against PWD. And we used to get judgments and people used to get compensated. So, there was strict control.

Now, you can't sue Fiji Laws Authority because they will just come up and say, we have immunity. Now, when you look at the constitution itself, why do we need to have an immunity to support such things? Because 173 says that any decrees that has been passed, you can't challenge it in court. So, when we went before Justice Alfred, we, when this matter was argued, we said, well, the defense, in fact, argued to say to the judge, you have no power to hear us.

So, the judiciary doesn't have any power to hear any laws that was passed by, before the 2013 constitution. So, whatever we do, no matter what we try to redress, we can't challenge it in court because the other parties will come and say, look, judge, you don't have any power. That is embedded in this constitution.

So, because this is the supreme law. So, when we are going to have immunity clauses in the supreme law, and you are restricting a person's freedom, a person's right, you don't call that a fair constitution. It's very imbalanced. Now I touch on the sensitive part. The sensitive part is the Fiji's history. We have all gone through the past coups and the immunity provisions were created for a particular purpose.

So, we need to be very sensitive whether we want to shake that. Because by shaking, we don't want instability in our country because, you know, we want to move forward. We had enough. We want to move on. But there has to be some kind of sort of wordings, not the way 173 is worded. To say that maybe perhaps previous actions done by the actors of those coups cannot, you know, you can't now bring it back.

However, going forward, none of those immunity provisions should be there because if you do anything wrong, you should be punished. So, the sensitive issue, the historical backgrounds of those immunities granted for the coup makers, I think one has to be very careful how we address this because we want stability. And otherwise, you'll end up large legal battles and we will never achieve anything.

But going forward, like any amendments needs to be done, I think we need to reflect that any laws that is made in Fiji, that is the legislations, cannot have any immunity. Because if you look at Fiji Road Authority as an example, it's like, okay, I can do anything wrong. Like imagine they dig a big hole.

The first thing law students learn is about thought that there's a manhole and it's not covered. So, if a blind person walks through, he will fall and get injured. He has a right to sue because there's a duty of care. Now under Fiji law, under the Fiji Road Authority, you can't sue them.

So, the constitution of this country is we need to be fair and equal. Do not discriminate. Whether it's a blind person or a person who can see, the laws applies to everybody. But when we start having law with immunities and the supreme law of this country supports such, then there's something wrong. Because I understand that, I mean, you will know that before we used to go to court and a law change or some amendment happens.

It was happening. And those were wrong because it only benefited certain sections of people. And this constitution was perhaps made and the immunity provisions was brought to protect that because they made so many. If you look at the decree that they made in 2009, that was the judicial decree. But

that decree mandated how the judiciary is going to run. They said, there is the administration of justice decree in 2009.

And this decree was implemented when my case was before the court of appeal. And that was the day that the Fiji court of appeal was dismissed. During that trial, Judge Ben was the acting president and he asked me, what do you want me to do? I said, well, there's no more court.

So, these decrees were brought in to protect at that time because that case came in at a time that, you know, a lot of, if you read the case, the case talked about how the CRW was formed, how CRW executed things, the security of the country, the whole works. So those kinds of things were actually established back in those days. And then if I want to come and go back to court now and say, hey, hold on a minute, we have a perfect constitution, which some says.

And I want to be heard again to say this man has been deprived of the common law principles. And there's a judgment and that judgment was thrown away. Yet we won, we lost. So, we wanted to come to readdress. I can't. I can't have a constitutional redress on that grounds because of 173.

So, 173 says, hey, hold on, no court can decide. So, the buck ends there. So, my submission is in Fiji going forward, we need to have in our constitution, a strict article to state that no laws in Fiji to be made or implemented, which carries a immunity provision.

So that is the going forward. And by doing that, obviously, and all the previous laws has to be amended, because you just can't hide under immunity provisions and then just keep going on. And then we say we have Bill of Rights. So, can you see how imbalanced the laws are, some of the laws in Fiji and our constitution. So that's my submission. But I have summed it up in my paper. So, it's all there, relevant sections.

Mr. Valenitabua: Thank you Mr. Prasad. In some Acts some legislation there are provisions which states that officers would not be liable for any act civil or criminal which they would have undertaken in the exercise of their function or their duty. I'm looking at the Public Service Act or the Crown Proceedings Act, State Proceedings Act. It is now over.

There is an exclusion clause in there which sounds like immunity. Are you including those in this?

Mr. Prasad: Yes. when you look at the Fiji Police and Fiji Military legislation those provision are there, It has been there for a while. But when you look at the immunity provisions, under the principles of common law, which has been established in Fiji, we can still take action against, for example, in those days, we used to take action against Attorney General's office because they are under the Crown Proceedings Act and say against a ministry vehicle that causes an accident or something or causes a damage.

So, when you look at actions of the individual driver driving and causing accident or causing damage, you sue the relevant ministry. Now, example, police. Can you sue police? Under the common law principles, and they're saying we are exercising our lawful rights, like unlawful detention.

Now, are they stopped by these immunity provisions? Because these laws come in and Section 173 says, well, you can't. You can't sue them because we are exercising our rights. Whereas FRA has got a particular section that actually is so clear.

Whereas the other one says you can still take action against these entities and whereby the locus is then on you to prove absolute gross negligence. That they were exercising but they were grossly negligent. Now, the same principles, if you look, with FRA, whether they're grossly negligent or not, you still can't sue.

So, under the police, under the military, those acts haven't been amended. So, it has been there. Like Public Service Commission hasn't been there. Future amendments. But you can still take action. But again, the locus is, which is very hard, the standard is very hard to prove gross negligence.

But these things were not exercised in the courts because of the 2013 Constitution and prior to that, how the administration was run. The lawyers did not go and take action because of fear. These things were raised with somehow the other way shut up.

When I tried to do certain things in my time, a lot of things happened against me. And what do you do? You just have to keep quiet and move on because you want to move on in life. You don't want to be house arrest and then, you know, been questioned a couple of hours and you're removed from the airplane. All these things happened. But bygones are bygones. We don't want all those things.

But when you look at the law, why can't I as an individual, why can't you as an individual have a right to sue anyone? Because that's what the Constitution says. But then the same Constitution says, well, yeah, I give you the right but you can't. So, very imbalanced Constitution.

Mr. Valenitabua: Article 173 you're looking at. There is a section or article in relation to freedom of access to the courts and tribunals.

Mr. Prasad: Yes.

Mr. Valenitabua: That is what you're relying on. And then Article 173 says, no, you can't sue because of this. And so, because of the provisions of 173. So that defeats the freedom of access to the courts.

Now, did it ever come up that this law here, this law, which has been the Fiji Road Authority Act 2013, by its provision is unconstitutional? Noting that the Constitution is the supreme law. Was it ever argued?

Mr. Prasad: Yes. So, the case that I did, so there were two cases that were filed. And when we argued before we had to withdraw the action, and we argued on the grounds that it's unconstitutional. You cannot have overlapping laws. One is saying you have a right. One is saying, and then the same law is saying you don't have a right. However, the worst part was that these provisions don't even allow the court to hear.

The court has no powers. So, the judge asks me, what do I do? Because this is the court and the judge doesn't have the power to hear. What else can argue? He can't even make a written judgment on that because it's an invalid judgment.

So, that is what happened. We could not argue and get a judgment to say that is unconstitutional. Because that particular article says even the judges doesn't have the powers to hear

anything in relation to what was passed before the first session of parliament. So, there you go. It's very imbalanced, very unfair, and people were hushed ; hushed that way.

Mr. Valenitabua: You were referring to Article 173. Is there any other provision? That may be the only one.

Mr. Prasad: Yes. So, Article 173, that's on your page one. Well, I got a small booklet so it's on page one. That's the last. And the last one is 174 which talks about judicial proceedings. And again 174 talks about the sections that has been embedded in the administration of justice decree 2009. So, what section 173, that's the last. And it says very clearly.

So, if you look at even subsection 4 which is on the next page, it says that it cannot be challenged. And then remember the administration of justice decree of 2009 sacked all the judges and the whole court system was sacked. And then they brought in the new, so all the judges and magistrates were appointed under that decree. Any appointment prior to that particular decree, they were all gone. So, there was a mess sacking of judges and magistrates. So, the new ones were appointed including you reapply. So now when you look at your issue, these judges have been taken away to say that you don't have the power to hear. Because it's governed by that decree. And that decree, nobody can challenge it.So that's what happened. And we could not raise any constitutional issue. So even if we do it, the same thing we do it now, the defense councils will come up and say I'm sorry, it doesn't allow you. So, we can't do anything unless and until there's amendments made.

Mr. Valenitabua: Because there's conflict within the constitution itself.

Mr. Prasad: Yes.

Dr. Gounder: Thank you for your submission. I read your submission early this morning. Very interesting submission. This is something which was first brought to our attention by Mr. Faizal Koya who attempted to take EFL to court. And I think he faced the same situation. So, does the same scenario also apply to FNPF and EFL as well in your knowledge of view? Because when the pensioners wanted to take FNPF to court, the courts used this particular aspect to say we cannot hear the case.

So, I think your argument today in the submission might have much wider implications.

Mr. Prasad: That is absolutely correct. Now I only used one particular law as an example so it makes it clear to the board. There are other legislations in place in Fiji which you cannot sue them.

And when you, again I'm repeating myself, when you try to argue, when you try to take this matter to court, this particular, the last two articles will stop you, will stop even the judges from listening. So basically, there's no court to hear those things unless and until this supreme law is amended.

Dr. Gounder: Thank you. I think this is a very important point and we will try to see what are the other implications for this apart from the FRA argument that you have used to justify. I think it also extends to FNPF and EFL and maybe other agencies.

What's also interesting is that EFL is now a privatized company with shares, although it has not been listed on the stock exchange. So, yeah, thank you for bringing this up.

Mr. Beg: Through you, Chair, thank you. Dr. Gounder, there was some good points. Mr. Prasad, thank you for your presentation. It's a topic that relates to me. I'm an architect by profession. I understand the space that you're working in, in terms of compliance and standards. I personally feel that no one is subject to immunity or any failure.

So, the problem you have at the moment, I guess, under 173 is that rights are formally recognized but the remedies are practically unavailable. So, in a nutshell, for me, I have a real problem right now as I continue to hear this. Not just the constitution is at risk, the laws are not supporting the constitution.

So, for example, this constitutional framework covers, your section covers section 2, 6, 7, 8, 15, 16, 26 and 173. All those rights that your case, the example of this young mother falling in a manhole, fracturing her leg and not being able to sue FRA for breach. So, in summary, I ask you the question, does the constitutional framework, does it permit non-compliance to be

insulated from liability? Or does not protect governance, it protects failure?

Mr. Prasad: Your second part, it does not protect. So, when you look at, I mean, when you look at logically, we have done a lot of practical cases where we used our constitution. Not 2013, before that. This article, I think, was really drafted because when you look at all the decrees passed back in, during, from 2006 when the decrees started to come in.

And then all of a sudden, they may have realized, hold on, there's so many changes in law. How can we protect this? How can we protect ourselves? So hence, you need to bring something to say, listen, we have done it, we can't even remember how the things we, decrees we have made. So, let's bring this, end of story, and let's see what happens.

So, that's what they did, they brought this and if you see the wordings of it. It was nicely crafted to say any decrees or any laws or any legislation cannot be challenged by any courts. And then, they also under 174, that is the last of the articles of your, in this book, says about the decree which abolished the entire legal system.

When the legal system goes, and then a new decree was passed to govern how the legal system is going to operate. So, they have taken that power away from the courts to listen. Because it's under the new, so when you challenge, even if I want to go to court and challenge what you are saying, I will be stopped. So, we have a constitution, and I remember everybody saying we have the best bill of rights, protecting people. And I don't know why this kind of issue was never raised by a Fiji Law Society even, I'm a member of. I don't know why these issues were never raised by most of the lawyers.

You know, that we have laws which have been restricted. Now, look at the ACCF that came in, took away the entire third-party laws of this country. So, but it has only one provision that if you want, you can go and swan the common law, but the way it was framed.

I was present in that, I was asked to present a paper, which is one maybe in this room, with all the insurance companies. And

as soon as I presented as to the benefits of the third-party laws in Fiji, just like we have in Australia, where people have the right to sue. And Fiji is too small to bring such a kind of act.

And it's only limited, so a person loses a life, who's only 40 years of age and has got another 20 years to earn, you only get 75,000. You see, and then when you look at the constitution, why can't, so, but then they said, oh, hold on. There may be something, so you say, okay, you can bring an action under common law, provided you still lodge all your claims with the ACCF.

And under common law principles, things does take time. It takes two years, three years before you get a judgment, but the judgment you'll get is over a million dollars or half a million or more. And how they came to a figure of this is what you get, maximum payout. You see, so if you look at that particular legislation, though it allows, but there is a provision to say this is the limits of compensation that one can get. And that's again unfair. In Fiji, nobody has challenged that.

I was asked to challenge that issue. Unfortunately, you would all know Mr. Moti, he passed away. He was a former attorney general in Solomon Islands. He got injured and covered under ACCF. There's no third-party law anymore in this country. And so, when, but unfortunately, he passed away, so we could not go ahead and challenge that to see the compensation scheme.

So, we have a lot of laws that has come in, overlaps like your question. One has to be relooked. So, when the Supreme Law is amended and takes away those provisions, then all the other existing laws has to be changed. Oh, I'm sorry, amended. But from my perspective, from my experience, it is very unfair. It is unfair where people don't have certain rights to sue and get proper justice.

Dr. Fatiaki: Through you, Chair. Thank you, Mr. Prasad. I'm not a lawyer. But my understanding is that at this point in time, the Supreme Court, as in the Supreme Court of Fiji, operating under the auspices of the 2013 Constitution, has made a ruling in respect of amending the 2013 Constitution under Section 11.

My understanding is the only area that they, I won't say they directed that we could not or we should not review, was Chapter

10 relating specifically to the events related to the coup. Everything outside of that, and I think maybe Chapter 12, which is the section that you're talking about, 173 is under Chapter 12, the section that related to the president, the transitional arrangements.

But every other section in this Constitution can now be amended. And when I say amended, I mean it can be revoked, repealed, taken out completely. And so, I think from the point of view of us as a review panel, that's our mandate from the Supreme Court.

They've made the necessary guidance as far as how this happens, and we are part of that process. Now we are not the actual group that will actually put out an amendment act, for instance, and go through the parliamentary process of what they have now deemed to be adequate, which is a two-third majority, and subsequent to that, a referendum of 50 plus one of people who vote for it, to allow that amendment act of this Constitution to take place. Our job stops the minute we submit our report.

But as part of that process, just for the sake of argument, if we feel strong enough, and if there are enough submissions, we could, for instance, revoke everything in Chapter 12. Basically, make it non-existent. That's putting it simplistically. I mean we could go line by line. But that would remove all the concerns you have, and done in a legal way. So, if they did not exist anymore in writing, in an amended Constitution that government may choose to submit to Parliament, then those issues become moot, because they would no longer become part of a new Constitution, in such an amended or reviewed Constitution.

So, I think that's where we're at right now. We have very clear guidance and permission of the Supreme Court to review every part of this Constitution, and your section is not one of the sections that they've told us we should not touch. Section 10, which relates specifically to immunity granted to people involved in the conduct of the cause, that's the only area there, and you are rightly attributed that to the question of national stability and the need to move on.

But everything in 173, and everything in that Chapter 12, as far as the Supreme Court is concerned, we are able to review. And by that, I mean we are able to amend, we are able to revoke, we are

able to repeal, we're able to do whatever we wish in terms of the powers that have been given to us, or the guidance that's been given to us by the Supreme Court. So, I guess I say that more in terms of a general reflection about how we might approach this, and I'm glad that you brought that up.

We have different chapters allocated to us to work through. I had the first few, I had the preamble, the Constitution, I was not aware of this. That scares the wits out of me.

I mean, other than the fact that it conflicts with everything, and natural justice, and Bill of Rights, and everything else. I didn't even realize that there was that part of it, the immunity for FRA and immunity for, you know, city councils and who else is included at EFL. I mean, that idea, it's just, you know, just almost nonsensical.

I mean, I can understand the coup immunity, which is chapter 10. The people who are involved in the coup, and they're the only ones that the Supreme Court has, I won't say determined, but have asked us, maybe in the context of amending the Constitution. We may not want to touch that.

But chapter 12, literally could become non-existent if this panel so decided at the end of that to remove that entire chapter, and all the immunity provisions that have been given to FRA, and EFL, and city councils, and everyone else. We have a mandate to do that. Now whether government feels strong enough to take it to the next stage is another matter.

We have not deliberated on it in any detail. For me personally, this is the first knowledge I have that, I mean, I understood immunity from soldiers, you know, and police and others involved in the actual conduct of the coup. I understood that.

I didn't realize that you had immunity and the inability to touch any law from 2006 right up until 2014. Well, basically the Supreme Court has told us we can do that. In this review process.

And like I said, that review part of it involves a decision that we will make as part of our written report, which may well not have a chapter 12. And then after that, if we remove that, then the courts can then adjudicate as they see fit going forward. That's

a simplistic, non-loyal way to put to you my perspective on it as a commissioner.

But I have no doubt that as I read it, those are the guidelines and what you described is, you know, just goes against the grain. Common law and everything else, common sense would dictate that you can't have a country run like this where nothing can be challenged. And, you know, I'm not going to argue about the propriety of that, but I'm glad that you mentioned that these were all decreed and promulgated.

There's a complete difference and that's part and parcel of the so-called democratic deficit that has brought about this review process. There's the issue of non-consultation with the public. Why consultation? But legitimacy, you know, of actually having it prepared and passed through a parliament, you know, where people get to scrutinize it and make a decision.

Those processes didn't occur and as a consequence, the court has seen fit to allow us to review it. And the only proviso that I understand they asked us not to touch was section 10. But everywhere else is open, including the clauses that you allude to.

Now, how we address it as a commission, I'm sure we'll get lots of feedback from other lawyers who will bring up issues like this. But I want to assure you that certainly it will be taken into consideration. And I think we have a mandate and I guess the power to write a report, for instance, that addresses that and I'm glad and thank you for bringing that to our attention. Thank you.

Dr. Gounder: Thank you. Through you, Chair, just a quick question. Since you brought it up and I'm sure we'll be discussing this, we have two lawyers in our panel and we will, I'm sure, discuss with others as well. What would be your ideal scenario? Is to remove all of that to solve this problem? What would you suggest at this stage?

Mr. Prasad: Well, if you look at my concluding remark, and I agree with Commissioner Dr. Fatiaki, we need to amend or remove, well, the way it's structured, you may have to amend it, you just can't remove it. You may have to amend 173 and where it says that it supports, you cannot challenge the laws that was passed prior to the first sitting of the Parliament, that clause should not be there.

So, once that clause goes, we, as Commissioner has correctly stated, we then have a law where we can challenge. But on the transitional history, we need to understand that what coups have done.

Now, these coups and immunities that was granted is very, very sensitive area. Because the moment you take away Article 173 and immunity for all, but then the Supreme Court ruling has come up, which you can't touch. So, the only amendments would be that there cannot be any immunity in the legislations. And can be, so once that is done, all the laws that was passed, which is still in this law, will now needs to be amended, because it becomes unconstitutional.

So, that takes care of that. But touching the coup issues, we have to be very careful how we're going to deal with it, because we will open up the floodgates, whereby everybody will sue. And then we have the court system, but then the Supreme Court is the last court, which says it cannot be touched. So that issue goes. Chapter 10, you can't touch. That's the end.

Mr. Valenitabua: Just one question, Mr. Prasad. Was, in your case, was a judgment or a ruling given, written one?

Mr. Prasad: In which case?

Mr. Valenitabua: The case you've been measuring. So, the James Pillay against Fiji military forces, yes, there is a proper judgment.

Mr. Valenitabua: Was this issue...

Mr. Prasad: No, so then the decree came in.

Mr. Valenitabua: It was not adjudicated in that one. The issue which you are raising now.

Mr. Prasad: Yes.

Mr. Valenitabua: Was it adjudicated in a judgment, in a case and resulting in a judgment?

Mr. Prasad: No, so the constitutional issue was never there, because there we had a proper judgment against the Fiji military forces. And when the matter went on appeal, then this justice administration decree came in where it abolished the whole court system. So, nobody could educate it. And FRA, we could not get a proper ruling because the judge had no powers to go here, because of Article 173. And that was it. So, there's nothing. I see. Thank you.

Ms. Nailatikau: Through you, Chair, if I may. Thank you, sir, for your contributions here today. I think your submission has also outlined how rights don't only have responsibilities but also redress and the importance of effective and enforceable redress.

When you speak about individuals being able to take an entity to court, for example, with respect to their rights being limited or their rights being placed at risk, does this only apply to individuals, or can it also be about individuals working with organizations or advocacy organizations?

Mr. Prasad: It applies to everything.

Ms. Nailatikau: So, they can be, in collective, take, you know, for example, take a civil suit, forgive me for the lack of terminology, but they can as a group, for instance.

Mr. Prasad: Yes, as a group, as an NGO, as a limited liability company, same. So, a person is individual, a company is a person, they can sue. But in this context, if they want to do those kinds of actions, they will be stopped. And why all of sudden certain legislations were passed within themselves and it's so important for them to get an immunity doesn't make sense. Why, you know? So, it doesn't make sense.

Ms. Nailatikau: Thank you. I asked the question because in other submissions and contributions, people have also spoken about, I believe, section 44.1 where individuals can, people can only seek redress on an individual basis as opposed to collectively, but what you are saying is that that should apply across the board. The issue here is the immunity.

Dr. Fatiaki: Because the media is not here, I'll feel free to make some candid comments. I appreciate as a lawyer; you see a lot of complexity

in this. We had a submittees the other day argue with me about how simple or complex a case could be. And I argued that it was a lot more complicated. And that's what I'm hearing from you in terms of how we might address this issue.

I would suggest that the way that 2009 came out with a promulgation that removed all judges in every law, that seemed very simple for the ones who did it. And then after that, they then built things up to 2013 when they put it into a constitutional document to try and make up for the fact that they had no laws after they removed everything in 2009. We could apply a similar brush stroke to this entire section and worry about fitting it afterwards and letting the courts rightly adjudicate that.

As easily as they did it in 2009, in one day, we could technically recommend as part of this review process to do exactly the same thing to that section without getting too complicated to the individual parts of it. And then let the courts make the decisions on a case-by-case basis as they arose. I just put that out as, you know, when we talk about how complicated or how simple this can be.

I'm sure when they did it in 2009 and wiped all laws of the book and sacked the court and everybody else by promulgation, I don't think they thought very difficult with great difficulty about how difficult that was. I think we're empowered to consider all of the parts of the constitution except for section 10 and if you read it, section 10 grants immunity only to the people involved in the actual conduct of the coup and events related to the coup. And that's, we're working on the basis that we're not touching that.

But everything in section 12, which is, or 172, 173, 174, is not being embargoed by the Supreme Court in their guidance to us. And again, how we approach it is something we will do at the end of all our consultations, but I can assure you that this is something that any right-thinking person can see is not right. You know, other than the fact that it makes no sense that it conflicts with so many other parts of the current constitution.

The fact that the courts have had to apply it that way means that they're applying it to the letter as they see it. We have the opportunity now as part of this review process to, as Dr. Gounder tried to maybe suggest, what would you recommend? Should we

just erase all of chapter 12? And that gets rid of from section 162 to 174. If it's not written into the new constitution, then it no longer applies. Thank you.

Dr. Gounder: I recall the story about a young electrician working for EFL who was using a very old harnessing system. And he was requesting for a new harnessing system, but he wasn't supplied on time. And he fell from the pole and he passed away. He had a young family. And one of the lawyers was acting on behalf of the family. They sued EFL, but the court said you can't based on this. This is back in 2014. These are all stories at the personal level too.

So, many people can get impacted by such legislations. And the pensioners too, I remember FNPF pensioners, when their pension was reduced. When they took FNPF to court, that was the argument used by judges.

We can't do anything because FNPF is protected.

D Mr. Valenitabua: Under Deprovisions,

Dr. Gounder: Deprovisions yes. And that's what I mean when I said the Supreme Court now, as in the current operating Supreme Court, has actually told us we can do this. And make it so that the supreme law of this country, the constitution, for instance, addresses issues like that. How we do it, again I emphasize, is something we're going to have to sit there. We'll have legal experts, but we may be well advised.

They may tell us that, well, you're quite able to just remove the entire section and it becomes smooth.

Mr. Prasad: One thing actually happened during the coup leading us to 2013. There were so many decrees passed. Mr. Chair will agree, we used to go to court and say, oh well, the law is amended. Which section? We didn't even know. Every day it was passed like that.

And then they must have said, okay, this is quite dangerous, it might go against us, let's make a decree. So, a new law comes in, a new decree, amendment comes in, and then that's the end. Now, and the Supreme Court would have looked at all those and said, look, this is very unfair.

You can't have overlapping legislations, which currently we have. One law says something, another law says something. So, a law has to be on the straight level and balanced. So, this is the difficulties, and what you said correctly, if you remove those. But again, the court is very mindful, the Supreme Court, that look, let's not touch on the sensitive part, the historical part. Let's worry about the law.

Some may argue that you want to remove the whole immunity. You know, people can argue, but the fact is that if you look at the Supreme Court ruling, it's made it very clear. So, yes, rightly, we can remove the entire immunity provisions. In particular, reference to the legislations, in particular to the laws, that there's no immunity. It takes care of itself.

Dr. Fatiaki: And the court has not directed that we can't address that part of it. We can certainly repeal those or remove them, these immunity decrees that have been promulgated for FRA and FMPF not being sued. That is certainly under our purview in terms of making recommendations about how we treat that section. Thank you.

Dr. Gounder: It's certainly to do with this point. There's nothing in the Electricity Act that talks about anything like this. So, the courts are certainly picking up this point. Thank you, Chair.

Mr. Beg: Through you, Chair. So, Mr. Prasad, if I hear you correctly, I'm a bit more technical. In 173.5, so basically your point is if we look at that framework and said you're saying notwithstanding subsections 1 to 4, nothing in this section shall operate to prevent the court or tribunal, blah, blah, blah, blah, something to those lines. Is that what you're trying to hint at?

Mr. Prasad: Yeah, so if you read 174, the whole article itself basically is on to preserve all the existing laws. And the heading is Preservation of Laws. So, whichever way we were trying to read section 173, it stops a person from challenging any laws that came prior to the first sitting of Parliament. So, the laws that came in 2014, remember, Parliament only sat in October 2014. So, anything that was passed, you cannot come and challenge that.

Now, you may say, no, hold on, I still have this right to seek re-address. Then you look at section 174, the last one, because 174

dictates that you cannot challenge the administration of justice decree. This is this decree that abolished the court and therefore the powers was taken away.

We challenged this in court and then again, you know, there was no court because this establishes that the decree is still there, justice administration decree is still there. So, the judge's powers was taken away. So, 173 is basically you can't, no matter what you do.

Mr. Beg: I was just thinking that you could, Mr. Prasad, I was thinking that you could, along the lines that you're suggesting, instead of fully removing it like my colleagues are suggesting or maybe, you know, you just say something to that effect, to prevent any court or tribunal from hearing, determining or granting relief in any matter where injury, loss or damage arises. Could we reframe it? I mean, that's for the technical drafters to look at. Yes, the drafters, you're absolutely correct.

Mr. Prasad: The drafters have to then say that any propagation decree or declarations, the wordings, we need to draft it in such a way that those now can be challenged in court of law. And then the immunity provision doesn't apply.

Mr. Beg: So that will then force the law to adjust itself.

Mr. Prasad: And because now you have a constitution, you cannot go against it. So, the courts will hear us redress that, as Dr. Fatiaki has correctly said. So, yes, you can have it, but you need to remove those. Remember, propagation decrees and declarations. It has to go. Thank you.

Mr. Beg: All right.

Mr. Valenitabua: Thank you, Mr. Prasad. Something for us to think about. And thank you for your submission. Thank you. It will force the lawyers now, Mr. Kohli and myself, to look at Section 173, 174, and the ones before it, Chapter 10. You know, the provisions in Chapter 10 and Chapter 12.

You have raised a pertinent point, a very important point. I have not come across this because I've never done a case in relation to this. I've been away. You are in a very good position to have

come up here. And thank you very much for that. Thank you very much again. We will deliberate on submissions. And then we will write a report. That report will have to be submitted to His Excellency, the President. And then the lawmaking process follows on from there. We've got a good team here.

As you might have concluded just hearing to the questions, we look at this provision of the Constitution. It affects the lay people of this country who may be damaged and who may be injured and who may suffer damages and claim damages for personal injuries and things like that. Thank you very much.

----------End of Session [27-4-2026] ----------

SUBMISSION TO THE CONSTITUTIONAL REVIEW COMMITTEE OF FIJI
27 April 2026

The Chairperson, distinguished members of the Committee,

Thank you for the opportunity to present this submission.

My focus today is a structural constitutional issue arising from the interaction between the **Constitution of the Republic of Fiji 2013** and statutory immunity provisions found in legislation such as the **Fiji Roads Authority Act 2012**.

The central concern is whether constitutional rights—particularly access to courts and effective remedies—are being limited in practice by statutory and preserved legal frameworks.

1. Constitutional Framework

The starting point is the Constitution itself.

- **Article 7(1)(a) and 7(4)** establish constitutional supremacy and state clearly that any law inconsistent with the Constitution is invalid to the extent of that inconsistency.

- 7(1) In addition to complying with section 3, when interpreting and applying this Chapter, a court, tribunal or other authority—

  (a) must promote the values that underlie a democratic society based on human dignity, equality and freedom;

- 7(4) When deciding any matter according to common law, a court must apply and, where necessary, develop common law in a manner that respects the rights and freedoms recognized in this Chapter.

Article 15(2) requires that **rights be interpreted broadly** and in a manner that most favours their enforcement, consistent **with a democratic society based on human dignity, equality, and freedom.**

Article 15(2) 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

Article 26 guarantees access to courts and tribunals.

Article 26

(1) Every person is **equal before the law and has the right to equal protection, treatment and benefit of the law.**

(2) Equality includes the **full and equal enjoyment of all rights and freedoms recognised in this Chapter or any other written law.**

(3) A person must **not be unfairly discriminated** against, directly or indirectly on the grounds of his or her—

(a) actual or supposed personal characteristics or circumstances, including race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, disability, age, religion, conscience, marital status or pregnancy

Article 173 (1), (2), (3) and **(4)(a)(b)(c)(d)** preserves existing laws at the time of constitutional commencement.

173 **(1)** Subject to subsection (2), all written laws in **force immediately before the date of commencement of this Constitution (other than the laws referred to in Part C of this Chapter) shall continue in force as if they had been made under or pursuant to this Constitution**, and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution.

(2) Notwithstanding anything contained in this Constitution, any Promulgation, Decree or Declaration (other than the laws referred to in Part C of this Chapter) and any subordinate laws made under any such Promulgation, Decree or Declaration—

(a) made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution; and

(b) which are in force and have not been repealed or replaced by another Promulgation, Decree or Declaration or by any subordinate laws made under any such Promulgation, Decree or Declaration (as the case may be), **shall continue to be in force in their entirety**.

(3) Notwithstanding anything contained in this Constitution, any Promulgation, Decree or Declaration (other than the laws referred to in Part C of this Chapter) and any subordinate laws made under any such Promulgation, Decree or Declaration—

(a) made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution; and

(b) which are in force and have not been repealed or replaced by another Promulgation, Decree or Declaration or by any subordinate laws made under any such Promulgation, Decree or Declaration (as the case may be),

may be amended by Parliament after the commencement of this Constitution, provided however that **no such amendment shall—**

(i) have any retrospective effect;
(ii) in any way nullify any decision made under these laws; or

(iii) grant any compensation, damages, relief, remedy or reparation to any person affected by these laws.

(4) Notwithstanding anything contained in this Constitution, **no court or tribunal (including any court or tribunal established or continued in existence by the Constitution) shall have the jurisdiction to accept, hear, determine, or in any other way entertain, or to grant any order, relief or remedy, in any proceeding of any nature whatsoever which seeks or purports to challenge or question**—

(a) **the validity or legality** of any Promulgation, Decree or Declaration, and any subordinate laws made under any such Promulgation, Decree or Declaration (including any provision of any such laws), made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution;

(b) the constitutionality of any Promulgation, Decree or Declaration, and any subordinate laws made under any such Promulgation, Decree or Declaration (including any provision of any such laws), made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution;

(c) any Promulgation, Decree or Declaration, and any subordinate laws made under any such Promulgation, Decree or Declaration (including any provision of any such laws), made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution, for being inconsistent with any provision of this Constitution, including any provision of Chapter 2 of this Constitution; or

(d) any decision made or authorised, or any action taken, or any decision which may be made or authorised, or any action which may be taken, under any Promulgation, Decree or Declaration, and any subordinate laws made under any such Promulgation, Decree or Declaration (including any provision of any such laws), made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution, except as may be provided in or authorised by any such Promulgation, Decree or Declaration (including any provision of any such laws), made or as may be made between 5 December 2006 until the first sitting of the first Parliament under this Constitution.

Taken together, these provisions establish both continuity and supremacy within the constitutional order and cannot be challenged in any courts in Fiji.

2. Statutory Immunity Context

A practical illustration arises under **Section 38A of the Fiji Roads Authority Act 2012**, which provides broad immunity from civil and criminal liability for acts or omissions carried out in the exercise of statutory functions.

In effect, compensation in such cases is discretionary rather than enforceable through the courts.

Section 38A in full version states as follows:

- Neither the committee, **the Authority** nor any officer, servant, workman or labourer employed or engaged by the Committee, or the Authority shall be liable for **any action, suite, proceeding, dispute or challenge in any court, tribunal or any other abjudicating body for or in respect of any act or omission done in the exercise or non-exercise of the powers** conferred by or duties prescribed under the provisions of this Act or any other written law.

- Notwithstanding anything contained in subsection (1), the Minister may on an ex-gratia basis grant compensation to any person who has suffered any injury or damage to property, caused either directly or indirectly by any act or omission done in the exercise or non-exercise of the powers conferred by or duties prescribed under the provisions of this Act or any other written law.

A few years back, I filed a claim against FRA for two clients who sustained injuries after falling into a manhole that was not fixed or protected. In one of the cases, a lady was disembarking from a bus, carrying her 2-year-old baby, at the bus bay in front of the Nausori Town Council office. As she stepped her left foot onto the bus bay, which was covered with water, her leg went straight into the hole. Luckily for her, she managed to save her baby. Of course, she sustained a fracture to her leg, and the matter was called before justice Alfred.

FRA argued that the Judge had no locus to hear this matter based on Section 38 of the FRA Act. I argued that although there is immunity in the Act, this does not override common law principles, and I quoted a Privy Council case similar to my case. In that case from Mauritius,

there was an immunity provision in the Act, but the Privy Council allowed the common law grounds of duty of care to proceed.

In my case, Article 173 of the Constitution specifically states that any laws passed prior to the first sitting of Parliament under the 2013 Constitution cannot be challenged in any court. This provision stops any judicial interference, and the case had to be withdrawn.

The FRA is generally immune from tort claims regarding its core statutory duties, stemming from a "King can do no wrong" doctrine.

The case **James Pillay v Fiji Military Forces**, which dealt with actions taken by the military during Fiji's period of political upheaval.

The High Court in Suva, Fiji ruled in favour of Mr. Pillay who was hit by a stray bullet during the height of the mutiny shootout on November 2, 2000 and ordered the Military to compensate him.

Justice Roger Coventry said the military was liable in negligence to James Pillay, who sued the military after being hit in the abdomen by a stray bullet.

The court heard that Mr Pillay was waiting for a taxi near the Queens Elizabeth Barracks, Nabua, where the shootout took place when he was hit.

Justice Coventry says the military breached its duty where it allowed men disbanded members of the elite Counter Revolutionary Warfare Unit access not only to guns but to ammunition.

In that case, the court did find issues around unlawful treatment. However, the broader legal context matters: after the 2006 coup, the **Administration of Justice Decree 2009** (and related decrees) effectively granted immunity to the military and government authorities for acts done during that period.

Because of that decree:

- Even if a court found wrongdoing,
- **Compensation could not be enforced or awarded** against the **Republic of Fiji Military Forces**.

After 2013 constitution was formed Article 173 denies anyone from bring redress of action and seek remedy for the laws that granted immunity.

3. The Constitutional Tension

This gives rise to a key constitutional tension:

On one hand, Articles 26 and 15(2) emphasize access to justice.

On the other hand, Article 173 preserves pre-existing laws, including those that restrict or exclude liability.

The question therefore becomes:

How meaningful is the right of access to courts if the supreme law limits those rights and remedies?

For example, FRA digs a manhole on a footpath. This manhole is not covered or protection placed around it. If you are walking on that footpath and its dark, did not see the manhole and fall in, sustain severe fractures.

Now can you sue FRA? The answer is Section 38 – NO.

So, what happens to your rights under Article 15 and 26?

Prior to establishment of FRA the roads, footpaths were looked after by local councils and state roads were looked after by PWD. People who sustained damages or injuries were able to sue the relevant parties for negligence and the courts in Fiji have granted awards in that respect.

4. Constitutional Supremacy

Articles 7(1)(a) and 7(4) confirm that the Constitution is the supreme law of the State and that any inconsistent law with the Constitution is invalid.

This supports an important principle:

Statutory immunity provisions should be applied in a way that remains consistent with constitutional rights, including access to courts and the effective remedies.

5. Practical Effect

In practical terms, the current framework may result in:

- Limited ability to bring civil claims against public authorities
- Reliance on discretionary compensation schemes
- Reduced judicial enforceability of rights in certain cases
- Continued operation of broad immunity provisions even where harm is alleged

6. Constitutional Concern

A core principle of constitutional governance is that:

where there is a right, there must be an effective remedy.

If immunity provisions prevent courts from providing remedies, there is a risk that constitutional rights become theory rather than practical.

7. Transitional and Historical Immunity Frameworks

It is respectfully submitted that Fiji also has **historical legal arrangements arising from past political and constitutional issues**, where certain actions and actors were subject to **specific legal immunity frameworks intended to preserve national stability and legal continuity at the time.**

These frameworks, while exceptional in nature, form part of Fiji's constitutional and legal history and have contributed to:

- maintaining institutional continuity during periods of political transition
- avoiding extensive litigation that could destabilise governance structures
- enabling constitutional and democratic restoration.

8. Reform Considerations

It is respectfully submitted that the Committee may wish to consider the following:

First, strengthening access to justice by clarifying that Article 15 and 26 includes the right to effective and enforceable remedies.

Second, ensuring that immunity is never included in any Laws of Fiji (The Act).

Third, clarifying the operation of Article 173 to ensure that preserved laws remain subject to constitutional scrutiny where they limit fundamental rights.

Fourth, preserving historically sensitive immunity frameworks, but ensuring they are interpreted narrowly and applied with current constitutional principles, including Article 15(2).

9. Conclusion

In conclusion, this submission highlights a structural interaction between constitutional rights and statutory as well as transitional immunity frameworks.

While the Constitution guarantees access to courts, the practical enforcement of those rights may, in certain circumstances, be limited by statutory immunity and preserved legal regimes.

It is respectfully submitted that reform in this area should ensure that constitutional rights remain meaningful, enforceable, and consistent with the principle of constitutional supremacy, while still preserving only those immunity frameworks necessary for historical continuity and national stability.

Submitted respectfully,

Diven Prasad

Diven Prasad Lawyers

Sandeep Narayan Singh

Sandeep Narayan
Time: 3.30-4.40pm
Date: 27-4-2026

Leighton: Good afternoon, Mr. Narayan. By way of introduction, my name is Leighton Fatiaki. I am just going to go through a few housekeeping matters with you, sir.

If you wish to speak, if you can just press the right panel in front of you on the mic for the mic to turn on, and after you have given your submission, if you can press the same panel just to turn it off. Following this, the Chair will introduce the Commission and the work that they will be undertaking, as well as the Commissioners. I kindly request if you can also introduce yourself after the Chair's introduction. This is for the transcription record.

Mr. Valenitabua: Good afternoon, Mr. Narayan.

Mr. Singh: Good afternoon, sir.

Mr. Valenitabua: It is a pleasure having you here this afternoon. As well, sir. Before I proceed further, by way of introduction, I would like the Commissioners to introduce themselves this afternoon. We will start from the far right, and then we will come across the table. Thank you very much, Chair. Good afternoon to you, sir.

Mr. Beg: My name is Conway Beg. I am an architect by profession, and I am glad to sit here and listen to your presentation. Thank you.

Ms. Nailatikau: Good afternoon, Mr. Singh. Thank you, Chair. I am Mere Nailatikau. I am an independent consultant. I work mostly in environmental and social safeguarding. Thank you.

Dr. Fatiaki: Good afternoon, and welcome, Mr. Narayan. I am Dr. Fatiaki. I am a medical practitioner by profession, Rotuman. I welcome you and thank you for coming this afternoon.

Dr. Gounder: Good afternoon, Mr. Narayan. I am Neelesh Gounder, and I am with USP. I look forward to your submission on behalf of the CF. Thank you.

Mr. Valenitabua: We now know your second name, your surname, I believe. I believe it is a matter of recording. Could you please introduce yourself, sir?

Mr. Singh: Thank you. My name is Sandeep Narayan Singh. By profession, currently I live in Fiji since 2022. I moved back in 2022 to Fiji. I am the economic consultant and investment consultant. I am also the director of Fiji China Business Council and the Fiji Canada Business Council. Apart from that, I am the leader of an organization called Hindu Unity, and I am one of social media influence in regards to when it comes to the politics and economic activities.

Mr. Valenitabua: Thank you very much for that introduction, Mr. Narayan.

Mr. Singh: Thank you, sir.

Mr. Valenitabua: Like I said, we welcome you this afternoon. It is a pleasure receiving you here. You are one of the five or six other individuals who have made submissions to us in relation to the 2013 constitution. The commission was established, and we are tasked by His Excellency, the President of the Republic of Fiji, to review the 2013 constitution. We are not tasked to create a new one, no.

We are tasked to review and prepare an amended one if it is necessary. I would use that phrase for the time being, for reasons you might understand. Now, we are going to listen to you this afternoon. We will listen to your views, to your suggestions, to your input into how we can improve this constitution. A review would usually result in an improvement. We can remove some provisions.

We can add new provisions, or we just amend the current ones to change meanings and so forth, as is usually done in legislative enactments or amendments. So that is what our task is. We will listen to you.

At the end of the session, my commissioners and I will be asking you questions, or some of the commissioners might want to comment on what you have raised. So be prepared that we will ask you questions and comment on your submissions this afternoon. That is all in relation to that. As of now, the floor is open to you, and I pass you the mic. Thank you.

Mr. Singh: Thank you, sir, for giving me this opportunity. I actually drafted it, so I'll just go through that, what I have drafted. First of all, Bula Vinaka, Honorable Chairperson and the esteemed members of the Commission, thank you for granting me this opportunity to present my submission. I sincerely appreciate your efforts in engaging the people of Fiji for shaping the future of our constitution.

First and foremost, I strongly submit that the Fiji must remain a secular state. This is not about the numbers game or elevating one religion above others. Religion is deeply personal. It shapes individual values and beliefs, but it must never be imposed by the state or used as the national identity.

The constitution must clearly guarantee the separation of religion and state, equal recognition and the protection of all religions, that no religious doctrine overrides constitutional supremacy. I do not believe by making Fiji a Christian state, the nation will progress economically or will boom. Neither will crime nor the serious concern of drugs will reduce. Instead, it will risk dividing our people further. We are already facing the hardship because of so-called racial politicians' issues and discrimination from decades.

Instead of solving and healing the past, some are trying to bring new wounds and now even dividing the nation in the name of religion. The nation must remain a secular state and all faiths must be given and recognized equally. Fiji must remain a secular state.

Two, citizenship chapter five. Under the chapter five, I firmly believe that all citizens of Fiji are Fijians regardless of ethnicity. We may proudly acknowledge our ancestral roots, whether indigenous, Indo-Fijians or others, but our home, identity and contribution belong to Fiji.

For myself, I am very happy to be called an Indo-Fijian or simply as Indian as I'm rooted from my ancestors and I'm proud of where they came from, a country that is booming and growing to become the world's largest economies. But by saying that, sir, it does not take away our commitment and contribution to the nation we live in. We all know that Fiji is only our country where we are born, living and contributing towards development.

This is our country. As citizens of this country, by rights, we are all Fijians. Taking this on consideration of citizenship, I rated here is the integration with the indigenous people of this nation.

It's like lack of integration and this I feel that there is an issue where our country is currently taking. But whom shall we blame? Before 1987, most of us know that the different races were flourishing together and the gap started to create after 1987. I kept dividing and many of our politicians contributed to creating distance between communities.

Calling Fijian or not Fijian is not the real issue. The real issue is whether everyone feels protected under this constitution and valued equally and no one is supreme above anyone else, even if many might argue. I would say that that itself can give the answer to equality.

Apart from the chapter five, I wrote this because this is very dear to me. This is about reform on the citizenship conditions. Now I want to focus on the condition upon which the citizenship of Fiji may be acquired and the condition upon which a person may become a Fiji citizen.

Under the current constitution and the laws, it is very general and the rules and regulations will sooner or later affect the nation, especially the way citizenship is being granted. In recent years, we have noticed the large number of Bangladeshis acquiring citizenship, including the large number of Chinese nationals. Many cannot even understand language properly and this is creating further division in our community.

Even laborers, unskilled workers are given citizenship of this country. I want to ask the commission that granting of citizenship must be amended and structured in the constitution. For example, citizenship by investment, citizenship by skill and knowledge. We do not want to make Fiji a situation of instability or extremism.

So, on chapter two, Bill of Rights, under chapter two Bill of Rights, I would like to propose the death penalty for serious offence, especially the drugs. There should be no one or no very limited rights for anyone arrested under the Drug Act.

This is high time that the constitution gives powers to authorities to act decisively in combating the drugs. This rise of drugs in Fiji is one of the most serious threats facing our nation today, destroying our youth,

breaking families and undermining our future. This is not just a legal issue; it is a national crisis.

The constitution must empower the state to act decisively. I propose constitutional recognition of drug trafficking as a serious national threat, stronger enforcement powers, faster investigation procedures, expanded powers for police and joint operation and special drug court for quick trials. Judicial reform, fast track courts for drug cases or stricter bail conditions for serious offenders.

The state shall take all necessary legislative and enforcement measures to combat illicit drugs and protect the public health safety and the national security. The constitution should provide the framework. The message must be clear, Fiji will not tolerate the destruction of its people through drugs.

The protection of iTaukei land must remain absolute and non-negotiable. However, protection alone is not enough. There must also be fair economic participation for landowners. I propose a national consultative land forum to ensure the inclusive decision making. Mandatory stakeholder consultation before any land law reforms. Stronger procedural safeguards.

The current system under the iTaukei Land Trust Board must develop. Reforms include dividend or profit-sharing schemes for landowners, mandatory sharing of increased land value upon resale, a requirement that the 50 percent of the land value at the time of sale be returned to landowners. The reason I am putting because this is a very serious concern as the nation is not developing when we talk about the land and the land law.

Too often land is leased, held and later sold at a significant profit while the landowners receive no or no return and this imbalance must be corrected. Additionally, I propose exploring the institutions similar to sector-based models to protect the tenants, the farmers, ensuring the long-term stability and trust. 5.

Chapter 4. Cabinet and the Governance. Under the Section 91.1 of the Constitution, the Prime Minister has the sole authority to determine the size of cabinet. I propose an amendment. Cabinet should be kept at the 15-member and reduce the bloated Parliament.

Independent institutions and judiciary. Under the 2013 Constitution, independent institutions are politically captured. I propose that the appointments to the independent institutions should be jointly selected by the Prime Minister and the Leader of the Opposition or a Parliament.

Judicial independence. Under the current Constitution, the Prime Minister advised the President on appointment of a Chief Justice and Court of Appeal President, after consulting only the Attorney General.

There is no requirement to consult the Leader of the Opposition. Under the 1997 Constitution, the consultation with the Opposition was required.

I therefore propose to remove the Prime Minister's direct advisory role, President to act on recommendation of Judicial Service Commission, consultation with both the Prime Minister and the Leader of the Opposition.

Electoral Reform, Fair Representation and Encouraging the New Leadership. To strengthen the democracy and restore the public confidence in governance, I propose important reforms on our electoral system. Firstly, I strongly believe that Fiji should move back to constituency-based electoral system. This will ensure fair and direct representation of communities where people know their elected representatives and can depend on them to raise and address their concern.

A constituency-based system will strengthen the relationship between the people and the representative, ensure accountability at the local level, and provide fair representation to different communities across the country. People must feel that their voices are heard and that the elected members of Parliament are directly responsible to them. In addition, I propose adopting a practical approach similar to Singapore, where the Member of Parliament is required to dedicate at least one day every week to their constituency.

This will ensure that MPs are accessible to people, directly engaged with community issues, assist in resolving problems faced by the citizens, and maintain a strong connection with those they represent.

Furthermore, I propose limiting the Members of Parliament to two consecutive terms, requiring to break before re-contesting to allow new leaders to emerge, reducing the size of Parliament to 30 members, which is more appropriate for Fiji's population. These reforms will encourage new leadership, bring fresh ideas into Parliament, improve efficiency and reduce costs, and reinforce the accountability and the service of the people. Politics should not be seen as a lifetime position, but it is a responsibility to serve the people with dedication and integrity.

Seven- accountability empowering the people. Citizens must have stronger rights to hold the state accountable. I propose legal rights for citizens to challenge unreasonable delays by government agencies and forcible timelines for savings delivery. Currently, dealing with government agencies can be slow and frustrating. This must change to support the economic growth and the public confidence.

In my conclusion, before I conclude, I propose that Chapter 10 immunity should be completely removed. No individual should be above the law. True democracy requires equality, accountability and justice.

In conclusion, I wish to highlight my concern that the 2013 Constitution was designed in a way that enabled the previous government to maintain the pro-loan control. A careful reading shows that the Office of the Prime Minister and Attorney General are referenced extensively in a manner that suggests significant concentration of authority in the hands of two individuals. Yet, many continue to describe this Constitution as fair.

I acknowledge that no Constitution can ever be perfect. However, it must always reflect to the fundamental principle of fairness, independence and the proper checks and balances. Not a system that is controlled by a few. No Constitution should be cemented forever. It must remain a living document, open to review and amendment as our nation grows.

It is also important to recognize that the 2013 Constitution was never fully endorsed by the majority of the people. It has created divided opinions and, in many instances, frustration and anger among citizens. I sincerely hope that the Commission will meaningfully engage with the people, carefully analyze and contribute and make fair, balanced and just recommendations. At the end of the day, every citizen must be

treated equally, recognized equally and be free to practice their faith without fear.

Every individual should have the right to live and move freely across the nation without discrimination. Vinaka Vakalevu, Jai Sri Ram and thank you.

Mr. Valenitabua: Thank you very much, Mr. Narayan. Thank you very much. We have heard your submissions. Interesting. I must say that some of the matters that you have raised this afternoon have been raised with us before. You are not the only one who have raised them, so your submissions, part of it, are in common with other members of the other citizens of this country who have appeared before us. Citizenship is an issue.

I would leave that to my other commissioners to speak on the citizenship. The drug issue, that is an issue which is threatening this country right now. So, we will discuss that with you, or we will comment in relation to that.

The returns to landowners, iTaukei landowners, of the proceeds of the land. We have heard submissions in relation to that. One of the commissioners might want also to comment on that.

There are other ones, judicial independence and so forth, the concentration of powers. You have raised that in relation to judicial independence and also the appointments, some of the appointments. The concentration of power to the AG and to the Prime Minister and so forth, we have heard about those.

And to top it off, we are glad that we have this consolidating submission coming from you on points that we are to look at in relation to this review of the constitution. Thank you very much for that. I will now call upon my committee of commissioners in case they have any comments to make regarding your submissions this afternoon. At the end I might just cover up on some matters that I think should be covered up. Thank you.

Ms. Nailatikau: Thank you, Chair. Mr. Singh, am I correct? Mr. Singh, thank you for your contributions. I call to your point about term limitations in terms of parliamentary terms, the two terms of parliament. That relates not only to section 56 of the constitution, but also the extensive work that the Electoral Law Reform Commission has done.

I am sure you will be pleased to note that we have met with them for a very important discussion. You mentioned a particular stand down period, for example, as in people would, a candidate for instance, with the credentials outlined under section 56-2 of the constitution, would then be required before standing for elections a third time to have a certain stand down period, for instance, perhaps not standing for the third election. How would that work in terms of what you were thinking?

The second part of my question was about your limiting parliamentary numbers to 30. I would be interested to know how you came up to that figure in terms of Fiji's geographic and population makeup. Thank you.

Mr. Singh: Thank you, Honourable Commissioner. I think the first question in regards to where we have a gap of one year and then they can contest the election. Of course, this depends on the candidate. If the candidate has done or achieved within the two-year period, definitely the public demand will be there for a candidate to contest re-election after having a gap of one year.

The reason of submitting this because we have seen now in Fiji, and I'm myself contesting next election to tell you, is the reason that we can see the young generation or the young leaders are not attracted to our political arena where it is concerned, despite so many political parties are coming up for registration, because people feel that the politic is only for the senior politician or old politicians. That's simple. And young people do not want.

I think to take this country forward and the reason that suggestion was done is that it allows the two-year term and then you turn down and then if you want to contest on the fourth year, you can contest. But it will also allow the change of the candidates that the new leaders and new people with the new fresh ideas would bring in.

And with your second question in regards to the number 30, I think looking at the current situation, we have one single vote, so it is one single constituency in Fiji and if we keep this as it is, as of now, I believe that's reason to reduce the numbers because the whole nation had a population of less than 900,000 and the registered voters is maybe around 450 or below 600,000.

Based on the numbers, I believe 55 is too much. We only proposed in the area was the 15-member cabinet and if you're looking at 15-member cabinet, therefore we're saying that it should be 30 so it can balance it where the government is concerned. But again, looking at the budget constraint, looking at the country's situation, looking at unnecessary MPs doing nothing in the parliament.

If you look at this current situation, I believe there are many that has done nothing, contributed to the nation's development. I deal with people maybe regular basis. So that is the reason I put that suggestion that looking at the size of our population, looking if we continue the election under the single that is the current political party act where the whole nation is one constituency and that's what I propose for the number 30. But if the country goes into constituency system, then the numbers definitely will change.

Ms. Nailatikau: And sorry, just to clarify, did you mean two terms? I mean one term being four years in terms of parliamentary terms?

Dr. Gounder: Thank you Chair and thank you Mr. Singh for your submission this afternoon. I want to start by asking you regarding the citizenship of Fiji that you mentioned. So, currently the citizenship of Fiji shall only be acquired through birth registration or naturalization. And then we have further laws that talk about the naturalization aspect of the citizenship. Now I've analyzed some data and I do not see the point that you highlighted about the Bangladesh residents.

But in any case, you are also recommending that citizenship can be acquired through other means apart from this, for example through investment interest in Fiji. Is that what you are suggesting?

Mr. Singh: No sir. In connection to the naturalization, naturalization is an act, it is under the constitution. And in naturalization you have various ways of acquiring the citizenship currently in this country. So, under the naturalization you lived in the country for five years on a legal permit, you acquired a citizenship. I'm just saying regulate that naturalization process because, well I don't have a number, but I know it's almost 7000 plus citizenship has been granted in the last couple of five years maybe.

But what I'm saying is that the country is getting, or the people are getting citizenship of this country who do not contribute in aspect of the skill

level, the education level, and the investment level. We are giving citizenship so generous. Anybody living in the country with a permit of five years, you are qualified to citizenship, you are a laborer or whatsoever.

There are a lot of countries that modernize their citizenship law. I lived in Singapore for the last seven years; I will talk about Singapore. Singapore has three categories of permits, S-pass, E-pass, and the work pass.

We never give citizenship to work pass holders because they come to work, whatever years you have a contract, work and go. And that actually brings more qualified people, expatriate to actually come to Fiji. There are many countries like Mauritius, or if you look at some European countries currently, giving citizenship under the naturalization on the basis of investment.

So, example, Fiji is currently facing difficulties of having investment in maybe rural area or agriculture sector. Why not we develop those sectors, create a program that people investing in those rural development has an easy pathway to citizenship.

Like Singapore, we give citizenship within two years. If you have an E-pass, which gives you master's and doctorate degree holders, you can get citizenship within two years. Or you brought some kind of program to vent in Singapore, example you are an IT professional or a game developer, you come to Singapore and develop that game, the government gives you early a recognition of citizenship. That's what I'm trying to say, restructure the naturalization.

Dr. Gounder: Thank you. I think we received this submission in the National Economic Summit, the National Development Plan consultations as well. So efforts are being made to modernize the Immigration Act at the moment.

We should take care of some of these issues. I just wanted to explore where you're coming from that angle, because most of the work payment that we are giving at the moment to the Bangladesh nationals we refer to as a maximum two-year period. After those two years, they go back home. So, there is no, so to say, transition from work payment to citizenship in Fiji at the moment. It's not that easy.

Mr. Singh: That's not true, sir. My agency, One Stop Pacific Island Business Consultancy, we deal with work permit. We deal with 70 large companies' work permit and we process work permits. There are people, renewal of one, we don't have a two-year work permit in Fiji.

In Fiji we have two permit systems, one is the long-term and one is the short-term. Short-term is one year or below one year, and we have a long-term which is three years. And the permits are renewed.

It's not that people are not allowed to go out. You're talking about the two years period of permit is basically a construction sector, because construction sector is based on a project base. So, you are building a building and the project is for two years. You bring person for two years, you complete the project, and you send the people. But that's only for those area. But if that contractor has a continuous project, the workers will remain there. And they will not just leave the country after two years. So basically, that's what is happening commissioners today.

And that's my line actually. I'm the expert in immigration. I even did a proposal for the amendment of the Act. I have drafted the 30-page submission which I have given to the former minister in regards to the immigration amendment. And that is my expertise in sector of immigration, Your Honors.

Dr. Gounder: So, the Act has been currently, I think, being revised.

Mr. Singh: Yes, sir.

Dr. Gounder: So hopefully they'll take care of it.

Mr. Beg: Sorry, can I just, through you, Commissioner, Mr. Narayan, I mean, you make a point about the Bangladesh issue, because I'm in the construction sector, so I see it happening. But, you know, we have to also be careful to empower our own people. And I'm just worried about the balance of that as well and how that would be interpreted and framed in our place. Because we need to empower our nation. We can't rely on, you know, every time we have a problem, we run outside. And there is a problem. I agree with you. So, yeah, I'd like to see how that would be. And my fellow commissioner, Dr. Gounder, that's his area of expertise. So probably we'll have a debate about that. Sorry to interrupt you.

Dr. Gounder: No, that's all right.

Mr. Beg: I just have one point. I thought you had some very valid points that you were making, but you brought up the death penalty. So, I'm trying hard to fathom that, because in the Bill of Rights, how do you, you know, the freedom of cruelty, inhumanity, how do we deal with that? Because everybody has the right to live. So, I'm just, and then also how it plugs in with international law. And, you know, if we bring that in, how would Fiji be perceived? I understand the frustration. I totally agree with you, the situation with the drugs.

But I have a serious concern about the death penalty and how we deal with that issue. So, yeah, but you, I mean, you framed it, like you used the drugs and processing of the law and so on. So, I think I would like to discuss that a little bit more with the team. I just, yeah, I have a concern with that, when it comes to the section of Bill of Rights and the right to live. So, thank you.

Mr. Singh: Thank you. Thank you, sir. On the first question, I think that was just a discussion. Yes, definitely we need to empower our people. And that is the reason I'm saying that the citizenship shall not be given to people with the work permit, because then they continue to stay and take up those jobs, right?

So, if you come for work permit, you come, finish your job and go, and don't try to apply citizenship here. Because you all know that even under your construction company, when you apply work permit, you have two terms.

But when you go for the longer term, you need to provide understudy, so that that skill pass to the local understudy, transfer of skills, the reason of that. And the reason why we're taking foreigners is because of that, because we are lacking of skill. But they should not just take over and continue with the job, so a local can't get a job.

On the second, on the death penalty, I live in Singapore, so I think that's why I'm coming out for the death penalty as consent. But yes, I think I have echoed my post after the incident, what is happening currently. And I echoed various times, maybe you have seen on media, about the death penalty with Fiji Village and all others.

The reason is this, Your Honor. Currently, the way I feel, I was very close to Reverend Simione Tugi, who was fighting for drugs, and I actually conducted the whole funeral of my brother. And since three, four years since I came back to Fiji, he was my closest buddy and brother to me.

And he was a fighter for drugs. I go with him to some conference and activities, and conference workshop, UN, and all these places. Everybody was keep on dialogue, dialogue, dialogue, dialogue, and there was no actions being taken. And recently we lost him. But after he lost, I took that kind of courage to actually stand for where the drug is concerned. I never came into drug issues.

I got two death threat warning came, one which I sent to the military commander, where is your residence, we want to bomb you. And the other one is that you shut your mouth, otherwise you will disappear. But that's fine where the drug is concerned, and the death threat I'm receiving.

But yes, sir, we need to create some kind of fear to the people. I believe nearly 40%, when Tugi was mentioning, around 40% of people are now either distribution sellers or usage of drugs, and the high rise of the HIV numbers. Taking the consideration of Bill of Rights and all those rights, the human rights, and all sort of things, I think sometimes as Fijians we need to stand up for our nation and protect our children and our youth.

I believe going above or going over the international treaty that we have sometimes need to compromise, and you would see Dubai, you would see Singapore, Leekwan Lee has compromised all that, where he thrown out human rights when he was there. And because to put that strength and focus to make sure that we don't lose the children of our nation and enter them into drugs.

Fiji is now at the level, I would say, a pandemic or calamity level, because of the number's threats going on. Just yesterday we have seen a young police officer being actually hit by a car, and she's currently facing a serious condition in the hospital, who is also the daughter of our defense minister.

And looking at all this aspect of criminals moving around, I propose that for the commission to see the situation, and I appeal the commissioners, let's forget about whatever the Bill of Rights and all those things have. If

it comes to drugs, there should be no rights, because it's not something that you're going to do it without knowing it.

Everybody knows what is drugs, everybody uses drugs, and there are syndicates, and I think the last time I raised this, countries which have the national budget of $4 billion has more than worth of $4 billion drug lying down in the country, and that is a serious concern. So that's the reason, sir, I have proposed that, and I just feel that some kind of consideration should come up when this is, because for me, if I am there as a politician, I don't care any international treaty, when it comes to my national, and my children, and my country, where we have to protect the drugs.

Mr. Valenitabua: Yes, Mr. Narayan the issue of drugs, we were discussing with the police compulsory testing, we were discussing with the police that, but then, now it has come up that the issue of drugs is now at a very high level here in Fiji.

It is a situation which is a threat to the lives of citizens of this country. Just been thinking that maybe laws should be introduced in order to tackle these drugs, considering the Bill of Rights, considering the views of our citizenry in relation to soldiers joining in the investigation, and considering the use of force, considering the use of inhuman treatment, and so forth. We have already discussed that, but coming to yesterday, matters have escalated.

When I say matters have escalated, the operations of these people who are dealing with drugs has just escalated. And you rightly said, it is now a threat to the country, and we need to regulate, we need to pass laws which are to deal with this thing.

Maybe compulsory testing for drugs, not only on the civil servants and public officers in the army, and the police, but all citizens, to empower police officers, to empower certain officers to just test drugs on the streets, you know, on suspicion and things like that.

So, the point that you are raising is current to Fiji at this point in time. We need to save this country, if we can, from drug usage and drug dealings, and the repercussions of drug dealings. Yesterday we only had a young police officer being run over with a car. Imagine if these people or the dealers were armed. What would be the situation in our country?

So, we've got to think seriously about this drug issue and how to pass laws. Maybe that can be legislated, maybe. But then legislation will be overridden by Bill of Rights in the Constitution. So, with my commissioners or with the commissioners listening here this afternoon, it is something that we will have to reconsider. We've dealt with the police submissions in relation to compulsory testing of drugs on officers.

Now, we might have to expand that and think beyond the police, police force, the army and civil servants, and the general citizen at that. It is something that is, I mean, when a group of people can take on police officers and armed officers at a checkpoint like that, it's no longer just, someone was saying, it's no longer an accident. No, that would have been a planned activity.

And it's an action or a conduct taken against the disciplinary forces who are here to safeguard our communities from the scourge, I might say the scourge of drugs now at the level we are at. So, I thank you for that submission that you have made in relation to the drug issue. I believe, I think that some of the commissioners might have other comments in relation to that. But from me, we will have a look at this. Thank you. Thank you, sir.

Dr. Fatiaki: Mr. Singh, thank you for your submissions, the comprehensive nature of which I'm sure we will be addressing in more detail. I'm not going to talk about the whole problem of drugs because that's a ballgame that's too complicated for me to enter. As I hear you, you're only addressing one aspect of it.

I suppose when we address issues, we can address it by education, we can address it by enticement, or we can address it by a big stick. What I understand from what you're telling me is there's lots of education going on, lots of conferences, lots of workshops, lots of, what do you call it, groups and committees that are formed when they target a particular problem. I think you said too much talk and not much action.

And so, what you've suggested, obviously, is the death penalty. As I look at this constitution, the area that rightly has been pointed out, and again, that's the only area I'm going to address, not the issue of drug testing and how you solve the entire drug problem in Fiji, but the issue of death penalty, a big, big stick to deter people.

There is section 8 that says right to life under the Bill of Rights. It says every person has the right to life and the person must not arbitrarily be deprived of life. I presume arbitrarily means that it is, that you can't do it in certain instances. So, a simple provision could say except in cases of treason, capital drugs as determined by law.

I mean, we would have to write something like that and then obviously, I mean, I'd leave that to the legal people to actually put it into words. But I think if we did that and put an exception to the right to life in cases of treason, drug trafficking beyond a certain amount, that would be determined by law, which would then be written as a specific law where you could apply the death penalty. Then that would address both aspects of the right to life, but also the right of the state to enact laws to protect its citizens.

So, that is really just a question of an argument over whether we support the reintroduction of the death penalty or not. And I have no doubt that there will be discussions around that topic as we go forward. I think the point you make is very valid.

I think our chairman has addressed that. I think my personal feeling is I think we are running around; we're running as the running front is disappearing around the curve and we're starting off this side. And we'll continue to do that at the expense of an entire generation and who knows, possibly the future of this country.

I think it's run beyond us and I can see that there are people like yourself who might think that we need to do something drastic to resolve that problem. And I hear you there and I have no doubt that we can address it in the context where it is constitutional. The Bill of Rights allows you the right to life.

We won't deprive it arbitrarily except in cases of capital treason, drug, I'm sure we can copy and paste from Singapore and Indonesia and Malaysia and all the countries that have the death penalty applied very strictly to a certain amount of drug which they will constitute trafficking.

And I would suggest that there are many people in Fiji who might feel that we have reached that point and I think that point is well taken and I'm sure we will discuss this more and get more opinions as we prepare to write the amendments to this constitution.

Mr. Singh: Sir, with that only, I think there was a consultation with the Narcotic Bureau when they wanted to set up. Aspect of that, I have submitted the thing and I think there were a few measures were there. Aspect of the fast-tracking court, we don't want to see the drug cases goes around 3 to 4 years and then you destroy the drug after 4 years. I think the evidence of that drugs destroy when it destroyed the number of years or number of months the case would be settled which is called fast-track.

A stricter bail condition was placed there. I put a 5 gram of drugs if you caught someone with a 5 gram of drugs which is the white meth and all those things, there shall be no bail condition. Those are the thing was placed.

Because one incident I wanted to refer which you might have seen on the Wednesday's newspaper where my face was published. Rokovoka Road in Lautoka where they had the same issue of meth selling from the resident. Despite of having 16 cases in the court for the same offense, people are freely selling the drugs at their place. And it's from since 2023, they have 16 cases in court.

So, this is the reason I'm saying that we should have this no bail policy. Singapore has no bail policy. It's 5 grams of drugs you caught, there's no bail policy. You stay in the prison unless your case goes on. So, we're not just saying this is targeting Singapore.

You have mentioned Indonesia and Malaysia. They have a similar ARPIC member's countries which is Philippines and all those countries have a serious or the same procedure on the drug cases where they go for death penalty. Of course, Philippines is a Catholic country.

They don't give death penalties. But if you look at Indonesia, Malaysia, and Singapore, they definitely give death penalty. Yes, sir.

Dr. Fatiaki: Thank you, Sir. Again, I want to take us back. Obviously, the laws that you are describing go outside the purview of this Constitutional Review Commission.

We're really focusing on the supreme law. And the only area I think of relevance to our consideration is not how you go through the judgment of different penalties and that's not in our purview. Our purview relates

to in respect of what you have recommended which is something drastic, like I say, a big stick.

And from our reading of this, this is the area in the Constitution that we would have to address. And like I suggested, I'm sure that our lawyers can find very quickly if we concur with it and if we have enough people suggesting that we move in that direction, we may well write a provision under that every person has the right to life and the person must not be arbitrarily deprived of life except in cases of, you know, and we can get the lawyers to write that out.

Okay, so it doesn't then, but it does provide and because this is the supreme law, it means no other law can override this and therefore everything else will be written with a view to giving what you suggest, giving the powers to the government to take serious action and don't get into situations where bail is granted, all these things.

That's number one. The other thing I thought I might just touch on again is a contentious issue and this is the issue of the secular state which you spoke very passionately about from the beginning. Let me just, in the way of history, and we have no opinions about what works. I can tell you just that you're passionate about it. I have other people who are very passionate about the opposite view. I reflect on a number of things.

We've had three constitutions that I would consider legitimate in the sense that they were convened after consultation with the people and designed for Fiji, not necessarily in compliance with international so-called norms and, you know, constitutions, but in compliance with our particular country.

And in three of those constitutions, I think the first two referenced the Christian state, that's 1970 and 1990, in the preamble, in talking about it. The third constitution in 1997 took away a denomination of religion, but they spoke about God.

Now, my understanding is that when you talk about a secular state, you can't talk about God because there's a percentage of people who don't believe in any God. And my concern is that if we are to reflect the people of this country, I don't know what the percentage is, but I suspect that 97 percent of these people in this country, if we walk down the street and

ask them, believe in some form of God. Like I said, the 1997 constitution was very specific.

It didn't refer to religion, but it said we, the people of Fiji, believe in God and his moral guidance to oversee our islands or whatever. And if you write that and reflect the belief and values, because that's part of our terms of reference, is to make sure that we reflect the values of our people.

And if 90 percent of our people feel that they believe in some form of God and want us to write it into the constitution, then we would have to remove the secular state part of it because it is not compatible with each other.

I put that to you because I understand exactly where you're coming from, but I think when you talk about God in our setting, it makes all 97 percent of us or 95 percent who believe in some form of God, whether you call him Shiva or Mohammed or Allah or Christ.

If you say God, then it's generic and it covers everybody, but it reflects values that we hear a lot of people saying that when you remove it from a country's constitution and you take it out and we become a secular state, then basically they're saying that the guidance that we get from those values of religion, any religion.

I'm not saying Christianity or any religion, if we remove that, then we become in almost a godless society and that it doesn't bode well for how we govern, how we make laws, how we interact with each other if we don't have any divine guiding principles, whether it's the Ten Commandments for the Christians, whether it's the Koran for the Muslims or whatever your holy book is.

So, I reflect like that and I also pointed this out to another group that asked for the secular state and I named 10 or 35 countries that are non-secular states and that you and I would probably consider very progressive and that includes the UK, Sri Lanka, Malaysia, Greece, Costa Rica, Malta, Argentina, Armenia, Denmark, Iceland, Norway, and close by Samoa and Tuvalu. All of these countries are non-secular. They actually state in their constitutions that they believe in God. Some are actually Christian ones, some Islamic ones, all these countries that I've just mentioned.

And I don't think any of these countries I would consider regressive. From the UK that has the state the Church of England is its national religion. I don't think they persecute all the other religions, but that is a non-secular country and like I say Sri Lanka, Malaysia, Greece, Norway, Denmark.

These are countries that exist very well and they are non-secular. So, I think when we talk about this issue of secular versus non-secular, we must understand that these are actually very progressive countries that none of us would consider regressive and repressive.

I mean there are some repressive ones like Saudi Arabia maybe in the way that they institute their religious rule, but the point I'm making is for Fiji in terms of our values and in terms of our history, the idea that we have a constitution, but we don't recognize any form of God, which is what a secular state says, then we are poorer for it.

And again, I emphasize we have to reflect the values of the people as they come up and tell us as we go along. We have not arrived at any conclusions, but at the end of this next two months in July when we start putting this together, those will be some of the considerations we have to have. And I thought I would share that with you as a general reflection because I know your intentions are good, but I've given it to you in maybe a bit more detail and a different perspective to maybe how you read it. Thank you.

Mr. Singh: Thank you Honorable Commissioner. I have gone through the 1997 constitution and the paragraph in regards to what you have mentioned. I think for me I'm okay in this aspect, looking at the 1997 constitution where the fairness of practice of religion or the religious is allowed. But looking at that, I believe that if that is the considerable or that is where the direction it might go, then definitely there should have some kind of tougher laws and strict laws may be more tougher than what we have today of somebody used freedom of speech or rights to degrade other faiths because the reason why we come up with this.

In recent days we have seen some issues happening across the country and it becoming somehow a very pain for one particular, maybe believers of one faith. And the aspect of, we can say, burning, breaking idols and all those sort of things.

And no serious outcome of that what currently we see in our legal system. So, people does all those events. And there was one incident also, Your Honor, you might know it, that somebody openly was degrading the faith and taking sweets off at the Deepavali and all that.

Fiji is made with the multiracial sort of aspect where we celebrate all festivals together and this is what Fiji is all about. But if one faith stand up and says that you cannot because your God does not want you to eat that, I think in that aspect, as I said, 1997 Constitution paragraph is perfectly okay.

But as far as there are measures taken in the Constitution that avoid this kind of destruction and divisions where our faith, our religion, but not only that, but as a nation that we build up, everybody celebrates Diwali, everybody celebrates Christmas.

My wife is Roman Catholic and I am Hindu and we celebrate all festivals together. Because we never see anything different, but there are some might use that and start degrading it and which already happening today despite of secular state.

Dr. Fatiaki: I agree completely with you. Just to reassure you, I refer you to Section 22 of the Bill of Rights. It says freedom of religion, conscience and belief. Anybody who were to contravene that would immediately be contravening the Constitution.

I think to legitimize or to suggest that a person who desecrates a temple or a church is somehow reflective of a constitutional provision is he just breaking the law and is a criminal. He might be a religious criminal, but he is a criminal nonetheless and I am sure all of us, irrespective of your religion, would demand that he not be accommodated. But I think your point is taken.

What I wanted you to consider in terms of the issue of a secular state is the other extreme of that, which is that the removal of God. For instance, that secular state is the reason why in some instances people can't pray. The education department I think gave a directive that people are not to say a prayer that ends with Jesus or any prayer.

To me, that's taking the secular state interpretation. I mean, who doesn't pray in Fiji? Whether it's a festival, doing a puja, or a village group having

a meeting and they decide to pray, that would be completely under the secular state. That's a crime.

And I think, like I said, I think the protection of freedom of religion is well guarded in the Bill of Rights and I'm sure there are respective laws that are enacted to make sure that if you break, you know, the sacrilege laws that don't allow you to, you know, disabuse or abuse places of worship of other religions.

I think you can apply that without going the other extreme and saying, okay, because we're secular, you must not mention God, and if you mention God, then you're breaking the Supreme Court, I mean the supreme law of the land. I think that's taking it to the other extreme and in a country like Fiji, which is, like you said, multicultural but also multi-religious and I would suggest very religious.

There are lots of, you know, good Sikhs, good Muslims, good Christians that live in this country and I think the idea that we want to make ourselves irreligious is probably taking the pendulum too far in the other direction.

Mr. Singh: Thank you. Sir, I conceded what you have said and I also wanted to tell the Commission that I will be submitting my written one where I will actually revise the secular state presentation that I have done and I'll go through back to that 1997 and come up with the constitution that you have submitted.

Dr. Fatiaki: Thank you very much.

Dr. Gounder: Thank you. Just one quick point. We have heard the argument about the death sentence for drug offenses, but you have made it more passionately, I think, in kind of an extensive way than anyone else. We have discussed this issue at length when we were looking at the national defense strategy, the white paper as well, and in some of the work that we did with the judiciary for the national development plan.

And looking at the criminal justice perspective and some of the fundamental principles of criminology, would you consider, say incarceration, longer sentences, say 50 years to 70 years in lieu of death sentence? Because if you put somebody to 70 years sentence, he is likely to die in prison.

And the courts have heard that after a very, very long time, courts have now sentenced three people to 40 years and one to 50 years after the arguments that we had, discussions that we had with the judiciary last time and Ministry of Defense as well. So, do you think that's a quick one, please?

Mr. Singh: Yes, definitely, sir. But one thing that I wanted to say about it, because putting the drug offenders or the criminals, the drug lords, because these are the drug lords that you mentioned that has taken into 40 plus or 25 years, I believe this is the Nadi case.

One thing I have a concern, because that could be right, doing that, rather than you saying about the death penalty to be considered. Putting them into a combined prison, which is currently happening, where other sort of prisoners are there, different criminal prisoners. Maybe that should be removed, and then it can be considered if it's a separate drug prison be built, because you don't want them to keep there for 40 years and then making the entire prison or prisoners not only drug addicted, but they could become the drug traffickers because they are being told because of that money is concerned.

And we've all seen that currently prisons are full of diapers, drugs, and all those sorts of things, because you have drug lords in that same prison. If that is considerable, I believe that definitely the nation should, but as apart from that, I think the nation should come up something in regards where the drug is concerned.

But I really would say that drug prisoners should be kept in a separate isolated drug, even no signals or anything to be back there, because that will actually avoid or populate other criminals or other offenders.

Mr. Valenitabua: The review period for the constitution, you suggested that the constitution is to be open to review. Do you have a number of years in mind?

Mr. Singh: So, looking at the reviews basically done around the world, I think it's fine to be done with maybe 9 months to 18 months normally, because getting up a new constitution could be done 18 to 2 years. I would say from 6 months to 1 year, that will be sufficient for review.

The reason is because we already have, most of the people have a pain of last constitution did not went for consultation. If it's a fair representation and a fair way of consultation done by the public, I think that the shorter term will be better. Again, taking the consideration that we're having election coming, we don't want people to use this amendment of constitution as a political tool to campaign. After all, this might happen. So therefore, I would say that how quick possible will be better for the nation itself.

Mr. Valenitabua: Pardon me, Mr. Singh.

Mr. Singh: Yes, sir.

Mr. Valenitabua: What I meant was, we now enact a constitution. You have recommended a review period. How many years after the enactment should we review?

Mr. Singh: I believe every 10 years we should review our constitution, the way the nation grows, because that is a living document.

Mr. Valenitabua: Thank you. You also dealt with, this is my last question, or my last comment to you. You have dealt with; you have submitted that Chapter 10 has to be removed. That is the provision in relation to the immunity given to the soldiers and anybody who participated in the coups of 1987 and so forth, 2000 and 2006.

Now, when you say that no one is above the law, the main concern here is that we do not want to create problems and move the country backwards, rather than just proceed forward and advance in the life of the country.

Is it to be a problem, creating a problem, if we remove Chapter 10, or should we leave it as it is and move forward? I hope you understand what I am asking.

Mr. Singh: Yes, sir. But my belief is different. I believe that by forgiving what has happened in the past is not the way to move forward. I believe that us, like younger generations, we might be five years old when the 1987 coup has happened.

My father was beaten by about 20 soldiers at that time because we have a goat farm on Sunday and we are working on Sunday. But apart from that, Your Honor, I think my suggestion was this because, again, as I said, that law is fair and equal.

But for the younger generation, I think moving forward, it is very important that we heal the past, not only by forgiveness or reconciliation and all those sorts of things, but the real justice.

That will also bring a fear for the younger generations or the future generations that the law will be abided equally by every citizen. I know this is a very serious thing, but I know many may be no longer alive, many have died, maybe a few have been only left with the 1987 coup's consent. But again, this sort of thing should have brought in because, as we know, the reconciliation went through all around places, but what was the outcome? I haven't seen any outcome by forgiving people.

So, I believe, sir, that it can be considered. I stand my submission that Chapter 10 need to be removed. I feel that will give more strength and confidence to the future generation that whoever commits something that is against the law.

Two, if I saw the nation developed because of that coup and the reason the coup has been named for, maybe I would say, yes, leave it as it is, but country has not developed. The country has gone backwards, and everybody could, on the name of iTaukei rights or whatever rights, but look at the situation of our country today. Our generation is not safe, and poverty has been grown up.

Look at all those situations. So, I definitely would say, no, that should be a lesson, and that should be a lesson for coming and future generation. Thank you, sir.

Mr. Valenitabua: Thank you. Thank you, Mr. Singh. I believe we have come to the end of our session this afternoon. It has been a good session. We've heard a lot, and we noted a lot to be considered by this team. We thank you very much for your time, and we thank you for your submissions. Thank you.

----------End of Session [27-4-2026]----------

VERBAL SUBMISSION TO THE CONSTITUTIONAL REVIEW COMMISSION – FIJI

Bula Vinaka Honourable Chairperson and Esteemed Members of the Commission,

Thank you for granting me this opportunity to present my submission. I sincerely appreciate your efforts in engaging the people of Fiji in shaping the future of our Constitution.

1. Chapter 1. Secular State

Submission on Secularism, Faith, and National Values

I respectfully submit that Fiji should be a nation guided by **Godly principles and values**. In the 1997 Constitution, the principle of **religious liberty** was clearly recognised, ensuring the protection and freedom of religion for all individuals. However, in the 2013 Constitution, this was changed with the declaration of Fiji as a **secular State**.

While secularism is intended to ensure neutrality, I feel that, in practice, it has distanced public institutions from the moral and spiritual values that guide the majority of our people. Fiji is a nation where a significant majority believe in God and are faith-based. As a result, there is growing concern that secularism is being interpreted in a way that excludes God entirely from public life, including institutions such as schools, where prayer and faith-based expressions are no longer commonly practiced.

There are examples of countries such as the United Kingdom, Indonesia, and Malaysia, where constitutional frameworks acknowledge belief in God or moral foundations, while still ensuring that no single religion is imposed above others and that diversity is respected.

Therefore, I respectfully propose that Fiji adopts a balanced approach one that maintains inclusivity and equality for all citizens, while also recognising the importance of Godly principles in guiding the nation's values and direction.

Conclusion

In conclusion, the State must be guided by **Godly principles, grounded in justice, compassion, and integrity, while fully upholding equality, freedom of religion, and respect for all.**

2. Citizenship Chapter 5 – Protecting National Identity and Integrity

Under Chapter 5, I firmly believe that **all citizens of Fiji are Fijians**, regardless of ethnicity.

We may proudly acknowledge our ancestral roots whether Indigenous, Indo-Fijian, or others but our home, identity, and contribution belong to Fiji.

For myself, I am very happy to be called Indo-Fijian or simply Indian, as I am rooted to my ancestors, and I am proud of where they came from a country that is booming and growing to become one of the largest economies.

But by saying that, it does not take away our commitment and contribution to the nation we live in. We all know that Fiji is the only country where we are born, living, and contributing towards development. This is our country.

As citizens of this country, by rights we are all Fijians.

We all know about the lack of integration with the indigenous people of this nation, but whom shall we blame?

Before 1987, you will know the way this country was flourishing, and the gap started to create after 1987. It kept dividing, and many of our own politicians contributed to creating distance between communities.

Calling "Fijian" or "not Fijian" is not the real issue. The real issue is whether everyone feels protected and valued equally and no one is supreme above anyone else, even if many will argue.

I think death itself can give the answer to equality.

Citizenship Conditions – Chapter 5 Reform

Now I want to focus on the conditions upon which citizenship of Fiji may be acquired, and the conditions upon which a person may become a citizen of Fiji.

Under the current Constitution and laws, it is very general, and the rules and regulations will sooner or later affect the nation especially the way citizenship is being granted.

In recent years, we have noticed large numbers of Bangladeshis acquiring citizenship, including a large number of Chinese. Many cannot even understand languages properly, and this is creating further divisions in our communities.

Even labourers and unskilled workers are being given citizenship.

I want to ask the Commission that granting of citizenship must be amended and structured in the Constitution.

For example:

- Citizenship by investment , Citizenship by skill and knowledge
- No automatic citizenship for work permit holders

We do not want to make Fiji a situation of instability or extremism.

3. Chapter 2 – Bill of Rights / Drugs and National Security

Under Chapter 2, Bill of Rights, I would like to propose the **death penalty for serious drug offences**.

There should be no or very limited rights for anyone arrested under the Drug Act.

This is high time that the Constitution gives powers to authorities to act decisively in combating drugs.

A. Drugs – A National Emergency Requiring Constitutional Backing

The rise of drugs in Fiji is one of the most serious threats facing our nation today.

It is:

- Destroying our youth
- Breaking families
- Undermining our future

This is not just a legal issue it is a **national crisis**.

The Constitution must empower the State to act decisively.

I propose:

- Constitutional recognition of drug trafficking as a serious national threat

b. Stronger Enforcement Powers

- Faster investigation procedures
- Expanded powers for police and joint operations
- Special drug courts for quick trials

c. Judicial Reforms

- Fast-track courts for drug cases
- Stricter bail conditions for serious offenders

d. Constitutional Support

"The State shall take all necessary legislative and enforcement measures to combat illicit drugs and protect public health, safety, and national security."

- The Constitution should provide the **framework**

The message must be clear: **Fiji will not tolerate the destruction of its people through drugs.**

4. iTaukei Land – Protection, Fairness, and Economic Justice

The protection of iTaukei land must remain **absolute and non-negotiable**.

However, protection alone is not enough there must also be **fair economic participation** for landowners.

I propose:

- A **National Consultative Land Forum** to ensure inclusive decision-making
- Mandatory stakeholder consultation before any land law reforms
- Stronger procedural safeguards

The current system under the **iTaukei Land Trust Board** must evolve.

Reforms should include:

- Dividend or profit-sharing schemes for landowners
- Mandatory sharing of increased land value upon resale

- A requirement that at least 50% of the land value at the time of sale be returned to landowners

Too often, land is leased, held, and later sold at significant profit, while landowners receive NO or minimal benefit. This imbalance must be corrected.

Additionally, I propose exploring institutions similar to sector-based models to protect tenants and farmers, ensuring long-term stability and trust.

5. Chapter 4 – Cabinet and Governance

Under Section 91(1) of the Constitution, the Prime Minister has sole authority to determine the size of Cabinet.

I propose an amendment:

- Cap Cabinet at 15 members
- Reduce bloated Parliament

Independent Institutions and Judiciary

Under the 2013 Constitution, independent institutions are politically captured.

I propose that appointments to independent institutions should be jointly selected by Prime Minister and the Leader of Opposition or a parliament.

Judicial Independence

Under the current Constitution, the Prime Minister advises the President on appointment of Chief Justice and Court of Appeal President after consulting only the Attorney-General.

There is no requirement to consult the Leader of Opposition.

Under the 1997 Constitution, consultation with the Opposition was required.

I therefore propose:

- Remove Prime Minister's direct advisory role
- President to act on recommendation of Judicial Services Commission
- Consultation with both Prime Minister and Leader of Opposition

6. Electoral Reform – Fair Representation and Encouraging New Leadership

To strengthen democracy and restore public confidence in governance, I propose important reforms to our electoral system.

Firstly, I strongly believe that Fiji should move **back to a constituency-based electoral system**. This will ensure fair and direct representation of communities, where people know their elected representatives and can depend on them to raise and address their concerns.

A constituency-based system will:

- Strengthen the relationship between the people and their representatives
- Ensure accountability at the local level
- Provide fair representation to different communities across the country

People must feel that their voices are heard, and that their elected Members of Parliament are directly responsible to them.

In addition, I propose adopting a practical approach similar to **Singapore**, where each Member of Parliament is required to dedicate **at least one day every week in their constituency**.

This will ensure that MPs:

- Are accessible to the people
- Directly engage with community issues
- Assist in resolving problems faced by citizens
- Maintain a strong connection with those they represent

Furthermore, I propose:

- Limiting Members of Parliament to **2 consecutive terms**
- Requiring a break before re-contesting to allow new leaders to emerge
- Reducing the size of Parliament to **30 members**, which is more appropriate for Fiji's population

These reforms will:

- Encourage new leadership
- Bring fresh ideas into Parliament
- Improve efficiency and reduce costs
- Reinforce accountability and service to the people

Politics should not be seen as a lifetime position, but as a responsibility to serve the people with dedication and integrity.

7. Accountability – Empowering the People

Citizens must have stronger rights to hold the State accountable.

I propose:

- Legal rights for citizens to challenge unreasonable delays by government agencies
- Enforceable timelines for service delivery

Currently, dealing with government agencies can be slow and frustrating. This must change to support economic growth and public confidence.

8. Conclusion

Before I conclude, I propose that Chapter 10 Immunity should be completely removed.

No individual should be above the law. True democracy requires:

- Equality, Accountability and Justice

In conclusion, I wish to highlight my concern that the 2013 Constitution was designed in a way that enabled the previous government to maintain prolonged control. A careful reading shows that the offices of the Prime Minister and Attorney-General are referenced extensively, in a manner that suggests significant concentration of authority in the hands of two individuals. Yet many continue to describe this Constitution as fair.

I acknowledge that no Constitution can ever be perfect. However, it must always reflect the fundamental principles of fairness, independence, and proper checks and balances, not a system that controlled by a few.

No Constitution should be cemented forever. It must remain a living document, open to review and amendment as our nation grows and evolves.

It is also important to recognise that the 2013 Constitution was never fully endorsed by the majority of the people. It has created divided opinions and, in many instances, frustration and anger among citizens.

I sincerely hope that the Commission will meaningfully engage with the people, carefully analyse all contributions, and make fair, balanced, and just recommendations.

At the end of the day, every citizen must be treated equally, recognised equally, and be free to practice their faith without fear. Every individual should have the right to live and move freely across the nation, without discrimination.

Vinaka vakalevu.

Sandeep Narayan Singh
Inspiring politician and Investment Consultant
Mobile: 2305240

Setareki Cokanasiga (Spear the Sun)

Setareki Cokanasiga
Time: 3.20pm-4.00pm
Date: 29-4-2026

Leighton: Bula Vinaka Mr. Setareki Cokanasiga. On behalf of the Constitutional Review Commission. It is my honor to thank you for coming before the Constitutional Review Commission.

We also thank you for the comprehensive submissions that you have submitted thus far, and we look forward to hearing your oral submissions. Just for housekeeping, if you wish to speak, you will have to press on the right panel in front of you to turn the mic on, and then press the same panel to turn it off.

Following this, Chair will introduce the Commission and the work that they will be undertaking, and then he will proceed to introduce the Commissioners, or we will ask the Commissioners to introduce themselves. Following that, we ask if you can introduce yourself, just for the record, so that we can transcribe. Vinaka.

Mr. Valenitabua: Vinaka. We'll call you Setareki. Setareki, welcome to the Commission this afternoon. You see your commissioners sitting here. They will introduce themselves first, and we invite them to do their introductions now, so that you know who you're speaking with.

Mr. Beg: Bula Vinaka, Setareki, welcome. My name is Conway Beg. I'm an architect by profession. I believe you're an architect. You're saying you're in that space, or not? No? You're not an architect. Okay. Thank you.

Dr. Fatiaki: Setareki, good afternoon. My name is Dr. John Fatiaki. I'm a medical practitioner, and I'm a Kai Rotuma. Vinaka.

Dr. Gounder: Bula Vinaka, Setareki. My name is Neelesh Gounder. I work for USP. Setareki, today I'm here as a commissioner, and I look forward to hearing your submission.

Mr. Valenitabua: Bula Tale, Sevuloni Valenitabua. You have given us a number of submissions. You have sent them to us through email, and we hear that you came this morning asking to be heard before the

Commission this afternoon. So, we have taken an extra session, given you another slot, so that we can hear you.

I believe you understand what the purpose of the Commission is, because reading through your submissions, it indicates that you are moving towards the review of the 2013 Constitution. So, without further ado, I will now invite you to introduce yourself formally, so that you can be recorded, and then make your submissions. Speak to the mic. It has to be transcribed. We've got a handsard reporter there who's going to record everything you say, and we will deal with your submissions later on. So, I give you the mic. Please introduce yourself, and proceed with your submissions.

Mr. Cokanasiga: My name is Setareki Cokanasiga I'm from Nabiau, Nabuka, Yavusa Nabuka, Tikina Conua, Yasana Nadroga/Navosa. I'm named after the chairperson, grandfather from Nukui, in Rewa, Setareki Cokanasiga gone Turaga na Tuinidau. I am a carer by profession. I used to look after Mr. Issac Beg, the late father of Mr. Conway Beck.

My presentation today is regarding the Great Council of Chiefs, GCC, submission to the 2026 Fiji Constitution Review Committee. The author is Setareki Cokanasiga, and this is my presentation for today. The exclusion of the Great Council of Chiefs, GCC, from the Fiji 2013 Constitution marked a significant shift in the nation's governance structure.

Historically, central to indigenous presentation and cultural legitimacy, the GCC removal has created a vacuum in indigenous governance. This submission outlines how the absence of the GCC contradicts international human rights standards, particularly those protecting indigenous people's rights to self-determination, participation, and cultural preservation.

A little bit of history about the GCC, the Great Council of Chiefs, was established during the colonial times, and was later entrenched in the Fiji Constitution of 1970, 1990, and 1997. It held significant powers, including appointing a president and vice president, and influencing land and cultural matters.

In 2012, the Bainimarama government formally abolished the Great Council of Chiefs, and the 2013 Constitution was

promulgated without any reference to it. All powers previously held by the GCC were transferred to Parliament and the Prime Minister.

Custodians and customary lands and chiefly authorities are now only indirectly acknowledged through the iTaukei Land Trust Board and the Ministry of iTaukei Affairs. I'll be speaking on my first submission today regarding the GCC and indigenous governance contradiction. Foundation Principles and Rights, this is from 2013 Constitution, Chapter 1 to Chapter 2, Contradictions and Loopholes, Supremacy Clause, Section 2, undermines the immunity provision, Chapter 10.

Freedom of Expression, Section 17, curtailed by Crime Act 2009, Sedition Law and Media, Decree 2010. Socioeconomic Rights, Section 31 to 40, weakened by progressive realization. GCC exclusion removes indigenous cultural legitimacy from cultural identity.

My recommendation to the Committee is to amend Supremacy Clause to override immunity, repeal the sedition provision and media decree. Guarantee and enforce socioeconomic rights with minimum standards and re-establish GCC in advisory role to safeguard cultural representation.

Second point into Constitution, 2013 Constitution, Institutional Governance, Chapter 5 to 3 to 5, Contradictions and Loopholes, Parliament Petitions, Section 72 - 73, ignored unicameral structural weakness checks.

Prime Minister's Dominance, Section 92, undermines Cabinet's accountability. Attorney General, Dual Role, Section 91, creates conflict of interest. Judicial Appointments, Section 97 to Section 100, influenced by executive. Ministry of Ethical Affairs laws exceeds but lack constitutional recognition.

My recommendation- is to re-instate bimetallism of strengthened communities with GCC advisory input. For example, because we only have a lower house, by re-instating the standard, that would be my recommendation 4.1. Second point is limit PM power and strengthen Cabinet oversight.

Separate Attorney Generals from Cabinet politics. Reform Judicial Service Commission to include civil society and indigenous representation. Insert constitutional clause recognize Ministry of iTaukei Affairs cultural governance role.

Oversight and Accountability and Special Provisions, Chapter 6 to Chapter 10. Contradictions and Loopholes- RFMF mandate, Section 131, which is still enforced as we speak right now, overlaps civilians' governance. Auditor General Report, delay weak enforcement. Emergency Power, Section 153 -154, suspend Bill of Rights.

Blank Immunity, Section 157 - 159, overrides supremacy. TLTB Amendments 2021, weaken indigenous land safeguards. My recommendation is to limit RFMF strictly to defense. Strengthen Auditor General independence. Enforcement timely reporting. Require parliamentary approval and judicial review for emergency powers.

Remove blanket immunity. Replace with transitional justice mechanism. Reinforce TLTB consent powers. Require parliamentary oversight for land amendments.

iTaukei Land Trust Board TLTB, Governing Laws. iTaukei Land Trust Act 1940 TLTA. iTaukei Land Trust Budget Amendment Act 2021, Contradictions and Loopholes. The Constitutional Land Rights versus Amendments Reducing Indigenous Control. Board consent powers, weaken undermining customary safeguards tied to chiefly authority.

Recommendation-reinforce board's consent powers. Require parliamentary oversight for amendments affecting land. Ministry of iTaukei Affairs, Governing Laws. iTaukei Affairs Act 1945. iTaukei Lands Act 1905 and 1940. iTaukei Development Fund Act 1965. iTaukei Trust Fund Act 2004. Contradictions and loopholes, customary governance structures exist in law but lack constitutional recognition. Village by law, regulated cultural practice but are not constitutionally entrenched. For example, the Kalabu village, they have a village by law, but legally, under the constitution, it's not legally entrenched.

Recommendations-insert constitution clause recognizing ministry role in cultural governance. Align village by laws with Bill of Rights protection.

Sedition Law to Media Decree. Governing Laws. Crime Act 2009, Section 65, Section 67, Sedition. Media Industry Development Decree 2010. Contradictions and loopholes, restriction freedom of expression, Section 17, Constitution. Suppress indigenous voice and prevent contestation of GCC removal.

Recommendations-repeal sedition provision and media decree. Guarantee press freedom and civic participation, including chiefly voices. Final takeaway from my first submission, GCC and indigenous governance contradiction.

My final takeaway is that this third submission demonstrates how the exclusion of GCC combined with the contradiction across foundational rights, Chapter 1 and 2, governance and institution, Chapter 3 - 5, and oversight and provision, Chapter 6 -10, and indigenous institution, TLTB, Ministry of iTaukei Affairs, weakens accountability and cultural legitimacy. Reforming these areas would restore constitutional balance, strengthen indigenous governance, align Fiji's framework with democratic and international human rights standards.

Moving on to my second submission, the GCC, connection across constitutional divisions and laws. Areas, foundation principles and rights, Chapter 1 and 2, the connection to GCC. GCC was the custodian of indigenous identity and cultural legitimacy.

Its exclusion undermines inclusivity. Sedition laws and media decrees silence chiefly voices. Preventing advocacy. Without GCC, indigenous communities lost constitutional champion for socio-economic rights.

Still with Chapter 1 and 2 of the constitution, relevant chapter sections and law, constitution section 2, supremacy, chapter 10, section 159, 157, immunity section 17, freedom of expression, crimes act 2009, section 65 - 67, government sedition, media industry development decree 2010, section 31 to 40, socio-economic rights.

Chapter 3 to Chapter 5, institution of governance of 2013 constitution, parliament and cabinet now operate without traditional checks. GCC once balanced executive power and legitimacy government.

Its absence weakens petition, judicial independence and indigenous representation. Ministry of Ethical Affairs exists in institution but lacks constitutional entrenchment. Relevant laws to the chapter 3 - 5 of the 2013 constitution, constitution section 72 - 73, petition section 92, PM powers section 91, Attorney Generals dual role section 97 to 100, Judicial Ethical Affairs Act 1945, Ethical Lands Act 1909 and 1940, Ethical Development Fund Act 1965, Ethical Trust Fund Act 2004.

Oversight and accountability and special provision, chapter 6 to chapter 10 of the 2013 constitution, RFMF board mandate in blank, immunity, overshadow, civilian and cultural oversight. GCC previously acted as a moral counterweight to military executive dominance. Its removal leaves no indigenous institution to demand accountability in emergencies, audits or land protection.

Relevant section to chapter 6 to chapter 10 of the 2013 constitution, constitution section 131 RFMF mandate, Chapter 7 finance and audit general, Section 153 - 154 Emergency powers, Section 157 - 159 immunity, Ethical Land Trust Budget Amendment Act 2021, Ethical Land Trust Board TLTB, chief safeguard land through GCC oversight amendments weakening TLTB consent powers wrote chiefly authority. Without GCC no collective indigenous land rights against legislative changes. iTaukei Land Trust Act 1940, section 4 and section 9, iTaukei Land Trust Budget Amendment Act 2021.

Ministry of Ethical Affairs, Ministry of Ethical Affairs connection to GCC. The Ministry of Ethical Affairs manages indigenous affairs but lacks constitutional recognition. GCC historically legitimized and reinforced its role.

Without the GCC statutory structures stand alone, vulnerable to political shift. Relevant laws, governing laws, acts and decree and sedition laws to the Ministry of Ethical Affairs. You have the Ethical Affairs Act 1945, the Ethical Lands Act 1905 and 1945, the Ethical Development Fund Act 1965, the Ethical Trust Fund Act 2004 and the village bylaw kept 120.

Sedition laws and media decree. These laws suppress dissents and prevent chiefs from contesting GCC's removal or advocating indigenous governance. While not written specifically about GCC, they ensure silence around its abolition and block public debate on restoration.

Relevant governing laws to sedition laws and media decree. Crime Act 2009, Section 65 - 67, Sedition Media Industry Development Decree 2010, Constitution section 17, Freedom of Expression. Overall link for my second submission regarding the GCC and GCC connection, of course.

Constitutional division and laws. Every contradiction and loophole across rights, governance, oversight, land and indigenous institutions brings back to the GCC exclusion. The GCC was the anchor of indigenous legitimacy.

Its removal, reinforced by sedition laws and decrees, weakens accountability and cultural governance. Restoring GCC in a modern advisory role would rebalance Fiji's constitutional framework. And giving the indigenous voice a right place in national decision making.

That's my third submission regarding the GCC. This is in regards to international human rights position towards the GCC. The exclusion of GCC from the Fiji constitutional framework raises concern on the several international human rights instruments.

United Nations Declaration on the Rights of Indigenous People, Article 3, 4, 5, 18, 19, 20 and 33. International Labor Organization Convention No. 169, Article 6 and 7. International Convention on Civil and Political Rights, Article 19. Human Rights and Anti-Discrimination Commission of Fiji, 2025. Statement of the Great Council of Chiefs, 2025. Governing laws and acts and decrees in human rights context, areas from foundation rights and freedom.

Constitutional Bill of Rights, Section 17, Crime Act 2009, Section 65 - 67. Media Industry Development Decree, 2010. Suppress of chiefly voices and indigenous advocacy, which violates freedom of expression and participation rights.

Governance and Representation Constitution, Section 91, 92, 97 to 100. Ethical Affairs Act, 1945. Lack of indigenous checks and representation undermines autonomy. Land and Cultural Authority Ethical Land Trust Act, 1940. Budget Amendment Act, 2021. Weakening of TLTP-conscient powers erodes indigenous land rights.

Emergency Powers and Oversight, Constitutional Section 131, 153 to 159. Broad military powers and immunity clause limit indigenous oversight.

Media and Dissent, Crime Act 2009. Media Industry Development Decree, 2010. Legal barriers to indigenous leaders, public participation and dissent.

My new international reform recommendation.

Number one is to establish the Great Council of Chiefs as a constitutional recognized advisory body.

Number two is to amend the 2030 constitution to include mechanism for indigenous consultation on national decision making. Repeal Sedition Provision and the Media Industry Development Decree to restore freedom of expression. Strengthen land and cultural governance to reflect indigenous participation and consent.

My conclusion and takeaway from my public submission today. The exclusion of the Great Council of Chiefs from Fiji constitutional framework breaches international standard on indigenous self-determination and participation. Restoring the GCC in a modern advisory role would affirm indigenous rights, strengthen democratic legitimacy and fulfill Fiji's obligation under international law. Thank you very much.

Mr. Valenitabua: Setareki, thank you very much for your submissions this afternoon. We see that you have prepared your submissions in written form and we received your submissions through email also. Like I said, we will consider those when the time comes for us to deliberate on all submissions which we have received. All right, we have a question for you.

Dr. Gounder: I'm also from Nadroga. I'm from Momi, so good to see you. I just have one clarification. You talked about the Media Industry Development Act on the decree. It was repealed by Parliament in April 2023, so it no longer exists. It's one of the first tasks the coalition government did because it was part of their... It was in April. I think it was the 5th of April or 6th sometime around that.

The second point I need a little clarification. You talked about separation of powers between Attorney General and Cabinet politics. A little bit more on that, just to understand what you mean. Thank you. You talk about AG, Cabinet and politics. Attorney General is part of Cabinet.

Mr. Cokanasiga: Right now, we are in a coalition government. So as far as I'm concerned, there is a three-way party running this government. So, the politics involving the position of Attorney General will be immense in a way of decision-making regarding Cabinet decisions and political matters. I'll give you an example of what I'm seeing. At the moment, we have Prime Minister Sitiveni Rabuka appealing the High Court decision on FICAC Commissioner. Still in court, PM. You have DPP, Manoa Kamikamica. Still have a case in Fiji Court.

You have Biman also present in the court. So, a balance within the position of Attorney General and politics between Cabinet and politics and the position of Attorney General in this kind of circumstances will be very much a push forward for me regarding what we're facing right now in Fiji. Thank you.

Dr. Gounder: Thank you. I understand your argument now much better. Thank you.

Mr. Beg: Oh, yes. I just want to thank you Setareki, I recall some of the discussion, when I ask you the question whether you are and architect just to qualify a statement by my colleague but I thank you for your submission. I think your submission was around the GCC framework and some other point around your conclusion was around the Great Council of Chief and affairs and decision.

So maybe just to clarify, for the record Spear the Sun, can you tell us a bit more about that, please? No, we...

Mr. Cokanasiga: Spear Sun is my... My name is Setareki Cokanasiga I'm named after Mr. Valenitabua's grandfather. So, if I put it in English, it will be Spear Sun. I have a digital platform. I actually am an architect of my own digital platform. And I run my own digital business. It's called Spear the Sun. So, you're really from the days where we used to have the discussions. Thank you.

Mr. Valenitabua: Thank you. Secretary, we have gone through your submission with you. A number of matters which you have raised have already been raised before us. Now we see that you are concentrating on the GCC. That has been dealt with. You are not the first who is giving us submissions in relation to that.

We're just curious about your recommendation on amend... This is on page two. Amend the Supremacy Clause to override immunity. We have the Supremacy Clause in Section 2. The Constitution is the supreme law of the land. You are submitting that that Supremacy Clause is to be amended so that it overrides the immunity provision in Chapter 10 of the Constitution. How do you suppose we can go about that?

Mr. Cokanasiga: Amend the Supremacy Clause to override immunity. This is the immunity provision in Chapter 10, Section 157 to 159. To amend the Supremacy of this clause, the Immunity Clause, Jone Vakarisi who died in military custody last week, is going to be buried in Lovoni Village tomorrow. From his case, we can see the constitutional crisis of GCC.

Every governing law is contradicting towards each other. Chapter 2 of... Chapter 1 of Foundation Principle and Rights regarding Jone Vakarisi's Bill of Rights and the immunity provision, Chapter 10, Section 157, protects the soldiers from Jone Vakarisi for them to... it protects them from the April 13 post of the Republic of Fiji military force regarding their joint operation. So, there is a security detail regarding all the citizens of Fiji.

And this immunity, together with Chapter, with the Bill of Rights, this immunity and... the Bill of Rights and the immunity provision, they seem to head on to each other. There we need to have a supremacy. As the supremacy law of the land, this immunity needs to be amended.

Mr. Beg: Setareki, can I ask a question then? Where do you think it fits then? Where do you think it should sit? That overriding law, where do you think it should sit?

Mr. Cokanasiga: At the moment, we still have a joint operation, military and police, Republic of Fiji military force and Fiji police force joint operation. From the 13th of April till today, they haven't put any oversight, any timeline to when will this operation will end. And also, I've been waiting for them to come here for you guys to present a submission regarding this immunity provision. Then only I can answer your question, Mr. Beg.

Mr. Beg: I just thought you might have an opinion on that. Thank you, sir.

Mr. Valenitabua: Thank you. That brings us to the end of our consultation for this afternoon. I see that you would have travelled from Navosa?

Mr. Cokanasiga: I'm staying in Suva Mr. Valenitabua.

Mr. Valenitabua: So that brings us to the end of this consultation session. Vinaka Vakalevu.

----------End of Session [29-4-2026] ----------

Annex B: Ministries, Laws, Acts & Decrees

This annex provides a comprehensive overview of the 20 Fijian Government ministries and the key laws, acts, and decrees that govern their mandates. It complements Annex A and the Executive Summary by offering a legal reference framework for the Constitutional Review Committee.

Ministry	Laws (Constitutional / Statutory Provisions)	Acts (Parliamentary Legislation)	Decrees (Military-Era Instruments)
Prime Minister's Office	Constitution Amendment provisions		State Services Decree 2009; Immunity Decree 2010
Finance		Finance Management Act; Income Tax Act; Audit Act; Budget Acts	
Foreign Affairs		Diplomatic Privileges and Immunities Act; Treaties Ratification provisions	
Education		Education Act [Cap. 262]; Higher Education Act; Fiji National University Act	
Health & Medical Services		Public Health Act [Cap. 111]; Quarantine Act; Burial and Cremation Act	
Justice		Administration of Justice Act; Legal Aid Act	Judicial Services Commission Decree 2009
Home Affairs & Immigration	Public Order Act [Cap. 20]	Immigration Act	Deportation provisions
Information & Communications		Telecommunications Act; Broadcasting Act	Media Industry Development Decree 2010
Rural & Maritime Development		Disaster Management Act; Land Transport Act	Relocation decrees
Agriculture		Agriculture Act; Biosecurity Act;	Land Use Decree

		Sugar Industry Act	
Fisheries & Forestry		Fisheries Act; Forestry Act; Environment Management Act	Logging concessions decrees
Tourism & Civil Aviation		Civil Aviation Act	Tourism Development Decree; Environmental Impact Assessment provisions
Employment, Productivity & Industrial Relations		Employment Relations Act 2007; Trade Disputes Act	Labour Decrees
Women, Children & Social Protection		Social Welfare Act; Family Law Act	Child Protection Decrees
Housing & Community Development		Housing Authority Act; Landlord & Tenant Act	Housing Decrees
Public Works, Transport & Infrastructure		Land Transport Act; Infrastructure Development Acts	Public Works Decree
Commerce, Trade & SMEs		Commerce Commission Act; Trademarks Act	Fair Trading Decree
Youth & Sports		Youth Development Act; Sports Council Act	Program funding decrees
iTaukei Affairs		iTaukei Affairs Act [Cap. 120]	Land Use Decree; Customary Governance provisions
Multi-Ethnic Affairs			Multi-Ethnic Affairs Decree; Equality provisions under the Constitution

Annex A: Constitutional Audit Cross-Reference Table

Submission to the 2026 Fiji Constitutional Review Committee
By Setareki Cokanasiga, Founder of SPEARTHESUN

Chapter	Constitution Section(s)	Ministry	Relevant Law/Act/Decree	Conflict/Contradiction
1 – The State	Sec. 4 (Secular State)	Education, iTaukei Affairs, Multi-Ethnic Affairs	Education Act [Cap. 262]; iTaukei Affairs Act [Cap. 120]; Multi-Ethnic Affairs Decree	Curriculum reforms and cultural governance clash with constitutional secularism, diluting indigenous and religious practices.
2 – Bill of Rights	Sec. 6, 31, 33, 38, 41	Housing, Health, Employment, Information	Housing Authority Act; Public Health Act [Cap. 111]; Employment Relations Act 2007; Media Industry Development Decree 2010	Rights recognized but unenforceable when decrees or budgetary discretion override them.
3 – Parliament	Sec. 46, 47	Finance, Commerce, Public Works	Finance Management Act; Commerce Commission Act; Public Works Decree	Decrees passed without adequate rights safeguards override socio-economic rights.
4 – Executive	Sec. 131, 157	PM's Office, Home Affairs, Justice	State Services Decree 2009; Public Service Act; Public Order Act [Cap. 20]	Emergency powers override civil service protections and weaken checks and balances.
5 – Judiciary	Sec. 105, 106	Justice, Home Affairs	Judicial Services Commission Decree 2009; Administration of Justice Act	Executive influence undermines judicial independence in rights cases.
6 – State Services	Sec. 131–133	Home Affairs, Rural Development, Transport	Police Act [Cap. 85]; Military Forces Act [Cap. 81]; Land Transport Act	Assembly and movement rights curtailed under broad policing powers.
7 – Accountability	Sec. 149, 150	Finance, Housing,	Leadership Code Decree 2007;	Weak enforcement of leadership code

		Commerce	Finance Management Act; Housing Authority Act	enables corruption, undermining socio-economic rights.
8 – Finance	Sec. 151, 152	Finance, Health, Education, Housing	Finance Management Act; Public Health Act; Education Act; Housing Authority Act	Budgetary discretion allows cuts to essential services, breaching constitutional guarantees.
9 – Emergency Powers	Sec. 157	Information, Justice, Home Affairs	Public Emergency Regulations 2009; Public Order Act [Cap. 20]; Media Industry Development Decree 2010	Freedom of speech, movement, and assembly curtailed.
10 – Immunity	Sec. 155–156	PM's Office, Justice	Immunity Decree 2010	Blocks prosecution of human rights abuses committed during coups.
11 – Amendment	Sec. 160	PM's Office, Justice	Constitution Amendment Act provisions	High thresholds restrict democratic reform.
12 – Transitional	Sec. 161–163	All ministries, esp. Information, Justice, Housing	Transitional Decrees; Media Industry Development Decree; Housing Authority Act	Old decrees remain valid even when they violate rights.

Notes on Decrees Still in Force (2026)

Under Sections 161–163 of the 2013 Constitution of the Republic of Fiji, all decrees and promulgations enacted by the military regime between 2006 and 2013 remain in force unless specifically repealed or replaced by an Act of Parliament. As of 2026, several key decrees continue to operate and have significant implications for constitutional rights and governance. These include:

- Media Industry Development Decree 2010
- State Services Decree 2009
- Public Emergency Regulations 2009
- Immunity Decree 2010
- Leadership Code Decree 2007
- Judicial Services Commission Decree 2009

These decrees often override or conflict with constitutional guarantees, particularly in areas of media freedom, civil service independence, emergency powers, and accountability. Their continued enforcement underscores the need for comprehensive legal harmonization with the Constitution.

Briefing Note: Constitutional Audit Recommendations

This briefing note summarizes the key findings of the constitutional audit of the 2013 Fijian Constitution, focusing on contradictions between constitutional guarantees and existing legal instruments. The audit highlights six major areas of concern:

1. Secularism: Tensions exist between the constitutional commitment to secularism and religious influences in governance.
2. Socio-Economic Rights: Sections 31, 38, and 41 guarantee rights to education, health, and housing, yet implementation remains inconsistent.
3. Judicial Independence: Sections 105–106 provide for an independent judiciary, but overlapping decrees compromise this independence.
4. Emergency Powers: Section 157 grants broad emergency powers that risk undermining civil liberties.
5. Immunity Provisions: Sections 155–156 provide sweeping immunity for past actions, limiting accountability.
6. Transitional Decrees: Several military-era decrees remain in force, contradicting democratic principles.

Key decrees still in effect include:
- Media Industry Development Decree 2010
- State Services Decree 2009
- Public Emergency Regulations 2009
- Immunity Decree 2010
- Leadership Code Decree 2007
- Judicial Services Commission Decree 2009

Prepared by Setareki Cokanasiga, Founder of SPEARTHESUN

Six Key Recommendations

Limit emergency powers	Section 157
Remove immunity provisions	Sections 155–156
Strengthen judicial independence	Sections 105–106
Enforce socio-economic rights	Sections 31, 38, 41
Audit and align decrees	
Protect indigenous rights	Section 28

Executive Summary: Constitutional Audit of the 2013 Fijian Constitution Against Ministerial Mandates

Key Contradictions

- - Sec. 4 – Secular State: Curriculum reforms under the Education Act and iTaukei Affairs Act clash with indigenous and religious practices.
- - Sec. 31, 38, 41 – Socio-Economic Rights: Rights to education, housing, and health are undermined by decrees and budgetary discretion.
- - Sec. 105–106 – Judiciary: Judicial Services Commission Decree 2009 enables executive influence over judicial appointments.
- - Sec. 131 & 157 – Executive & Emergency Powers: State Services Decree 2009 and Public Order Act override civil service protections and restrict freedoms.
- - Sec. 155–156 – Immunity: Immunity Decree 2010 blocks accountability for past abuses.
- - Sec. 161–163 – Transitional Provisions: Old decrees remain valid, including those that contradict rights guarantees.

Decrees Still in Force (2026)

- - Media Industry Development Decree 2010
- - State Services Decree 2009
- - Public Emergency Regulations 2009
- - Immunity Decree 2010
- - Leadership Code Decree 2007
- - Judicial Services Commission Decree 2009

Recommendations

1. 1. Limit Emergency Powers: Amend Sec. 157 to prevent arbitrary suspension of rights.
2. 2. Remove Immunity Provisions: Repeal Sec. 155–156 to restore accountability.
3. 3. Strengthen Judicial Independence: Reform Sec. 105–106 to ensure impartial appointments.
4. 4. Enforce Socio-Economic Rights: Make rights to housing, health, and education justiciable.
5. 5. Audit & Align Decrees: Repeal or harmonize decrees with constitutional guarantees.
6. 6. Protect Indigenous Rights: Clarify Sec. 28 to safeguard cultural and land rights.

Conclusion

The 2013 Constitution remains weakened by decrees and systemic contradictions. Reform is essential to ensure enforceability, accountability, and protection of democracy and human rights for all Fijians.

Executive Summary: Constitutional Audit of the 2013 Fijian Constitution Against Ministerial Mandates

Key Contradictions

- - Sec. 4 – Secular State: Curriculum reforms under the Education Act and iTaukei Affairs Act clash with indigenous and religious practices.
- - Sec. 31, 38, 41 – Socio-Economic Rights: Rights to education, housing, and health are undermined by decrees and budgetary discretion.
- - Sec. 105–106 – Judiciary: Judicial Services Commission Decree 2009 enables executive influence over judicial appointments.
- - Sec. 131 & 157 – Executive & Emergency Powers: State Services Decree 2009 and Public Order Act override civil service protections and restrict freedoms.
- - Sec. 155–156 – Immunity: Immunity Decree 2010 blocks accountability for past abuses.
- - Sec. 161–163 – Transitional Provisions: Old decrees remain valid, including those that contradict rights guarantees.

Decrees Still in Force (2026)

- - Media Industry Development Decree 2010
- - State Services Decree 2009
- - Public Emergency Regulations 2009
- - Immunity Decree 2010
- - Leadership Code Decree 2007
- - Judicial Services Commission Decree 2009

Recommendations

1. 1. Limit Emergency Powers: Amend Sec. 157 to prevent arbitrary suspension of rights.
2. 2. Remove Immunity Provisions: Repeal Sec. 155–156 to restore accountability.
3. 3. Strengthen Judicial Independence: Reform Sec. 105–106 to ensure impartial appointments.
4. 4. Enforce Socio-Economic Rights: Make rights to housing, health, and education justiciable.
5. 5. Audit & Align Decrees: Repeal or harmonize decrees with constitutional guarantees.
6. 6. Protect Indigenous Rights: Clarify Sec. 28 to safeguard cultural and land rights.

Conclusion

The 2013 Constitution remains weakened by decrees and systemic contradictions. Reform is essential to ensure enforceability, accountability, and protection of democracy and human rights for all Fijians.

Constitutional Audit of the 2013 Fijian Constitution Against Ministerial Mandates

Introduction

The 2013 Constitution of Fiji, comprising 173 sections across 12 chapters, establishes the supreme law of the Republic. While it recognizes a broad range of civil, political, and socio-economic rights, its limitation clauses, emergency powers, and immunity provisions weaken enforcement. This submission compares the Constitution with the mandates of Fiji's 20 ministries, identifying contradictions, legal loopholes, and potential human rights violations.

Chapter-by-Chapter Analysis with Ministry Links

Chapter 1 – The State

Issue: Sec. 4 – Secular State

Affected Ministries: Education, iTaukei Affairs, Multi-Ethnic Affairs

Contradiction: Curriculum reforms and cultural governance under the Education Act [Cap. 262], iTaukei Affairs Act [Cap. 120], and Multi-Ethnic Affairs Decree may conflict with constitutional secularism, diluting indigenous and religious practices.

Chapter 2 – Bill of Rights

Issue: Sec. 6, 31, 33, 38, 41 – Socio-Economic Rights

Affected Ministries: Information, Housing, Health, Employment

Contradiction: Rights to education, housing, health, and employment are recognized but rendered unenforceable when overridden by decrees such as the Media Industry Development Decree 2010 and budgetary discretion.

Chapter 3 – Parliament

Issue: Sec. 46, 47

Affected Ministries: Finance, Commerce, Public Works

Contradiction: Decrees such as the Finance Management Act and Public Works Decree are enacted without adequate safeguards for socio-economic rights.

Chapter 4 – Executive

Issue: Sec. 131, 157 – Executive & Emergency Powers

Affected Ministries: PM's Office, Home Affairs, Justice

Contradiction: Emergency powers under the State Services Decree 2009 and Public Order Act [Cap. 20] override civil service protections and weaken institutional checks and balances.

Chapter 5 – Judiciary

Issue: Sec. 105, 106 – Judicial Independence

Affected Ministries: Justice, Home Affairs

Contradiction: The Judicial Services Commission Decree 2009 enables executive influence over judicial appointments, undermining independence in rights-related cases.

Chapter 6 – State Services

Issue: Sec. 131–133

Affected Ministries: Home Affairs, Rural Development, Transport

Contradiction: Broad policing powers under the Police Act [Cap. 85] and Military Forces Act [Cap. 81] curtail rights to assembly and freedom of movement.

Chapter 7 – Accountability

Issue: Sec. 149, 150

Affected Ministries: Finance, Housing, Commerce

Contradiction: Weak enforcement of the Leadership Code Decree 2007 enables corruption, undermining socio-economic rights.

Chapter 8 – Finance

Issue: Sec. 151, 152

Affected Ministries: Finance, Health, Education, Housing

Contradiction: Budgetary discretion under the Finance Management Act allows cuts to essential services, breaching constitutional guarantees.

Chapter 9 – Emergency Powers

Issue: Sec. 157

Affected Ministries: Information, Justice, Home Affairs

Contradiction: The Public Emergency Regulations 2009 and Public Order Act [Cap. 20] curtail freedoms of speech, movement, and assembly.

Chapter 10 – Immunity

Issue: Sec. 155–156

Affected Ministries: PM's Office, Justice

Contradiction: The Immunity Decree 2010 blocks prosecution of human rights abuses committed during past coups.

Chapter 11 – Amendment

Issue: Sec. 160

Affected Ministries: PM's Office, Justice

Contradiction: High thresholds for constitutional amendment restrict democratic reform.

Chapter 12 – Transitional

Issue: Sec. 161–163

Affected Ministries: All ministries, especially Information, Justice, Housing

Contradiction: Transitional provisions allow decrees such as the Media Industry Development Decree and others to remain valid even when they violate constitutional rights.

Ministry-Specific Contradictions (Summary Table)

Ministry	Key Constitutional Conflict
PM's Office	Emergency powers override civil service protections.
Finance	Budget cuts undermine socio-economic rights.
Foreign Affairs	Trade deals conflict with environmental protections.
Education	Curriculum reforms clash with religious freedoms.
Health	Resource shortages undermine health guarantees.
Justice	Executive influence undermines judicial independence.
Home Affairs	Deportation powers breach non-discrimination rights.
Information	Media restrictions contradict free speech.

Rural Development	Forced relocations breach housing rights.
Agriculture	Land use undermines indigenous land rights.
Fisheries & Forestry	Logging concessions breach environmental protections.
Tourism	Expansion overrides indigenous land rights.
Employment	Labour disputes curtailed under emergency powers.
Women & Social Protection	Welfare cuts undermine socio-economic rights.
Housing	Labour disputes curtailed under emergency powers.
Public Works	Infrastructure projects override environmental rights.
Commerce	SME policies conflict with fair competition rights.
Youth & Sports	Youth programs lack enforceability.
iTaukei Affairs	National unity clauses override indigenous governance.
Multi-Ethnic Affairs	Ethnic policies clash with equality guarantees.

Recommendations

1. Limit Emergency Powers: Amend Sec. 157 to prevent arbitrary suspension of rights.
2. Remove Immunity Provisions: Repeal Sec. 155–156 to restore accountability.
3. Strengthen Judicial Independence: Reform Sec. 105–106 to ensure impartial appointments.
4. Enforce Socio-Economic Rights: Make rights to housing, health, and education justiciable.
5. Audit & Align Decrees: Repeal or harmonize decrees with constitutional guarantees.
6. Protect Indigenous Rights: Clarify Sec. 28 to safeguard cultural and land rights.

Conclusion

The 2013 Constitution provides a comprehensive framework but contains systemic weaknesses that undermine rights enforcement. Each ministry operates under decrees and acts that dilute constitutional protections. Reform is essential to ensure the Constitution is not only supreme in theory but enforceable in practice, safeguarding democracy, equality, and human rights for all Fijians.

Quick Takeaway: Constitutional Audit Recommendations

Limit Emergency Powers (Sec. 157)

Prevent overreach and safeguard civil liberties. Ministries affected: Home Affairs & Immigration, Rural & Maritime Development.

Remove Immunity Provisions (Sec. 155–156)

Ensure accountability for past and future actions. Ministries affected: Prime Minister's Office, executive ministries.

Strengthen Judicial Independence (Sec. 105–106)

Protect courts from executive interference. Ministries affected: Justice Ministry.

Enforce Socio-Economic Rights (Sec. 31, 38, 41)

Guarantee education, health, and housing rights. Ministries affected: Education, Health & Medical Services, Housing & Community Development, Women, Children & Social Protection.

Audit and Align Decrees

Repeal or harmonize military-era decrees with constitutional guarantees. Ministries affected: All ministries (e.g., Information & Communications, Agriculture, iTaukei Affairs).

Protect Indigenous Rights (Sec. 28)

Safeguard iTaukei land, culture, and governance. Ministries affected: iTaukei Affairs.

Ministry Impact Matrix

Recommendation	Affected Ministries
Limit Emergency Powers	Home Affairs & Immigration, Rural & Maritime Development
Remove Immunity Provisions	Prime Minister's Office, Executive Ministries
Strengthen Judicial Independence	Justice Ministry
Enforce Socio-Economic Rights	Education, Health & Medical Services, Housing & Community Development, Women, Children & Social Protection
Audit and Align Decrees	All Ministries (e.g., Information & Communications, Agriculture, iTaukei Affairs)
Protect Indigenous Rights	iTaukei Affairs

Rainbow Pride Foundation (Chrisopher L)

Rainbow Pride Foundation
Time:10.12am-11.10am
Date: 29-4-2026

Mr. Valenitabua: Good morning Mr. Lutukivuya from Rainbow Pride Foundation. It is with great pleasure that we welcome you before the Constitutional Review Commission on behalf of Chair and the Commissioners. We thank you for accepting our invitation and coming forward to make submissions before the Commission today.

Before we start, I will go through some housekeeping matters. If you wish to make a submission or speak you will have to press the right side of the panel in front of you to speak and then press the same side to turn the mic off. After this Chair will introduce the Commission and the work that they are trying to undertake and also the Commissioners will either introduce themselves or Chair will introduce them.

After that we kindly request if you could also introduce yourself. This is for the record, the transcript.

Mr. Valenitabua: Mr. Lutukivuya, welcome. Thank you for turning up this morning. In response to the invitation that was sent we know that we have had a number of deferments in relation to the consultation from your association, your foundation. However, we are glad that you have managed this morning to appear before this Commission.

The Commission has been established to review the 2013 Constitution. We are not, or it is not part of our task to produce a new one, no. We are only tasked to prepare an amended one which we will then forward to His Excellency the President.

From there it will have to go to Cabinet and then the legal process of law making takes over. So, our task is only to listen to submissions from citizens of this country, from the people of Fiji and record these submissions, record your thoughts, your views, your expectations, your recommendations.

Record those and then in the end we will have to deliberate on all these matters that we have collected from the people of Fiji and then work on it, write a report and God willing we will have a Constitutional amendment or an amended Constitution.

So, we are glad that you are here this morning. By way of introduction of your commissioners we have got name tags in front of us. However, I would just like to introduce Mr. Conway who is on the far right, Conway Beg.

We have got Commissioner Mere Nailatikau or Merewalesi Nailatikau, you might be familiar with her. On my left is Dr. Neelesh Gounder from USP and further left is Dr. Unaisi Baba from the Fiji National University. I am Sevuloni Valenitabua, the Chairperson.

One of us is not here this morning, Dr. John Fatiaki. So please pardon, excuse his absence. Now with those words of welcome we will pass the mic to you and you can introduce yourself and also proceed with your submissions.

Mr. Lutukivuya: Sa yadra Vinaka Sara. A very good morning, a warm good morning to everybody, to the panel. First of all, introducing myself, Christopher Lutukivuya, a LGBTIQ, HIV and mental health advocate in the country. I do apologies for the late, the last-minute change in the representations of the submission, who was going to submit our submission today.

So, with that being said, in introducing my submission today or the organization's submission today, you know the Rainbow Pride Foundation is an organization that looks after LGBTIQ health and rights in the country, therefore would like to also put forth this, to submit this contribution to the Constitutional Review Committee in support of the Constitution that reflects dignity, equality and live realities of people in Fiji.

So, people of diverse sexual orientation, gender identity, expression and sex characteristics understand the importance of respecting every person regardless of their ethnicity, religious belief, gender or sexual orientation.

We believe strongly in the values of respect, unity, family, tradition and culture that shapes Fiji as a nation. Recognition of diversity does not weaken the value. It strengthens them by ensuring that every citizen is treated with fairness, dignity and compassion.

As a community-led organization working on the intersection of human rights, HIV response, public health and social justice, the Rainbow Pride Foundation works closely with people of diverse SOGIESC across the country in Fiji.

So, including those who continue to face discrimination, exclusion and unequal treatment in everyday life. The Constitution should affirm that every person regardless of their sexual orientation, gender identity and gender expression or sex characteristics has equal dignity, equal protection and equal opportunity before the law.

Why constitutional recognition matters to us. Many people of diverse SOGIESC in Fiji continue to experience discrimination in employment and in workplace, unequal treatment in healthcare services and settings, bullying and exclusion from school and university, family rejections and homeless, harassment by service providers, violence and threat in community, barrier in accessing justice and police protection, exclusion from leadership and decision-making spaces, stigma with HIV testing, treatment and social services. Although, legal protections exist in some areas.

Constitutional silence creates uncertainty, weak enforcement and inconsistent protection. Without clear constitutional recognition people of diverse SOGIESC remain vulnerable to discrimination that affect not only their human right but health outcomes as well, economic participation, education access and national development. Therefore, recognition is not about special right, it's about equal right.

Existing constitutional principle should be strengthened from our view. The constitution already upholds important principle, equality, non-discrimination, dignity, privacy, freedom from degrading treatment, access to justice and freedom of expression and association. So, this principle should be strengthened through clear protections of explicitly including sexual orientation, gender identity and expression and sexual characteristic.

Explicit recognition improves legal clarity and ensure institution can properly uphold the right of every citizen. Therefore, this submission is important for a transgender person whose legal

identity do not align with their lived reality. Intersex person facing medical and legal invisibility.

Young people of diverse SOGIESC vulnerable to abuse and exclusion and people excluded from family, faith and community support because of who they are. So, our key recommendations are strengthening non-discrimination protections and strengthen positive obligation. The constitution should explicitly prohibit discrimination based on sexual orientation, gender identity, gender expression and sexual characteristic.

The protection should apply across employment, education, healthcare, housing, access to public service, law enforcement, government institution, humanitarian response and disaster recovery system. This strengthens fairness, accountability and equal treatment for all citizens.

Recognitions of the human dignity and personal identity. The constitution should affirm that every person has the right to dignity, bodily autonomy, privacy and personal identity. This includes protections for transgender, gender diverse and intersex from discrimination, degrading treatment and forced disclosure and harmful institutional practices.

This also acknowledges the intersectionality and multiple dimensions of discrimination for SOGIESC as diverse people who are member of group that face unique challenge, layered discrimination, iTaukei with disability and also those who lives in rural maritime area.

Recognitions of identity helps improve access to healthcare, mental health outcome, school retention, employment opportunities, legal protections and community safety and belonging. Protections from violence, harmful practices and abuse.

Constitutional safeguards should ensure protection from hate-based violence, forced family rejection, coerced or abusive practices, harmful conversion effort, discrimination in policing and justice system and also abuse within the institution, school or workplace.

No citizen should live in fear because of who they are. And also strengthen right to privacy that introduce protections against unauthorized disclosure of SOGIESC status in both physical and digital spaces.

Equal access to health and social services. The constitution should affirm equal access to healthcare services, HIV prevention, testing and care, sexual and reproductive health and services, mental health and psychological support, a social protection system, legal aid and justice services. Stigma and discrimination in health and social system creates serious public and development risk. Constitutional clarity supports stronger outcome in these circumstances.

Inclusive civic participation and presentation. People of the diverse SOGIESC should be recognized as full participant of national life, including leadership and governance, public services, policy consultants, disaster preparedness and humanitarian responses, climate resilient planning, youth development and community national development. No community should be invisible to national planning or excluded from decision that affects their life.

Clarification on marriage. The Rainbow Pride Foundation wishes to clear that this submission is not advocating for constitutional recognition of marriage. The focus of this submission is equal citizenship, protection from discrimination and human dignity, not marriage reform.

The constitution should ensure that people of diverse SOGIESC can live safely, work fairly and access service equally and participate fully in society without fear. Therefore, constitutional inclusion supports national development. Exclusion creates significant economic and social and public health cost, which has been faced so many times.

When people of diverse SOGIESC are excluded, the productivity decreases, mental health burden increases, HIV outcome worsens, education participation drops, trust in the institution weakens and social cohesion suffers.

So, in conclusion, the Rainbow Pride Foundation respectfully urges the Constitutional Review Committee to ensure that Fiji's

constitution reflects the dignity, equality and lived realities of people. Recognition of people of diverse SOGIESC is not about creating special rights or division.

It's about ensuring that no citizen is left unprotected. We ask that the Constitution protects without exception, recognizes without prejudice, includes without discrimination and upholds dignity for all. Vinaka.

Mr. Valenitabua: Vinaka, Mr. Lutukivuya, we heard your submission. Would it be possible to put it down in writing and send it to us please? We'll wait for it so that they could be collated with the other submissions which we have received and are in writing and would make work for the Commission easier. Now I'll start this of.

I've been listening to your oral submission. You've been raising various issues in relation to the subjects of your advocacy. I was looking at or I am looking right now at Section 26 of the Constitution.

You will be aware or you should be aware of Section 26 of the Constitution and the heading is Right to Equality and Freedom from Discrimination. Section 26 has 8 subsections and reading through those 8 subsections, they deal, subsection 1 deals with equal before the law. Section 26.1 says Right to Equal Protection, Treatment and Benefit of the Law.

If we go down to Section 26 of Section 2, it says equality includes the full and equal enjoyment of all rights and freedoms recognized in this chapter or any other written law. And then in subsection 3, it says that a person must not be unlawfully or unfairly discriminated against directly or indirectly on the grounds of his actual or supposed personal characteristics or circumstances including race, culture, ethic, social origin, color, place of origin, sex, gender, sexual orientation, gender identity, expressions, birth, primary language, economic or social or health status. I stress health because of the HIV aspect of your submission.

Now if we go down through all of those subsections, Section 36, subsections 1 to 8, the discrimination and equality, they are both addressed in those sections. Protecting citizens of this country

from discrimination and conferring on citizens of this country the right to equality before the law.

Now having heard your submissions, you were talking about strengthening, that is the adjective that you've been using, strengthening, you know, these rights, these freedoms and so forth.

How do you propose to this commission, what is your proposal on how we can do it, how can we strengthen it? They are already covered here and I'm sure that they have been practiced.

Look around, all these, the members of the group that you are advocating for, they hold good positions at work and employment, they work in various industries, hotels, offices and so forth. Where do you see the strengthening should be based on and how can we deal with that as commissioners? So, that subsection 26 of the Bill of Rights are more of a declaration to our community.

Mr. Lutukivuya: I'll be very frank; it's not being operationalized as it should. Our community continues to face discrimination, our community tends to face stigma because of their identity, because of their orientation and I do, and I must say that not everybody within my community are of privileged background.

And when they try to escalate or move up to a certain standard or bar, discrimination tends to oppress them, suppress them in a sense in which they lose all dignity in trying to move forward.

So, I'm speaking from lived experience, proposing from lived experience that have been collated on the ground because of the lived realities in which we have been facing for years. Not everybody has equal access to health. As somebody who's been advocating for HIV over the past 12, 13 years, this is the lived realities on the ground.

Transgender women, LGBTIQ individuals are still being discriminated when they enter the health services. So, that's also the proposal that I'm putting forth. How can this committee sort of look at strengthening the Bill of Rights subsection 26? Yes, we were excited when we saw this in the first place, but the fact that we continue to get the same thing that we have been

getting over the years, despite the fact that this exists in the constitution, it makes us wonder where's the equality, where's the equal treatment.

So, that's why I'm here today and also asking how can this be strengthened and further operationalized or socialized in a manner that it is understood by everybody.

Ms. Nailatikau: If I may, Chair. Thank you, Mr. Lutukivuya for your submission this morning. I appreciate that it takes a lot of time and energy and effort to collectively put something together, and there are lots of barriers, seen and unseen, to doing the work that you've been doing for many years. Noting that you bring some valuable lived experience relating to mental health, the LGBTIQ community, as well as HIV advocacy. I would really hope that you can encourage others in your community to also make submissions before the commission.

It's part of our job to make sure that we hear these lived experiences as well, and if we do ask questions, it's really just to make sure that we can understand or clarify how this can find a landing spot if it does in the constitution.

I have a question relating to forced disclosure, and a very important part of this process is that it's trusted, is that it is open and transparent so that members of the public can also have the chance to listen to each other and understand what other members of the community are also submitting. And, of course, it's our obligation to be as transparent as possible throughout the process.

That does come up against submittees or members of the public's concerns who may want private or closed sessions, for example. And when you spoke about forced disclosure, I think that also brings to bear the reality and lived stigma that a lot of members of your community live with that you spoke about, and how not everyone is in a state of disclosure or able to publicly disclose their identity when they make submissions, and that we hope shouldn't prohibit them from being able to make submissions as well.

I would just like to hear from you in terms of ways in which processes like this can be bettered in the sense that there is a

genuine positive intent to be open and transparent, but at the same time you don't want to put people in difficult positions by contributing to making them feel unsafe in terms of disclosure of identity. I hope that question was clear.

Mr. Lutukivuya: Well, in all honesty, there are those within the community who prefer their lives more quiet. And if I may, because there are those within our community who are married with children and do not want to be known because of their status.

The fact that other people tend to expose them on social media within their community, and it comes back to us as an organization asking us where is the protection, how can we protect them. Now we are sitting here asking how can we strengthen these protections of outing people publicly because of their status. And nobody has to go through that because of their lived realities.

And it's quite sad that there are those who have been pushed out of their family. I've mentioned family so many times within the submissions that I've made. It's because of that as well.

They've been thrown out of their family because of the life that they, because of who they are. And there is poor understanding, despite the fact that we have done so much advocacy, but as I've also mentioned within the submission, we also have our own religious belief and traditional understanding to what is and what should not be. Outing people has been one of the major problems that we have been facing over the years.

Because, I'll just leave it at that because it's a bit emotional talking about trying to put words together to sort of really speak on what exactly is happening on the ground. So, I hope I kind of...

Ms. Nailatikau: Thank you Mr. Lutukivuya, I think your contribution has really underscored the importance of allowing members of the public to dictate their; condition to make them; feel safe to make their condition and while transparency is always the main priority members of the public to be Safe and protected and having a safe as its their right as how they want on how they want to be governed, how they see their rights being protected and upheld. I'm sorry about any other issues that my question may have

raised, but I do appreciate you underscoring that important point.

Professor Baba: Thank you. Chair, Mr... Sorry, I didn't quite get your name. Uluivuya?

Mr. Lutukivuya: Lutukivuya.

Professor Baba: It's a very nice name. Lutukivuya. Is HIV covered here? HIV patients, are they covered here in your disclosures?

Mr. Lutukivuya: Yeah.

Professor Baba: Yeah, okay. I thought I'd clarify that. I'm asking for you to just clarify for me, because I find that young people that live around me do not go to nightclubs anymore. I worry that the openness with which my generation live their lives is totally redefined today.

So, what would happen is they have changed their patterns of socializing. The five people would go to each other's houses, or they'd just control the people that they mingle with. In the long term, that constitutes a problem for me as an educator, because they're not mixing with everybody.

They've limited their social circles, if you like, their identities and their possibilities to expand and understand other people, because they're worried about people who are mixing with them that are not disclosing the fact that they are HIV positive.

I just put it to you in terms of moving forward and helping everybody live together, yeah? So, there's 30,000 students in my institution. How do you suppose we don't disclose? And still, because people are young, the urges to be with other people will be there.

So, it constitutes almost a problem in terms of, you want people to be free, you want people to be natural, and have relationships with other people. But where do we tell our children, it's okay, go mix, because the world is no longer like that. The statistics in this country, isn't it highest in the world? So yes, we should produce protection for each other, but the future that we hold educationally is also a future we're responsible for.

Now, I used to work in the American Guam. So, when my girlfriends want to have a boyfriend, they tell them, can I have your health certificate, where you disclose, you know? Like if you have, not even HIV, even NCD, like if you have sugar, you should tell your partner to be. So, we are open to each other before we tie knots, before we sexually engage.

In my eyes on the system, how do you suppose we also tackle that? And you know, how do we, because it's written here to be protective, but HIV for me is an area I'm not sure, as a leader of a big institution, it's the biggest in the Pacific.

We are trying to protect as well, those that are out of non-disclosure. If you want people to go and have relationships, yes, it makes people natural and normal, and it doesn't matter who they choose, in my view.

But the non-disclosure protects who?

Mr. Lutukivuya: The non-disclosure that I was mentioning about is outing people who are LGBTIQ, but would not like to be known. And if we are talking about HIV, we also have the HIV decree which specifically says that you are not allowed to disclose anybody's status without their authorities, and if there is a need to do that, you need permissions from the PS Health or the President.

Professor Baba: You know, the same is in Nauru and other Pacific Island countries, where we have 1,200 people, so you would assume that one person generally has 10 partners?

Mr. Lutukivuya: Yes, and you talk about enjoying freely. The availability of ARV has sort of allowed this to happen, so it suppresses all the virus within the system that you cannot pass it to anybody else.

Professor Baba: Okay, okay, that's the solution. Thank you.

Dr. Gounder: Good morning, Mr. Lutukivuya. Thank you very much for your presence this morning and for your presentation. I must say it was a very honest and candid presentation.

I also have deep respect for your submission from the perspective of realities. Thank you very much for that. In a

number of occasions, you talked about strengthening the principles of the provisions in the Constitution, and the Chair has already read out a long list of provisions that protect people from discrimination against various circumstances.

I also take your point about the gap between what's on the paper and what's practiced on the ground. This is an issue not only emerging from the Constitution, but in other frameworks as well, such as development plans. We have a lot of ideas, but some of those don't materialize at the end of the day.

The things on paper in various policies don't seem to happen on the ground. So, this is a challenge in many other areas as well, but I recognize your point. For us as a Constitutional Review Committee, we will take note of the gap that you have mentioned, that what's on the paper doesn't necessarily always get implemented on the ground.

So, hopefully at the end of the submissions we will be able to converge that that is an issue and make a recommendation for the government to ensure that the provisions that are in the Constitution are actually implemented on the ground and have an impact on the people in terms of their real lives.

But beyond that, is there anything in addition to what is currently there that you want to see in terms of the actual provisions, taking into account the gap between what's on the paper and what's actually implemented? Anything more that you wish to see here? Thank you.

Professor Baba: Chair if I may. I've been sitting here and thinking, just as an example. Institution, I take your point it's not covered. Because the law is one thing but how we put it in rules and rights 'e sega' when I went back with Doctor Neelesh and team, I looked hard at our course outline because In the American system, explicitly we have to put it there.

So, if you have 30,000 students in all university systems, in other words, the Higher Education Commission will regulate this. Every course outline, now we are doing it at FNU. It's only because I said here. You know what I mean? We're too busy. We don't really look at detail. It doesn't cover it.

But if every course outline does what we do in the university system in America, it's called Accommodations EEO. It's actually a section of the Constitution, comes under the 14th Amendment. We're talking about the U.S. Constitution. So as a lecturer, I'm duty bound. Every course outline I produce, one of the pages at the back has accommodations because of EEO or EDA or AAEO.

We are governed. Then you put it there, then you say, for everybody that has blah, blah, blah, blah, blah, that this course will make sure we accommodate them. But it goes back to the EEO thing over here. I haven't seen it here. I don't know how. Maybe chair. Equity provision. It's called EEO in the American system. So, if you are disabled, there's the ADA Act. It all covers that. It's called accommodations. So, I'm taking it that we, at least in my institution, we can do that.

But maybe taking it up. It's the High Education Commission or the regulatory body. Yeah, that's what answers with Dr. Neelesh. Just helping you in terms of institutions. I don't know how that transfer first to schools. It probably it should be there somewhere. Yeah, but I think it's work to be done. It may not appear here because it's already here. But we need to transfer it to the regulations that we have. Over to you, chair.

Mr. Beg: Through you, chair. Can I call me? Can I call you Christopher instead of?

Mr. Lutukivuya: Go ahead.

Mr. Beg: Thank you. I was listening tentatively to your submission. What I hear is the, you know, we have, Fiji is founded on very strong cultural and religious values in one breath. We practice it and, you know, all the different parts of society. But the Constitution protects. In one breath, it applies to all citizens, regardless of your differences.

And obviously, I heard you earlier saying that you love the section of Chapter 2. And it's very clearly defined. But in reality, we're not practicing the Constitution is there, but society is not practicing those values against yourselves or what you're trying to present.

So do you think the society needs to change or, you know, because what I hear is you're happy with what's in the

Constitution. But reality, the operational mechanism is not being practiced. Is that right to say that, Christopher?

Mr. Lutukivuya: Yes. Changing society, that'll be a different story altogether. We can only do so much. But the request is strengthening Section 26 of the Bills of Rights. That's probably, that is actually where I'm basing my whole submission from. Because as I've aforementioned, the reality on the ground is not reflected as such. Being protected, non-discrimination clauses.

I am no constitutional, Constitution writer or compiler. But the fact if there is a way that it can speak to institution on how maybe ways and should protect that little bit clause.

Using the mechanics within that clause and put it into their regulations, within their policies. Maybe if there's something that can speak to that to filtrate this down. Because most of the time we're talking up here, people on the ground are suffering.

And if we are to talk about realities, I think the whole pages of books in this room cannot fit them all. Because of what the community has undergone without being truly protected as per Section 26. So, the violation keeps on continuing. The violations of right, the violations of physical harm.
So, these are some of the things that we would like to see being protected. And most of the community are being violated just because of who they are. So that's basically strengthening that protection, strengthening that equality within that section would be really nice.

Mr. Valenitabua: Christopher, Section 26 is there that protects or gives the freedom to equality before the law and freedom from discrimination. And there is Section 24 of the Constitution which gives the right to privacy.

Now you have talked about privacy in relation to members of your group. The confidentiality of communications which should happen in hospitals and our medical clinics and respect for private and family life.

So, as you were saying, Section 24 right to privacy and Section 26 right to equality and freedom from discrimination, they have there the coverage in the Constitution. And it is still not enough.

Now Mr. Conway raised a reason, I should say, which is giving problems or creating problems. I would term it, you know, he said about society. Now I would term it as the prejudices which people have against members of your community. Those prejudices, I don't know how they can be controlled by law. I'm not saying that it can't be done. There might be books written about it.

Mr. Beg: Chair, can I just interrupt there just so that it strengthens your argument. Chapter 5 also plays a role in this, the judiciary, if they want to take it to court.

Mr. Valenitabua: So, I was going to come to that. So, you've got the rights here. The prejudices are there from the people in the hospital, in our various societies. Now there is a section also in the Constitution, which is Section 44, which allows a person whose right has been breached by anybody to go to court and seek redress from the court.

Now I do not know whether that has happened. Again, like you said, some of your members would rather remain, you know, maintain their privacy. We can pass laws, but if we do not remedy the prejudices which are there in society, prejudices by the people is going to be a long ask. We can put proficiency in the Constitution.

I get your point. So that is something that we will have to look at. How to remedy the prejudices. The rights are already protected, but if we are to strengthen, then it's the prejudices, the prejudice which has to be diminished or eradicated. Do you agree with me?

Mr. Lutukivuya: Yes, sir.

Mr. Valenitabua: It's the prejudices that you are talking about. You know, we have lived our experiences. We have seen how some of you, I mean, some of the members of your community have been treated, how they've been spoken to and things like that. It's discriminatory, it's derogatory at times, degrading and so forth, despite the coverage here under Section 24 and Section 26.

So, it's that prejudice that has to be cured here or remedied. Anyone else?

Mr. Beg: If I can just add to that, I think, Christophe, what you're saying about the hospitals, I think society needs to change in that, of accepting that, because we're protected in the Constitution. What I hear you saying is, let that operational mechanism flow. Why do you have to look at us in that view, based on who we are, to be accepted? So basically, that's what I'm hearing.

Mr. Lutukivuya: It's also the same applications when we make a report to the police station. So, this is why I'm asking equality, this is why I'm asking equity, this is why I'm asking fairness. Other people would be served first. One LGBTIQ, full on make-up, would be sitting on the corner half a day before somebody come and take their report or their statement.

So, why can't we be treated the same? That's all I'm asking. It's provided within the Constitution 5, 2, 26, 25, but the fact that it is not being filtrated down to the understanding of the institution that exists to protect us, to give us a service, that's something that we're asking. Prejudice does exist, and we cannot control it. But abiding to the working law system that is in the country is something that we could look at.

Professor Baba: Could I help a little bit, Christopher? Are you familiar with Tonga and Samoa? That within the cultural society set up, there is absolute provision for what we call 'Fakalelei and Fakafifinei' n Samoa. So, if I had, for example, five sons, my youngest will be culturally trained to be a girl. They don't have a choice. And it's acceptable because it's part of the cultural make-up of society in Samoa. Just like they can make somebody from Fiji their matai.

See, the cultural set up of Samoa totally is part of that acceptance already. So, when I speak to my Samoan Fakafifine, there's absolute respect for them, because a lot of them, they're actually tutored to be whakafifine, even though they were born to be men in the first place. But culturally, they were trained to be ladies.

And very often, they're better at playing the woman's role. That's in Samoa. Now in Tonga, they wouldn't call them whakafifine, and there's a reason. They call them Fhakalete. It's also the same

kind of respect, but there is a cultural role to this. In Fiji, because it's very Melanesian in culture, and the rest of Melanesia, there is no such cultural role.

So ,you will understand that it will take education a lot of time to change the mindsets of people. It's just not part of our psyche. I was alluding to rules and regs of institutions, but I think every ministry could have their rules and regs to accommodate.

In the American system, it's called the 14th Amendment. People don't have a right to do otherwise. We'd have to. Even for soldiers, if they're in my class and they need to go on tour of duty, I go and write a letter and say, when you come back, if you choose to come back straight to me, I will continue. It doesn't absolve you. It doesn't take anything away.

What I'm saying is, that is what Counselor Conway and Chair were alluding to. In a place that does not, because we're very Melanesian, had we been governed by Tonga, maybe it would be different, or Samoa. Samoa is very liberating.

Anybody that knows that lives in Samoa, it's very freeing. You can be yourself, but not here. The Melanesian part of us doesn't allow it. So how do you propose we go through that? Through the Council of Chiefs? That's my question to you. Vinaka

Mr. Valenitabua: Do you want to answer that?

Mr. Lutukivuya: I actually don't want to.

Mr. Valenitabua: That's fine. That's fine.

Mr. Lutukivuya: On the note, I have respect for the Chiefs, despite that they would be the last resort to sort of change this, but I would rather stick with the constitutional provisions that we currently have.

Mr. Valenitabua: Thank you. I think that brings us to the end of our consultation this morning. We have heard, and we will really deal with this in relation to what you have submitted this morning.

It's a huge task. You will understand that because of the prejudices out there. We'll have to find something or find a way to address it. So, thank you very much for coming in this morning.

We've heard you. We will deliberate on your submissions. Please send us a written copy. Thank you.

----------End of Session [29-04-2026] ----------

Rainbow Pride Foundation

DRAFT Submission to the Constitutional Review Committee

Introduction

Rainbow Pride Foundation respectfully submits this contribution to the Constitutional Review Committee in support of a Constitution that reflects the dignity, equality, and lived realities of all people in Fiji.

People of diverse Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC) understand the importance of respecting every person regardless of ethnicity, religious beliefs, gender, or sexual orientation. We believe strongly in the values of respect, unity, family, tradition, and culture that shape Fiji as a nation. Recognition of diversity does not weaken these values—it strengthens them by ensuring that every citizen is treated with fairness, dignity, and compassion.

As a community-led organisation working at the intersection of human rights, HIV response, public health, and social justice, Rainbow Pride Foundation works closely with people of diverse SOGIESC across Fiji, including those who continue to face discrimination, exclusion, and unequal access to opportunities and services.

This submission does not seek constitutional recognition of same-sex marriage. Rather, it seeks constitutional protections that ensure people of diverse SOGIESC are recognised as equal citizens under the law—protected from discrimination, violence, exclusion, and unequal treatment in everyday life.

The Constitution should affirm that every person, regardless of sexual orientation, gender identity, gender expression, or sex characteristics, has equal dignity, equal protection, and equal opportunity before the law.

Why Constitutional Recognition Matters

Many people of diverse SOGIESC in Fiji continue to experience:

- discrimination in employment and workplaces
- unequal treatment in healthcare settings
- bullying and exclusion in schools and universities
- family rejection and homelessness
- harassment by service providers
- violence and threats in communities

- barriers in accessing justice and police protection
- exclusion from leadership and decision-making spaces
- stigma within HIV testing, treatment, and social services

Although legal protections exist in some areas, constitutional silence creates uncertainty, weak enforcement, and inconsistent protection.

Without clear constitutional recognition, people of diverse SOGIESC remain vulnerable to discrimination that affects not only their human rights, but also health outcomes, economic participation, education access, and national development.

Recognition is not about special rights—it is about equal rights.

Existing Constitutional Principles Should Be Strengthened

The Constitution already upholds important principles of:

- equality
- non-discrimination
- dignity
- privacy
- freedom from degrading treatment
- access to justice
- freedom of expression and association

These principles should be strengthened through clearer protections that explicitly include Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC).

Explicit recognition improves legal clarity and ensures institutions can properly uphold rights.

This is particularly important for:

- transgender persons whose legal identity may not align with their lived identity
- intersex persons facing medical and legal invisibility
- young people of diverse SOGIESC vulnerable to abuse and exclusion
- people of diverse SOGIESC living with HIV who face layered stigma and discrimination
- people excluded from family, faith, or community support because of who they are

Key Recommendations

A. Strengthen Non-Discrimination Protections (Strengthening Positive Obligation)

The Constitution should explicitly prohibit discrimination based on:

- sexual orientation
- gender identity
- gender expression
- sex characteristics

This protection should apply across:

- employment
- education
- healthcare
- housing
- access to public services
- law enforcement
- government institutions
- humanitarian response and disaster recovery systems

This strengthens fairness, accountability, and equal treatment for all citizens.

B. Recognition of Human Dignity and Personal Identity

The Constitution should affirm that every person has the right to dignity, bodily autonomy, privacy, and personal identity.

This includes protection for transgender, gender-diverse, and intersex persons from discrimination, degrading treatment, forced disclosure, and harmful institutional practices.

Also Acknowldging the Intersectionality and Multiple Discrimination for SOGIESC diverse people who are also members of other groups that faces unique challenges: Layered Discrimination, Itaukei, Living with Disability and Living in Rural Maritime areas

Recognition of identity helps improve:

- access to healthcare
- mental health outcomes
- school retention
- employment opportunities

- legal protection
- community safety and belonging

C. Protection from Violence, Harmful Practices, and Abuse

Constitutional safeguards should ensure protection from:

- hate-based violence
- forced family rejection
- coercive or abusive practices
- harmful "conversion" efforts
- discrimination in policing and justice systems
- abuse within institutions, schools, or workplaces

No citizen should live in fear because of who they are.

- Strenthen Rights to Privacy that include protection against "unauthorized disclosure of SOGIESC status" in both physical and digital spaces.

D. Equal Access to Health and Social Services

The Constitution should affirm equal access to:

- healthcare services
- HIV prevention, testing, treatment, and care
- sexual and reproductive health services
- mental health and psychosocial support
- social protection systems
- legal aid and justice services

Stigma and discrimination in health and social systems create serious public health and development risks. Constitutional clarity supports stronger national outcomes.

E. Inclusive Civic Participation and Representation

People of diverse SOGIESC should be recognised as full participants in national life, including:

- leadership and governance
- public service

- policy consultation
- disaster preparedness and humanitarian response
- climate resilience planning
- youth development
- community and national development

No community should be invisible in national planning or excluded from decisions that affect their lives.

5. Clarification on Marriage

Rainbow Pride Foundation wishes to clearly state that this submission is not advocating for constitutional recognition of same-sex marriage.

The focus of this submission is equal citizenship, protection from discrimination, and human dignity—not marriage reform.

The Constitution should ensure that people of diverse SOGIESC can live safely, work fairly, access services equally, and participate fully in society without fear.

These are fundamental constitutional rights that exist independently of marriage debates.

6. Constitutional Inclusion Supports National Development

Exclusion creates significant economic, social, and public health costs.

When people of diverse SOGIESC are excluded:

- productivity decreases
- mental health burdens increase
- HIV outcomes worsen
- education participation drops
- poverty and vulnerability increase
- trust in institutions weakens
- social cohesion suffers

Inclusion strengthens national resilience and supports Fiji's commitments to human rights, sustainable development, gender equality, and public health.

A Constitution that protects all people strengthens the nation for everyone.

7. Conclusion

Rainbow Pride Foundation respectfully urges the Constitutional Review Committee to ensure that Fiji's Constitution reflects the dignity, equality, and lived realities of all people.

Recognition of people of diverse SOGIESC is not about creating special rights or division—it is about ensuring that no citizen is left unprotected.

We ask for a Constitution that:

- protects without exception
- recognises without prejudice
- includes without discrimination
- upholds dignity for all

A stronger Constitution is one where every person can belong safely, equally, and with dignity.

Shree Sanatan Dharm Prathinidhi Sabha of Fiji (Sanatan Sabha)

Shree Sanatan Dharm Pratinidhi Sabha of Fiji
Time: 12.00pm-1.30pm
Date: 29-4-2026

Leighton: Good afternoon Mr. Narayan. My name is Leighton Fatiaki. I'll just be going through a few housekeeping matters with you.

Just for the sake of making submissions, you'll have to press the right side of the panel of the mic in front of you to turn the mic on. And once you've finished, you can press the same side to turn the mic off. Following this, the Chair will introduce the work of the Commission that the Commissioner will be undertaking, after which he will then introduce the team or will ask the team to introduce themselves.

We also ask after that if you can introduce yourselves, sir. Just for the record, we thank you very much, sir, and the Sri Sanatan Dharam for accepting our invitation to be here this afternoon.

Mr. Valenitabua: Good afternoon, Mr. Narayan. Before I proceed, I'd like to request the Commissioners to introduce themselves. We'll start from the far right, then I'll ask the Commissioners to follow on until we get to the left. Good morning, sir, and welcome.

Mr. Beg: My name is Conway Beg. I'm an architect by profession, and I'm happy to sit here and listen to your consultation or your presentation. Thank you.

Ms. Nailatikau: Good morning, Mr. Narayan. I'm Merewalesi Nailatikau. I'm a consultant, mostly working in environmental and social safeguarding. Thank you for joining us this afternoon.

Dr. Fatiaki: Good afternoon, Mr. Narayan. I'm Dr. John Fatiaki. I'm Rotuman a medical practitioner by profession. Welcome, and we look forward to hearing your submission.

Dr. Gounder: Good afternoon, Mr. Narayan. I'm Neelesh Gounder. I work at USP. Today, I look forward to your submission. Thank you.

Professor Baba: Good afternoon. I'm Unaisi from F.N.U.

Mr. Valenitabua: Good Afternoon Mr. Narayan, Sevuloni Valenitabua, the Chairperson. We have all welcomed you this afternoon. A matter

of introduction. You are before the Constitution Review Commission. This commission was established or was called upon by His Excellency, the President of the Republic of Fiji.

Cabinet had decided on an amendment or review of the 2013 Constitution, and then we were called upon to be the review team. Thus, the Constitution Review Commission was established. The task that has been given to us is to review the 2013 Constitution, and in doing so, we have to get or collect the views and thoughts and suggestions and recommendations from the population Of Fiji, we've got citizens and we've got our people, all Fijians.

We have to try and gather as much as possible from the population. So, that is why we have been inviting associations and we have been receiving individuals also to come and submit submissions to us before the Commission.

We thank you on behalf of the Commissioners. We thank you for turning up today, and we believe you will be speaking on behalf of the Shree Sanatan Dharm Pratinidhi Sabha of Fiji. Yours will be the first Indo-Fijian Association to appear before us, and we're happy that you are here today so that we can hear from a representative of an Indo-Fijian Association.

The task is, as I have mentioned, we'll be here to listen to your submission. Your submission will be recorded fully, word by word. We've got a handsard recorder who's recording everything. And we can tell you now that whatever you submit to us today in relation to what your association thinks or recommends to be included in the Constitution or removed from the Constitution or amended within the Constitution will be considered by this Commission.

That is what we are tasked to do here, record and recommend the changes. And at the end of our timeline, which is the 31st of August 2026, we will have to write a report for His Excellency and together with a draft amended Constitution. And from there, our job ends. The rest of the process will be taken over by His Excellency and Cabinet also. Now, with those few words, we welcome you again, and we are ready to hear from you. I now pass the mic to you, sir.

Mr. Narayan: The Chairperson, the members of the Constitutional Review Committee, distinguished officials and fellow citizens who might be listening to me through this or observing this proceedings, good afternoon to you all Bula Vinaka, Jai Shri Ram, Namaskaram. My name is Ravin Narayan, and I am one of the National Vice-Presidents of the Shree Sanatan Dharm Pratinidhi Sabha of Fiji. And first and foremost, I would like to take this opportunity to the Commission that the invitation that was extended to Shree Sanatan Dharm Pratinidhi Sabha of Fiji to come out and give the submission or at least voice out their concern of being one of the largest religious organizations in Fiji, representing the descendants of the Girmitiya since 1879. And for that, thank you very much, Vinaka Vakalevu.

The Chairperson, members of the Constitutional Review Committee, I appear before you today on behalf of Shree Sanatan Dharm Pratinidhi Sabha of Fiji, who is representing almost 250,000 of the citizens of this country who have Sanatan faith.

We thank the Committee for the opportunity to make oral submissions, and our written submission is before the Commission on table. And today, I will not read that submission that is before you, but however I would just like to be heard on five matters that we consider that is in that submission. So, I'll be taking you through orally on that particular part.

The five matters that we consider most urgent matters that go to the very heart of what kind of Fiji as a nation that we want to become in decades ahead of us. The first and foremost that we are pointing out is the national identity. One people, one nation.

Chairperson, allow me to begin with a simple question, which is, what is a Fijian? The 2013 Constitution answers that question clearly under Section 2, Subsection 1, states, and I quote, all citizens of Fiji shall be known as Fijians. That is the law, and it has been there for the past 13 years. Yet in 2026, members of my commentary, whose ancestors arrived in this country in 1879, who have fought for Fiji, have built Fiji, have built the schools in Fiji, who have paid taxes for the past six generations, and yet we are continued to be called 'vulagi', we are considered outsiders or guests.

In our own homeland country, which we call Fiji. Chairperson, this is not merely an offensive, it is unconstitutional. The Sabha is not asking the committee to write any new laws. We are seeking the committee to enforce the law that already exists. We respectfully propose three small but significant changes. First, retain Section 2, Subsection 1, without delusion.

Second, require all state entities and public officials to refer to citizens only as Fijians without ethnic qualifier. Third, mandate a civic education campaign explaining that Fijian is a civic identity and not an ethnic level. The chairperson sir, New Zealand does this, Canada does this, the United States of America does this, and so can Fiji do this.

We are not asking for any special treatment; we are asking for equal treatment under the constitution onwards. Secondly, sir, our second major point is the language and religious freedom, protecting our sacred mother tongue. The Japanese censor, the second matter concerns the survival of our faith.

For followers of Sanatan Dharam, the Pure language, which is Shudh Hindi, is not a political symbol. It is not a heritage that is kept in the museum. It is a living language of our scriptures, the Ramcharitmanas, the Bhagavad Gita, the Vedas, our prayers, our rituals, and our Aarti.

When a priest chants the Hanuman Chalisa, he does not speak in Fiji Hindi. When our elders recite the Sundarkand of the Ramcharitmanas, they speak in Pure Hindi. If our children cannot learn Pure Hindi, they cannot fully participate in our religious life of our community.

This is not a preference chairperson, that is a theological fact. The current constitution recognizes Fiji Hindi, and rightly so, but it is silent on Pure Hindi. And that silence has been used to exclude Pure Hindi instructions from the state-supported education.

We are not asking to diminish Fiji Hindi, we treasure Fiji Hindi. It is a language of our mothers, our fathers, the market, and the home. But we are asking for the constitution to recognize that Pure Hindi serves a different and equally legitimate purpose.

Our proposal is simple. Amend Section 31, Subsection 3, to include these words, and I quote what we are proposing. The state shall also support the teaching of Pure Hindi as a linguistic language essential to the religious freedom of Sanatan Dharam followers.

Currently, Section 31, Subsection 3 promotes Fiji Hindi. If the state can support Arabic for Muslim Quranic studies, Hebrew for the Jewish, and then the state can support Pure Hindi for the Sanatan worship. Equal protection requires equal accommodation.

The third point that we are pointing out to this commission and bringing before this Honorable Commission is this. Land security. Dignity for the leasehold tenants. The chairperson, the third matter is land. Let me be absolutely clear. The Sabha acknowledges and respects the iTaukei land ownership.

We do not challenge the native title. We do not seek to transfer ownership from the iTaukei hands. But respect must be reciprocal. There are thousands of Sanatan Dharam families in this country who have lived on the same leasehold land for four, five, or even six generations. Their parents have built those houses. Their parents have planted those trees.

They have sank wells, installed irrigation, and have improved this way. And when the land lease expires, they are told to leave. No compensation for the improvements. No security for the future. Just a mere displacement.

The chairperson sir, the current constitution promises a right to housing under Section 37. But that right is qualified by a price, and I quote, within its available resources. In practice, that means no court can enforce it. A displaced family has no remedy.

We propose three changes to that. First, make the right to the housing justifiable and enforceable in court. Second, a mandate minimum lease term of 99 years for families who have occupied the land for more than three generations.

Thirdly, guarantee a fair compensation for permanent improvements. These improvements, these provisions do not take one inch of the iTaukei land. They simply say that if you

lease a land to a family for a century, you cannot throw them off that land without nothing. That is not anti-iTaukei That is pro-stability, pro-production, and pro-peace.

The fourth submission that we are making before the Constitutional Review Commission is on the electoral reform and democratic governments. The chairperson sir, the fourth matter concerns how we govern ourselves. The current system of 51 seats elected from a single national constituency has a serious flaw. It shivers the link between the representatives and the communities.

A farmer in Rakiraki cannot tell you who his MP is. A village head in Labasa cannot call their representative. This is not democracy. This is lottery. We propose a mixed system. 30 constituency-based seats where every community has a local representative they know and they can hold accountable.

And 21 proportional seats to maintain national balance. We also propose, and I know this may be controversial, but please let me explain carefully, up to four nominated seats in Parliament for major religious bodies. The Methodist Church of Fiji, the Sanatan Dharm Pratinidhi Sabha of Fiji, the Fiji Muslim League, and the Catholic Church.

Chairperson sir, these organizations are not special interests. They are the infrastructure of the Fijian civil society. They run schools. They operate hospitals. They provide social services. Giving them a formal voice in Parliament is not undemocratic, but it is recognizing reality.

And finally, on governance, we strongly support the re-establishment of a Senate, a second chamber with a suspensive veto which staggers 60 attempts, with representation from the Ethiopian traditional leaders, religious bodies, and civil society. A Senate is not an obstacle to democracy. It is the guardian of democracy. Protecting minorities from temporary majorities and ensuring that legislations are properly scrutinized.

So, the fifth that we are proposing is that no more humanity for coups. The chairperson sir, come now to the most difficult matter. Fiji has endured four coups, twice in 1987, 2000, and 2006. After each coup, the next constitution included immunity

provisions, protecting those who broke the previous constitution. The Shree Sanatan Dharm Pratinidhi Sabha of Fiji says, enough. And it's enough. We are asking for the committee to reopen the past. What is done is done.

But we are asking the committee to bind the future. We propose an unamendable provision in the new constitution, a provision that no future parliament can repeal. And it would say this, no law, no amnesty, no pardon, no statute of limitations shall grant immunity to any person for the acts done in furtherance of an unconstitutional seizure of power.

Any person who participates in support or benefits from such seizure shall be permanently disqualified from holding a public office. The chairperson said, this is not vengeance. This is the architecture of a durable republic.

It says to any potential coup maker, if you break the constitution, you cannot later use this constitution to protect yourself. Fiji has suffered enough from the cycle of seizure, amnesty, and renewed seizure. The committee has the opportunity, this Honourable committee has the opportunity to break that cycle. And I urge the committee to take it.

Sir, in conclusion, the chairperson, members of the committee, I will close with this. The Shree Sanatan Dharm Pratinidhi Sabha of Fiji has been part of Fiji for over 140 years. We have built temples; they are still standing. We have educated generations of Fijian children of every ethnicity and faith. We have farmed the land when it was difficult. We have served in public offices when it was dangerous. We have loved this nation with ferocity that only the dispossessed can fully understand. We are not asking for any privilege.

We are not asking for any separate rights. We are asking for equal rights. For the constitution to mean what it says. For our children to be called Fijians. For our sacred language to be protected. For our families to have security on the land. They have worked for generations. For democracy to have checks and balances. And for our nation to finally, once and for all, close the door on coups and immunity. The committee has a historical opportunity. You can give Fiji a constitution that honors every stream of our national life.

The iTaukei, the Girmit descendants, the Rotuman, the European, the Chinese, and the Pacific Islands. All of us who call this nation our home. We trust and we have faith in this commission. And with that, sir, the Sabah stands ready to assist this committee further. And we thank you for your attention and giving us this opportunity to submit. And we stand by for any questions that the commission has.

Mr. Valenitabua: Thank you, Mr. Narayan. Thank you for that submission. We have been given a written version of your submissions. And we'll be looking at that. Now, each time, as we usually do, to ask you questions or to comment, give reflections in relation to your submission. You have raised a number of points. The first one of which is the common name for all Fijians. That has been an issue which has been presented to us by a number of associations and individuals.

The freedom of religion in Section 22, I note that you have included in that the right in relation to Section 31.3. And that is the teaching of pure Hindi. That's a new one. We have always accepted that the Fijian Hindi is sufficient. But now we have another addition to that.

Section 37, the right to housing. And that is an extension from lease, from leases which are granted. Maybe under the state lands provisions or regulations and the iTaukei lands regulations. That is a matter that we'll discuss. And then you've got the electoral reform. Others have also come up with their various division of seats and the electoral system. And the immunity. Difficult one, but we've got submissions in relation to that issue also.

So, with those five, I have summarized the titles or the headings of your submissions this morning. I will not comment for the time being. I'm sure that my learned friends sitting with me here would like to address you on certain matters or on what they think about your submissions and how to address them. Commissioners, please.

Dr. Fatiaki: Mr. Narayan, thank you for your submission. My comments are more along the lines of clarification in respect of some of the specific things that you have spoken about.

I refer, for instance, to the issue of the identity. Correct me if I'm wrong, but I understand that you suggested that we would not only apply the term Fijian as a generic term for all citizens of Fiji, but there was the implication or suggestion that we would actually enforce it, which means that we would require people by law, I presume, to refer to each other as Fijians and no ethnic designation. Am I correct in assuming that?

Mr. Narayan: Yes, sir.

Dr. Fatiaki: Okay. And by implication, you would therefore, I think the word you used was mandate, which means that we would essentially force people to address each other as Fijians. And obviously, that raises questions about the Bill of Rights issues to do with, you know, people's freedom of expression, freedom of speech and things.

If we are to enforce, I mean, it's a different thing writing into the Constitution the requirement that we're all Fijians, for instance. But I think the issue of mandating it or enforcing it or requiring that we have to address each other using the word Fijian, I don't doubt your intentions are good, but I reflect and ask you to reflect on if we were to do that, then we would conflict with freedom of expression in the Bill of Rights, which is a fundamental freedom.

And I wonder whether you want to take it that far and maybe reflect on your submission or whether you might want to just request for the use of the word Fijian for Fijian citizens without mandating that we must call each other that and if we don't, you know, punitive measures might be taken. That's my first general reflection and I ask you to maybe reflect on it in the context of my comments.

The second one relates to the issue of your suggestion, I think, that there would be seats under the reservation of seats in Parliament. I think you suggested four that would be allocated to designated religious bodies. Am I correct? That's one of the things you suggested. Okay, my issue again with that, am I to then assume that you wish us to withdraw under section four, which refers to the secular state in the 2013 Constitution. You

would be therefore suggesting that we would remove that entire section.

That Fiji will no longer be a secular state because obviously as soon as we allocated seats in Parliament for Christian or, you know, Sanatan representative or Hindu, or sorry, Muslim, it would no longer allow us to be a secular state. Am I to presume that that is what you are suggesting?

Mr. Narayan: No, sir.

Dr. Fatiaki: Could you therefore clarify exactly what you are suggesting? Because if you are suggesting and asking us to incorporate into the Parliamentary make-up four reserved seats that are specifically for religious denominations, by definition that means we are no longer a secular state because the secular state would not permit us to do that. So, we will have to have one or the other. And if that's your submission, then I would suggest that you are also submitting that we remove the secular state provisions. Am I correct in suggesting that?

Mr. Narayan: No, sir.

Dr. Fatiaki: Could you clarify how this would be compatible then?

Mr. Narayan: Thank you, sir. For that, the first, would you like me to comment on the section four or the first issue that you had raised also? The identity one.

Dr. Fatiaki: Sorry, the first one was more for, like I said, for you to reflect on in the context of what I put out. But the second one I would like some understanding of that if you don't...

Mr. Narayan: The second one that we have submitted to this commission on reservations of the seat, it's not basically to identify or create a non-secular state. However, we are saying to incorporate the religious representation in the Parliament so that all voices of these people through whom the entire Fiji, we know that we are all faith-based and everybody has some faith, they have got some voice in the Parliament. That is basically what we are saying.

Dr. Fatiaki: Thank you for that. Just in the way of clarification, I will read to you exactly what the Senate, sorry, the secular state states. It says, religious liberty as recognized in the Bill of Rights is a founding principle of the state. Religious belief is personal. Religion and the state are separate, which means the state and all persons holding public office must treat all religions equally. The state and all persons holding public office must not dictate any religious belief.

The state and all persons holding public office must not prefer or advance by any means, I presume a parliamentary election would be, any particular religion, religious denomination, religious belief, or religious practice over another or over any non-religious belief.

Now again, if I would just use those sections, immediately you would see that a person who is, for instance, Sikh, who doesn't have a seat in Parliament, may say, well, you are preferring these four religions to be represented in Parliament against my wife, I am a Shinto Buddhist, for instance. Your thoughts?

Mr. Narayan: My, the clarification I believe would have been sorted out had I, the four that we have proposed, I was trying to use it as an example. It was not saying that those four seats should be reserved. My humble apologies, I should have clarified it. It's supposed that all the religions, they have got one voice in Parliament.

Dr. Fatiaki: Thank you, Mr. Narayan. I'll let my colleagues carry on.

Dr. Gounder: Yes, thank you, thank you, Chair, and thank you, Mr. Narayan, for your submission this morning. I'm familiar with the Shree Sanatan Dharm Pratinidhi Sabha of Fiji, and I recognize your voice in terms of one of the largest religious organizations in Fiji.

I haven't gone through the written submission, but we will be looking at it later. But based on your presentation this afternoon, I refer to your comment regarding the teaching of conversational Hindi language in the school.

There's been a lot of debate in the last 13 years or so, since the 2013 constitution came into force, and I agree that survival of the Hindu religion actually depends on the teaching of formal

Hindi. What I want to argue is that there is an education bill before us. This is an attempt to revise the Education Act.

If you look at Part 5 of the bill, which talks about curriculum development and assessment, and Section 23.3 of the bill, which if passed by Parliament will become our new Education Act, it talks about the National Curriculum and Assessment Authority, which will ensure the curriculum in addition to the standard subjects taught in schools covers the thematic areas, and which mentions the word Hindi is deleted, and it says other languages in Fiji. So, my question is, have you made a submission to the Education Act, the bill, which I believe was widely consulted?

Mr. Narayan: For me, we haven't made it, and I'm unaware that the Sabha had made it or not, because at that time, when this consultation was, I was not present in the country.

Dr. Gounder: Okay, thank you. I think it provides an opportune time for the Sabha also to talk to the Parliament and seek what is the stage, where is the bill in this current process, because it will be important to make changes in the bill, which will have a more forceful effect in terms of implementation at the school level, because the constitution may contain broad provisions.

So, while your argument is recognized in terms of the formal Hindi being taught and moving away from conversational Hindi, that point is recognized. So that is something that I wanted to highlight.

The second point that I want to highlight is just a reflection, which Commissioner Dr. Fatiaki has highlighted. If you talk about, in my view, if you talk about a secular state, and then you talk about seats based on religious organizations, there might be a conflict between secular state argument and seats based on religious grounds.

And I know you are a religious body, you might have some interest, but at the same time, you have to be mindful of the secular state, which talks about equal treatment of all religions, and also at the same time is somebody who does not wish to pray, may have the same freedom. So just be mindful of the fact that you can have a conflict over the secular state. Thank you, Chair.

Ms. Nailatikau: Thank you for your contributions. I think, as was mentioned, your note on all being the common identifier of Fijians, and I'm thinking about particularly 2.3b, where you talk about the constitutional or legislative directive should require all state entities and public officials to refer to citizens solely as Fijians without ethnic qualifiers. And I think as you noted in your introductory paragraph, you're also talking about how there are often derogatory terms used to refer to people of different identities in Fiji.

I think what I'm reflecting on as well is having to be very careful, as my two fellow commissioners have spoken about, in terms of how ethnic identities are also recorded statistically and census-wise, for example.

And having differentiations in ethnic identifiers can be important for understanding how different communities experience health outcomes, socioeconomic outcomes, etc. So, it's really a thinking-out-loud consideration for me in terms of addressing what you are talking about in terms of being all equal under the law and enjoying rights as citizens of Fiji. And we certainly have heard submissions talking about the common identifier being something very precious to a lot of people who have made submissions, but also about how do you protect ethnic identifiers in ways that are supportive of communities being able to understand their experiences, for instance.

So, just thinking about that delicate balance, ensuring that all are equal under the law, and at the same time, all communities and their unique experiences can be understood and recorded. That's just a point for reflection from me, not requiring an answer. Thank you.

Mr. Beg: Thank you, Chair. Thank you, Mr. Narayan. I probably just only have one comment. There were other comments that were raised by the commissioners, but you know your point about the descendants of the Girmit. And you mentioned in your faith that as part of your qualification – I need to just understand this. Sorry, it's just a qualification.

You made mention that if you don't speak pure Hindi, you're not considered part of our faith. If I speak Fiji Hindi, I'm not

considered. Can you qualify that? Because that's what I heard from you.

Mr. Narayan: The words that I had used was that the children will not be able to participate in the rituals of the Sanatan Dharam if you do not know pure Hindi, because the scriptures, the textbooks, and all those are in pure Hindi, and the language that is spoken in temples and ceremonies are pure Hindi. The conversational Fiji Hindi that is used is just outside of a conversation in markets and at home. But when you come to the rituals and ceremonies, those are pure Hindi. My point was that if they do not learn pure Hindi, they won't be able to participate.

Mr. Beg: Thank you, Mr. Narayan. But would you think that's a constitutional violation of someone's Fiji Hindi, their rights, if they wanted to participate?

Mr. Narayan: I believe that the part would be participation and being a Sanatan. Participation, what I'm referring to is that you will not be able to read, you will not be able to chant those mantras, you will not be able to perform those ceremonies, because in that actual you have to speak in pure Hindi.

So, if you have got a lack of pure Hindi knowledge and you have got Fiji Hindi, you will be there, but doing the actual ritual, you will not be able to do it, because yourself, you are unable to read those.

Mr. Beg: Forgive me for this, because my mind thinks, like, if over the years, since you said, I think your organization was formally described in 1926, but you say 1879, the Girmits was of all, before India was segregated between Pakistan and India, because it all came under one umbrella.

My point is, over time, Fiji Hindi became its own language. So, I'm just, I'm trying to understand, my forgiveness, forgive me, I don't speak Hindi, which is a really bad trait, because I have some part in that, in my bloodline, but my point is that if the Fiji Hindi speakers over time, that's all they learned, how do you force that in the religion? Is that through your, purely through religious beliefs, what you stand for?

Mr. Narayan: We do not discriminate Fiji Hindi, it is a conversational language. And like you have mentioned, India and Pakistan, in India there

are more than 1000 languages in individual states, out of 28 states they speak. But the common language that we are saying that is Hindi, because those scriptures and those textbooks are in Hindi. So, Fiji Hindi is only recognized in Fiji, and it does not have any formal form of textbooks. Even the textbooks that is published by the Ministry of Education for the children, Meri Pahli Pustak, Meri Paheli Pustak, they are all in pure Hindi.

So, the fact would be that, if you lack pure Hindi knowledge, you will not be able to read, or enjoy, the new, which is not published, the Shanti Dutt, or any other Hindi articles that are written. That is what we are saying, that for children to promote Sanatan Dharam, they should at least learn pure Hindi, so that they will be able to read those texts and scriptures.

Mr. Beg: Okay, thank you, I appreciate that, but it doesn't qualify someone to come and sit and observe in your space, anyone.

Dr. Gounder: Thank you, sir. If I can just add to that, so what has happened over time, historically is that, there is a Colloquial Hindi that we speak to each other, which developed in the sugarcane fields, and there is a proper Hindi with the sound syntax and literature. So, the religious texts are written in the proper Hindi.

So, over time, most of us know both Hindi, but to be able to effectively read a religious textbook, you need to have learnt real Hindi. So, schools have been teaching the proper Hindi since we started teaching in schools. But the 2013 constitution provides for the conversational Hindi.

If we go down that path, in two or three decades, we may not have any pure Hindi speakers coming out of the schools, which will eventually mean that Hindus will have to read their texts in English rather than in Hindi, which is happening in some countries where there is no provision to be taught. So, I think the point that is being raised is really about that.

And I will quickly highlight one more point. The constitutional making provides an important opportunity to include these points. For example, I don't speak my mother tongue today, because somebody didn't include it in the Education Act of 1926, which made provision for only three languages to be taught in

schools, not more than three. So, you can see, it can have a huge implication on people's traditional languages of mother tongue.

So, thank you for highlighting that point. I think it's a very important point. But it's now, especially for me, too late to go back and change that. We have moved on, and Hindi, formal Hindi has kind of become the main language for most Hindus. I hope that clarifies your point and the Commissioner's.

Mr. Valenitabua: In the Constitution, provision is provided for the teaching of Fiji Hindi. If we were to include that pure Hindi, as you have labeled it, would it be sufficient if we just amend that pure Hindi to Hindu, you know, a general term, which can include pure Hindi and Fiji Hindi? The problem, see, with us in the iTaukei, as we call us now, in the iTaukei we've got our different dialects. A person from Nadroga speaks a different dialect from someone from Rewa, where I come from. However, we all have this common dialect, which is the Bauan.

Now, we are not being told that we are to be taught Bauan, to be taught Nadroga dialect, or to be taught the Vanua Levu dialect. It's just vernacular under the Constitution. So, teaching starts at home, where we speak our native or our mother tongue. That is our dialect from where we come from. Even villagers have different dialects in some places. So, the vernacular under the Constitution covers all of that.

And we are not teaching Nadroga dialect as a subject in school, no. It is just the vernacular. Can you wait, please? So, what I'm trying to say is, do we have a common name for these languages? Rather than stating pure Hindi, what else can we add? Or how can we amend that?

Mr. Narayan: The common, basically, with all due respect to what you have said, for the iTaukei's from Nadroga, from Bau, from Vanualevu, even though they speak in their own dialect, but they have the common language that the Bible that has been written in the vernacular for the iTaukei community to read is one. Which is constant, yes. So, everybody reads that. So, for us, we are speaking, having conversation in another language, that is Fiji Hindi. But our texts are written in another language, which is pure Hindi. It's not pure Hindi, people have adopted this pure

Hindi, but it's called Shudh Hindi. I would rather call it Shudh Hindi, which would be better.

Not pure Hindi, but Shudh Hindi. That is, it. So, the language that we speak in Fiji, the Fiji Hindi, the textbooks and the other scriptures that are written are from India, which is written in Shudh Hindi.

Mr. Valenitabua: What can be a common name?

Dr. Gounder: So, in my view, correct me if I'm wrong, putting Hindi should be sufficient or do you think we should put, because Hindi in itself we can move on and say that's the proper Hindi that we are teaching. So, here, I know what's creating the confusion is that in the current constitution it's a conversational Hindi, so it goes down to a Hindi which doesn't have its own syntax, its own alphabetical system that we have normally. So, would Hindi be sufficient rather than Shudh Hindi? In my view it should be sufficient, but I want to hear your view.

Mr. Narayan: Yes, it could be sufficient, because if you say Hindi, then Hindi is the recognized one. There is no Fiji Hindi, there is no pure Hindi, it's Hindi.

Dr. Gounder: So, we could just say Hindi should be taught in schools, full stop.

Mr. Narayan: Thank you.

Mr. Valenitabua: Then it depends on the education department and each individual school, you know, what to teach. Same as in the iTaukei language.

Professor Baba: Chair, can I come in? So now, 2022 to 2032, all over the world, Mr. Narayan, it's the decade of languages, indigenous languages. If you're pushing your point, so you're pushing for a reconnect to the Indian subcontinent or continent. So, given that we are all Fiji Islanders, from an education perspective, a whole lot of our children speak Fiji Hindi. We are not allowed to deny them that.

We are actually duty-bound to teach that. Sometimes the technical term for that is Creole, not Fiji Hindi, it's a Creole. It's a mix of India and this country called Viti or Fiji. So, it's a mix of an Indian man from India and a Fijian man from Fiji, the two of

them, that's the mix. So, the mix is Creole, which is Hindi, Fiji Hindi.

Just to point out to you that this is a longstanding issue, even at the University of the South Pacific. For those of us who are academics, we're divided in the middle. Because Professor Subramani, for example, was advocating for Fiji Hindi, wrote books on Fiji Hindi, and there's a group of people that just totally refuse to be Fijian in the sense of the word.

So, you can't deny that there is a Creole. So, from an education perspective, a constitution must recognize that. For when we teach in Natabua, when we teach teachers, the both are happening.

So, what we're doing is, we're teaching Fiji Hindi to the ITaukei, if you like, Rotuman's, etc., so that they have an understanding of our people who are descendants of Girmitiya and others. Because when they go to the community, they need to. We're not teaching Fiji Hindi.

But there is a diehard people also in universities that will not recognize the fact that you've been here for 100 years. It constitutes a problem for me, because we kind of have to accept the both, yes? So, you want the both in the constitution, so Hindi is not enough? Just putting Hindi is not enough? And give us, to allow us to be either this or that? The bulk of the Fiji people, do they read Hindi-Hindi or Fiji-Hindi? Because you are duty-bound to develop a language here. You know, when we talk languages, you are duty-bound.

As a group of Indians from India who've settled here, you must create a new language. Because you know what? To say no to that is to deny that this Creole exists. You are not quite from India. You are not quite Fijian. But you are also legitimately, you are Creole. We need Creole, even the Fijians today.

They say they speak Fijian, it's Creole. Yeah, so from an education perspective, what are you saying? You want in the constitution, which one? Just to clarify, I need this, because at Natabua, we fight over this. The lecturers will talk to each other. I don't exactly know what's the problem of the both. You know? Yeah.

Mr. Narayan: Thank you, madam.

Mr. Narayan: As you have said, for me to know that word Creole, the...

Professor Baba: It's the technical term, you're talking about Fiji-Hindi. It's a Creole. It's not a Fiji-Hindi, it's a Creole. It's legitimately a language.

Mr. Narayan: The Fiji-Hindi is mostly used to converse, because it's a mixture of Hindi, it's a mixture of iTaukei, it's a mixture of English words that we converse normally. And not only the Girmit descendants are speaking, the same is being spoken by our iTaukei brothers and sisters.

They have adopted to this Fiji-Hindi to some extent. But the fact is that, madam, if you see, like you have said, that how many populations, out of respectfully, if we have got a population of 300,000, suppose, of Fijians, of Indian descendants, out of that, when the International Hindi Conference took place, there were merely about 250 to 400 people. And in schools, it's very less proportionate of children that are taking up this language.

The reason being that they are taking it as a subject that should assist them to pass. So, if they are not able to learn that they are dropping Hindi and they are adopting to other subjects. And for us, our difficulty is this.

To take Sanatan Dharam ahead with our tradition and culture, we have to preserve that Hindi so that these children of ours, in future they can read those literatures that are there. Because no other literatures, our literatures have been written in Fiji-Hindi. And like as rightly pointed out by Dr. Gounder, that the Fiji-Hindi does not contain grammatical things and all those things. And the Hindi that we are proposing covers that part.

Professor Baba: Just so that you're talking about something that's probably a 60-year-old debate or more, because I've seen professors of Hindi at USP fight over this. One day we launched a book. Somebody wrote it in Indian-Hindi. The professorial team who are Indians from USP, Fiji Indians, did not understand a thing. Do you know which book I'm talking about? Neelesh.

One of our professors produced a book and wrote it in Indian-Hindi, the proper Hindi. And then people were looking around and I'm sitting among them as their student. I was between Satendra Nandan and Subramani. And these are scholars. And they are saying there's nothing wrong with Fiji-Hindi. You haven't created the literature, you haven't created the syntax, the morphology around it. I take that. It's your duty to do it. Because you are from here.

You said in the first sentence you want to be Fijian. Being Fijian constitutes that language. You are not allowed to not give it respect, that's all I'm saying.

As an educator. The students in Natabua, about 5,000 of them, they speak Fiji-Hindi. They are learning the Hindi-Hindi from two people who are over 70. That's the point you're telling me? I just need to understand your point that a religious group would like Indian-Hindi. Proper Hindi. Okay, fine. We'll write that down maybe. Thank you, Chair. I really am trying to understand the push.

Mr. Valenitabua: Thank you. Mr. Narain, I think we have got that point. We'll just have to amend that Fiji-Hindi to a term which covers all Hindi languages. That is the short of it all. Now, I'd just like to comment on Section 35. You had referred to Section 37 of the Constitution. And you referred to it as the land security and right to housing. You started off with the leases. And then the lease, you're asking that it be included in the Constitution.

That leases are to be for a minimum term of 99 years. And then at the end of the 99 years, compensation for permanent improvements are to be paid upon the expiry of the lease. If we consider early in the 1900s, Europeans and later, pardon me for the name, later Indians arrived.

We have seen leases granted to Indians at the time for 50 years, 30 years. Alta and Alto came later. These were the early leases. Now, the policy at the time was to develop the country. Now, it was a matter of trade. Britain stepped in and saw that Fiji could improve economically through trade.

That was why we had rubber plantations, cotton plantations, bananas and so forth. And leases were given for the purpose of

this farming. Now, something that was considered at the time was that the population of Fijians, pardon me, I'm going to use that to differentiate between the two, the population of Fijians was small.

So, the power that be at that material time thought we can give out some land on leases so that they can be farmed, cattle, banana, whatever else was there, sugar cane in the West, started in Nausori. We'll give out these lands to be leased at certain periods, for certain terms, 30 to 50 years. If you look at the lease documents from those years, the early 1900s, they were for 30 years, 50 years, Alto and Alta then came in and then there was permanence at 50 years.

Now you are asking, for 99 years, consider at the time the population of Fijians was small. Mataqali members, the numbers were small. Now, the numbers in the Mataqali have increased considerably. Members of the Mataqali are raising disputes about land. They are fighting over land. Do you still think the 99-year leases should be included in the constitution? And on top of that, justiciability.

You have asked that the issues in relation to housing to be justiciable. Are they not justiciable right now? Because people can go to court in relation to leases and housing. What is your comment on that?

Mr. Narayan: Thank you, Chair. The issue you have said that back in 1900s when we started, the leases were 30 or 50. Till date, I believe, the substantive amount of land that are currently in Fiji are farmed by the descendants of the Girmitiya, which are holding on these whole lands. And those lands to be cultivated in a more efficient and productivity level would rather that if the traditional landowners, they give it out on rent, it will mean two things.

It's one, the productivity is increasing. Increased productivity will lead to an economy which will be growing. And in other hands, the landowners, they will be gaining from the rental amount that they will be getting from the ground rent money.

It can be a form of investment for them. And making sure for 99 years, what we are asking is that it gives some form of security for a person to call, to dwell on a land and make it productive and

then at least having some form of security to say that this particular piece of land that I'm planting a tree here will give me benefit for the next 99 years. That's what we are saying, just for the security part.

And the second part that the Honorable Chair has asked about, that the remedy. There are remedies that if they are displaced, for the landlord and tenants, they can take. But if a lease is expired, then the tenant does not have any form of ownership or any equitable interest over the particular land, which cannot be brought before the court.

And even the section that we have said that the right to housing, the state is saying that if it is not adequate or it is not in the jurisdiction, they will not assist. So, these farmers that are currently being displaced, so we are having these quotas that are increasing in these corridors and other parts of Viti Levu that we are seeing that the expiry of the land leases, they are coming. Had it been some form of security that, for example, the TLTB would have taken, the lease agreement will increase, so with the increased ground rent.

You increase the ground rent and your lease increases, you dwell on that, but there is a condition that the traditional landowners should also benefit. That is what we are saying about security for the farmers. Thank you.

Professor Baba: I would like to agree with you. You know, I have been walking from Nabouwalu to Labasa. As a vice-chancellor, I strictly make a point to go on the boat to be with the people, to understand how students and their parents' travel. It is not because it is comfortable, it is because it is duty. My last travel really broke my heart, because between Nabouwalu and Labasa, a lot of lands are free now. They overgrown.

The houses are there, but they don't have people. And I am the kind of person, for the 20 years maybe that I was at USP, I would stop and demand roti from people who I know who do roti and get angry if they give me something not roti that they cook. Anyway, you can't do that anymore. Not in Vanualevu. So, I agree with you, because like you, I am not from here. I am a leaseholder.

So, where I have to make business, whether it is Vanualevu or here, I have leasehold land. My one in Lautoka, I have just done the 99-year lease now. It cost me 45, now 15 to change.

But I agree that maybe the problem could be with the landowner, for a study on landowner, if they really are benefiting, how much, and what exactly could the business community and the TLTB do together, because it's not transferring to the Fijian landowner. Something is happening. So, I just want to affirm that I find that sad, because these are lands, from an education perspective, where people demand that we build FNU, for example, we look at populations.

It's called dwindling populations, but the constitution covers that already, no? I mean, the lawyers among us are saying it's covered, but I think the devil is in the detail. It's for us to examine what exactly is TLTB doing in terms of favoring and really productive managing the money given to landowners.

The last time I did an analysis for the Tui Suva and his people, it's almost like 15 cents when it reaches the everyday person. That means that they should really prefer, they would prefer having a forest. They can eat from it, rather than get 15 cents a year. So, it's in the distribution of leases.

No economic development thinker has given us something productive for the landowner. You know, I have stories about FNU, but it's not for this forum. Every landowning piece that we have at FNU, there's 17 spaces, we haven't quite given back a cent. It will change now. There's many ways to give back. It's not happening.

But I would like to agree with you. It bothers me that we can't get the leases renewed, but it also bothers me that no one's done an analysis of the benefits of me sitting in the half acre in Lautoka to the landowner, whether the landowner, how much he gets a year. But thank you. I agree with you on that.

Mr. Valenitabua: Mr. Narayan, I think we have come to the end in relation to the immunity provisions, your submission and the thoughts within that is recorded, and we will consider that. You're not the first one who has said that. It's not community from the past, immunity forward. So that's in the books. Well, thank you very

much for this morning or for this afternoon. We will deliberate on all submissions and then write a report and forward it to His Excellency, the President. The government can then take over from there to deal with it according to law. Thank you very much.

----------End of Session [29-4-2026] ----------

WRITTEN SUBMISSION TO THE CONSTITUTIONAL REVIEW COMMITTEE

BY THE SHREE SANATAN DHARM PRATHINIDHI SABHA OF FIJI

1.0 INTRODUCTION

1.1 The Shree Sanatan Dharm Prathinidhi Sabha of Fiji ("the Sabha") respectfully makes this written submission to the Constitutional Review Committee ("the Committee").

1.2 The Sabha is the largest Hindu religious organisation in Fiji, representing approximately 250,000 adherents of the Sanatan Dharm faith. For over 140 years, our community has contributed significantly to Fiji's social, cultural, educational, and economic development.

1.3 This submission complements our oral presentation and identifies five priority areas for constitutional reform. These matters are of national importance and concern the foundational principles of identity, equality, governance, and constitutional supremacy.

2.0 NATIONAL IDENTITY: ONE PEOPLE, ONE NAME

2.1 Section 2(1) of the 2013 Constitution provides that *"All citizens of Fiji shall be known as Fijians."* This provision establishes a unified civic identity.

2.2 Despite this clear constitutional directive, the continued use of terms such as "vulagi" to describe certain citizens undermines both the letter and spirit of the Constitution. Such practices perpetuate exclusion and are inconsistent with constitutional supremacy.

2.3 **Submissions:**

(a) Section 2(1) should be retained without amendment or dilution;

(b) A constitutional or legislative directive should require all State entities and public officials to refer to citizens solely as "Fijians," without ethnic qualifiers;

(c) The State should be constitutionally mandated to implement civic education programmes clarifying that "Fijian" is a civic, not ethnic, identity.

2.4 **Comparative Perspective**

Jurisdictions such as Canada, New Zealand, and the United States adopt inclusive civic identities that transcend ethnicity, thereby strengthening national unity.

3.0 LANGUAGE AND RELIGIOUS FREEDOM

3.1 Section 22 of the Constitution guarantees freedom of religion, while Section 31 recognises linguistic rights, including Fiji Hindi.

3.2 However, the Constitution does not recognise Pure Hindi (Shuddh Hindi), which is the liturgical language essential to the practice of Sanatan Dharm. This omission has practical consequences for religious transmission and education.

3.3 The ability to understand and engage with sacred texts such as the *Ramcharitmanas*, *Bhagavad Gita*, and the Vedas is integral to religious freedom.

3.4 **Submissions:**

(a) Section 31(3) should be amended to include: *"The State shall also support the teaching of Pure Hindi as a liturgical language essential to the religious freedom of Sanatan Dharm followers."*

(b) State-supported education frameworks should accommodate the teaching of Pure Hindi where there is demand.

3.5 **Legal Basis:**

Freedom of religion includes not only belief but also practice, observance, and transmission.

4.0 LAND SECURITY AND THE RIGHT TO HOUSING

4.1 The Sabha recognises and fully respects iTaukei land ownership and does not propose any alteration to native title.

4.2 However, insecurity of tenure for long-term leaseholders has resulted in hardship, displacement, and economic instability for many families who have occupied and developed leased land over generations.

4.3 Section 37 of the Constitution recognises the right to housing but limits its enforceability by qualifying it with "available resources," rendering it largely non-justiciable.

4.4 **Submissions:**

(a) The right to housing under Section 37 should be made justiciable and enforceable by the courts;

(b) Legislation or constitutional provisions should mandate minimum lease terms of 99 years for families with multi-generational occupation;

(c) There should be a constitutional guarantee of fair compensation for permanent improvements upon lease expiry.

4.5 These measures do not affect land ownership but promote fairness, stability, and economic productivity.

5.0 ELECTORAL REFORM AND DEMOCRATIC GOVERNANCE

5.1 The current electoral system, based on a single national constituency, has weakened the connection between elected representatives and local communities.

5.2 **Submissions:**

(a) Adoption of a mixed electoral system comprising:

i. Thirty (30) constituency-based seats; and

ii. Twenty-one (21) proportional representation seats;

(b) Consideration of up to four (4) nominated parliamentary seats for major religious organisations representing significant segments of civil society;

(c) Re-establishment of a bicameral legislature through a Senate with:

i. A suspensive veto power;

ii. Staggered six-year terms;

iii. Representation for traditional leaders, religious organisations, and civil society.

5.3 These reforms would enhance accountability, inclusiveness, and institutional checks and balances.

6.0 CONSTITUTIONAL SUPREMACY AND IMMUNITY FROM COUPS

6.1 Fiji's constitutional history has been marked by repeated unconstitutional seizures of power in 1987, 2000, and 2006.

6.2 Subsequent constitutions have included immunity provisions, contributing to a cycle of impunity.

6.3 **Submissions:**

(a) The Constitution should include an entrenched, unamendable provision stating that:

i. No immunity, amnesty, pardon, or limitation period shall apply to acts undertaken in furtherance of an unconstitutional seizure of power;

ii. Any individual involved in such acts shall be permanently disqualified from holding public office;

(b) This provision should be expressly shielded from amendment.

6.4 This reform is prospective and seeks to deter future unconstitutional actions, thereby strengthening constitutional supremacy and the rule of law.

7.0 CONCLUSION

7.1 The Sabha reiterates that its proposals are not grounded in claims for special treatment, but in the pursuit of equality, dignity, and constitutional fidelity.

7.2 The reforms advanced in this submission aim to:

(a) Strengthen national unity through a shared civic identity;
(b) Protect religious freedom and cultural continuity;
(c) Promote fairness and stability in land tenure;
(d) Enhance democratic governance and accountability; and
(e) Ensure the enduring supremacy of the Constitution.

7.3 Fiji stands at a constitutional crossroads. The Committee has a historic opportunity to craft a framework that reflects the diversity, aspirations, and shared future of all its people.

7.4 The Sabha remains available to assist the Committee further and welcomes any opportunity for clarification or additional submissions.

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Ravi Narayan

National Vice President
SHREE SANATAN DHARM PRATHINIDHI SABHA OF FIJI

Fijian Teachers Association (FTA)

Fiji Teachers Association
Date: 29-4-2026

Leighton: Members of the Fiji Teachers Association, on behalf of the Constitutional Review Commission, I'd like to take this time to show our appreciation for accepting our invitation to make submissions before the Commission. My name is Leighton Fatiaki. I'll just be going through a few housekeeping matters to speak with regards to the submissions.

If you can turn the mic on, it's the right panel in front of you on the mic. And once you've spoken, you can just press the same panel to turn the mic off. Following this, the Chair of the Commission, Mr. Valenitabua, will introduce the Commission and the work that they'll be undertaking.

He will then introduce the team, or will ask the team to introduce themselves. Following this, we also ask that you introduce yourselves as well. This is for the recording, transcribing purposes.

Mr. Valenitabua: Bula vinaka, Mr. Uluinaceva, Bula Vinaka Mr. Manumanunitoga. It's a pleasure receiving you this afternoon. Thank you for coming before us, so that you could give us submissions in relation to the Fijian Teachers Association. Before I proceed further, I invite your commissioners to introduce themselves. We'll start from the far right.

Mr. Beg: Bula vinaka, sirs. My name is Conway Beg. I'm an architect by profession, and I'm really grateful to be here and to listen to you. Thank you. Vinaka.

Dr. Fatiaki: Good afternoon. Welcome to the Constitutional Review Commission. My name is Dr John Fatiaki. I'm a medical practitioner and im a Rotuman. Vinaka.

Dr. Gounder: Good afternoon. My name is Neelesh Gounder. I work at USP. Today I'm here as one of the Commissioners for CRC, and I look forward to receiving your submission this afternoon. Vinaka.

Dr. Baba: Bula vinaka, General Secretary of the FTA, Mr. Paula Manumanunitoga Bula vinaka, Ratu. You know who I am, and good to see you here in front of the CRC. Vinaka.

Mr. Valenitabua: Gentlemen, Mr Sevuloni Valenitabua Chairperson of the CRC. We have you here this afternoon. Before we proceed further, I'd like to inform you about the CRC, which is the Constitutional Review Commission. We

have been appointed by His Excellency, the President of the Republic of Fiji. The Commission is tasked with reviewing our current Constitution. When I say that we have been tasked to review, it is not a new Constitution that we are looking at.

We have been asked to listen to the members of the population of this country, our people, and get their views on what they think, what they prefer to be included in the Constitution. You would have heard and you would have known that there were complaints about how the 2013 Constitution came into effect. The main complaint was that the majority of the Fijian people did not know about its preparation and its enactment.

There was very little public consultation. Now that was a democratic deficiency, which the team has been asked to remedy. And in order to remedy that democratic deficiency, we have to listen to the people and get their views. That is why we've been sending out invitations to targeted groups or selected groups. And from next week, we will be traveling out of Suva to the Lau group, to Lomaiviti, to Kadavu, to Vanualevu, all around Fiji, so that we can get the widest coverage possible and gather views in relation to what should be, what should not be, what has to remain, what has to be changed in the 2013 Constitution. We've had consultations, more than 20 consultations so far. There will be an additional one. We will gather all submissions and then we will deliberate on them and write a report, lodge that to His Excellency the President with an amended Constitution, if need be. So, it's a big task and you are contributing to that big task this afternoon. I thank you very much for attending. And now I pass the mic to you two gentlemen, first to introduce yourselves and the second to continue with your submissions.

Mr. Paula: Thank you very much, Chairperson of the Commission. My name is Paula Manumanunitoga. I hail from Namosi. I'm the General Secretary of the Fijian Teachers Association and from the outset I would like to just emphasize that we had registered ourselves as the Fijian Teachers Association, but the previous government changed our status to Fiji Teachers Association. I've been General Secretary of the Fijian Teachers Association for seven years now. This is my colleague, Ratu Marika Uluinaceva. We are both teachers by profession. He hails from Rakiraki Yale in Kadavu. He is our Industrial Relations Officer and he's been at FTA longer than my tenure at FTA.

Mr. Valenitabua: Thank you. You may proceed with your submission.

Mr. Paula: Thank you, Mr. Valenitabua From the outset we know that the 2013 Constitution is here to stay. We would have loved if we had come in with a recommendation that it should be abolished due to many reasons. We thought that the government would pursue a constitution based on the Yashgai Constitution that was a widely consulted constitution throughout Fiji and the two previous constitutions which we had. But since that is not the case, I will start with our formal contribution which is here. We will be giving you a copy when we leave.

First, we will begin by the use of the name Fijian in the preamble. The Fijian name must be unique to indigenous people, that's how we feel. And the Fijians that are entered in the Vola ni Kawabula and they use the Fijian language as their mode of communication and the Fijian culture and traditions, customs and traditions have been used since the beginning of time in Fiji and our recommendation is that the name Fijian be reserved for those who are entered in the Vola ni Kawa Bula as Fijians.

We move on to section 4.0, chapter 1, circular state. We believe in religious liberty as stated in part 1, as recognized in the Bureau of Rights. But we at the Fijian Teachers Association believe that we should somehow in a section of the constitution include that Christianity is the official religion of the state. On chapter 17, freedom of speech, expression and publication, which states every person has a right to freedom of speech, expression, thought, opinion and publication. The Fijian Teachers Association feels that this freedom must be based on fact and truth without slander on other person's races or religion.

On chapter 20, which is a section on the employment relations, which states every person has a right to fair employment practices including human humane treatment and proper working conditions. This has been an ongoing struggle for us as trade unions, as registered trade unions. We feel that we have been doing all the negotiations on behalf of all the workers of this country, especially our union members.

We feel that everything that has been borne out or granted by government as negotiated by unions, union members must benefit and not those who are non-union members. So, only those joining unions will benefit from the negotiations by unions and if possible, for it to be made compulsory for all workers in this country to become union members. There are some countries in the world that have that as included in their workers' rights bill and if they don't become a union member, their pay

must be deducted for some of their pay to be directed towards social welfare or for other commitments as government sees right.

On chapter 28, on the rights of ownership and protection of ITaukei, Rotuman and Banaban lands, the Fijian Teachers Association wishes to express its concern that the ownership of the lands only exists on the soil level at below three feet. Nothing below three feet belongs to the indigenous peoples or the owners of the land. What it strongly recommends is the constitution for it to include that the total ownership of the land must also include everything under those three feet or six feet below the level of the ground.

We have reasons for that because when Fiji was ceded to Great Britain, our chiefs ceded everything but when it was returned, it was not returned to the chiefs, it was given to the state. So rightfully, we strongly recommend that that should be done for landowners to own everything under the current land laws which is approximately three feet or six feet under the ground. We also recommend that every recognition and protection of ITaukei cultural identity and group rights that were removed from the 1970 and the 1997 constitution are to be fully restored. We also strongly recommend that the great council of chiefs be given full recognition and respect in the new constitution or the amended constitution. We also have a recommendation for that GCC membership. The GCC must have only 14 permanent seats from provinces including representatives from other ethnicities as well including the Fiji council churches.

On chapter 29, protection of ownership and interests in land, all rights of ownership of traditional land must be returned to the owners. I think I have already stated that. In section 30, all minerals including all minerals and on section 31 is what we had intended to focus in from the starters on the rights to education but we could not ignore the other sections which we had raised earlier.

Every person has a right on section 31, the right to education the right to early childhood education, primary and secondary education and further education. The Fijian Teachers Association recommends the state that the state must provide this equal education opportunity to those also who are facing physical disadvantages like people who live in the far remote rural areas and it must provide availability of internet connections and availability of computers to disadvantaged groups of people who live in squatters and those who live in the outer islands, the

maritime and in the interiors. On section 33, the right to work and adjust minimum wage, the Fijian Teachers Association recommends that the state must create employment opportunities for the unemployed and improve economy to increase the minimum wage.

We all understand that there are thousands of people, thousands of foreign workers in our country who have come in from Bangladesh, sort of disadvantaging our groups of people who are unemployed who are out there in the villages and are out there in settlement areas. It is the view of the Fijian Teachers Association that the government must stop recruiting people from overseas and train our own local young people who are school dropouts to fill in the vacant positions in industry. On section 36, the rights to adequate food and water, there has been a lot of complaints from people, especially in the Delanaivesi-Lami area, the shortage of water.

We feel that it should not be only stated in the constitution, that it is the duty of the state to take reasonable measures. It must see that this problem must be solved. It says the state must take reasonable measures within its available resources to achieve the progressive realization of the right of every person to be free from hunger, to have adequate food of acceptance quality, and we strongly recommend that this must be taken seriously by government and not only be put in the constitution as it is.

Section 41 on the rights of children, we all understand that this has been an issue, especially with what the teachers face in schools. Teachers are facing an uphill battle in schools. It is a daily battle from 7am to 4pm. Because children know their rights, they spell it out in front of their teachers clear, they even overdo it by swearing at the teachers, by putting up their hands, throwing the finger, throwing objects at teachers.

This has forced some teachers to find work elsewhere and if you know that the current figures, latest figures of 2025, 800 teachers left this country, resigned, left this country to join work, to probably look for cleaner buses, but there are pushing factors, push factors which are pushing them away. When children are given rights, the parents do seem to take a back step and just allow children to exercise their rights to the full, but rights come with responsibility and the Fijian Teachers Association strongly recommends that the rights of parents to teach a child by corrective behavioral measures or remedial measures in the home, which aligns with cultural practices.

I know the constitution particularly mentions about the cultural, it sort of rules out the cultural path, especially for us indigenous peoples. We use the rod, but this has been ruled out by the constitution and the Fijian Teachers Association feels that the rights of the parents, the rights of the child must not override the rights of the parents. We are all parents, sometimes we give hiding to our children, but we all know what's going to happen if our neighbor picks up the phone and calls the police.

It's going to be us in the cell for a couple of hours and the child is let off. Even though the child was in the wrong, the parent's intention was to teach the child, was to correct his behaviour, so it's going to be the child that's going to be taking over our society instead of the parents. We strongly feel that this must be, that something must be done to you learned commissioners in a way, put in a way that the rights of the child does not override the rights of the parent.

You may have also been following that, especially for us at the Fijian Teachers Association, we've been recommending the reintroduction of the use of corporal punishment only to be at the head of school level because things are getting out of control. I think in one of the sections in this constitution it talks about, I'm sorry if I may not be able to quote, it talks about conventions. We being a signatory to a convention on the rights of the child, I think we should not, like we strongly believe at the Fijian Teachers Association, we should not allow other people to come in control and rule over our own sovereign, how we rule, how we run our country. So, if it is possible, these signatories, these conventions, we could write to them and tell them, tell the United Nations that we are withdrawing our signatory from this particular convention.

On section 48 on the presidential assent, on part 2 it says if the president does not assert to a bill within the period set out in submission, the bill will be taken to have assented to the expiry of that period. So, it means even if the president does not assent to any bill that's passed in parliament, it's still automatically passed even though he doesn't give his assent.

So, we strongly recommend at the Fijian Teachers Association that if the president does not assent to the bill, the bill must be returned to parliament for further discussions or the president must put in writing his intentions or his reasons why he does not want to assent, he does not want to give his consent or give his signature or sign off on that bill. Clearly put in his reasons and for it to be rediscussed at parliament level.

The president has no lawful veto power to be the last authority to stop anything unlawful decided by parliament or stop an unlawful government.

On part 2, the president shall perform ceremonial functions and responsibilities as the commander-in-chief of the Republic of the Fijian Military Forces. We feel that the President must be given powers to order the RFMF or to direct them on certain stance that they probably be taking including if anyone at the RFMF decides to perform a coup again, the president has the authority to stop him and tell him not to. On permanent secretaries, section 127 on the role of permanent secretaries, we are observing at the Ministry of Education how weak our current permanent secretary is.

This is due to an arrogant leader, a leader who does not listen, the Minister of Education, I'm sorry to say that but this is a fact, the Minister of Education is in a big mess now, a bigger mess than what it was in the previous regime. FTA demands, probably recommend that the clause on with agreement or with a concurrence of the minister in the constitution be removed. We want that removed. The permanent secretaries must have the total freedom to run his or her ministry and is guided by policies of the Minister of the Civil Service or as we used to know the Public Service Commission. We've been observing quietly. We've spoke to both of them. There seems to be differences. You may have heard that the previous permanent secretary was forced to leave because in the past the politicians did not have anything. They lay out the policies and the permanent secretaries would run the show. This is the strongest recommendation that we request the commission to consider that that part of the constitution be removed.

Yes, I think that is the conclusion of what we have come here for, to give enough submissions. I would ask if my companion would like to say a few words.

Mr. Uluinaceva: In some of the areas that are really the responsibility of the permanent secretary, just because of that clause with the agreement of the minister, we feel that he is obliged to get the approval of the minister. It can depend on the contract to be renewed, but we don't know whether that is in place. With this constitution, it removes all that has been there before and also the right of the PS to run his business and report to the ministry who will be allowed to assess and also gauge the work of the permanent secretary.

Also, in the conclusion that we have here, we have discussed this a lot, to look at all the constitutions. The one that was produced by Yash Ghai, to us, has been the one that is closest to the one that was done in 2014. With all the situations that we had faced then, it was similar also to the 2013 situation. It could be used as a constitutional review, as a guiding light for reviewing the constitution that we want to review. That's all. I would like to add on to what has been discussed.

Mr. Valenitabua: Thank you very much, Mr. Manumanunitoga and Mr. Uluinaceva. Thank you for your submissions. We welcome your written submissions, as you have stated at the outset. You have covered a number of sections in our constitution, which the Commission needs to look at. We have heard you, and your submissions are recorded by Hansard reporters, which we have here. We will read your submissions together with what is recorded in relation to your oral submissions. The Commissioners usually ask questions in case there is some clarification which they need from you. I take this time for the Commissioners to ask questions for clarification, if they have any questions. Thank you.

Dr. Baba: Can I start? Thank you, Chair. Thank you, Ratu-Paula and Tuma. Those of us that do education and do it seriously, I think we are hearing you loud and clear. A lot of people, I'm agreeing with you, a lot of people, we have a technical term on this. A lot of people think just because they go to school, they know education. This is a fundamental flaw in society. We call that ethnography minus one. That technical term talks about the situation that we are looking at now. When you look at the Attorney General's office, they generally put a lawyer.

When you look at the health ministry, generally they put a doctor to be the minister. Those two, I think, are equal to the Ministry of Education, one of the biggest in the country. We have divisional heads, we have district heads, we have the Permanent Secretary who is supposed to operationalize from Selina's time to now.

No one is unaware of the lack of movement within that ministry, so the right of the people to do their work is inhibited by that clause. I'd just like to thank you, because as an educator of 40-something years, this is a serious flaw. But other people might say that it's the choice by the Prime Minister of an education minister that doesn't know anything about education, nor experience, is the problem, rather than the clause.

But like you, I've spent the last three years worrying about this situation. I must just thank you for raising it today. I limit my comments on that because that's my area of expertise. If anything at all, there's a big going back in time. Neither of us education specialists have been consulted anyway. So yes, thank you for bringing that up. It's the concurrence that I worry about. Thank you.

Dr. Gounder: Vinaka, colleagues from Fijian Teachers Association, I think we know each other well. I have worked closely with FTA on many occasions, especially your fight in the area of economic rights and issues related to salaries and other conditions. I refer to your presentation on corporal punishment, which is, as an educator, I find it difficult to accept. Children, anyway, must not learn in an environment of fear. And nobody should be inflicted any form of physical abuse, including corporal punishment. Times have certainly changed. We are not the same country we used to be, say, years ago. I also understand that children's behavior patterns have also changed. But we are living in different times. So, the call for corporal punishment goes against the grades of what we see a modern society and a schooling and education system is.

I know you have called for corporal punishment at the head level. But one of the flaws of that system is, what if corporal punishment fails? What's next? That's one fundamental question when it comes to the issue about corporal punishment. So, my question is, how do you see corporal punishment in terms of the rights of the child and the argument that all children should learn in an environment where it provides them safety and security rather than the fear of physical abuse? Thank you.

Mr. Paula: Through you, Chair, I'd just like to say a few words on that. Well, many civil societies in the world have not removed corporal punishment from there. I can name a few. But for us, Fiji, we have just been we have gone too fast. That's how we feel. We have adopted so many policies of countries that have been civilized for hundreds and thousands of years. For us indigenous people, we're still just less, not even 200 years since we got Christianized or civilized, as Europeans say. We strongly feel that we have gone too fast. I know there are rights of children. We would not want to, like the corrective behavioral measure, we even thought of replacing corporal punishment with a term, a corrective behavioral measure. It's a corrective measure to correct behavior. In the school situation, we are not recommending that children, like what used to happen to all of us in the past, we went to school. When you did not attend school, you'd get a hiding. Or if you didn't know your times tables,

you would get a hiding. You'd get your head banged with some pieces of equipment. That is not what we are recommending. We're only recommending for behavioral. It's a behavioral measure. It was introduced since the previous regime or probably the other government, the two previous governments brought this into law. We make a study. We make a study of how things have gone. I would recommend that you commissioners take time out in the afternoon, go down to the bus stand in Suva. You stand in a corner somewhere and you observe the behavior of students. And this is the same sort of behavior that's happening in the schools. The punch ups, the bullying, the swearing, even teachers, as I mentioned, get thrown at by children's lunch boxes. I mean, what we're saying is we have gone too fast. We will come to that stage. But this is just a recommendation for you to hear. It's not like we want it to be considered that the rights of the child be curtailed, be controlled, and the rights of the parents, even in the home. Parents, children are misbehaving in the homes. When I'm speaking, how many of us are indigenous peoples? Like, you go to a Fijian home where there is a single mother with so many children and the grandmother is there. Oh, the boy's in that home. And I've been head of a school with 1,300 students. And misbehavior often comes from children who are raised in those sorts of circumstances.

So, if the parents can play their part well, well and good. If they don't, then the child keeps on misbehaving, bullies our child. If your child gets bullied in the school, you'd be angry. So, this is why we're recommending that it stays with the head of school. The law for everything for infliction of corporal punishment or corrective behavioral measure, as I said, must be with the head of school only. It's a kind of deterrent. And we wait for another 100 years. When we get there, then we go slowly. We don't just jump too fast. I mean, just think of our parents. For me, my grandfather was a teacher. My father, a teacher. I am a teacher. So, my children, two of them, have become teachers. So, we are lucky. Think of the villagers that have been raised in the village. It's going too fast. We're just going too fast. That's how we feel. No offense is meant, Dr. Gounder. We are just voicing out our opinions.

Dr. Gounder: I'm happy to hear your views. I was trained as a teacher. My family are teachers. I get to meet teachers all the time. I socialize with teachers. My only concern is that nobody should be inflicted physical abuse for any reason whatsoever. In the education system, corrective measures, in my view, must be sought through counseling and guidance. And the Ministry of Education was here. They made a strong argument about counseling

and guidance. In schools, in the national development plan, we work closely with the Ministry of Education. The provision of counseling and guidance, accessibility, provision of counseling and guidance to all schools should be provided. Thank you.

Dr. Baba: Can I clarify a few things, Paula, with you? So, like you, I have only ever just thought all my life. So, I agree with you that behavior has become really bad. I just give an example to the commission because maybe they haven't come across. When I was head of campus in Lautoka, I thought I was looking at animals. They are Fijian, and they are men. I'm sorry. Every year, there are 10 boys in Lautoka that really disrupt all our activities. And I've said it over and over at FNU. However, this is where I ask respectfully that you reconsider. The Ministries of Education all over the Pacific receive a lot of substantive support by aid donors. So, sitting, if I were to sit as a minister, I would say, Paula, your concerns are very good. What can we do about it? Because in 2003, we signed the CRC. That's a convention of the right to children, to the child. You are right. It's from Europe. But it was done for a reason. Because all over the world, there are children that are disempowered by adults who are bullies. And we've seen some of that here.

So, the child, because it's a minor by law, it's under that particular protection. My other concern is when we shake international conventions that we have ratified, Paula, we cease to get the money that we don't have to develop our schools. To pay what you call HEG or PEG, or whatever it's called now. Is it HEG or PEG? Per Child FEG. Yeah, I used to hate that thing. Sounds like a... So, per child, you get money because you have 500 children in your school. You have more FEG money. You can repair the classroom. Because we are developing countries, we can't do this ourselves. So, on a balance, I'm wondering if you can help us at the commission, maybe in your revised submission. How do we move forward? We want discipline.

This behaviour cannot go on. We're far too small as a country to entertain criminal behaviour within our classrooms. And like I said, on the ground, in Natabua, I've spent, what, 10 years now at FNU? 10 Fijian students would almost break down toilets, would punch the policemen while they're sitting on their chair, driving the police car. So, you know, as educators, we are concerned. So, I think that was your position. We feel like we are not being supported by law. Or is there another way to restructure this part of the constitution? Because those of us who do, who are on the interface of law and real life, we are not being helped

here. It feels like it. Yeah, there is the CRC. We've ratified it. That's why we get education money. A quarter million for teacher upgrade every year, which hasn't come to us yet. So, yeah, this is a balance that I worry about. But I hear you. Yeah, like a chair.

Mr. Uluinaceva: Chair, can I just add a little bit to the same topic? I think what we are trying to talk about is a more structured discipline process. And the way the constitution is worded, no compromise. If we can have it like something as a last resort, because there are some students that will need that road of correction. Otherwise, if we don't change them, they'll end up in prison. They'll keep on taking on the drugs. And one of the things that can stop them is this discipline. So, what do you think? Don't remove it completely. Have a structured discipline process, but it must be there as a deterrent to stop children from getting worse in their behaviour. That's all I would like to add.

Mr. Beg: Through you, Chair, thank you very much. Enlightening. I just want to say thank you for your presentation and your points that are taken on board. Yeah, I kind of agree with what's being discussed, but I'll go through your written submission. But your points on handling that space with discipline is a tough space and I don't envy, but I agree in some ways it needs to be addressed. Thank you.

Dr. Fatiaki: Thank you for your submission. My comments are more just along the lines of reflection. I think what you argue passionately about is well taken. I'd like to assure you, certainly for myself as a commissioner, that I have no preconceived ideas about what should come out at the end of our report. I'm very open to accepting any suggestion and I would like to think that when I come to the deliberations at the end of two months, my deliberations will not be governed by my personal opinion about these sorts of issues, but will be actually governed by what I hear from you people and the people of Fiji as what they consider appropriate to be inside the supreme law of the country.

And if I might add, although we've been asked to review the constitution and it is a working document 2013, there is nothing in this constitution that we are not empowered to review and by definition amend, change, except for one particular chapter. So, every single other thing here can be changed and we will consult with you. I can assure you for myself there will be no preconceived stand on any particular issue and that I would like to think that my deliberations will be governed and geared by what my terms of reference are, which is to take the values of the people

who make submissions, the people of Fiji who make submissions to this commission in determining what we arrive at. If I might just go more practically to the issue of, for instance, corporal punishment, I'm not going to argue whether it's good or bad. From a practical point of view, corporal punishment was allowed or permitted prior to this constitution. Please, colleagues, correct me if I'm wrong, but my understanding is there wasn't provisions in the previous constitution that prohibited it. If that is the case, I would presume that the provision in this constitution is under the Bill of Rights in respect specifically to the protection of children against unnatural abuse and punishment, the rights of the children.

Let me say categorically that if enough of us felt strongly enough and enough of the public felt strongly enough, then we could remove the rights of the children from the Bill of Rights. It might sound dramatic and drastic, but the point I'm trying to make is this is what constitution making is all about. There are obviously no Bills of Rights for the children in previous constitutions and if our process is to reflect what the people of Fiji want and if that were one of the measures, then if we were to remove that particular right, I notice there's no right for parents, no right for sons or daughters or uncles or aunties.

So, by such an extension, that section could be removed and then it allows you then to manage the opportunity to utilize and I presume it's a tool. Whether I agree or not is not the issue and whether it is actually beneficial or not is not the issue for me. I'm sure there's lots of studies that have been done that demonstrate that. These emotive issues and these are things that the public of Fiji need to talk about amongst themselves.

As a parent, I exercise certain what I consider parental responsibilities within my household. I worry that I infringe upon the rights of my children. Fortunately, none of my children have taken me to court yet or to the police, but I do worry about that and I think reflecting upon that as a parent, I would say to them, you have no rights in my house because all rights belong to me as the father.

Again, these are just general reflections. If we're talking about a country and I beg to differ with my colleague, I do not think that signing onto a convention on children's rights supersedes the constitution, sorry, the supreme law of Fiji. So, if we were to change this, if there was sufficient impetus, sufficient consideration for us to change this and remove this,

I have no doubt that subsequent to that, that will be the law and then we can then address the other issues in respect of complying with international conventions. But I would hope that the constitution will reflect the will of the people and not the will of the international conventions. Thank you.

Mr. Valenitabua: Gentlemen, you have made your submissions. You have heard comments from the commission. I recorded your concerns or the contents of your submissions this afternoon. The issues were the Fijian identity, which is now in the constitution. That is noted because it has been raised by a number of other associations and individuals, both on the for side and on the against side, if I may simplify it that way. The circular state, that has been covered by a number of submissions and we take your submission in relation to that. Freedom of expression, that is a new one, where expression has to be based on truth, raising the issue about defamation and all that. But then, most of the time, what you read on Facebook is just that, untruths, spoiling the reputation of people and the reputation of government and all those other bodies. Section 20, members of the union.

We heard that from a well-known person to you, Mr. Felix Anthony, so that is recorded and will be deliberated upon. Ownership of ITaukei land, we have heard concerns even from one of our Indo-Fijian brothers in relation to the ownership of land and the returns to the land owners. Your group rights in relation to the GCC and the group rights of the ITaukei people, I believe we will be hearing more of that. In relation to the reinstatement of the GCC, that has been covered, but in relation to the powers, there are some pros and cons in relation to that. Section 30, right of land owners to a fair share of the royalties, we have heard that. I have already mentioned about this, I missed it, from one of our Indo-Fijian brothers.

The state to create employment opportunities is the first time coming from you, so we will have a look at that. Right to adequate food and water, stated to solve the problem, we will rely on the government on that. It's already in the constitution, the right to life, so food and water come under right to life, as among other things. Right to housing is different because it is provided separately.

The rights of children, that is a big issue now. What is to be done? Fights at the bus stations, there was a fight in Nadi during the weekend, which has been circulated on Facebook. Fights in schools, teachers being

assaulted. Now, as a former school teacher, we never had that in our time because of the discipline. There was nothing to stop teachers at the time from disciplining children. Now, I think the issue here, which we might have to look at, is correctional behavioral measure, as you mentioned, versus abuse. There has to be a line drawn there. It's going to be difficult because section 41 of the constitution, subsection 1D, states that children are to be protected from abuse. Neglect harmful cultural practices. Harmful cultural practices, where does it come under that? Any form of violence, inhumane treatment and punishment and hazardous or exploitative labor. So, we have to, in relation to discipline, at the home or in schools, is it correctional behavioral measure or is it abuse? We don't have the answer at this point in time. That is something we have to consider. It is true that discipline among our young population is really bad and is getting worse.

The section 48, assent by the president, we'll have a look at that. Section 81, president to have more powers, we have heard that. And section 127, the PS powers, which is being watered down by ministerial intervention, if I may call it that. So, use of the Yash Ghai constitution as our guideline, we are reading the report from the Yash Ghai guide constitution days. We didn't see the light of day, but we want the reports in relation to that. So, various submissions we have summarized here. We are going to be looking at them. Please send us your written submissions. We will collate that and add them to the submissions which are with us in our record. And we will surely deliberate on these things that you have raised. Having said that, I thank you very much for being here this afternoon and I wish the FTA well in the Fijian. Thank you.

----------End of Session [29-4-2026] ----------

FIJIAN TEACHERS ASSOCIATION

SUBMISSION

FOR

THE

FIJI CONSTITUTION REVIEW

DATE: Wednesday 29th April, 2026

TIME: 2:00pm – 3:00pm

VENUE: Level 9 – Conference Room, Suvavou House, Victoria Parade, SUVA

FIJIAN TEACHERS ASSOCIATION SUBMISSIONS FOR THE FIJI CONSTITUTION REVIEW ON WEDNESDAY 29TH April 2026

PREAMBLE

Fijian as a name

Fijian name must be unique to Indigenous Fijians in the VKB with the Fijian Language and Culture. Other races must be proud of their origin, genealogy, culture and language as it is unique. Fiji is the only country where the ITaukei Language is a home to.

Chapter 1: 4.0 Secular State:

Secular State

(1) Religious liberty, as recognized in the Bill of Rights, is a founding principle of the State.

(2) Religious belief is personal…….

Include Christianity as the official religion of the state.

Chapter 17:

Freedom of speech, expression and publication 17.—(1) Every person has the right to freedom of speech, expression, thought, opinion and publication, which includes—

Freedom of speech must be based on fact and truths without slander on other persons, races or religion

Chapter 20

Employment relations 20.—(1) Every person has the right to fair employment practices, including humane treatment and proper working conditions

Only those joining unions will benefit from the negotiations by unions
It is compulsory to be a member of at least 1 union

Chapter 28

Rights of ownership and protection of iTaukei, Rotuman and Banaban lands 28.—(1) The ownership of all iTaukei land. ….

To include more than 6ft under and beyond the shoreline to include 12mile economic zone.

When the waters were ceded to Great Britain in 1874 all that was ceded must be returned to the landowners and not the state.

Every recognition and protection of iTaukei cultural identity and group rights that were removed from the 1970 and 1997 constitution are to be fully restored. We also strongly recommend that the Great Council of Chiefs (GCC) be given full recognition and respect in the new constitution.

The GCC must now have 14 permanent seats from provinces including representatives from other ethnicities including the Fiji Council of Churches

Chapter 29

Protection of ownership and interests in land 29.—(1) All ownership of land, and all rights and interests in land leases and land tenancies that existed immediately before …
All lands taken …

All rights of ownership of traditional land must be returned to the owners as it was before cession

SECT 30

Right of landowners to fair share of royalties for extraction of minerals

30.—(1) All minerals…. All minerals is owned by the landowners as it was before cession

SECT 31

Right to education

31. (1) Every person has the right to----
   a. early childhood education
   b. primary and secondary education; and
   c. further education.

The state must provide this equal education opportunity to those who are also facing physical disadvantageous like far remote rural areas, availability of internet connections and availability of computers.

SECT 33

Right to work and a just minimum wage

33.-(1) The State must take reasonable measures within its available resources to achieve the progressive realization of the right of ev....

State must create employment opportunities for the unemployed and improve economy to increase the minimum wage

SECTION 36

Right to adequate food and water

36.-(1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to be free from hunger, to have adequate food of acceptable quality and .

Government must improve source production and supplies of essential services

SECTION 41

Rights of children

d) 4) to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour; and

The rights of parents to teach the child by corrective remedial measures in the home which aligns with cultural practices especially to include those sanctioned by the Great Council Chiefs shall supersede the rights of a child eg. Corporal punishment or Corrective Behavioural Measurer

SECTION 48

Presidential assent

(2) If the President does not assent to a Bill within the period set out in subsection (2), the Bill will be taken to have been assented to on the expiry of that period.

If President does not assent to the bill it MUST be returned to Parliament for further discussions. President must give his assent in writing and to sign

SECTION 81

CHAPTER 4—THE EXECUTIVE Part A—THE PRESIDENT

The President of Fiji

(1) The President is the Head of State, and the executive authority of the State is vested in the President.

This "executive authority" has no lawful veto power to be the last authority to stop anything unlawful decided by Parliament or stop an unlawful government

(2) The President shall perform the ceremonial functions and responsibilities as the Commander-in-Chief of the Republic of Fiji Military Forces.

This must include his authority to tell RFMF to stand down in the in the event of a coup

President acts on advice

82) In the exercise of his or her powers and executive authority, the President acts only on the advice of Cabinet or a Minister or of some other

In the event of an emergency the President may declare, his complete control of Govt Disciplined Forces and all civil servants.

Permanent secretaries

(127)—(1).....

(7) The permanent secretary of each ministry shall have the authority to appoint, remove and institute disciplinary action against all staff of the ministry, **with the agreement of the Minister** responsible for the ministry.

FTA demands the removal of the clause **"with agreement of the Minister".**
The PS should be allowed to run his/her Ministry and guided by the General Orders and the Policies/Bi Laws of the Ministry of Civil Service.
The Minister is only responsible to assist the PS in his decisions. The PS will be assessed by the Minister and graded for renewal of contract purposes.
This Section 127 part (7) can allow Ministers to micro manage the Ministry which will interfere with PS responsibilities.

CONCLUSION

FTA completely rejects the 2027 constitution as there was no proper consultations done but FTA supports the Yash Qhai Constitution which went through wide consultations to be the guiding constitution for the review of the 2014 Constitution.

Niko Nawaikula (Stand With Niko) (SWN)

Niko Nawaikula
Date: 30-4-2026

Mr. Valenitabua: Good afternoon, Mr. Nawaikula, Mr. Silatolu and Mr. Rabe on behalf of the Constitutional Review Commission, I would like to take this time to welcome you and thank you for accepting our invitation to make a submission before the Commission. Before we proceed, my name is Leighton Fatiaki, I will just be going through a few housekeeping matters. Just with regards to making submissions, the mics in front of you, if you can press on the right side, the right panel of the mic in front of you to turn the mics on to make your submission and after you have made your submission you can press the same panel to turn the mics off. The Chair will then introduce the work that the Commission is undertaking during this exercise and then he will either introduce the team himself or request that the Commission members introduce themselves. We also request that after the introduction, if your team can also introduce yourselves, this is for the transcription and the record.

Dr. Fatiaki: Good afternoon, Mr. Nawaikula and your colleagues. It is my pleasure this afternoon on behalf of the Chairman of the Constitutional Review Commission to preside over this afternoon's session and it is my pleasure to welcome you and your team this afternoon to present to us a submission. Thank you for accepting our invitation, we appreciate it. In the way of a background, I am sure you are aware that we were established by His Excellency the President under the Inquiry Act and our task has been defined in our terms of reference which has been published in the Government Gazette.

Let me just say that number two of the terms of reference very specifically advise us to consult widely and meaningfully with the people of Fiji, all the peoples of Fiji, so that the submissions when put together can encompass the collective view of this country and its peoples. I know you come with a particular interest and I might just allude to the fact that if you refer to our terms of reference, you will find that there are three items specifically out of the twelve that allude specifically to the area of indigenous rights. I am not going to read them out, I am sure you can refer to the necessary areas, but those are obviously a reflection of Government's interest in our addressing those as part of our terms of reference in this review process. I state from the outset that we are independent. We have no directives about what we will come up with. I speak for myself and I have no doubt

for my commissioners when I say that we will listen to everything and everybody.

We have obviously our own personal opinions, but in the process that we are embarking on, I can assure you that our job is not to take our personal opinions on anything to determine the outcome. Our job is to listen to you, we the people of Fiji, to express yourselves freely, openly, transparently, to give it due consideration, guided by the restrictions that the Supreme Court may have placed upon us in its ruling and also the terms of reference that we have been given by His Excellency the President. Other than that, every paragraph and clause in the 2013 Constitution is up for review. I want that clear. We have been asked by various people, what is the meaning of this? You already got the 2013 Constitution. Well, I told them, other than the two paragraphs or the section that we were advised we can't touch, we can touch everything else from the first line to the last line.

Whether we have enough time, again, is another issue that we don't address. Our mandate is to complete this task by the 31st of August. We intend to do it. Part of this process will be widespread consultation. We have spent the first four weeks in Suva taking submissions from invited parties that we consider may be held in-house. Subsequent to that, we travel from next week into two teams. One team heads off to Lomaviti, Laos. The other team heads off to Beqa, Vatulele, Levuka, Ovalau, and Kadavu. We meet again in Savusavu and Vanualevu From Savusavu, at every major center, all seven of us will sit. Once we've sat at the major centers, we then divide ourselves. I'm proud to say that I will be heading down south to Nabouwalu in places that I've never seen in my life, all along that coast with my team. The other team heads up to Manawa and other places along the other side of the Vanualevu .

We will meet again in Labasa, where we will all be together. And then from Vanualevu, we will then head off back to Vitilevu, where we will spend five weeks going around the same process, all of us together at each of the major centers, and subsequently divided into two teams to address the more rural and remote communities. We hope to culminate our visits by the end of June. The first week of July sees my colleagues and I on Maryland of Rotuma. And after that, we return here, and I think there may be

provision, depending on the Chairman's determination, if we have sufficient time, we may take some more submissions in-house in the first week of July, or the second week of July. The process after that involves our putting together the voices of the people in a meaningful document. We will be assisted by two international constitutional professors. I know Professor Reagan from Australia; Professor is a professor from Texas in the United States.

We also have professional craftsmen. Despite the shortage of time that many people allude to, we are determined to complete this task by the 31st of August. From that point on, we are not going to address anything further, because it's beyond us. Once we've completed and compiled our report and submitted it to the President, the ball is then in the government and the Parliament's court to decide how they proceed with it in the form of an amendment act or whatever, and to undergo the processes that have been defined by the Supreme Court in respect of the two-third parliamentary majority and the 50 plus one referendum majority. Those are my general comments in the way of introduction. Gentlemen, thank you for your patience.

I'd like to introduce my commissioners. Maybe I'll get them to introduce themselves. From my far right, Mr. Beg.

Mr. Beg: Thank you, Presiding Chair, and welcome, Mr. Nawaikula and Mr. Silatolu, and your other... Sorry, I didn't get your name at the end, but welcome, sir. My name is Conway Big. I'm an architect by profession. I'm glad to be in this space and to listen to the public and to everyone here, and look forward to this process with yourselves. Thank you. Thank you, Chair, and good afternoon, gentlemen.

Ms. Nailatikau: I'm Merewalesi Nailatikau, a consultant by profession with a background in public diplomacy and public policy. Thank you. Professor Nabobo.

Dr. Nabobo: Thank you, Chair. It's nice to have you here. We're looking forward to your submission. Mr. Nawaikula and the team.

Dr. Gounder: I'm Neelesh Gounder. I'm an academic by profession, and I look forward to your submission this afternoon. I'm looking forward to hearing from you.

Mr. Valenitabua: Sevuloni Valenitabua, it's a pleasure to see you this afternoon Mr. Nawaikula and the team.

Dr. Fatiaki: Gentlemen, I'm John Charles Fatiaki. I'm a medical practitioner by training, and I'm a Kai Rotuma. I now have the pleasure and privilege to ask you to make your submission. Please, before that, introduce yourselves, and then after we listen to your submission, we may enter into a process of some dialogue, depending on our time. And the floor is over to you now.

Mr. Nawaikula: Thank you. By way of introduction, my name is Niko Nawaikula. I am the president of SWN Advocacy. SWN meaning stand with Niko, and we will be giving our submission today. Thank you.

Mr. Silatolu: My name is Timoci Silatolu. I came because of this committee, and I wish to make submissions.

Mr. Raile: I'm William Raile, member of the SWN. Thank you.

Mr. Nawaikula: We have our copies of our submission here. So, there's a copy each for the commissioners and one for the secretary. I will be submitting on behalf of the advocacy group, and after that, my colleagues may decide to, if they can, add on to that. And those views can be personal, so it can be different.

About SWN, as I said, that's an advocacy group, SWN meaning stand with Niko. It is a non-government organization that was registered in 2021. Before that, we were working very closely with other NGOs, specifically the Fiji Native Tribal Congress. And with the Native Tribal Congress, we made interventions in New York before the floor of the UN General Assembly.

In 2011, 2014, 2015. And around about April or May every year, you have what you call the Permanent Forum for Indigenous Peoples. And there are voluntary funds that you can look into to attend it. And we attended it through TED. And the first one that we attended to in 2011 was through sponsorship of the Melanesian Interest Group in Fiji. So as the name indicates, it discusses issues concerning indigenous peoples around the world. And it happens once every year. We made submissions there specifically to complain about the anti-Taukei laws that were passed by the last regime. But what had happened was that when the last coup happened in 2006, government took over everything, even nationalized the ITLTB and even the Fijian

Affairs. So, there was no independent body to speak out for indigenous peoples.

And a few chiefs, Tuicakau, Marama Bale Roko Tui Dreketi, and Mere Samisoni, just decided to form an NGO, which was then the Fijian Native Tribal Congress, to at least speak out. So, we were possibly the only one doing the work that you would have expected the GCC and the Fijian Affairs to do, because they had been nationalized and they come under the control of the government. So that was one of the things we do in that advocacy. We also, on the 16th of August, 2012, managed to travel to Geneva, and very hard we had to look for affairs. I had to go to Australia, work in the tomato fields for them. But we also complained. And we complained before the Human Rights Committee, called CIRD, which is the Committee for the Elimination of Racial Discrimination. And I think every fourth year they review governments, and Fiji was reviewed on the 16th of August in 2012.

So, we went there to also complain about these anti iTaukei laws. The one that took away our name, the Surfing Decree, the Land Use Decree, the Minus for the Mahogany. Bearing in mind, of course, that Fiji ratified ILOC 169 in 1998. And by that, Fiji was obliged to recognize all those group rights. Group rights meaning the right to prior and informed consent before you change any legislation. The right to our cultural institutions. So, in August of 2012, we attended there to complain. There's a law, a decree that terminated the GCC at the time. There are many others. I think there's a total of about 81 what we call anti-iTaukei laws. Specifically passed by the last government to take away what we can term our group rights.

And one of the interesting points, if I can say here, was that government was also represented there. And when I came in to submit on behalf of these chiefs, the reply from government. Government always have, at every UN session, government has priority. They don't have to make appointments, they can just come in. So, the submission that they made then, government representative at the time was an individual from, I've forgotten his name.

But he said Fiji, or the government at the time, does not recognize indigenous rights because they are the majority. And the reply that I had always noted from the committee for the

elimination said, no, you're wrong. What about Bolivia? What about Venezuela? What you should do is recognize indigenous rights to its fullest extent.

Recognize fundamental human rights. Recognize also the rights of the other community. And the challenge or the task of the government, whoever is in power, is to balance this so that non-topo is the order.

And just to say now, when I come back, there's an example. If you look at TLTB, indigenous people own 91% of the land, but you have that institution to make sure that we have equal access. So even though indigenous people may own 91% of the land, you have this legislation to guarantee equality of access to land. So that's basically that. So, you know, just a point of interest. You can Google CERT 81st Session to see a copy of my submissions.

And you will see the signatures of Terakau, Na marama, and others. You can also see the submission of the government. And you can also search there to find the concluding remarks. And note that the concluding remarks stated by the CERT Committee, which is a human rights committee, was that these legislations, the example that they gave was the legislator that terminated the GCC, was a racist. Racist because by ratifying ILOC 169, Fiji has recognized these as indigenous rights of corporates. And having legislation to terminate those on the basis of their race alone makes them racist. So, this is a point to remember. Well, I'm still talking about SWN.

So locally we engage in a wide range of advocacy to promote justice, human rights, and democracy. So those are our core areas. Earlier in the year, or last year, we had teamed up with other parties, including Unity Party, and others who wanted to challenge the 2013 Constitution. We had very, very good reasons to challenge the Constitution, because therein contains the anchor for the government policy to terminate or annihilate what we may term as indigenous rights or indigenous corporates, and I will go into that.

So, we very eagerly joined whoever was at the time that wanted to go against the Constitution. So, we joined up with Unity Party. There were others from overseas, so we were formulating a way to go to court to challenge it. But that was overtaken by the Supreme Court. When the Supreme Court did so to give its opinion on the 2013 Constitution, we stepped back. But leading

up to the decision which they gave in August, SWN advocacy organized a peaceful march against the 2013 Constitution in about July, but the permit was refused. But when your committee was established, immediately after that, we successfully organized a Talanoa session at FNU National Camps. Thanks for that, ma'am. Very successful.

We invited different points of view to come and talk about their views on the 2013 Constitution. After that, recently, currently we've been engaged from after that, we are going down to the level of the Vanua, and we have just recently returned from Rewasa in Saivou Ra and Toga, where we tried to educate the indigenous people and point out to them what exactly their rights or the protection that were given to their culture and cultural identity, cultural institutions that were the mainstay of the 1970 and 1997 Constitution, which the authors of the 2013 Constitution decided to throw away, and to persuade them to please come to your committee to beg or to demand that those be restored. So that is basically about us.

And by way of introduction, let me just say that we will address the committee on how the proposed amendment should incorporate the recognition and protection of the cultural identity, cultural institutions, and the group rights of iTaukei. We limit ourselves to that. We know there are other experts who come here. They know about the separation of powers and all those things. But for us, we limit ourselves to the need to look into that or to restore what were there in the 1970 and 1997 Constitution. First, even way back, because it all started in the deed of cession.

If you look at the deed of cession, you will see that this is a treaty where the whole purpose of that was for the crown to come and an extinguee for the protection of the rights of indigenous people. And the wording of the deed of cession speaks on to that, especially if you look at clause 4 which recognizes the promise of the crown to protect their rights to land. Clause 7 which recognizes the promise of the crown to look after their cultural autonomy.

And we all know, Mr. Koli and I are lawyers, and we know that a treaty does not have any legal right unless those aspects of the treaty are passed on to the domestic law. So clause 4 was passed on into the domestic law by the Native Lands Ordinance

of 1882. It became Native Lands Act of 1905. It is still there. It establishes what we call now the Native Lands Commission. And Clause 7 was made into domestic law under the Fijian Affairs Act that establishes the cultural autonomy.

And those were the deeds of cession, 1970 constitution, 1966 says these laws were taboo. No state can change them unless very strictly the principle of prior consent and consultation goes in by the consent through the Senate, which again was repeated in section 185 of the 1997 constitution, which the others of the 2050 constitution threw out. For whatever reason, I don't know. So, we will be addressing you only on those and other related matters.

So, the first point we want to make is that the constitution must reflect the culture of the nation. And we believe that the Fijian culture and identity, including its language, institutions, representation, the foundation culture and identity of Fiji, or what we can call our common identity. So, this must be reflected in the constitution. Not only the constitution, but other aspects of governance.

In New Zealand, for example, it has adopted the bicultural policy that recognizes the need to incorporate Maori language, traditions, and the core government administration. And it's reflected in various state practices, including if they sing the national anthem of New Zealand, they will sing it in English and sing it in Maori. Both New Zealand and Australia struggle to fully reflect biculturalism.

And one reason for that is that they only gave serious thought to the indigenous peoples after Yunchi, basically, or in New Zealand, 1975, when they passed the Waitangi Treaty Act. And these challenges partly arise because both countries only ratified it in 2007. And you can see that Fiji is different.

So Fiji is a different case. They have been recognized because indigenous culture has been recognized since the deed of cession. So, the point we are saying is that whereas those countries are now trying, the move nowadays for the current norm, national norm, is to accept the indigenous identity of a nation to be the indigenous culture of the nation state. And in Fiji, probably why that did not happen was because of the demographic shifts. We became more of a multicultural community, and we are possibly going through that. But the

point that we wish to make is that the culture of the common identity or culture of Fiji is the indigenous Fijian culture, and that must be reflected.

And I will get back to that. And how that may be illustrated may be as follows. For example, the Senate should be, we don't have the Senate, but we bring in the great Council of Chiefs right at the center of government station and replace the GCC, the Senate with the GCC.

And when you sing the national anthem, you need not sing it in English. Because our common identity is Fijian, we sing it in the Fijian vernacular. On every announcement, you know, you can see government copying Australia, where they say, before I say this, I acknowledge the owners of the land you stand, but Australia only comes lately.

So, what we might do instead, for every official statement, we start with the Fijian language, because Fijian should be our common identity. So that is the simple point on that, and I will come back to the point where we will be urging the committee to recommend that instead of the Senate, you have the GCC there.

So, I will take that in detail later on. But the second point we want to make is that your amendment or the amendment that you recommend must restore all aspects of recognition and protection of Fijian cultural identity, institution, and group rights that were there in the 1970 and 1997 constitution, which the owners of the 2013 constitution decided to throw away. I think, you know, in the last parliament I always say this is like a social engineering.

But the last government where they tried to remove all your cultural identity to make everybody equal, but it's wrong, it's wrong because you have UNDRIP and ILO 169, those conventions, which says you must maintain the culture and recognize the ethnicity and their different identities. And the task for the government as the committee for human rights said is you balance this to see that none topples the other.

So, we looked at it and we see that altogether there are nine provisions in the 1970 and 1997 constitution that recognize and

protect those rights. But there are two provisions in the 1970 which are repeated in the 1997, so you actually have seven. And the first of those is chapter 18, section 185.

This is of the 1997 constitution which they decided to throw away. This one is also a repeat of what was there in section 66 of the 1970 constitution and it concerns, relates to land rights or the law that governs the registration in the VKB for Itaukei. The law that governs their cultural autonomy, which is the Fijian Affairs Act.

The law that governs the administration of their land. And as I explained, they go right back to clause 4 and clause 7 of the deed of session. And they were domesticated to become the Native Land Trust Act, the Native Lands Act, the Fijian Act.

And the provisions of the 1997 constitution says government, whichever government, is not allowed to change or amend this law unless you have the consent of the Senate or the majority of all the GCC members there. And you see that is also consistent with ICC 169 and UNDP, which says you must have prior and informed consent, consultation of the indigenous people before you can change or amend any legislation affecting that. So those were entrenched in section 66, 1970, section 185 of 1997 and removed in 2013 in which we are asking the committee please restore them.

The second one is section 186, talking of the 1997 constitution, which deals with the customary law and customary rights. That is an express recognition in the 1997 constitution of customary law and customary rights. That was also removed and we are asking the committee please restore that.

The, third, chapter 8, which is, section 116 in the 1997 constitution, the constitutional recognition of the Bose Levu Vakaturaga. And fourth, section 90, which is the role of the Bose Levu Vakaturaga to choose the president, etc. Fifth, section 93 of the 1997 constitution, that gives the GCC the role in removing the president and vice president. Also, section 64 of the 1997 constitution, giving the role of the GCC to appoint members to the Senate.

And lastly, section 44. Section 44 deals with social justice and affirmative action. And the government, I think from about since 1987 onwards, have been using this to introduce policies to give

[redacted]

So, we are basically asking the committee to please restore the rights recognized under section 185, which is right to prior informed consent, those ones, 186, and 44. The thing about the GCC, we have a different, we are asking, forget about it, but just bring in the GCC to become the Senate and that will cure all those. So that is our second point.

Asking the committee to please restore everything that were constitutionally recognized for indigenous regions in the 1970 and 1907, but the authors of the 2018 decided to throw it. And how it may be carried out, we submit that if you can expressly recognize UNDRIP and ILOC 169, possibly in the chapter looking at fundamental rights, because fundamental rights deals with individuals, and you have group rights, and we are also asking if there can also be expressed recognition of the minority rights. So those are how the group rights should be reflected, we submit in the proposed amendment.

Now if I come back to the point on the need for the GCC to be brought at the center of governance and the constitution. If you look at the constitution making process, 1970, 1990, 1997, you will see that the authors were almost at pain of trying to bring in the GCC. In the 1970, they didn't even mention it, they only mentioned the appointment. But in the 1997, there's about four provisions dealing with the GCC. So, they were always at pains of trying to bring this into the center of national governance. We are submitting here that this is the time.

But having said that, you will have to consult with the GCC and ask them, because we are proposing here when you do that, you have 14 permanent members, with Rotuma 15 permanent members of the GCC, and with the liberty to invite representatives of other ethnicities, and very important, a representative of the council of churches. Because the role of the GCC or the role of the senate is only a house of review. Politics happens in the parliament.

But parliament, they pass laws only dependent on the numbers. They don't think about morality. They don't think about whether that will affect the right of an ethnic group.

And that's where you need the senate or GCC as we are saying now. But subject to consulting with the GCC, you ask them basically, do you want to have a national role? Do you want to be the chiefs of Fijians and the whole of Fiji? Or do you want to be in that little corner, only to be chiefs of Itaukei? I think if they are mature enough, they will say it's time for us to take on this national role, and we will invite other ethnicities. Because this is all our home, and the chiefs then will be chiefs of Itoki, and chiefs of everyone who lives in Fiji.

That's not the end. I'm not in government, but if I were in government, I would propose it that you already have your regional government, your provinces. Those provinces should look after all ethnicities there, Kaivijti, Kai india, Kai chaina. They should all come to the provincial council. So that is our request. And I know you need to consult with the GCC and tell them, do you think it's the time now for you to be chiefs of the whole of Fiji? Or do you want to sit in your own corner there, in your building there? To be chiefs only of a faction.

But I think they will be mature enough to say this is the time for us to take a national role. So that's on the need to bring the GCC, and I will just now go through another related matters. Amendment must completely replace the 2018 constitution. I hope when the amendment comes, I will not hear even the 2013. So, something like the 1997 constitutional amendment, it was actually amending the 1990, which was a racist constitution. So, I hope it will be called the 2026 constitutional amendment, and thereafter the 2026 constitution for Fiji.

On the immunity provision, we support the GCC's recommendation that the immunity provision must be removed. We know the Supreme Court opinion that the immunity provision cannot be amended. It's an opinion. It's not a coercive order. So, it should not stop you. Also, with the greatest respect, we feel that the Supreme Court opinion is wrong to uphold that a provision of the law that forbids the executive from doing its core role of making and amending laws should be accepted by the Supreme Court.

Sorry to say that you cannot review the decision, you cannot appeal it, but we are suggesting remove the commission and whoever wants to challenge it can take it to court. And also, the immunity provision contradicts the basic maxim that everyone should be equal under the law. What's the point of holding a constitution that says everybody is equal and then you're granting immunity? For one thing, if you want to take it out, take it out into another legislation.

Don't let it be part of this holy book which we call the constitution. We are contributing our very selves in holding up the constitution and swearing upon it. And the next, we are praying that there is a Section 30. It introduces the ownership of minerals by the state. I don't think it was there in the last constitution. You have to look into that, 1997, 1970.

Before that, it only existed at legislative level and it would be wrong to carry this on now especially when the very issue of mining, ownership of the minerals is being debated and discussed. And lastly, on the rights of the children, Section 41, we feel that it is important that a proviso should be there to say that the rights of the child is subject to the parents and the state's right and decision to decide what is in their best interest. And to note that the biggest country in the world, USA, does not ratify the Convention on the Rights of the Children because they feel that parents and the state should have that. So that is the end. And my colleagues might want to add, or might even now or later.

Dr. Fatiaki: Thank you very much, Mr. Nawaikula. Thank you for that very lucid and comprehensive explanation and presentation of your submission. Some of us have followed it literally word for word. Some of us have listened to you, enthralled by your knowledge and history of your submission and we thank you for that. I leave the floor open now first to your colleagues if either of them wish to add anything to your submission at this point in time.

Mr. Silatolu: Yes, thank you. I've got my submission, yes, which I will pass on to the... forward it to them. Just on the religious aspect, in 1835 Christianity, Jesus Christ, arrived in our shores and I've been reading papers that there are arguments over it. But if we look at history, we can tell that Christian religion came on our shores first and it brought everything that is now Fiji. That you may consider, talking about which religion to be the main or

recognized as these countries, you may take that suggestion that Christianity arrived on our shores first. And war clubs and all that, which is the land on the sea. Thank you.

Dr. Fatiaki: Thank you very much for that. We'll consider that as an additional submission, a private one, specifically in relation to Christianity as a topic. Any others? Okay, there aren't any. Thank you very, very much, gentlemen. I appreciate very much your submission. I leave the floor now to my colleagues who might wish to seek clarification. Let me say from the outset, our job is not to have an opinion on what you give, whether it's right or wrong.

Our job is to listen to what you want, look at the Constitution, see how we can accommodate it in the way of a review, amending it, revising it, altering it, entering extra things to it, withdrawing things from it. That's our role. And most of our comments will be related to maybe clarifying aspects of your submission that may need clarification. But please, we don't hold any opinions at this stage. I leave the floor open to my colleagues. Conway?

Mr. Beg: Thank you, Presiding Chair. Thank you, Mr. Nawaikula. Very comprehensive. Thank you for that. I replayed the wheel when you presented at the FNU as well, so it's nice to kind of go through that, and then it was a consolidated thing. I was interested in your points about 1.3 of your submission, where you made reference to the Kurd and the ILOC, when you said in 1969, because, you know, you're saying that these benchmarks are out there that advocates certain benchmarks that our Bill of Rights that align to that Fiji had signed up to, and what you're saying is in the ILOC, these are benchmarks that we also need to recognize these points that you brought forth. Yeah, fascinating architectural sort of dialogue there, which is great. I understand that. So, thank you. It clarified your point about recognizing that. As you're saying that this, if I hear you correctly, this is not evident in the 2013 Constitution. Thank you for that qualification.

Mr. Nawaikula: Yeah, I think if you look at what we're recommending, we're recommending that you expressly recognize UNDRIP and ILOC 169. You know there's a difference, eh? ILOC 169 has been ratified. Once you ratify it, you're legally obliged. But UNDRIP is still going through that process and has yet to become a

convention, and we have suggested that when you recognize that, you also put in that, that in implementation, you must weigh group rights with fundamental rights and the rights and interests of the other, balancing it. Those were the things that were stated in the Human Rights Committee said, and that also I sincerely believe should be the way and policy for any government. And it's good if it can be entrenched in the constitution.

Mr. Beg: Just to qualify that, so that's saying that it's also racial? It's also racial in terms of what wasn't there before. You're saying it's discrimination to your rights?

Mr. Nawaikula: Yes. Thank you for that qualification.

Dr. Fatiaki: Thank you for that, Conway. Just a shared reflection amongst my colleagues. There is an entire chapter in 1997 that is on group rights. That is absent in the 2013 constitution. Just for the information of my colleagues, there is a chapter. I'm sure that one of our colleagues has read it and will be able to refer us to it in future discussions.

Mr. Nawaikula: There is a chapter, and there, I think I referred to it here, but it's stated on top. It's a chapter, but there are only two provisions there. And I think there's one on affirmative action and recognition of customary rules. And just my point on that we were suggesting, on ILOC 169, a provision should expressly mention Fiji's obligation to implement them under its laws and policies subject to those rights being balanced with fundamental human rights and the rights and interests of other communities. Thank you very much, Mr. Nawaikula. And thank you for that magnanimous suggestion that it is a balancing act. And that's the hope, that we get the right balance in our deliberations going forward. Mere, would you like to make a comment?

Ms. Nailatikau: Thank you, Presiding Chair, gentlemen. I thought I would simply reflect and express appreciation for the role in which bodies can also play a parallel or supplementary role to the reporting of our governments on international commitments that we have ratified, as you mentioned. And I understand this may have been part of a periodic review that governments are obligated to undertake, and that it comes with great personal and difficult costs in terms of being able to make those trips to be able to go and convey the concerns of your communities. I just wanted to say that that does not go unnoticed, and it adds to the context

and the depth of what you are sharing today. I just wanted to express that appreciation as a reflection, if I may. Thank you, Chair.

Mr. Nawaikula: Just to add on that, there's a very, very important role for the NGOs to do that. And, you know, it's a fact, a lot of our NGOs are financed by overseas to push their issues. And that's not all. We have local issues that also need to be ventilated to the national and international communities. So, important role for NGOs to counterbalance. Every further year, every convention ever ratified, you have a review in Geneva, and it's important for these NGOs to come into there. And probably also to learn the process. The process is that you should know when to come in. They advertise it, and government is always given the right to put their review, and your reports are supplemented to clarify it. Because a lot of those made by the government are only on their behalf. For example, during the time of the last government, you know, they were doing this for equality. And that sounds very nicely when you talk about equality overseas. But you need these other NGOs, like the Vanuatu Group. They are also a community, and you should look at group rights. So, if you don't push that in, the international community might not know your issues.

Dr. Fatiaki: Thank you. I look across to the left, and I'm going to ask Professor Nilesh Gounder, a colleague, please.

Dr. Gounder: Thank you, Chair. Thank you, Mr. Nawaikula. I think your presentation is very clear, and you bring in the issues, and then you are also recommending the sections in particular that you are looking at. So, it's very clearly written, and I don't have any questions on any of those. But I was just looking at the 1997 constitution. I assume you are referring to chapter 13, the group rights that appears in chapter 13 of the 1997 constitution. Is that what you are referring to? Yes, that is correct. Okay. Thank you. Now, it's very clear what you are presenting, actually. Thank you.

Dr. Fatiaki: Thank you, Dr. Nilesh. I may go back to Professor Unaisi Bobo.

Dr. Baba: A few comments, please. And with Dr. Nilesh, I think it's very clear what you've told us. I thank you for turning up today and doing your presentation, Mr. Nawaikula Naka.

Dr. Fatiaki: Mr. Ami, would you like to make a comment?

Mr. Kohli: Yes, Mr. Nawaikula, I think it's a very interesting presentation. Actually, what you are saying is also being taken into consideration in other countries. Back in New Zealand, the kanga Maori is recognized as a law in New Zealand. And what they have done is that, as recently as this morning, they are saying that if you want to pass a law that's going to affect the indigenous people, like the Maori, the Attorney General comes in and you must consult the Maori Tribunal or something. So here I'm just wondering, there should be a similar provision somewhere where if it affects the rights of the people, etc. etc.etc. How can we embrace that in the legislation?

Mr. Nawaikula: I think we have 185. It's very narrow. Those are relating to the legislations that had a beginning in the deductions. But it should be wider and I think how you can address that is to have it in the group rights. Because the group rights you mentioned, because Fiji has already ratified ILOC 169 and then lost their union. So, just an enabling provision there and leave it to the Parliament to work out how do you consult. There's a question. How do you obtain the prior informed consent that is to be legitimized? So, there are other legislations that need to be passed to support it. Thank you.

Mr. Kohli: My next query from you is this. If you look at page 5, 7, you are saying that chapter 5, section 44 recognizes social justice and affirmative action. This has been the section used by the government in 1997 to justify the grant of 50% scholastic freedom, 50% employment, civil servants and 50% commercial grant benefits. If you look at 1997, the population of Indian was 51%. It's 32% now. So, if it goes down, do you still want 50-50 or do you think it will be unfair on the people? I think to take an example from one of the legislations that have been passed, the anti-narcotics bill. Very interesting when I look at it. Talking about recruitment, it said it must reflect the ethnic makeup of the community broadly. Not 50-50 to tie you down, but maybe proceed in that way. Thank you very much. That's clear.

Dr. Fatiaki: Chair, would you like to make a comment or contribution? Mr. Nawaikula.

Mr. Valenitabua: Mr. Nawaikula, just looking at the GCC. In your submission, it was suggesting that the GCC replace the Senate.Correct me if I'm wrong.

Mr. Nawaikula: Yes.

Mr. Valenitabua: And then later on, you say that the GCC should comprise of 14 members. Correct?

Mr. Nawaikula: Yes.

Mr. Valenitabua: Those 14 members will be permanent members. And then 10 appointed and elected members representing religious heads and ethnic representatives and people of good national standing. That brings it up to 24.

Mr. Nawaikula: Yes.

Mr. Valenitabua: So, the number of that group added by the GCC to replace the Senate is 24. Is that what you're looking at?

Mr. Nawaikula: Yes.

Mr. Valenitabua: Back in 2006, before the change in the Constitution, there were 32 members of the Senate and 14 of those 32 members were ITaukei's, as we call them now, but Fijians in those days. Why is it, if we are going to establish the GCC, or if we propose to establish the GCC with 14 members plus 10, 24, to replace the Senate, why not just call it the Senate and bring in 14 members of the GCC plus 10 appointed from elected members, so that you still have the House of Parliament, lower house, and the upper house as the Senate? What is the necessity of changing from Senate to GCC when you still can have the same reflection or the same purpose?

Mr. Nawaikula: That does not make the GCC into a national role because it's the Senate. The way that we are proposing now, then the chiefs can see we are chiefs of itaukei and we are chiefs of everyone. That is the difference.

Dr. Fatiaki: Thank you, Mr. Nawaikula. I see exactly the point you're making there in terms of trying to bring that sense of ownership to the GCC, that in fact the chiefs are looking after all people. If I may suggest, I suspect that they already do. I suspect that there are chiefs in all provinces that probably look at the members in their provinces as all part of their mandate. Having said that, in terms of making a review to our constitution or the 2013 constitution, it may be easier for us to introduce a bicameral change and by extension have a Senate and obviously incorporate within that the GCC. Let me just say though, I think you alluded to this, we

could never hope to define what the GCC should be because by definition it is what it is and I would presume that if anything were to be put forward from our body, it would not dictate to the GCC how they should be constituted. I think you alluded to the fact that this would need to go to the GCC for them to consent to it and that would be beyond our mandate as a review commission for the 2013 constitution for us to extend that far. Having said that, I think the thoughts are good. I thank you for your submission and I think my colleagues have nothing else. I return the mic to you should you wish to make any concluding comments.

Mr. Nawaikula: Just in relation to that, it is happening in practice but somehow the law is changing it. For example, in Rewa, they call the representatives of Luvedra Na Ratu. In Vanua Levu, even the Fijians are also part of the Vanua but the law meaning the Fijian Affairs Act in relation to the membership of the Provincial Council has to be changed to reflect the practice.

Dr. Fatiaki: Colleagues, if there is no more comments, I wish to again on behalf of the Chair and my colleagues on the Constitutional Review Commission, thank you Mr. Nawaikula and two gentlemen that have accompanied you. Thank you very, very much for your time and submission, acceptance of our invitation. We will deliberate upon these aspects of your submission and thank you very much again on behalf of the Commission. Thank you.

----------End of Session [30-4-2026] ----------

SWN ADVOCACY
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29th April 2026

The Chairman & Members
Fiji Constitutional Review Committee
Suva

Dear Sir/ Madam,

Re: SWN ADVOCACY SUBMISSION ON THE PROPOSED 2026 CONSTITUTION AMENDMENT BILL

This is the SWN (Stand With Niko) Advocacy submission on the proposed amendment to the Constitution.

1. **About SWN**

1.1 SWN is a non-governmental organization (NGO) registered on 23.08.2021 (Reg No. 2021RB012308), operating as a charity and advocating for justice, human rights, and democracy.

1.2 SWN has undertaken advocacy work in collaboration with other organizations, including the Fiji Native Tribal Congress. This work has resulted in interventions and submissions at the United Nations in New York in 2011, 2015, and 2016. These submissions addressed concerns regarding discriminatory policies, including anti-iTaukei laws under the former Fiji First Party (FFP) Government. SWN also participated in proceedings before the Committee on the Elimination of All Forms of Racial Discrimination (CERD) in Geneva in August 2012 for the same purpose.

1.3 Incidentally, the concluding remarks of CERD, after considering Fiji's anti itaukei laws was that they were racist because Fiji had ratified ILOC 169 in 1998 that recognized indigenous rights and their removal by those laws was an act of racism because they were done on the basis on race and ethnicity and nothing more.

1.4 Locally, SWN engages in a wide range of advocacy initiatives promoting justice, human rights, and democracy.

1.5 SWN had teamed up with the Unity Party and others to challenge the 2013 Constitution, which was later upheld by the decision of the Supreme Court last year, validating the 2013 Constitution.

1.6 Leading up to the Supreme Court decision in August last year, SWN had organized a peaceful march against the 2013 Constitution in July 2025; however, the government refused to grant a permit.

1.7 When the CRC committee was announced, SWN Advocacy organized a very successful Talanoa Session on 27 March 2026 at the FNU Nasinu Campus to raise awareness.

1.8 Currently, SWN is engaging in Talanoa sessions at the vanua level, with the most recent held at Rewasa (Ra) and Toga (Rewa), to educate indigenous Fijians about constitutional protections and the recognition of their culture, identity, institutions, and group rights. These rights were recognized and protected under the 1970 and 1997 Constitutions but were rejected by the authors of the 2013 Constitution. SWN is urging communities to present to this committee and advocate for the restoration of those constitutional protections through this amendment.

2. INTRODUCTION

2.1 SWN will address the committee on how the proposed amendment should incorporate the recognition and protection of the cultural identity, cultural institutions, and group rights of the iTaukei as Fiji's Indigenous and First Nations people, along with related matters.

3. CONSTITUTION MUST REFLECT CULTURE

3.1 We believe that iTaukei (Fijian) culture and identity, including its language and institutions, represent a foundational culture and identity of Fiji. This must be reflected in the Constitution.

3.2 New Zealand, for example, has adopted a bicultural policy that recognizes and incorporates Māori language and traditions into the core of government administration. This is reflected in various state practices, including the national anthem being sung in both Māori and English. Australia is also attempting to introduce bicultural recognition, although recent constitutional amendment efforts to recognize Aboriginal rights have been unsuccessful.

3.3 Both Australia and New Zealand continue to struggle to fully reflect biculturalism in their constitutions, although it exists at legislative and policy levels. For example, in New Zealand, the national anthem is sung in both Māori and English, while in Australia, official events often include acknowledgements of the traditional custodians of the land.

3.4 These challenges partly arise because both countries only ratified the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) after 2007, and have since faced difficulties integrating Indigenous identity and culture into governance structures. Historically, Indigenous peoples in these countries were marginalized, and their cultures were suppressed.

3.5 Fiji presents a different case. Indigenous Fijian culture and identity have been recognized and protected since cession and continue to exist as a living culture. However, this has not been fully incorporated or reflected in governance structures or the Constitution.

3.6 One possible reason is historical demographic shifts, where Indigenous Fijians were once a minority while Indo-Fijians formed a significant portion of the population. This contributed to Fiji developing as a multi-ethnic and multicultural society without a clearly defined common cultural foundation.

3.7 Unlike these countries, Fiji should not be striving toward bicultural recognition. Indigenous Fijian language, institutions, and culture have always been present. The failure of government administration and the Constitution to fully embrace and reflect this culture may be attributed to political shortcomings. There is now a stronger case to address this issue, especially as Indigenous Fijians make up approximately.

3.8. Bringing the Fijian culture into the center of government administration and constitution maybe illustrated as follows;

i. Instead of the senate, have the Great Council of Chiefs.

ii. Instead of parliament, have the "vale ni bose lawa"

iii. Instead of the national anthem being sung in English, sing it in the vernacular Fijian only

iv. On every official announcement, government officials should speak Fijian at the introduction.

3.9. I will come back to my point on the need for the GCC to replace the senate.

4. THIS AMENDMENT MUST RESTORE ALL ASPECTS OF RECOGNITION AND PROTECTION OF FIJIAN CULTURAL IDENTITY, INSTITUTIONS & GROUP RIGHTS LEFT OUT BY AUTHORS OF THE 2013 CONSTITUTION

4.1 Altogether there are nine (9) provisions in the 1970 and 1997 Constitution taken together that contain recognition and protection of Fijian cultural identity, institutions and group rights that the authors of the 2013 Constitution rejected and left out.

4.2 Two provisions however of the 1970 Constitution are repeated in the 1997 Constitution so that the total is actually 7.

4.3 These are;

i. First, Chapter 13, S185 dealing with group rights. S185 brings into the Constitution the form of protection now consistent with UNDRIP and ILOC 169 dealing with the need for consultation and prior and informed consent before a legislation is introduced or amended dealing with an indigenous itaukei people. S185 says, government cannot amend any legislation dealing itaukei land rights and cultural autonomy namely, Native Lands Act, Native Land Trust Act, Fijian Affairs Act and Fijian Development Fund Act unless approved by the majority members of the GCC in the senate. This was deliberately left on by the author of the 2013 Constitution.

ii. Second, S186 deal with Customary laws and customary rights. This provision say parliament must recognize and make provision for customary laws and customary dispute resolution. This was totally thrown out and left out of the 2013 Constitution by its authors.

iii. Third, Chapter 8, S116 gives Constitutional recognition of the Bose Vakaturaga or GCC and its Constitutional role of appointing the President and disciplining the President. This also was thrown out and did not find a place in the 2013 Constitution.

iv. Fourth, S90 the 1997 constitution recognize role of the GCC in appointing the president and vice president. This did not find a place in the 2013 constitution and was thrown out.

v. Fifth, S93 of the 1997 constitution recognize the role of the GCC in removing the president or vice president. This also did not find a place in the 2013 constitution and was thrown out.

vi. Sixth, S64 of the 1997 constitution recognize the role of the GCC in appointing over 43% of the Senate. This was also thrown out and did not find a place in the 2013 constitution.

vii. Seventh, Chapter 5, S44 recognize social justice and affirmative action. This has been the section used by government under the 1997 constitution to justify the grant of 50% scholarships to itaukei, 50% employment in the civil servant and 50% commercial grant benefit. This was also thrown out and did not find a place in the 2013 constitution.

4.4 SWN is begging the committee to restore the rights recognised and protected under S185, S186 and S44 of the 1997 Constitution because these provisions deal with Group Rights recognised under ILOC 169 that Fiji ratified in 1998 and UNDRIP that Fiji endorsed in September 2023.

4.5 Alternatively, and SWN recommend this, this amendment to expressly mention *ILOC 169 and UNDRIP and Fiji's obligation to implement them under its laws and policies subject to those rights being balanced with fundamental Human Rights and the rights and interests of other communities.

4.6 S116, S90, S93 and S64 of the 1997 Constitution deal with the GCC and SWN will make submissions on that later.

5. HOW ARE THE RESTORATION OF S185, S186 & S44 OF THE RIGHTS RECOGNISED UNDER THE 1997 CONSTITUTION TO BE ADDRESSED IN THE PROPOSED AMENDMENT.

5.1 Like the 1997 Constitution, SWN begs the committee to have the Constitutional recognition of ILOC 169 and UNDRIP under a chapter to look after group rights and minority rights.

5.2 On ILOC 169 and UNDRIP a provision should expressly mention Fiji's obligation to implement them under its laws and policies subject to those rights being balanced with fundamental Human Rights and the rights and interests of other communities

5.3 The restoration of the rights recognised under S185, S186 & S44 of the 1997 Constitution should be expressed under this chapter.

6. GCC TO BE BROUGHT TO THE CENTRE OF GOVERNANCE AND THE CONSTITUTION

6.1 If you look through Fijis Constitution making process starting with the 1970 Constitution you will see that its authors are almost at pains trying to bring into the Constitution the GCC as a unifying role and house to review the Laws passed by Parliament.

6.2 In part 3 of this Submission we argued the need, in accordance with contemporary thought, for the Nation to adopt & accept the Culture of the Indigenous peoples of that country as the common Cultural identity of the Nation to be reflected in its constitution and all aspects of governance.

6.3 For this and other reasons we beg and request that this Committee recommend to the Government that the Senate is to be replaced by the GCC but only if the current GCC members can agree to invite a representative of the Council of Churches and other ethnic community representatives to join them.

6.4 Another important justification is relevance and national interest. Placing the GCC at the very top and above parliament gives to it the important national and unifying role that they are the GCC not for itaukei but for all Fiji and the Fijians.

6.5 This new look GCC will have 14 permanent members comprising heads of the provinces plus 10 appointed and elected members representing religious heads, ethnic representatives and people of good national standing.

6.6 The role of the new look GCC will be as head of the nation and head of the cultural autonomy and as head of nation it will be a house of review to scrutinize the laws and policies of government to see that they are morally sound and does not abuse the interest of any ethnic community.

6.7 It means also that the composition of the provincial council must change to include elected representatives of all ethnicities in a province so that the provincial council is for all itaukei communities and individuals residing within a province but that will be upon the executive government to do so.

7. AMENDMENT MUST COMPLETELY REPLACE THE 2013 CONSTITUTION

7.1 SWN looks forward to the complete replacement of the 2013 Constitution by this amendment, something similar to the 1997 constitution amendment that totally replaced 1990 Constitution.

8. REMOVE IMMUNITY PROVISION

8.1 SWN wants to place on the record its support for the GCC recommendation that the immunity provision must also be removed by this amendment.

8.2 The Supreme Court opinion that the immunity provision cannot be amended is not a coercive order to be followed but it is a mere opinion.

Also with the greatest respect SWN is of the opinion that the Supreme Court is wrong to uphold a provision of a law that forbid the legislature from doing its independent and core role of making and amending laws. The problem we have is you cannot appeal the supreme court opinion but that does not forbid parliament from removing the immunity provision and leaving it to anyone that object to challenge it in the Courts.

8.3. The immunity provision contradicts the basic maxime that everyone is equal under the law, it is also unfair against those who committed the same offence and have already served and it also implies that the law is you can commit a coup, introduce a new constitution, entrench within a immunity provision, conduct 3 or 4 elections under it and that will legitimize everything.

9. REMOVE S30 ON OWNERSHP OF MINERALS BY THE STATE

9.1. SWN submit that the part of S30 of the Constitution that confer ownership of minerals to the state must be removed because this was never a part of any previous Constitution and the debate on whether landowners should own the mineral is still current.

10. AMEND RIGHTS OF CHILDREN

10.1. SWN submit that S41 on the rights of the children should be amended with a proviso that say that the rights of the child is subject to parents and state decision to decide what is in the best interest of the child.

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Niko Nawaikula
President
Stand With Niko (SWN) Advocacy

Ministry of iTaukei Affairs (MTA)

Ministry of ITaukei Affairs
Date:01-05-2026

Leighton: Good morning, members of the Ministry of ITaukei Affairs. My name is Leighton Fatiaki. I'll just be going through a few housekeeping matters with you. On behalf of the Constitutional Review Commission, I'd like to take this time to thank you sincerely for accepting our invitation to make submissions before the Commission and taking the time to come today. I'd especially like to thank the APS, Mr. Tuione, Acting Director, Development Services, Ms. Venina Moce, and the Deputy Secretary of Policy, Mr. Joeli Ditoka, as well as the Chairman of the ITaukei Land and Fisheries Commission, Retired Colonel Meli Saubulinayau, and the Deputy CEO for ITaukei Land Transport, Mr. Josefa Toganivalu. Just with regards to making submissions, there are mics in front of you.

If you can just press on the right panel on the mic in front to turn the mic on to speak. And then once you've made your submission, you can press the same panel to turn the mics off. After this, Chair will introduce the Commission and the work that they will be undertaking, as well as introducing the Commissioners, or he will ask the Commissioners to introduce themselves. We also request that after the introductions have been done, if the team can also introduce themselves. This is for the transcript and the record. Vinaka.

Mr. Valenitabua: To lady and gentlemen from the Ministry of ITaukei Affairs, Sevuloni Valenitabua, the Chairperson of the Constitution Review Commission. To members of the press, this morning we will have a slight change. I have been chairing all sessions of consultations from day one with the Great Council of Chiefs. From next Monday, this Commission will be divided into two teams. One team will travel to the Lau Group and the Lomaiviti Group, which I will head. And the second team will be traveling to Beqa, Kadavu, Ovalau, and Vatulele That team will be headed by Dr. John Fatiaki. So, this morning the change will be that Dr. John Fatiaki will be chairing the meeting in my place. I will be sitting here, so he will continue as Chairman when I hand the mic over to him.

Dr. Fatiaki: Madam Gentleman of the ITaukei Affairs Ministry, let me say on behalf of our Chair and reiterate our thank you to you for taking the time to come into this session to make a presentation in response to our invitation to you. This is an important task, and to have you on force this morning is an important reflection for us on the importance of this work. You're all aware that we were convened by a Presidential Commission under the

Inquiries Commission Act, specifically to address what the President referred to as the democratic deficits that were identified in the 2013 Constitution under which we operate. We are also guided by the Supreme Court rulings that the government sought earlier on this year, and on that basis the Commission was instituted. We were appointed to undertake this task.

Let me emphasize that our job is to review the Commission in the context of, one, our terms of reference, and I will allude to that temporarily, but also in respect of the so-called democratic deficits. Very specifically, the identified democratic deficit that was most prominent was the lack of widespread consultation. So, our second term of reference asks us to seek input and basically extend to all the people of the Republic of Fiji meaningful consultations to ensure its provisions reflect the values, the needs, and the aspirations of all the people of Fiji. Widespread consultation, and we intend to undertake that. We've started that task, and we will continue to all the furthest corners of Fiji.

The second aspect of our task is obviously to assist in this process in terms of clarifying what the required amendments or revisions are. I should emphasize that the Supreme Court has only directed us to refrain from addressing Chapter 10, which is the chapter on immunity, but every line of every other chapter and section is open to debate, and therefore I welcome your submission and likewise to the extended public of Fiji as we head out. Specific to ITaukei Affairs, I will point out that there are three provisions in our terms of reference that address very specifically your area. Three out of 12.

We have been directed to ensure that we protect and guarantee under the Constitution the rights, interests, and concerns of indigenous Fijian and Rotuman people as well as ensuring the rights of other communities and groups. We have been directed, under our terms of reference, to look at protecting, guaranteeing, and securing under the Constitution land and fishing rights and resources of indigenous Fijians and Rotuman's and assuring that registered owners of native lands and customary fishing rights have an equitable share of the income derived from the exploitation of the resources beneath and above the surface of their land, their sea beds, rivers, etc. Number three, we have been directed and guided by the terms of reference to recognize the role of the great council of chiefs in the national affairs of the state under the Constitution.

Lady and gentlemen, I've only read that out because this pertains directly to you, the Ministry of ITaukei Affairs. We have been included in the terms, you have been included in the terms of reference. I want you to be aware of that as you make your presentation. You've heard from our chair, the next two weeks we head off. Maritime provinces will be covered by the two teams. We get together again in Vanua level and spend about three and a half weeks there and then the remaining five and a half weeks are spent in Viti level.

At every major center, meaning Savusavu, Labasa, Suva, Ba, Tavua, at every major center the entire commission will sit as a group of seven. When we go into the smaller areas from Sigatoka, we will divide into two groups after the Sigatoka meeting and they will be addressing it at a group of three or four. I head one of the teams.

We want to make it clear that we want representation and on each of these groups we have a lady, we have an ITaukei speaker, we have an Indo-Fijian speaker. That is representative, that will be going to all the areas that we intend to cover. And finally, we end up on my island of Rotuma, the first of the third of July.

I think for a week after that our chair will make decisions with the secretariat. We might accept some more submissions in-house and that will be the final wrap-up before we start deliberating and preparing the constitution review report proper. Let me emphasize our job is to collect these submissions, putting to a meaningful thing that reflects what we have collected and preparing it in a report.

Our job ends there once chair and our secretariat hand it to the president. The political decision-making as to what happens to that is not in our hands. I emphasize we are not part of the law-making. Our process is to do this. Lots of times I address this because people ask us in the media about the referendum, about the parliamentary process. That is entirely the prerogative of government. That is not ours and we try not to address it in this forum. I put this out so that people don't ask us questions about changing the laws and whether we've got enough time for the referendum. That does not come into our consideration.

What we are interested in is this book, our constitution, 2013, and the people's idea about what they want done with this in terms of the review. Those are just in the way of introductory comments. I'd like now to introduce my fellow commissioners. If I could start with Mere, please,

could you introduce yourself, and then we'll move on to the other side. Thank you. Thank you, Chair.

Ms. Nailatikau: Vinaka to members of the ITaukei Affairs Delegation. Thank you for your presence here this morning. My name is Merewalesi Nailatikau. I am from Kadavu with maternal links to Kabara in Lau. I'm an independent consultant. My background is in public policy and public diplomacy.

Dr. Baba: Sa bula Vinaka mai na ITaukei Affairs. It's really nice to see you today. Welcome to our space. We look forward to listening to you today.

Mr. Beg: Vinaka, Ministry of ITaukei Affairs. Thank you for coming today. My name is Conway Beg. I'm an architect by profession, and I'm really delighted to be in this space and to listen to basically your presentations and be as interactive as possible. But thank you.

Mr. Valenitabua: For the record, gentlemen and ladies, Sevuloni Valenitabua chairperson of the CMC. CRC, sorry. Thank you.

Dr. Fatiaki: I'm Dr. John Fatiaki. I'm a medical practitioner by profession. I am presiding over this session on behalf of our chairman.

Mr. Tuione: Sa bula Vinaka to the chairperson, Mr. Paula Tuione. I am currently acting PS for the Ministry of ITaukei Affairs. Thank you for the invitation. I'm looking forward to the deliberation this morning.

Josefa Toganivalu: Bula Vinaka Josefa Toganivalu, Currently the deputy CEO. I just want to make a reference. I'm not the deputy CEO of the ITaukei Land Trust Board, of the ITaukei Affairs Board. Thank you.

Meli Saubulinayau: My name is Meli Saubulinayau. I'm a former military officer. Now, the chair of the NLC.

Joeli Ditoka: Bula Vinaka, commissioners, chair and presiding officer. My name is Joeli Ditoka, and I'm the deputy secretary of policy at the ministry.

Venina Mavi: Bula Vinaka. I am Venina Mavi, currently the acting director of the Development Services Division, and I'm from Nakorovou Dreketi Rewa. Vinaka.

Dr. Fatiaki: Thank you very much. Now I hand the mic over to you, PS, and your team to make your submission. Thank you.

Mr. Joeli Ditoka: Vinaka, the chair of the Constitutional Review and presiding chair. My name is Mr. Tuione. of the members of the Constitutional Review. Our presentation this morning will be delivered by Deputy Secretary of Policy, Mr. Ditoka. Now, however, before I hand over to him, I wish to acknowledge the invitation to this very, very important part of government reform in the sense that how we can best contribute into this delivering of the Constitution. Firstly, we acknowledge the brief introduction by the presiding chair, which really outlines the importance of this exercise. Second to that, we also acknowledge that the Itaukei Affairs are part of the CTOR as well.

We believe that our contribution this morning will be somehow contributed to trying to address the three main areas of trying to review the current Constitution that we have. We are here this morning with an understanding that we are able to deliver and also are ready to exchange a few collaborations and discussions in our presentation this morning. So, without further ado, I now hand over to DAS Policy, Mr. Ditoka, to take us through our presentation for our submission this morning in our level.

Mr. Joeli Ditoka: Respected Commissioners, thank you. Just to take us through a copy of the submission, I believe it was sent to the Secretary earlier this morning. We have six main points in our submission and also noting the presiding member's comment about the possibility of submissions, we take note of that also.

So, the purpose of the submission of the Ministry is to propose some targeted constitutional reforms to strengthen recognition of iTaukei rights, as already alluded to by the presiding member and our acting PS that is part of the TOR already, institutions and contributions within a unified national framework that upholds equal citizenry and also fundamental rights. Our first point is going to that recognition of indigenous rights and perhaps a step further, as was previously included in the 1997 Constitution, the possibility for recognition of customary law.

The Ministry submits that the Constitution should expressly recognize indigenous rights, including the status of customary law as a source of law, subject of course to the Constitution and the Bill of Rights. The current constitutional framework does affirm equal citizenry and human rights, but does not recognize customary law or indigenous group rights as a separate bundle of rights or as a general source of law. I just made allusion to the 1997 Constitution. Attached to our submission we have

an excerpt from the 1997 Constitution, specifically Section 186 which gave recognition to customary laws and customary rights.

In fact, that the Parliament must make provision for the application of customary laws and for dispute resolution in accordance with traditional Fijian process, to quote that subsection one there. Unfortunately, under the previous constitutional arrangement, by the time the Constitution was finally abrogated in 2009, Parliament hadn't gone around to passing any laws, but if the Commission is looking at the wording that the Ministry is considering, it's not difficult. Don't have to reinvent the wheel because it was in the previous iteration of our Constitution.

This would provide for judicial development, application of customary law in appropriate contexts, including land, governance, and dispute resolution. And of course, there has to be a balance against the Bill of Rights maintaining equality, dignity, and non-discrimination. That's the first point of the submission.

The second point is the recognition of historical contributions of indigenous peoples and perhaps a sovereign wealth mechanism. It is the submission of the Ministry that the Constitution should acknowledge historical sacrifices and contributions of Itaukei chiefs, communities, and other indigenous groups in the country for things including but not limited to the provision of land, particularly the urban and peri-urban landowning units, the stewardship of natural resources including water sources, and the maintenance of societal order and governance structures, and beyond that the overall economic participation in the life of the state. Because while constitutional frameworks have traditionally recognized land ownership and tenure and the institutional roles in this in the past, there is limited recognition of the economic value of these contributions, which I think as a point of history is significant.

In fact, the Taukei Land Trust Board has done some work towards establishing a sovereign wealth fund, but that's from the landowner's own resources. There's never been any recognition by the state of these historical sacrifices and contributions. The commission would be aware that the Ministry of Local Government is bringing certain peri-urban and urban landowning units and villages into the municipal framework, which would require payment of town and city rates.

But traditionally there's been no recognition of the resources that have been surrendered and sacrificed by these very same institutions,

landowning units, for the development of the economy. So, if there could be some constitutional recognition and perhaps enabling authority for establishment of a sovereign wealth or intergenerational equity mechanism which would give recognition to those. We have not located in our research over the last couple of weeks a contemporary example in another jurisdiction, but that shouldn't stop the commission from considering this point.

And also related to that, the second point of the TOR, which is related to fair share of royalties, it's the submission and recommendation that beyond royalty payments that actual ownership rights be recognized. It's not the norm in most states, but that does not stop us as a sovereign nation from transferring the actual ownership rights rather than just limiting it to fair share, especially with deep sea and mineral resources. Thank you.

The third point is the constitutional guarantee of consultation. The ministry proposes a constitutional requirement for meaningful consultation with ITaukei institutions before decisions affecting ITaukei interests are taken. To be clear, this is not replacing the consultation requirement that's already in the constitution.

Any laws that affect a particular group, that group has to be consulted. This is in addition to that requirement for consultation, mirroring what is already in law in the ITaukei Affairs Act, which requires legislation or major decisions impacting ITaukei to come first to the ITaukei Affairs Board and the Great Council of Chiefs before being tabled in Parliament. So, it's simply elevating that protection and guarantee into constitutional recognition.

And that would ensure certain customary land and resource decisions, traditional government structures, and cultural heritage and identity or any decisions impacting those things will have some consideration by the institutions that are meant to safeguard them. Also, just a final point in our recommendation, these consultations should be defined as timely, good-faith engagements with a genuine opportunity to influence outcomes and not merely box-ticking exercises on the part of the state. I think I already said this is in addition to not replacing the requirement for the impacted groups, including the specific LOU, the Vanua, or the general public as the case may be.

And of course, I should have mentioned at the onset of this point, the constitutional recognition of the GCC, which is the point three of the DOR in any event. The fourth point, Commissioners, is relating to official language. We understand that actually when we did our research into the previous constitutions, including 1970, 1990, and 1997, there's never been an official language actually in any of our constitutions, probably to do with resource limitations or whatever the case may be.

However, they did recognize parliamentary proceedings where the official language was English, with the right to use feature in this time. But it is the submission of the Ministry that it should be one of the official languages, or at least should be considered by the Commission in addition to English and whatever other languages. The fifth point touches on the President and the Commander-in-Chief.

The appointment of the President currently sits with Parliament. The Ministry submits that this could be reverted to the Great Council of Chiefs to preserve and remove the politicization of the office of the President, because currently the mechanism is a nominee from the Prime Minister, as well as a leader of opposition and a vote in Parliament. Moving it to the GCC would remove the political aspects of the appointment, and it would be a non-political body making the appointment.

Also, in the same vein, for the three-year term to be increased back to five years, we believe that would give the necessary gravity and importance which the office used to hold. Otherwise, you'll have a new head of state every six years, which seems a little counterintuitive. We also thought that the current Constitution seems to diminish the importance of the President's role as Commander-in-Chief, so the recommendation of the Ministry is the wording previously used in Sections 87, 90 and 91 of the 1997 Constitution be reverted to. Those provisions are annexed also to the submission of the Ministry.

The final point, Commissioners, is the Senate and the legislative process as a whole. The Senate, as you would appreciate, provided a secondary House of Review for legislation after it was passed by the House of Representatives under the three previous Constitutions, the 1917, 1990 and 1997. And in the 1997 Constitution, the nominees of the Great Council of Chiefs actually had a veto power over legislation that affected the indigenous people in particular. In fact, nine of the 14 GCC centers had to approve before it would pass, even if it had a majority. Without the

nine, it would not pass, and that was the safeguard to ensure consultation and consideration.

This also impacts the use of Standing Order 51 because the legislative process under the previous Administration, without making this a political statement, out of the hundreds of legislations passed in the eight years, Standing Order 51 was used for almost every single bill that was able. And maybe you can count in a single hand how many went under the full legislative process. So, the recommendation is one, the reintroduction of the Senate, and the second one relating to bills passed under urgency is to put some guardrails on Section 47, Subsection 3 of the Constitution.

It currently only requires a majority of members to skip the full legislative process, which is the basis for Standing Order 51 and the parliamentary standing orders. So, there could be some guardrails to make sure that it is not too restrictive, so that the genuine emergencies and genuine urgency, they can pass laws faster, but for it not to be the norm. That's the sixth and final submission point.

And in conclusion, commissioners, we also note the prior submission. In fact, one of the first submissions of the Great Council of Chiefs, and in recognition of their position within the ITaukei governance framework, noting that they are the mouthpiece and the voice of the ITaukei, we support the prior submission of the Council. And these proposals from the Ministry are meant to augment and to frame the strengthening of constitutional recognition of ITaukei rights and institutions, maintaining Fiji's commitment to equality, unity, and the rule of law. Properly calibrated, we believe they will be enhancing the legitimacy, social cohesion, and long-term stability by aligning the constitutional order with the lived realities of Fiji's indigenous peoples. And thank you, commissioners. Thank you very much, gentlemen.

Dr. Fatiaki: Thank you for that very clear, lucid, presentation, taking us through the various aspects of the submission that you have presented to us. I might now open the floor to my colleagues on the review commission to see if they need any clarifications or they'd like to raise any issues that have been brought here as part of your submission. Colleagues? I don't see a mic on, so I might just lead the process.

Mr. Valenitabua: Gentlemen and lady, your point two, recognition of historical contributions, that is clear, and the sovereign wealth mechanism. How,

could you please expand further on that, on the sovereign wealth mechanism to be established? Please?

Mr. Joeli Ditoka : Yes, commissioners, chair, and presiding member, it could be a trust fund, something like the iTaukei Trust Fund Board, which is legislated to provide for the Great Council of Chiefs specifically, but it would be a fund, perhaps, to be established to look after iTaukei interests more broadly. And depending on whether there'd be a separate fund for Rotuma or the same one, the mechanics would be left to the legislative drafters, but that's the idea, to have a trust fund with its own legislation.

Perhaps just a constitutional recognition and provision for the possibility of, similar to the customary rights and customary law recognition.

Dr. Fatiaki: Thank you very much for that. Conway?

Mr. Beg: Thank you very much, chair, and just in response, thank you for your illuminating presentation. You know, I looked at the areas and you made references to the various constitutions, which kind of had some of those instruments and some didn't have it, and what the ministry is now requesting for proposal. I mean, the one that I kind of liked at the moment was your point about the governance model, you know, at the moment. And it's kind of illuminating because it's coming through and the shift of power being centralized, you know, and you wanted a bit more structure in that sense.

And then the other point about your indigenous recognition, I think there's no, in the current constitution, if I hear you correct, there's no explicit indigenous constitutional status, is the proper right word, if that's what I'm hearing. And you're asking the ministry to, or your point of view is to the recognition of Itoki rights, more so in that. So, yeah, thank you. I just wanted some clarity on that. It was good. But, yeah, most of it is really illuminating.

The part about the Senate, you know, that's coming through quite clearly in a lot of other submissions, so it's good that you're bringing these points to the forefront. But, yeah, I'd like to discuss that more and further with the team, but I want to acknowledge your presentation. Thank you very much for that.

Dr. Fatiaki: Thank you, Commissioner Beg. Commissioner Nabobo? Thank you. Thank you, Todays chair, for point number one, Mr. Ditoka and team. I'm just wondering, because the chair of NLC is here, I would like to throw, if

you can throw a bit more light. When we talk about indigenous rights, you're talking about, in particular, CRC, which international convention was that? Was that the 27th, 2007? Your international convention.

Mr. Joeli Ditoka: Oh, the UN DRIP.

Dr. Baba: Yeah, UN DRIP, right. So, we have UN DRIP to quote from. We also have, there's another one that I'm particularly interested in, and this is the 2003 Intangible Heritage Convention of the UN. Could you please tie those two together in your submission? Because when you argue this case further, particularly as it comes to involvement of institution to make sure they do this in the future, the two need to be tied together, in my view. Now, in customary law, could I just get a bit more, just a little more explicit comment from the NLC's point of view? Sometimes, in my mind, I can't distinguish between customary law and the legal fraternity that argue for land acquisition. For example, I refer to the case in Monasavu by Israeli FA. He won the case, but I'm just wondering in the cases of the rest of Fiji.

For my university, we are acquiring land all over Vanualevu because chiefs are gifting them for free. I like this clarified because I'm iTaukei, I understand the weight of land gifting. Because there's a lot that is done on the pretext that the receiver understands the weight of the wealth. So FNU will do it differently. It's not explicitly stated anywhere that when you are gifted land or when you lease land, that there is some assumption by ITaukei that we understand. Because land gifting is the epitome of chiefship. Minus the GCC, there's no more land gifting. You would have to just say it as that. But I'd like the NLC to just clarify a bit further because it's not written in your submission. I'm sure you'll detail that. But we assume as it's okay that people understand the weight of land gifting, the weight of gifting land through leases, particularly in 1999, as I'll be the mother of the generation. So, is NLC involved in this? Some clarity around your second paragraph, I'd appreciate just the detail of what you want. Is that in line? Thank you, Chair. I would like that just a bit more.

Dr. Fatiaki: Thank you, Commissioner Nabobo. I think those should be seen as reflections. It isn't a specific question. It's just more just clarification and reflections. Commissioner Merewalesi, please.

Ms. Nailatikau: I believe a member of the delegation wanted to respond. I'll give this time to you.

Ratu Meli: We're referring, if something is found on that land, like mineral or oil, that the ownership be referred back to the actual owner. Because below the six feet, they say it's government. But before government came into place in 1874, it was fully Fijian. Everything was Fijian. But after 1874, it changed. It's a source of income for government. And we have spent over 100 years giving to government, giving to government. It's time that it comes back. Thank you.

Dr. Fatiaki: Thank you, Commissioner Meli. Let me just reaffirm again that some of these issues have already been brought up with us. We're very, very clear about it. They've already started discussions amongst ourselves. And I just want to reassure you that this is not the first time it's come up. It's come up because it's meaningful to a lot of people.

It's been very passionate in some of the presentations, particularly by individuals. And we recognize that. Our job is not to make distinctions on what government should have and what people should have. Our job is to listen to what the people say and incorporate it into the Constitution in a meaningful way that addresses those, if that is the majority view and the considered opinion of the commission, that that is in the best interests of the country. I think I just want to reassure you in terms of our consideration of that. People have spoken very passionately about it. And that passion comes across, and we will definitely consider that in making final deliberations. Thank you. Ma? Thank you, Presiding Chair.

Ms. Nailatikau: I really welcomed your point about the appointment of the President and the Vice President. As you framed it, this being able to be depoliticized, as you mentioned, by the GCC being involved in consultation with the Prime Minister, I believe, as you accepted with reference to the 1997 Constitution. I would welcome your expansion and a little bit about your thinking in terms of balancing what may be the depoliticization, but also ensuring that the voices of the people, for instance, are reflected in the selection of a very important representative, the President and Vice President. And I believe, if I'm not wrong, the current Constitution also includes the Leader of the Opposition in terms of making it a bipartisan process. And again, just welcome the expansion on the reflection and analysis that went into this. Thank you.

Dr. Fatiaki: You could take that as a question or a reflection, if you want to answer. We appreciate that.

Ratu Meli: In the past 16 years, if you had noticed, the appointment of prominent people, it was done so that they support the government of that day, in the case of the Police Commissioner and the Commander. But we were lucky in 2022, when the appointment was made about Ratu Jone, that he stood his ground. Because he was put there in case of the election going wrong, he was supposed to take over the government. Because that has been going on for the last 16 years. Naupoto was put there for that case. That's the point that I'm trying to bring to the table, that it should be taken away from the political head and be given to someone who is actually the head of the nation, which is the President. If you see in the 2013 Constitution, the President is only wearing a ceremonial job. He's not actually the Commander-in-Chief. He's only doing ceremonial. Thank you.

Ms. Nailatikau: Thank you, Mr. Saubulinayau. I appreciate your in-depth reflection. Thank you.

Dr. Fatiaki: If I may just add to that, just in the way of reflection, and because this alludes to point number five, the President and Commander-in-Chief, I think the message that has come through very clearly and is elucidated quite clearly by Ratu Meli is that we don't want a President, one, to be politicized, the appointment. And as soon as you give it to Parliament where people get elected, there's an opportunity for politicization. History over the operation of this Constitution over the last 13 to 14 years has indicated, for instance, that the President, as rightly pointed out, acts expressively on the advice of the Prime Minister.

So, what Ratu Meli alluded to as a figurehead, again, there's that part of it. And then the other area in terms of curtailing the issue and their request for an increase in the Commander-in-Chief's discretion as the Commander-in-Chief of the Army, that that power be, I guess, given to him, independent of the political process, so that it remains separate and independent of the government of the day. The example given in terms of how the ex-President reacted when the election outcome had been announced, we're all aware this is public knowledge, it was in the newspapers, it was a flick of the coin that could have landed on the point where the election process or the election outcome was not recognized

and the President could, I guess, technically abrogate whatever was in place or the results of the elections.

I think the example given was that he chose not to go with the political sway despite his political appointment and despite the risk that he would be removed. That sentiment is coming through, and I think, because this alludes to the fifth point that you brought here, is the independence of the Presidency. Now, we are going to obviously deliberate the process of appointing a President that represents all people in Fiji, and that's where my fellow Commissioners come from, in trying to make it reconcile that he becomes representative of all peoples of Fiji.

And I think that's the question that was asked. And I think your reservations about how it's been operating is recognized. How we go about in terms of balancing the two, I think is an area that we are going to address in great detail, and we thank you for the clarifications and the examples that you give because it helps us recognize how things operate in the real world, not necessarily in what we think is the ideal world that it should operate in. Chair?

Mr. Valenitabua: Mr. Ditoka, gentlemen and ladies, your point two and recommendation number five, bullet point number five, it says, point two, recommendation bullet point number five, consider amending the constitutional provision relating to fair share of royalty to actual acknowledgment of ownership of natural resources, including mineral and deep sea. The constitution, the 2013 constitution has section 30, subsection one, and it says all minerals in or under any land or water are owned by the state, provided, however, that the owners of any particular land or of any particular registered customary fishing rights shall be entitled to receive a fair share, that is where that word comes from, that phrase, a fair share of royalties or other money paid to the state in respect of the grant by the state of rights to extract minerals for mining from that land or the seabed, deep sea mining, in the area of those fishing rights. Now, this is now in the constitution.

You are recommending that the constitutional provision, which is section 30, be amended in relation to the fair share of the royalty. The fair share of the royalty is provided in the subsection two. However, we don't need to go to that because the second limb of that bullet point says that actual acknowledgment of ownership of natural resources, including mineral and deep sea, should be in the constitution. So, are you

suggesting section 30, subsection one, to be amended to say that all minerals in or under any land or water are owned by ITaukei land owners?

Mr. Tuione: Yes.

Mr. Valenitabua: Is that what you are getting at?

Mr. Tuione: That is the submission of the ministry. Thank you. And government can take the fair share for the public through taxation or whatever other...

Dr. Baba: Yes. Chair, can I contribute a part to that? Sure. Commissioner Nabobo. I think the reversal is what ITaukei is suggesting, is what... Internationally, I've done research around this, as I'm interested in land gifting and land blah, blah, blah, as an educator. None of my research in England and Scotland say that you give six below to the government. These are the people that came here to introduce this. It's colonialism again. So, yes, I totally agree with you, and I'm glad we've reached this point today. It's bothered me for the longest time.

Dr. Fatiaki: Commissioner Nabobo...

Dr. Baba: Just a reflection, eh? Just a reflection that I think that reversal you're suggesting to the chair is perhaps the way it should be. Because where the rule came from, they don't exercise that rule.

Dr. Fatiaki: Thank you, Commissioner Nabobo. Let me emphasize, and I speak on behalf of this commission, we don't agree or disagree with anything anybody brings. Let me just... On the record, these are reflections. We do not agree or disagree with anything that anyone brings.

Our job is to facilitate the process by which we can amend this constitution to address what it is you bring. It may have been just a slip, but I just want to reemphasize that. We're coming from a place of independence and a place of listening and consultation.

The actual process of arriving at the report will be subsequent, but we hear that very clearly. Again, I reiterate that paragraph I had marked in my constitution here because someone else has brought it to us, and his request was that we remove that passage. Which allows us a fair share, the indigenous owners, and actually remove it and replace it with ownership. And as rightly pointed out, you've added the other part, which

is then where does government get its revenue from? Through taxation and other mechanisms that are then put in place. That's a fundamental request. Colleagues? Conway?

Mr. Beg: Thank you, presiding chair. I just want to respond to a clarity from Ratu Meli. Because it relates to the President's role in the military. Chapter 6 of the constitution defines our disciplined forces and militaries in that section. It's interesting, I just wondered your clarity in that. Again, it's not in your submission, but you brought it up. I just wanted you to clarify that you're saying the role of the military in relation to the connection with the President's point in here, since you brought it up.

Because I'm just saying it would be nice to hear your qualification in regard to Chapter 6, because there's a section there, 131, which covers the military forces. Since you brought it up, is that going to be part of your submission or not?

Ratu Meli: I'm just explaining what we meant by saying that it should be the Commander-in-Chief who appoints them. And the appointment of the President to be apolitical, to be away from government. And at the present moment, as you are well aware of, the President is appointed by the political party who is leading government. So, we don't want that to happen. And the appointment of the Commander also comes from government. The President does not actually have any say to that. He just endorses whatever government gives him. But we are trying to say the appointment of the Commander, he should be appointed by the Head of the State, which is the President, whom we want to be elected by the Great Council of Chiefs, or an independent body.

Dr. Fatiaki: Thank you, Ratu Meli. If I might just add to that, again in the form of clarification, I think the term Commander-in-Chief is used very loosely in the Fiji context. So, Commander-in-Chief in the United States of America means that actually Donald Trump can direct the forces of the state at any point in time as per his wishes as President of the country and Commander-in-Chief.

The current constitution, the term Commander-in-Chief actually does not reflect that role. He actually is a Commander-in-Chief in name, in practice. One, his appointment as Commander-in-Chief is a political decision. Number two, the appointment of the constitutional officers of Commander of the Army and Commander of the Police, Commissioner of the Police Force, again, a political appointment under the Prime

Minister's office. And the President is therefore a rubber stamp for it. And I think that what's coming across is the need for one, the appointment of the President to be apolitical, not influenced by any political party.

And then number two, he is given the powers to be the Commander-in-Chief so that he does not have to act on the advice of the Prime Minister as per the current constitution. Did I summarize that correctly, Ratu Meli?

Ratu Meli: Thank you. Thank you, Dr. Thank you very much. VInaka, I hand over to our Chair. Chair, please.

Mr. Valenitabua: In relation to the appointment of the President, there has been a suggestion that the President be elected as in an election. You gentlemen and ladies would understand what that means. And candidates for the Presidency might have to be selected, and then there's an election for that. What is the Ministry of ITaukei's view in relation to the general election for the position of President?

Mr. Taione: Vinaka, if I may start with Mr. Chair. I think what we have alluded to in our submission, we are going back to the nominating from the GCC. However, for reflection on what you have stated, we believe if that is the case, that there should be clear guidelines or criteria followed in nominating those that has to be contested in that regard. However, the guidelines should be in a sense that the process is independent, transparent, and also highlighting the very important point of getting someone that is of high integrity, who can deliver this very, very important role as a President of the country. That is, if I may start off here, then maybe my colleagues can add into that. If it's elected like the usual election, then there should be clear guidelines or criteria followed in that regard. Thank you.

Dr. Fatiaki: Any more comments on that?

Ratu Meli: We fully support the submission by the Great Council of Chiefs that they be the appointing body. Thank you.

Dr. Fatiaki: Thank you very much, Commissioner Meli, and that is noted.

Joeli Ditoka: If there are no other comments, I'm sorry, your mic is on. I'm sorry to tell the Presiding Member and Chair, Commissioners. I think Acting PS and

the Chair, Victor Invernoy, have already alluded that we will stick with our submission as to the preferred methodology of the appointment of the Head of State and Commander-in-Chief. But just going back to our point, a general election would not further the depoliticization of the office. It would drive it in the exact opposite direction, because then you have the case like you hear often in America, not my President, which is the whole point our submission is trying to avoid.

Dr. Fatiaki: That point is taken. I didn't want to comment about it, but rightly so. Chair, did you want to...?

Mr. Valenitabua: Yes, just one more point, the official language. I note that in the 1997 Constitution, as you have stated, the official language was English, with a right for members to also use Fijian or Hindustani, as the languages were categorized then. Now, your recommendation is that the constitutional recognition of the ITaukei language in addition to English. Do you want that to be constitutionalized in the Constitution, or we'll just proceed with the practice that we now have?

Joeli Ditoka: In the current Constitution, there's no mention of official language, no mention of official language in Parliament either. It's just the requirement that conversational ITaukei and Fijian be taught in schools, and that the accused persons and the proceedings in the court system be in a language understandable by the accused. The Ministry's submission is that there be an official language, ITaukei English, and from our point of view, ITaukei at least in addition to English, and I'm sure other committees will include the other languages. The reason we're seeking constitutional recognition is because the Ministry has been trying to progress language policy, language commission and other things that we feel like if there was a constitutional recognition, the work would float down.

Dr. Fatiaki: Gentlemen, thank you very much. Any more contributions specifically from that side, from you, the sub-mittees?

Ratu Meli: The 1997 Constitution states that the language of Parliament be English, not national language. What we want is to be a declaration of a national language, which to include the ITaukei language. Now, will you?

Dr. Fatiaki: Thank you, Ratu Meli. That is very clear, that request, and it will be certainly discussed at length and taken on board. If there are no more

specific questions, I might just make a small correction. This refers to the recommendation and the acknowledgement of the historical contributions and sovereign wealth that was made by your presenter in respect of specifically, number one, the Constitutional Recognition Clause acknowledging these historical contributions.

Just in the way of explanation, I'm Special Administrator for Suva City Council. That's another role that I have. And as part of that, that recognition is why in these municipal elections that are about to happen in September, we have incorporated all the villages that are within the city boundary and all the informal settlements to take part in the actual election.

They're eligible to. Prior to that, they couldn't because they were not ratepayers. But in recognition of the fact that Suva sits on, you know, Tui Suva land, the idea that the Suva village could not vote in the municipal elections is a recognition of this. And because of that, they are actually included. I just want to point out they won't have to pay rates at this point in time. So, they've been allowed to vote in this first municipal elections, but they're not enforced ratepayers as per the current status right now.

What may subsequently happen in terms of municipalities, in terms of local government subsequent going forwards is something that will be discussed further. But to my knowledge as a Special Administrator, they are not being given city or town rates at this stage. Thank you.

Dr. Baba: Commissioner Bobo. I hope this is a reflection, not to influence you in any way, but it's to do with your commenting on languages. Now the last government had put together a team. We wrote the decades work for this country on languages because internationally, this is the decade of indigenous languages. So, I haven't seen anything like that launched by government. But in reflection to what you're pushing Ratu Saubulinayau, we have done the work for the next 10 years. We are supposed to be. Now, if you look at what I referred to earlier, which is the intangible heritages, indigenous languages in the world is 6,000, 1,500 sit here in the Pacific. Yesterday, the conversation on Creoles and languages was indigenous languages include Fijian language. It's not Ithaca, it's Fijian. So, I wonder, just in clarifying your pushing for languages, because this is the decade that we are supposed to do work around that.

One, we did that work for you, Ditoka, and it's not launched yet. Because when you launch it, you'll give it money. I'm just wanting your reflection

because you really are hitting an important point, I think. But in reflection from where we sit, because this is going to go down, indigenous languages, this is the decade. So, it's not you are referring to what we are supposed to do. Is that what you're saying? Thank you.

Dr. Fatiaki: Thank you, Commissioner. Make it a reflection, sir, chair. Thank you. Again, I reiterate, we will actually have another presentation shortly. In respect of that specifically, let me reemphasize, our role is not to support or oppose any aspect. We're not going to show any tacit support or anti any submission.

We will remain neutral, we listen to what you want, and we will take that into consideration with what other people want. And we promise you we will apply ourselves for that task diligently. Thank you again very much, and please, PS.

Mr. Tuione: Thank you, Presiding Chair. I think before we end, on behalf of the Ministry, we wish to acknowledge the deliberation this morning. We have noted a few suggestions that are coming. We'll also be willing to, available if there is any further clarification from the team, we'll be around to assist in that regard. So once again, thank you so much for this opportunity, and we thank you so much for giving us the opportunity to share a few of our inputs in this very important exercise. Thank you.

Dr. Fatiaki: Thank you, Turaga PS. Madam, gentlemen, we thank you again for coming and making your presentation. We've enjoyed the session this morning, and we hope it's been helpful for you as well as for us. Thank you. Thank you.

----------End of Session [01-5-2026] ----------

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File Ref: MTA 6/58 **Date:** 30/04/2026

Mr. Sevuloni Valenitabua
Chairperson
Constitutional Review Commission
Level 9 Suvavou House
SUVA

By Hand Delivery

Subject: **Ministry of iTaukei Affairs Submission**

1. Reference is made to above-mentioned subject your letter, received by the Ministry, in relation to the same.

2. Our Ministry has prepared a written submission, which is attached.

3. We hereby forward the same for your consideration and will continue to support the Public Awareness and Community Engagement activities to assist the Commission in this important work.

Vinaka Vakalevu

Paula Tuione (Mr.)
Acting Permanent Secretary for iTaukei Affairs

Ministry of iTaukei Affairs

Submission to the Constitution Review Commission

Purpose

To propose targeted constitutional reforms to strengthen recognition of iTaukei rights, institutions, and contributions within a unified national framework that upholds equal citizenry and fundamental rights.

1. Recognition of Indigenous Rights and Customary Law

The Ministry submits that the Constitution should expressly recognise iTaukei indigenous rights, including the status of customary law as a source of law, subject to the Constitution and fundamental rights.

- The current constitutional framework affirms equal citizenry and human rights but does not recognise customary law as a general source of law.
- By contrast, earlier constitutional arrangements in the 1997 Constitution provided potential space for customary law within the legal system, subject to consistency with the Constitution and general principles and provision for a written law which could have been passed (although had not eventuated even by 2006 overthrow and eventual abolition in 2009).

Recommendation:

- Insert an explicit provision recognising customary law as part of the laws of Fiji, applicable where not inconsistent with the Constitution or written law.
- Provide for judicial development and application of customary law in appropriate contexts (land, governance, dispute resolution).
- Ensure this recognition is balanced against the Bill of Rights, maintaining equality, dignity, and non-discrimination.

2. Recognition of Historical Contributions and Sovereign Wealth Mechanism

The Constitution should acknowledge the historical sacrifices and contributions of iTaukei chiefs and communities in nation-building, including:

- Provision of land for public purposes;
- Stewardship of natural resources;
- Maintenance of social order and governance structures.

While constitutional frameworks have recognised land ownership and institutional roles in the past, there is limited recognition of the economic value of these contributions.

Recommendation:

- Include a constitutional recognition clause acknowledging these historical contributions.
- Provide enabling authority for the establishment of a sovereign wealth or intergenerational equity mechanism to capture and redistribute value derived from natural resources and land-based development.
- Ensure such mechanisms operate transparently and for the benefit of both iTaukei communities and the broader national interest.
- Consider amending the constitutional provisions relating to "fair share" of royalty to actual acknowledgement of ownership of natural resources including mineral and deep sea.

3. Constitutional Guarantee of Consultation

The Ministry proposes a constitutional requirement for meaningful consultation with iTaukei institutions before decisions affecting iTaukei interests are taken.

- Existing statutory provisions (e.g., sections 3, 4, and 5 of the iTaukei Affairs Act, as amended in 2023) reflect a legislative intent to embed consultation in governance.
- However, these protections are not constitutionally entrenched.

Recommendation:

- Constitutional recognition of the Great Council of Chiefs;
- Insert a constitutional obligation requiring prior consultation with recognised iTaukei institutions on matters affecting:
    - customary land and resources;
    - traditional governance structures; and
    - cultural heritage and identity.
- Define consultation as timely, good-faith engagement with a genuine opportunity to influence outcomes, not mere notification. For the sake of clarity, this is in addition to (not replacing) the requirement for consultation with impacted groups including the specific Land-owning unit, Vanua or the general public, as the case may be.

4. Official Language

The current Constitution does not specify Official Language. However, the 1970, 1990 and 1997 Constitution only referenced parliamentary proceedings where the official language was English with a right for Members to also use "Fijian" or "Hindustani".

Recommendation:

- Constitutional recognition of the iTaukei Language in addition to English.

5. President and Commander-in-Chief

The appointment of the President currently sits with Parliament. Reverting this to the Great Council of Chiefs would preserve and remove the politicisation of the Office. The term of 3 years to be increased to 5 to give the office the necessary gravity and importance it used to have. The current Constitution also seems to diminish the importance of the President's role as Commander-in-Chief.

Recommendation:

- Revert to the wording used in sections 87, 90 and 91 of the 1997 Constitution for the position of Commander-in-Chief, appointment by the Great Council of Chiefs and length of term to 5 years.

6. Senate and Legislative Process

The Senate provided a second House of review for legislation passed by the House of Representatives. The nominees of the Great Council of Chiefs had a veto power as a minimum of 9 of their 14 nominees needed to agree to amendment of any legislation affecting iTaukei. The use of Standing Order 51 was also concerning as it was not limited to genuine urgent business.

Recommendation:

- Reintroduction of the Senate; and
- Some additional criteria in section 47(3) of the Constitution so that legislation would go through the full process as a matter of norm and only genuine urgency would allow use of process under Standing Order 51.

Conclusion

We note the prior submission by the Great Council of Chiefs.

These proposals from the Ministry are framed to strengthen constitutional recognition of iTaukei rights and institutions while maintaining Fiji's commitment to equality, unity, and the rule of law. Properly calibrated, they will enhance legitimacy, social cohesion, and long-term stability by aligning the constitutional order with the lived realities of Fiji's indigenous foundations.

EXCERPTS – 1997 CONSTITUTION

Customary laws and customary rights

186.-(1) The Parliament must make provision for the application of customary laws and for dispute resolution in accordance with traditional Fijian processes.

(2) In doing so, the Parliament must have regard to the customs, traditions, usages, values and aspirations of the Fijian and Rotuman people.

(3) The Parliament must make provision granting to the owners of land or of registered customary fishing rights an equitable share of royalties or other moneys paid to the State in respect of the grant by the State of rights to extract minerals from the land or the seabed.

(4) A law fixing amounts under subsection (3) must require that account be taken of:

(a) any benefits that the owners are likely to receive as a result of the mineral exploitation;

(b) the risk of environmental damage;

(c) any legal obligation of the State to contribute to a fund to meet the cost of preventing, repairing or compensating for any environmental damage;

(d) the cost to the State of administering exploitation rights; and

(e) the appropriate contribution to the general revenue of the State to be made by the person granted exploitation rights.

Commander-in-Chief

87. The President is the Commander-in-Chief of the military forces.

Appointment of President and Vice-President

90. The President and Vice-President are appointed by the Bose Levu Vakaturaga after consultation by the Bose Levu Vakaturaga with the Prime Minister.

Term of office

91.-(1) The President holds office for 5 years, is eligible for re-appointment for one other term of 5 years but is not eligible for re-appointment after that.

(2) The Vice-President holds office for 5 years, is eligible for re-appointment for one further term of 5 years but is not eligible for re-appointment after that.

Gabiriele Josua

Gabiriele Josua
Time: 3.45pm-4.10pm
Date: 30-4-2026

Leighton: Mr. Josua, on behalf of the Constitutional Review Commission, I'd like to take this time to welcome you and thank you for making time to make submissions before the Commission. Just a few housekeeping matters. If you wish to speak, you'll have to press on the right panel of the mic in front of you to turn the mic on to speak, and then press the same panel to turn the mic on to make your submissions.

Following this, Chair will introduce the Commission and the work that they'll be undertaking, and then he will either introduce the Commissioners or ask them to introduce themselves. We ask that after the introductions, if you could also introduce yourself, just for the transcript and the record, Vinaka Vakalevu.

Mr. Valenitabua: Bula Vinaka Mr. Josua. Will you be speaking English or iTaukei?

Mr. Gabrielle: I have written my submission in English.

Mr. Valenitabua: In English. Thank you. Now, good afternoon to you. Thank you very much for turning up this afternoon, late this afternoon. We have been receiving submissions from individuals before, so you're not the first. We would like to give you comfort on that.

The submissions you will have to present to us, and then later on, we might ask you questions or just give you some reflections on your submission. Before you this afternoon, the Commissioners, I will ask them to introduce themselves, and then from there, we'll proceed with the submissions. Thank you.

Mr. Beg: Thank you very much, Chair. Welcome, Mr. Josua. My name is Conway Begg. I'm an architect, and I'm looking forward to listening to you.

Ms. Nailatikau: Bula Vinaka, I'm Merewalesi Nailatikau. My background is in public policy and public diplomacy. Thank you for coming today.

Dr. Fatiaki: Good afternoon, Mr. Gabrielle. Thank you. Thank you very much for your presence this afternoon, accepting our invitation to present. My name is Dr. John Fatiaki. I'm a medical doctor by profession.

Mr. Kohili: Bula Vinaka. My name is Ami Koli. We are from Labasa.

Mr. Valenitabua: Bula Vinaka, Sevuloni Valenitabua. I'm the chairperson of the Commission, and we are fortunate that we have professionals sitting before you today who are going to listen to your submissions. Just note that whatever you say is being recorded, and they will be printed later on, and we will be looking at them, reading them, and analyzing them in the process of picking out thoughts and recommendations of matters that should be included in Fiji's constitution.

I believe you know that before you came in here. So, without further ado, I will now invite you to please give a short introduction of yourself and then move on to your submission. Thank you, sir.

Mr. Gabriele: Good afternoon, madam. Good afternoon, sirs. My name is Gabiriele Joshua. I hail from Qeleni, Wainikeli, in Taveuni. I am a farmer. I represent myself. I am here in Suva because my home was destroyed by fire, and I'm seeking help. I heard this constitution review commission through the media, and I want to give my two cents' worth of comments on it. Yeah, this is Fiji, the way the world should be, in what way one may ask.

In every way is the answer. This land was created for us. We were given this land by the Creator to uphold all its laws and everything concerning its traditions and customs.

We should build a government that would be for us, we the people. But everywhere one goes around in Fiji and listen to the 'Talanoa' around the Yaqona Bowl, or to friends going to the bush or women in their general discussions, it is obvious that dissatisfaction about life and livelihoods in Fiji is so far, far away from the Fiji that one dares to dream of attaining and owning and living in it, get married and bring up children to enjoy the fruits of one's labor. But what is stopping this from happening? The answer lies in the 2013 constitution.

The 2013 constitution was hijacked from somewhere around the world to be used as our constitution. It was not organic. It was not by us, we the people. It was thrust upon us. When Mr. Frank Bainimarama and Mr. Sayed Kayum took over the government in 2006, they threw away Professor Ghai's constitution and abrogated the 1997 constitution.

From 2006 to 2013, they were looking for a constitution that their government could run on. After eight long years, they found this constitution, which we now call the 2013 constitution. This was not our constitution, we the people. It was their constitution. When they lost the government in the general election of 2022, their constitution should have gone out with them.

Why are we keeping it and just amend some parts that we do not like? All should be thrown out with them. The three words, we the people, in the opening of the constitution are very important.

We should stop and ask ourselves, did we the people took part in forming that constitution? If not, then why are we still using it as a guideline to something that we hold dear to our hearts? Was it because we have used it in the past three general elections of 2014, 2018, and 2022? Was it because there were not any major protests against it?

To tell you the truth, people were afraid of the guns. Ordinary people were doing their business as usual every day. Well, that is Fiji, the way the world should be. We the people are friendly people. That is how we live our lives, no matter what difficulties we are facing each day. We do not show it publicly. We keep it to ourselves.

That is the Fijian way of living. But deep down, we are struggling. We are hurting. We need someone or somebody to come and save us from this evil constitution, which is holding us under ransom. If you look at it properly, meaning the 2013 constitution, I think that the two perpetrators should be behind bars because of the big lie that made all this to happen. There were no we the people forming that horrible constitution. As I have already mentioned, it was thrust upon us. People up in government now should understand that.

That is the way we live our lives here in Fiji, an independent sovereignty. Everyone and everybody should respect what we do here in Fiji, our country. We make our laws according to the way we live. The world should not dictate to us what we do here in our Fiji. This is our country. We live here, not them.

Any laws that we make for the people of this country should be done by the people. Only then that we can accept a constitution formed by the

people, for the people. Only then that the first three words of our constitution, we the people, will have a meaningful connotation.

After saying all this, in my view, parliament should sit. The head of the Fiji military force should be called in and sit with the prime minister and all of government and discussions should be based on the abrogation of the 2013 constitution. All of what I am saying should be passed in parliament by the show of hands.

The head of the military, by the power of parliament, takes over the government for one month only, abrogates the 2013 constitution and gives the powers back to the government. This time we do it legally. This has never been done before, but it can be done.

The only thing that one needs is guts and I think that we have a lot of it abundance. All the legal minds should sit within this one-month period and come out with a new 2026 constitution. Problem solved.

One might say that it cannot be done. I say it could. This is Fiji, the way the world should be. We do not have to listen to foreign powers to dictate to us what we should and shouldn't do. We are an independent sovereignty and we dictate our laws and regulation and by the power of God Almighty, I say we can. That is all. Thank you for listening.

Mr. Valenitabua: We have heard your submission. We have listened attentively to what you have just said. We understand the sentiments coming from you and we note your words that the constitution, the 2013 constitution was thrust upon us and that the words, we the people of Fiji and so forth, is not correct because only two people, according to you, had prepared this 2013 constitution and that you are saying that we should abrogate the 2013 constitution through a process which you have suggested, getting the military in and discussions done in parliament and so forth, so that the 2013 constitution can be abrogated.

Now please understand our position which I am going to tell you now. We were appointed by His Excellency the President of the Republic of Fiji, Rotuma, and we were given terms of reference which were written on paper.

Nowhere in the terms of reference we have been told to abrogate the 2013 constitution. We were given the term of reference telling us how to

go about amending the constitution. The 2013 constitution had some what had been termed democratic deficiencies.

In other words, the way the 2013 constitution was made or prepared was undemocratic and one of the basis of that claim that we have undemocratic deficiencies is that we did not know about the constitution. It was not brought to the people. The views of the people were not given.

So, His Excellency the President and the cabinet decided that we have to cure that deficiency, the first deficiency, and that is to get views of the people, get recommendations from the people, get ideas from the people and whatever else we can call it, so that the people can contribute into the making of a constitution.

We have been given the mandate to amend and the commissioners have been telling our people that we can change, we can amend line to line if the people want. So that is where we are. We have heard your submission, but our term of reference guides us. We understand your concern about the constitution being we are now doing the remedy for that.

It's like a person being sick. His constitution is sick and this is the first step towards giving it an injection or tablet so that the constitution can you know become alive again.

Mr. Gabrielle: I understand.

Mr. Valenitabua: We heard you and there might be some things we can consider after hearing the recording or after reading the recording, sorry, after reading the recording and then we'll take it from there.

Mr. Gabrielle: Thank you, sir.

Dr. Fatiaki: Thank you. First of all, I don't have much to say and that's saying something. I just want to say thank you.

Mr. Beg: Mr. Gabriel, thank you very much. As the chair said, very solemn points and obviously we've heard you, we felt you and we'll take on board the comments that you've raised and some enlightening ones for consideration, but thank you very much for making this presentation.

Ms. Nailatikau: Sorry, Mr. Josua, I also wanted to echo our gratitude to you for the efforts you've made to make your submission today. I think it's important to listen to the dreams and aspirations of Fijians of all backgrounds, all ages and all ethnicities. I appreciate the time and effort it took. I noted that your submission is fully handwritten, again not something that goes unnoticed, but I wanted to end with my expressing gratitude to you today.

Mr. Kohli: Yes, I think I would like to thank you too for carrying that flag of Vanualevu, Vinaka Valevu.

----------End of Session [30-4-2026] ----------

MY NAME IS GABRIELE JOSUA. I HAIL FROM QELEN VILLAGE, IN WAINIKELI, TAVEUNI. I AM A FARMER. I REPRESENT MYSELF. I AM HERE IN SUVA BECAUSE MY HOME WAS DESTROYED BY FIRE AND I AM SEEKING HELP.
I HEARD OF THIS CONSTITUTION REVIEW COMMISSION THROUGH THE MEDIA, AND I WANT TO GIVE MY 2 CENTS WORTH OF COMMENT ON IT.

THIS IS FIJI. THE WAY THE WORLD SHOULD BE.
IN WHAT WAY? ONE MAY ASK.
IN EVERY WAY — IS THE ANSWER.

THIS LAND WAS CREATED FOR US. WE WERE GIVEN THIS LAND BY THE CREATOR TO UPHOLD ALL IT LAWS AND EVERYTHING CONCERNING ITS TRADITIONS AND CUSTOMS. WE SHOULD BUILD A GOVERNMENT THAT WOULD BE FOR US, "WE THE PEOPLE." BUT EVERY WHERE ONE GOES AROUN IN FIJI, AND LISTEN TO THE "TALANOA" AROUND THE YAQONA BOWL, OR TWO FRIENDS GOING THE BUSH, OR WOMEN IN THEIR GENERAL DISC IT IS OBVIOUS, THAT DISATISFACTION ABOUT LIFE AND LIVELIHOODS IN FIJI, IS SO FAR, FAR AWA FROM THE FIJI, THAT ONE DARES TO DREAM OF ATAINING, AND OWNING, AND LIVING IN IT. GE MARRIED, AND BRING UP CHILDREN, TO EN THE FRUITS OF ONES LABOUR.

BUT WHAT IS STOPING THESE FROM HAPPENI THE ANSWER LIES IN THE 2013 CONSTITUTIO THE 2013 CONSTITUTION WAS HIJACKED FR SOMEWHERE AROUND THE WORLD, TO BE USED AS OUR CONSTITUTION. IT WAS NOT ORGANIC. IT WAS NOT BY US. "WE THE PE IT WAS THRUST UPON US.

WHEN MR. FOREOE BAINIMARAMA AND MR. SAIYAD KAIYUM TOOK OVER THE GOVERNMENT IN 2006, THEY THREW AWAY PROFESSOR GHAI'S CONSTITUTION, AND ABROGATED THE 1997 CONSTITUTION. FROM 2006 TO 2013, THEY WERE LOOKING FOR A CONSTITUTION THAT THEIR GOVERNMENT COULD RUN ON. AFTER 8 LONG YEARS, THEY FOUND THIS CONSTITUTION, WHICH WE NOW CALLED THE 2013 CONSTITUTION. THIS WAS NOT OUR CONTITUTION, "WE THE PEOPLE". IT WAS THEIR CONSTITUTION. WHEN THEY LOST THE GOVERNMENT IN THE GENERAL ELECTION OF 2022, THEIR CONSTITUTION SHOULD HAVE GONE OUT WITH THEM. WHY ARE WE KEEPING IT? AND JUST AMEND SOME PARTS THAT WE DO NOT LIKE. ALL SHOULD BE THROWN OUT WITH THEM.

THE THREE WORDS "WE THE PEOPLE" IN THE OPENING OF THE CONSTITUTION ARE VERY IMPORTANT. WE SHOULD STOP AND ASK OURSELV DID "WE THE PEOPLE" TOOK PART IN FORMING THAT CONSTITUTION? IF NOT, THEN WHY ARE WE STILL USING IT AS A GUIDELINE TO SOMETHING THAT WE HOLD DEAR TO OUR HEARTS? WAS IT BECAUSE WE HAVE USED IT IN THE PAST THREE GENERAL ELECTIONS OF 2014, 2018 AND 2022? WAS IT BECAUSE THERE WERE NOT ANY MAJOR PROTEST AGAINST IT?

TO TELL YOU THE TRUTH, PEOPLE WERE AFRA OF THE GUNS. ORDINARY PEOPLE WERE DOING THEIR BUSINESS AS USUAL EVERYDAY.

WELL, THAT IS FIJI. THE WAY THE WORLD SHOULD BE. "WE THE PEOPLE" ARE FRIENDL PEOPLE. THAT IS HOW WE LIVE OUR LIVES NO MATTER WHAT DIFFICULTIES WE ARE FACING EACH DAY. WE DO NOT SHOW IT PUBLICLY. WE KEEP IT TO OURSELVES.

THAT IS THE FIJIAN WAY OF LIVING. BUT DEEP DOWN WE ARE STRUGGLING, WE ARE HURTING. WE NEED SOMEONE OR SOMEBODY TO COME AND SAVE US FROM THIS EVIL CONSTITUTION, WHICH IS HOLDING US UNDER RANSOM.

IF YOU LOOK AT IT PROPERLY, MEANING, THE 2013 CONSTITUTION, I THINK THAT THE TWO PERPETRATORS SHOULD BE BEHIND BARS BECAUSE OF THE BIG LIE THAT MADE ALL THIS TO HAPPEN. THERE WERE NO "WE THE PEOPL FORMING THAT HORRIBLE CONSTITUTION. AS I HAVE ALREADY MENTIONED, IT WAS THRUST UPON US. PEOPLE UP IN GOVERNMENT NOW SHOULD UNDERSTAND THAT, THAT IS THE WAY WE LIVE OUR LIVES HERE IN FIJI, AN INDIPENDENT SOVEREIGNTY. EVERYONE AND EVERYBODY SHOULD RESPECT WHAT WE DO HERE IN FIJI, OUR COUNTRY.

WE MAKE OUR LAWS ACCORDING TO THE WAY WE LIVE.

THE WORLD SHOULD NOT DICTATE TO US WHA WE DO HERE IN OUR FIJI. THIS IS OUR COUNTRY. WE LIVE HERE, NOT THEM.

ANY LAWS THAT WE MAKE FOR THE PEOPL OF THIS COUNTRY, SHOULD BE DONE BY THE PEOPLE. ONLY THEN, THAT WE CAN ACCEPT A CONSTITUTION FORMED BY THE PEOPLE, FOR THE PEOPLE. ONLY THEN, THAT THE FIRST THREE WORDS OF OUR CONSTITUTION, WE THE PEOPLE" WILL HAVE A MEANINGFUL CONOTATION.

AFTER SAYING ALL THESE, IN MY VIEW PARLIMENT SHOULD SIT. THE HEAD OF THE FIJI MILITARY FORCE SHOULD BE CALLED IN, AND SIT WITH THE PRIME MINISTER, AND ALL OF GOVERNMENT, AND DISCUSSION SHOULD BE BASED ON THE ABROGATION OF THE 2013 CONSTITUTION.
ALL OF WHAT I AM SAYING SHOULD BE PASSED IN PARLIMENT BY THE SHOW OF HANDS.
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THIS TIME, WE DO IT LEGALLY.

THIS HAS NEVER BEEN DONE BEFORE. BUT IT CAN BE DONE. THE ONLY THING THAT ONE NEEDS, IS GUTS, AND I THINK THAT WE HAVE A LOT OF IT IN ABUNDANCE.

ALL THE LEGAL MINDS SHOULD SIT WITHIN THIS ONE MONTH PERIOD, AND COME OUT WITH A NEW 2026 CONSTITUTION. PROBLEM SOLVE

ONE MIGHT SAY THAT IT CANNOT BE DONE. I SAY IT COULD. THIS IS FIJI. THE WAY THE WORL SHOULD BE. WE DO NOT HAVE TO LISTEN TO FOREIGN POWERS, TO DICTATE TO US WHAT W SHOULD AND SHOULDN'T DO. WE ARE AN INDIPENDENT SOVEREIGNTY, AND WE DICTATE OUR OWN LAWS AND REGULATIONS, AND BY THE POWER OF GOD ALMIGHTY, I SAY, WE CA

THAT IS ALL.
THANK YOU FOR LISTENING.

Dr Mahendra Reddy

Dr. Mahendra Reddy
Date: [1-5-2026]

Leighton: Good afternoon, Dr Mahendra Reddy. On behalf of the Constitutional Review Commission, it is my honor to thank you for taking the time to make submissions this afternoon before the Commission. Just a few housekeeping matters with regards to making a submission. The mic in front of you, you'll need to press the right panel to turn the mic on. And once you've made your oral submission, you can press the same right panel to turn the mic off. Following this, the Chair will introduce the Commission and the work that the Commission will be undertaking. He will also introduce the Commissioners, or will ask them to introduce themselves. We kindly request after that, if you can also introduce yourselves. This is for the record and the transcript.

Mr. Valenitabua: Naka. Good afternoon, Dr Reddy. Sevuloni Valenitabua, the Chairperson of the Constitutional Review Committee. With me are the members, or some members of the Commission. I invite them to introduce themselves for the record, and for you too. You might know some of us, but we'll require introductions at the beginning of the session.

Ms. Nailatikau: I'll start from my right. Good afternoon, Mr Reddy. Thank you for availing yourself today. My background is in public policy and public diplomacy. I'm looking forward to your submission. Good afternoon, Mr Reddy.

Mr. Beg: My name is Conway Beg. I'm an architect by profession. Thank you for coming in, and I look forward to hearing from you.

Dr. Gounder: Thank you. Good afternoon, Dr Reddy. My name is Neelesh Gounder, and I look forward to your submission this afternoon.

Mr. Kohli: Thank you for taking your time to come over to make a presentation for this important cause. Good afternoon, Dr Reddy. I'm Ami Kohli from Labasa.

Mr. Valenitabua: Those are your Commissioners, Mr Reddy. Thank you very much again for coming in this morning. The Commission, as you would understand, is tasked with reviewing the 2013 Constitution. We are tasked to, first of all, collect information, thoughts, suggestions, and recommendations from the people of this

country in relation to what is to be included in the Constitution. The 2013 Constitution will be amended later, and we are also tasked with preparing a draft. There will be a constitutional lawyer and a legal drafter who shall come in to carry out that task.

But as for us, we are to set up consultations and collect submissions, thoughts, and recommendations, as I have said, collect them, analyze them, and make recommendations in relation to which provisions should be included in the Constitution, whether some provisions need to be removed, and which provisions that just need amendments. So, your presence before us this morning is very welcome. We know your experience, both outside and inside Parliament, and in life too. So, we anticipate that you will give us a very good or excellent submission this morning. At the end of the submission, we might ask you questions, for clarification's sake. There might be comments coming from the table here by the Commissioners. We hope we can converse and clarify matters for the sake of the preparation of an amendment to the Constitution. With those few words, I now pass the mic to you for your introduction and for your submission. Thank you.

Mr. Reddy: Thank you, Chair, and members of the Commission. First of all, thank you very much for giving me this opportunity to make a submission in person. And of course, I will also provide the soft copy of the written submission. Before I start, I just want to make two caveats. One is that my appearance here with the Commission is not as a staff of the USP, but in my individual capacity as a former minister in my academic background. The second is that this submission, I will read out and explain, but it should be read with the citations and the references.

So, I will leave the full hard and soft copy with the admin staff. As an introduction about myself, I grew up and was born and bred in Nadi. I went to high school and primary school in Nadi. My first degree is in agriculture. I studied at USP's Aleppo campus, diploma and bachelor's degree. I wanted to become an economist, so after completion of my degree, I worked there one year at USP's Alafua campus.

But then I came to main campus at Laucala and did development studies program under scholarship. And then I took part-time

courses in economics and was then appointed as teaching assistant in economics. And then I received the Spoolright Scholarship to undertake Masters in Agriculture and Resource Economics at the University of Hawaii and I left for the University of Hawaii in 1994-95.

And then I completed Masters and then I received another scholarship to do PhD at the East-West Center Hawaii. I did my PhD. And then since then, from 1998 to 2008, I was at USP from lecturer to associate professor of economics.

And then in 2008, I left to join MIT and then Puget National University as the dean of the business college. I was also, while having the full-time job, I spent a year probably as the director of Reserve Bank of Fiji, one of the directors, and spent close to four years as the chairman of the Fiji Consumer and Competition Commission. In 2014, I was invited to be a candidate in the Fiji First Party, then Fiji First Party, and I was asked to apply.

I applied and got the seat and I contested the election and I won a seat and I was appointed as Minister for Education, Heritage and Arts in 2014. Up till 2017, June, when I was charged by FICAC and then resigned from my position as Cabinet Minister. And I fought the case, I won the case, and then I was reappointed in Cabinet in 2017 December and continued as Minister for Waterways and Environment.

Then in 2018, I was asked to contest and I contested again and I won my seat. I was appointed Minister for Education, Heritage and Arts and I continued till 2022. I resigned after elections for several reasons and then I wanted to get into consultancy.

Then I got back to USP and I took up the role of Senior Fellow in the Graduate School of Business and I have been teaching there since 2023 late. But I resigned and for three months I was in the US to fulfill the requirement for permanent residency. Then I came back and I joined again USP as a full-time Senior Fellow, so I am a full-time staff there now.

I teach in the region as well and at the moment I am teaching in Samoa. So, I got the last week to complete my teaching slot in Samoa. So, I have been working on this submission for the last

three weeks and I decided that I should make an oral as well as provide a written submission.

So, I contacted the office this morning and I am so happy to be here today and make this submission to the esteemed Commission members. Thank you. Thank you.

Mr. Valenitabua: We are ready to hear you.

Mr. Reddy: Thank you Chair, thank you members. Commissioners, Chair and Commissioners, as you know, Fiji is a plural multi-ethnic and multi-religious nation whose constitutional order must be carefully structured to preserve democratic stability, ensure equality amongst all citizens and foster long-term national cohesion.

The constitutional architecture of Fiji cannot be viewed merely as a legal framework for the allocation of state power, rather it must be understood as a principal institutional instrument through which Fiji manages ethnic diversity, political competition, state legitimacy and national development. Since independence in 1970, Fiji has operated under, except for the Legislative Council, four constitutional arrangements. The 1970 constitution, the 1990 constitution, the 1997 constitution and now the 2030 constitution.

The country has also experienced four military coups, many of which were directly or indirectly linked to constitutional or political power, ethnicity and institutional authority. Fiji's constitutional history demonstrates that constitutional design matters profoundly in determining whether institutions promote stability or facilitate conflict. Comparative constitutional scholarship demonstrates that constitutions endure not merely because of legal impossibility, but because they command legitimacy across political, ethnic and social divisions, and here I quote several references.

In deeply plural societies, constitutional durability depends particularly on whether the constitutional order is perceived as neutral, inclusive and protective of all communities. Fiji's past constitutional instability reflects the consequences of constitutional frameworks that failed to sustain such legitimacy over time, in particular the 1990 constitution. The present

constitutional review must therefore be approached with caution, intellectual rigor and a long-term national perspective.

I will be very worried if this constitutional reform is driven by short-term political dissatisfaction, ideological preferences or attempts to revisit settled national building principles. Rather, and I quote in bold, reform should seek to preserve provisions that advance inclusion, equality and democratic stability, while amending provisions that undermine institutional independence, in particular, weaken democratic accountability or create structural imbalances in governance. So, this is precisely the foundation of my submission to this body.

So, this submission is informed not only by constitutional theory and comparative governance practice, which I have read recently, but also by my practical experience serving in senior public office as minister and cabinet member, where I observed firsthand how constitutional structures shape the functioning of government, public administration, development planning and political stability. The constitution is the overarching supreme legal and political covenant of the nation, and all of you understand that. It defines the structure of the state, allocates powers amongst institutions, limits the exercise of governmental authority, protects the rights of citizens, establishes the rules through which political power may be acquired or exercised, and it is also well cited in a number of publications which I have listed here.

More fundamentally, a constitution reflects the social contract between the people and their state. Now, I want the commission to note this particular statement that it is a social contract between the people and their state. So, the question would be then, how we define who are the people? We know the state, but who are the people? Are they a particular ethnic group, a particular community, or all who are citizens of this country? In deeply plural societies such as Fiji, the constitutional reform performs an additional, particularly critical role.

It serves as a principal framework through which diverse communities coexist under a shared national order. It must provide confidence to all groups that the state belongs equally to them, that no community will dominate another through constitutional privilege, and that political power will be exercised according to law rather than identity. Noting the issues raised by

various commentators, political parties, analysts, I note that a good constitution must satisfy five essential tests.

So, these five essential tests, I was able to count the literature. So, in one paper you won't find this, so I counted it, and I found that these five would aptly describe what I think would be a good constitution. Legitimacy. It must command broad public acceptance across communities. They must have ownership. Now I emphasize on this point because if you look at the 2013 constitution, this is a major issue, is that ownership was not given.

Buying was not there. In the management terminology we say buying. That you take it to the people and let them say that we have the say in the constitution. We made a point then.

Number two is inclusivity. That it must provide equal constitutional recognition and belonging to all citizens, not just a particular group because they are in majority who are the first settlers. I again emphasize on this as well because I think I can see some of the submissions are talking about supremacy to one particular ethnic group or the other. Institutional balance. It must prevent excessive concentration of power in the hands of a few within the government or outside the government, particularly the oligarchs, etc., not trying to capture the decision-making apparatus of the government. In small societies, small countries, this tends to happen. The powerful, strong interest groups outside try to capture the decision-making process, particularly before the budget, etc. Rights protection.

It must safeguard liberties and minority protections, particularly in countries like Fiji where we have several minority communities. And the fifth one is adaptability and stability. It must provide continuity while allowing local reform. And this is precisely why we are sitting here. It's because, I mean, why we went to the court system. Because it did not provide continuity.

And I'm glad that the courts did look at it and said, look, I think we need to find a way out of this. So, Fiji's constitutional history confirms that constitutions which did not have widespread acceptance or was perceived as privileging one ethnic group a particular political fraction over others eventually lost legitimacy and became sources of instability rather than order. The

objective of this review should therefore be principled refinement.

And what I mean by that is that make targeted improvements and correct weaknesses, ambiguities, or gaps guided by constitutional principles, evidence, and interest. That's one. And not political redesign.

Like we're not to rewrite the constitution merely to suit the preferences of some political actors or to for partition gain revenge or to meet short-term political objectives. So, Chair, members, having said that and setting the overarching framework of my submission, I now move to suggest explicit changes or amendments that I foresee that should come with this review. One, section 3.1 on secular state, section 4 of the constitution provides that religious liberty as recognized in the Bill of Rights is a founding principle of the state.

There have been calls from certain quarters of Fiji to be declared a Christian state. Such proposals should be firmly rejected. From both constitutional and governance perspectives, declaring Fiji a state aligned to a particular religion would be a serious, tragic, and social error.

Fiji is home to Christians, Hindus, Muslims, Sikhs, and persons of other faiths who have lived together for generations in relative harmony. The circular nature of the state has been central to preserving this coexistence. Comparative constitutional practice strongly favors secular constitutional frameworks in plural societies in India, Singapore, Mauritius, South Africa.

All diverse multi-religious democracies maintain secular constitution or order, not because religion lacks importance, but because state neutrality is essential to preserving equal citizenship in religiously diverse nations. Constitutional alignment with one religion, even symbolically, risks transforming faith from a personal conviction into an instrument of political identity and state preference. It may produce legal, political, and symbolic hierarchies of belonging that undermine national cohesion.

So as a former public office holder, I observe that one of Fiji's most distinctive strengths is the extent of interfaith

coexistence, mutual participation in religious observations, be it Diwali, Eid, Easter, Christmas, Ram Naumi, etc. So constitutional departure from secularism would unnecessarily endanger this social asset. Recommendation for that is we retain Section 4 in its current form.

Next, role of military forces. Section 131, subsection 2 provides it shall be the overall responsibility of the Republic of Fiji military forces to ensure at all times the security, defense, and well-being of Fiji and all Fijians. Chair and Commissioners, no modern democratic constitution should provide military with an autonomous constitutional mandate to ensure the well-being of the nation.

Such language is excessively broad, vague, and open to subjective interpretation. Semmel-Ungtingson's theory of democratic-civic military relations emphasizes that constitutional democracy depends upon objective civilian control, whereby military remains professionally competent but institutionally subordinate to the elected civilian authority. In democratic constitutional system, the military exists to defend the state, not to serve as an independent constitutional guardian or avatar of national welfare.

Given Fiji's history of military intervention, constitutional ambiguity regarding the military's political role is particularly dangerous. This provision may be interpreted in future as conferring constitutional legitimacy upon military intervention in civilian governance. In every mature democracy, including Australia, New Zealand, India, and the United States, the armed forces remain unequivocally subordinate to elected civilian government.

As former Cabinet Minister, I can attest that constitutional ambiguity regarding military authority can distort effective decision-making and create uncertainty in the chain of democratic contribution. So, my recommendation is we replace Section 131 subsection 2 with the wording stating, and I quote, The Republic of Fiji Military Force should at all times remain subordinate to the elected civilian government and self-perform only such functions as provided by the law. Next one, with regard to constitutional immunity and accountability.

Future constitutional arrangements should not shield individuals from legal accountability for unconstitutional conduct. The rule of law requires that no person be permanently above the law. So, while transitional immunity provisions may occasionally be politically expedient in extraordinary post-conflict circumstances, and I do understand they should remain exceptional and time-bound rather than entrenched constitutional norms.

So, permanent immunity weakens deterrence, undermines public trust, and signals that unconstitutional conduct may ultimately evade accountability. So, my recommendation is that future constitutional reform should avoid broad and perpetual immunity clauses. Next, suspension of members of the Commission.

Section 132.13 requires consultation with the Attorney General in matters concerning suspension of members of the Constitutional Officers' Commission. This requirement undermines institutional independence. An independent Constitutional Commission must not be subject, directly or indirectly, to executive influence in any decision relating to membership or disciplinary.

Because the Attorney General is a political officeholder, this requirement creates both actual and perceived risk of executive interference. So, my recommendation is delete the consultation requirement with the Attorney General from Section 132.13. Next, citizenship and common national identity. Section 5 establishes equal citizenship and common national identity for all Fijians.

Modern constitutional democracies increasingly adopt civic rather than ethnic conceptions of nationality. A civic national identity promotes allegiance to the state rather than communal subgroups and strengthens social cohesion in diverse societies. The recognition of all citizens with a common name that identifies them to the country is one of the most progressive nation-building reforms in Fiji's constitutional history.

So, my recommendation is that the provision of a common name for all Fijians, be that name whatever be, that the provision of a common name, and I'm not saying what the common name

should be. I don't think we should waste our important time in chasing after one particular common name. Whatever be it, that we should maintain a common name for all Fijians.

Next, Bill of Rights. Chapter 2 contains a comprehensive and modern Bill of Rights. It aligns Fiji with contemporary constitutional best practice and should be retained substantially unchanged. Weakening this protection would represent democratic regression. So, my recommendation is that we retain Chapter 2 as is. My next is on the Fiji Independent Commission against Corruption.

Section 15, Subsection 9 requires Fiji to provide regular updates to the Attorney General. No anti-corruption institution can be fully independent while constitutionally obligated to report to a political officeholder. Even where no actual interference occurs or seems to have occurred, such arrangements compromise public confidence in institutional neutrality. Best practice requires anti-corruption institutions to be operational and structurally independent of the executive. I don't want to go in detail, but I want to say it here and we'll see what happens in the question and answer session. But I'm saying that look, it's not only about managing the perception.

I mean, provision itself undermines the provision of independence. So I suggest, my recommendation is that delete Section 115, Subsection 9 in its entirety. 3. Proposal Representation Electoral System.

Section 53 establishes a single national open list proposal representation system. Now, as someone who has fought three elections, this system should be retained. Political science literature consistently demonstrates that electoral systems shape political incentives.

Constituency-based and majoritarian systems in divided societies often encourage ethnic bloc mobilization, whereas proportional systems incentivize broader coalition building and reduce disproportionality in representation. Historically, constituency-based electoral arrangements in Fiji contributed to communal political mobilization and reinforced ethnic voting patterns. Chair, you and some of you are much older than me and you've witnessed elections since 1970 and you would have noted

how the communal seats, all this, were creating division between ethnic groups.

So the current proportional representation system has helped reduce communal constituency politics, encouraged national rather than localized ethnic campaigning, improved proportionality between votes cast and seats won, promote issue-based election competition. Very important that it's about issue, national issue, rather than me campaigning from a constituency in India where I was born and saying that I will build a bridge here when I get elected. I need to talk about what I'm going to do for the country because my vote could come from, you know, So my recommendation is that we retain Section 53 unchanged.

Next, term of parliament. The current four-year parliamentary term should be extended to five years. From practical cabinet experience, a four-year term is insufficient for meaningful strategic governance.

In operational reality, in what I saw, year one is spent establishing government and strategic plans. Year two and three focus on program design, implementation, and getting development partners on board. Year four is then politically constrained by elections.

When do we work, to be honest? Any additional year would be great, particularly even if you look at development plans. By the time you get your development plan ready, half the term is gone. And the major projects are ten-year projects, you know, fifteen-year projects.

And whenever governments change, they bring their own development plan and rightfully so because they campaign on a particular manifesto. They want that manifesto to be dovetailed into the development plan. So this coalition government came in, they threw you the other development plan, and they came up with their own plan, rightfully so.

Term limits for Prime Minister. Section 93 should be amended to impose a two-term consecutive limit on the Prime Minister. Comparative constitutional design increasingly recognizes that prolonged incumbency can contribute to executive

entrenchment, party capture, weakened accountability institutions, and diminished democratic renewal.

Unchecked prolonged incumbency may lead to over-centralization of executive power, institutional weakening, leadership stagnation, and reduced democratic renewal. I've seen it first-hand, Chair. Two-term limit preserves democratic choice while safeguarding institutional resilience.

Partition control over Parliament along with appointment of the Speaker of the Parliament is appointed by the government side by tabling a motion. It is unlikely that a vote of no confidence will ever get carried forward. So, the recommendations of Section 93 to limit any Prime Minister to two consecutive terms.

After one term, the President can contest. In conclusion, the 2013 Constitution contains several progressive provisions that have strengthened national unity, equality, and democratic governance. These include the circular state provision, equal citizenship framework, Bill of Rights, and proportional representation electoral system.

However, targeted reforms are necessary to clarify civilian supremacy of the military, strengthen institutional independence, improve democratic accountability, enhance governance effectiveness, and prevent over-centralization of executive power. Constitutional reform must not become an exercise in political revisionism. It must be guided by the enduring interest of the Republic of Fiji and future generations.

Fiji requires a constitution that is inclusive, democratic, balanced, and capable of commanding legitimacy across all communities. The task of this Commission is not merely to revise the Constitutional text, but to strengthen the Constitutional foundations of Fiji's democracy for generations to come. I do hope my submission is accepted and interrogated, and I wish the Commission the very best in revising the 2013 Constitution for the best interest of Fiji and its future generations. Thank you, Chair, and I am happy to take any questions.

Dr. Gounder: Thank you very much, Dr. Reddy. The submissions have been clear upon your reading, and we would welcome to have a copy of your written submissions, please. The girls on your right would

be able to prepare copies if you need a copy to be prepared. No, they can take it. Like I said at the outset, questions might be asked, and comments might be made by the Commissioners who are sitting here with me this afternoon.

Commissioners, please. Thank you, Chair. Thank you, Dr. Reddy.I think your submission is very clear, and I have no clarification or further questions, Chair, but I look forward to your written submission, which we will go over in detail during our discussion with the Commission. Thank you. Dr. Reddy, do you have a question? I think you might raise some very, very good questions.

I am particularly interested to know, because of your wide experience in government, as an academic, you see, we have been commissioned basically to review this Constitution because of people's perception that they were not consulted. In your experience, will you be able to tell us, was there any consultation done, and to what extent it was done, if you know? So, there was this Cai Constitution, which was extensively, you know, we had consultation done. But then the Cai Constitution was shelved and burnt, to the extent that there was, I think there was a decree, now probably an act, that no one should have a copy of that, if I am right.

I think lawyers should. So then the 2020 Constitution was not subject to consultation. So if anyone is saying that they want to say there was massive consultation, then they are saying this is Cai Constitution.

They need to come up and clearly say whether this is Cai Constitution or not. But no, that was burnt and that was shelved, and so they came up, whoever was the architect of it and whoever was behind it, they came up with this and it was enacted, you know, that's it. So where is the ownership? I mean, you know, the whole purpose, you all know the function of a legislature, apart from a moment's bill, is legislation.

Legislation, you've got a sector committee, sector committee is supposed to go and consult the rank and file. At that time there was no parliament, then why was there any other way of getting this consultation out in public, a draft? No. So ownership was not given.

Mr. Reddy: Thank you for that. Doctor, the provisions which you have referred to, I followed closely in relation to the variance provisions, and we are grateful to you for stating whether they should be removed completely or they should be amended and so forth. Your assistance, that gives us your assistance, and we're going to be considering that. The common name, that was interesting. Yeah, to be honest, that was interesting. The military, we have heard that the military has to come under civil government.

I believe that was one of your recommendations. And the future reform of the constitution to avoid perpetual immunity, that has also been added to us. In other words, we leave the chapter 10, which is now the immunity chapter, and then just add a provision.

Correct me if I'm wrong, give me a correct name. Add a provision to prevent any further immunity provision being included in the constitution. Is that right? Chair, that's my intention, but how to write that is the drafter's law. But that's the intention I have when I said that. Yes. Yes. We got that. So, that is about all. Your submission has been very clear. I have no further questions to ask at this point in time. Unless there's any other questions from you. Yeah, Mr. Mayor.

Dr. Fatiaki: Through you, Chair. Thank you, Mr. Reddy. Very compelling arguments that you're making. Yeah, it's very, you know. I thank you for bringing up that point about the constitution consultation. Thank you for that question. The only question I have is your point about the fight against dependencies. You make reference to the Attorney General, the obligation position that we've heard from submissions previously. In your submissions, you are saying that FICAC is to be amended, that that section amended? I'm saying FICAC is not independent at the moment.

Not independent during our time. Not independent. I'm saying that there is interference and FICAC is being used as a political tool to target people who are not liked by existing governments.

The other problem with FICAC is that in a small country like Fiji, and it is going to be the same for the other countries, people are connected through, you know, their relatives, or their village, or

Mataqali, etc. It's a small country. You know, to have such an extensive, give extensive prosecution of power to FICAC, you, if I, if I terminate some staff, the staff is connected and FICAC will go and get a case.

The thing is this, they may not win because, you know, I didn't do anything wrong, but the problem is that it is very taxing. It is, it drains you, it breaks you. And then you can't take FICAC, or any prosecutional body, because, based on malicious prosecution, because I did extensive reading on that, where I was subjected to it, I was subject to malicious prosecution.

Because then you, and you'll never, 99% that you'll not get through in court, because you'll be discouraging a precoitional body to pick up any case in future, because they will be subjected to suing. So, so you cannot take them, you cannot sue them. So they have the money, they have the government grant, they can be used by anyone to target anyone, even though they know that they will lose, nothing will happen to them, because they won't be sued or they won't be subject to, you know, removal or cutting of grants, etc.

But that's a separate matter in terms of whether we should have FICAC or not. No, I really wouldn't want to go to the extent of suggesting that, you know, we should, you know, remove FICAC. I think that is something we really need to have a broader discussion.

But at least, you know, get this off, get this monkey off FICAC's back, you know. They should totally be removed. There should not be any connection between the Attorney General and FICAC.

Thank you, sir, for your clarification. I just, hearing you, you know, I just lived the experience. Sure.

The way it was presented, I just wanted a qualification. Thank you. The other one was the point about the military in Section 1312, you know, back into the civilian authority.

That's what you're suggesting, it comes back in that control. Because as you're saying, is it, in the way it's written, it's very vague according to your presentation in Section 1312? The statement I made, Commissioner, I have some past experience. I

have, I was present in some discussions where, you know, so I want to say that we are, they could have used that clause.

So what I'm saying is that let's get that out so that, you know, that clause cannot be used in any time to take over a democratically elected government or, you know, get the boots on the ground. I don't, I think they should always be subject to, they can come through the police and be called in to assist the police. But you give that power as the last bastion of, you know, welfare for the people, you are inviting them constitutionally. And given Fiji's history, that should be the last thing that any constitution should allow. I appreciate that. Thank you.

Mr. Reddy: Chair, if I may.

Mr. Valenitabua: Thank you, Mr Reddy. My question relates to the section that you wanted to remain in terms of the 2013 constitution. I believe it's in Chapter 3, under Part B, relating to proportionality representation versus constituency-based representation. I appreciate that you've also included literature in terms of, you know, in terms of understanding the various experiences of different contexts. I'd be interested to know if you found that this proportionality-based representation has lasted and has been stable in places with similar context to Fiji, but potentially post-conflict, small island nation, et cetera, but broadly just interested to hear your experience in terms of the single constituency-based representation. We've certainly heard a wide spectrum of views on that front.

Mr. Reddy: No, I didn't go into detail about researching in other countries where you have this. So, yeah, I won't be able to make much comment on that.

Mr. Valenitabua: Well, Dr. Reddy, we have come to the end of this session of consultation. We thank you very much indeed for your submissions. We will take the points you have raised into consideration. At the end of the consultations, which will be on the 30th of June, or the first week after the first week of July 2026, we will then have a look at all the submissions. The submissions will be collated and then analyzed, and then we will have to write a report. In that report, we'll have recommendations, and then our legal drafter and the constitutional lawyer will be preparing a draft constitution, and

then we'll hand those up to His Excellency the President. That is where we will end, or that will be where we'll end. Any other process after that, as you know, will be political. So, that is not within our terms and conditions.

Mr. Reddy: Thank you very much, and we wish you well. Thank you, Chair, and thank you, Commissioners, for allowing me this time to make my presentation. I wish you all the best. I do understand that your report could be amended, because it's a political process, but I would pray to God that what you submit there will be taken. Thank you. God bless. God bless, Viti. You're welcome. Thank you.I would appreciate it if I could have a photo with you.

----------End of Session [1-5-2026]----------

Review of Fiji's 2013 Constitution
Submission to the Constitution Review Commission

By

Dr. Mahendra Reddy
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Former Minister for Agriculture, Waterways and Environment,
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1/5/26

1. Introduction

Fiji is a plural, multi-ethnic, and multi-religious nation whose constitutional order must be carefully structured to preserve democratic stability, ensure equality among citizens, and foster long-term national cohesion. The constitutional architecture of Fiji cannot be viewed merely as a legal framework for the allocation of state power; rather, it must be understood as the principal institutional instrument through which Fiji manages ethnic diversity, political competition, state legitimacy, and national development.

Since independence in 1970, Fiji has operated under four constitutional arrangements, the 1970 Constitution, the 1990 Constitution, the 1997 Constitution, and the 2013 Constitution. The country has also experienced four military coups, many of which were directly or indirectly linked to contestation over political power, ethnicity, and institutional authority. Fiji's constitutional history demonstrates that

constitutional design matters profoundly in determining whether institutions promote stability or facilitate conflict.

Comparative constitutional scholarship demonstrates that constitutions endure not merely because of legal enforceability, but because they command legitimacy across political, ethnic, and social divisions (Elkins, Ginsburg & Melton, 2009). In deeply plural societies, constitutional durability depends particularly on whether the constitutional order is perceived as neutral, inclusive, and protective of all communities. Fiji's past constitutional instability reflects the consequences of constitutional frameworks that failed to sustain such legitimacy over time, in particular, the 1990 constitution.

The present constitutional review must therefore be approached with caution, intellectual rigour, and a long-term national perspective. I will be very worried if this

constitutional reform is driven by short-term political dissatisfaction, ideological preferences, or attempts to revisit settled nation-building principles. **Rather, reform should seek to preserve provisions that have advanced inclusion, equality, and democratic stability, while amending provisions that undermine institutional independence, weaken democratic accountability, or create structural imbalances in governance.** This is precisely the foundation of my submission to this Commission.

This submission is informed not only by constitutional theory and comparative governance practice, but also by my practical experience serving in senior public office, as Minister and Cabinet member, where I observed firsthand how constitutional structures shape the functioning of government, public administration, development planning, and political stability.

2. The Constitution: Purpose and National Significance

A constitution is the overarching supreme legal and political covenant of a nation. It defines the structure of the state, allocates powers among institutions, limits the exercise of governmental authority, protects the rights of citizens, and establishes the rules through which political power may be acquired and exercised (Albert, *et. al.,* 2024). More fundamentally, a constitution reflects the social contract between the people and their state.

In deeply plural societies such as Fiji, the constitution performs an additional and particularly critical role: it serves as the principal framework through which diverse communities coexist under a shared national order. It must provide confidence to all groups that the state belongs equally to them, that no community will dominate another through constitutional privilege, and that political

power will be exercised according to law rather than identity.

Noting the issues raised by various commentators, political parties and analysts, I note that a good constitution must satisfy five essential tests:

(i) Legitimacy: It must command broad public acceptance across communities. They must have ownership of it.;

(ii) Inclusivity: It must provide equal constitutional recognition and belonging to all citizens and not just a particular group because they in the majority or are the first settlers;

(iii) Institutional Balance: It must prevent excessive concentration of power in the hands of a few within the government or outside the government.

(iv) Rights Protection: It must safeguard liberties and minority protections, particularly in countries like Fiji, where we have several minority communities; and,

(v) Adaptability and Stability: It must provide continuity while allowing lawful reform. Excessive rigidity can create frustration if lawful reform becomes nearly impossible.

Fiji's constitutional history confirms that constitutions which did not have widespread acceptance or was perceived as privileging one ethnic group or a particular political faction over others eventually lose legitimacy and become sources of instability rather than order. The objective of this review should therefore be principled refinement (make targeted improvements and correct weaknesses, ambiguities or gaps, guided by constitutional principles, evidence and national interest) and not political redesign (not rewrite the constitution merely to suit the preferences of some political actors or to for partisan gain, revenge, or to meet short-term political objectives.

3. Suggestions for Principled Refinement of the 2013 Constitution

3.1 Secular State

Section 4 of the Constitution provides that:
"Religious liberty, as recognised in the Bill of Rights, is a founding principle of the State."

There have been calls from certain quarters for Fiji to be declared a Christian state. Such proposals should be firmly rejected.

From both constitutional and governance perspectives, declaring Fiji a state aligned to a particular religion would be a serious strategic and social error. Fiji is home to Christians, Hindus, Muslims, Sikhs, and persons of other faiths who have lived together for generations in relative harmony. The secular nature of the state has been central to preserving this coexistence. Comparative constitutional practice strongly favours secular constitutional frameworks in plural societies. India,

Singapore, Mauritius, and South Africa, all diverse multi-religious democracies, maintain secular constitutional orders not because religion lacks importance, but because state neutrality is essential to preserving equal citizenship in religiously diverse nations.

Constitutional alignment with one religion, even symbolically, risks transforming faith from a personal conviction into an instrument of political identity and state preference. It may produce legal, political, and symbolic hierarchies of belonging that undermine national cohesion.

As a former public office holder, I observed that one of Fiji's most distinctive strengths is the extent of interfaith coexistence and mutual participation in religious observances, be it Diwali, Eid, Easter, Christmas, Ram Naumi, etc.. Constitutional departure from secularism would unnecessarily endanger this social asset.

Recommendation:
Retain Section 4 in its current form.

3.2. Role of Military Forces

Section 131(2) provides:
"It shall be the overall responsibility of the Republic of Fiji Military Forces to ensure at all times the security, defence and well-being of Fiji and all Fijians."

No modern democratic constitution should provide the military with an autonomous constitutional mandate to ensure the "well-being" of the nation. Such language is excessively broad, vague, and open to subjective interpretation.

Samuel Huntington's theory of democratic civil-military relations emphasises that constitutional democracy depends upon objective civilian control, whereby the military remains professionally competent but

institutionally subordinate to elected civilian authority (Huntington, 1957).

In democratic constitutional systems, the military exists to defend the state, not to serve as an independent constitutional guardian or arbiter of national welfare. Given Fiji's history of military intervention, constitutional ambiguity regarding the military's political role is particularly dangerous. This provision may be interpreted in future as conferring constitutional legitimacy upon military intervention in civilian governance.

In every mature democracy, including Australia, New Zealand, India, and the United Kingdom, the armed forces remain unequivocally subordinate to elected civilian government.

As a former Cabinet Minister, I can attest that constitutional ambiguity regarding military authority can distort executive decision-

making and create uncertainty in the chain of democratic accountability.

Recommendation:
Replace Section 131(2) with wording stating:
"The Republic of Fiji Military Forces shall at all times remain subordinate to the elected civilian government and shall perform only such functions as provided by law."

3.3. Constitutional Immunity and Accountability

Future constitutional arrangements should not shield individuals from legal accountability for unconstitutional conduct.

The rule of law requires that no person be permanently above the law. As Dicey's foundational constitutional doctrine establishes, constitutional government depends upon equality before the law and the subjection of all public actors to ordinary legal accountability.

While transitional immunity provisions may occasionally be politically expedient in extraordinary post-conflict circumstances, they should remain exceptional and time-bound rather than entrenched constitutional norms.

Permanent immunity weakens deterrence, undermines public trust, and signals that unconstitutional conduct may ultimately evade accountability.

Recommendation:

Future constitutional reforms should avoid broad or perpetual immunity clauses.

3.4. Suspension of Members of the Constitutional Offices Commission

Section 132(13) requires consultation with the Attorney-General in matters concerning suspension of members of the Constitutional Offices Commission.

This requirement undermines institutional independence. An independent constitutional commission must not be subject, directly or indirectly, to executive influence in decisions relating to its membership or discipline. Because the Attorney-General is a political officeholder, this requirement creates both actual and perceived risks of executive interference.

Recommendation:
Delete the consultation requirement with the Attorney-General from Section 132(13).

3.5. Citizenship and Common National Identity

Section 5 establishes equal citizenship and common national identity for all citizens.

Modern constitutional democracies increasingly adopt civic rather than ethnic conceptions of nationality. A civic national identity promotes allegiance to the state

rather than communal sub-groups and strengthens social cohesion in diverse societies.

The recognition of all citizens with a common name that identifies them to the country is one of the most progressive nation-building reforms in Fiji's constitutional history.

Recommendation:
That the provision of a common name for all Fijians be maintained.

3.6. Bill of Rights

Chapter 2 contains a comprehensive and modern Bill of Rights. It aligns Fiji with contemporary constitutional best practice and should be retained substantially unchanged. Weakening these protections would represent democratic regression.

Recommendation:
Retain Chapter 2 as presently drafted.

3.7. Fiji Independent Commission Against Corruption (FICAC)

Section 115(9) requires FICAC to provide regular updates to the Attorney-General.
This provision should be removed.

No anti-corruption institution can be fully independent while constitutionally obligated to report to a political officeholder. Even where no actual interference occurs, such arrangements compromise public confidence in institutional neutrality. Best practice requires anti-corruption institutions to be operationally and structurally independent of the executive.

Recommendation:
Delete Section 115(9) in its entirety.

3.8. Proportional Representation Electoral System

Section 53 establishes a single national open-list proportional representation system.
This system should be retained. Political science literature consistently demonstrates that electoral systems shape political incentives. Constituency-based and majoritarian systems in divided societies often encourage ethnic bloc mobilisation, whereas proportional systems incentivise broader coalition-building and reduce disproportionality in representation (Lijphart, 1977; Horowitz, 1985).

Historically, constituency-based electoral arrangements in Fiji contributed to communal political mobilisation and reinforced ethnic voting patterns.

The current proportional representation system has helped:
(i) Reduce communal constituency politics;
(ii) Encourage national rather than localised ethnic campaigning;

(iii) Improve proportionality between votes cast and seats won;
(iv) Promote issue-based electoral competition.

Recommendation:
Retain Section 53 unchanged.

3.9. Term of Parliament

The current four-year parliamentary term should be extended to five years.
From practical Cabinet experience, a four-year term is insufficient for meaningful strategic governance.

In operational reality:
Year 1 is spent establishing government and strategic plans;
Years 2–3 focus on programme design and implementation;
Year 4 is politically constrained by election preparations.

Thus, effective governing time is materially reduced. Developmental states require institutional time horizons aligned with planning cycles. A parliamentary term shorter than the practical policy cycle creates structural misalignment between democratic mandates and implementation capability.

A five-year term would improve:
(i) Development planning continuity;
(ii) Investor confidence;
(iii) Development partner engagement;
(iv) Policy implementation effectiveness.

Recommendation:
Amend Section 58(1) to provide for a five-year parliamentary term.

3.10. Term Limits for Prime Minister

Section 93 should be amended to impose a two-term consecutive limit on the Prime Minister.

Comparative constitutional design increasingly recognises that prolonged incumbency can contribute to executive entrenchment, party capture, weakened accountability institutions, and diminished democratic renewal.

Unchecked prolonged incumbency may lead to:
(i) Over-centralisation of executive power;
(ii) Institutional weakening;
(iii) Leadership stagnation;
(iv) Reduced democratic renewal.

A two-term limit preserves democratic choice while safeguarding institutional resilience.
Partisan control over parliament, along with the appointment of the Speaker of the Parliament is appointed by the government side by tabling a motion, It is unlikely that a vote of non confidence will ever get carried forward.

Recommendation:
Amend Section 93 to limit any Prime Minister to two consecutive terms.

13. Conclusion

The 2013 Constitution contains several progressive provisions that have strengthened national unity, equality, and democratic governance. These include the secular state provision, equal citizenship framework, Bill of Rights, and proportional representation electoral system. However, targeted reforms are necessary to clarify civilian supremacy over the military; strengthen institutional independence; improve democratic accountability; enhance governance effectiveness and prevent over-concentration of executive power.

Constitutional reform must not become an exercise in political revisionism. It must be guided by the enduring interests of the Republic of Fiji and future generations. Fiji

requires a constitution that is inclusive, democratic, balanced, and capable of commanding legitimacy across all communities. The task of this Commission is not merely to revise the constitutional text, but to strengthen the constitutional foundations of Fiji's democracy for generations to come.

I do hope my submissions are accepted and I wish the Commission the very best in revising the 2013 Constitution of Fiji for the best interest of Fiji and its future generations.

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Dr. Reddy
1/5/26.

Eremasi Matanatabu

Eremasi Matanatabu
Date: 1-05-2026

Mr. Leighton Fatiaki — Good afternoon, Mr. Matanatabu. My name is Leighton Fatiaki. I'll be going through a few housekeeping matters with you this afternoon.

First of all, I'd like to convey our great appreciation for reaching out to make submissions before the Constitutional Review Commission and taking the time to come here today to make those submissions. On behalf of the Chair and the Commissioners, we thank you. Following this stuff, we have a few matters with regards to making a submission.

The mic in front of you, if you can press the right panel in front of you to turn the mic on in order to make your submission. And once you've spoken, you can press the same panel to turn the mic off. Following this, the Chair will introduce the Commission and the work that they'll be undertaking.

He will then proceed to introduce the Commissioners or will request the Commissioners to introduce themselves. After that, we also request if you can introduce yourself. This is for the record and the transcript.

Mr. Valenitabua — Mr. Matanatabu, good afternoon to you. We thank you very much for your attendance before this Commission today. This is the Constitutional Review Committee.

We have been tasked to review the 2013 Constitution, as you would have known by now. Before I proceed further, on my far right is Ms Nailatikau. Next to me on my right is Mr Conway Day.

My immediate right and left is Mr. Ami Kohli. And on the further left is Dr Nilesh Goundar. Dr Nilesh is with USP as a lecturer and academic.

Mr Kohli is a lawyer in Labasa, a very senior lawyer. Mr Berg is an architect. And Ms. Nailatikau is a consultant.

So, I am Sevuloni Valenitabua, also a lawyer. So that is your Commission to which you will be presenting your submission today. We welcome you.

I believe you would have read our Term of Reference, have you? The Term of Reference is clear. We are tasked by His Excellency the President of the Government of Fiji, or of the Republic of Fiji, I should say. We are tasked with the duty to review the 2013 Constitution.

It's a review and it will eventually end up with an amendment. So, provisions can be removed, provisions can be added, provisions can just

be changed within the Constitution itself. And having said that, we've had a number of consultations, more than 20 consultations already here in this room.

And from associations, from the ministries of government, and from individuals like you. The submissions have been received. Hand-signed is here.

We have recorded word-by-word. And also, we have received written submissions. Some have come in with their written submissions and then they just speak to the submissions.

At the end we will then, or we, ask questions and maybe make comments on a few of whatever has been submitted to us. That is what we have been doing and what we will be doing. On Monday we leave Suva and we go out to the maritime parts of the country.

Having said that, I now leave or pass you the mic so that you can introduce yourself and present us your submission. Thank you. Hello.

Mr. Matanatabu Just by introduction, my name is Eremasi Matanatabu. I am a 59-year-old I taukei, Fijian. I was educated in Suva and moved to Lautoka in 1995, which is where I currently reside.

My background is ICT. I have been in the industry for the last 25 years of the first part of my career. The last 15 years I have been more in project management and currently I am a general manager for the PMH group in Lautoka.

I am married with five children. They are all adults and have their own families. I have 12 grandchildren, which I will be representing today in my submission.

Mr. Matanatabu I am the Honorable Chairperson, Mr. Sevuloni Valenitabua, distinguished members of the Constitution Review Commission, ladies and gentlemen. It is a great honor and privilege to stand before this commission today. I am deeply grateful for the opportunity to present my submission in person and to contribute my voice to this important national process.

This review represents a moment of genuine hope for Fiji, and I do not take it lightly. I trust the commission is placed in every citizen who comes before it. My submission is grounded in three pillars that every I taukei elder taught when we were young, the Vanua, the Lotu, and the Matanitu.

I speak not as a lawyer or a scholar, but as a Fijian citizen who has lived under every constitution, every code that this commission is now tasked

to examine. I speak as a son, as a husband, a father, and a grandfather. And I speak for the Fiji I wish to leave for my grandchildren.

I am here for my grandchildren. There are 12 of them. When I look at their faces, I ask myself one question.

Am I leaving them a better Fiji than the one my parents left me? I am not certain that I am. Growing up, my world was shaped by three pillars that every I taukei elder taught. The Vanua, my home, my village, my elders, my tradition, my culture, my ancestors.

Who are we? The Lotu, the church, Sunday school, the Christian faith, the moral compass of our community, and how we should live. The Matanitu, the school, education, government services, how we organize ourselves together. These are three pillars that stood in my childhood.

They complemented each other. I saw it and I lived it. I also lived to see each one broken.

Three questions I'd like to ask and discuss, and the three spheres of each pillar. Each pillar answers a different human question. They are not in competition by nature.

The Vanua asks, who are we? The Lotu asks, how should we live? The Matanitu asks, how do we make decisions together? How do they strengthen us? The Vanua grounds the Matanitu. Power comes from the people and the land, not from those who hold office. The Lotu guides the Matanitu, holds government to a moral standard higher than any political convenience.

The Vanua and Lotu protect each other. The church in Fiji is not foreign. It's a genuine Fijian.

Where do things go wrong? Problem lies when one pillar tries to occupy the space of another. When Matanitu abolishes the GCC, it reaches to the domain of the Vanua. That's not his right.

When the Matanitu silences citizens for writing letters, it crushes both the Vanua and the Lotu. The Constitution's work is to define the boundaries between these three pillars, not rank them. I would like to show you now six ways the 2013 Constitution failed all three pillars.

My first argument is a constitution that is written for its authors, not its people. In 2013, the Constitution was written by and for the people of Fiji. It was written by the military regime without free public consultation.

A Constitution commission consulted the people in 2012. The regime rejected what was found and the Constitution was never put to the people for approval. What does this mean for the three pillars? For Vanua, the people's voice was heard and then ignored.

For Lotu, a document imposed by force has no moral legitimacy. For Matanitu, a government that begins with seizing power cannot honestly claim legitimate governance. I was working and raising a family in 2006 when the coup happened.

I watched the same people sit down and write the rules by which they would govern. I watched the 2012 commission consult the people and be discarded when the regime did not like the answers. I think we all know that there are some international examples that have followed the same problems.

In land mine in 2008, the military wrote Constitutions for themselves and then the coup happened in 2021. In Chile in 1980, Pinochet's commission wrote it in secret and Chile spent the next 30 years trying to undo it. The patterns are always the same.

When those who seize power write the rules, the rules serve the seizure. I ask the commission to please, any revised constitution in the future must be put to the people for ratification by referendum or by elected constitutional assembly before it becomes law. My second point is the Prime Minister's powers are inconsistent with democracy.

The PM is referenced 111 times in the 2013 constitution, 111 times. Through the constitutional office commission which the PM chairs, one person controls, and let me list, the commission of police, the commander of the military, the electoral commission and supervisor of elections, the auditor general, the governor of the reserve bank, the public service commission, and the judicial appointments. This is not separation of power; this is concentration of power.

Bainimarama, the architect of the constitution, was convicted of perverting justice and that's proof. He used his controls of the police commissioner to interfere with an investigation. The constitution made it easy for him.

We had Richard Naidu convicted for pointing out a judge's spelling error on Facebook. Conviction was dismissed after a government change. We had FICAC used for opposition leaders, nine politicians detained for opposing a land bill in parliament.

From experience in the private sector, when government controls anti-corruption, police, courts and elections, it reaches into every corner of

life, including businesses, families and communities, who are just there to get on with building their families. I ask the commission to please, we must be restructured as a genuinely independent body, the constitutional office commission, appointments confirmed by parliamentary supermajority, not by PM. The PM should govern, not control.

May I add that again? The PM should govern and not control. My third point is the immunity clause. What chapter 10 does? Section 155 to 158 grant absolute unconditional immunity to court perpetrators.

Section 158 places this beyond parliament, beyond the courts and beyond future amendments. Victims have no right to compensation, no recourse, none. This is self-pardon written into supreme law of the land.

Prior to 2006, I used to write letters to the editor. I was working in Nadi as a project manager for the ATS changes to the ERP systems. And I was writing letters after the regime took over the government in 2006.

While working one day, a twin cab with five Military officers arrived at the ATS compound and called the then CEO, Alifereti Malo, to ask where I was. So, he said, yes, he's here at the moment working on a project. And they said, we are here to pick him up and take him to the camp.

So, I was picked up in the twin cab and taken to the military camp in Namaka, where they held me for half the day. I was threatened and I was told that I can no longer write any letters to the editor. So, the constitution that that same regime later wrote for itself protects the people who issued the threat.

I had no legal recourse under the chapter 10, and I never will. What does the law teach us? The faith I was raised in taught me we are all answer for what we do, not just to the law, to God, and to each other. A constitutional clause that places some people above accountability contradicts this directly.

The law cannot endorse it. And Matanitu cannot legitimate it while it contains it. Again, the international lessons in Myanmar Article 445, blanket immunity, atrocities committed knowing no justice would follow.

In Chile, a dismantled Pinochet immunity provisions eventually prosecuted him. Impunity is a constitution, does not prevent future abuses. It licenses them.

I ask the commission to please. Chapter 10 must be repealed in its entirety. Address traditions through the Truth and Reconciliation Commission process, not a constitutional shield.

No one should be above the law that all Fijians must live under. My fourth point, 50 years of coups. We have one missing rule.

How can we fix it forever? Since independence in 1970, Fiji has had four coups. 1987, twice, 2000, and 2006. Every single coup removed an elected government by force.

Every single coup was followed by immunity for the people who did it. And not one Fijian constitution from 1997 to 2013 has contained a rule saying you cannot give legal protection to someone who seized power by force. That missing rule is why coups kept happening.

This is a structural gap. 1987 coup, Decree 9 of 1990, gave immunity to the participants. 2000 coup, the Muanikau Accord, granted limited immunity to Spade and his group.

2006 coup, Chapter 10 of the 2013 constitution, gave the most complete immunity ever written, permanent, placed beyond all courts, placed beyond all parliaments, beyond any future amendment. No court, no parliament, no future government can make it valid. Fiji courts have the power and duty to strike it down.

Fiji's commitment to the ICC cannot be removed if domestic law. So, every coup was rewarded with immunity. Until those changes, nothing else changes.

In 1999, Fiji became one of the first seven countries in the world to ratify the Rome Statute of International Criminal Court. The ICC is a permanent international court for crimes committed by those in power. By signing, Fiji made formal commitment nobody in Fiji is above the law.

The other six countries, Senegal, Trinidad and Tobago, San Marino, Italy, Ghana, and Norway. The 2006 coup makers tore up the 1997 constitution, but they could not tear up Fiji's international obligation. This obligation remains in force today.

Fiji is still bound by the Rome Statute. This review has an opportunity to make that commitment real inside Fiji's own law for the first time. The proposed solution, an anti-impunity clause.

In plain language, the clause says, any law or constitutional provision that gives immunity for a coup is void from the moment it is written. No

court, no parliament, no future government can make it valid. Fiji courts have the power and duty to strike it down.

Fiji's commitment to the ICC cannot be removed by any domestic law. This is not a new idea from outside Fiji. Kenya's 2010 constitution already has this.

South Africa's constitution has this. It is enforceable legal rule, not just a statement of values. A companion Rome Statute crimes act would bring Fiji's international commitments into domestic law, so Fiji's own courts can act.

I ask the commission an anti-impunity clause in the new constitution, and Rome Statute crimes act in parliament. Together they close the structural gap that has been exposed four times in 50 years. Fijis already committed to participate in principle in 1999.

The consultation now honors that commitment at home. My fifth point. The electoral system must reflect the will of the people.

A single national constituency removes a geographic link between voters and their representatives, concentrates power in urban centers like Suva, Nausori, and Lautoka. A voter in Kadavu or Rotuma, or the Lau group has no local MP to identify or hold accountable. From the Vanua perspective, the Vanua is rooted in place.

A specific piece of land, a specific community, and a specific accountability. The elders who taught me were accountable to the people around them. They could be found and they could be spoken to.

An electoral system that erases geography erases something that the Vanua holds sacred. In 2025, the Rabuka government tried to reform the constitution with a clear democratic mandate. They fell one vote short of three quarters majority required.

This is an example of a government that is elected by the people, could not reform the system that the people voted to change. What works elsewhere? Samoa has a geographic constituency plus proportional representation. It's been stable democratic transition for decades.

We also have New Zealand with a mixed member proportional system. After citizens' referendum in 1996, local seats are kept. My ask to the commission, an electoral model that restores geographic representation across Fiji Islands and provinces, maintains equal citizenships, and ensures that every community, including a small asylum, has a direct voice in parliament.

My final point is the rights of the I taukei and Rotuman people must be secured. The 2013 constitution abolished the Great Council of Chiefs. Whatever its limitations, the GCC was a constitutionally recognized sphere of indigenous governance.

The government does not have the right to abolish an institution of the Vanua. The Vanua predates the state. And I repeat it, the Vanua predates the state.

Its authority comes from its ancestors and the land. The elders who taught me were not appointed by the government. Their authority came from their community, recognition of them.

No government gave it, and no government should be able to take it away. A reconstitution body must drive its authority from the Vanua, not from government appointment. Native land, customary fishing rights, and resource revenues must be protected and enforceable, not just stated.

Growing up, the church was not separate from the community. It is an expression of it. The pastor's moral authority came from his independence from the state.

The constitution must be protected from freedom of faith communities and independence from the matanitu. The voices that matter most of these questions of the vanua are not in Suva's boardrooms. They are in the villages of Kadavu, in Rotuma, and the outer islands in Lau.

If this review does not reach these communities, it will produce a constitution as disconnected from the vanua, as the one it is replacing. I ask the commission to please. A constitutionally recognized, independent, mandated body for Itaukei communities.

Enforceable protection of land and fishing rights. A genuine constitutional independence for faith communities. And a consultation process that goes deep into rural and outer Fiji.

Not as formality, but as a primary purpose. In closing, for the 12 faces of my grandchildren, and what I have seen in my lifetime. A prime minister convicted of obstructing justice.

Opposition leaders criminally charged before elections. Citizens detained for wearing T-shirts. An anti-corruption body used as a political weapon.

Courts that punish critics instead of protecting citizens. A democratic government unable to reform the constitution it is reluctant to change.

An educational pathway destroyed because schools collapsed international confidence.

And a citizen, me, taken to the military camp and told to be silent for writing letters. My parents left me a better Fiji than the one I'm leaving my grandparents now. My parents knew and strongly respected their vanua, their lotu, and their matanitu.

I want my grandchildren to be able to say the same about me. I end by asking, a constitution that honors the vanua. Protecting identity, land, and voice of every community.

A constitution that honors the lotu. Protecting conscience and moral independence. A constitution that honors the matanitu.

With genuine separation of powers and genuine accountability. And then, put to its people, let them choose it. So that the first time in my lifetime, Fiji has a constitution the people truly choose.

Honorable Chairman, members of the commission, I want to close by expressing my sincere and heartfelt gratitude for the privilege of standing before you today. This process, the opportunity for an ordinary Fiji citizen like me to come before the commission such as we speak freely. It in itself expresses the democratic values I've spoken about today.

And I do not take it for granted. I've lived through years when speaking freely was not safe. That I'm able to stand here in this room and say these things without fear is something I deeply value and for which I'm profoundly thankful.

I trust that the commission to carry voices of all Fijians from the cities and the outer islands, from the elders and the young, from every community and every pillar of our national life, and the care and the respect they deserve. The people of Fiji are watching. My children, grandchildren are watching. Fiji is in good hands. We now value.

Mr. Valenitabua — Thank you very much, Mr. Matanatabu, for your submission.

Clear submission. You have raised important pertinent points and something that the commission has to think about. Like I said at the outset, commissioners might want to ask questions or to make comments in relation to your submission.

I now open the floor for the commissioners if they wish to ask questions.

Mr. Goundar — Thank you, Chair. Vinaka, Mr. Matanatabu, I want to thank you for your submission this afternoon.

And you have spent your time, taken time out of your schedule, perhaps more commitments, to come and present to us here today. That is a testament in itself of your concerns regarding the current provisions in the Constitution and your point about leaving a better Fiji for your children and your grandchildren. Your presentation was very clear, and as commission members we have taken note of the submission.

Once again, I don't have any questions, but I want to thank you for your submission and your keen interest in the current process.

Mr Kohli

All I want to say is I share the same sentiments as our Chair and Mr. Governor. Very well presented.

I listen to every word, try to absorb. And I think we have very nicely summed up what the thoughts of people feel. I have only one question.

Because you are a lawyer, I am posing this to you. In light of Supreme Court ruling, how do we deal with immunity codes? Because Supreme Court basically, if I am right, says we can't touch that. Arguable.

Arguable, yes. Because you are a lawyer, I am posing it to you. Is there any way of going around that? I am sorry to say I am not a lawyer, no.

Mr. Matanatabu

I am sorry. I am an IT professional. My humble apologies.

Mr. Kohli

May I take that question back? Thank you. Thank you very much for your presentation. I take it back.

Mr. Begg

Isa, thank you very much. I really enjoyed listening to your testimony. I do have the same conviction.

You have your grandkids, your kids, and so on. But I understand all that. And I listened to you passionately.

Thank you for your presentation. I just share the same sentiments with my fellow commissioners. I just have one point for clarification.

When you use the word lawful, what are you referring to there? Can you qualify that for me, please?

Mr. Matanatabu

Thank you. I think in every community in Fiji, though I use the Itaukei terms, I am not strictly referring to one particular denomination. Every community has its vanua, has its lotu, and has its matanitu, and how they relate to them.

So, for me, it is a general term. But being an Itaukei, I just use the Fijian terminology that I was brought up in as a young child. Thank you for that.

It's a good point. I also want to ask the question, because that word is used in your presentation, how does that relate with other faiths? Sorry. Other faiths, you know, other religions that are in the country.

The lotu to me is, if I interpret it in English, it's just faith. The lotu doesn't necessarily mean it has to be Christian, or Islam, or Hinduism. Lotu is lotu.

It depends on how you interpret your lotu. Fiji had a different lotu before the lotu came, before Christianity came. That was lotu to Fijians then.

Lotu to Fijians now is, well, the majority of this is Christianity. So lotu can't be just tied down to Christianity. Lotu was here before Christianity came.

Mr. Begg — Thank you very much. I just wanted a qualification on that word, but I appreciate it. Thank you.

Ms. Nailatikau — Thank you, Chair. Mr. Matanatabu, thank you very much for making the time to be here with us today to represent your family, and particularly your grandchildren. Like my fellow commissioners, I listened with great interest and great reflection from the words that you shared with us today.

I think, if I may add to what has already been said, an important aspect that you spoke about was about the separation versus concentration of powers. And I think, in reflection, you've given us much to think about in terms of how these things exist on the page and how they transpire in real life in terms of affecting everyday citizens. I think that's an important part of understanding that whatever the origins of constitutions like this, you alluded to the experiences of different countries who have similar experiences to Fiji.

It's that people don't necessarily have to be legal practitioners to understand how power is concentrated in such documents. And I appreciate your emphasis on being able to share it as an ordinary citizen, as someone who has lived through various experiences, and appreciate you making that link to the specific sections in the Constitution. No questions from me, but just ensuring that that does not go unacknowledged and is received with appreciation. Vinaka

Mr. Valenitabua — Vinaka. Yes, Mr. Matanatabu your submissions, the areas that you had addressed us on, the seven areas, they have been put before us. And that shows how common issues, common worries, common factors are

there in the communities, all communities that are here in Fiji, which we need to address.

These concerns, these worries, they need to be addressed. So, we thank you very much. What we will do is this.

Your submission, do you have a written copy with you? Please hand over the written copy to one of the girls, and then we will put that together, collate with the other submissions which we have received. We have received mostly written submissions, some oral, and then we'll collate all the submissions, and then we'll go out to the islands, to the maritime parts of the country, starting from Monday. There will be two teams going, team one and team two.

And what we'll do is gather more submissions from our people. One of the democratic deficiencies which we have been tasked to remedy is the participation of the general public. 2013 Constitution has that deficiency.

We received some submissions at the latest this morning where that was raised. So, we're going to be remedying that by providing the widest purview, the widest extent of coverage in relation to participation by members of our nation. That starts on Monday.

Now, once we have completed that, within the next two months, then we'll collate and analyze and then write a report with recommendations to His Excellency the President on what is to be included in the draft Constitution together with the draft Constitution. We are getting an expert, constitutional law expert, and an expert who is to draft the Constitution. After we present our report, that is the end of this commission as far as we are concerned at this point in time.

All the rest will be political. We'll leave it to the President, and then he'll give it to Cabinet, and then Cabinet will take it to Parliament, and so forth, and so forth. All right? I'm sure you understand what I'm talking about.

So, thank you very much. We wish you the best. Have a safe trip back to Lautoka.

Is it Lautoka or Nadi?

Mr. Matanatabu — Lautoka. Back to Lautoka, right. Yes, sir.

Sa Vinaka.

----------End of Session [1-5-2026]----------

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SUBMISSION TO THE

Constitution Review Commission of Fiji

Grounded in Vanua, Lotu and Matanitu

Eremasi Tova Matanatabu
15 Thomson Crescent, Simla, Lautoka, Fiji
April 2026

PERSONAL PREFACE

My Story, My Submission

My name is Eremasi Tova Matanatabu. I was born in 1967. I am an iTaukei Fijian — that means I am an indigenous Fijian whose roots go deep into this land. I am a husband, a father of five adult children, and a grandfather of twelve. I have spent more than twenty-five years working in information and communications technology, and I am currently in senior management. I write this submission not as a lawyer, but as a Fijian man who has lived his entire life under the constitutions, governments, and coups that this Commission is now asked to examine.

I write it because of my grandchildren. There are twelve of them. When I look at their faces, I ask myself one question: am I leaving them a better Fiji than the one my parents left me? I am not certain that I am.

> *My parents left me with a better Fiji than the one I am leaving my grandchildren now. My parents knew and strongly respected their Vanua, their Lotu, and their Matanitu.*

My parents lived by three pillars that every iTaukei elder taught. These were not political ideas. They were the structure of everyday life.

VANUA	LOTU	MATANITU
Home, village, elders. Our culture and traditions. Looking back to our ancestors for guidance on how to live today.	Church on Sundays. The Christian faith and all its teachings. The moral compass of our community.	School, education, and government services. The structures by which society organised itself and provided for its people.

Living Through the Coups

I have lived through four coups. Each one caused real damage to real people — including me and my family.

In 1987, I was in my second year of a Diploma in Applied Computing and Data Processing, funded by the United States Government. This was a real opportunity — a chance for young Fijians to build skills that would otherwise have been out of reach. When the first coup happened, schools closed. Our lecturers left. When we eventually graduated, the American Government withdrew its funding. A door that had been opened for us was shut — not because we failed, but because a coup destroyed the trust that made the programme possible.

EREMASI 1987	*I was twenty years old, studying computing on an American Government scholarship. The coup happened. Schools closed. Lecturers left. The programme survived, but the funding was cut once we graduated. An opportunity built for our generation was taken away by events we had no part in causing.*

In 2000, I was working in Lautoka for Fiji Pine Limited when another coup struck. In 2006, I was at Datec Fiji Limited. This time, what happened was personal in a way the others had not been.

Taken to the Camp

I had been writing letters to the editor. Not threats. Not incitement. Simply letters, published in the newspaper, saying that the military regime that had seized power from the elected government was wrong, and that Fiji deserved democracy. For that, I was taken to the Military Camp in Namaka, Nadi. I was held for half a day. I was threatened. I was told not to write any more letters.

EREMASI 2006	*I was not a politician. I was a citizen who believed that writing to a newspaper was the right of every person in a democracy. For that, I was taken to a military camp and told to be silent. The Constitution that the same regime later wrote for itself protects the people who gave that order from any legal consequences. I have no recourse. Under Chapter 10 of the 2013 Constitution, I never will.*

What I Am Leaving My Grandchildren

I have twelve grandchildren. When I look at them, I think about what my parents gave me: a country where the three pillars still stood with some dignity. The Vanua was respected. The Lotu guided communities. The government — however imperfect — was still answerable to the people. I am not sure I am handing my grandchildren the same.

That is why I am here. That is what this submission is about.

THE FRAMEWORK

Vanua, Lotu and Matanitu: Three Pillars, One Nation

Everything in this submission is built on a simple idea that my elders taught me long before I understood anything about constitutions or politics. Fiji's society rests on three pillars, and all three must be healthy for the country to work properly.

Think of it like a three-legged stool. Each leg answers a different question about how people live together:

VANUA	LOTU	MATANITU
Who are we? Our identity, our land, our ancestors, our culture. No government created it. No government can take it away.	How should we live? Our values, our conscience, our faith. It keeps us accountable to something beyond the law.	How do we decide together? Our laws, our elections, our public services. It must be answerable to the people.

How They Support Each Other

Vanua reminds Matanitu where its power comes from. A government that forgets it serves the people eventually starts serving itself. The Vanua — the rooted identity of the people — keeps the government honest about who it belongs to.

Lotu holds Matanitu to a higher standard. Laws can be changed by those in power. Moral values are harder to corrupt. When a community holds its leaders to a moral standard beyond what the law requires, leaders behave differently.

When one pillar crushes the others, everything fails. This is exactly what happened in Fiji. A government used the law to silence citizens, abolish indigenous institutions, and write permanent protection for itself. That is what a collapsed Matanitu looks like when it overruns the Vanua and the Lotu.

What this submission asks for is simple: a constitution that gives each pillar its proper space and stops any one of them from crushing the others.

ARGUMENT 1

A Constitution Written for Its Authors, Not Its People

Pillars engaged: Vanua • Lotu • Matanitu

The most basic problem with the 2013 Constitution is not any particular section of it. The problem is how it was made. It was written by a small group of people who had seized power by force, without asking the Fijian people what they wanted, and without ever putting the result to a vote.

To understand why this matters, think of it this way: if a group of people break into your house and rewrite your house rules while you are locked outside, those rules are not yours — no matter what they say on paper.

In 2012, the military government set up a Constitution Commission led by respected law professor Yash Ghai. The Commission travelled around Fiji, listened to thousands of citizens, and produced a draft. The government rejected it and replaced it with a document of their own.

FIJI 2012–2013	*The Yash Ghai Commission consulted more than 7,000 Fijians across the country. Its draft constitution was publicly released. The military government rejected the draft, burned copies of it publicly, and produced its own text. The 2013 Constitution was never put to the people for approval. [Source: Yash Ghai Commission Report, 2012]*

Citizens who tried to speak out were silenced. I am one of them. I was taken to a military camp and told not to write letters. The constitution that followed ensures the people who gave that order can never be held legally responsible for it.

The Terms of Reference for this Commission use the phrase 'democratic deficit.' That phrase means a gap between what democracy requires and what the law actually delivers. The democratic deficit in Fiji's 2013 Constitution starts before you even open the document — it starts with how it was made.

SOURCES

[1] Yash Ghai Constitution Commission Report, 2012
[2] Constitution of the Republic of Fiji, 2013
[3] Amnesty International, 'Beating Justice', 2016

Recommendation: Any new or revised Constitution must be put to the people of Fiji for approval — either by a referendum (a national vote) or by a specially elected group chosen for this purpose — before it becomes law. A constitution that was never offered to the people cannot fully claim to speak for them.

ARGUMENT 2

Too Much Power in One Person's Hands

Pillars engaged: Matanitu

In a healthy democracy, power is shared. Different parts of the government check on each other. The courts can overrule the government. An independent police force investigates everyone equally. A free electoral commission runs elections without interference. These checks exist because history has taught us that any person or group given unchecked power will eventually abuse it.

The 2013 Constitution does not share power. It concentrates it. The Prime Minister is mentioned more than 111 times in the document.

Imagine one person choosing the referee, the line judges, and the match officials for their own team's games. That is what this constitutional structure does.

FIJI 2024

Frank Bainimarama, who designed the 2013 Constitution, was convicted in 2024 of perverting the course of justice. He had used his office to interfere in a police investigation into corruption at the University of the South Pacific. His Police Commissioner was also convicted. The system he designed made this straightforward: he controlled the Commissioner, and used that control to protect himself. [Source: Fiji High Court, 2024]

FIJI 2021

Nine opposition members of parliament were detained and questioned by police simply for opposing a government land bill in Parliament — a lawful act of democratic participation. [Source: Freedom House, Freedom in the World 2022: Fiji]

SOURCES

[1] Constitution of the Republic of Fiji 2013, multiple provisions on the Constitutional Offices Commission
[2] Freedom House, Freedom in the World 2024: Fiji (freedomhouse.org)
[3] Fiji High Court judgment, State v Bainimarama and Qiliho, 2024

Recommendation: The body that appoints independent officials (the police commissioner, judges, the auditor-general, and others) must be restructured so the Prime Minister does not control it. Appointments should require approval from a broad cross-section of Parliament — not just the governing party. A Prime Minister should govern the country, not appoint the people responsible for keeping the Prime Minister accountable.

ARGUMENT 3

The Immunity Clauses Must Go

Pillars engaged: Lotu • Matanitu

Chapter 10 of the 2013 Constitution — sections 155 to 158 — does something that no court, no parliament, and no future government can undo under the current rules: it gives permanent legal protection to the people who carried out the 2006 coup and to all acts done in the name of that coup.

Section 158 goes even further. It says these protections cannot be removed by Parliament, cannot be overturned by the courts, and cannot be changed by any future amendment to the constitution. It also says that nobody harmed by the coup or by anything done in its name has any right to go to court or claim compensation.

In plain terms: the people who took power by force wrote a law saying they can never be held responsible for doing so, and they made that law impossible to change. I was one of the people those acts were done to. I was taken to a military camp and told to be silent. I have no legal recourse. The constitution the same people wrote ensures that.

EREMASI 2006	*The people who ordered my detention are protected by Chapter 10 of the 2013 Constitution. They wrote that protection into the supreme law of the land after they had already used the power they seized. That is not the rule of law. That is the rule of those who wrote the law for themselves.*

The Lotu I was raised in taught me something clear: all of us answer for what we do. Not just to the courts, but to God and to each other. A constitutional clause that says some people are permanently beyond accountability is a direct contradiction of this. You cannot build a moral community on permanent impunity.

AMNESTY INTERNATIONAL 2016	*Amnesty International's report 'Beating Justice' documented widespread allegations of torture, beatings, and brutal treatment of detainees by Fiji's security forces, with perpetrators facing no consequences. The report found the behaviour was condoned at senior levels. [Source: Amnesty International, Beating Justice, 2016]*

SOURCES

[1] Constitution of the Republic of Fiji 2013, Chapter 10, Sections 155–158

[2] Amnesty International, Beating Justice: How Fiji's Security Forces Get Away with Torture, Ill-Treatment and Deaths in Custody, 2016 (amnesty.org)

Recommendation: Chapter 10 of the 2013 Constitution must be removed entirely. The next argument sets out what should replace it. Nobody — regardless of what office they held — should be above the law that every other Fijian must live under.

ARGUMENT 4

Fifty Years of Coups, One Structural Gap — and How to Close It

Pillars engaged: Vanua • Lotu • Matanitu

The Pattern No One Has Fixed

Since Fiji became independent from Britain in 1970, it has suffered four coups: twice in 1987, once in 2000, and once in 2006. Every single time, an elected government was removed by force. Every single time, either the constitution was torn up or suspended. And every single time, the people who took power made sure they were protected from being held responsible for doing so.

This is not a run of bad luck. It is a pattern — and it has a cause. No Fijian constitution, from the 1970 Independence Constitution to the 2013 Constitution, has ever contained a clear, enforceable rule saying: 'You cannot give legal protection to someone who seized power by force.' That gap — that missing rule — has been exploited four times. It will be exploited again unless it is closed.

Year	What happened	Constitution affected	Immunity granted?
1987 (x2)	Lt Col Sitiveni Rabuka seizes power twice. First coup in May, second in September.	1970 Westminster Constitution abrogated. 1990 Constitution imposed.	Yes — Decree No. 9 of 1990 granted immunity to coup participants.
2000	George Speight leads civilian coup, takes PM hostage. Military intervenes and takes control.	1997 Constitution suspended by the Military Commander.	Yes — Muanikau Accord granted limited immunity to Speight's group.
2006	Commodore Bainimarama seizes power from elected PM Laisenia Qarase.	1997 Constitution abrogated by military decree in 2009. 2013 Constitution imposed.	Yes — Chapter 10 of 2013 Constitution grants blanket, permanent immunity.

Look at the final column of that table. Every single coup was followed by immunity. The 1987 coup produced Decree No. 9 of 1990. The 2000 coup produced the Muanikau Accord. The 2006 coup produced Chapter 10 of the 2013 Constitution — the most complete immunity ever written, placed beyond the reach of any court or future parliament.

The 1970 Constitution that Fiji inherited from Britain assumed democratic norms would be respected. It was a document built for a world where the military accepted election results. It made no provision for what would happen if they did not. That assumption was wrong, and Fiji has paid the price for it four times.

SOURCES

[1] Constitution of Fiji 1970 (Independence Constitution), negotiated with the British Government
[2] Constitution of Fiji 1990, Decree No. 9 (Immunity Provisions)
[3] Constitution of Fiji 1997, amended following the Muanikau Accord
[4] Constitution of the Republic of Fiji 2013, Chapter 10
[5] Brij V. Lal, Fiji: Coups in Paradise, Zed Books, 2009

What Fiji Already Chose in 1999

Here is something that does not often come up in discussions about Fiji's coups, but it is one of the most important facts about who Fijians are and what they believe.

In 1999 — seven years before the 2006 coup — Fiji became one of the first seven countries in the world to ratify the Rome Statute of the International Criminal Court (ICC).

UN TREATY 1999	*Fiji ratified the Rome Statute of the International Criminal Court on 29 November 1999, becoming one of the first seven states in the world to do so. The first seven ratifying states were Senegal, Trinidad and Tobago, San Marino, Italy, Fiji, Ghana, and Norway. [Source: United Nations Treaty Collection, Treaty No. 38544]*

The coup-makers who followed tried to erase that commitment inside Fiji — through military decrees, the abrogation of the 1997 Constitution, and finally through the immunity provisions of the 2013 Constitution. But they could not erase Fiji's international legal obligations. Those remain in force today.

What this means in plain terms is this: Fiji already belongs to an international system that says power must answer to law. The constitutional reform process now underway is the opportunity to make that commitment real inside Fiji's own borders — not just on an international treaty that few people can see or enforce.

SOURCES

[1] United Nations Treaty Collection, Rome Statute of the International Criminal Court, Treaty No. 38544. Fiji ratification: 29 November 1999. (treaties.un.org)

[2] International Criminal Court, Rome Statute, Article 27: Irrelevance of official capacity. (icc-cpi.int)

The Proposed Solution: An Anti-Impunity Clause

This submission proposes that the new constitution contain an explicit Anti-Impunity Clause. This is not a new idea from a foreign country. It is the logical completion of what Fiji's democratic governments have always believed — and what Fiji already committed to in 1999 when it ratified the Rome Statute.

In plain language, the clause would say:

What an Anti-Impunity Clause means in plain language

Any law, decree, or constitutional provision that tries to give legal protection to someone who seized power by force is void from the moment it is made. It has no legal effect. No future parliament, no future government, and no future constitutional amendment can make it valid. Fiji's courts have the power and the duty to strike it down. And Fiji's commitment to the International Criminal Court remains in force regardless of any domestic law that tries to override it.

This kind of clause already exists in other constitutions. Kenya's 2010 Constitution, Article 3(2), states explicitly that any attempt to remove or suspend the constitution by force is void, and that any person who assists such an attempt is guilty of treason.

KENYA 2010	*Article 3(2) of Kenya's Constitution states: 'Any attempt to establish a government otherwise than in compliance with this Constitution is unlawful.' This clause is enforceable in Kenya's courts and has been used to challenge acts that seek to bypass constitutional authority. [Source: Constitution of Kenya, 2010]*

Together with a companion law — a Rome Statute Crimes Act that incorporates Fiji's international commitments into domestic law — the Anti-Impunity Clause would do five specific things:

- Make any future attempt to write immunity for a coup into the constitution legally void from the moment it is written.
- Give Fiji's own courts the tools to act against such attempts without waiting for the international community to intervene.
- Make clear that Fiji's commitment to the International Criminal Court cannot be removed by any domestic law or constitutional change.
- Allow for a conditional, court-supervised path to limited immunity where appropriate — such as through a Truth and Reconciliation process — but prevent anyone from granting themselves immunity.
- Send a clear signal to Fiji's military, to the region, and to the world that Fiji's constitutional order is founded on the permanent principle that power must answer to law.

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Recommendation: The new constitution must contain an explicit Anti-Impunity Clause stating that any law or provision granting immunity for an unconstitutional seizure of power is void and unenforceable. Parliament should also pass a Rome Statute Crimes Act bringing Fiji's international legal commitments into domestic law. This would close, for the first time in Fiji's fifty-six-year history, the structural gap that has allowed every coup to repeat itself.

ARGUMENT 5

The Electoral System Must Reflect the Will of the People

Pillars engaged: Vanua • Matanitu

The current voting system — a single national constituency — was designed by the Bainimarama regime. In simple terms, it means that all 50 members of parliament are elected from one single national list, rather than from geographic areas. While the abolition of ethnic-based voting (called communal rolls) was a genuine positive step that should be kept, the single national system created a new problem: it cut the link between voters and their local representatives.

If you live in Kadavu, Rotuma, or the outer islands of Lau, you have no MP who specifically represents your community. Every MP represents the whole country in theory, which means in practice they represent wherever the most votes are — the cities. Rural and outer island communities lose their voice.

For the Vanua, this is a deep problem. The Vanua is about belonging to a specific place — specific land, a specific community, specific people you are accountable to. An electoral system that erases place erases something the Vanua holds sacred.

FIJI 2025

When the Rabuka government attempted to amend the constitution in 2025 with a clear electoral mandate from the people, it fell one vote short of the three-quarters majority required. A democratically elected government could not reform the electoral system the people had voted to change. The constitution had been designed to prevent exactly this kind of democratic reform. [Source: Fiji Parliament records, 2025]

Other Pacific nations show there is a better way. Samoa uses geographic areas alongside proportional representation, so that local communities have a direct representative while national fairness is maintained. New Zealand held a public referendum in 1996 and moved to a system that keeps local seats while adding proportional national seats.

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Recommendation: The Commission should recommend a voting system that brings back geographic representation — so that every island, province, and community in Fiji has a

representative directly answerable to them — while keeping the principle that all citizens vote equally, regardless of ethnicity.

ARGUMENT 6

The Rights and Voice of iTaukei and Rotuman Peoples Must Be Protected

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The Commission's Terms of Reference specifically ask it to look at the rights of indigenous Fijian and Rotuman people, the protection of native land and customary fishing rights, and the recognition of the Great Council of Chiefs. As an iTaukei man who grew up learning the three pillars from his elders, I regard this as the area where everything I have described in this submission comes together most directly.

The Great Council of Chiefs

The Great Council of Chiefs (GCC) was the constitutional body that gave the chiefly system of the Vanua a recognised voice in the governance of Fiji. It was not a perfect institution — no institution is. But it represented an important principle: that the iTaukei people's own system of authority deserves a place in the national framework.

The 2013 Constitution abolished it.

This submission calls for a reconstituted body — designed with input from iTaukei communities themselves — to be given constitutional recognition. Its authority should come from the Vanua, not from government appointment.

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If this review process only hears from people in cities, it will produce a constitution shaped by city voices. The Commission's guide says it will travel across the country and sit with communities. I am asking the Commission to honour that commitment fully — to go to Rotuma, to Lau, to Kadavu, to the villages. The voices that matter most on questions of Vanua are not in boardrooms. They are in the places the Vanua is actually lived.

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Recommendation: The Commission should recommend: a constitutionally recognised, independently mandated body for the iTaukei people's voice in national affairs, with authority from the Vanua rather than government appointment; enforceable protections for native land and customary fishing rights; genuine constitutional protection for the independence of faith communities; and a consultation process that reaches the outer islands and rural communities as a primary commitment, not an afterthought.

CLOSING STATEMENT

For the Twelve Faces

I have made six arguments in this submission. Let me say what each one means in plain terms.

- The 2013 Constitution was written by people who seized power, for their own benefit, without asking the Fijian people. That is where the democratic deficit starts.
- Too much power was placed in one person's hands. That power was abused. The structure that enabled the abuse must be changed.
- The immunity clauses protect coup-makers from accountability. They protect the people who silenced me. They must go.
- Four coups in fifty years happened because no constitution ever said clearly that you cannot give legal protection to someone who seized power by force. This is the structural gap. The Anti-Impunity Clause closes it. Fiji's own commitment to the International Criminal Court — made in 1999 — means it is already obligated to uphold this principle.
- The electoral system leaves outer islands and rural communities without a direct local voice. Geographic representation must be restored.
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Ministry of Housing

Ministry of Housing
Date: 1-5-2026

Leighton: Good morning and welcome to the team from the Ministry of Housing, in particular the Permanent Secretary Mr. Manasa Lesuma and the team. On behalf of the Constitutional Review Commission, it's my honor to thank you for accepting our invitation and taking the time out of your busy schedule to come and make a submission before the Commission. My name is Leighton Fatiaki, I'll just be going through a few housekeeping matters.

With regards to the mics, if you wish to speak, you'll have to press on the right panel on the mic in front of you to turn the mic on and once you've made your submission if you can also press the same right panel to turn the mic off. Following this the Chair will introduce the Commission and the work that they'll be undertaking as well as introducing the Commissioners or he will ask the Commissioners to introduce themselves. Following this we request that if you can also introduce yourselves as a team, this is for the transcript and the record.

Mr. Valenitabua: Permanent Secretary, good morning, good morning, ladies, welcome to the Commission and the Consultation this morning. We are glad that you responded to our invitation and have turned up here before the Constitutional Review Committee to submit or make submissions to us in relation to what you think about the provisions in the Constitution. Before I move on, on my right is Mr. Conway Beg, one of the Commissioners, on my right is Mr. Ami Koli, Mr. Beg is an architect as you might know since you deal with housing and on my left is Mr. Koli, a lawyer in Labasa.

There should be seven Commissioners, four of them are not here with us. We are getting ready to go to the islands, to the maritime islands next week on Monday so they have sent their request and apologies that they won't be able to be here this morning. That does not mean that we are not taking you seriously. You've got me as a chairperson, you've got a lawyer here on my left and you've got a architect who is also a thinker, a very deep thinker on my right. So, you should be in good hands. We welcome you again.

By way of introduction, the Constitution Review Committee is now out there at the public knowledge. We were appointed by His Excellency the President, His Excellency the President of the Republic of Fiji and our

main task is to review the 2013 Constitution. There is a possibility of an amendment of the 2013 Constitution so that we can have provisions removed or repealed or provisions added or provisions just amended within the sections. That is what we are here for or what our task has been given to us. In our term of reference, we have been told to look into the democratic deficiencies in the preparation of this Constitution. One of the deficiencies is that most of us, the majority of us in Fiji, citizens and population of this country did not know how this came about, how the 2013 Constitution came about. It was the work of a very small group of people. We don't even know who. So that democratic deficiency has to be redeemed, has to be cured so that we say in the preamble to the Constitution, we the people of Fiji, it means us, everybody.

Maybe not everybody but the majority. So, the task before us as commissioners is to take submissions, hear submissions, record submissions from the people of this country, record them, collate them, analyze them and decide which provisions should go into the Constitution, which ones should not. So, we are looking at an amendment to this document here. We've had a number of consultations up until the last report I presented. There were more than 20 consultations. Yours is the second last one to be held here this week and the second last one from all the consultations with which we have put up here.

From Monday we will be traveling to the Maritime Islands. I will be heading a team to go to Lau and Lomaiviti. We start from Onoilau and then we come up north to Vanuabalavu, then to Lomaiviti.

And there's another team which will be going to Beqa from Monday, Vatulele, Ovalau and Kadavu. That would be the leg one of this consultation. And then we'll move on to Vanualevu and then Vitilevu.

Finally, the Maritime was decided to be visited first because of the fuel problem we are dealing with. We thought that we'd take the Maritime Islands first in case we run out of fuel then we'll just be dealing with Vitilevu and Vanualevu. So, thank you very much for appearing before us this morning.

We have just been joined by Ms. Merewalesi Nailatikau. She was here this morning but had to run off and get something done. And I will now hand over the mic to you, Permanent Secretary, so that you can make your introductions and the ladies and make your submissions.

Mr. Lesuma: Thank you. Vinaka vakalevu, Chair, and we thank you for the opportunity to come before the Commission this morning to present on behalf of the housing sector. So, very briefly with me this morning, on my right is the Director of Housing, Ms. Teopola Kulavati.

On my left is my Principal Research Policy Officer, Ms. Litiana Mua. And on my far right is also our Senior Policy Officer, Ms. Susana Rounds. The Ministry of Housing is fortunate to have members of the Commission because you will see with me today my executive team is made up of three ladies who play a key role in this ministry. And we all see housing as women in any household is a foundation of any family. So, I feel very fortunate being in a ministry surrounded by the ladies who are able to provide the guidance and advice that helps us to deliver our mandated role under the Ministry of Housing. So, to the Chairperson members of the Commission this morning, firstly, we apologize for having to defer the presentations from the last invite that we had received.

I believe the Secretary would have been aware that whilst we had conveyed our apologies it was rather late. We actually went past the date that we were actually invited to present and unfortunately it was an oversight by my secretary who had sent in an email, an apology for the Ministry's oversight, hence our coming in this morning. To the Commission, again on behalf of the Ministry of Housing, we thank you for the opportunity to present our formal recommendations regarding the review of the 2013 Constitution of the Republic of Fiji.

Our submission today outlines a roadmap to move housing to an enforceable constitutional pillar. Our first concern lies with Clause 35 under the Bill of Rights. Currently the State is only required to take reasonable measures within its available resources.

This language creates a loophole where housing is not a stand-alone enforceable right. This does not reflect international human rights standards and we are therefore recommending a transition to an absolute right. We propose that Clause 35 be strengthened and amended to recognize the right to adequate housing as a stand-alone right that imposes a minimum core obligation on the State.

We must move away from policy discretion and toward a constitutional mandate that requires the State to establish affordable social housing and subsidies for our low-income earners or seniors in our marginalized

communities. Secondly, we must address the trauma of displacement. Under the Bill of Rights in Clause 39F, it currently offers a general protection against arbitrary eviction, but we feel it lacks the procedural safeguards to protect the vulnerable.

It fails to mandate alternative shelter or resettlement sites. Leaving informal settlements or settlers, especially those on Itoki land and also those on private land, in a state of constant insecurity. The Ministry therefore proposes an anti-homelessness clause.

We believe the Constitution should explicitly state that no eviction should result in an individual being rendered homeless. The law must mandate meaningful consultations and social impact assessments before any court-ordered eviction. No person should be removed from a home without a clear path to an alternative shelter.

Turning to the land sector, again under our Bill of Rights in Clause 27, we find that the clause is far too narrow. Currently, when the State acquires land, compensation is based only on market value. It completely ignores the loss of family livelihood and the cost of relocation.

Furthermore, the clause fails to distinguish between essential public works, like hospitals and roads, and development-led acquisitions from commercial gain. We therefore propose a public interest test to ensure that the compulsory acquisition is strictly a last resort for public good purposes only. Furthermore, committee members, we also advocate for a holistic compensation that covers relocation and livelihood restoration, ensuring that no citizen is left disadvantaged by the State's need or by the owner's needs for the land.

Finally, on Clause 42, again under the Bill of Rights, while it guarantees equality, it fails to mandate that our housing system be inclusive. Accessibility should not be a luxury, it must be a requirement, and we therefore recommend a constitutional mandate that all State-funded housing and public infrastructure comply with universal design principles. We must ensure that our homes and cities are built to be accessible to every citizen, regardless of their physical ability.

Just to conclude, Chair and Commission members, our houses are a foundation of dignity, health and security. We urge this Commission to please consider and adopt these recommendations and turn reasonable measures into enforceable rights, and to ensure that the 2013

Constitution truly protects the most basic needs of every citizen. Thank you.

Mr. Valenitabua: Thank you. Permanent Secretary, we received these written submissions by email last night, or yesterday afternoon. I read it last night. Was there an earlier email sent to us? Yes? No?

Mr. Lesuma: No.

Mr. Valenitabua: So, it's only this one. Thank you for that clarification. Now, we have heard you. Thank you very much for your submissions and the written form, which we received, and the oral submissions that were made before us this morning. Housing is an important aspect of our lives, and that is why it's in the Bill of Rights, because everyone has a right to housing. We've got these sections which have been highlighted. Section 35, the right to housing. Section 39, the eviction, arbitrary eviction. Section 27, compulsory acquisition of property. And Section 42, the rights of persons with disabilities. Am I correct? Right.

Now, normally we ask questions to submitters, and we ask questions for clarifications. At times, there's just reflections on the submissions that have been made to us. So, I'll just ask my commissioners if they have any questions to ask or any comments to make in relation to your submissions this morning. Commissioners?

Mr. Kohli: Thank you, Chair. Thank you. I think you've raised some very humane points on housing, and there's no doubt about it at the moment. The Constitution provides that the government should provide housing, and adequate housing. And I think what happens is that if they are not able to do so, it's onus upon them to say they don't have resources.

That's how my fight goes. But the implications of people being evicted, moving out of the lease when it expires, etc., it has very serious implications. And I think when you're coming to here and saying, it's one thing to say we're a right to housing, and the other thing to say, you move out now, where do we go? So, I take that into consideration, and we'll address that as well. Thank you.

Ms. Nailatikau: Thank you, Chair. Good morning, ladies and gentlemen. I apologize sincerely for my tardiness this morning. Please do not take it as a reflection on your esteemed ministry. I offer my apologies. I thank you for your submission this morning. And I'm curious and encouraged to see

the inclusion in your recommendations for perhaps a process that would include a social impact assessment in terms of, as Mr. Kohli was also alluding to, people's housing rights in terms of movement and potential displacement. I would just be curious to hear you expand on what such a process might look like. Perhaps an environmental impact assessment is the most familiar term for many of us. But you've touched on an important dimension in terms of how it impacts us socially. Likewise, market value of land versus the broader impacts of loss of livelihood, et cetera. But yes, just to reframe my question, it would just be very welcoming to hear you expand on what a social impact assessment process might look like in terms of your recommendations. Thank you.

Mr. Lesuma: Thank you, Madam. I will answer your questions and also will ask the ladies to come in if I've actually missed out anything. We have realized that for any government interventions, it's important to know what's on the ground. As we speak, there is about close to 300 informal settlements in Fiji. Now, one of the reasons why we have not even been able to determine the exact number is because such an exercise has never been conducted in the past. As we speak, we are working with the New Zealand MFAT. We have supported us in providing funding to conduct a socioeconomic survey for all informal settlements in Fiji.

That is now a process that we are doing as we speak. We are working closely with Fiji Bureau of Stats and we are actually in the process of engaging 36 enumerators to actually conduct this exercise. Really, the reasons behind this is we would like to know the number of families in any house, the details of the combined annual salary, all the information that any household would have, the type of information that we acquire through these surveys.

Through that, it actually helps my team and the policy team to come up with policies that are more targeted. It actually also determines the type of interventions that governments should take. Particularly, through that, we are also able to understand that there are some of those that are still living in informal settlements who would like to go back to their villages but cannot afford to do so. They do not have the means. While others who stay in informal settlements, though they can afford, they have the means of buying a property. This is just not enough. So, for us, these are the type of information that are very useful to us because it tells us really where the gaps are. Not all those that are residing in informal settlements are the poorest of the poor or the very vulnerable. There are those that can actually afford affordable homes but because there has

been a shortage of homes in the last so many years, it hasn't been enough provided through government or through the housing authority to provide housing stock, people have resorted in informal settlements.

According to our national housing policy through the studies that we have made, government has to provide 1,600 homes every year for the next 30 years. But again, going back to your question, the social survey is basically a way for us to be able to obtain the type of information that we require to help us help government make the decision that we need to make. Through that, we are able to capture those that qualify for housing authority.

So, we've actually worked with housing authority in ensuring for any subdivision that they develop, 10% of any subdivisions will be for those that qualify from the informal settlements. And that is only possible because of the surveys that we conduct there. So, I hope I've answered that question. But then if the director has anything further to add that I probably missed, please, director.

Ms. Teopola: Chair and members of the commission. Just to add on to what the permanent secretary had mentioned, this is basically for those that have been displaced due to eviction. So, the social impact assessment is to allow us to understand the affordability that they have for housing or alternative options for housing. So, while we look at the income, most of them are very low-income earners. So, in terms of displacing them, what other options do they have to have shelter? So, we have recommended that social impact assessment just to allow us to frame the kind of assistance that can be rendered to them.

So currently, since we have three informal settlements that have been evicted through court order, we have done the social economic assessments. And we have realized that most of them are very low-income earners earning a household income of $30,000 and below. Some of them are casual workers.

So, these are a population that does not have that access to a loan facility because they do not meet the requirements of the commercial banks. So, we try to provide assistance for them through our government-owned financial entity, which is Housing Authority. So the social impact assessment is just to allow us to understand their background, their terms of affordability to alternative housing or shelter that can accommodate them permanently because of the risk of being

displaced through court order. So basically, the social impact assessment is just to provide that baseline for us. Thank you.

Mr. Beg: Thank you, Chair. Thank you, PS and members of your team. I don't know what to say. Maybe I – first of all, I might have to declare my interest here because I work closely with this sector as well. And I don't know how to frame my questions because I have to be careful because I'm listening. But first of all, I have to say thank you very much for your submission. And as my fellow commissioners, we will look at it. They're very poignant and to the heart.

The question I wanted to ask was hearing the changes in the constitution that you're recommending is that it's not enough to be in policy. You want it enshrined in the constitution. And there are models around the world that has that. Like, for example, developing countries. I think South Africa has a very strong model and the other developing countries. But Australia and New Zealand don't have it. It's enshrined in – it's not in their constitution. It's through policy. Yeah. So, I – but Fiji's different. We have to do what we have to do. But I just wanted to ask that question. Can you qualify that for me? Yeah. Well, my question was you prefer it to be enshrined in the constitution.

Not very clear because it's not coming through. Even though we write policies, government says this because I can talk all day on this subject, but I don't want to. My position is different here. So, I'm sorry, Chair. I just need to be very careful what I say. Those are my first points.

Mr. Lesuma: Well, we feel that there has to be – it has to be – the law has to be strengthened. Because we've seen that people have been evicted without any care at all in terms of where they go. Government has to put the responsibility in trying to find means and ways to temporarily put them somewhere. I think, for example, people that have been residing on land for generations, the owner has then decided after so many years to relocate them. Because of the need to probably build something on the land.

There is no sense of responsibility taken by the landowners, even though these people have been residing on land for generations, to at least cover part of – but they've actually left everything entirely to the state. We've realized in the – just after the coalition government has come in, there has been a lot of court evictions that have been issued by the court, or even by the court, by the landowners through the court, to evict settlers

on the land. They have come to the ministry, basically, and they've even approached the prime minister's office, and a lot have come to the ministry saying, we've been given a court eviction, there's nowhere to go.

But because they've come into government, government has that responsibility to look for some place to – we continue to discuss with the landowners, but there's very lack of commitment from the end to work with government to provide – to help us provide a place where we could actually displace and move them into – the displaced families into where. So, we feel that whilst the policy is there, it's still not strong enough. It has to become law.

So, there's some sense of responsibility for those – for the landowners, basically, who have accommodated people to resettle on their land for generations. If they plan to relocate, then at least there's some sense of responsibility to work with government, because for government to be solely responsible for that, it would be a costly exercise, I understand. I understand also in the constitution, in the 2013 constitution, it says where the resources, it's actually –

Ms. Nailatikau — Its reasonable measures within available resources, sir?

Mr. Lesuma — Within available resources, yeah. We just felt that that's not strong enough. There has to be a commitment on those parties involved to ensure that whoever is going to be resettled has to have a place where he can actually build a home to resettle in. I mean, those are basically how we look at it, learning from the experiences that we've had.

As we speak, we have been tasked by cabinet because of the – I feel like to share this with us. Because of the recent evictions, cabinet has approved that the ministry comes up with a five-year to ten-year relocation and resettlement policy. Now, we have that policy.

That's – we've drafted the policy. We've circulated it to the key ministries that needs to provide the advice, including the ministry of finance. It's going through the government machinery for approval before we go back to cabinet to endorse the policy.

We can even see the differences in views when circulating the policy. Because it is a big ask for government to be able to take on the full responsibility. So, I feel it needs to be strengthened because whoever is the owner of the land that allows people to stay on the land for

generations at least have some sense of responsibility to work with government if they have a need to use the land and there's a need to resettle those that are living on the land. Thank you very much.

Mr. Beg: I think you've answered my question. I will debate this with my fellow commissioners, but I hear you loudly and clearly.

Mr. Kohli: It's a space I work in as well, but thank you, sir. I will discuss this further with your commissioners. I noticed that, you see, there is constitution says clearly that you should have in the Bureau of Rights, the government should provide, and if they can't, they have to do it in the spheres that they can't.

But, you know, I'm surprised that nobody has challenged that. In the sense that nobody has taken a government to court. In New Zealand they have, I know that.

Australia, they have. And I'll just share something that might assist you. You'll be aware that when they're overloading of, you know, overloading of trucks, etc., and ADA is to give you a traffic infringement notice, and then you go and challenge.

Then before you challenge, you go and pay $10,000, $20,000, whatever. You have to pay it first and challenge. And the Supreme Court has just ruled yesterday that that infringes upon Bureau of Rights.

ADA can't do that. That is wrong. And for years, including myself, we are guilty of the fact that we didn't take it up because our clients didn't want to take it that far for fear of ADA.

So, I'm saying there may be people who, because of fear, are not taking it. But I think they should take it. If somebody takes that matter to court and says, well, the onus is upon you to say we don't have rent to give or to resettle.

And I think that will help you, not directly, but indirectly. And if that decision comes down, the government might be forced to recognize that they'll be liable if they don't.

Mr. Valenitabua: Do you have any response to that? To that comment? It's a comment, right? It's a comment, not a question.

Mr. Lesuma: But we share equally the same views. We've always been mindful of the fact that what if anyone had taken that up because of what's in the Constitution? Well, we're quite fortunate that we are sitting on this side of the room. We'll leave it to the commission to decide what.

But that is a real issue. There's a shortage of homes, shortage of land parcels. And one would easily take that up and say you have a right to housing.

And while the government is working hard in providing this through the various – there are different programs that the ministry is involved in. We have formalization of informal settlements where we have tenants that are sitting informally. We develop the land around it.

We acquire the land, acquire a development lease. And we actually develop to civil works to ensure that they have electricity, good roads, meeting FRA standards, having the water and sewerage regulations installed. That is part of the program that we do.

But it is a very costly exercise. So, I feel that government is partially trying to provide as much as they can in terms of providing the lands in various ways through housing authority. You will see that we are aggressively addressing that by providing not only the land parcels but we are also building homes for families.

We've realized particularly a lot of Ito case who have actually acquired land. There's a lot of – it is a challenge to try and run around and get the plans, the various offices that they need to go to be able to eventually build a home. So, we've realized that that is one of the challenges that families face.

So, we are now coming back in and providing land and homes for people just to walk in. But then again, whilst we are also providing through housing authority, we have transitional social housing with public rental bond. And the ministry is working with our informal settlements in formalizing the informal settlements.

And also, we are also in the process of acquiring greenfield to move these families to the greenfield. So eventually, they will be able to get a block on the greenfield that we are now, that government is acquiring. So, it is all part of this resettlement, relocation and resettlement program that we are doing.

So, I feel that government is trying its best to provide that environment in terms of providing opportunities for those to own homes. But again, it's still not enough. And anyone can always come up and say that they have not been – government is not honoring inside of what's in the constitution of a person's right to housing.

And you're right, rightly in terms of highlighting that because that was also a concern that we had. No one has ever taken that up. But that doesn't mean that that will not be taken up at some point because of the very slow work that is happening in the housing sector.

And most of it is because of the slow – I think it's mainly because of the budget. It's very costly. And until – I feel until government realizes that the housing sector is one also – one of the main sectors that needs to be prioritized, then it's only then that we'll be able to achieve.

At the moment, I believe there are other sectors that seems to be a priority at the moment. But we will continue to be the voice until the day they realize that it's also a very important sector in Fiji. Thank you.

Mr. Valenitabua: Yeah. Permanent Secretary, section 35. Section 35 of the constitution.

You started off your submissions in relation to section 35 of the constitution. And you state in paragraph 1.1.1.1 – is there another constitution there? We're getting another one. Yeah.

Sorry. Do the number of pages for your big copies? Page 24. Section 35, subsection 1. It's headed right to housing and sanitation.

Now, I see that in paragraph 1.1.1.1 of the submission, the Ministry of Housing is stating that the constitution does not clearly state the right to adequate housing. Clause 35.1 or subsection – or section 35, subsection 1 – shows that housing is not recognized as a stand-alone enforcement right. Hence, does not access constitutional entitlement to adequate housing.

And then, in paragraph 1.1.2.1, your ministry says that the constitution does not impose any obligation on the state to develop social or public housing programs and so forth. Now, the right – section 35.1.1 – mentions the right of every person to accessible and adequate housing and sanitation. Are you submitting to us that that needs to be made into

one subsection alone, so that it says every person has a right to accessible and adequate housing full stop? Is that what you're saying?

Mr. Lesuma: Yes, sir.

Mr. Valenitabua: That makes it stand-alone? It's stand-alone, yeah. That's what we refer to. I see.

So, when the wording as of now, which says the state must take reasonable measures within its available resources to achieve the progressive realization of that right, is only a policy guide to the ministry? Yes. Is that right?

Mr. Lesuma: That's right. Okay.

Mr. Valenitabua: Thank you. Let us go to section 39. This is for clarification, Permanent Secretary.

We're not trying to, you know, yeah. Right. This is for clarification, because when we get down to collation of the submissions and analysis, we will have to decide what goes into the constitution and what should not go in there.

Mr. Lesuma: Agreed, sir.

Mr. Valenitabua: Yeah. So, now we have one point there, a right to itself, adequate housing.

You mentioned water in your statement earlier. There's a right to water. Someone has to show the water authority of Fiji in relation to that, because of the water.

I'm not suggesting it, I'm just commenting on it. Section 39. Section 39 states every person has a right to freedom from arbitrary eviction from his or her home or to have his or her home demolished without the order of a court made after considering all the relevant circumstances.

And then, subsection 2, no law may permit arbitrary eviction. Now, that is a direct constitutional provision, subsection 2. There should not be any arbitrary eviction, and subsection 1 gives us the qualifier, which is there should be a court order. Now, that means if we look at your submission on paragraph 2.1, you're saying that it's a general statement on forced

eviction, correct? It fails to include requirements for eviction process, obligations in the provision of alternative shelters, or resettlement sites.

Mr. Lesuma: Correct.

Mr. Valenitabua: So, you are suggesting to us, or your recommendation to us, is subsection 1 is okay, there has to be a court order before anyone can be evicted, which is the law, and subsection 2 is all right, because it spells out the right, there is no right. But we have to add, say, a subsection 3, which sets out the factors, which has to, maybe one, processes, two, factors, which have to be taken into consideration.

Mr. Lesuma: Yes, sir. Agreed.

Mr. Valenitabua: So, there'll be additions, or you are suggesting additions, subsection 3, the factors to be taken into consideration, like you cannot evict someone unless you find an alternative place for him or her to go to.
That is your telling government then?

Mr. Lesuma: Correct, sir.

Mr. Valenitabua: And then, the processes. Maybe the processes can come under your regulation? The process can come under your regulation.

Mr. Lesuma: But the main law is to be in the constitution, just making them understand, you know, how it can be put in the constitution. I think, Chair, on clarity, on, in terms of alternative shelter, there has to be a shared responsibility on, it's not entirely on the state, but it should be a, the responsibility should also lie with the owners, of the land, who have accommodated, you know, these squatters for so many years. We just feel that there should be some sense of responsibility taken by those who are evicting the families, and not just evicting them blindly.

They should work with government in trying to, so I don't know how, how that will be captured. But again, that's a process, sir. It's not going to be...

Mr. Valenitabua: Are we looking at, are we looking at tenants who have been sitting on, say, Itaukei lands for so many years? So many years.

This is what you're talking about?

Mr. Lesuma: Yes, Chair. Are you also talking about landlords? Landlords.

Landlords on freehold properties that are sitting, and we have generations that are occupying land for so many years.
Well, generations, sir.

Mr. Valenitabua: As squatters.

Mr. Lesuma: Yes, as squatters.

Mr. Valenitabua: What about the normal tenants? People who walk in and they rent houses and this and that?

Mr. Lesuma: We've had a few, through the survey that we've conducted, we've realized that there are also those who are also renting in the homes. The surveys that we also conduct is not a one-off exercise. We do a few in one settlement to see the consistency in terms of who is actually... We've realized that some have been renting for so long, longer than almost the same as those that are currently staying on the land itself.

But we feel, while at the same time, we are also mindful through the surveys, we are also able to capture those that actually benefit from this kind of setup. There are those also who have homes that have been rented out in these informal settlements and live elsewhere. For these cases, they will not be accommodated.

They will be dismantled and they will not be given an alternative site to... So, the exercise is very thorough because we also do title search to ensure that the person that is assisted is a genuine settler that needs to be assisted. And there are those that actually manipulate the process to have a few homes and we are all also able to capture this. And even those that reside overseas who still have homes in these informal settlements are currently being rented out.

We will assist those that are renting, but not the owners who have actually left the community, but have left a building there for someone to rent. I think you addressed very well that there are powers to evict and also not to arbitrarily evict, meaning that the supervisory role is in the court.

Mr. Kohli: But your question is, what after eviction? So, if you look at clause 39, it says here every person has the right to freedom from arbitrary evictions from his or her home or to have his or her home demolished without an order of a court made after considering all the relevant circumstances.

Maybe under that if you include alternative accommodation, including means to resettle...

Mr. Lesuma: Yes, there was a rule. Maybe if you can outline that a bit, define that a bit further.

Mr. Kohli: Then the court will have to take into consideration liability.

For example, at the moment if somebody owes money, goes to court, you want to enforce it. Court will ask how much can you pay, what is your income, how many children you have, what are your expenses. Then court says, all right, you pay this much.

If you have got $100 left, you pay $10 a week. So you have other money, you know. So something like that can come in here as well, take into consideration all those factors before you make an order.

Mr. Lesuma: Yes.

Mr. Kohli: Is that what you're looking at?

Mr. Lesuma: Yes. Totally then.

Ms. Teapola: Yes. Chair, may I just add on in terms of the process of the court eviction. We were recommending that alternative shelter be provided by the party that's evicting the settlers and that the full responsibility does not fall on government as it is right now.

There are three settlements that have been evicted, but then we are taking on the full responsibility to relocate them. So we wish to recommend that court considers that the party, like for landowners, the owners of the freehold land or whoever is evicting that portion of the community, be responsible to provide the alternative shelter and government can come in to facilitate, to ensure that they follow the proper process of actually relocating the displaced families.

Mr. Kohli: Can I just ask you for clarification? Do you have a problem with freehold land? Because in freehold land, as far as I'm aware, the law is this.

If you allow someone to stay on the land and he incurs expenses in erecting his house and you don't evict that person, let him stay there, then you cannot go and evict that person. Correct me if I'm wrong, but

I've succeeded in a few cases where they have said that much area must be given to the person who has resided there for about six years and built a house to his, and you are now gaining, unjustly getting enriched by that house to his detriment. So, the court has allowed him to stay there.

Mr. Lesuma: I thank you, sir, for raising that. There are a few that has the same. I would say the situation is very much how you've actually highlighted.

But again, because it's the third party, we will just wait and see when they come to us. But that's a very valid point that you've raised, and one that those that are residing can easily take it up, but then that's for the court to decide. But it is in some situations exactly in the nature that you've highlighted, the tenants have, with their lawyers, have come in to see the ministry, and they've actually informed us.

There's a court case that's currently provided us the status of where they are in terms of the decision of the court. It's still an ongoing thing. But according, the lawyer has actually advised us, we are basically here to tell you, if we lose this case, I have 200 families that we'll be looking for a place to move to.

Basically, so they are telling us that. And the question is, what will you be doing to these families if we lose the case, and we have to be evicted from a freehold land? We would like to come and give a heads up that these are the families, there's about 200 families that will be required to be evicted or to be resettled. So, in view of the experience that we've had, and as highlighted by the rector, we feel that there should be a sense of responsibility shared by the owner who's currently, who's evicting.

And maybe the court will also see that, you know, like you've raised, that they need to ensure that any decisions made by the court, they need to be mindful that there is another alternative site for them to move to at. So, we will facilitate, but we feel that it will make work easier for us if that's being addressed by the court at that level, in terms of having alternative sites, some sense of responsibility taken in. It may not be fair on those that are the Itaukei landowners, who have allowed people to reside.

So that is probably another scenario that the commission probably will see. It's probably, it's not a one size fits all situation, where we can

actually solve all problems with regards to this nature, because of the difference in ownership there. Thank you for that.

Mr. Fateaki: Just for clarity, the questions I wanted to raise was in these different scenarios, what is the narrative of the agreements? So, you have different cases, like leasehold, ITLTB, and then freehold. What is the narrative, what are you seeing in terms of the agreements, the lease agreements or rental agreements in that framework? Because that can easily be prescribed there. My lawyer friend, if that's very clearly identified, then again that's something to look at.

But I'm only just asking the questions of my area. But the points are, where that has happened, it's basically a loose agreement sometimes. And that can become very, that sets the precedent.

So, in law, that's what happens. Then over time, they have the right under different parts of the constitution, and law takes over. So, it's tricky.

I think we all address those matters. I think you're right. But I have a strong affection for that.

And probably we'll discuss that more with our team. Thank you.

Mr. Kohli: I think, yes, the difference is between those who have been allowed to come and live on the land, and those like squatters have moved in without the knowledge of the landlord.
The latter category are very vulnerable. They have no right.

Mr. Lesuma: Yes, yes.
Whereas the former category has rights. Mary Merritt. Yeah.

Mr. Valenitabua: Paragraph three. On page three of your submissions. I note your limitations identified in paragraph 3.1.1.1. Which states the constitution states, the owner of the acquired property will be compensated based on its market value.

However, it does not include compensation for the loss of livelihood and relocation and resettlement costs. That is for the tenant. That is for the tenant.

Mr. Lesuma: Correct, yeah.

Mr. Valenitabua: And in paragraph 3.2, subparagraph 3.2.1.1, the Ministry of Housing is suggesting an amendment to clause or section 27, subsection 2V, to ensure compensation is fair and equitable, covering the relocation and livelihood restoration costs.

Mr. Lesuma: Correct, yeah.

Mr. Valenitabua: You were suggesting that that be included or similar provisions, provisions to be put in its proper words to be added to the constitution. Now, if we look at section 27, subsection 2B4.

If we take B, who asked that word from the top, subsection 2, a written loan may authorize compulsory acquisitions of property. And then we go on to B. Are we together? Then we go on to B, it says on the basis that the owner will be promptly paid the agreed compensation for the property. You are all right with that.

Yes. Or failing agreement, just an equitable compensation, as determined by a court or tribunal, that is to be argued in court. And after considering all relevant factors, including, go down to subparagraph four, Roman numeral four, the interest of any person affected by the acquisition, to you, does that not cover the tenant, the relocation, the livelihood restoration costs? Should they come under that? Do we have to spell it out?

Mr. Lesuma: I feel we should.

Mr. Valenitabua: So it's in addition to subparagraph 2B4, including, we can just add there, including the interest of any person affected by the acquisition, including, this is, including is the interest, the interest in relation to loss of livelihood and relocation and settlement costs, extra.

Mr. Lesuma: Yes? Sure. Okay.

Mr. Valenitabua Any comments on that?

Mr. Kohli: I think there is a very relevant point here, as you have said. If I just draw an analogy, if, for example, a person loses his boat in a hurricane, they come and say the cost of the boat is 25,000, that's the market value. They don't realize how long it will take him to replace that boat.

It might take him one year to earn that income to be able to replace that boat proficiently. So basically, you have to take into consideration that factor as well, not only $25,000 loss of boat, loss of income for the next, until he's able to replace. So basically, if I hear correctly, you are saying, don't only look at the market value and say I'll pay you 100,000 for this.

You look at him, his cost of acquiring a boat, building costs, replacement costs in building, because he might have built that house a long time ago. And sometimes, market value does not necessarily reflect the cost of replacement. So, you want all that to be taken into consideration.

If I'm correct. I think that can be added on. Yeah.

Mr. Lesuma: Yeah.

Mr. Valenitabua: Well, thank you very much. In relation to the persons of the section, and what is that? Section 42.

Section 42. Subsections 1, 2, and 3. They deal with the right of persons with disabilities. I believe we can have a look at that.

And see how we can improve the constitutional provisions in relation to persons with disabilities. The blind, the lame, and all that. Oh, accessibility.

Accessibility, yeah. The right to accessibility. Yeah.

So, we will have a look at that. Is there any other submission that you would want to add this morning?

Mr Lesuma: No, Chair. We thank you for the opportunity for us to come in this morning.

I believe that's all that we had in mind to present to the commission this morning. And just before I conclude, I would like to wish the commission the best in the work that you are all being tasked to do. I believe it's not an easy task.

And in terms of the travel that you need to do, we hope that you always have a safe journey in visiting our islands. I just have one question, if I may. What is the timeline for?

Mr. Valenitabua: The timeline for this commission's work is six months.

Oh, six months. We started in April, and we are given 31st of August, 2026 as the expiry date. Yeah.

We started in March. Not April, we started in March. And then we have that six month.

What we did was two months for preparation, reading, we've got books, lecture, literature, in relation to constitution making, the Yes Guy report, the Reeves report, and constitution from 1970 onwards. We've been reading through all those. So, two months for preparation.

Within those two months of preparation, we are having this consultation to selected or targeted audiences, including the ministries. We've had individuals, we've got associations, or we had associations and we had ministries when coming. So now at the end of these two months of preparation, secretariat, which is at the back there, they are now ready for our public consultations.

So, I decided that we'd have two teams. Because the six months, if we were to go as a group all around VT Label, we wouldn't have been able to achieve that. So, the two teams have been, two teams have been formed.

One team will start next week from the Lau Group, the Lomaiviti Group, and the other team from Beqa, Kadavu, Vatulele, and Ovalau. Then we'll meet together in Honolulu and separate again there, two teams. One team covers the Cakaudrove and Taveuni, which is my team, and the other team led by Dr. Fateaki, who's not here today, will cover Macuata and Bua.

Once we finish that, then we'll come back here. Now the logic was that we'll go to the outer island first in case we run out of fuel. So, we would have done our job by the time the fuel runs out.

You know, it's just a matter of planning. So that's it. Thank you very much for your submissions today.

We have taken your submissions and the contents thereof into consideration, or we've recorded them. We will be collating this with the other submissions, and then we will be analyzing, and then we will work

out how they can be included in the draft, in the draft amended 2013 Constitution. Whether it will be called 2013 Constitution or we call it 2026 Constitution, or 2027, we don't know yet.

Yeah. I will try my best. Just one request.

In case we need more assistance, we'll contact you, sir, to come and gather more information about housing. It's important to our people, so we have to get it right. That's all I have to say.

Thank you. That's all I have. Thank you.

We usually take photos.

----------.End of Session[1-5-2026]----------

MINISTRY OF HOUSING

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SUBMISSION TO THE CONSTITUTIONAL REVIEW COMMISSION

A. OVERVIEW

The Ministry of Housing welcomes the opportunity to submit recommendation for the review of the 2013 Constitution of the Republic of Fiji. While the current Constitution recognizes socio-economic rights, significant gaps remain that hinder the "progressive realization" to adequate housing. This submission outlines the limitations of the current framework and proposes specific amendments to ensure housing is treated as a fundamental, enforceable human right.

B. HOUSING SECTOR

CHAPTER 2 BILL OF RIGHTS CLAUSE 35 RIGHTS TO HOUSING AND SANITATION

1. RIGHT TO ADEQUATE HOUSING (Reference: Clause 35)

Clause 35 (1) states; *"The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to accessible and adequate housing and sanitation".*

1.1. Identified Limitations

1.1.1. Lacks Constitutional rights to Housing

1.1.1.1. The constitution does not clearly state the right to adequate housing. Clause 35(1) shows that Housing is not recognized as a standalone, enforceable right hence citizens does not access constitutional entitlement to adequate housing.

1.1.1.2. The constitution lacks explicit right to adequate housing which does not fully reflect the standard of international human rights laws.

1.1.1.3. As per the current constitutions, the provision of housing remains as a matter of policy discretion instead of a constitutional duty.

1.1.2. Lack State obligation on affordable social or public housing programs

1.1.2.1. The Constitution does not impose any obligation on the State to develop social or public housing programs that can be accessed by low-income households, people with disabilities, marginalized groups and senior citizens.

1.2. Proposed Recommendations

1.2.1. Transition to an Absolute Right

1.2.1.1. Amend Clause 35 to recognize the "Right to Adequate Housing" as a standalone right that imposes a minimum core obligation on the State to the most vulnerable and prevent homelessness

1.2.2. State-led Housing Programs

1.2.2.1. Insert a sub-clause requiring the State to establish and maintain affordable social housing frameworks and subsidies for the most vulnerable population.

CHAPTER 2 BILL OF RIGHTS CLAUSE 39 FREEDOM FROM ARBITRARY EVICTION

2. FREEDOM FROM ARBITRARY EVICTIONS (Reference: Clause 39)

Clause 39 states: *(1). Every person has the right to freedom from arbitrary evictions from his or her home or to have his or her home demolished, without an order of a court made after considering all the relevant circumstances*

(2). No law may permit arbitrary evictions

2.1. Identified Limitations

2.1.1. Lack Procedural Safeguards

2.1.1.1. Clause 39 (1&2) provides a general statement on forced eviction, it fails to include the requirements for eviction processes, obligations in the provision of alternative shelters or resettlement sites.

2.1.1.2. The Constitution does not explicitly address arbitrary eviction that affects informal settlers and communities under informal arrangements with Itaukei landowners.

2.2. Proposed Recommendations

2.2.1. Anti-Homelessness Clause:

2.2.1.1. Amend Clause 39 to state that no eviction should result in an individual being rendered homeless. The State or the evicting party must be obligated to provide alternatives to basic shelter.

2.2.2. Mandatory Consultation:

2.2.2.1. Require "meaningful consultation" and a "social impact assessment" as a pre-requisite for any court-ordered eviction involving any citizen.

C. **LAND SECTOR**

CHAPTER 2 BILL OF RIGHTS CLAUSE 27 FREEDOM FROM COMPULSORY OR ARBITRARY ACQUISITION OF PROPERTY

3. LAND ACQUISITION AND TENURE SECURITY (Reference: Clauses 27 & 29)

(Freedom from compulsory or arbitrary acquisition of property)

Clause 27 (1-3) states: *27.— (1) Every person has the right not to be deprived of property by the State other than in accordance with a written law referred to in subsection (2), and no law may permit arbitrary acquisition or expropriation of any interest in any property. (2) A written law may authorise compulsory acquisition of property—...*

3.1. Identified Limitations

3.1.1. Limited constitutional guidance on fair and holistic compensation:

3.1.1.1. The constitution stated that the owner of the acquired property will be compensated based on its market value however, it does not include the compensation for the loss of livelihood and relocation and resettlement costs.

3.1.2. Lacks to distinguish between infrastructure-driven and development-led acquisition:

3.1.2.1. The constitution does not differentiate between essential public use acquisition (like, schools, hospitals, pipeline, and roads) and development driven acquisition (e.g. tourism, industrial and commercial). This may expose the process of acquisition to focus solely on private or commercial benefits without assessments for alternatives that can avoid unnecessary acquisition.

3.2. Proposed Recommendations

3.2.1. Holistic Compensation:

3.2.1.1. Amend Clause 27. 2. (v) to ensure compensation is fair and equitable, covering relocation and livelihood restoration costs.

3.2.2. Public Interest Test

3.2.2.1. Introduce a "Public Interest Test" to ensure compulsory acquisition is a last resort and strictly for non-commercial, public-good purposes.

D. PERSON LIVING WITH DISABILITY

CHAPTER 2 BILL OF RIGHTS CLAUSE 42 RIGHTS TO HOUSING AND SANITATION RIGHT OF PERSONS LIVING WITH DISABILITIES

4. RIGHTS OF PERSONS LIVING WITH DISABILITIES

Clause 42(1-3) states:

42.— (1) A person with any disability has the right -.

a. *to reasonable access to all places, public transport and information*
b. *to use sign language, Braille or other appropriate means of communication and*
c. *to reasonable access to necessary materials, substances and devices relating to the person's disability...*

4.1. Identified Limitations

4.1.1. No Disability-specific protection:

4.1.1.1. The constitution guaranteed equality but fails to highlight any constitutional requirements that the systems be inclusive in design and adaptable based on different needs.

4.2. Proposed Recommendations

4.2.1. Universal Design Standards:

4.2.1.1. Mandate that all state-funded housing and public infrastructure must comply with "Universal Design Principles" to ensure accessibility for all citizens.

Professor Wadan Narsey

Ms. Nailatikau: We will ask the IT support team to see if they can zoom in any further, but in the meantime, we will have... We could?

Professor Narsey: Your voice is very muffled; I can't seem to hear you all that clearly. Can you hear me clearly?

Ms. Nailatikau: We can hear you. Does it help if we use our mics? Yes, please, yeah.

Professor Narsey: Okay, will do. So, who are the people sitting in the front row, starting from my left?

Mr. Valenitabua: Yeah, good afternoon, Professor Nassi. Good afternoon.

I am Sevuloni Valenitabua. I'm the chairperson. And next to me is, you know, Merewalesi Nailatikau.

Next to Mere is Dr. Fatiaki. And next to Dr. Fatiaki is Mr. Conway Begg. And last but not least is Dr. Neelesh Gounder

Professor Narsey: I think I know most of you guys. That's good.

Mr. Valenitabua: There's one who is yet to come in here, Mr. Ami Koli, lawyer of Labasa.

Professor Narsey: I know him as well, because I met him when we were touring Vanua Levu for the electoral reform.

Mr. Valenitabua: Yeah, the Tui Labasa. All right, since you have already joined us, I think we will start.

I think we will start. Now, I believe that you know very well what this commission is about. Right, so we are here this afternoon to hear from you.

I have introduced most of us, except for Mr. Koli. And we also have in the room now our legal drafter. She is sitting on the side, and she is sitting in just to listen to the consultations.

Now, we have one hour, so without further ado or further introductions and all that, I think I will now give you the time to address us in relation to what you think we should know about review of the 2013 constitution. And at the end, we might be able to have some discussions. Thank you.

Professor Narsey: Thank you, Mr. Chairman. First of all, what I would like to do is to perhaps speak at maximum for half an hour and spend the next half hour if you have any questions. Now, I presume that you all have my written submission?

Ms. Nailatikau: Yes, we do.

Professor Narsey: And what I would like to suggest is that you have the media there as well. This is an open session. I don't think there is anything confidential I want to say today.

So, I'd be grateful if you would also make available the written submission to the media in Fiji.

Mr. Valenitabua: Yes, we will. We will.

We will, Professor Nassi. Yeah, you have asked us about providing your written submissions to the media.

Professor Narsey: Yes, please.

Mr. Valenitabua: Yes, we will. We will do so. Okay.

Professor Narsey: Thank you very much. Now, let me, if I just give an overview of what I am saying in my written submission, you can see on the first page of my written submission, there are six very, very specific recommendations that are there, sets of recommendations that are there. The main one, probably, because my chairman of the Electoral Review Commission asked me to focus on that, you know, particularly, is the electoral system, the new revised electoral system that we thought would be really good for Fiji, right? So, that is me.

But I also address, I start off by addressing the question, what constitution does Fiji have today? And, it is a question which was, of course, answered by the Supreme Court opinion, of all things, in a very, very surprising manner. But I will take the Supreme Court rulings, if you

like, as a starting point for the rest. So, essentially, my second set of submissions will be about the electoral system.

The third one will be about an upper house, or senate. The fourth one is the removal of decrees, which are really cancerous decrees, and should never be in any constitution, because they undermine the basic human rights of our people, in particular, the 2012 pensioners, who had their case been heard in court in 2012, and then the military passed a decree to say, no, this case will be thrown out of court. So, they denied these 4,000 people their day in court, which is absolutely abhorrent to any good constitution.

So, the fifth one will be the whole very, very sensitive question of the removal of immunities in the 2013 constitution. And, I emphasize, the immunities which have not been approved by Parliament, right? Because, in the 1997 constitution, immunities were granted to those who were involved in the 1987 coup. And, you know, on both sides as well, I must mention.

And, that was approved by the 1997 constitution by the Parliament then, both upper house and lower house. So, you know, once something gets approved by the Parliament, upper house and lower house, the democratically elected Parliament, you have to consider it to be the law. And, you can't question it.

But, there's a whole range of other immunities in the 2013 constitution, which have never been approved by any Parliament or by any referendum. The sixth one that I would like to comment on briefly is removing the overriding role of the military, as stated in the 2013 constitution, cap 131. Because, I don't believe that the military has got any responsibility in the civil governance of the country.

Now, I'm very, very glad to see in the last few weeks, the last week or so, that the commander of the RFMM has also come out in favor of the removal of immunities. And, I'm very, very happy he's done so. Because, I do know from what was going on after the 22 elections, there was a lot of pressure on him to interfere with the economy and with the elections and so on, from different sides, from both sides of the political divide.

And, I was so glad that the military declined to interfere with the normal political processes. And, I'm glad that his contract has been renewed for

another five years. And, because I believe that under him, the military now understands the huge damage that coups have caused Fiji.

And, I have a lot of articles on my writings, trying to document the huge cost to Fiji of the coups. And, put simply, and I don't mind saying it now, because it is something that our people must keep in mind all the time, that if we did not have the coups in 87, 2000, and 2006, everybody's income in Fiji, everybody's income in Fiji would be twice, more than two. And, it would be not what precious, because they're not.

And, I, it's a point which I think you can request Dr. Neelesh Gounder to elaborate on, because he will have seen all the graphs that I have put up before the public, explaining why every coup set us back God knows how many years, until our people were able to claw themselves back to a normal growth path, but never to the old growth path. So, let me first of all start with, I won't spend too much time on it, because to me, the Supreme Court opinion, I find it absolutely objectionable, you know, that they ended up concluding that a constitution which had never been passed by any parliament, never been approved by a referendum. You know, when there were all those opportunities in front of the Bainimarama government, you know, in pre-elections, 2014, 2018, 2022, they could have had a referendum if they wanted to.

They never used that opportunity. They control parliament for a... You can't change a single, you know, line in this, unless you have three quarters of parliament, and, you know, three quarters of registered voters in a referendum, which is an impossibility, because registered voters, well, you never get three quarters of registered voters voting, ever. So, to me, it was a huge joke on the people of Fiji, that you impose a constitution, nobody knows who is the source of this constitution, and you tell the people, hey, you can't change it, unless you have these conditions satisfied.

Well, in fact, those conditions were never used in the first place to bring that constitution into being. Now, look, I agree that having gone through the Supreme Court opinion, right, you can see why they're saying, well, that constitution has been there since 2014, to now, that's, you know, 80 and whatever contracts have been signed under it and all that, and if you now say, this is null and void, and you go back to the 1997 constitution, then people all over Fiji and globally who have done contracts under the 2013 constitution will have to re-look at all those

contracts. So, the Supreme Court ruled in their wisdom, you know, it's in place, it's now the law.

So, you know, my submission sets out all the things that have happened, you know, in the last sort of, since 1987, and I don't mind actually repeating them, because, you know, people have got all kinds of ideas, especially in the Truth and Reconciliation Commission has been sitting, they think that the truth has come out, but sadly, the truth has not come out about any of our coups, not a single one. And, you know, nobody really knows who were behind the 87 coup, you know, when the Third in command overthrew the locally elected government of Bavadra and Jai Ram Reddy, the 1990 constitution, you know, there was a coup in 2000, nobody knows who were really behind that coup, because there were people in the highest levels of the RFMF who were in favor of the coup at the beginning and they changed their mind halfway through, which was why the mutiny took place, because soldiers felt betrayed. And, you know, I don't mind saying that, because it's there in the Evans Board of Inquiry Report, and I would plead with the commissioners, go to the trouble of reading that Evans Board of Inquiry Report, because there's a lot of interesting things in there, and of course the commander of the RFMF then refused to appear before the board.

I mean, how atrocious, right? But, you know, it actually shows you that there was one person hired in the military who was in contact with the CRW soldiers on the morning of the coup, and he's been named in that report, and he's now occupied a very high diplomatic position in the coalition government. So, you know, we all know what happened. And then the 2006 coup, well, hold on, you know, nobody disputes that it was a treasonous coup, but, you know, how often have you seen in the public that one of the things that was happening just before the 2006 coup was the prosecution was about to be brought by the Australian Police Commissioner, the late Andrew Hughes, over the deaths of the five soldiers, you know, in 2000, after the 2000 mutiny, and of course for sedition.

And so, the 2006 coup, it was not a coup to make everybody equal in Fiji, you know, despite all the propaganda and everything else. The truth has never been publicly revealed. So, you know, look, I mean, like it or not, there's all these things that have happened in Fiji that the Supreme Court opinion did not investigate.

They did not investigate these things. And so, while they did say, right, that, okay, you know, we can't go back, events have overtaken it. Well, I don't know, Commissioners, you know, how on earth can you have events overtaking a sacred constitution for a country? What events? I mean, I go through all those arguments by the Supreme Court, and about the only set of arguments that I can sort of agree with, you know, is the first set which says that too many things have happened, contracts would have to be rewritten, etc., so we'll have to stick with it.

We'll have to stick with the 2013 constitution, right? Okay, so I can accept that, and basically the rest of my submission starts from that premise that however, you know, whatever grade is the democratic deficit in that 2013 constitution, how do we take the country forward? And that is, of course, the task that also faces you Commissioners. How do you take it forward? So what I am suggesting in my submission to the Commissioners is that if we start that the 2013 constitution is there, right, I agree with the sentiments expressed by Justice Anthony Gates in a 2001 case. He said, you know, it's not possible for any one man to tear up the constitution.

There is no authority to do so. The constitution remains in place until enacted by Parliament, you know, a body of elected members who collectively represent all of the inhabitants of Fiji. You surface their rule for many years, apparently outside or without the constitution.

Eventually the original order has to be revisited, and the constitution resurfaces. Well, I agree with the Supreme Court opinion that reasserting the 1997 constitution is not practical, given so much water has flowed under the bridge. But what I am suggesting in the submission that I have made is just a few areas where the government of the day, through Parliament and a referendum, right, can bring in some critical changes to the 2013 constitution, which effectively presents before the people of Fiji a new constitution, a fundamentally different constitution, which I am just suggesting for the convenience's sake at the moment.

We can call it the 2026 constitution, or if it happens to come in, you know, after the end of the year, call it the 2027 constitution. And what are these changes? Well, the first set of changes, you know, that the government itself commissioned last year, was to bring in an electoral system that the people actually wanted. Now, I don't know how much detail I should go through in explaining the new electoral system and how

it differs from the old system, because you in your, you know, consultations around the country will also have, you know, met these same views from people, right? And on our commission, of course, you know, it was chaired by former Chief Justice Daniel Fatiaki, who the people all over Fiji respected.

And so when he used to, you know, tell them, you know, in his big, you know, Chief Justice voice, I'm here to listen to your views. Tell us what you think. You know, I don't want to tell you what to think.

You tell us what you think about the electoral system. Well, you know, such an authority like him, they spoke and they gave their honest views. And everywhere they said the following things, which I'm sure, you know, you yourself will have heard, because I looked at your terms of reference, and your references on the electoral system are pretty much the same as ours, except that our work, of course, I think necessarily was more comprehensive than your work could be, given that you have so much more to cover on the Constitution than just the electoral system.

But, you know, I think that our report makes very, very clear that the complaints that were there and look, those complaints are still there today, you know, and it's not going to go away just because this coalition government adds some photos to the ballot paper, right? You've got 500, 300, 400 numbers there. So, adding 300, 400 photos and party symbols and all that will make that ballot paper a virtual booklet. And voters will have to go through this.

At least it will be better, I think, because now when they circle a number or they tick a number, they will be voting for the person that they really genuinely believe in. But it wasn't, it isn't so there if you leave it as it is. And everywhere people said, well, we don't know whether we even tick the right number or not.

You can tick anything. Is it the right number? You don't know. Well, if you go and look at the 2014 election results, there's one bloke over there, one bloke there, who's a total unknown.

And he got more than 4,000 votes, more than his party leader. And why did he get more than 4,000 votes? Because his number was a transposition of Frank Bainimarama's number. Instead of 279 or 297, it was 279 or 297.

Nobody knew him. And he's disappeared from view now. So, you know, the whole thing about giving ordinary, illiterate people all over the country a massive ballot paper with 300 numbers.

Oh, man. What a joke. What a joke they played on the people of Fiji.

And you all know why they did that. Because all you got to do is look at the results of the 2014, 2018 and 2022 elections. They were all asking the voters, and even candidates were asking the voters, just vote for this number, the number for the leader.

And the leader, you know, well, in 2014, you know, one leader from the Fiji First Party, he got 80% of all the votes. And all the others who came into the party, into the parliament with him, had minimal number of votes. One or two smart ones, I can tell you, there was one very smart person in the Fiji First Party, he's the only one in his party whose votes went up from 2014 to 2018 to 2022.

Only one, and I'm not going to tell you who that smart person was. Because the others, all their votes all went down. And so you look at the results, and what you had was that the leader of the party had huge numbers of votes, and the others had but a role.

Now, the other political parties tried to play the game, but they could not match. They could not match the leader of the Fiji First Party. Although, you know, they made a run for it.

You know, Ro Temumu Kepa got 60,000-70,000 votes. You know, Sitiveni Rabuka got 60,000-70,000 votes. But in the process, what also happened was that ordinary people throughout the country were denied the chance to vote for somebody who they hold accountable in parliament.

People are denied that. And you can look at the results for all the three elections so far. And sadly, I mean, and I'm so disappointed, sadly, what the government has done now is they're going to have the next election under the old system.

We'll still have the same witnesses. Unless, of course, the Constitutional Review Commissioners go around the country telling

people and putting it in their report, hey, listen, you might not have constituencies now, as our commission actually recommended, but there's nothing to stop you from all looking for your own local leaders in your area and vote for them. Don't vote for any big leader.

Don't vote for any big leader. Because you need to have somebody in parliament who represents you, who you can go to with your problems. If you don't have it, you're back to square one, expecting Superman to solve all your problems around the country.

And from what I hear, the problems around the country have absolutely multiplied. Absolutely multiplied. And a large part of that also is because in parliament, you've got a whole lot of people who do not represent the local communities.

So, you know, that is a very key feature which is really missing in the current system. So, you've got a system which allows people with very small numbers of votes to get into parliament while other people with large numbers of votes are disqualified. Partly by the threshold rule, 5% threshold rule, which I will also describe.

Plus, there are other things there, you know, in our electoral laws, which we deal with in the details of our report, which has created this climate of fear in Fiji. And all those laws and things have to be got rid of. And our report details those things as well.

Okay. So, what did the public want? Well, you know, primarily they wanted their own local constituencies and MPs who would identifiably be accountable to them. Primary.

That's the primary thing that they wanted. And so, this is what we have tried to accommodate. And not only that, we've also tried to accommodate all the small constituent areas where people say, oh, look, you know, Yasawas, Rotuma, you know, Kadavu, you know, they're lumped in with the mainland electorates, and their voices are drowned out.

And, of course, the maritime provinces have, although they're small in number in terms of numbers of voters, they have their own distinct problems. So, we've tried to give the maritime constituencies their own

constituency and five there. So, we ended up with 25 open constituencies, 25 open constituencies.

And the way we did it, we designed it, is that you could use the existing information on the voter ID cards, which is every voter is identified with a polling station. You look at the voter ID card, you'll see there's a polling station there. And we worked together.

Well, in fact, Daniel Fatiaki and Seini Nabou worked together with the official, with the technical people in the elections office, and designed all these constituencies. And we used the boundaries that were given to us by the U.S. Deliberate, and we reconstructed 25 boundaries using the existing voter ID card. Why did we do that? So that the elections office would not have to do a new national re-registration of voters.

And that's very important for you to understand. That is still there. They don't have to re-register all the voters to use the system that we recommended.

Because a national re-registration would be a big exercise involving a lot of money, a lot of work. But they can use the current system, the current boundary maps that we have set out, and have the election within three months, in my opinion, before the end of the year, if they want it, right? And so that was the first thing, constituencies. Secondly, they wanted simple voting, no complicated preferences to count and move this way and that way, which nobody in Fiji could understand.

But this is what, you know, that has been happening, you know, in previous elections, right? So, this was simple voting. If you have constituencies, you probably will have maximum of 10 candidates per constituency. One tick, one tick of the ballot paper, which will have the names, the faces, and the party symbol.

And you count the votes by first-past-the-post method. So, you know, the elections officer in the local constituency can file the votes in different files corresponding to the candidates. The public can see, the candidates can see, the media can see, hey, which is the candidate getting the biggest file? And the person is declared the winner.

No counting of preferences, nothing, right? Okay. So that's the second thing. Now, some people insist, and, you know, I'm one of them, I'm one

of them, because in 1996, when the Reeves report came out with the 97 Constitution electoral system, you know, I wrote two articles in the paper then, in 96, that the electoral system they were recommending, you know, was not good because it did not have proportionality.

It did not have proportionality. So, the 2013 Constitution has got proportionality, which I agree with. And so, our recommended system has also got proportionality in it.

And I'll explain how we get the proportionality element in a moment, right? Because first, you know, I want to explain this whole thing about the reserved seats for women. Now, here and there, here and there, we've got some voices, you know, usually from men, I mean, always from men, right, saying, oh, why is it that bloody women get to spare any extra special effort? Let them go and compete, you know, equal on the level playing field with us, you know. If they're any good, you know, there's a certain big lady in Parliament, if they're any good, you know, they can get funding from China and everywhere, and in fact, soon they're in Parliament with large numbers of votes.

Hey, hey, not every woman candidate in Fiji is in that fortunate position. They can't go around campaigning. You look at the violence against women in the country and all that, the safety concerns.

They can't compete on equal level playing field with men. And, you know, there have been calls for women in Parliament for ages. Donkey is here, Fiji Women's Rights Movement, Crisis Centre, you name it.

They've all said, please let's have more women. And so we've decided, okay, let's give them more women, and originally, we were only going to get about 15 or 20, but then we realised, and this is an interesting point to understand, if you have a smaller number of reserved seats for women, their constituencies will have to be larger, which means they will have to campaign further afield to get votes. We don't think that we should force them to go get any further afield.

If we have the same constituency boundaries as the 25 open ones, then women and men candidates from a particular party, they can campaign together with great safety and security. This is a very important principle to understand, and also having different constituency boundaries makes it so much easier for the Fiji elections office. One boundary for one

constituency, and both the reserved seat for women and the open, open, open candidate can stand in that constituency.

So, 25 open constituencies, 25 women, that's 50, and how do we get the proportionality? Well, we have a list system, a list system which goes on top of these 50 constituencies. Now, in our proposal there, we've got 21 list seats, right? Where do the list candidates come from? They come from the losers in the open constituencies. So, you've got the 25 open constituencies, the losers, you've got 25 winners coming from there, no doubt, they've got first place, they've won, right? And then the next loser of that constituency then goes on to the list for their party, goes on to the list.

Now, in our report, we had said, hey, hold on, you know, if you're a loser in a small constituency like, you know, yourself, you know, you won't have too many votes. So, you'll be at a disadvantage to a loser in the big constituency somewhere in Vitilevu. Well, that's quite true.

But then, you know, in hindsight, and I thought, well, if it's going to be puzzling for voters, why not just simply use the losers' votes, exactly what they've got, and that way you also have an additional advantage that only losers who've got large numbers of votes will go on to the lists for their parties. Now, think about that. I've emphasized that in my report because what it also means is that not only will you have a winner from a constituency, but you also have a loser, the next loser from that constituency.

You're going to get opposing views in Parliament from each constituency. Or pretty much so. We could be at an advantage because, to me, it is important to strengthen opposition in Parliament.

You know, Parliament can sometimes become a rubber stamp for the party that's controlling Parliament, but that's not everything. You need to have opposition in Parliament. And so, the losers from the constituencies, the 25 open constituencies, not from the Reserve list because already they're at an advantage, right, only from the 25 open constituencies, they'll go on to the lists for their parties.

So, what will happen? At the end of the election and the counting of the votes in the open constituencies, right, once you have the 50 winners in the open constituencies, you will also know, right, how many each party

has got. You know, for the first time ever, and I don't mind bringing it in now, if you have a constituency election, you might have for the first time independents coming into Parliament because you don't need a 5% threshold to win in a constituency. You might have small parties like Unity Fiji, Labour Party, coming into Parliament even though they don't have 5%, you know, of the national votes.

So, to me, that's a very, very important benefit that will come through constituencies. So, after the elections office has determined how many independents there are, how many there are from small parties or whatever, it doesn't matter, what can work out is how much votes have the parties got as a percentage of all the votes cast, leaving out those votes for independents. Threshold is 5%.

Well, 5% of the number of votes we usually have amounts to about 25,000 votes. That's too big, bigger threshold. You know, I mean, if you have a 55-seat Parliament, 5% of all the votes cast is only about 1.8% of all the votes.

And if you have a 71-seat Parliament, then, you know, one will only represent 1.4% of the votes. So in my opinion, in my opinion, the threshold can be very, can be reduced from 5% down to 2%. When you have that threshold, you can work out, well, how much will parties, what is the percentage of votes going to each party? That tells you how many seats they are entitled to.

And in my, in my submission there, I've called it, that is T, capital T, the total number of seats they are entitled to in Parliament. Then you look at how many seats they have got, actually, in their constituencies. That's the open seats and the reserved seats for women.

And then that's the constituency seat C. How many are they entitled to? It's T minus C. That's the one number of seats they'll get from the list. Shall I go through that slowly again? Because John Fatiaki, who I once told statistics, some 40 years ago at USP, will understand this very easily. And Neelesh, of course, will also understand it.

Once you've determined the total number of seats entitled to a party, look at how many they've got in their constituency, take it away, and that gives you the number of list seats that they're entitled to in Parliament. So, the list will then come from the party list, which is pretty much the

same as what you have at the moment. You just go down highest number of votes to the lowest number of votes to get the number of list seats.

Now, here is a result that follows from this, right? I've seen in the news that there's talk about you'll have to set up a boundaries commission, right? I don't know, but Ami Kohli will remember, in the olden days, the boundaries commission used to be a real source of bickering and fighting as politicians and parties tried to move the boundary this way or that way to make it easier for their candidate to win. But in the system that we are recommending, where the boundary goes will not matter. It will not matter because if you move the boundary to get an extra seat in the constituency, then you'll get one less through the list.

If you get one less in the constituency, you'll get one more from the list. So the boundaries commission then will not be a place for bickering between the parties. The boundaries will be set for the convenience of the voters, the convenience of the candidates, and the convenience of the Fijian election office officials, which is going to be a really great thing because you don't want any more conflict between political parties.

And look, I tell you what, once we reduce the threshold to 2%, once you allow constituencies, the small parties who are currently outside of parliament will be in parliament, without a doubt. And you're not going to have all this bickering. So basically, we've got a system that we've got, and I don't mind emphasizing this once over and over again, right? One of the advantages of this system we're recommending is that it is a proportional system.

A proportional system means that the percentage of seats going to political parties depends on the percentage of voters who are supporting them, and the percentage of voters supporting them in Fiji, if you want to look at it ethnically, you look at it ethnically. Why do I look at it ethnically? Because let's be clear, 87 coups, 2,000 coups, all because politicians were able to run around saying, oh, indigenous Fijians, iTaukei have been marginalized from governments in this country, and other races are taking over. Yeah, that's true.

I mean, you know, it's neither here nor there. But that was the case, right? But today, today in Fiji, and I've got a graph in my submission which shows it so clearly, currently, you know, iTaukei are 67% of the population and of the voters. Indo-Fijians are 26%, and in 10 years' time,

iTaukei will be 73% of the voters, and Indo-Fijians will be 19% of the voters.

And if you don't believe me, go and look at the education statistics to see what the ethnic composition of class one is, class one in schools. It is about 15% now, Indo-Fijians. All the schools throughout Fiji, and you iTaukei know it too, it used to be called Indian Secondary School, Indian High School, Indian Middle East, Indian, well, they're all mixed-race schools, and in fact, the majority of students of those schools are Indo-Fijian.

So, in the future, if you've got a proportional electoral system, the Fijian parties, the iTaukei parties, who are supported by iTaukei voters, they will always form the majority in Parliament. You are not going to have the precondition for coups that you had in 87 and 2000. It's end of story to coups, I think, and I'm very, very glad that the commander of the RFMF has come out very, very clearly and said, we're not going to support any more coups anymore.

So, these are all the advantages that I've got in my paper that explains it in detail, right? So, shall I leave it over there? Right? I would just simply, you know, plead with people, right? If anybody says, let's economize on the cost of Parliament, I'll say to them, look, the way to economize on the cost of Parliament, we used to have 71 seats in Parliament before. It never bothered anybody, right? If you want to economize, set up a proper independent salaries commission, right? Not comprising the MPs themselves, right? Who disgracefully increase their own salaries straight after they won the election. I mean, that was utterly disgraceful.

So, one of the recommendations you must make in your final report is that that business of determination of salaries of MPs and ministers, et cetera, and their bids must be taken out of their hands altogether and given to an independent commission. On my website, I have a paper, you know, around about 2023, where a pointer of our salaries in PhD Parliament are totally, totally incompletely out of kilt with what exists in New Zealand and Australia and all that. So, if you have a higher salaries commission which sets the salaries appropriately, you have the right number of ministers and assistant ministers, then you are not going to have these extravagant costs of Parliament.

So, I would suggest, please don't criticize the Parliament, please keep the reserve seats for women, and, you know, you must also think about, well, I'm glad, you know, Mary, you are there, right, on that commission. Just think about this. If our recommendation is accepted for 25 reserve seats for women, then women all over the country, all over the country, they will have a woman representative in Parliament who they can go to with their needs.

Never happened before in the history of Fiji. Never before. And it's not something to be thrown away just because you want to reduce the size of Parliament.

Please resist that urge. And women typically are not forthcoming with what they should have. I suspect that your commission would experiment with having 25 women MPs in Parliament for the first time ever and see down the line does it make a difference or not.

And if after 15 years it doesn't make any difference, okay, put the number if you want to. Reduce it back to zero again and let the women compete on a level playing field if you have got a level playing field back then. So let me then go on now to the second major point that I'm making, right, which is that the commission must reestablish the upper house.

The second. It amazes me because soon after the particular lecture I wrote an article where I said hey, here's all these constitutional issues the new government can deal with. And included in there was hey, let's reestablish the Senate because you need to have a checks and balance mechanism in Fiji.

Without it, a government can just do what they want which is pretty well what they have been doing for the last three and a half years or what they have not been doing for the last three and a half years. To be honest, it is a very beautiful performance and it amazes me why the current government, coalition government has not made it a priority to reestablish the upper house, the Senate which can be a checks and balance mechanism. Now, I have got a table in my report, in my submission which shows you what the representation was in 1970 what it was in 1997 and what I am proposing for the constitution you are going to recommend.

And I have made some changes there. I have got eight nominated by the Prime Minister seven nominated by the Leader of the Opposition and only five nominated by the GCC because to be honest to me the GCC have failed the Fijian people as leaders. They have failed.

You know, when Bainimarama closed them down and told them go and drink homebrew under the mango tree they quietly went away. And not only that the ITaukei people couldn't care less. They didn't rise up in rebellion.

They were quite happy when the lease money was all equalized you know, they were glad that the GCC has been closed down but the important thing is that the GCC did not fight back either. Quietly went away. Whereas in 87, in 2000 they were very active players supporting the coups.

So, to me, they have failed the people. But anyway, it's not for people like me to say you know, whether they should be there or not it's up to the iTaukei people and I have got them in there in the proposed Senate and five representatives you've got the same one, two more one but what I'm adding in there is we can have ten nominated by the religious organizations, ten representatives because I believe that the religious organizations will nominate people of integrity and I've got a table in there which explains how I've derived the ten which is based on the most recent Bureau of Stats survey data for 23-24 essentially, Methodists will nominate three Saddam Haram and Haider Samad will nominate two Catholics and the Assemblies of God and the Muslims will nominate one person and so you will get that number you know, in Senate and I mean,

I suggest that at the end of it in Senate, there will be far more iTaukei representatives than their share of the population and to me, that's fine as well because, you know, one of the things and responsibilities of this Senate in the old constitution was they had a lot of say over indigenous Fijian resources the iTaukei resources and that's right so, you know, please consider that.

My third area of concern is removing all this excess decrees which deny people their basic human right in court and this one in particular of course, which is to do with decrees 51 and 52 you know, which stopped the David Bernas case from being heard in court I claim my interest, I am one of those pensioners who lost out considerably the pensions were

reduced and people were forced to take away their sums but, the thing is you should not have anything in the constitution which stops people from enjoying their basic human right to go to court with their perceived grievances how the court rules is their business but, at least they should be able to go to court currently, they can't go to court and those clauses which are there in that past constitution should be just chucked out willy-nilly, there is no room for that.

Now removing the immunities not approved by parliament please make the distinction the immunities that were given for those who were involved in the perpetration of the 87 coup and also some of their opponents right, I keep that in mind they were never approved by the 97 parliament I was there, I was there in that parliament you know, and I put this regret that we approved those immunities because no constitution should have immunities in there, really, the constitution has to apply to everybody, willy-nilly you can't say, ah, this constitution applies to 99% of the population but not to 1% and certainly not say something like, for deeds which they committed in 2000 running up to 2014 hey, what deeds? what deeds are you giving them immunities for? and in my paper,

I actually specifically, you know, referred to two deeds which are absolutely questionable for giving immunities for one of them is the 5 people who were taken by the military from police custody in Nabua police station, the evidence is all there, they were taken and that night their bodies were delivered to the morgue I mean, how?

Absolutely atrocious international law you know, which the supreme court opinion refers to, hey I don't think there's any supreme court, any court anywhere in the world which will justify the killing of 5 soldiers, persons without trial, without judge, without jury and that's what the 2013 constitution, you know, implies, can't be given immunity I suggest no and the other thing is of course the treasonous overthrow of the government of the late Dara Singh which was not just an SDL government I remind, it was a multi-party government of SDL and the Fiji Labour Party that was deposed in 2006 and the prime minister he was sent packing off to his home island, you know, Vanua Balavu or wherever, right how actually disgraceful and you know, look, I tell you what folks people deserve the constitution they gave but something like that happens to your prime minister.

I expected I expected all kinds of people from all over Fiji to come and protest in Suva and when I went to visit the late Qarase, his home, you know in that street there, you know between Rewa Street and Waimanu Road, well about 40-50 people there that's all that poor fellow, the prime minister you know, he absolutely was treated so badly, right and I don't think that you can give immunity for that treasonous act so, I say that please remove the immunities and I'm so glad that the commander Kalouniwai has come out and said please do not have immunities in the constitution because I think I will take you back in 2000 when the coup happened, the civilian leaders right, civilian leaders only military leaders quietly kept out of sight, but they were there always in the background the civilian leaders, George Speight, Jo Nata and Fred you know, my friends, I used to play golf with them at Fiji Golf Club they called for immunity because they had learnt from Rabuka's immunity in the 87th coup if you have immunity provisioned in a constitution you're always giving the message to the people of Fiji hey, do a coup remove the government, hold on to the government for 8 years, 10 years, whatever put your own in place have a rigged election and then give yourself immunity well that cycle is never going to break unless you the 2026 constitution review commission.

If you put a line under that and say no more immunities in constitutions and you have, of course the difference is you can say no immunity which has not been approved by parliament shall be allowed in the constitution you recommend. The line has to be drawn here and now and I'm so glad that that commander Kalouniwai has just come out, saying please get rid of the immunity and I, of course, I've got something in my submission which really really totally actually disagrees with the supreme court opinion and you have got access to lawyers who also can look at the supreme court opinion and to me their section there on why they say the immunities should be left as they are, it's absolutely woolly, woolly reasoning reasoning neither here nor there all kinds of waffle in there .

I believe that you should reject that section completely. Totally reject that section because the way they are arguing there, there is no substance at all to justify the maintenance of immunity provisions in the constitution. Ok, the last point that I put is in that constitution where there is that step 31 2 which says it shall be the overall responsibility of the Fiji military forces to employ all terms of security and defense and well-being of Fiji and all Fijians. Well, please the military should never be given that kind of responsibility in the constitution you will know that

there is social influences and I won't name them but during the 22 election counting, vote counting, there were people who felt that their counting was going against them they were appealing to the military commander, please, use this clause in the constitution and stop this nonsense whatever they thought was the nonsense, having a clause like that in your constitution is an opinion, my opinion is an invitation to the military to do a coup when they feel like it because how can it be the responsibility of the RFMF to ensure all the security, defense and well-being of Fiji and all Fijians how can they do that how can you give them that responsibility and for what exactly.

I suggest to the constitution review commission please just check that whole clause out and you will be doing not just the people of Fiji a favor, you will also be doing the military a favor because I suspect that even the commander and his good advisors don't want that responsibility to look after the security of people in Fiji is the responsibility of the police, it's not the responsibility of the military.

Militaries everywhere in the world are created to deal with external threats not so-called perceived internal threats and the reason why we have come to this sorry state of affairs is because since 1987 since 2000 the military have got used to in fact interfering with the economy and let me say this actually let me say this also if you look at them all individually right, they have all got disgustingly rich at the expense of the people of Fiji all these military people who have interfered with the economy, who have done coups, who have got rid of civilian governments and put themselves in these places and in the process they have wrecked the country so please CRC may I suggest that you throw that clause out now may I suggest that what you can do and you've got all your legal drafts.

I'm quite sure you've already been doing this right you also know that in looking at what should go into the constitution you recommend you know you can draw on the 1970 constitution right oh I should have put that in there as well I haven't got that, you should also have the 1970 constitution I'm glad that you announced in the revised version, look at the 1997 constitution, look at the Yash Ghai draft constitution and yes you know I mean may I also suggest you can also look at the 2013 constitution, see what's good in there it's not that there's nothing good in there and see what you can what you can take out of all this constitution and recommend for a new constitution for Fiji so if you implement the kind of thing that I'm suggesting which is you have a new electoral

system you remove all those clauses which undermine the human rights of people you get rid of the immunity clauses, you get rid of a clause which gives the military the ultimate authority and the responsibility for safeguarding Fiji, by the time you do that, I believe you'll have a constitution which is genuinely a new constitution. And it just shows you Mr. Chairman don't believe the academics who say I'm going to speak for only half an hour can you at least speak for one whole hour sorry do you have any questions you'd like to ask.

Mr. Valenitabua: Thank you professor, any questions from Miss Nailatikau, wants to ask you a question.

Ms. Nailatikau: Thank you professor Narsey, much appreciate your conveyance as well of all the deliberations and consultations that the Fiji electoral law reform commission has put across my question to you relates to the composition of the senate you propose a new composition for the senate, you're also one of a few submittees who has expressed respectful reservations about the level to which we can outsource our indigenous guardianship aspirations to the great council of chiefs as it stands for example. I remember being a cadet reporter in parliament when you were in the senate and I was just interested to hear from you your reflections on the roles of your colleague GCC representatives in senate in terms of their roles in being guardians of indigenous related legislations or any of those matters that would have been discussed in the senate and also thanking you for putting forward a very strong argument for the reserved seats for women. But my question to you relates to the GCC in the senate and your experience as a former senator.

Professor Narsey: Well you know when the GCC was resuscitated, I was thinking why is it being resuscitated because the upper house wasn't even brought back and my feeling is that there are politicians who want to use the GCC for their own purposes as they did in 87 and as they did in 2000 but I was then very relieved I was very relieved when Semi Seruvakula was appointed chairman of the GCC because I have had experience with him and I have had a lot of dialogue with him since the 2000 coup and all that and I absolutely respect he's a person of integrity and the other person who I have met who is also at the GCC is Ratu Naulu Mataitini and he's been writing a lot of very very good things in there, some of which I disagree with and all that but you know there's a little minor things you know but I believe that the GCC is now on a new trajectory. Now in 2015

and 2016 if you look on my blog site and just look through the word GCC, you'll see I wrote a couple of articles assessing the performance of the GCC by 9-10 criteria you know and by those criteria I adjusted each of those criteria by about 10 points, you know points out of 10 and at the end of it all the GCC could only get 27 points out of 100 in terms of their performance as leaders of the Indo- people.

Now I believe I believe that the GCC needs real guidance as to what their role should be in Fiji especially when I look at indigenous Fijians, you know look, up to about 10 years ago, 10 years ago the people who were emigrating from Fiji were the Indo-Fijians, the Kai China the Kai Loma and all that in the last 10 years it's also the iTaukei people and if they get an opportunity to emigrate they emigrate because they can find in Australia, New Zealand Canada, the States, they can find opportunities to improve the welfare of their families, their children in ways that they cannot do in Fiji.

So Fiji has failed the iTaukei people as well now I was looking at some of the statistics from the 23-24 EUS very few people do these kinds of detailed number crunching that I do and I was horrified to find that while the Fiji Bureau of Stats website says the population of Fiji is 900-something thousand right, the EUS data, and Neelesh will confirm that for me if he looks into it shows that the population of Fiji is now about 850,000 it's been dropping for 5 years, declining and huge declines in the iTaukei population which nobody expects of course but it is, so really the iTaukei have to ask themselves how can the GCC serve their interests better, and the GCC has to ask themselves as well not for people like the outsiders to actually say that right so if you look at the 1997 constitution, which is the last lawful constitution we had.

It gave the Senate certain powers certain powers over changes in law brought in by the lower house in particular I think over iTaukei resources so you might want to ask yourself what should be the functions of the GCC in the new order in Fiji, and honestly the GCC need to ask themselves how are they serving the indigenous people in the country using their special position that they have or are they just sitting there at the top collecting all the freebies that they get. Now one of the things that I did write about recently was up till about the Supreme Court opinion I felt that well nobody has the right to say that everybody in Fiji should be called Fijian, I always said let the business Fijian people define that and thankfully there is a lot of people amongst the indigenous Fijians who say

no, everybody in Fiji should be called Fijian and iTaukei to be used for indigenous Fijians in matters that concern their resources and all that so that's the Supreme Court opinion as well I'm not comfortable with that but I noticed that the GCC has come out and said we want to go back to not call everybody Fijian which disappoints me and I did not expect that from Ratu Naulu Mataitini but you know these are things that people can discuss and you know if your constitution wants to talk to the indigenous Fijians, talk to the GCC and all that and ask them well are you comfortable with calling everybody Fijian in the interest of national unity you never know, they might agree.

And this issue can be laid to rest forever and a day but there are other things in my article of 2015 or whatever I'll dig up a reference and I'll send it to you people where you can ask yourself how well are the chiefs looking after the iTaukei people by the state criteria and honestly, honestly whatever their good intentions may be, I believe that the iTaukei people who are educated and qualified now for the modern global economy.

I believe they are the people who should lead the iTaukei people and relying on a traditional chiefly system which is mostly brings up men as leaders, there are no very few women as leaders in the GCC apart from people like Ro Teimumu Kepa, but I noticed that the GCC has not made any attempt to bring in good commoners into the GCC leadership position. You know in the British House of Lords they used to be the hereditary lords and all that but they also nominated commoners of ability to go into the House of Lords depending on their contribution to society and even people of their House of Lords. So you know the GCC has done a lot of hard searching to know what its role should be but you know my suggestion is that the GCC.

You know it should not have overriding role in the upper house they can contribute and I've given them five positions there I mean it's entirely up to you, you can reorder the number you want to give to the representatives in the Senate from the Prime Minister, from the Leader of the Opposition who of course can also nominate people of ethnic minorities they can nominate Rotumans they can nominate you know Kai China the Kai Lomas and all that right but I would hope that you keep the element of religious representation because I believe religious organizations have got very good people of integrity and I look at

Archbishop Loi Chong you know as an example of somebody who has contributed very seriously in the national politics.

You will notice something commissioners I've said nothing there in my submission about how your constitution can come into being that's your practical process I've said nothing there in my submission because to be honest it is something that is totally unclear to me what this government has planned to bring about your constitution in place because if the Supreme Court has said that you need to have a two thirds majority in Parliament and then a simple majority in a referendum.

Then it seems that your constitution has to wait for the next election to come in and during that election you can have a referendum which can prove your final report so I have said nothing in there about that probably this is a headache that you are going to have to think about because the last thing you want to happen to your report is what happened to our report which is that you used a lot of taxpayers money to go around the country and ask people for their views, you did a lot of work yourself, you did a lot of thinking, the people did a lot of thinking, then you produce a report and then it's embargoed and shelved and not even tabled in Parliament.

So, I will simply hope that you have got a pathway forward not only is your report tabled in Parliament and recommendations are accepted and brought into being but also the 2025 electoral law reform report is also tabled in Parliament, also discussed by the public and all that and eventually given effect to at the moment nothing has been said about all that and I have no great faith because to me to be honest there is a real problem you have in front of you which is also what we had in front of us and we never thought about it at the time we were doing the work is that politicians can sometimes think not sometimes, they always think if the system is working for us, why change it? why change it? if the system is working for us and quite often political leaders can be utterly and totally selfish they want to come back in the next elections regardless of whether the people want them or not and they might say no need to change, so you know you have a real headache in front of you Mr. Chairman and Commissioners, is there a pathway forward for your report to make sure that 1. it gets tabled in Parliament 2. it gets released to the public and discussed and 3. the recommendations that you are going to make are brought into being, after the next election and referendum hopefully.

Mr. Valenitabua: Professor Narsey we have been given until the 31st of August 2026 to complete our work and present the reports, the recommendations and the amended constitution to His Excellency and that is how far we go and that is how far we are looking. What happens after that is beyond us, at this point in time so we'll just head into His Excellency as we were directed under our terms of reference and then we'll leave it to His Excellency and the Government. I hope that answers your question, we have been asked that question but once it gets to Government there is the process of amendment to be followed which is in the constitution and which has been refined by the Supreme Court so the Government has to follow that if it wants to get the bill to Parliament and have it passed by two thirds second reading and then the referendum 50 plus 1 percent so I hope that answers your question.

We are working hard towards the 31st of August 2026.

Professor Narsey: Sir Chairman I think you've clarified your view on what happens as far as your work is concerned. Whereas what happens afterwards is as you rightly say, not your responsibility but that of the Government which commissioned you.

Mr. Valenitabua: Yes, the President commissioned us, yes.

Professor Narsey: And I think that one of one of the areas that the Fiji Electoral Law Reform Commission the one chaired by Mr. Fatiaki, I think we failed in one respect which is that we did not demand from the Government a commitment that they would take our report to its logical conclusion and basically they were able to sit on our report not even table it in Parliament and not even reveal it to the public although it was the tax payers who had paid for it all and ultimately the tax payers of Fiji and the voters of Fiji are our ultimate clients and we failed to get that commitment and we are failing even now because our report has still not been tabled in Parliament it has still not been been made public which is to me is absolutely unacceptable and it does not show that this is the Government which is accountable to the people of Fiji and sadly it's also got to do intimately with the kind of electoral system we've got the kind of system we've got for forming Government that in fact the Government is able to just do this without being accountable to the people of Fiji. It's really sad for me yeah.

Me Valenitabua:	We understand the position in relation to your report however we will proceed as we have been mandated under our term of reference.
Professor Narsey:	May I may I make one request now I do not speak for my colleagues but I suspect the Chairman of our Commission would be in agreement with me that in your in your report, it includes a recommendation that our report be tabled in Parliament and made public may I request that.
Mr. Valenitabua:	Right all the Commissioners are listening to you now, we will deliberate on that we will discuss it during our deliberations and the writing of our report.
Professor Narsey:	Thank you very much any questions from anyone Neelesh.
Dr Gounder"	I'll send you an email Prof.
Mr. Valenitabua:	We have been overtaken by time, so unfortunately, we will have to bring this session virtual session to a close Prof Warden Narsey we thank you very much for your submissions and your comments about what I should say this afternoon. We have been listening to your submissions, the written ones are here, so we will be looking at them and in our presence is the legal drafter she is also listening. Vinaka.
Professor Narsey:	Thank you very much, thank you Commissioners thank you.

----------End of Session [6-7-2026] ----------

Submission to 2026 Constitution Review Commission

Professor Wadan Narsey

1. The Terms of Reference for the 2026 CRC as stated in the Government Gazette Vol. 27 No. 21 (Friday 27 March 2026) required the Commissioners to *"inquire into and examine the democratic deficit of the 2013 Constitution of Republic of Fiji, as identified by the Supreme Court of the Republic of Fiji"*.

2. While the above might seem unduly restrictive to the Supreme Court Opinion (of 29 August 2025), the CRC is also required to inquire into and report on the perspectives from Fiji's diverse communities into a wide-ranging set of eight issues some of which are different and broader than what the Supreme Court was tasked with.

3. I wish to make comments and recommendations on six issues:

(A) what constitution does Fiji have today?

(B) An Electoral System for the People From the People.

(C) An Upper House or Senate

(D) Removal of cancerous Decrees denying the 2012 Pensioners their day in court

(E) Removal of immunities in the 2013 Constitutions not approved by Parliament

(F) Removing the over-riding role of the military as stated in the 2013 Constitution Cap 131 (2).

(G) Have the 2026 Constitution approved by Parliament and the people of Fiji.

A What Constitution does Fiji have today?

4. No one disputes that:

a) In 1987 third in command in the RFMF (Sitiveni Rabuka) treasonously over-threw the lawfully elected Government of Bavadra and Jai Ram Reddy;

b) After the imposition of the 1990 Constitution, there was a consensus 1997 Constitution approved by the Fiji Parliament (both Houses) with immunity granted to Rabuka and his associates, as well as others who had opposed the 1987 coup;

c) The 1999 Elections were held under the 1997 Constitution with the political party of Rabuka losing power while the Party of Jai Ram Reddy (including myself) was wiped out totally (despite having significant number of votes);

d) The Fiji Labour Party of Mahendra Chaudhry then formed Government but held office for just one year;

e) A 2000 coup by a unit of CRW soldiers, backed initially at the highest levels of the RFMF but led in Parliament by civilians (prominent being George Speight and Jo Nata), took the Chaudhry Government hostage;

f) Eventually, another election under the same 1997 Constitution brought in the Qarase Government of 2001.

g) The 2006 Elections brought in the multi-party Government of SDL (Qarase) and FLP (with Chaudhry personally staying out).

5. No one disputes that

a) the 2006 treasonous coup by Bainimarama then overthrew the lawfully elected Government of the late Laisenia Qarase in multi-party with the FLP, with Chaudhry joining Bainimarama soon after;

b) the Fiji Court of Appeal ruled in 2009 that the 1997 Constitution had not been abrogated;

c) the Bainimarama Military Government by military might then ruled Fiji for eight years and then imposed the 2013 Constitution on Fiji prior to the 2014 Elections under it;

d) the 2013 Constitution was never ratified by any Parliament (despite the Bainimarama Government being in control from 2014 to 2022);

e) the 2013 Constitution was never ratified by a Referendum despite there being three national elections in 2014, 2018 and 2022 during which Referenda could have been easily held;

f) the 2013 Constitution stipulated, in total contradiction, that to change any element of the 2013 Constitution there needed to be three quarters majority in the Parliament and three quarters majority of *registered* voters in a Referendum (a virtual impossibility).

6. How utterly ludicrous (and a joke on the people of Fiji) to require conditions for the slightest constitutional change required by the people of Fiji that were never used when the constitution was imposed in the first place on the people of Fiji, by unknown persons.

7. The 2013 Constitution also granted a whole range of immunities for unspecified acts by the Bainimarama Government agents (but not their opponents) from 2000 to 2014.

8. Elections were held in 2014 and 2018 returning Bainimarama's Fiji First Party to Government.

9. The 2022 Elections saw FFP defeated narrowly by a coalition of PAP, NFP and SODELPA.

10. In the March 2025 sitting of Parliament, the Fiji Government tabled the Constitution (Amendment) Bill 2025 (Amendment Bill) which sought to amend the amendment process in section 160 (by deleting "three quarters" and substituting "two thirds" in s 160(2)(b) and deleting subsections (3) to (6) and repeal the amendment prohibition in section 159 (by deleting s 159(2)(c)). The Bill was defeated on its second reading.

Supreme Court Opinion

11. The Coalition Government then through the Office of the Solicitor General (OSG) sought an "Opinion" from the Supreme Court on five issues, the first four being merely conditions for changing the 2013 Constitution and the fifth on the validity of the 1997 Constitution. The Supreme Court went further.

12. The Panel of Supreme Court judges argued that the conditions for change were too onerous making the Constitution unresponsive to people's changing needs. The Opinion ruled that a two thirds majority in Parliament and a simple majority in a Referendum should be enough to keep the constitution "alive" and responsive to changing needs over time, but also not too easy to change.

13. The fifth issue was whether the 1997 Constitution was still valid with the OSG strangely asserting that it was not necessary to answer that question as it had been "overtaken by events".

14. Let me state at the outset that I disagree with the same Supreme Court Opinion that while the 1997 Constitution has not been lawfully abrogated, "events have overtaken the 1997 Constitution". Any rational person must ask: *what "events" can "overtake" a constitution*?

15. I am in agreement with a previous judgement by Justice Gates who ruled (*in a 2001 case Koroi v Commissioner of Inland Revenue*) on the attempted abrogation of the 1997 Constitution in 2001 as follows:

> *"It is not possible for any man to tear up the Constitution. He has no authority to do so. The Constitution remains in place until amended by Parliament, a body of elected members who collectively represent all of the voters and inhabitants of Fiji. Usurpers may ... rule for many years apparently outside of, or without the Constitution. Eventually the original order has to be revisited, and the Constitution resurfaces".*

16. This is however a moot point now with the Supreme Court ruling otherwise. The Supreme Court has argued that by a number of criteria and arguments (which they discuss and which can be regarded as quite plausible), they have determined that the 2013 Constitution must now be regarded as the "common law" of Fiji.

17. The Supreme Court asserted that this was a "determination" and not just an "Opinion".

18. While I personally believe that this is still debatable, I concede that Fiji can still accept the Supreme Court decision that the 2013 Constitution is now "in place" whatever its dubious provenance (the Supreme Court called it *"democratic deficit"*) , but bring in fundamental changes which results effectively in a "new" constitution.

19. This constitution can then obtain social legitimacy if passed by Parliament (with two thirds majority) and a Referendum (simple majority), as determined by the Supreme Court Opinion.

20. I believe that the Fiji Parliament can bring in at least five sets of fundamental changes to the 2013 Constitution that will allow the Fiji Parliament to effectively approve a "new" Constitution (which we can call the 2026 Constitution):

a) A new electoral system (POLCS) with constituencies and proportionality;

b) reintroduce an Upper House similar to what existed in the 1997 Constitution;

c) remove cancerous Decrees denying basic human rights to groups of Fiji people;

d) remove immunity provisions not approved by any Parliament.

e) Remove the over-riding role of the RFMF in national affairs.

B A New Electoral System For the People From the People

21. In early 2025, the Fiji Government appointed the Fiji Electoral Law Reform Commission (FELRC) chaired by former Chief Justice Daniel Fatiaki and comprising Professor Wadan Narsey, Dr Deidre Brookes (a NZ citizen) and Seini Nabou.

22. The 2026 CRC should confirm that in the Terms of Reference, the Fiji Law Reform Commission had asked the 2025 FELRC to ensure that:

(a) the proposed electoral system should uphold the principles of democracy and good governance, equality, inclusion, and fairness;

(b) promote the representation of women by the inclusion of Special Measures; which comply with Fiji's obligations under international law, including CEDAW

(c) strengthen the accountability of elected representatives to voters;

(d) review the restrictions placed on civil society actors

(e) review the powers of the Supervisor of Elections, electoral offences and penalties.

(f) carry out community-wide consultations

23. The 2026 CRC should confirm that its own TORs for electoral reform are consistent with the TORs for 2025 FELRC.

24. The Final Report of the FELRC (*An Electoral System for the People from the People*) was handed to the Fiji Government in early July 2025. A Validation exercise was conducted at the FEO. A presentation was made by Professor Narsey from Melbourne via Zoom to the Prime Minister.

25. The 2026 CRC should note that the website of the FLRC recorded *"The Report [An Electoral System for the People from the People] marks a significant milestone in Fiji's journey toward electoral reform and democratic enhancement.*

26. The 2026 CRC has also been given the Final Report (and all its detailed annexes) which was handed to Government in early July 2025 but embargoed and not tabled in Parliament or made public, for reasons unknown.

27. My comments here repeat the main arguments of that Report with a minor modification that I have conceded in hindsight, on the method of ranking of failed candidates on the List which ensures the crucial factor of proportionality.

28. I also suggest a modification that the 2026 CRC could recommend (on the 25 RSW) based on its consultations with the people

The public complaints about the current system

29. The CRC may wish to confirm from their own public consultations that virtually everywhere in Fiji the people/voters/political candidates complained (as outlined in the Report's Annexes)

(a) about the confusing Sudoku style ballot paper with hundreds of random numbers with no candidate name or picture, and no party names or symbols;

(b) the absence of an identifiable local MP who would be accountable to the voters in his/her local community;

(c) the unfairness of a system which allowed candidates with insignificant number of votes to become MPs under the massive votes going to the "Popular Leaders", while others with thousands of votes were excluded;

(d) the unreasonable and onerous requirements for registration of Political Parties;

(e) the increasing criminalization and excessive penalties for minor infractions;

(f) excessive powers of some electoral officials

(g) many other criticisms outlined in the full Report of the FELRC.

What the public wanted

30. The 2026 CRC should confirm through a detailed reading of the Report's Annexes and their own consultations throughout Fiji that:

(a) Voters throughout Fiji wanted their own *local* constituencies and MPs *who would identifiably be accountable to their local constituencies;*

(b) Maritime voters wanted *their own voices in Parliament* and not be submerged in mainland constituencies and MPs.

(c) Voters wanted simple ballot papers with candidate names, party symbols, and photographs of candidates, not just numbers easily jumbled and ticked.

(d) They wanted simple voting with ticks (no complicated counting of preferences)

(e) they wanted transparent counting of ballot papers in front of candidates (and their agents) and the public;

(f) A few knowledgeable witnesses (like Dialogue Fiji) wanted proportionality at the national level, one of the great benefits of the 2013 Constitution.

(g) many witnesses stated that if the 2013 Constitution prevented what the people wanted, then Government should throw out the 2013 Constitution and its electoral system which had never been approved by any parliament or referendum.

The 2025 Proportional Open List Constituency System (POLCS)

31. The Proportional Open List Constituency System (POLCS) recommended by the 2025 FELRC would comprise three essential elements:

(a) 25 Open Constituencies (with 5 Maritime ones), with no ethnic requirement for candidates or voters; (for the first time there will be MPs representing Kadavu, Yasawa/Mamanuca, Rotuma, Lomaiviti/Ovalau and Lau.

(b) 25 Reserved Seats for Women in the same 25 constituencies, all voters voting and only women standing; this can be a temporary measure until women candidates begin to stand and win in the 25 Open constituencies.

(c) 21 List Seats to ensure proportionality.

32. Note that for the first time in Fiji there would be no need for ethnic *constituencies* and *ethnic voting* to protect any major ethnic group, as proportionality will do that quite effectively, as it does to a certain extent in the 2013 Constitution.

33. This would result in 71 MPs, the same size as in the 1997 Constitution, which number was generally accepted by the people without any great protest about cost inflation.

34. The current high salaries of Ministers, Assistant Ministers, MPs and their perks must be all independently assessed by a body independent of Parliament.

35. The number of MPs could be less if so desired by reducing the number of Constituencies (e.g. merging some Maritime constituencies and/or reducing the number of List candidates). But I believe that the extra problems associated with larger constituency sizes do not justify this.

36. The constituency boundaries could be easily demarcated by using *already existing information on the Voter ID cards,* such as polling station the voter was associated with. This exercise has already been conducted by Mr Fatiaki and Ms Nabou with the assistance of technical staff from the FEO and constituency boundaries determined (see the Annexes).

37. The CRC should note that there is no need for a costly and time-consuming *national re-registration of all voters.*

Simple voting and transparent counting

38. Voters wanted simple voting and simple transparent counting and the 2025 POLCS delivers on this.

39. Each and every voter would get 2 ballot papers, one for the Open Constituency, and one for the RSW.

40. Each ballot paper will have the names, party symbols (including Independents) and photos of all the candidates for that constituency alone. i.e. a relatively small number probably less than 10 or 15.

41. There will therefore be 25 MPs from the 25 Open Constituencies.

42. There will similarly be 25 Women MPs from these same constituencies, *so that there is no need for different boundaries for the RSW.*

43. The 50 local MPs can be and should be decided by the FEO at the local constituency centers: in front of party agents, media representatives and voters themselves. Simple piles associated with each candidate would be clearly observable and the counting visible and verifiable.

44. There are no preferences to count and recount causing great confusion in the public mind.

45. While the First Past the Post system has its weaknesses, the benefits of simplicity far outweigh the small weakness. In any case, the eventual proportionality of results for every party will compensate for any weakness of representation at the constituency level.

46. What must be appreciated is that with 50 local MPs, voters will know exactly who is their local MP and who they can go to for their needs. This is a fatal weakness in the current 2013 Electoral system.

47. In complete contrast, with the current electoral system allowing Parties to mount their campaign on "votes for the leader" the MPs who enter Parliament under the Party banner often have absolutely minimal votes, and no MP can be identified with the local needs of voters. This will never happen under the 2025 POLCS.

48. The List MPs will then be the *only results* decided at the FEO HQ after all the Party votes are aggregated. All these MPs will have significant numbers of votes behind them from their local constituencies.

The List to Ensure Proportionality

49. For each qualifying Party having more than the 5% Threshold, "the Proportion of their Total MPs in Parliament" will be the same as the "Proportion of their Total Party Votes in Total Votes cast for Qualifying Parties".

50. While the 5% Threshold currently applies to qualification for the List, note that any small party which has enough local constituency support to win on a First Past the Post mode of counting, could win a seat *without getting 5% of the Total Votes cast in Fiji* (the current Threshold).

51. Independents could also be elected in local constituencies without having to satisfy the 5% Threshold which requires around 25 thousand votes.

52. In the Final Report we had stated that the losers from the Open Constituencies would then go on to the Open List where they will be ranked according to "Standardized Votes" which take into account that some Open Constituencies will be very large (and losers will tend to have large numbers of votes) and some (e.g. Maritime Constituencies) will be quite small (and "losers" will tend to have smaller numbers of votes). Percentages would equalize the candidates.

53. I have since considered that there is no need for standardization of Losers Votes via percentages, which method voters and parties may have difficulty understanding.

54. The FEO could simply rank Losers by the *total votes received.* This will also ensure that the MPs selected for Parliament will have significant *numbers* of votes behind them.

55. We need not worry about Maritime constituencies as they will be well represented in any case, better than ever before especially with the RSW seats in each constituency.

Guarantee of Opposing Views in Parliament

56. With there being 21 List MPs (of Losers in Constituencies) as opposed to 25 Local Open Constituency MPs (of Winners), *there is a virtual guarantee that there will be opposing views conveyed to Parliament*, and not just of the Winners. This will surely strengthen democracy.

Why Reserved Seats for Women?

57. A few witnesses did state to the FELRC that there should not be any reserved seats for women and that women should compete with men equally as candidates.

58. The FELRC however felt that given the extent of violence against women in Fiji, women were not on the same "level playing field" *when it came to taking full part in politics as candidates*, even if they in aggregate had roughly the same number of votes nationally as men.

59. The Full Report of the FELRC explains why there are urgent economic reasons to strengthen women politically in Parliament, because historically, women have never been more than 15% of Parliament despite all the encouragement by women's organizations, local and international.

(a) Women have extremely small shares of total wealth, total income, paid formal employment, and even leisure, while doing more than 54% of all work in Fiji (paid and unpaid).

(b) With the 25 Open and 25 RSW boundaries being the same, then male and female candidates for any party should be able to campaign together, giving greater security to campaigning women candidates. There will be no shortage of women candidates as currently.

(c) Note an additional advantage not mentioned in the full Report that giving women their own reserved seats will also ensure that good male candidates are not pushed out of the 25 Open Constituencies.

(d) Note also that the losers from the RSW seats do not go on to the Party Lists, only the losers from the 25 Open Constituencies.

(e) Of course both the winner and the loser from the Open Constituency could also be women who would add to the 25 RSW. This is however extremely unlikely as good women candidates would probably all stand in the RSW constituencies.

(f) If the RSW recommendation is accepted, the PM will have far more women to choose from as his Ministers and Assistant Ministers than currently.

(g) Women all over the country will without fail have a woman MP from their local constituency to go to for their interests. This has never happened previously in the history of Fiji.

(h) For the first time ever in the history of Fiji, the Fiji Government will be able to tell the world that Fiji satisfies the CEDAW target of at least 30% of Parliament being women- at least 25. Currently there are only 5.

(i) Fiji would surely be able to understand whether having at least 25 qualified women in Parliament is an improvement on past parliaments: not just on matters concerning women but national policies as a whole.

(j) In the unlikely event that the 2026 CRC finds from their conclusions that there is no great public pressure for Reserved Seats for Women, I reluctantly suggest below that (despite its great value):

- the recommendation for 25 RSW can be ignored,
- the number of List Seats can then be increased to 30,
- while keeping the size of Parliament to 55, the current size.

Protecting major ethnic groups

60. Fiji has suffered coups in 1987 and 2000 because, in my opinion, indigenous Fijian Parties did not control government after elections and they were able to influence the RFMF to conduct coups.

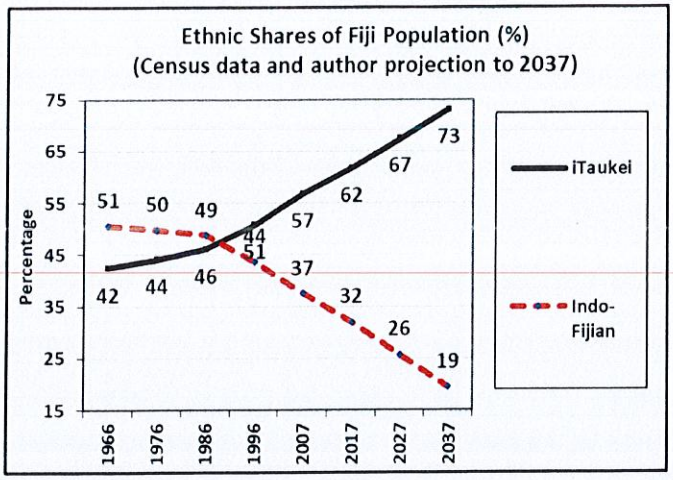
61. It is a continuing tragedy that the full truth behind the real ringleaders of the 1987 and 2000 coup have never been established, even to date with the sitting of the Truth and Reconciliation Commission.

62. The origins of the 2006 coup are quite different and have also never been publicly established although many had hoped for more light to be shed by the Truth and Reconciliation Commission.

63. With indigenous Fijians now comprising 65% of the voters and Indo-Fijians comprising around 30%, *the element of proportionality through the Open List system will ensure, without fail,* if the two major ethnic groups vote as groups, then *whoever they vote for*

* iTaukei/Indigenous Fijians will elect 63% of the MPs (even more in the future)

* Indo-Fijians will elect 31% of the MPs (decreasing slowly into the future)



64. The future for ethnic proportions of the population may be seen in the accompanying Graph. By 2037 Indo-Fijians will be a mere 19% of total population and slightly higher proportion of voters. A mere 12% of Class 1 primary school children will be Indo-Fijian.

65. The political parties representing iTaukei voters will almost certainly form Government either on their own or in partnership with other parties which will include those voted for by Indo-Fijians as currently.

66. The skewed electoral results and marginalization of iTaukei parties that encouraged coups in 1970 and 2000 will not occur again. Coups arising from ethnic iTaukei unhappiness will be a "thing of the past".

67. This positive proportional result has happened in some fashion under the 2013 Constitution and its Electoral System in the elections of 2014, 2018 and 2022.

68. That proportionality element is preserved through the 2025 POLCS outlined in the Final Report of the FELRC.

69. It is also important to note that in the constituency system Political Parties can choose to stand candidates of other ethnic minorities.

70. It should also be noted that Prime Ministers and Leaders of Opposition can also nominate persons from ethnic minorities to Senate.

71. One un-noticed feature of Fiji's ethnic politics since 1970 is that virtually all Indo-Fijian political leaders (e.g. Jai Ram Reddy, Mahendra Chaudhry, Professor Biman Prasad, and others) who suffered from military coups have co-operated with the RFMF coup leaders thereafter in the national interest.

There will be no need for gerrymandering through the Boundaries Commission

72. I remind that in ALL the electoral systems before the 2013 Constitution when there was no national proportionality, *the Boundaries Commission was a source of much political bickering and tension as political parties tried to move boundaries this way and that to suit their perceived interests.*

73. With total proportionality ensured between political parties by the 2025 POLCS, *there will be absolutely no advantage to be gained by any political party trying to change boundaries here and there* (called "gerrymandering" in political theory).

74. The 2026 CRC should make an extra effort to understand why this will be so arithmetically as I explain below.

75. At the FEO HQ after allowance is made for the Independents who win in Local Constituencies, then each Party who gets past the Threshold (existing 5% or the recommended lower 2%) will then be allocated the same proportion of seats in Parliament, and corresponding seats (say T).

76. If C is then the number of constituency seats it has won, then the number of List seats it is entitled to will be

$$L = (T-C).$$

77. *Once T is fixed*, then C going up by 1 MP (through gerrymandering of boundary change) will mean that L must go down by 1 MP, since T is fixed. A Constituency seat artificially gained by a Party by shifting boundaries, will *automatically* mean a seat *less* in the List allocation, so to keep the national number of MPs owed to each party the determined by their share of total votes.

78. A Boundaries Commission, if set up under the POLCS, will not face political bickering among parties.

79. Constituency boundaries can be set purely according to the logistical needs of the candidates, voters and FEO officials in implementing the elections.

Other advantages of the recommended POLCS

80. For the first time since 2006 *there may be Independents winning.* Since 2006 there have been no Independents in Parliament.

81. For the first time since 2014, *there may be small parties winning in local constituencies* even if they do not get the Threshold nationally. Currently at least two small parties are unfairly excluded by the 5% Threshold.

82. If the next election is held under the same 2013 system, then it is possible that even the current two small parties in Parliament may not make the 5% threshold. Even the current newly created parties who were elected under the Fiji First Party banner may fail to get the 5% threshold for obvious reasons. I suggest that the Threshold be reduced.

The 5% Threshold Black Hole: reduce to 2%?

83. It would be considered utterly scandalous if it was discovered that the Fiji Elections Office had quietly thrown away thousands of votes into a dustbin (Black Hole) at the back of their Headquarters in Toorak.

84. Yet this is precisely what the current Fiji Electoral System in the 2013 Constitution does in every election and probably will again, in the next election.

85. The current 5% Threshold has meant that more than 30 thousand voters have been effectively disenfranchised at each of the elections of 2014, 2018, 2022. Their votes have been totally nullified because they were for small parties or Independents not reaching the 5% Threshold and therefore simply did not count towards electing any MP.

86. With 1 MP in a 71 seat Parliament representing just 1.4% of voters (and 1 MP in a 55 seat Parliament representing just 1.8% of total votes), I suggest that the Threshold for Parties to qualify for the List could be reduced to 2%.

87. In any case, remember that the winners in the local constituencies will not require any Threshold to be exceeded- they just need to be First Past the Post relative to the other candidates.

If the Public insist on Economizing on the size of Parliament

88. If the 2026 CRC finds from its public consultations that the people are generally in favour of keeping the size of House of Representatives at 55 (the current one), AND if there is no great pubic desire for the 25 Reserved Seats for Women, then the 25 RSW can be omitted altogether and the List Component be increased to 30 to ensure proportionality.

89. I would strongly advise against merely reducing the number of the RSW seats as that would require laborious different boundaries for the Open Constituencies and the RSW.

90. This would then result in (25 + 30) or 55 MPs altogether in Parliament, as currently.

91. But then, Fiji would also miss a glorious opportunity to take a radical step forward towards gender equality in politics on the global stage. It should also be remembered that another Review of the Electoral system may be a long time coming. Fiji has surely had enough of electoral changes.

92. I would strongly recommend keeping the 25 RSWs and the 71 Seat Parliament, especially as each MP will have a direct connection and accountability to the voters of one of the 25 constituencies.

93. Those concerned about the excessive cost of Parliament might wish to recommend to the 2026 CRC to re-establish the Higher Salaries Commission and prevent the debacle that took place after the 2022 Elections when a Committee comprising MPs *themselves* massively and unprofessionally increased their own salaries and perks.

Other Changes to the Electoral Laws

94. The 2025 FELRC Report and its Annexes have detailed recommendations for fundamental changes to the electoral laws to remove the climate of fear etc.

C Re-establish Upper House

95. One of the undoubted benefits of the 1997 Constitution was that it had an Upper House (Senate) which was an excellent "checks and balance" mechanism for the Lower House of elected MPs.

96. The authoritarian Bainimarama Government saw no need for an oversight body.

97. It is puzzling that the current Parliament (neither the Government nor the "Opposition") have shown any urgency for the restoration of the Upper House.

98. I suggest that while not being accountable to an Upper House may have benefits for those in power, it reduces the Government's accountability to the public.

99. I would strongly recommend that the 2026 CRC explore with the public the full restoration of an Upper House in the new 2026 Constitution, discuss what could be the components and what would be its key functions.

100. They can take guidance from the 1970 and the 1997 Constitutions which both had parliamentary legitimacy with nominations from the Prime Minister, Leader of the Opposition, the GCC and Council of Rotuma.

101. The Senate in the 1970 and 1997 Constitutions had the following numbers:

Table 1 Composition of Senate in Constitutions of 1970, 1997 and Proposed 2026

	1970 Constitution	1997 Constitution	Proposed 2026 Constitution
Prime Minister	7	9	8
Leader of Opp.	9	9	7
GCC	8	14	5
Rotuma	1	1	1
Religious Org.			10
Total	25	33	31

102. My suggestions for the Senate in the new Constitution are given in the last column.

103. I note that one of its components, the Great Council of Chiefs has been restored by the Coalition Government but without any specified role in Parliament.

104. Given that the GCC had dubious roles in supporting the coups of 1987 and 2000 and given that the iTaukei representation in Senate will be further strengthened by the religious organization nominees I suggest below, I believe that the GCC representation can be reduced to 5.

105. I would suggest that in addition to those nominated by the Prime Minister, the Leader of the Opposition and the GCC, there could also be around 10 persons nominated by the main religious bodies in Fiji, roughly 7 of whom would represent iTaukei religions and 3 represent Indo-Fijian religions. Of course, these representatives could be from ethnic minorities as well.

106. The latest FBS data from the 2023-24 EUS, suggest that the most supported religions in Fiji are currently, with their approximate national support and my suggested number in Senate:

Table 2 Religious affiliations of Fiji population in 2023-24 and Suggested numbers in Senate		
Religion	Perc. Of Population	Suggested No. in Senate
Methodist	35.4	3
Sanatan Dharm and Arya Samaj	21.8	2
Catholic	9.2	1
Seventh Day Adventist	6.0	1
Assemblies of God	5.8	1
Other Christian	6.6	1
Muslim Sunni and Ahmadiyya	4.0	1
Total		10
Source: estimated by Narsey from 2023-24 EUS		

107. I suggest that the representatives of religious groups in Fiji may be expected to provide far more moral and ethical guidance to Parliament than political parties or even the GCC which has had a chequered past in previous coups (such as in 1987 and 2000).

108. With the Senate numbers suggested in the Table, political party representatives nominated by the Prime Minister and Leader of the Opposition will comprise 15 out of 31 and cannot thereby determine Senate decisions without other support.

109. I remind that the MPs in Parliament will be roughly representing these same ratios of ethnic populations in the population.

110. Overall there will be a significant majority of iTaukei representatives in Senate, even higher than their share of population. This is appropriate given Senate's over-riding responsibility for iTaukei natural resources.

(D) Removing Cancerous Decrees

111. The Coalition Government has already removed some undesirable Decrees imposed by the Bainimarama Government, such as the Media Decree.

112. It is just as important to remove Decrees 51 and 52 which the Bainimarama Government imposed so as to break the lawful contracts that the FNPF had with the 2012 Pensioners AND to throw out the David Burness case *which was already being heard by the High Court.* This has never been done before in the judicial history of Fiji

113. It is absolutely critical for the Coalition Government or any Fiji Government to remove from the Constitution any cancers that deny Fiji citizens their right to take their perceived grievance to court- to be at least heard, whatever the court may subsequently decide on their case. The reputation of Fiji's judiciary deserves nothing less and I would expect the Fiji Law Society to take the lead in calling for these cancers to be removed from the Fiji Constitution.

E Removing the Immunities Not Approved by Parliament?

114. It cannot be disputed that "punishment" for those who break the rule of law, is crucial to the existence of the rule of law: as a deterrence of the offender and others, for retribution and reform of the criminal, all ultimately with the objective of protecting society.

115. I call on the CRC to ask why there has there been no "punishment" for

(a) those who clearly committed treason in 2006?

(b) The 5 deaths of CRW soldiers in military custody after the 2000 mutiny without trial, judge or jury?

116. On the contrary how can the 2013 Constitution give wide-ranging immunity to Bainimarama and all coup collaborators stretching back not just to the 2006 coup but also to the 2000 coup and mutiny.

117. It is extremely unfortunate that the Panel of Supreme Court judges did not inquire into the possible fundamental causes of either the 2000 coup or the 2006 coup.

118. While some prominent front men (such as George Speight and Jo Nata) have been prosecuted, found guilty and paid their dues, there is clear evidence in the 2000 Evans Board of Inquiry Report that there were leaders of the 2000 coup at the highest levels of the RFMF with the Commander even refusing to appear before the Evans Board or Inquiry.

119. I remind also that the Panel of Supreme Court judges did not inquire into the identities of the real supporters of the 2000 coup at the highest levels of the RFMF, including one senior officer identified by the Evans Board of Inquiry Report as being in contact with the CRW soldiers on the morning of the coup. He is currently occupying a high diplomatic position in the Coalition Government.

120. The facts are abundantly clear that the 2006 coup had nothing to do with ethnic tensions but possibly tragic events, such as the killing of 5 CRW soldiers after the putting down of the 2000 mutiny. It has been forgotten that the Commissioner of Police at the time (the Australian late Andrew Hughes) was investigating this event and about to charges also for sedition, but had to with his family to Australia, following threats made on their safety.

121. Should the Supreme Court not have inquired whether the immunity offered in the 2013 Constitution could be legitimately applied in international law for the killing of the 5 CRW soldiers in 2000 or the treasonous 2006 overthrow of the Qarase Government?

122. Of course, there was no punishment meted out for treason committed by Rabuka in 1987. But the fundamental difference in law is that Rabuka was guaranteed immunity in the 1997 Constitution which was approved by both Houses of a legitimately elected parliament in 1997.

123. In contrast, the 2013 Constitution was unilaterally imposed on Fiji by the unelected military Bainimarama Government, without any parliamentary approval or Referendum, and "signed into law" by one individual, arguably also an illegally appointed President.

124. The fundamental legal flaw in this 2013 Constitution is that it brazenly stipulates that any changes whatsoever, however small, must require three quarters of an elected parliament and three quarters of a Referendum, when neither condition was required for its imposition in the first place.

125. This has been correctly modified by the Supreme Court Opinion to only require two thirds of Parliament and a simple majority in a Referendum.

126. The Supreme Court Opinion however strangely ruled that no changes may be made to the provisions for immunity. This is surely challengeable.

127. The Supreme Court Opinion acknowledged that *"Immunity provisions can be seen to detract from the rule of law, they insulate from what would otherwise be the legal consequences of their actions. They also sit uneasily with the concept of equality before the law. As well, such provisions may create, in the minds of those contemplating a coup, expectations of future immunities and, in this way, might increase the risks of extra-constitutional action. These issues are compounded when immunities are not able to be amended."*

128. But then it argued: *On the other hand, unamendable immunities may be— as they probably were in 2012 and 2013 —preconditions to a peaceful transition from military government to democracy. In this way they can be seen to promote democratic values."*

129. Whether they were "preconditions" to a peaceful transition to democracy is quite debatable. Preconditions set by whom for whom to follow? The idea that immunities for some for unknown crimes committed can be seen to "promote democratic values" is surely stretching logic beyond common sense.

130. The Supreme Court Opinion argued *"As well, nonrecognition of the unamendable immunities would understandably be regarded by those affected as a departure from understandings that have formed the basis of the way Fiji has been run over the last 35 years (that is, since the 1990 Constitution came into effect).*

131. *"A departure from understandings"*? Understandings by whom?

132. The Supreme Court Opinion argued that *"The 1997 Constitution shows that unamendable immunities can result from a democratic process and for this reason are not necessarily a breach of the right of self-determination"*.

133. While the first part of the above statement is correct, the second part (underlined here) is a "red herring" or *non-sequitur.*

134. The Supreme Court Opinion went on to assert (Clause 229) *"Given that unamendable immunities have now been a feature of Fiji's constitutional history for the 35 last years and are not inconsistent with international practice".*

135. This above statement ignores the central point that unamendable immunities have been a feature only since the 2013 Constitution was imposed by the Bainimarama Government.

136. The idea that there have been international cases of immunity granted in constitutions do not make them in any way desirable, especially given that the "rule of law" must apply to all, without exception. Certainly the rule of law must apply for horrendous crimes such as the

extra-judicial killing of 5 possibly innocent persons in 2000 and the treasonous 2006 overthrow of the lawfully elected Government of the late Laisenia Qarase.

137. The Supreme Court Opinion goes on stating "*and, very importantly, in the particular Fijian context, it would not be right to withhold recognition of them [immunities] in this case*".

138. "*It would not be right*"? This is extremely shallow logic to say the least: it has happened in the past, so let us continue the practice, however fundamentally bad it is?

139. I remind that when the 2000 coup occurred front man George Speight and his co-conspirators expected and demanded immunity for their treason against the democratically elected Chaudhry Government: they had learnt from the immunity granted to Rabuka by the 1997 Constitution and verified by the 1007 Parliament.

140. I suggest that should the 2026 CRC continue the immunities granted in the 2013 Constitution not approved by any Parliament (i.e. excluding those implicated in the 1987 coup) this would permanently reinforce and strengthen the perverse historical logic that anyone can commit any crime in Fiji, overthrow the government, hold power long enough, even hold elections under distorted electoral laws. and rewrite the constitution to include immunity for themselves.

141. There can be no end to this cycle. It is surely time to draw a line under that cycle.

142. The 2026 CRC may wish to consult the highest levels of the RFMF who I believe have declared that they will never again support a coup against a lawfully elected government.

143. The current RFMF Commander has withstood many public calls (and private pressure) for him to remove an elected government following the 2022 Elections.

144. He has publicly acknowledged responsibility for RFMF involvement in all the past coups, and has opposed the immunity clauses in the constitution.

145. His contract has been renewed for another five years.

146. I believe that the 2026 CRC is at a historic crossroad: this is now the time to say that immunities for crimes committed *must never again be granted through any constitution approved by a Fiji Parliament. Any such clauses must be removed.*

F Removing the role of the military

147. In the 2013 Constitution, Cap. 131 (2) states *"It shall be the overall responsibility of the Republic of Fiji Military Forces to ensure at all times the security, defence and well-being of Fiji and all Fijians"*

148. During the counting of votes after the 2022 Elections and several times thereafter there have been calls in the social media, from all sides of the political divide, for the RFMF *to use this specific clause* and interfere with the vote counting and government formation process.

149. It is absolutely unacceptable for the RFMF to be used in this fashion in domestic politics, a recipe for the encouragement and continuation of coups and the coup culture.

150. The 2026 CRC should throw this clause out from the Constitution they recommend.

G New Fiji Constitution?

151. The 2026 CRC might want to re-examine all the constitutions that have been placed before the public and see what can be retained and what eliminated:

- the 1997 Constitution

- the Yash Ghau Draft Constitution

- the 2013 Constitution

152. Should the changes recommended above be approved by two thirds of Parliament and a simple majority in a Referendum, then the public can legitimately see the 2026 Constitutions as a genuine "new" constitution, approved by a Fiji Parliament, supplanting the imposed 2013 Constitution with all its "*democratic deficits*".

Can the 2026 CRC save Taxpayers' Funds: What Electoral System for Fiji? Professor Wadan Narsey

This last week has seen a very positive development with Prime Minister Rabuka proposing that all Ministers take a 20% pay cut and reduce all their frequent overseas trips.

While some cynics have publicly labelled this as a superficial gimmick before the next election, nevertheless the measures proposed will save some taxpayers' money.

May I suggest to the Prime Minister that he could save some more of taxpayers' funds by advising his 2026 Constitution Review Committee that they do not waste tax-payers' money on community wide consultations for the public's views on desirable electoral reform.

This would merely cover the same grounds that the 2025 Fiji Electoral Law Reform Commission (FELRC) chaired by Danial Fatiaki (former Chief Justice), and comprising Professor Wadan Narsey, Seini Nabou and Dr Deidre Brookes, covered quite comprehensively (in the words of the Fiji Law Reform Commission - *demonstrating Fiji's commitment to inclusive and participatory policymaking. The Final Report will be made publicly available in due course."*).

Nine months on, while that Report has not been made publicly available or even tabled in Parliament, PM Rabuka can remind the 2026 CRC that the 2025 FELRC had focused on electoral law reform in their Terms of Reference (TORs), far more comprehensively than required of the 2026 CRC.

The TORs given to the 2025 FELRC

The 2026 CRC should confirm that the FLRC had asked the 2025 FELRC to ensure that:

(a) the proposed electoral system should uphold the principles of democracy and good governance, equality, inclusion, and fairness;

(b) promote the representation of women by the inclusion of Special Measures; which comply with Fiji's obligations under international law, including CEDAW

(c) strengthen the accountability of elected representatives to voters;

(d) review the restrictions placed on civil society actors

(e) review the powers of the Supervisor of Elections, electoral offences and penalties.

(f) carry out community-wide consultations.

With the excellent assistance of FLRC staff (Leighton Fatiaki and Leah Duru) and two staff from the Fiji Elections Office (Anaseini Senimoli and Mesake Dawai), the FELRC Team went all over Fiji, twice, seeking the views of the people.

The website of the FLRC accurately noted:

"The Report marks a significant milestone in Fiji's journey toward electoral reform and democratic enhancement. The review was conducted with support from the Ministry of Justice, Electoral Commission, Ministry of Women, Ministry of Rural and Maritime Development, Ministry of iTaukei Affairs, Ministry of Information, and the Fijian Elections Office. It included a four-month nationwide consultation across all four divisions and Rotuma. The process featured simulations with political parties, outreach in places of worship, villages, and universities, and materials translated into Vosa Vakaviti, Hindi, and Rotuman—demonstrating Fiji's commitment to inclusive and participatory policymaking. The Final Report will be made publicly available in due course."

While the Final Report of the FELRC (*An Electoral System for the People from the People*) has been inexplicably "embargoed", I had already conducted a full Simulation/Validation exercise at the Fijian Elections Office (20 June 2025) to which ALL the political parties were invited and were present. So they all know what we were recommending.

Secondly, I can refer to the contents of my **Narsey Power-point presentation** I personally made on the 30 June 2025 by Zoom to Prime Minister Rabuka from Melbourne.

The views here are therefore my own, and not necessarily of my colleagues on the FELRC whose Final Report was handed to the FLRC on 7 July 2025.

What the people complained about.

If the 2025 CRC is given full access to the Report of the 2025 FELRC including all the detailed Annexes, they can confirm that virtually everywhere in Fiji the people/voters complained

(a) about the confusing Sudoku style ballot paper with hundreds of random numbers with no candidate name or picture, and no party names or symbols;

(b) the absence of an identifiable local MP who would be accountable to the voters in his/her local community;

(c) the unfairness of a system which allowed candidates with insignificant number of votes to become MPs while others with thousands of votes were excluded;

(d) the unreasonable and onerous requirements for registration of Political Parties;

(e) the increasing criminalization and excessive penalties for minor infractions;

(f) Excessive powers of some electoral officials

(g) many other criticisms outlined in the full Report of the ELRC.

What did the people want in their electoral system?

The 2026 CRC can also confirm through a detailed reading of the Annexes that:

(a) Voters throughout Fiji wanted their own ***local*** constituencies and MPs ***who would identifiably be accountable to them;***

(b) Maritime voters wanted ***their own voices in Parliament*** and not be submerged in mainland constituencies and MPs.

(c) Voters wanted simple ballot papers with candidate names, party symbols, and photographs of candidates, not just numbers easily jumbled and ticked.

(c) They wanted simple voting with ticks (no complicated counting of preferences)

(d) they wanted transparent counting of ballot papers in front of candidates (and their agents) and the public;

(e) A few knowledgeable witnesses (like Dialogue Fiji) wanted proportionality at the national level, one of the great benefits of the 2013 Constitution (which I totally agreed with and went beyond the 2013 Constitution).

(f) many witnesses stated that if the 2013 Constitution prevented what they wanted, then Government should throw out the 2013 Constitution and its electoral system which had never been approved by any parliament or referendum.

The 2025 FELRC therefore attempted to ensure that the electoral system being recommended would be consistent with the 2013 Constitution which was the Supreme Law of Fiji, until such time that it could be lawfully changed, as Prime Minister Rabuka stated publicly (FT 29 June 2025).

The Electoral System recommended by the 2025 FELRC: the POLCS

It has been previously revealed (FT 16 Nov 2025) that while the eventual total numbers in parliament could be reduced by Parliament, the Proportional Open List Constituency System (POLCS) recommended by the FELRC would comprise three essential elements:

(a) 25 Open Constituencies (with 5 Maritime ones), with no ethnic requirement for candidates or voters; (for the first time there will be MPs representing Kadavu, Yasawa/Mamanuca, Rotuma, Lomaiviti/Ovalau and Lau.

(b) 25 Reserved Seats for Women in the same 25 constituencies, all voters voting and only women standing;

(c) 21 List Seats to ensure proportionality.

This would result in 71 MPs, the same size as in the 1997 Constitution. The numbers could be less.

Keeping Parliament at 55 MPs?

If Parliament decides to have the same 55 MPs in Parliament (to keep costs down) then the system could comprise

22 Open seats
22 Reserved Seats for Women
11 List Seats.

The Maritime communities would probably be merged with mainland constituencies as in the 1997 Constitution, surely undesirable.

Voters wanted simple voting and simple counting

Each voter would get 2 ballot papers, one for the Open Constituency, and one for the RSW.

Each ballot paper will have the names, party symbols (including Independents) and photos of all the candidates for that constituency alone.

There will therefore be 25 MPs from the 25 Open Constituencies.

There will similarly be 25 Women MPs from these same constituencies.

The losers from the Open Constituencies would then go on to the Open List where they will be ranked according to "Standardized Votes" which take into account that some Open Constituencies will be very large (and losers will tend to have large numbers of votes) and some (eg. Maritime Constituencies) will be quite small (and lowers will tend to have smaller numbers of votes).

Only Political Parties who have a minimum of 5% of the Total Votes Cast will qualify to draw the required number of MPs from their ranked Open List, to ensure that, without fail, the

"Proportion of their Total MPs in Parliament" is the same as the "Proportion of their Total Party Votes in Total Votes cast for Qualifying Parties".

But note that any small party which has great support could win a seat without getting 5% of the Total Votes cast in Fiji.

Advantages of Reserved Seats for Women

The Full Report of the FELRC explains why there are urgent economic reasons to strengthen women politically in Parliament, because historically, women have never been more than 15% of Parliament despite all the encouragement by women's organizations.

Women have extremely small shares of total wealth, total income, paid formal employment, and even leisure, while doing more than 54% of all work in Fiji (paid and unpaid).

For the first time ever in the history of Fiji, the Fiji Government will be able to tell the world that Fiji satisfies the CEDAW target of at least 30% of Parliament being women- at least 25. Currently there are only 5.

The PM will have far more women to choose from as his Ministers and Assistant Ministers than currently.

With the 25 Open and 25 RSW boundaries being the same, then male and female candidates for any party can campaign together, giving greater security to campaigning women candidates. There will be no shortage of women candidates as currently.

Note also that giving women their own reserved seats will also ensure that good male candidates are not pushed out of the 25 Open Constituencies.

Other Valuable National Guarantees

The people of Fiji should note that at least in 1987 and 2000 there have been coups because indigenous Fijian Parties did not control government after elections.

There are therefore many benefits that the element of proportionality through the Open List system will ensure, without fail, given the current demographic reality and trends of the numbers of ethnic voters (and even more extremely in the future).

If the two major ethnic groups vote as groups, then *whoever they vote for*

* iTaukei/Indigenous Fijians will elect 63% of the MPs (even more in the future)

* Indo-Fijians will elect 31% of the MPs (decreasing into the future as Indo-Fijians keep emigrating)

This never happened in any election from 1970 to 2006.

This may have happened in some fashion under the 2013 Constitution and Electoral System and that element needs to be preserved for the future.

It is also important to note the importance of regional balance of MPs under the POLCS. If all the voters in each Division vote only for candidates from their division, then the distribution in parliament will be

Central	43 MPs
Western	28 MPs
Northern	14 MPs and
Eastern	3 MPs.

No division will be unfairly marginalized.

There will therefore also be absolutely no advantage to be gained by any political party trying to change boundaries here and there (called "gerrymandering" in political theory): a seat artifically gained in a constituency by shifting boundaries, will mean a seat lost in in the List allocation, to keep the national proportions of Ms owed to each party the same.

Other advantages

* For the first time since 2014, there may be Independents winning. Since 2014 there have been no Independents in Parliament,

* For the first time since 2014, there may be small parties winning in local constituencies even if they do not get 5% nationally.

Currently at least two small parties are unfairly excluded. If the next election is held under the same 2013 system, then it is possible that the current two small parties in Parliament may not make the 5% threshold.

Even current newly created parties who were elected under the Fiji First Party banner may fail to get the 5% threshold given that the two FFP Supermen may not be allowed to stand for elections.

The 2026 CRC can save taxpayers' money

I would like to suggest that the current 2026 Constitution Review Commission could first request their authorities to make available to them the Full Final Report of the Fiji Electoral Law Reform Commission (*An Electoral System for the People from the People*), including the Annexes.

That Report also has detailed annexes listing all the communities consulted throughout Fiji, as well as detailed verbatim records of the witnesses, also in the vernacular.

The 2026 CRC can then decide whether they need to consult further on these terms of reference or new areas not covered by the 2025 FELRC.

The 2026 CRC could also make their own recommendations on what kind of electoral system they think more appropriate, consistent with their overall Terms of Reference, of which the electoral system is only a part.

But without doubt, a significant amount of taxpayers' funds may be saved if the 2026 CRC do not attempt to duplicate the in-depth work of the 2025 FELRC.

Fiji Nursing Association (FNA)

Fiji Nursing Association
Date: 17-04-2026
Time:10.00am-12.00pm

Mr. Valenitabua: Lady and gentlemen. I know that there's a lot going on outside of this building right now. And there's a hold-up in traffic. We haven't got our full staff in place. Staff members. But we will proceed. Since you are here, and the three of us, we can listen to you this morning. I welcome you to this consultation session with the Constitution Review Committee. Present, the commissioners present are, as we have introduced ourselves, Dr. Fatiaki, Conway, and me.

The CRC is a review commission. We are reviewing the 2013 Constitution as an obligation or task that has been given to us by His Excellency, the President of Fiji. We'll be doing the job for the country, for the government, for everybody else.

And that is why we have been sending out invitations to various institutions and various individuals, inviting them to come and make submissions before us. We'll be going out to the public, to the islands, but we are dealing with the submissions here at Level 9 until the day we leave. So, we welcome you to this session.

We are here to listen to you. Remember, we want to review, we are reviewing the Constitution. We will take submissions on what should be removed, what the people think should be removed, what the people think should be included, and what the people think should remain the same in the 2013 Constitution.

And eventually, we might have an amended Constitution. Now, there is a purpose for these consultations. We welcome you, and we will now pass you the mic so that you can proceed with your submissions this morning.

Ms. Miliakere: Good morning. Good morning. Good morning, Mr. Beg. Good morning, Dr. Fatiaki. My name is Miliakere Naisorovakawalu, the current President of the Fijian Nursing Association. And on my left, Mr. Taniela Ravuka is the General Treasurer for the Fijian Nursing Association.

I would like to take this time to thank the Constitutional Review Committee in thinking of the Association. We were so proud, because it came in the last two days when the invitation came to our former

President. But when we saw that invitation that came in from the CRC, we were so proud.

And we would like to thank the Committee's Mr. Ratumaiyale for thinking of the Association. The Fijian Nursing Association, I know Dr. Fatiaki, we have heard Dr. Fatiaki has been long in the service in the medical private. It's the only national professional association for nursing in this country.

Currently, we've got about 1,600 members, and it's been there, existed for more than 60 years. We are the only voices for our members, but we are voices for the nurses here in Fiji. We were grateful because tomorrow is our 67th AGM.

And this is one of the achievements that we're going to share with our members, that we were part of the CRC. Even though we did not be meeting with the National Council, sir, we discussed last night because of the Constitution. The Constitution came in from our inside.

We were both nurses. I'm the Director of Nursing at the St. Giles Hospital. So, when we talked about recruitment, we talked about legislation, we always linked to the Constitution.

And Mr. Ravuka is also a former staff of St. Giles, but Director of Nursing at the military, Fijian military hospital. So, I'll start with the Constitution. It was shared with the Fijian Nursing Council members in St. Giles, because we deal with our Act.

When we talked about legal things, we always talked about the Act. That is the Mental Health Act and the Nursing Act. So, when we shared with our Council members yesterday, these are only two group books when we talked about in the hospital.

And I was sharing with my Council members of Fijian Nursing. One is our Bible, the country that is the Constitution. And the second one is the Holy Bible.

So, with the Constitution, sir, from my understanding when we look at it, I was sharing with my Council members, we've got about 170 plus, if I'm correct, sections. But we were trying, we were sharing, what is the reality. Because we were so, you know, like what I mentioned, we were proud because the CRC think of this association.

This is a very important association, the only national voices for nurses. And we tried to link, okay, when we are going there, what are we going to share? Whether it is the relevance of the section to nursing as a trade union, or we are going to share our story and the CRC is going to fit into the section. Because currently we've got issues from the association and the members.

Number one, we read the, we knew that there are sections that talks about the freedom. When we try to relate into Fijian Nursing as a trade union, we look at, we were reading about section 17 right up to section 20. The freedom of speech, the freedom of expression. With, we, when we tried to compare with the previous constitution, with the previous act, then we came up with industrial action. Before, it took us like, correct me, sir, it was only two, it was two weeks. We do our negotiation and bargaining when it goes down to the ERA.

But right now, it's about six months, that is some of the process that have been changed, that is reflected in the ERA 2004. So, I knew that the constitution, from the constitution, the government aligned the development of the act, the regulation and other policy. And from us, when we look at 17 to 20, it was good, the freedom is there. But then we tried to look at 20. There was some narrative, because maybe it was a constitution, it was general. When it goes down to the act, it's more explained. Then we have the regulation and the policy, it's going to be very clear. And we were coming up with, right now, the Fijian Nursing Association. We'll share the stories, like what I mentioned.

And then we'll try to share with the CRC and see where do we fit into the section that 174, from the 17 to the 20. We've been having, like, the freedom of, we talked about the housing quarters. Right now, nurses are finding difficulties, our members, to go to the islands. Before, when we posted nurses, they've got nurses home. Right now, it's more general. Not anybody can come see.

So, when they posted to Vanua Levu or even Lomaloma, right? Loma loma, the divisional medical officer approached me last three weeks, Madam, can the FNA bring it up for nurses to have allocation allowance for accommodation? Because there is no quarters for nurses in Loma loma. We want to send the nurses down, but there is no quarters. Just for an example, when we have climate change in Nadi, nurses working in

Lautoka stay right in Sabeto. And the quarters have been given to the other non-essential workers. And then when we look at the constitution, essential is mentioned in there. This is in relation to quarters.

We were asking the Minister of Health Management, and this is going to be part of our, this afternoon we are going to meet with our acting PS and the senior executive. Part of our log of claims is the right to have housing. And I knew that it's been reflected in here.

If something can be done, like what we used to do before, I knew that we've been in the government for more than three decades now, and some of you in the fourth decade. When it comes to climate change now, when we want to provide essential services, the services is not available to the community, because why? The nurses are not being accommodated. There is no quarters there.

If we have quarters, we can ablate the nurses there for emergency. And it's only the non-essential workers out there we do respect. Because what happens when the services of the community are not accessed to the service during disaster because of nurses have been staying far away. Working in a lot of the staying in Sabeto. Flooding comes, they are stuck, even in Nadi. And not only in the western side, in Lomaloma, in Bua. So, they have to be accommodated outside. They have to seek accommodation from the village. This was not like before.

So, from the association, we're negotiating to the ministry, please, can you provide quarters? Because this is going to help the ministry in regards to the services and to the government. So that is regards to... The other one is, we are facing with the challenges, is still with the section 17 from the 20. The remuneration.

I knew that right now, from the 8, there is a circular being circulated to us for all civil servants. But before that circular, that was being circulated a few days ago, the nurses working in the public health sector, they were not being remunerated with the overtime. They are breaching.

The FNA is trying their best to work together with the Ministry of Health, so that the nurses will not go out because of the issue of the lack of claims. When we read into the section 20, it talks about the negotiation and all those about trade union. And then I knew, from my understanding, I knew that Mr. Valenitabua, with your specialist in law,

that the ERA Act, we always argue that the ERA Act has been breached by the, maybe with the ministry.

We understand the Ministry of Health has got a limitation in regards to budget because it's with the Ministry of Finance. Right now, last year, without the pushing of the Fiji Nursing Association, our nurses were not paid with overtime from last financial year, July to December. Because we signed the mediation agreement in 2023 and collective agreement supposed to be in 2024.

We negotiate with the ministry. We do not want our members to go for industrial action. It's already been approved. We don't want to. The only thing is to find ways to remunerate because you are breaching. We don't want to take it to the court of law.

And these are some of the things we would like to share, that is to be part of this one. Maybe we can filter down to the ERA or whatever. So last night and this morning, even this morning before we came, we are going to tell our story.

Our story is linked with the relevant section. We've got specialists that have been chosen by the government to listen to our voices. And this is where we think that you, the specialist, we share whether this is the right forum from understanding the link of the Constitution right to the relevant Act.

And we're coming up with the ERA Act. And we've got our other Act like the mental health, like for example, the right to be protected and for St. Giles Hospital, we've got a mental health Act that has been there for 2010. Our nurses from 2011, during our AGM, they've been raising that our nurses or health care workers in St. Giles, they have been robbed.

We fear because of being the violence. Ended up, nurses being burned. Even though ACCF has been given, but the stress of PTSD has been there. But we are not remunerated. It has been acted in ours. So, we try to negotiate.

We submit. We told the minister, you know, we would like to help. We would like to work together. We don't want to be seen as enemies. If you're going to hire a lawyer, we've got a lot, but we don't want that you

are going to be taken to task because you failed to do that. And we also negotiate with them, with A/PS.

Please, can you speak to your head of executive support unit to new the implementation of the Act. That is very important in regards to the right for safety. So maybe, sir, this is some of the things that we would like to see. That maybe when we review the Constitution, all the other relevant Act that is, it needs to work well with.

The other issue that is currently we'll see that it's been in the paper. The recruitment process. We always discuss, and I'm also a member of the Fijian Nursing Council, and the permanent secretary is out here, and our chief nurse is our registrar. We've got nurses, not like before. Dr. Fatiaki will know.

When we receive our letter to be transferred, so you'll go. It's no other preferences. This is what we have noted for the past 16 years. Maybe we've aligned with the Constitution. The preferences of choosing where you need to go, and the appeal. And it's affecting the services.

Our services have not been accessed to the outer islands, in the maritime, and also with the rural. We are sending people right to Ono- i-Lau. Sometimes they refuse, because they prefer, and we put them to the other areas against which they appeal.

And that is the power within the Constitution reflected for PS in here. You know, it was, but compared for us, when you're given your letter for transfer, you go to Levuka, you go to Ono-i-Lau, Naitasiri up there, you go, you serve for three years. No more now.

When we give them, and it is very challenging for the nursing division in the ministry, but it's not finished if we can also be part of the lobby with the ministry. This is some of the issues. Maybe I need to stop if you would like to question us. My colleagues have got other sections that you would like to share too.

Mr. Rasavuka: Vinaka Sir, Taniela Rasavuka I would like to highlight more on what Madam have mentioned around section 33, 34 and 35. She was talking more about the rights to work firstly on the degree to work and adjust minimum wage. We are, from the Nursing Association, we are happy that this is highlighted and like Madam has said with the stories that we

will come up with, we have been remunerated in 2023 to the right salary that most of the nurses are supposed to be sitting on according to their years of experiences. But it is still sad even though that it is mentioned in the Constitution that all workers are supposed to have this right, we can still see that section 26, maybe I'll say it applies there, discrimination maybe of sex because we are mostly majority female and comparing it to the doctors, more are male.

We came up with a submission and they went ahead with their work and they are paid with all the allowances you can name, from environmental allowance, from risk, we are working in the same environment in the hospital. But the question is why this is stated there but maybe 26 applied onto that area that we are mentioning. And also, before like Madam has said, access to transportation I hope, we hope that this section will be more loud and more visible because of what we are going through now.

We have been receiving circulars the cost cutting in transportation but we are essential services that we need nurses to be transported in and out during their shift and this is something that the Pugin Nursing Association have fought as an association for us to be provided with transportation. In light with the crisis that we are going through from FNA we hope that this is more visible for us essential services like nurses that this is continued to be done with whatever the state or the resources that the state has for them to provide that the nurses are provided with this right for them to access transportation for them to deliver the services because of our communities and our society to receive the care that they need to receive. And like Madam has mentioned as well with the housing she has enlightened the housing in Bua.

We went around to collect information before our AGM tomorrow to gather data from our members especially in the peripheries. In Nabouwalu none of the nurses in Nabouwalu are from Bua or from Labasa or from Vanualevu. They are all from Viti Levu.

They are deprived from this right for them to provide the care that the people of Bua need just because of housing. They have to go to Nabouwalu village a nearby village they have to go and ask the Turaga ni Koro if they can rent in some of the houses there. If there is any emergency there is no nurse in the compounds to be housed in the

compound or for the vicinity of the hospital for them to provide the care that is needed.

I hope and we plead this morning this can be section 35 can be more visible in what we are saying for our members for them to be provided or accessed to this right. And also going back to the T3 with minimum wage as you know we have been having a meeting in our office in FNA and we have been getting calls from the police departments and the CID's asking us what our next plan what are we going to take. We have identified that the shortage of nurses is a crisis and it says in the section 33.1 the state must take reasonable measures within what is available.

We would like to put it on the floor what can the states do what resources do you have available with the crisis that we are having and the main reason that they are going to expel they are going to Oceania they are going to Pacific Health in Walu Bay or migrating to the nearby Pacific Islands now Cook Islands just because of these wages. So, we are leaving that on the floor for today for us coming this morning that if these three areas can be addressed as well. But we are so happy that this is reflected in the constitution but we are just requesting if it can be more visible in other policies or acts that is aligned to this constitution that it is documented there and noted and we are provided with these rights.

Mr. Valenitabua: Thank you. Thank you Mili. Thank you, Taniela. I will ask my fellow commissioners if there are any comments or any questions which they would like to ask.

Dr. Fatiaki: Through you, chair, Mili, Taniela, thank you very much for the presentation. I'd like to just allude to the aspect of the what you are referring to comes under our chapter 2 which is the Bill of Rights and obviously under that various aspects of it, I think we started off at about 17 to 20 in respect and I think particularly for your association and the nurses in general, the area of employment relations is the area that I guess has a lot of impact upon the profession and particularly in the context of the type of work that the nurses do.

So, I refer to section 20 which is the one to do with employment relations. Just glancing at it, we allocated each of the commissioners a separate area and we gave one of the lawyers the Bill of Rights to look at. But now that I have a look at it, and just historically, the initial

employment relations Bill was actually handled by a committee of which I was a member of in 2006 in Parliament.

And so, I have a particular interest in this particular area because in that committee, obviously, most of the people who came to were employers and representatives. And the employment relations Bill was specifically tabulated in Parliament to address some of these issues. I notice that now we've incorporated it into the Constitution as a right.

My concern is, immediately after saying every person has the right to fair employment practices, including humane treatment and proper working conditions, every worker has the right to form a trade union and every employer, etc. After that they make subsection 5. They put all the exceptions to your right. I point this out because obviously in this particular instance where you got notification of this at the last minute, I think it would be a good time because we will accept submissions until probably the end of June to have a written submission. And I remember when we were discussing this area in the employment relations Bill, the initial one, I know they put another one out since.

But one of the areas that I had issues with is that they had more exceptions than they had rights. So, if I look at the constitution right now, you've got one, two, three, four rights under employment relations and about seven exceptions to those rights. I see that as almost counterproductive in the sense that if you give a person a right to bargain, then you should leave it at that.

Now, if there's a dispute about the applicability of that particular right to a particular situation, that's what the courts do. That's the job of the employment relations tribunal or the courts, the higher courts. So, what I would like from the FN Fiji Nurses Association is have a look at all the exceptions that they've put there.

And maybe, I'm not going to quote you because I'm a medical professional myself, but if I were in a position where I had four rights according to me in terms of how to bargain and all that, and then I had seven exceptions to my ability to do these things, I would have an issue with that. Because the exceptions, after a while, they keep putting you into, they say, well, it doesn't apply now because we've got national security, public safety issue, public order issue, public morality issue, public health, orderly conduct of elections, all of these things makes

your right under employment relations null and void. They can make a law to exclude you from bargaining, having this right under the supreme law, which is the constitution, by virtue of these exceptions.

And we talked about this amongst the lawyers, and the question is, why don't we just give the people the right to bargain collectively and then leave it at that? I noticed that whoever wrote this constitution, wrote it, it sounds good when they say you have the right of free assembly, however, a law can be made to restrict you in these 15 situations. And I, what I'd like the Fiji Nurses Association to look at is as an association, looking after the welfare of yours. Ask yourself whether, how much of that part of the section 20 under employment relations, you might want to modify.

You might like to say, well, you should remove all of subsection 5, so there's no restrictions. And if there are disputes about the applicability of your right, then take it to court. And the courts will then decide.

The way it's written here, you might end up with no rights for employment relations. If I can fit you into one for the purposes of regulating collective bargaining processes, which means that they can tell you how to bargain. And if you don't agree to them, well, sorry, your right to bargain no longer applies.

They could regulate essential services. See, they always put medical and nursing under essential services. As soon as they put it under essential services, half, three quarters of your rights disappear, because they say it's essential.

Even if the particular instance in which they're applying this is not an emergency. You understand? I mean, there's a difference when you have an emergency and an essential service is necessary. Then, obviously, that is an appropriate one.

But if they just say essential services, they mean anything to do with nursing is considered an essential service, and if they consider a particular situation to be a national emergency, then your rights no longer apply if you're a doctor or a nurse. I'd like you to just look at those exceptions, please, and then maybe in the way of a formal submission, you might want to address those. As a medical professional, I'm looking at those.

I have serious concerns about rights that are given to people if the number of exceptions to the rights are more than the actual rights. That's one. And I guess under that, obviously, some of the issues with respect to the right to appropriate housing and that.

In a collective sense, I think we could apply it here, although I understand where you're coming from in terms of the rural postings, and I think that is more an issue that has to be addressed at the, what do you call it, at the nursing regulations and the nursing acts that the Ministry of Health will, you know, be able to address and input the necessary recommendations, but not in a, not in the context of a supreme law document that applies to all of Fiji. I think the nursing part of it in terms of housing at the rural and remote substations probably would not be appropriate to consider in the setting where we're basically asking for basic human right to a house or to a shelter. I think the supreme law, when it says it in that context, that's how it's looking at it, rather than staff housing for teachers or nurses that get posted.

So, that may not be an appropriate area for us to address it, but it can definitely be addressed under the medical regulations and the medical respective nursing acts in respect of the, and again, under your employment conditions, those things should be addressed there. Those are some initial comments I leave to my colleagues.

Mr. Beg: Thank you, Dr. John. Subject matter experts here. President and Treasurer, sorry. Thank you very much. Very enlightening presentation this morning. I have a different view. I mean, I understand I've been taking notes here.

The housing thing is a real concern, having been in this space. And I've worked on a couple of your housing projects out in the maritime areas. Yeah, I'm very speechless that it has now, where those services are not being provided, I am really a bit gob smacked and thank you for addressing that.

But I guess our job is, as what Dr. John said, is to receive comments and listen. But what's resonating really is the lack of clarity from the Constitution into the various acts that exist. So, it's sort of like we have this Constitution that's saying these are all your, what you can do and how your, you know, your basic way to operate.

But then the acts is defining a different mechanism below. And I think it's contributing the process, in my opinion, having looked at the acts very quickly on this. And, you know, the amendment to the Bill of Rights would like support for essential services, delivery in remote and maritime areas.

I'm just preempting some of the thoughts that are coming out here because these are, again, our Constitution must lay down a strong bridge to our health. And the people who work in healthcare. So, the Constitution has been all about that.

The underlying principles. So, I think we would probably like to address those issues I would have thought. I think when we go away, I've already started to draft something quite quickly because this subject has been with me for some time as well.

I've been listening to you. I understand also the point that you made about demographic location of nurses that, again, are not posted to the areas of their, can you just explain a little bit more about that? I may have lost; you're talking about nurses that are qualified but are not located to the regions that they are from. Is that what you're trying to say? So that might help alleviate some of the housing problems? Can you just sort of elaborate a little more? Thank you, sir.

Ms. Miliakere: This is in regards to the posting and transfer of our nurses, especially for the interns who just completed the internship for 18 months as registered nurses. So, when we try to post them to the new areas like before, for us, when we receive, you just receive your posting, you're going to serve in the community for three years, complete your job so that you can move to the new. Right now, no.

Before they have to be posted, they have to fill the preferences. There are three preferences. They have to choose. And majority from right now, we've got three nursing schools, and majority from Vanualevu with due respect here. And they want to go to Vanualevu. So, for us, as a nursing, we've got a national posting committee.

So, we just have to only the married one, we look into case by case, the one that they prefer. If they're married with children or if they're married with parents, but we always, with the preferences, they choose down.

So, when we did not give their preferences, they appeal that process to PS, because it's part of the Ministry of Civil Service policy.

That's where I tried to share with the location. They prefer their location. And even while we were discussing with the Honorable Minister, during that time, this is what happened.

When this new constitution came in, there is a different thing. So that's where the constitution changed the policy, recruitment guidelines and everything. And we've been challenging because when new government comes in, the constitution passed the policy because we've been in the government, I mean, I've been for 34 years.

And we've seen different government, different, the policy remains the same. So, it does not go well when we come in with the new government, come in with the changes, and this is some of the limitations. So, when we want to make them move, to go, because this is the best situation, and there is a process that allow them, this is your right, you can appeal, go up to PS, because PS is reflected in the constitution, this is, the right is there.

I mean, the authority is here.

Mr. Beg: Meanwhile, while that's going on, Madam President, the services are, either work is being delayed, and the filling out that position can linger on for a while, is that correct?

Ms. Miliakere: Yes, and the community have been deprived of the services.

Mr. Beg: So then, you know, I just looked at your stats quite quickly, in 2022 you had, what, 500 to 600 nurses leave Fiji, 2023 you had about 1,000 nurses that migrated. Wow, that's a big number. 2024, approximately 1,500 nurses, but a lot of it's in process through recruitment agencies from Australia and New Zealand. These are astonishing numbers. I'm sorry, is this, and is this because of the concerns you're raising?

Ms. Miliakere: Yes, Mr. Beg, these are the pushing factors. We're just pushing our marketing within locally. So, from 2015 to 2024, in January, it's more than 1,000. With the COVID that came up, with the triple P that came up. Even we came up with the triple P. On the other side, it was a bit disadvantaged from the Fiji Nursing Association. When the triple P came up, we were against it.

Even though it was good, there is a good and bad. But otherwise, that's where coming in. Majority of our nurses went to the Aspen.

So, when they go to the Aspen, there is another new management and there is another new recruitment strategies. They've got very good retention strategies. Like for example, when you resign, or even you went to Australia, you worked there for 20 years, you come back with a salary scale of 20 years, they're fitting in there.

When you come into the government with that experience, you start from step one again. So, when you recruit, I recruit Mr. Rasavuka to work in Aspen, I'm going to be awarded with 1,000 because I'm recruiting them. And we're going to pay 5,000, 2,500 first payment, it's called the adaptation relocation allowance.

And that is their strategies. Their retention strategies. And we always say, you know, in a joking way to the management, you are bribing. We've got the government money. So, when we have meetings, but otherwise that's the retention strategies. There is a MOU between the government, what I've been informed, 23 years we can always say, reduce their budget. But it's already been an MOU, a legal something. Those are some of the things that is pushing. Right now, it's going down, but it's still going.

Mr. Beg: So, I hear you, Madam President. So, I'm trying to, with my colleagues, I'm trying to work out, because we're addressing the Constitution, how this could better improve that. I think, I also hear there's a lot of operational matters that you raise, but because it's all somehow comes back to the acts, and, you know, for instance, the nurses are raising concern about transportation, they can say, well, as you quite rightly said, Dr. John, well, that's fine.

It's an essential service so that your waiver, your rights are gone, you have to do that. So, I understand it. I would like to hear more from the rest of the panel.

I'm not a subject matter expert here, but I work in the field of architecture, and we've worked in medical facilities. We did the Taveuni community project that was kind of successful many years ago, but I don't know what's happening now, but I hear you rather clearly that our

medical team nurses that work in the field, especially to remote areas, are concerned, but thank you very much. Sorry, I yield back to the chair.

Mr. Valenitabua: Madam President and gentlemen, the rights, you have mentioned sections 17 to 20 of the constitution, and sections 33 to 35, including section 26. Now, Dr. Fatiaki has commented on the fact that you have section 20, for example, your rights, and then limitations. The government can just enact legislation to limit whatever is there, or they may have powers already, the police powers, the military powers, and whatever powers there are.

Are you public officers? No? Are you public servants?

Ms. Miliakere: Yes.

Mr. Valenitabua: All right, the public service is there. They might have their own regulations, and so on. These are the limiting aspects.

Mr. Beg has said that we are looking at the constitution here. Is there anything you have found which might cover the nursing association in this situation where it says employment relations, section 20, you have these rights in sub sections 1, 2, 3, and 4, and you have a limitation, or you have limitations in sub section 5, A to J, or A to F. Look at F. A law may be passed for the purpose of regulating essential services and industries.

Mr. Beg: Chair, can I reference 38 to that section as well?

Mr. Valenitabua: Section 38, also section 38. This is where the limitations are. They are limiting your rights so that they can have essential services and industries done, and to continue. Do you have or have you thought of a provision or do you want a provision which would say, okay, we've got this right, you want to limit our essential services or limit our industrial action for essential services and industries? What about us? Can we have a right which also considers that our essential services are under threat? The case in Ono-I-lau, was it? The nurses were attacked.

In that situation, how are you covered? Have you thought about that? You're coming to us in relation to the constitutional provisions. The government is protecting itself. We have our rights.

We limit your rights. What about you? How are you protected by the government when you are performing essential services? Do you see the reverse of that? Has there been any discussion within your association?

Ms. Miliakere: Yes, sir. Currently, now, we have prepared a collective agreement. And this afternoon at 2.30, we're going to confirm when we're going to sign with the minister of health. And part of the collective agreement is the environmental allowance. So that it's to cover all the risk for nurses working either in maritime, in the hospital, or even in the... That is one of the strategies that we came up with.

Because it's... We are not covered with any risk. The only risk that has been enacted is the mental health risk. And it's only when you have injury, when it's been assessed with a report from... As part of the ACCF, that's where you can... Otherwise, what is happening like what you have mentioned, even in coral, it's happening every year.

Even right now in Koro, one in maybe QVS, they've been threatened to the nurses. They're not... So, it's part of our strategic priorities is to look at that they need to be covered with the risk. And that's where the environmental allowance has to come in.

Maybe, sir, that's where we are coming in right now. I agree with you, sir, that's where I mentioned in the previous constitution, in our previous ERA, I mean, in the Act, when we... There was changes like what I mentioned. It's two weeks.

There was more with the limitation. It was less for our trade union. So, when we look at the from A to F subsection 5, they provided this one, they give you the freedom, and they limit you again.

So, we are being threatened. And that's where you'll see that members are saying, never mind about the limitation. We are exposing our threat because it's not been happening government, that's what I for how many weeks.

And even right now, the nurses, I said, we don't care whether we go to prison or whether we go to be locked up somewhere because we are threatened. And that's where we'll see because it's been happening during that time. And now we're coming up with the changes.

Different government, that's what I mean, because we've been in the, I mean, 34 years, we knew what is happening, and this is happening. So our members right now, tomorrow is our AGM. And it's from 2023. So, for me, because I try my best to see, okay, we look at it in the big picture, we continue to negotiate. There is a limitation there. We have to follow the law.

So, when members are saying tomorrow, we had enough is enough, we go out, we will be taken myself, this one, the council, we will be locked, we are willing. Whether we go to prison, we go there. So, we are prepared.

We told our family, you prepare. If you want to walk out, if our members, 1,600 or 2,000, say we want to go out, because the restriction is here, we'll go out. So, we told our family members, prepare yourself, we are going to be locked. That's our because of the limitation. We are willing because we've been suffering, sir. Please.

Mr. Rasavuka: May I speak on section 38, sir? On section 38, right throughout and then in subsection, number two, it says a person must not deny the emergency medical treatment. In this section, we sometimes input nurses at the crossroad where religion come in. It says here that, you we need to deliver the service and it does not say somewhere here where do we stand when religion come in when we are limited with our care but we have our oath we have to provide the care and so a question where in here where it can highlight that area that I'm mentioning that at times we can be we can face disciplinary and we can go to court of law and we are breaching our code of conduct which nursing council can take out or deregister on us for not providing the care because religion come in and we don't achieve number two in and we are limited limitation for providing back here in that area.

Dr. Fatiaki: Thank you Taniela again I reiterate what I've just said because now that I've had the chance to keep looking at a few more provisions of the rights. Your ability is to make a submission to tell us for instance that all the exceptions to your rights can be removed you should you know what I'm saying you see. I'll give an example and a lot of this boils down to good faith unfortunately if there's not good faith in the person who's drafting this Constitution, he will say you have the right to like collective bargaining or reasonable accommodation and then he says however, law can be made enacted to restrict your right in the interest of and then

he goes national security, public safety, public order, public morality, public health.

Once he says public health what he's saying is he doesn't need to observe the right for instance of giving you choices. He doesn't need to do that anymore you know like collective bargaining he can just say this is it three years go to Ono I Lau and he doesn't need to because he's made he said this is for public health.

The point I'm making is what you need to do in a bit more detail is to go through these rights ask yourself how does this apply particularly in respect of employment relation freedom for sanitation and the Bill of Rights to Health and ask yourself that look at that aspect about denied emergency medical treatment .There's another one to right to your choice of religion and ask yourself how in a nursing context that a nurse's right to her religious beliefs may impact upon her ability to do this and if that is not a good idea then you will ask us to remove that to delete that as an example. Remove a person must not be denied emergency medical treatment take it out so that you're not put into a position where that is used against you even though your religious belief may conflict with it. You understand.

So, I the thing that worries me in reading this as a doctor for instance who worked in the hospital is if I give you the right to collective bargaining you know and collective bargains the kind of thing you say well look when you post us we want give us three options that's your bargaining and that should be observed as a right but, as soon as you have the exceptions then then then you're right under the Constitution gets taken away.

My concern is I mean obviously there are some instances of exceptions every time I've looked over here freedom of association every person has the right to freedom of association that's it that's the right. We should say nothing else go to the next right no after that this is not good faith after that I've got number one two three four five six seven cases where now after I said to you have the right to freedom of association except in these instances. Once I take the first one in the interest of national security public safety public order public morality public health that's everything in the in Fiji can take away your freedom of association under this section.

So, if I were helping as a lawyer giving you advice, I would say oh can you remove this entire part here so every person has the right to freedom of association that's it go to the next one every person has the right to fair employment practices including humane treatment and proper working conditions. This is like you know housing and things like that every worker has the right to form or join the trade union okay that's fine every employer has the right to form an employer's association and to participate in that's fine trade unions and employers have the right to bargain collectively where you're bargaining on their behalf that's your right.

Those are the rights that should be there under employment relations you have four after that then they make this exception now a law may limit or authorize the limitation of all those rights just mentioned which are the things that allow you to bargain and then they less these seven things. If your recommendation was to us to remove section part five subsection five so there is not a restriction then they will have to then keep working by the law meaning the Constitution.

If they decided to do something that was outside that if they were to just give you a letter that says you and you say well you're not observing our collective bargaining you're not observing our right under this section if you dispute it go to court and most likely the court will find in your favor.

It's this to me this is bad faith you know by putting all these restrictions so I ask you to look at the relevant chapters yeah Taniela brought up an interesting issue with real sorry it's Taniela yeah brought up an interesting issue about okay we like the idea that everybody has the right to emergency care but if emergency care conflicts with your right to your religion or your you know your belief then, then then maybe we should remove that right away and that may be something that your membership you know talk about and look at the areas in respect .

I mean I know that they're going to be right for instance the freedom of religion they've had arguments you know Jehovah's Witness don't allow someone to get transfusion. The danger with these rights is they can remove your ability to decide whether your child gets a transfusion under the rights of the child or the rights to access of medical treatment. Then the doctors the boss not the person and if the person has a religious belief that they do not want to get a transfusion, then then you know this is the kind of situation that may arise when you brought up.

Taniela the issue of having to provide emergency treatment but that may conflict with a person's religious beliefs. I would like you like I said go there my words of guidance would be along the lines of when someone gives you a right and then they say but you say everything after but can you erase just give me the right, and then I'll take that and I will use it responsibly. If I don't use it responsibly then the employer can take us to court and the court will arbitrate but if they write it in here every time you try and do the same they say the Constitution says we can do this the Constitution says we can do that we can tell you go there because it's in public health and that's it.

Therefore, they've taken away your right under employment relations employment relations should be a two-way thing the figures that my colleague Conway has pointed out any person in their right mind I'm not going to talk about the Minister of the Ministry should be banging their head against the concrete because, if you can't understand why people are leaving in those kind of numbers then you have no appreciation for what these people are doing. I can tell you the same poor factors are there from 20, 30, 40 years ago the same poor factors New Zealand pays better Australia pays better but, we never lost that amount it's now looks like the push factors are the major reason that when nurses are not valued.

They don't feel that people appreciate the work that they do then it's the push away that should concern me and those figures are very concerning. I mean that to me that's a national emergency and that's a national crisis but they will have another workshop to discuss it and another parliamentary committee to look at it and unfortunately, they end up not addressing the fundamental issues but thank you very much. It's heartening to see you guys here and representing the nurses and I really appreciate it.

Mr. Valenitabua: Madam President, and the gentleman treasurer my question to you was you've got these essential services which can limit your right and that is in protection of the government and its people it does not consider you as nurses now if do you have copies of the Constitution all right just have a look at it have a look at section 38. Have a look at section 38, when I asked that question, I was putting it to you to go and think about it now little did I know that Mr. Beg had done something which I will I will show you now.

Section 38 deals with the right to health so the state must take reasonable measures within its resources to achieve progressive realization of every person's right to health. And then subsection 2 a person must not be denied emergency medical that is understood in applying in section 3 any right in applying any right under this section if the state claims that it does not have the resources to implement it is the responsibility of the state. To show that the resources are not available giving excuses excuses; excuses. We can't have ex-ray in ono-i- Lau because there's no x-ray machine there there's a breakdown in the extreme machine in Lakeba there's we can't deal with it now.

In relation to you in addition to section 38 there's a suggestion here you have your meeting tomorrow you have your meeting tomorrow we're going to give you a copy of these so that you can discuss section 38.

Include a section 38 [a] it's not there it's here in my screen. I'm just going to read out and we'll give you a copy section 38 support for essential service delivery in remote and maritime areas this is to be a new section. right, this is a suggestion under section 38 and 1 section 38 a is done in various constitutions. This can be done in the year to support for essential service delivery in remote and maritime areas subsection 1 would say the state shall take reasonable legislative and administrative measures to ensure that public officers which includes nurses providing essential services in remote rural and maritime areas are supported by adequate housing sanitation and living conditions necessary for the effective delivery of those services. So, it's precise to the essential services they give you the right they limit it and we add this and maybe do away with the limitation.

I'm not saying that we were not that we are going to do it but we'll discuss it so, we add that one. And then subsection 2 says in fulfilling this obligation the state shall have regard to geographical isolation and logistical constraints continuity and quality of essential services and equitable access of all communities and maybe security of this we can add that. If you want that included in the Constitution so like Dr. Fatiaki just said you can go back have a written submission include this. Mr. Beg is going to give you a copy so that you can discuss with your members tomorrow.

I can assure you that most of the panelists will look very favorably on any requests that come from the medical profession. The nursing profession thank you.

Ms. Miliakere: Sir, because what happened when we look at the other healthcare workers the allied and this seems to be relying on us to be there even the last three weeks even, we've got managers they're just asking me what is happening with our overtime I said to you.

Do I look like a money lady or the finance people because they see that we seem to be very vocal in regards to the right so like what is in the Constitution what is in the ERA so, with our presentation today we sharing and from the response we were very happy. Thank you Dr. Fatiaki ,you know we were proud because there is a medical person that is here even myself when I look into the committee the first time with the because, I always the Constitution and the act so when we work in our mental health we always this is a always share with them this is the Bible but what happened compared with the previous one this is some limitation a lot of it's even with association because, when I start from stillness as I was the strong member of the FNA so I'm 37 years with the FNA.

So, when we try to look into this one and I said it's for me as a public it's a direct of nursing also at the same time with with I try to you know have that complimenting each other looking at because of the limitation in here. And what happened like what you mentioned because it's been given taken away again that's were coming up we said it's okay the limitation is there it's against the national security we are willing to go because who's going to be suffer it's the the nurses plus the public is going to suffer because of this limitation.

That is so thank you so for maybe it's a it's God time we always you know we believe in God's time we said we shared with him the eve of the the eve of the AGM surprise will be coming I was the last two days when the office secretary sent me the invitation I said, we don't have to miss this one and today what so what it's supposed to I said it's 12, they said no 10 we supposed to have another one but he was not coming because the 12 o'clock so, he was there I said we were sharing we went to run about after 1 no 4 o'clock 4 o'clock this morning.

We were discussing the Constitution from 1 o'clock until 4 and then we were arguing with this one so thank you we are going to go back we're going to sit, and even this afternoon, for the submission on the relevant section. We're requesting sir for that what additional in 38 a maybe from Mr. Beg to give us a limitation. So, we're going to be part of our other matters in our agenda in our AGM.

Dr. Fatiaki: Just a final comment and this really doesn't really specifically to your submission but I heard you mention that amongst the nursing association you had a very much a sense of God time and God let me assure you as the person who reviewed the first three chapters of this Constitution this new Constitution has no comment about God in the preamble in everything compared to the other three constitutions every other Constitution acknowledged God in it except for this one.

It's removed God completely from it supposedly in the interests of the so-called secular state I mentioned this only because other submittees as recent as yesterday have brought this to our attention. Now I know you didn't bring that as a amendment to the Constitution but I noticed that you started your conversation by alluding to a God moment and, I appreciate that very much because the nature of our profession is if you're not walking with the guidance of God then you aren't practicing the profession properly.

I thank you for that I want to assure you that other people have brought up to us the fact that this Constitution need to be couched or to be directed or to be guided by a God or a belief in God and I think, you alluded that to that you talked about a God moment and I think I can assure you that other people have brought it and it will be under consideration in our review. Thank you.

Ms. Miliakere: Just so can I respond to that one, it's been coming but the secular state I want to share with the secular state I'm not a very religious person but they all my nurses' members majority they knew I don't go to church but I will be a virtual from centenary my husband is a strong church somewhere like a pastor but I always believe that there is a living God.

What is so one of the things that it's really because of we are diverse circular state is one of the thing that I did not want to bring it up in the association so that because of maybe I say that I'm more racist or more Christian, but I'm not a church goer but I believe. The secular state, I'm

always coming up if we cannot really look at the secular state this is my individual ascent but I don't want to push if we can something be reflected in there something in the Constitution at least one day maybe what you call is Easter. We can recognize as business to be stopped so that we acknowledge it this is a Fiji and it's been see that we believe in in God in here. We respect diversity but we need to show out that we were a lot of social issues we both from the mental health.

The national crisis right now is mental health and runs with HIV and it has to come back into the community come back to the family to the individual when you have one God, you believe you don't go to church every day or every Sunday but you believe, and then you share that this is the living this is going to work together with a medication with whatever changes that comes in but it has something has to be changed in the secular state. If so that to show the solution for the social determinants of health right now is a national crisis it has to come back with where God.

This is this is a not to say that the Christian countries but at least respects on Easter, just for one day not to say that all business to stop on Sunday but at least respect one Easter. When you look at I always in Easter at the Rup's I don't know whether Rup's are Christian or what this is one of the things that I've noted that every holiday Rup's will close during Easter. That's in Nakasi and I said that they are Christian or what is who's the owner of this company.

I went to Tonga last year in Tonga that's why I always said my Tonga the royal here they are here my distress when I when I'm stressed out I go to the royal family see the way that they dress you look at the thing and the way. In Tonga on Sunday there is no business everything closed it's only going to church and the taxi if you want to run on Sunday you have to remove the taxi sign, and Sunday is a day for church. That's all that's where coming that's from me.

I know, I always share with them they knew that I'm not a 'Tabutabulotu' and anything. Sir, just for information we invited, every AGM we've got a 'talatala ' to come and do the blessing so, tomorrow it's going to be the Qaselevu ni Lotu Wesele' start with the blessing and our Honorable Assistant Minister is going to be our chief guest. And he's not aware that we are going to do the Fijian protocol the; Matanigasau'. Matanigasau because coming back the respect.

You as an iTaukei leading an association is a iTaukei led by a iTaukei and majority a iTaukei and we are Christian. I said our theme is our nurses our futures empower nurses save lives; how can we save lives of other people when we are not having a forgive ourself because we've been hurting our Assistant Honorable Minister with words. That's we're coming back and I try to relate where God comes in is very important with the social issues that is coming up now majority, we iTaukei. We always have that sympathy in St. Giles we iTaukei where can we fit in God where maybe in the circular state at least respect one day in a year maybe for Easter all shops business to be close and to indicate. Yes, we believe in one God, that is me thank you Dr. Fatiaki again I think you sir.

Mr. Valenitabua: Thank you. The suggestion from us through Mr. Beg has been sent to Mr. Fatiaki to print out. We'll release it to you it's a way of resolving the issue which I raised and for essential services nurses in particular there are too many attacks on nurses, how will you be covered so this is one area which you can talk about. Do you have a lawyer?

Ms. Miliakere: Yes, sir we don't have any MOU but we seem to be like it's just a situational it's a lawyer a lawyer on the SPA the special sales purchase agreement but we're trying to assess yeah that is our legal.

Mr. Valenitabua: That's fine. Take this discuss it with the between your executives and maybe you can add it into the submission that you will send us later. Thank you very much. Do we have something else?

Ms. Miliakere. No. Thank you. Can we get a copy of the submission from Mr. Beg.

Mr. Valenitabua: Yes, after this we can wait for Mr. Fatiaki to give you a copy there are two sections section 38 at the section 38A and 131 section 131A for public service. It's not going to be good for you for all essential service so the nurses are going to be the nurses are going to be taking the lead. We will discuss it later it might come up in the Constitution someone might have a different idea but at least you bring it up in your submission. Go and read what's been said to you okay. Thank you.

----------End of Session [17-04-2026] ----------

FIJI NURSING ASSOCIATION

"Caring is our Concern"

PRESIDENT: Miliakere Nasorovakawalu (Mrs)
GENERAL SECRETARY: Filomena Talawadua (Mrs)
REF: GN100

FROM : **FIJI NURSING ASSOCIATION**

TO : **CONSTITUTIONAL REVIEW COMMISSION**

DATE : **28.04.2026**

SUBJECT : **SUBMISSONS ON PROPOSED AMENDMENTS TO THE CONSTITUTION OF FIJI**

The Fiji Nursing Association ("Association") has identified some clauses from the 2013 Fiji Constitution, which we believe as an Association needs to be reviewed and appropriately addressed through this esteemed Commission. The following are the collective submissions of the Association.

A. EMPLOYMENT RELATIONS

1. Firstly, in terms of employment relations, we believe that the current wordings of Section 20 have gaps that leave employees (especially Essential Service providers) vulnerable to having their rights being stifled or even unnecessarily limited. Section 20 subsection (5) enables the limitation of employment relation rights, which we believe has been used to stifle past attempts of our Association in negotiations for our members.

2. We recommend that Section 20 (5) of the Constitution be reviewed and amended to either remove the limitations enabling words/provisions or include a provision that limits the limitations that may be prescribed under Section 20. Our specific focus for the amendments is on paragraphs (a), (c) and (e) to enable individuals such as an essential worker or a public officer to freely be part of a Trade Union and participate in bargaining processes. The amendment should also enable bargaining and negotiation processes to follow an expedited or reasonable timeline.

B. BILL OF RIGHTS (RIGHT TO HEALTH) AMENDMENTS (REVISED)

2. Secondly, we also note that Section 38 of the Constitution is not equally applied to Essential Service providers especially members of our Association or persons working in our profession. We have experienced so many hurdles with trying to get support and protection for members of our Association that are providing essential services in rural, remote and maritime areas.

3. We recommend that Section 38 (the provision for right to health) be reviewed and amended to provide much needed support and protection for Essential Service providers in Remote and Maritime Areas. We request the Commission to consider our recommendations, and we put forward a few suggestions for its consideration:

(a). That amendments to Section 38 include a provision that ensures the State/Government shall provide reasonable legislative and administrative measures to ensure that public officers providing essential services in remote, rural and maritime areas are supported with adequate safe, and secure housing, sanitation, and living conditions, necessary for the effective delivery of those services.

(b). That the amendments incorporate provisions that the measures referred to in (a) above shall ensure that such officers are not placed at a systemic disadvantage by reason of their deployment, and are afforded conditions that uphold their dignity, safety, and personal security.

(c) . That the amendments provide provisions which ensures that the State In fulfills its obligation, and shall have regard to -:

a). geographical isolation and logistical constraints;

b). risks to personal safety and wellbeing associated with postings to rural, remote and maritime areas;

c). the need to ensure service continuity and quality of essential services; and

d). equitable access to services for all communities.

C. CHAPTER 6 – STATE SERVICES (REVISED)

4. The Association believes that it would be proper to also include an additional provision in Chapter 6 of the Constitution which provides specific requirements for the Conditions, Safety and Security of Public Officers in Rural, Remote and Maritime Deployment. This provision would be in addition to the Rights prescribed in Section 38.

5. This additional provision will provide that the State shall ensure that members of the Public service and essential service providers deployed to remote, rural, and maritime areas are provided with adequate, safe, and secure housing, infrastructure, and living conditions, necessary for the proper performance of their functions.

7. The conditions referred to in paragraph 6 above shall-:

a). meet minimum standards to be prescribed by written law;

b). reflect the operational demands and environmental conditions of such postings;

c). address risks to personal safety, security, and well-being, and

d). not be reduced below a level that would materially impair service delivery or place officers at undue hardship or disadvantage.

8. We recommend that a provision be included that ensures Parliament shall provide for a budget that caters for such deployed public officers and provide for the following:

a). Minimum accommodation and facility standards

b). hardship, isolation, and security–related allowance;

c). systems for maintenance, safety compliance, and rapid response to risk;

d). transparent and equitable allocation of housing and support services.

9. We also recommend that the amendment provisions include that the State shall take reasonable steps to ensure that no public officer deployed under this section is exposed unsafe or insecure living conditions arising from neglect, under–resourcing, or administrative failure.

10. We further recommend that compliance with this section shall be subject to independent oversight as prescribed by law.

11. We request these esteemed Commission to hear our plea for improved support for essential service providers such as nurses and pray that our recommendations are also given due consideration.



Miliakere Nasaorovakawalu (Mrs.)
President
Fiji Nursing Association

Jon Apted

Mr. Jon Apted

Date: 29-6-2026

Leighton: Thank you, Commission. It is my great pleasure to welcome you this afternoon. Thank you very much for accepting the invitation of the Commission to make submissions. Just before we start, I just have a few housekeeping matters. With regards to the mic in front of you, just on the right panel, if you press it, it will come on, and then you can speak, and then press the same panel to turn it off. I will briefly introduce the members of the Commission, before handing over to the Chair to speak to the work that the Commission will be undertaking.

To the far right, we have Mr. Conway Beg, a well-known architect, and also a rugby player and administrator with FRU. Seated next to him is Ms. Merewalesi Nailatikau, a development and communication specialist, as well as a former Miss Hibiscus and Miss South Pacific. Seated next to her is Dr. John Charles Fatiaki, a former Senator, current Special Administrator in Suva, and has his own medical practice. Seated next to him is the Chair of the Commission, Mr. Sevuloni Valenitabua. He is a prominent defense lawyer, as well as a future Human Rights Commission member previously, and is well known in Fiji and throughout the region. I think Mr. Kohli will be joining us momentarily. He is also part of the Commission. I know you will be familiar with Mr. Kohli from Labasa Kohli N. Singh. Seated to the far end is Dr. Neelesh Gounder, a well-known economist in Fiji and a University Lecturer with the University of the South Pacific. With that, I will now hand over to the Chair.

Mr. Valenitabua: Mr Apted Good afternoon, and welcome to the Constitution Review Commission. We thank you very much for accepting the invitation to come before us this afternoon. We were blessed today. In the morning, we had Mr. Wiley Clark from the Fiji Law Society. Then after that we had Mr. Graham Leung. And then this afternoon we have you. And we have such an honors task. And to be getting submissions from you and the two other lawyers which we had listened to this morning is really appreciated, particularly when you use your time, which you could have been using in your office doing other matters, to appear before us. The Constitution is as you see it now, except for Mr. Kohli. There were six of us initially, seven of us initially. One later resigned due to work commitments with FNU, so the six of us were left.

The six had been around Fiji. Lau Group, Lomaiviti Group, Yasawa, Kadavu, Beqa, you name it, even in Vanualevu and around Viti levu. And what we had been doing was that we were gathering submissions from the people of our country on what their views are, what their recommendations are, on matters or laws, matters which could be included as laws in the amended Constitution for Fiji.

Our task is to review the 2013 Constitution. The review means that we can amend it. So, we had been given this task to remove laws if they need removing, add additional laws if they need additions to be added, and also amend the provisions inside the Constitution itself to just change the meaning.

Those are the tasks that we have been given by His Excellency. So as a follow-on from our trips around Viti Levu, we have now started here today at Level 9 Suvavou House to receive submissions from associations, ministries, and individuals like yourself in relation to what your thoughts are in your submissions in relation to the 2013 Constitution amendment. We have been asked to throw the Constitution away completely. However, that is not our purpose. We do not have the authority or the power to do that. We only review and amend.

So with you present this afternoon, we are looking forward to submissions from you which will assist us in our deliberations when we come to deliberate on the suggestions that we have received regarding the 2013 Constitution. With those few words, I again welcome you and now open the floor and give us your submissions this afternoon.

Jon Apted: Thank you, Mr. Chair for that welcome. First, if I could just say that I've been brought here under false pretenses. I was accosted in the supermarket by Leighton in April, and I was asked if I was intending to give a submission. I sort of indicated I wasn't, and he told me that the Commission was interested in talking to me. So, I've come here to talk. I have not come here to make a submission proper. And as I explained to you before the session began, I had asked a team member in my office to cancel my appointment today and defer it to another time this week, and it wasn't until this morning when I checked on the alternative time that I was told that they had overlooked to seek an alternative time.

So, I come to you, as I do normally, with absolutely nothing prepared. So I will speak from the heart, and I'm quite happy to answer any questions that you have or to have a conversation. And what I am offering today is, and this is part of the reason that I ask for no press, it's because I'm not prepared and because I want to come to you from a personal space.

I think that I'm different from many other people who have appeared before you because of my experience in the area in which you are working. I'm not sure whether you are all aware of how much background I have in this area, but I was a legal officer in the AG's chambers in 1987 when Sitiveni Rabuka took over. I was the one from the AG's office who was sent to do that kind of work with the Falvey Commission, Falvey Report, and I traveled with them.

I was also, because at the time of the coup, all drafting work was done by expatriates under British supplementation and Australian supplementation, and they were pulled after the coup, so I had to, as a junior officer who was the only one in the office who left, who was not a court lawyer and whose first language was English, to do drafting. So, I drafted alone for two years. As a result of that, I also did the work with Cabinet on Constitutional Review and that kind of thing, so I was with the Falvey Commission, I was with Saturn Cabinet when they did the draft 1990, I was initially with the Manueli Commission before I went to the US and then Pate took over and finished the Constitution, and then I came back and was supervisor of elections, so I was directly involved in the implementation of the 1990, and I have experience in electoral administration.

I did the two elections, 1992 and 1994, and then I went back, and then I was called back to be Constitutional Review with Sir Paul Reeves and Company. So, I've been involved in these exercises three times. So, the point of that all is that I always think of myself as still a teenager, but obviously I'm not, and I have a personal experience and perspective on what has happened from 1986 until today, because I worked in the AG's office under the 70 Constitution, I was there for the 87 events, I was there for 1990, on and on and on.

So that's what I want to draw on as I talk to you today. The first thing that I would share is that, and this comes from both my experience with review bodies and my personal experience in last year with the Supreme Court reference that led to your appointment. I caution you about how

you understand and deal with submissions from the public. There is a tendency, not just in the constitutional area, but in any law reform area, for people to come to the review body with their idea of change. They very rarely articulate the problem that they perceive. And with all due respect to them, often their solution is not the solution to the problem.

Because they know from their experience what feels bad. But they don't know necessarily how the system works and how the rules interact and what else is at stake. So, they will come to you with the demanding solutions, but the difficult job that you have to do is to work out what they're really complaining about and what really makes them unhappy and whether their proposal actually will achieve that outcome or won't.

And oftentimes if you stand back and look at it that way, what they suggest won't work. Because they don't actually understand what the problem is. And it's just like how people in Fiji deal with medical problems. They have a symptom, there's a knee-jerk reaction to it, like have a massage or whatever, but they don't know what the underlying cause of their problem is. And sometimes their solutions tend to be fatal. And I'll give you an example from last year.

In the Supreme Court reference, a number of indigenous-based political parties were advocating for the return and the restoration of the 1997 Constitution. And I do not doubt that they genuinely believe that. But none of the people, and I put it to them in the court, I put it to their counsel in the court, none of the people who were representing them in court actually had thought about what was in the 1997 Constitution.

Or even knew about what the experience of the country was under the 1997 Constitution. I could be completely wrong, but my perspective was that this golden view of 1997 was driven by anger and hurt at the way it was taken away. And then how the 16 years after that, you know, they'd been marginalized.

And a lot of the anger, which was, you know, only became articulated in the last couple of years, was centered around Boselevu Vakaturaga. So, there was this anger that the Great Council of Chiefs had been removed. So therefore, the old one that recognized it was all good.

When I pointed out to counsel for the other indigenous Fijian parties, not on the record, but in conversation in court, I said, do you know what the

2000 coup was about? Do you know why George Speight took over? Do you know why all of those people congregated in Parliament for three months or whatever they were doing and were so crazy? Do you understand why there was so much looting and burning and stealing? It was because of the 1997 Constitution. The indigenous people didn't like the result that the 1997 Constitution had resulted in, the political outcome because of the numbers. That was the reason the AG's office itself took action to try after the coup to, you know, when the question was about whether the Constitution had been abrogated or whatever, the position taken by AG's office was it had to go because the indigenous people didn't like it.

So be very careful about what you hear now, because a lot of the people who are advocating for its restoration have no sense of history and no experience. They're young. They have no experience of what went on. And I was, how do I put it? I was very, very close to the recommendations that led to that voting system. Right. We went around the world. We spoke to experts. The commissioners were convinced that it was going to work. I was not. But that's fine. I'm not the commissioner. But their belief and their experiment didn't pan out.

Okay, and it didn't do what the players and that's the other lesson when you're idealistic about how a system is going to work. You can't rely on the players. The political parties, the politicians to behave as you expect them to be, because life is unpredictable. What I also pointed out to counsel privately at court was that I asked them if they realized that the underlying. I asked them if they knew what the seat makeup was under the 1997 constitution. None of them knew it, but they were advocating for its return.

I asked them if they knew what the allocation was based on and how true or how current those assumptions were today, because the seat allocation between the ethnic communities in the 1997 constitution was based on the population in 1995 or 1996. And the expectations and the assumptions about population have not been realized. They've been contradicted because our population now is completely the proportions are different to what the allocation was then.

And the assumptions that underlay that, which also have not continued to be true, is the assumptions was also that Indo-Fijians or Indians, whatever you want to call the group, would be the only ones to be

immigrating. And Indigenous Fijians would eventually become the majority through the external immigration of non-Indigenous. But if you actually look at the numbers since COVID, this seems to be as many Indigenous Fijians immigrating as non-Indigenous.

So, the point I'm trying to make there is be very careful about the assumptions that you make about not just what the people's submissions mean, but also about the underlying assumptions as to the state of affairs, because life is really unpredictable. In 1994-95, nobody would have dreamed that Indigenous Fijians would be fleeing to Australia and New Zealand in great numbers. Everybody assumed that they would be the ones here and all the rest of us would be going. But that's not true. I mean, the rest of us are going, but so are Indigenous Fijians. The other thing is to look at the assumptions about the aging of the population.

We don't know, with the external migration and with HIV, what the shape of the population will be in five years, in terms of the age breakdown, the ethnic breakdown and all of that. So, one needs to be very, very careful about that. What else can I say? You also mean, I don't know whether this is a practical point, but if you have your, there's two sides to it.

There is what you in your hearts, having heard the people and bringing your own life experience, think the ideal is going to be. But there is also the practical question of, given the majorities that are needed to bring about change, what can you recommend that is likely to get the two-thirds majority in the House and the 50% at a referendum? Because otherwise, your work is not going to go anywhere. As a practical matter.

I don't know what the mechanism is going to be for the referendum, and I'm not an expert at referendums, but I would expect that it's far easier to get a yes vote in a referendum on an issue than it is on a package. So, if you are confronted in a referendum of yes or no to X, you can easily say yes or no. But if you are confronted with a package of 20, 30, 40 proposals to which you must give one yes or no, it's always easier to say no.

Because uncertainty will cause you to be conservative. And if, of the bundle of 20, 30, or 40, you don't like one, you're more likely to say no because of that one, even if you are okay with the other 19. I mean, that's my perspective, which I just suggest to you, just for your consideration.

So that's some general issues. If I can go to the Constitution itself, just very quickly, and I will do what I said you shouldn't listen to. I think it's important that the preamble and the opening, the fluffy stuff, focus on nation building.

As it does now, but some fine-tuning of the words because there's all of that, and it should recognize the special place of the indigenous people, and those kinds of things. Citizenship, the Constitution, at the moment, historically, the 1970 Constitution and the 1990 Constitution, I can't remember about the 1997, was a bit more prescriptive about citizenship. It said who was entitled to citizenship in the Constitution itself.

The 2013 Constitution doesn't. It leaves it to law. It gives you the three categories, but how people qualify for those categories, whether it's registration, birth, naturalization, is left entirely to legislation.

So, at the moment, there are no guarantees in the Constitution about who has a right to be part of this state. So that's one thing I recommend you look at, whether you need to have some assurance of some category of people. The Constitution in terms of citizenship now, and related to this is the question of the rights of former Fijians to resume citizenship, whether that should be a constitutional issue or a statutory issue.

There is a very vexed question of whether iTaukei people, indigenous people, have a special right to citizenship, even if they've adopted foreign citizenship, and if you're going to embrace that idea. There's all the difficult questions about equality and all of that. The next question is, how many generations should this right exist? Because there's this idea that if you're in the volanikawabula, you should automatically have a right to be a citizen of the nation state of Fiji.

It doesn't quite equate, because we've got second generation now, third generation. Soon we'll have fourth generation indigenous people living in Australia or Canada or the UK, who are maybe even pure indigenous or half indigenous or quarter indigenous. Should they have a constitutional right to citizenship? These are questions that have been raised.

I'm not raising them myself. I'm aware that these are difficult national questions, so there's that. The other thing I'll go to is... Sorry, how much

time have I got, by the way? Until what time? So I'll have to cut my coat according to my... Oh, I've got only half an hour left. Let me just go through very quickly. Secular state, that's a very, very strong provision of the 2013 constitution and very controversial. I personally am in favor of a constitutional guarantee of a secular state.

I am a Christian myself, but I'm aware from history that the most bitter wars in European history, even in Rotuman history, have been fought over which is the correct Christian religion. And I'm old enough to remember how Methodism took over the state in 1987, and we had the Sunday observance decree as a result, and how oppressive that was for other communities, including Catholics like myself, because in our denomination, you're free to do anything on a Sunday. You just go to church, and then you're free to do whatever, and then suddenly we were all required to live like Methodists, and it was not very nice.

But anyway, that's my experience. I think that secularism is important because life changes, and there's more than one truth even within the Christian faith. I don't have a problem with the preamble or earlier declaratory provisions of the constitution recognizing the special role of Christianity in bringing order to the country.

I won't say civilization, that's kind of patronizing, but that kind of idea. The constitution, another provision that is about which language it should be in, at the moment English is predominant. I think it has to stay that way, because we can't have competing texts, and when you deal with language, when things are translated, the translations are never the same.

Currently the interpretation provision provides that interpretation and application of the Human Rights Commission. The court can take into account international law on the right. I think that's important that that stays, because we need to be consistent with other countries in terms of international law, especially in new areas.

A particularly good example is how one deals with COVID, how one dealt with COVID, because we had no precedence for that kind of situation, and that was a situation in which everywhere in the world was confronted by the same thing. The human rights provisions, I think that they are important and need to remain, but there are big flaws within the current one. If I can be frank, because the traditional civil and political

rights, which are the things like freedom of speech, assembly, voting and all of that, were being restricted, the architects of the 2013 constitution, in order to do the sell about what a great human rights constitution it was, bumped up the economic and social rights.

So, we have all of these almost meaningless economic and social rights in the constitution, which are not really enforceable, they're just sort of declaratory. So, a lot of it is fluff. You go back to the important civil and political rights, the limitation provision is defective.

There are two models of how constitutions provide for human rights. Our 1966 constitution, our 1970 constitution, 1990 constitution and 1997 constitution followed the British post-independence model, where there was a statement of the right, limitations were permitted for specific purposes, with an overriding rider that the limitation had to be reasonable and justifiable in a democratic society. So, for example, any particular right, you could only limit it by a law, if it was, depending on what it was, for public health, for public order, for the rights and freedoms of others.

And this list differed depending on the rights. So, there was always this question of whether you could pass a law infringing that right, which also infringed that right, when this one has public health and that one doesn't have public health. That was a little bit difficult from a drafting point of view to do something, because laws impact more than one right.

So, I know that in the Ghai report, he recommended doing away with the list and to just have a general formula about limitations, and that's fine. But you've got to get the formula correct. What is deficient in the current constitution is that it authorizes limitations broadly. You can limit the rights so long as there's a law, or even if there's not a law, it's necessary. This is like having an illusory right. The Supreme Court has placed a gloss on it.

They've read into the constitution a right that the limitation has got to be proportionate, and it's got to be rational, it's got to be for a necessary purpose, and it's got to be no more than is necessary in the circumstances. So, the limitation provision needs to be tightened, and I recommend that you use whatever is the current trend internationally in constitutions so that limitations are not completely open-ended. I also

invite you to look at the list and decide whether they all need to stay, especially the ones towards the end.

There's the question related to this and to citizenship, of whether the right to stand as a candidate, which is both in the human rights provisions and elsewhere, should be limited to single citizens, people who are exclusively Fiji citizens, because presently those with dual cannot stand or contest. A big problem, a big practical problem for many of our colleagues who went overseas for greener pastures, is the two-year residency rule. And that is really important that you look at whether that is necessary, because at the moment you can vote if you live overseas, but you can't stand as a candidate unless you normally reside in Fiji, and there's a constitutional test, which is not very well written, that you have to have been here for two years before nomination.

And a lot of people who are living overseas and who intended to contest have come back only to find that they miss out. And you've got to ask yourself, is that necessary or is it fair in this particular day and age where people are mobile? I mean, I know Mr. Kohli himself. Like me, I see him often at the airport. We don't know. I don't have any residency overseas, but I travel a lot. So, if I counted up how many days I've been here over the previous two years, I don't know, or three years, I don't know whether I would qualify, even though I have no other home other than here.

I don't have family, a wife and kids overseas or whatever, but that is a real practical issue. And there are many ordinary people who work on boats, who go overseas to work for, you know, like to make money and come back there. They haven't shifted their center of gravity, but they are out of the country.

You know, there's lawyers who've gone to work like yourself for personal reasons in the Solomons or Nauru or whatever, and you, as a result of looking for work because you're being discriminated against or you're not able to find, you're not comfortable here temporarily, therefore become disentitled to contest an election. You know, so that's a very, very strict rule, which I think should not be in the Constitution. The other question around voting, which is in the Constitution strangely, well, not strangely, is there, but was not there before, is that Fiji citizens overseas have a constitutional right to vote.

In the past, Fiji citizens overseas were eligible to vote, but they didn't have a constitutional right to vote. The presence of the constitutional right means that the elections office and the state machinery must go out of their way to facilitate polling for these people. And sometimes it's impossible, you know, like it's really impossible to get ballot papers out given the time frame here to meet the other constitutional, the seven days and the 14 days and then you've got these ballot papers.

And how do you get them across to them? How do you get them returned? In my day, we sent them by, you registered, we sent them by courier. You got them, you didn't get them. That's your problem, baby.

You know, like, but now that's why the machinery's got to go here, there, everywhere. And they're spending so much money going around doing polling in these overseas places. I don't know of any other country that has as little resources as we do that spend that much money trying to get votes from people who are not here. So, I urge you to look at that because it's in the Constitution, this right that they have to vote. And we know why that was put in because the support for the architects was large. A lot of it was overseas, so there was that reason.

There is, wait, limitations I've dealt with. The voting system, well, there is the question of how many houses you should have. We used to have two with the Senate, and the whole purpose of the Senate was essentially to protect indigenous Fijian interests. Because that was where the great Council of Chiefs nominees sat with their veto power over specific legislation. This Constitution has just one chamber. When you have one chamber, it's cheaper.

But it's harder to give a place to indigenous interests that is real without being unfair to everybody else. Without making the voting system discriminatory and that kind of thing. So that's the advantage of having a second chamber. You can recognize special interests, including women, including youth, in an upper house, without undermining the purity of the elected system. I mean, I'm not saying that you should, I'm just saying that it's something that you can think about. That's the value of a thing.

I'm going to say something very controversial here. And I ask forgiveness if it offends indigenous people sitting here. But I speak as somebody who is also of indigenous ancestry. There is a tendency, because of the importance of chiefs to our identity, to overestimate the wisdom of

chiefs. Especially in the modern setting. We were lucky in the colonial era and the immediate post-colonial era to have chiefs who were trained specifically to succeed to government.

The likes of Ratu Mara, Ratu Penaia, Ratu George Cakobau, they were all trained by the British and by Ratu Sukuna to be ready for that role. We don't have those kinds of people anymore. And if you stand back and you look honestly at how chiefs behave, and I'm not saying all chiefs, because it's the opposite, the assumption is all chiefs will make the right decision. That's the assumption of elevating chiefs. But if you look at the experience of the last 20, 30 years, that's not true. There has not been unity.

There's not been necessarily wise decision making. We have a situation at the moment. We have a constitutional crisis over FICAC because people are frightened to advise the president what he's allowed and not allowed to do because of his status. So, think very carefully about that. The fact that people are chiefs does not make them wise. Yes, the Great Council of Chiefs, the Boselevu Vakaturaga, had a stabilizing influence after 1987.

But again, if you were there on the scenes, it was like this far. There was a tussle in there. And then there is the question of what is the Great Council of Chiefs, which opens up, I mean, who is entitled to sit there, which opens up another big issue. So, all I'm saying is that that is a huge issue that you've got to think about without any rose-colored glasses because the Constitution is forever. So just because there is anger and nostalgia for what was taken away doesn't make that suitable for today. If I can use an example, an analogy, it's like somebody taking your house, right? That was the house you used to live in that was okay for your family 16 years ago. But your family's changed. You're richer. You've been living in that house has one bathroom and toilet.

In the last 16 years, you've been living in a different house with four bathrooms and toilets. And you're fighting to go back to that, even though it doesn't suit you anymore, because it was taken away. And that's the same situation with the 1997 Constitution. There's this nostalgia about it that's completely undeserved and completely uninformed. And it's built around this anger that something was taken. And they're perfectly entitled to be angry about it.

That I can understand. But the assumption that therefore what was taken is good and should be given back is that you need to look at carefully. You've got to assess whether it's still right. So, there's that. The voting system, the present voting system, is a mess. It cannot continue in the present form. It denies ordinary people effective representation. And I'm sorry if I'm lecturing you, but that's just my tone. It also favors the superstar parties.

So now, it was built around Fiji first. PAP was able to challenge it and win at the last election because it had a superstar. I mean, a charismatic leader who could be the focus. I mean, that's the reality, who could be a focus of votes, because that's what the voting system favors. I mean, it means that even though there is currently, and I'm not favoring or saying what, we all know that there's dissatisfaction. We know that there are parties seeking to challenge, but the system doesn't allow any alternative parties to come forward.

And it actually makes what's going to happen at the next election so unpredictable. Because we can't work out in the absence of polls whether the leader of PAP still has enough charisma to get enough votes over. So, it's quite an unstable system because it depends on parties maintaining leaders who have strong appeal.

And if he should decide to resign, who in that party has the charisma to pull votes? Or in any other party? So, it's not a very stable model. The alternatives are to go back to first past the post, which is simple. I'm sure you've heard submissions going for that.

The problem with first past the post is that it's kind of outdated internationally. Everybody's into proportional. But at the same time, be careful about proportional because you've got to look at what's happening globally with all of the unstable governments because of proportional.

The assumptions that I grew up on of two parties with one little splinter party in all the big countries no longer hold. So, you have to think very carefully about a voting system that accommodates what exists now and what could happen in the future. And remember also the thing about voting systems is voting systems themselves change behavior.

The voting system will affect how parties operate. Because the game changes so your team will change and your tactic or strategy will change. So, be careful about don't assume that parties will behave how you think they've behaved for the past five years or 10 years, you've got to be very careful and you've got to work out how they behave now and if we do this.

What's the likely pattern that will happen. A big problem in the current arrangement which you will need to look at is the discrimination or the, what's the word. Yes, discrimination or the impediment to independent candidates, the independence has a role.

The current threshold is, I think, three times almost the amount that a party candidate needs to get, even via the leader. So, for example, they just rounding it off right. If, if you had originally there were 50 seats in Parliament. Right. So, if you were at 50 seats in Parliament, out of 100% of the vote, you would need each party rep rounded off would need 2% of the vote to get in. Not necessarily 2% that they got but 2% that their party got a independent candidate at the moment requires 5% to get in.

And it's hard enough for an independent to get 5% of the vote nationally because that's a huge area to project to, but, or even 2% of the vote nationally, but it's still way higher than to the five is just completely, you know, like a disincentive to independence to, to come forward. And the need for independence is particularly for small interest groups, you know, who might not be represented or taken care of in the big parties. I mean, the Rotuman community.

There's an assumption that the indigenous EGM parties will include somebody from them but you don't know if the indigenous EGM parties with their own dynamics and their own relationships will pick somebody who truly represents you, you know, and in that situation it's important that there be an alternative. Who's able to offer themselves, same for the even more so for people like Mr big, and me. You know, our community, who used to be so powerful. And now forgotten.

We don't have anybody who represents us in Parliament. And the political parties have no incentive to include us, because that's the game, you know, they go for the majority. But if being an independent was easier. You might have a shot, I'm not saying you would, but you'd

have a shot. You know, so it's important for those kinds of groups the same for women.

The parties might not put for their, you know, they might not put good women forward for their own internal alliance reasons. Right, and then at least the ability to stand as an independent would allow a strong, popular, effective woman who's not aligned with the party to be elected to represent women in Parliament so I commend that idea to you for your consideration. We're running out of time, only 15 minutes, I've got so many things to say. OH, very, very important one, from my experience. First vacation of seat of member. This looks innocuous, but it was the mechanism that they got Niko out under and you will remember we had to fight bitterly jointly to get him back in.

And that was because the Constitution allowed elections office to make a wrong call, which resulted in him losing his seat until we managed to convince the court otherwise. But the reality of winning that case, and I don't know whether you remember it or not, was because we had to use the analogy of married women to get over the line if we didn't have that analogy, we might not have got over the line. All I'm saying is that this provision which looks innocuous. If you have an electoral administration that, you know, making the wrong decision, or whatever. It leaves the security of the member at the whim of the administration. There is a huge problem with the short period given to the Court of Disputed Returns.

They are only, you only have 21 days to file an election petition. And it's got to be decided within, I don't know, so many days of the filing. It's ridiculous. It is really, really ridiculous. And what it does is it favors the winner. Yes, there is a principle that challenges to elections need to be determined quickly because you need to know who your MPs are because of the executive government and all of that.

But the numbers and the time periods that they've come up with are really ridiculous. Because what has happened in my experience is that after an election, there are stories about what went wrong or right. Right? It takes you, people are exhausted. After the count and all of that, the mamarau is over, they kind of like disappear. They all come together. They're all there.

You've got the reports. But Fijian people are not good at recording things and taking things down. So you hear stories of what happened. Then you

want to bring a petition. But you've got to go and find these people. And even when you find, you know, you get the thing verified, you've got only so many days to get them, get their affidavit done and all of this.

And you just can't. It's just impossible because the time frames are so short. So, what these time frames in the Constitution do is make the whole system impossible to review. It's impossible to bring an election petition because you just can't meet the deadlines in terms of getting your allegations together, getting your evidence together, getting your arguments together. It's just impossible. So, I recommend we look or you look at what is the standard rule in Australia, New Zealand, the UK.

And we follow that because what makes us different? Or Canada or even Samoa, Tonga or wherever. But ours is unduly and unrealistically restrictive. And that's not good for democracy. It means that when people cheat, which will usually be the party in power because they have the resources, it's not possible to review them. There is a problem, and I hope you realize that the provision about the president acting and who the president whose advice the president acts upon is the reason that we have this impasse over the acting director of FICAC. Because the current provision says the president acts only on the advice of a minister or the cabinet, doesn't say which one of those two, which is a problem in itself, or another authority if the Constitution provides for that.

So, the problem with the impasse over FICAC is the FICAC Act says the JSC advises, but the Constitution says that the president acts on the advice of a minister, the cabinet, or an authority specified by the Constitution. So, the Constitution itself doesn't say JSC advises about FICAC, it's outside the Constitution. And that's why the advises to the president and to the prime minister have said the provision in the FICAC Act is unconstitutional, because you only are to act on the advice of a minister, a cabinet, or an authority designated by the Constitution.

And JSC is not designated by the Constitution for that advice. So that is the reason that we are in this no man's land or no person's land over Fisher's appointment. And we have this, what is actually a constitutional crisis, where the JSC, the president and the prime minister are in a public spat about it. Like they're polite about it, but it is a crisis. And nobody knows whether the acting director is there legally or illegally or what, and then you've got Barbara Malimali on the other side and you know it's a

mess. But that's the provision that is part of the problem. No problem with appointment. Sorry, sorry, sorry. Prime Minister.

There's all these prescriptive provisions about how you appoint the prime minister, I'm not fussed about it. But what it says is that if you're the leader of the party, and your party gets the majority you're automatically PM. If your party. If no party gets an absolute majority, then it's voted for on the floor. That's what happened that that gripping day on 24th of December, three years ago because no party had won the majority so that's why it had to go on the floor. But there's that I don't know whether you want to keep that.

They are going back to the vacation of seats and members. They are the question. The fundamental question that underlies a vacation of seats provision is how much power should be given to a political party to expel and, and cause the removal of a member. Traditionally, before 1990. Under the 1970 Constitution, we had the standard Commonwealth situation where if you got elected on a party ticket into Parliament. You still were entitled to vote in your own conscience. And if you cross the floor. There were no consequences. You know you got to deal with it with your body.

Right, but you didn't lose your seat. I was the one who wrote in the crossing the floor provision into the 1990 on the instructions of the then cabinet, because the 1987 coup happened, because Leonie Gila. Mr. Accepted the Senate other speaker. You see, after the election there was a majority, I think of only one between one or two between labor. NFP coalition, and the Alliance, right. So, the Alliance were busy plotting to bring somebody from that side over to this, get a shock, they got a shock.

On the day, the first order of business was to vote for the speaker. On the day that they went, when they went to vote for the speaker. NFP stood up and went and brought Leonie Gila and nominated him, and he stood and was dragged to the chair. And there's a famous picture on the front page of the Fiji Times where Leonie Gila is walking, and the government bench is like, you know, because nobody expected somebody from the Alliance side to our neck and go the other side so it was a result of that that this rule was written that if you cross. You lose your seat. But that's a philosophical question for you guys.

There's two provisions. One is that if you cross you lose your seat, and the second is if you are expelled you lose your seat. But that gives primacy to the party, and its executive over the voters.

Because it's in this system, it might be okay where you've got the seat through the party. But if you're going to another voting system where the party is less important to the selection of the member. The question is, should the member elected by the voters be subject to the whims of the party executive.

Attorney General, lawyer 15 years practice disciplinary offense, whatever that I don't have a problem with that. The judiciary provisions need some tidying up but I'm not particularly fussed about that. The. Okay, big problem. A big big big problem is this. Traditionally in the Westminster system.

The civil service was independent. And civil servants were permanent and independent, and were assumed to last more than the ministry ministers come and go. The civil servants are forever. And in order to immunize the civil servants from the political pressure independent service commissions were invented. And that was why the PSC appointed and dismissed civil servants, and the JSC back in the Judicial and Legal Services Commission it was originally called appointed and dismissed judges and government legal officers. And there was a police service commission that appointed the police.

But the membership of those commissions was independent, because they were independent service commissions. The independence of the civil service has been greatly compromised in this constitution. Prior to this, the Public Service Commission constitutional role was to appoint and dismiss and discipline civil servants.

Right so from PSS, all the way down to admin officer or driver or whatever. The. What changed there was that in this particular constitution, what they are also sorry.

Then in 1974, government passed the PSC Act, the Public Service Act, which gave the PSC, the personnel functions of government. So on top of the pure appointing and disciplining PSC became the personnel authority of the government to do the training, and the, you know, like all of that kind of HR. It was the HR arm of government.

In this constitution, the HR arm is gone. The appointing and dismissing of civil servants is gone. All that the Human Rights Commission, I mean the PSC does under this constitution is appoint the permanent secretaries.

And remember, the PSC is appointed by the COC, the COC. And the problem with the COC is that it's political. It's supposedly independent, and supposedly to bring independence to the public service, but the members of the CRC are the Prime Minister, the Attorney General, leader of the opposition, one member nominated by the leader of the opposition, and two members appointed nominated by the PM.

So, the body, which is appointing the PSC, supposedly independent, is political. I sit on the COC, and I, because I come from the olden days, I exercise my vote independently of the person who nominated me. And to be fair to Mr. Rabuka, he also comes from those days, so he tries to, you know, like, make genuine decisions.

But I know that under the previous government, the nominees of the leader of the opposition, the leader of the opposition and the nominees left, they boycotted. Because when the COC would sit, they were not even listened to. You know, there was no discussion, because the government people just made the decision, and that's how the setup is.

It encourages that kind of behavior. So, the COC, you know, like, the idea of the COC needs to be relooked at. The other problem with the COC in practice, and I'm coming away from the PSC, but I could go back to the PSC.

The other problem with the COC in practice, judging by my own experience, is that because we are not, we don't have the PSC there, we don't have any personnel records, when we are called upon to appoint somebody, like to be the commissioner of police or to be the commander of the RFMF or the commissioner of corrections, we have no idea of their personnel history, if we're looking at somebody from within. We have no access to any records. You know, so we're just saying, oh, yeah, what do you know about XY, he's a good guy.

I remember when I was the minister, I don't know, because the records are not there because we are not the personnel authority. And so when you're doing acting appointments, we're kind of like just guessing based

on the members' recollections of the personality of people. And that's been a big problem with prisons.

When we suspended the prisons commissioner, we've had a series of acting ones because we don't know who's good. You know, so systemically it doesn't work. So I'll go back to the PSC, which is the bigger problem. The PSC at the moment only appoints the PSs. The Constitution says that the PSs appoint people in their ministry. And that is because the PSs are beholden to the minister.

That invites the PSs to keep the minister happy. And the situation, part of the problem of this country, to be honest, and I mean no insult, but part of the problem with this country is that civil servants are paralyzed. Civil servants are paralyzed for two reasons, three reasons.

First, they fear losing their job. So, it's easier not to make a decision than to make a decision because you might be exited immediately. Second, you might be FICA-ed because decisions that you make will usually have some disgruntled party or you've got somebody in your office who doesn't like you and all they've got to do is write a complaint to FICA-ed and you're down the vortex. You've got to have money to defend yourself. You go through all of that stress. It's stressful.

And so what does that encourage? It encourages behavior where you don't move. You come to work, you take your pay, any hard decision comes, you move the file there because if you make a decision, your neck is on the line. So, there's two constitutional provisions that lead to this. The first is the FICA-ed provision and the second is the PSE provision. So that is my analysis of why we have a paralyzed civil service. I'll be frank.

The civil service has always been slow, but at least in the old days they made decisions. Now they don't at all because it's out of fear of consequences that this constitution promotes, that kind of paranoia by the rules. The JSC needs to be, the membership, the concept is fine, but the membership needs to be, and the appointment procedures need to be made less political.

In the 1997 constitution, judicial appointments were required to have the consent of the select committee, although that was a little bit problematic because some of the lawyer members in parliament, at

least one in particular, made it difficult for somebody. So you need to really look at that. Independent Legal Services Commission.

This is banged into the constitution with the other independent commissions, but it's a different kind of beast. Independent Legal Services Commission doesn't appoint anybody. It's the FICAC of lawyers, and it was put in there to scare the living daylights out of the chair and Mr. Kohli and people like them and me.

You know, like to make this policeman, this important body, and it's banged in amongst the independent appointing authorities that are important to the state. The Independent Legal Services Commission is not to do with government. It shouldn't be in the constitution.

I don't think it exists in any, it's recognized in any other constitution. Whether we have an Independent Legal Services Commission or the Fiji Law Society does it, I really don't care. But I don't think that the Independent Legal Services Commission should be a constitutional body. It's just not that important. FICAC, very controversial topic. Yes, FICAC, well, bodies like FICAC have an important government role to play to keep people accountable, just like the DPP or the, I don't know, Human Rights Commission or Ombudsman or whatever.

The problem with FICAC, though, is the constitution says that it investigates and prosecutes. In other jurisdictions, the FICAC only investigate, like the police. And whatever they find gets submitted to another decision maker, like the DPP, who then reviews and decides whether they're sufficient.

And that is the problem with FICAC. Because it both investigates and prosecutes, there's absolutely no accountability, except in court when they lose and then they quickly forget about it because they've got another prosecution coming up. But somebody's life has been ruined by five years of stress, five years of very, very high legal fees.

And the effect, the chilling effect that FICAC has on the civil service cannot be overestimated. So, two things, if you're going to keep FICAC in the constitution, you have to say that it investigates only. It can't do both.

And it's because they put them together that FICAC became the lapdog for government. There's strange, in the qualifications for the various

offices, the legal offices, there's a variation in how many years' experiences you need. And there's no rhyme or reason to it. Like the DPP is seven years and the SG is like none at all. And then it's because at the time they were drafting, they were tailoring to whoever was the incumbent. So, these sorts of things have to be rationalized.

The supervisor of elections used to be constitutionally required to be a lawyer. And it should be a lawyer because you're making legal calls. But the constitution doesn't require it to be a lawyer at the moment. It should be, there should be a requirement to be a lawyer. Legal aid commission. Again, I don't know why the legal aid commission is in the constitution.

You know, it's nice to have, but it's not really an important part of the state. It's got the word commission there, but that's about it. And then of course it was part of the last government's platform. You know, this whole kind of populist idea that we serve the people and we bring justice to you and all of that kind of thing. So, I'm not sure why the legal aid commission should be in the constitution. The mercy commission, yes, that should be in the constitution.

It used to be the prerogative of the mercy commission because the power of pardon is an important state power and traditionally it was exercised by the Queen. Public service disciplinary tribunal. I'm not sure why it's there, but whatever. Accountability and transparency commission, important, but illusory. I mean, we've had, how long has it been now? 12 years? 12 years there's been provision for it and for a code of conduct and for whatever and nothing has happened and freedom of information. What that shows is that you can put whatever you like in the constitution.

Doesn't mean that it's going to happen. So, the question for you guys is how do you make sure that what you recommend, if it's implemented, there's pressure for the people in power to actually do something. I don't know the answer to that, but okay.

Discipline services. The commissioner of police and the army are supposed to be independent and to a lesser degree corrections, but like I say, they're appointed by a political body being the COC. So, you have to recommend another appointment mechanism that is not politicized. Republic of Fiji military forces. I think that that provision has got to go.

The responsibility for the well-being of Fiji, that's just an invitation, a permanent invitation to coup d'etat.

We are very fortunate that the commander, the current commander and the younger officers were sick of what was happening for 16 years. They come from a different culture, but things swing. And a provision like that is an invitation to somebody else within the camp to say it's our job to intervene and regularize what's going on. Okay, that's enough lecture. That's about all I have to say. I think the equality provisions and the human rights provisions are really important.

Apart from the wish list towards the end, none of them should be whittled down. The big question is amendment. The last question is, no, there's two. One is immunity and one is amendment towards the end. Personally, I have many friends who I have fought, argued bitterly with for many years about immunity provisions. My good friends like Ratu Joni Madraiwiwi, Imrana, and other people who are very active in that kind of civil society politics space, always argued against immunity provisions because they say that it encourages coups because there's no accountability for your actions.

As somebody who's worked in the transition side after a coup, immunity is the only thing that allows people to surrender power. So, without an ability to give immunity, why would you give it up and expose yourself to hanging? People don't commit the coups in the expectation of immunity. They do it for other reasons.

And immunity is granted only when they've been convinced down the line to give up power. So, without immunity, and if we do away with immunity, people will have too much at stake, their freedom, their life, to actually surrender power. That's my view.

I mean, I'm not saying I'm right. There's many views about it, but be careful about immunity. And that was why in the Supreme Court reference last year, the court decided not to go to immunity because immunity was on the table. The court recognized that it's far too complicated, and that's not the role. They use the usual excuse, that's not the role of a court, that's a political issue. But what they really recognize is that the very real practical consideration that if you remove it, you give those whose immunity has been lost a stake in taking over to

protect themselves. So be careful. I don't know the answer. I'm just saying be careful.

The last thing is amendment. In the original 1970 Constitution, there were two different thresholds. One for the workaday provisions of the Constitution, and then a higher threshold for the important one. And I think that's important to have that kind of decision because the Constitution is full of things that are more important than others. So, you don't want impossible things for housekeeping measures, you know, because time changes. So there should be two thresholds.

I think that a two-thirds majority for normal things and a three-quarters or 70% for fundamental things like the human rights provisions and that kind of thing is important. The referendum, I'm not a great fan of referendum, but I get it. Yes, it's a modern thing to have a referendum. I think it should be 50% of those present and voting. I don't think we should seek a two-thirds majority in a referendum because it's very difficult to get people to agree to something. Even to get 50% is a big ask.

If you look at the history of referenda in other countries, referenda rarely pass. They rarely pass, and that's at a 50% level. I don't know, maybe your research team can look at what the pattern is for constitutional amendments across the world. I would be surprised if many required a special majority in a referendum because generally it's just very difficult to get something passed in a referendum. Look at Australia. The last referendum on the Aboriginal or the First Nations didn't get through because all it takes is a little bit of agitation and people say no.

So, with those, as they say, key words. Thank you very much for the discussion this afternoon. We have been listening and you have given us some ideas which we will be able to use or consider during our deliberations. You have been of much assistance this afternoon. Please pardon us, we have to bring this to an end. We have a team going to Rotuma tomorrow.

Jon Apted: Oh, lucky them.

Mr. Valenitabua: So, they need to go and get ready. And also, we have a virtual meeting with the legal drafter at 5pm.

Jon Apted: Sorry to have taken your time.

Mr. Valenitabua: That's fine, you're welcome. So, we have to call this to an end.

Jon Apted: Thank you for your time and the invitation.

Mr. Valenitabua: John, thank you. And I apologize for using your first name. I think we know each other that way. I had hoped when you started this conversation that this would be in the form of a to and fro and that we would be open to have some discussion. Unfortunately, time doesn't permit that and we have listened to you for the last hour and a half or so.

I'm just interested, given your experience with the genesis of the last four constitutions, which of them do you personally think did the best for Fiji? 1970, 1990, 1997, 2013? Your preference, just rate them 1 to 4? No, I can't. Because a constitution is only as good as how it works in a context. And the 1970 constitution was a compromise that was chosen for that context, but the underlying assumption didn't pan out. The underlying assumption, and don't forget this because you've got to understand this as well. The underlying assumption of 1970 was that indigenous Fijians would stick together. And they never do.

John, I don't want to drag this on. That wasn't a right or wrong question, answer. It was really just a reflection in terms of your experience with all of them, whether you had a preference for any. There's no, I mean I don't have a swarming. I just say there were aspects of each that were good, but none of them worked in terms of the political compromises that they... And I'm interested because you did state quite categorically that a constitution is forever. I think our experience is we've had four constitutions and obviously they're not forever.

I guess from a commissioner's point of view, what I would be interested in is what are the circumstances that led to the constitutions being written. And my understanding is each one was written in response to a crisis or a coup. Which begs the question, the corollary of that would be as a commissioner, I'd be interested in identifying what is causing these coups and maybe looking at that closely in terms of designing a constitution that's suitable for Fiji. So it's just the to and fro that I hope that we'd have, which we unfortunately don't have the time to have. We've listened for one and a half hours, but that's part of this conversation. If I could just answer that.

Jon Apted: My answer to your question, your rephrased question, which is why didn't they work. Two didn't, well, three didn't work, but it's because the assumptions about the power sharing arrangements and the mechanisms just didn't work as they were expected to. The assumptions about people's behavior was wrong. I think we can surmise a lot about the reasons that these things didn't work. The reality is none of us know, other than him. And I guess from a pragmatic point of view, I'm trying to look at this in the context of how we get each constitution, given that they're not lasting forever, and hoping that this time around we get something that lasts a little longer. We do know, with due respect, we do know how people have behaved. We can't predict how they will necessarily behave, but you have to remember history and how they have behaved. So, it's not completely out there. We do have a history to draw on. We know what doesn't work. So, when you move forward, you've got to work out what might work.

And yes, you could get that wrong, but don't forget what hasn't worked. And I guess if I was to use that criteria, the 1970 was the best because it went for 17 years. Yeah. Well, no. No, no, no. Remember, it didn't. It didn't. There was a palace coup in April 1977. When the governor general dissolved. But that was, if he didn't do that, if the NFP didn't get such a shock that they'd won, they were not expecting to win. They were expecting to be the opposition forever. So when they won, they competed to win, and when they won, they were not ready with their leader. And nobody, half the party, didn't want Sadiq Koya to be the PM. They were happy for him to be the leader of the opposition. So that's what happened. But if that hadn't happened, there would have been a coup in 1977 as well. Sorry, I'm just saying. Ah.

Mr. Valenitabua: All right, I think that brings us to the end of our... Mr. Apted, on behalf of the chair and the commissioners, I'd like to thank you again for your robust lecture and discussion. Before you leave, we'd just like to take a picture with you and the commissioners.

----------End of Session [29-6-2026] ----------

Graham Leung

Mr. Graham Leung
Date: 29-6-2026

Leighton: It is my great pleasure to welcome you. Thank you very much for taking up the invitation from the Commission to present a submission. On behalf of the Chair and the Commissioners, I would like to thank you, especially for being very early this morning and prompt.

I will introduce the Commissioners very briefly, and then I will hand over to the Chair, who will then lay out the work that the Constitutional Commission will be undertaking. Just with regards to making your submission, the speaker in front of you, if you just tap on the right panel, the mic will come on, and after you have made your submission, you can press the same panel to turn it off. Introducing the Commissioners, to the far right is Mr Conway Beg, a well-known architect, also a Fiji rugby player and administrator within the Fiji Rugby Union. Seated next to him is Merewalesi Nailatikau. She is a Development and Communication Specialist. Next to her is seated the Chair of the Commission, Mr. Sevuloni Valenitabua. He is a well-known lawyer in Fiji, as well as the Pacific. And seated right next to him is Mr. Ami Kohli, a well-known lawyer as well, who I know you are familiar with from Labasa, with the firm Kohli & Singh. And seated next to him is Dr. Neelesh Gounder, a well-known economist and a lecturer at the University of the South Pacific. I will now hand over to the Chair of the Commission.

Mr. Valenitabua: Mr Leung, welcome. We are very pleased to have you here this morning. We have just had the Law Society complete their submission and we were really looking forward to today's consultations because we'll be having lawyers appear before us. You are the second this morning and then we will have Mr Hector in the afternoon, late in the afternoon. Now we welcome you and we thank you for your attendance before us, your experience, your knowledge, the Electoral Commission and work with the SG's office and the Attorney General's office is important and we will be guided by a lot of things that you will be telling us.

The work of the Commission is well known to you. It's a national task that has been given to us by His Excellency, the President of the country, and we are to amend or review the 2013 Constitution and that review can mean amendment and we are looking at an amended 2013 Constitution. So we've been going around the country, as you know, collecting submissions and recommendations from the people of the country.

And this week we have arrived back from our journey around the country and we are back at Level 9 receiving submissions from associations, ministries and individuals like yourself. We will now give you the floor without further ado and we'll listen to your submissions and then we might have some discussion later on with comments from us or questions. Thank you.

Mr. Graham Leung: Thank you, Mr. Chairman. Thank you, fellow commissioners. Thank you, Mr. Chairman, for the kind and generous introduction. I hope I don't disappoint you in terms of the expectations and the bar that you've raised. Just as a matter of clarification, how much time do I have? I know I'm early but I don't want to overstay my welcome because you've got other people throughout the day as well.

Mr Valenitabua: We can listen to you until 1 o'clock.

Mr Graham Leung: Thank you. So, Mr. Chairman, first of all, thank you and thank your fellow commissioners.

I've followed your journey, if I can put it that way, in the newspapers the last several weeks and I've kind of loosely also followed a lot of the submissions that were reported in the newspapers. Most of the submitters have cherry-picked and referred to different sections or different topics or themes that are important to them. But unless my memory fails me, very few submitters spoke to their broad vision of what the Constitution represents and how it should be a forward-looking document.

So, I want to start this morning by sharing my vision of what this Constitution, as amended, should look like and commence with maybe some historical background, briefly, to where we are today. Throughout my submissions, I refer to specific sections that are of interest to me and at the end, I'm happy to share with you a soft copy of a table of recommendations that I feel could be useful for you as you ruminate and reflect on the kind of changes that will improve the Constitution as we know it. So I welcome this opportunity today to share with you my views on constitutional reform and to some extent, the future of our country.

Mr. Chairman and Commissioners, I don't think you need reminding that the task that you have been saddled with has come at a critical juncture

in our country's troubled and sometimes fractured history. Most of the observers here, including the journalists that are present and observing the proceedings, a lot of them probably weren't born in 1987, but for those of us that are older and longer in the tooth, I think 1987 was a watershed event and the effects of 1987 still reverberate today and still informs and influences present-day constitutional and governance issues and is likely until a generation of people who participated in successive illegal displacements of constitutional government are called by the Almighty to another place. So it goes without saying that your responsibilities are enormous, but even more challenging I suspect for you is the rather truncated and urgent deadlines that you're being asked to carry out this review.

You will know from our history that Sir Paul Reeves, former Governor General of New Zealand, whose report led to the 1997 Constitution, his review took about 18 months, give or take, and Professor Yash Ghai's report took less, but a lot longer than the three or four months that you've been given the task. So, as I said, your outreach throughout our 300 islands has received extensive press coverage. You've gone from Rukua to Rakiraki, from Nabukaluka to Nabouwalu, and everywhere and everything in between, and I'm happy to say that the Chairman and others that followed you to the Lau Group didn't capsize in one of those puns.

I'm glad I wasn't in the fiber, but by the grace of God, here you are at this level nine, which this level nine has an auspicious or inauspicious history going back a few years. Those of us that follow these events loosely, we saw blankets and pillowcases and food being carted in and out, but that's a story for another day. So, I recognize that your job is, if you want it to be pedantic, you're not here to draft a new constitution, but if you suggest amendments to the constitution, and you have an amendment bill to amend the 2013 constitution, in effect, you're actually producing a new constitution. So, in many respects, because this constitution for now is the supreme law, you're not starting with a blank canvas. You're not starting from scratch. So, this is the foundational document, warts and all. Now, the temptation is to throw the baby out with the bathwater, but I think that's quite an ambitious task. I think this constitution, like the curate's egg, is good in parts and bad in others. We recognize that.

And you've heard many submissions over the last couple of months with people expressing reservations about certain parts or endorsing and

affirming other parts. Now, I want to say that the changes that will become part of your recommendations to His Excellency the President, they won't be an abstraction. In my view, it will be a set of guidelines that have been drawn out of your experience and the experience of all our people, the experience and aspirations, trauma of our people stemming from those watershed events of 1987.

My sense of what Fiji's future might look like, that's my personal sense, is conditioned by my own personal understanding of past constitutional and legal events as well as the current events that we face. Mr. Chairman, members of the Commission, I believe that our collective history, trauma, and experience impose on us as citizens of this wonderful and sometimes troubled country impose on us duties that are impossible to avoid. Much of what has happened over the last 30 or 40 years in this country compel us to respond to some unpleasant and inconvenient truths.

And it's not easy to be telling truths in a country because quite often the messenger is shot and people fail to listen to the message. But I believe that it is time that we address some of these past events and inconvenient truths that continue to saddle us as a country and to weigh us down. I don't think that we can any longer sweep some of these unpleasant aspects of our past under the proverbial mat.

We keep ignoring that, hoping that it'll just go away. So, as you near the finish line, I believe this is more or less the second last week of receiving submissions. In carrying out your collective solemn duty as commissioners that have been tasked to review the Constitution and to solicit the views of our people, you must ask yourself, first of all, what kind of vision do you imagine for our country? What should the future look like? How do we not repeat mistakes of the past? How do we co-proof our Constitution? Can we co-proof our Constitution? What kind of legacy will you as commissioners bequeath to your children and their children in this Constitution-making process which you are a part of? So I'm not going to give you a lecture on our history because it would be inappropriate to do so. I certainly have no intention of patronizing. I see a couple of PhDs on the commission. But I think the starting point which has made us as a country has to be 1879.

Of course, there was 1874 was when Fiji and Ratu Cakobau and the other chiefs ceded Fiji to the British Crown. Queen Victoria was on the

throne and I think the Prime Minister of Britain at the time was Gladstone. But in any event, fast forward to 1879, the first wave of inter-Fijians arrived in this country.

And a large number, despite the rigors of indenture, remained and chose to live in this country following the abolition of indenture. Of course, you know from history that following that, indenture was abolished and then we had various waves of migrants. We had from the state of Gujarat, we had Gujaratis coming in, the Patels and so on.

The Sikhs, we had waves of migrants from forced migration. I think in today's terminology we would call it human trafficking. Where the Solomon Islanders and Kanakis were brought to open up the roads and clear the forests, the Gilbertese and followed Chinese merchants and fanned their way to places like Naitasiri, Kadavu and so on.

And colonial policy dictated and influenced many of these events. So, by the early 60s, Fiji, as you well know, had become a rich tapestry of different races. But many of those races were largely subsisting in their own racial enclaves and silos, living separate and compartmentalized lives. Independence came, of course, in 1970 and it forced us as a country to deal with the realities of different ethnic groups which for a rather prolonged period were living side by side but not having much to do with one another. Now, many of the world events around us as we speak might give us pause and room for pessimism. The war in Ukraine continues unabated. The problems in the Gaza. This week the Strait of Hormuz opened and then it closed again and then it opened. And we have a man with orange hair on Pennsylvania Avenue dictating things.

So, the world is really upended. Here at home in this country we've just had a budget passed. Cost of living, difficulties abound. Very painful fiscal space and then we have a record, I think, at this juncture which we can't be too proud of. Growing incidence of HIV, non-communicable diseases, five amputations a day in hospital, the drug scourge continues and so on. So, these are not mere statistics. This is the backdrop against which your commission is taking place. So, we are talking about the lives of our fellow citizens, many of whom for whatever reason have been unable to realize their full potential and being robbed of a life of dignity and happiness. And certainly, the poverty levels are depressing.

But as a country, I believe we have shown in the past, despite these troubling circumstances, that our people have always had the resilience and the strength to pick up the pieces and soldier on despite the difficulties. So, our people have shown the enormous capacity for adaptation, for survival and being good human through a whole repeated cycle of coups. Now some of our finest minds have left Fiji since 1987 and you know this of course.

We have lost both brains and treasure, brains and capital, and growing numbers continue to do so. So, the figures are depressing because we have lost some of our best people and figures will differ, but it's clearly in excess of 100,000. Now I want to say again something which is self-evident. All the ethnic groups that make up this country today have strengthened and enriched Fiji. Their energies, their food, their commitment, their culture. This matrix of different cultures has made our country far more interesting, vibrant and treasured.

Our progress at times of course has been disrupted by unconstitutional events. Our progress reflects the social and political challenges that have accompanied each of the coups. We cannot turn the clock back to 1987, but at the same time we cannot ignore the reality of those events.

I believe Mr. Chairman and fellow commissioners what we can do perhaps through your report is to learn the error of our ways and not repeat some of the grievous mistakes of the past that continue to haunt us. This review process of which you are an integral part, which you are leading, presents a once-in-a-lifetime opportunity to get things right. To rise above parties and politics, political point scoring and boldly reset our constitutional foundations.

As a forward-looking country which embraces the rule of law and promotes the values of equity, fairness and justice for all. I believe your review must consider and involve strengthening our democratic institutions and processes, insisting on building a nation of shared values and a shared identity on which the well-being of everyone is secured. I want to digress for a minute and speak to the issue of indigenous rights.

Quite often if you speak about indigenous rights in this country, immediately the intellectually lazy way of dealing with this issue is to scream racism. But I think a more careful and more nuanced approach

at looking at indigenous rights, putting things in perspective, is helpful. We cannot, I believe, move forward unless there is a collective understanding and acceptance of the fact that the indigenous people of this country, by virtue of their indigeneity, have a special place deserving of recognition.

Special does not mean superior. For too long, attempts at addressing by way of affirmative action the situation of our indigenous brothers and sisters has been dismissed and even derided. Mr. Chairman and Commissioners, it is possible to bring about greater economic empowerment of Fiji's indigenous people in a way that does not discriminate against the other races. The mistake is to conceive of these concepts in a way that is binary. I believe that the wealth deficit between the different races will be the key to Fiji's long-term peace and security. If the indigenous people feel secure, then the rest of us feel secure.

If they feel marginalized, then that is not good for our long-term peace and security. I want to talk now about some specific topics within the Constitution. The first point I wish to make is on languages. English, of course, is the language of government, the language of the courts, the language of parliament. Pretty much, more or less, the language of commerce, although, of course, different people speak Hindi and Fijian and other minority languages. But recognizing the historically diminished use and status of the indigenous language of Fiji, I believe that the state must take practical and positive measures to elevate the status and advance the use of the Taukei language.

Again, I qualify that by saying it is not to be the official language of Fiji. It's one of the official languages. In a speech made in 2001, the late Ratu Joni Madraiwiwi a former vice president of Fiji, who you would never accuse of being racist, said, and I quote, already the character of this country has become more appreciably Fijian. That is neither good nor bad in itself. It is merely a fact. So I think on the last statistic that I saw, the Taukei comprise about 63-65% of the population.

And Ratu Joni continues. For that reason, now is perhaps the time to begin considering the adoption of Fijian as the national language. So, national, not official. I say that without prejudice to other languages, particularly Hindi. But if we are to build a national identity, let it begin with the language of the first indigenous inhabitants of these islands. It would have the advantage of giving a protected status.

Language is the core of one's identity. For it allows us to express our feelings and outlook in our own terms. In this era of globalization, Fijians will not long survive if sustained efforts are not made to protect it. And he then ends by asking a question. Without it, where will the Fijian people be? End of quote. I now turn to a different topic, which is one that has excited a great deal of interest in your nationwide travails. And that's section four of the Constitution, which says in the short title, secular state. And I've been listening and reading with great interest calls for Fiji to be a Christian state. For the record, let me state that I'm a Christian.

I'm a Roman Catholic. So I set out in my written submissions the whole of section four. Now, there have been a number of calls in your journey around Fiji that calls for references to secular state be removed. And a number of submittees have asked or submitted that Fiji should be declared in the body of the Constitution to be a Christian state. Mr. Chairman, I think there is a misunderstanding of what exactly is a secular state. From my understanding of the Constitution, the purpose of a secular state is to prohibit politics and religion mixing to the extent that it may be humanly possible.

Now, secularization is not a rejection or absence of religion. It is certainly, in my view, not a rejection of Christianity or any other religion for that matter. Those that conceive of Fiji as a Christian state might not recognize the danger that a fundamentalist government at some future time might seek to force Christianity of all of the people of this country.

You can do it in the kingdom of Tonga, which is culturally and religiously homogeneous. But I think that kind of religious chauvinism is unlikely to work in a country such as Fiji. It's likely to be a point of division and not a point of unity. The last thing we want is to end up being a theocratic state, like a country such as Iran, where the machinery of the state and the machinery of religion are inextricably linked and one and the same. A secular state is neutral as far as religion is concerned. It does not favor one religion over another.

It may allow voluntary religious observance within state institutions, such as prayer in state schools. Mr. Chairman, in my view, secularism is not an argument against Christianity. It does not question Christian principles or indeed the beliefs of any religion. It is essentially a political and legal doctrine that government and religious institutions must be

independent of each other and kept separate. So when I've been reading the newspapers and listening to calls for Fiji to be declared a Christian state, I've asked myself, what exactly do they mean? How does a state become Christ-like? How does a state, how does a country become Christ-like? Do they mean that the official religion of Fiji should be Christian? Can a country become like Christ? How does elevating Christianity as the state religion sit in a country where we have significant minorities that practice other religions? In my view, the best way the country can become a Christian state is for those who profess to be Christians to be more Christ-like in their daily lives and the way they treat their neighbor. I don't know my Bible very well, most Catholics don't, but I think the Methodists here in this room will understand the Bible, the St. James Version.

I think the greatest commandment is love. If you love your neighbor, the Bible doesn't say your neighbor has the same skin color as you or the same hair or type or eat the same food. Your neighbor in the Bible is such a large expression. Your neighbor is anybody really. So, the best way we can practice Christianity is to love our neighbor. So, I do not support calls for Fiji to be made a Christian state.

I'm content for Section 4 to remain, that we should remain a secular state. You'll be opening a Pandora's box if you decide to tweak Section 4. Now I want to turn to Section 5. This is controversial where there's a big pronouncement, all citizens of Fiji shall be known as Fijians. And that has really irked a lot of people and I think I can understand why.

We've passed the stage now of everybody knowing that this was an imposed constitution. Nobody was consulted on this. I think two people somewhere did a hatchet job and came up with this. They thought that if we legislate us all being called Fijians, we'll suddenly wake up one morning loving each other because this is a unifying characteristic. Nobody in this country is a non-Fijian, we're all Fijians. Well, that's all well and good if it's come through a democratic process.

But if somebody on the Mount of Olives decrees this without consulting the original group of persons who were described by the British since 1874 in the Fijian Affairs Act, they're Fijians and Indians and they're general electors. I believe sincerely that all of us accept the wisdom of having a common name. A common name. But the common name that we choose should reflect a broad consensus of what we should call

ourselves. If the indigenous people of this country for 100 plus years have self-identified themselves as Fijian and then they wake up one morning and then the constitution says everybody is Fijian and they haven't been consulted. For those people, not for me, for those people there's a sense of they've taken a part of who we are without asking us.

I think that's the point of grievance that we should recognize. So, in 1944 the Fijian Affairs Board, Fijian Affairs Ordinance was established or re-established to regulate indigenous affairs. And the legal expression Fijian to refer to the indigenous people of this country was replicated in the 1970s, the 1990s, and the 1997 constitutions. And the word Fijian was explicitly used to refer to the indigenous people of this country in contradistinction to the other races. But as a result of the Fijian Affairs Amendment Decree 2010, it decreed that wherever the word Fijian is any law of Fiji, it should be replaced with the word Taukei. So, I think that's a sore point for a lot of people.

So, the incentive to call everyone in this country Fijian has its origins in efforts to find a common name for all who call this country home. If the truth be told, Mr. Chairman, we remain still a nation of ethnically separate communities with a nascent national identity that is still being developed. But we're making progress.

And the late Ratu Joni Madraiwiwi said, and I quote, our collective sense of nationhood of being Fiji citizens only manifests itself on the occasion of great sporting victories or national tragedies. You know, when Serevi comes back from the World Cup and brings the gold medal from Rio, people come out in their hundreds. When we see our team play sevens in Vancouver, the majority of the people there are Indo-Fijian brothers and sisters.

So sports has a great way of unifying our people. So as I mentioned, the description Fijian to describe all citizens of this country, regrettably, is controversial and has had a polarizing influence. So I'd say a bit more in my written submissions on this. In the Reeves Commission, which I had referred to earlier, which led to the 1997 Constitution, Sir Paul Reeves, Tom Forthora, and Brij Lal, they thought that the common name for people living in this country should be Fiji Islander was appropriate for all who live in this country. You know, we have Cook Islanders, we have the Cocoa Islands. So, I mean, something for you to think about when we get to this stage.

The SDL party's submissions to the Yashgai Commission was not against a common name. Its view was that if all citizens were to be called Fijian, this must be done following consultations and with the agreement of the native Fijians and all the other races in Fiji. I will end this part on a common name, just by referring, some of my Rotuman friends are totally up in arms when I refer to them as Fijian, and they remonstrate, I'm not a Fijian, I'm a Rotuman.

So, nobody consulted me. So, the Rotuman on your commission is not here, but anyway. So, this person said to me, I don't want to be called Fijian, I'm a proud Rotuman. I said, well, good for you. So, that's the problem with imposing a common name when the issue is a little more intricate, more complex than that. And a significant number of people in this country do not speak the Fijian language or live the Fijian way of life or practice Fijian customs or traditions.

In a speech delivered in June 2018, Biman Prasad, the current leader of the NFP, said, and I quote, In position of a common name does not promote common and equal citizenry. In position of a common name does not promote or achieve equality, dignity and justice for our ordinary people. In position of a common name does not promote meritocracy in recruitment and appointment to positions, particularly in the civil service and our security forces, equal opportunities and a sense of pride and patriotism.

End of quote. In my research preparing these submissions for your commission, Mr. Chairman, I came across an editorial comment in the Fiji Times on the 9th of March 1970, just before independence, on a debate on a common name on the eve of independence. And the editorial said, and I quote, "No hasty decisions can be taken on a matter of such importance as a common name in any multi racial society" but it is obvious that the Fijian people themselves and their leaders feel that with the approach of dominion status for Fiji a common national name is necessary. What it should be will need a lot of thought by people of all races and at all levels of community life.

So this debate has been going on for more than 30 years. I think it's time to come to closure, but in a consultative democratic way that meets the broad acceptance of all the people of this country. So I'm going to fast track here and talk about the Bill of Rights, which is Chapter 2. The Bill of

Rights is a cornerstone of democracy. It enshrines the rights of all our people and affirms the democratic values of human dignity, equality and freedom. Mr. Chairman and fellow commissioners, the Bill of Rights, when you look at it in Chapter 2, looks impressive at first glance. You had all these wonderful rights, freedom of assembly, information, privacy, education, environmental rights, rights of children, rights to health.

But if you look at it more carefully, many of the rights have been limited. The state does not have to justify laws limiting rights before an independent court on the grounds that they are necessary in a free and democratic society, unlike the 1997 Constitution. Instead, the government will usually only have to show that the limitation is reasonable. So the expression reasonable is very subjective. So I would respectfully draw your attention to the Bill of Rights and to look closely at the claw back provisions which limit the rights which, on the one hand, are purported to be granted to citizens. Although the rights provided for in the 2013 Constitution are generally consistent with the main human rights covenants and treaties, the extent of the guarantee of true protection for the exercise of those rights, in my view, is severely limited in a number of ways.

If you turn to Section 6 of Section 5, it permits restrictions which are potentially unlimited on the rights by ordinary statutes, whereas it is normal for possible limitations or regulation of rights to be defined by constitutional provisions. And as I've mentioned earlier, the Constitution itself permits very broad restrictions on particular rights. Mr. Chairman and fellow commissioners, in my view, any limitations on any rights must be reasonable and justifiable, as would be the case in a free and democratic society. I now wish to turn to Section 26, subsection 3A, on non-discrimination. It is noted that there has been a suggestion to delete the words sexual orientation, gender identity, and expression from Section 26, 3A. International precedents and jurisprudence indicate that discrimination on the grounds of sex covers discrimination on the basis of sexuality.

And in my written submissions, which I'm happy to share with the Secretariat later, I refer to decisions of the Supreme Court of the United States going back to 2020. I quote three decisions there. And in one of those cases, the court held that direct discrimination because of sexual orientation or gender presentation was a form of direct discrimination because of sex.

And Justice Gorsuch, writing for the majority in the Supreme Court of the United States, said, and I quote, It is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex. So I'm sure in your available time you'll be able to look at those cases and unpack the reasoning. So if you discriminate against people on the basis of sexual orientation, it's a form of prohibited discrimination on the ground of sex.

The word sex in international legal precedents and cases extends to sexuality. And in the European Court of Human Rights, gender identity has been recognized as a separate and prohibited ground of discrimination. My hope, Mr. Chairman, is that we can live in a nation where tolerance is exalted and that people will not be judged by who they love, but by the content of their character. Now this is a new submission. I want to suggest for the Commission's consideration. We've got some unfinished business here in the Constitution.

And we can see that some of the Constitution of 2013 has not been operationalized. But from memory, there was an accountability commission. And we've never had it established. So I would like to suggest for your consideration that the Constitution be amended to establish a commission for racial harmony and national unity. You know, on Ratu Sukuna Day, and Human Rights Day, and Girmits Day, and all national holidays, people make these great speeches and prescriptions about national unity. And then it just fades away.

But if you look at social media, there's still a rather robust and loud minority that is continuing to make deeply offensive remarks about sending Indians back to India. I mean, like, in this day and age? Give me a break. So what I'm trying to say, Mr. Chairman, is we can't build national unity just by making speeches.

There have to be policies and institutions strengthened to work systematically to building national unity and eliminating racial prejudice, whether you're strengthening the Public Order Act or you're strengthening hate speech based on the ground of race, but having a national unity commission. It is evident, in my view, that race relations in Fiji and national unity need to be strengthened and improved, and that state intervention is needed. We can't just live together without state intervention.

National unity is vital to the long-term success of this nation. It is the foundation of our country's prosperity and success by providing the stability for investment, reducing conflict-related risks, and encouraging collaboration, collaborative effort across the racial divide. Harmonious race relations will promote social cohesion and trust, boosting consumer confidence, attracting investment, and align diverse interests towards shared national goals, increasing productivity and prosperity for all our country.

So what I'm trying to say in simple terms is national unity should be a key goal, but it shouldn't just be left to chance and to individuals. State intervention through a commission for racial harmony and national unity. For too long, it has been assumed that the different races that now call Fiji home will coexist.

But there has never been, in my view, any systematic and state-sponsored plan or action to improve race relations and to promote national unity in a positive and affirmative way through state policy and institutions. So, I recommend that the constitution should establish a commission for racial harmony and national unity to comprise three commissioners, and the granular details can be left to legislation to be passed by parliament, enabling legislation. The commission for racial harmony and national unity must promote respect for racial harmony, tolerance, and reconciliation, and the protection, development, and attainment of racial harmony, tolerance, reconciliation, and national unity.

My paper then goes on to say it will have the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, promote, investigate, research, educate, lobby, and advise the government on issues concerning racial harmony, tolerance, reconciliation, and national unity. I see the clock is moving very quickly. Section 40.

I'll have to skip over this very quickly. I've recommended that the environmental rights provisions in the constitution be strengthened. On qualification of voters, which is section 55, obviously the right to vote of all citizens is fundamental in a democracy, and one of the most powerful aspects of voting is its ability to ensure that the voices of all our citizens

are heard, especially those from marginalized communities who are often forgotten.

In a democracy, every eligible person, regardless of race, gender, income, or background, should have an equal right to participate in the electoral process. It goes without saying that this is essential to promote equity and fairness, and ensuring that diverse perspectives are represented in government decision-making. If you look, if you open your constitutions, which you probably know by heart by now, after several months, section 55.2, and it says section 55 deals with voter qualification and registration.

Look at, if you may, with respect, it says a person who is serving a sentence of imprisonment for 12 months or longer does not have the right to be registered as a voter. I have a view of that. The person is already serving a jail term, which is their punishment. It could be robbery of violence, lastly from the person, act with intent or whatever, gone in for 12 months or longer. Why should they be deprived of their right to vote? To me that's double punishment. They're still a citizen of the country.

They're not an adjudicated bankrupt. They're serving time under a penalty of law, criminal conviction. I believe that that provision is unfair, and I would urge you to look at it so that prisoners that are serving 12 months or longer are able to exercise their democratic right to vote for a person or a candidate of their choice in the general elections. I think that measure is double punishment. Then, just on to another topic, I turn to section 82 of the constitution, which deals with the powers of the president. The president acts on advice.

The president of Fiji is not an executive president like the president of the United States. It's the prime minister who's the chief executive of this country, not the president. You know and I know that the president is titular in the sense that he or she has ceremonial duties and functions, cutting ribbons and cutting cakes and opening bazaars and that sort of stuff, and consulted on other matters.

But there's a real danger of overreach if the president starts second-guessing the prime minister because it's the prime minister in whom the powers of leading or governing this country. So just on section 82, I would urge you to look at that, and if it needs strengthening, from time to

time we hear suggestions that the president of this country has prerogative powers. Well, the crown went and was removed in September 1987, and the British crown, through the ages, the crown had prerogative powers.

Those prerogative powers are no longer, and sometimes we hear even lawyers talking now with this constitution, Oh, where did the president get the powers to do this? Oh, he's got prerogative powers. It should be made clear in section 82 that there are no longer any prerogative powers in the president. So the appointment of the president in section 84, in the 1997 constitution, I think the president came to the GCC, and I know even some of my Fijian and Turkey friends want that back.

The president is not president of one race or one political party or one segment of the population. The president is the head of state of all of us. So I would ask that you consider a method of appointing the president that is democratic and reflects a broad consensus of the people.

Because under the 2013 constitution, we know that the political parties nominate a candidate for president and he or she is elected on the floor of parliament. So obviously the majority party that's in government will have the numbers. And so in a sense, the president comes through a politically partisan process.

I'm not talking now specifically about this president or this electoral process that led to the appointment of his excellency. I'm just talking more generally that I believe that section 84 in the appointment of the president, I would encourage you to look at a broad process rather than a narrow one. On the appointment of the chief justice in section 88, section 88 of the constitution deals with the acting chief justice, acting president.

Section 88 says when the president is away from Fiji or for any reason unable to perform his or her duties, it's the chief justice that acts as president. I think that provision is fraught with difficulty. You know, the chief justice is chairman of the Judicial Services Commission.

And then when you've got the JSC suing the president, there's a conflict of interest. And also it fudges the lines between the three branches of government. You've got the executive, you've got the judiciary, and you've got the three branches, the executive, the legislature.

So again, I would encourage you to look at the appointment of the acting president. Why not make the speaker, as is the case in many other countries, if the president is indisposed or unavailable, then that's a safer option. But to bring the judiciary in, and if there's a case against the president for misconduct, I think it's the chief justice that sets up the tribunal.

So we're kind of tying ourself up there in knots. I'm in support, Mr. Chairman and fellow commissioners, of the Bose Levu Vakaturaga being restored to its constitutional status as it was in the 1907 constitution. On the electoral system, which is chapter three, I'm sure if you ask the prime minister's office, you'll be able to see a copy of the Fatiaki committee report, which was delivered in July last year, but it hasn't seen the light of day.

So a lot of the thinking on the electoral system has already been done. And that's really the opening up a can of worms there because we're very late into the election season now. So rather than reinvent the wheel, you might wish to give some consideration to some of the main features of that Fatiaki report.

Now, I think there are serious deficiencies in the electoral system contained in the constitution. And a number of submittees around the country have already expressed their concern that there is no link of the members of parliament to any particular constituency. Now, if you look at the constitution, it talks about a single national role.

It doesn't talk about a single national constituency. So I think that provision in the constitution has been misinterpreted. So in my humble submission, we should go back to multiple constituencies.

So you look at the 55 current MPs, they serve the whole of Fiji. So if you're a cane farmer in the middle of Seaqaqa which of those 55 members is your local MP? Or if you're a villager at the bottom of Vatoa in the Lau group and you have a problem with island shipping or the cost of groceries coming in by transport, whatever, which of those 55 MPs do you go to? So we need a restoration of multiple constituencies serving discrete demographics within certain areas. Because I can tell you now, again, something you already know, the constituency needs of

somebody at Udu Point will be very different from somebody who lives in Nabulalevu.

Or somebody who lives in Nabukaluka in the middle of Naitasiri. Or somebody who lives in Makoi or Caubati in Suva. We have urban needs and dwellers.

We have rural needs and dwellers. And their needs and aspirations and interests vary widely across the country. When you don't have local MPs, the MPs are at wild, so to speak.

They're carte blanche. They are not held accountable by anybody. Whereas in the old days, when you had communal seats, Nandi communal or Nandi open, there's a geographic confine that their local MP, they could go to if there was a drainage problem in Yako, outside Nadi or Sabeto, in the cane districts.

Now it's just like free for all. And it's not working. And people don't like it.

So I would again respectfully draw that to your attention and suggest that something be done about that. The other issue that I had for your consideration is section 50, subsection 2C. Just bear with me for a second.

Yeah, there is this provision. I can't seem to get my hand on it at the moment. But if you want to stand for Parliament and you're part of the Fiji diaspora living in Vancouver or Wellington or Sydney, you have to be a resident in Fiji two years before the election.

That's the electoral act. It's an electoral act, is it? But I think it's also in the constitution.

Ms Nailatikau: I believe, Mr. Leung, that might be section 56.

Mr Graham Leung: Just bear with me for a second. Yes, sorry, 56, 56, 2C. Thank you, Ms. Nailatikau, 56, 2C.

So this lady keeps reminding me. Maybe I shouldn't say her name, but Ellen Whippy. She keeps calling me and saying, you know, can this, she lives in Sydney.

Anybody knows Ellen knows that she's not shy with her views on anything. And she wants to stand for Parliament. I said, you can't.

She said, I can't leave my family for two years and come in and satisfy this two-year requirement. All I'm trying to say, Mr. Chairman, is that we have a lot of good people that have Fiji at heart. And they may have migrated 10 years ago, 5 years ago, 15 years ago.

They still hold Fiji passports. And they want to come and serve this country, bringing their wealth and expertise. But this two-year rule is onerous.

Can you give some consideration to looking at that and maybe making the residential requirement more reasonable? Say three months or six months. Nobody's going to leave their family for two years just to satisfy the residential requirements to be a candidate. I think when you do that, you are excluding people that have the potential to serve our Parliament and serve our people through the Parliament.

So two years, I think I know why it was there. But, you know, it's a chance for you as commissioners to make a recommendation to make the residential requirements a little more flexible. Oh, yes, my favorite is Section 53.3. That's the 5% rule, which you would have heard all about.

It's, people have commented on this Dehont system. And the 5% rule means that unless you receive 5% of the votes cast, that's 53.3. A political party or an independent candidate shall not qualify for any seat in Parliament unless the particular party or independent candidate receives at least 5% of the total votes cast. I would urge you to look at that and see whether it should be changed and why, because it's quite a high threshold.

So you can be a candidate from the Unity Party like Save Narube and receive 6,000 votes. And not meet the 5% rule, which is on the last elections around 32,000. And yet you could be Candidate X for Party Y and receive 500 votes.

And because your number is small and you piggyback onto the leader's number, I think you people went somewhere in Lau and then one man there said, he used the Fijian expression, Kanaloto, you got a free ride.

So somebody got 500 votes, jumped on the bandwagon of somebody who got 120,000 votes, and that was their vehicle to get into Parliament. So when there's cynicism about an electoral system, it erodes trust in that system.

The system has to be credible so people can relate to it. They can't understand, and I can understand why. How come so-and-so got 5,000 votes, didn't get in? I mean that's some people's version of democracy, but I don't accept that.

So I would urge you to look at that. Then moving on, Section 64. Presently no elections take place in the event of a death or resignation.

In many countries where they have elected Parliaments, a by-election is a useful barometer to test the popularity and value of a government mid-term. So if you've got a government of four years or five years even, or even three years, the Australian Parliament's federal election has three-year terms. If there's a by-election in 18 months because a member for Wentworth has resigned, then everybody goes to the polls and you can question the government and say, OK, we want a new person to replace us.

With this system, in this constitution, the person next on the list with the next highest number comes in automatically. And in one way you save money not having to run a by-election, but in another way you deprive people of going to the polls for the government to refresh its mandate or to elect a new candidate to reflect people's disgust or disappointment with the performance of the government. No such flexibility exists with Section 64.

I have a lot to say on Chapter 5, which is the judiciary. I think it's important for the judges to have tenure. In the last 16 years, we had Sri Lankans coming here left, right and centre, and most of them were on three-year short-term contracts.

And they kind of knew because Fiji's a small place. If you made a decision that was perceived to be anti-government and offended one or two people, you knew you were on the next plane out. So, if you have tenure to strengthen judicial independence, then you shouldn't be afraid as a judge of making decisions that would displease the politicians.

So, I say a lot more in my written submissions. Just on the retiring age of judges, Section 110, you've got different retiring ages. For the Chief Justice, the President of the Court of Appeal, Supreme Court judges and judges of appeal, the retiring age is 75.

But for High Court judges, the retiring age is 70. And I would urge you to look at that and see whether there's a need for rationalizing and making more consistent the retiring age of the judges. People are living longer.

Remember, of course, that's one extremity. In the United States, the Associate Justices of the Supreme Court are elected for life. And in President Obama's time, he was hoping that Justice Ginsburg would resign so he could have a democratic candidate.

But she died at the age of 90 or something, 92. And she sat on the Supreme Court until the very end. So, obviously, we don't want people that have Alzheimer's sitting on the court.

But in relation to Section 110, please look at the retiring age of judges and see if you can rationalize that to make it consistent across the whole pyramid or spectrum of judges. On the appointment of the judges, removal of the judges, the removal provisions in Section 111, Subsection 1, I would submit should be widened to include removal of the judges for gross misconduct. On FICAC, Section 115, everybody's favorite whipping boy, girl, let me be clear for the record.

I am not against anti-corruption efforts. I think we all understand that corruption bleeds the poor and costs the country in terms of development. I don't believe that FICAC should be a constitutional body.

It was birthed by decree in 2009 and it should remain in a decree. FICAC, in my view, needs a major reset. It can continue, in my view, as a normal Act of Parliament and there are similar bodies in places like Namibia, Singapore, Hong Kong and New South Wales.

If you look at the legislation, FICAC is even permitted to deal with sexual offences, prostitution offences and abortion offences that don't fall within its core purpose of being an anti-corruption body. And FICAC should, in my view, be confined to being an investigative body. At the moment, it's an investigative and a prosecution body.

When I started working in the DPP's office around 1984, the DPP's office was the only prosecution authority and I worked under Sailosi Kepa in those days. But now, we've got different prosecution agencies and there's been a blurring of functions and responsibilities which I think is confusing. So, this may be an opportunity for the Commission to reset that.

Has FICAC delivered? Well, I think you know the answer to that as well as I do. I'm not going to say more than that. Section 117, subsection 5. Yes, it's interesting.

In Section 117, subsection 5, this Supra person in the DPP, he's appointed or she's appointed for seven years. That's quite a long period and I would urge the Commission to consider a reduction of the term of appointment of the DPP and to reduce it. We want a DPP that is not beholden to the executive and independent but to give the DPP a fixed term of seven years, I think is a bit long.

On the role of the military in Section 131, it goes without saying that it's universal practice that the military has no place in governance and politics. It's answerable to the elected government of the day. It's subordinate to civic governance.

And the principle of political control of the military is rooted in the concept of representative democracy. It refers to the supremacy of civilian institutions based on popular sovereignty over the army and security policy-making apparatus. In my view, the Constitution should embed clear constitutional guarantees to protect the state, including the armed forces, from two types of potential dangers, from politicians who have clear military ambitions and from military with political ambitions.

It must establish a clear legal and constitutional framework defining the basic relationship between the state and the military. In a democracy, the military is meant to be politically neutral to prevent any possibility of military intervention in civic and political affairs. When you look at Section 131, subsection 2, the language that the RFMF has overall responsibility to ensure at all times the security, defense and well-being of Fiji and all Fijians, that expression is pregnant with ambiguity and has given an appetite in some quarters for the military to second-guess what the elected government of the day is doing or not doing.

I think that needs to be remedied. In my view, on the face of it, those words do not provide a constitutional basis for military intervention in domestic politics or matters. Yet, when read in the light of the Constitution's enactment and justification, it appears that there is a segment of opinion that has regarded Section 131, subsection 2 as intended to affirm the assumption of the military as the extra-constitutional guardian of not only the entire citizenry, but also the 2013 Constitution.

So, I would urge you to look at that very closely. In its submission to the Guy Commission, the RFMF stated that its primary mission is to be the guidance of the governance of this country. It was based on thinking that the army was to be the last bastion of law and order to deal with both internal and external threats.

In my view, that's a bit of a stretch. In a democracy, the role of protecting the Constitution is the responsibility of the courts, the judiciary, and parliament. The military is only called out at the direction and request of government.

It is not the responsibility of the army to interpret or preempt the will of the people. And there's nothing extraordinary about that. It just reflects universal practice and principles, what I'm saying about the military being subservient to the elected government of the day.

You can't have two centers or two repositories of power. Okay, Section... If you look at the Constitution, there's an extraordinary concentration of power in this duet, the Prime Minister and the Attorney General. The Constitution refers to the Prime Minister 111 times and to the Attorney General 66 times.

So these were virtually persons who had accumulated through the Constitution vast amounts of power in their constitutional offices. In my view, this is something that needs serious reflection because when you vest so much power in individuals, it undermines democracy and it is dangerous putting so much power in the hands of two people. Together, the Attorney General and the Prime Minister control nearly all the appointments to the judiciary and the independent constitutional commissions as well as other senior state service appointments.

So the concentration of powers means that the positions is largely held unaccountable. And I expand that in some detail in my written submissions. I turn to Section 173, the constitutional protection of promulgations and decrees.

I would urge you to consider possibly removing or diluting those protections. The military regime after the 2006 coup enacted 103 promulgations after the coup between April 2009 and the abrogation of the Constitution of 1997 and 328 decrees between the abrogation and the 2014 election. So a total of 431 laws were either promulgated or decreed.

Many of those laws contained ouster clauses denying judicial challenge to them. For example, Decree 51, which completely changed the pension formula for pensioners, that was by decree. And because of the ouster clauses in Section 173, they can't be challenged.

So it is something that you might wish to look at. I see a lot of people have called for removal of immunity in Chapter 11. I will say this, when you grant immunity, it sends a dangerous signal that the violent or unlawful seizure of power is ultimately tolerable, provided it succeeds.

This undermines democratic stability in institutions and it lowers the deterrent threshold against future unconstitutional interventions. Historical experience, Mr. Chairman, Commissioners, strongly supports the conclusion that failure to hold military actors accountable encourages further defiance of civilian authority. Legal impunity for military actors undermines the rule of law by creating a category of persons effectively shielded from accountability.

The rule of law demands that all persons, regardless of influence, rank or office, are subject to the rule of law. Immunity provisions for coup perpetrators fundamentally contradicts this principle. And the dangers of impunity and immunity are not theoretical.

They simply are borne out by real world experience and demonstrated in many countries. So they offer a stark and cautionary example that we in Fiji can learn from. It is imperative that Fiji moves away from the practice of granting immunity to coup perpetrators.

If Fiji is to strengthen the integrity of its rule of law and secure long-term democratic stability, in my view it is essential that immunity for future coup perpetrators cease. I think it's a lot more challenging for past events, but moving into the future, it's something that needs to be discouraged. So in light of my submissions, I would urge that the CRC consider protections that ensure no future legislative or constitutional enactments can grant immunity from prosecution to any coup perpetrator.

Protections that ensure no future laws or constitutional amendments to grant immunity. The explicit recognition of coups as criminal acts constituting treason, and the complete exclusion of provisions granting immunity to individuals involved in any future unconstitutional seizures of power. I believe, Mr. Chairman, that Fiji must act decisively to break the cycle of coups and immunity that has left a mark in our constitutional history.

Anyone found guilty of treason should be banned for life from standing for any political office government board, committee, or instrumentality, and this should be written into the Constitution. I turn to Chapter 11 on constitutional amendment. The opinion of the Supreme Court in August 2025 reducing the threshold for changing the Constitution.

This is your chance now to rewrite that and give effect to whatever the Supreme Court decided, but instead of three quarters, two thirds. I suggest respectfully to the Commission that the Commission should make it mandatory to have a periodic review of the Constitution every ten years. It is a living, dynamic document, and the opportunity to revisit its workings will ensure that it is responsive to changing circumstances and fit for purpose.

There's nothing sinister about this. The Constitution is an evolving, dynamic document. Where it is rigid and unamenable, it becomes brittle and unworkable.

Of course, the demographics will change as the outward immigration continues, and we start having other people here. In conclusion, Mr. Chairman and fellow Commissioners, I trust that when you implement your instructions and finalize your work, you will bear in mind the words of Fiji's national anthem, Land of Freedom, Hope and Glory, and that your report reflects the high aspirations of our national anthem, which

resonate more strongly today. In conclusion, may I commend to you the words of the Honorable Prime Minister when he told Parliament on the 30th of April this year, and I quote, the Constitution is not just a legal document, it affects how we live, how we are represented, and how decisions are made about our future.

This is a process of profound national importance. It must reflect the real aspirations and diversity of our people. Let us work together to bring about constructive changes to our Constitution, a Constitution which embodies the values of equity, justice and freedom, and delivers the promise of a multicultural society to fruition.

It promises a unified nation that draws strength from our unique character and from our diversity. Mr. Chairman and members of the Commission, in conclusion, it is my fervent hope and prayer that you will have the courage and the vision to reset our supreme law, and that you will future-proof our Constitution to withstand the pressures of partisanship and vested interests bent on putting self before the national good, that you will not succumb to expedient, but do what is right for Fiji. And I have full confidence, when I look across the table, that you have the ability and the conviction and the wisdom to rise to the occasion.

I thank you. Happy to take any questions.

Mr Valenitabua: Thank you very much, Mr. Leung, for a lifetime comprehensive submission.

I must say we have been directed to various provisions in the Constitution, which we need to look at and we will look at during our deliberations after submissions have been finalized or collected and finalized. Now I inquire of the Commissioners if they have any comments or questions which they would like to make or ask Mr. Leung. Mr. Kohli.

Mr Kohli: Thank you, Mr. Leung, very interesting hearing you, very comprehensive, and thank you for enlightening us about various sections of the Constitution. My only one query from you is how do you reconcile the fact that on one breath you are saying that we should have a constituency where people are represented, people should be able to see their MP, identify who they are and raise issues, and with the other breath you are saying that to reduce the residency period of people staying overseas to three months, so they come here in three months,

they win the election, and they disappear. How do you address that issue?

Mr Graham Leung: Thank you, Mr. Kohli, for that question I don't see those issues as sitting in tension with one another.

Obviously, if a person comes from, say, Sydney and decides to live in, say, Tamavua, Ragg Avenue, for three months before the election, and Ragg Avenue comprises a constituency covering part of Greater Suva, then if they are elected the people that live in that constituency have that person to relate to, so to speak, because he or she will be living there. So, I don't see that as a big difficulty, but obviously if the person loses, which is probably likely because if you have come from overseas and you have been living there for ten years, a lot of people have forgotten probably who you are. That difficulty would only arise if the person is elected, but they would be living in a physical locality and the people that live in that constituency would, in principle, hold that person to be accountable as being their local MP.

They kind of won't disappear. So, if Parliament, if they're elected to Parliament, Parliament's a four-year term. That Parliament would sit every month.

So, I don't see that as an immense practical difficulty. In any event, the chances of somebody from overseas who's disappeared or left Fiji for many years coming back and being elected, I think the chances would be quite slim.

Ms Nailatikau: Thank you, Mr. Leung.

It caught my attention, your submission relating to the possibility of by-elections, for example, when a representative either passes away or resigns and drawing examples from the United States, for example, where by-elections happen for either senators or representatives who represent a state or a district, would you be suggesting this as by-elections for Fiji with multiple constituencies as opposed to the current model that takes place or would that also be a nationwide election, for example?

Mr Graham Leung: If we had constituencies and only the people in that constituency would vote, it wouldn't be nationwide. It wouldn't involve other people.

Ms Nailatikau: Thank you.

I just wanted to check if that assumption was correct. And finally, forgive me if this takes things beyond what you might be willing to share, but particularly relating to the matter of a common national identity, it comes to be quite apparent that national unity or cohesion can't be something that is imposed. It's something that has to be reached by everyday common people in terms of being able to see themselves as common citizens and equal citizens.

Relating to arriving at a national identity, might this be something that you see your proposed Commission for National Unity and Racial Harmony play a role in, for instance?

Mr Graham Leung: Absolutely, yes. I see this proposed commission as playing a very important role in building coherence, building national unity, and seeking to promote the virtues of tolerance, coexistence, and racial harmony, not leaving it to chance in terms of broad speeches which politicians tend to make from time to time, and bringing along a population with them so that we work actively to promote racial harmony rather than just hoping that it will happen by chance. Mr. Begg has a question, I think, Mr. Chairman.

Mr Beg: Yes, Mr. Begg, please carry on. Thank you, Chair, through you. Thank you, Mr. Leung.

Very compelling submission. You know, I think it's very learned and fares well for me. There are a couple of things that excite me a bit in your submission.

There's the section on immunity, and your threat, if I can use the words, and the way it's framed is that, you know, the immunity hasn't come about from the 2013 Constitution. It's been with us since 1987, so that framework of immunity has promulgated itself through the various years and constitutions, and I'm not an expert in this, I must say, but it baffles me as well that through that historical foundation of this, how the immunity has come about has been born, to take some of your words, through that term, and I welcome your thoughts about it not being threats moving forward, but I was wanting to seek, because we have a Supreme Court ruling as well around this sensitive matter, and to add further to

this is the question of settlement in the historical events. I just wanted to ask your views on that.

Mr Graham Leung: I think, well, I thought, Mr. Beg, that you mentioned the word threat. I'm not a person by disposition or personality that is inclined to make threats, so I just wanted to make that clear, but look, I think we recognize that immunity is a complex issue and that it needs careful reflection. If you go back to 1987, that was, as I mentioned, that was the defining event which, 14th of May, 1987, I remember very vividly that day because I was a legal advisor to the Fiji Police Force based at Ratu Sukuna House, so I remember that fateful day.

So what happened was the 1990 Constitution, which was an imposed one, then the 1997 Constitution, which had bipartisan support in both Houses of Parliament and the GCC, and then the 2013 Constitution. All of those constitutions have provided for and perpetuated this immunity. So it's been with us for, what, 30 years or so.

Now, if you take 1987 as a starting point, not just the perpetrators of the coup, but those that took part in various ways, at various levels, whether it be policemen or soldiers or navy or civil servants, judges, lawyers, I'm not suggesting that all of those, that it is humanly possible to prosecute all those people going back if you lift the cover of immunity from prosecution because it would be an administrative and legal and constitutional nightmare going back that long, covering hundreds of people. And we need to be careful we don't go down a rabbit warren, which we can't get out of because it's sensitive and difficult and complex. What I had in mind was moving forward, I think the Constitution should work, maybe say a couple of paragraphs on that, but perhaps leave the immunity as it is for now because it's embedded, but recognizing that it's a poison chalice that we need to do something about, make provision in the amendment bill in the Constitution and say explicitly that if you're going to do a coup in the future, this is the result and you won't get immunity from prosecution in the future and to send a warning to anybody out there who feels that they can use the precedent of the past as a get out of jail card in the future.

I think that's what I had in mind. And as I told the Truth and Reconciliation Commission a few months ago in an oral submission, I was reading somewhere that somebody stole a loaf of bread or something from the top shop and they went to jail for six months. I said in a different context,

well, you can stage a coup and end up being prime minister and so there's a moral contradiction there.

It's very difficult for people trying to understand what's happening, how you can have two sets of rules when we talk about the rule of law. So I don't know what the answer is exactly. I'm not a constitutional law expert Mr Beg.

But that's my rather long-winded answer to your curly question.

Mr Beg: Thank you. I apologize if I came across as being threatening.

I was trying to primarily establish the foundations of your submission around this chapter, which is very exciting. Thank you.

Mr Valenitabua: Mr. Leung, relying on your experience, we had an interesting submission at the FNU last week.

The submission was presented by someone knowledgeable and educated The that all public servants and members of the disciplinary forces are to take an oath similar to the oath of affirmation and allegiance which are in the Constitution. I say similar because there was a slight difference submitted to us and the submission was that the oath was to be taken to the Constitution. That's it, to defend the Constitution of Fiji.

Now, the oath of allegiance, for example, states that I will be faithful and bear true allegiance to the Republic of Fiji, to the country according to law, and I will obey, observe, uphold, and maintain the Constitution of the Republic of Fiji. Now, that is, according to the submission which we received, it was to be changed to say that I will be faithful and bear true allegiance to the Constitution of the Republic of Fiji. Full stop.

It was interesting to us as we were sitting there. Dr. Gounder was there and Mr. Beg was there. With your experience and expertise, could you give us a comment in relation to that submission? Is the affirmation of allegiance and is the oath of allegiance? A slight difference.

Oath of allegiance to the Constitution and oath of allegiance to the Republic of Fiji. We were asked to differentiate and distinguish those two. It's a question.

If you are minded to answer, you can answer. Otherwise, we'll just keep it.

Mr Graham Leung: I mean, if you make an oath of allegiance to the country, it's the country.

Generically, it's Fiji or the State of Fiji. I think the oath of allegiance to the country is wider than the oath of allegiance to the Constitution. The Constitution is the supreme law of the country and it governs every other law in the country, subordinate to and bends to the will of the Constitution.

I can't see why you can't have both. I mean, given the upheavals we've had with extra constitutional usurpations of authority, I think it's important to commit to and promise to obey the Constitution. Because when we disobey the Constitution, that's when we have people thinking it's okay to go outside the Constitution to change the government.

Because the Constitution provides the machinery for a peaceful transition of power, the holding of elections to elect new governments or dismiss governments. So, I think we shouldn't go outside that. I'm in favor of both.

If you're a citizen of this country, you promise an oath of allegiance to this country, to Fiji, the country. But equally important, you promise with this oath or affirmation, you promise obedience to the Constitution. Provided it's the Constitution of the people that has been enacted through a democratic process.

Some people would have an objection to committing or making an oath to a Constitution which is imposed. But for now, it's the Supreme Law. I hope that answers the question.

It's a question that deserves closer reflection and consideration.

Mr Valenitabua: Thank you. And one more, please.

During our consultations throughout Fiji, there have been calls for the return of the Senate. Do you have a comment in relation to that?

Mr Graham Leung: I thought about that. You know, in 1917 and in the 1970 Constitution, we had a bicameral legislature.

And you must remember the 1970 Constitution which gave birth to the Senate and the bicameral legislature as part of the lawmaking machinery. We inherited from the British after constitutional discussions in 68,69 at Marlborough House in London. And the Senate had representatives of the Great Council of Chiefs as it was then known, or the BLV.

I believe the Senate was a British construct to protect the rights of the Indigenous people, especially with regard to amending legislation affecting Fijian land and Fijian interests. Now I think in this day and age, I wonder whether a Senate is relevant, not just in terms of the cost to government, but in terms of the lawmaking process. It is obvious that after a bill is passed by the House of Representatives as it was then known, it went to the Senate for the Senate's assent.

But to answer your question in a nutshell, I don't think a Senate is essential to good governance and to a democracy. New Zealand has a unicameral legislature. Australia at the federal level has the House of Representatives and the Senate.

Penny Wong is a Senator. I think the concept of the Senate is a colonial vestige. It harkens back to post-independence when the Constitution took a very paternalistic view that the indigenous Fijians needed that extra layer of constitutional protection.

Today, when I open Facebook, I see so many taukei graduates in PhDs in various fields. A lawyer friend of mine Romulo Nayacalevu recently got a PhD from the Australian National University. A lot of water has passed under the bridge since 1970.

I think we need to be designing a Constitution that is forward-looking and progressive and not overly nostalgic about a past that's been overtaken by events. It may have worked in 1970, it may have worked in 1997, but do we need it in 2026 moving forward? I don't know. That's my rhetorical answer to your question.

You always ask me the difficult questions.

Mr Valenitabua: Thank you very much. Thank you very much for those comments and answers.

We have been overtaken by time. We have two other sessions this afternoon. We thank you again for appearing before us.

You have taken us through the Constitution section by section, which we really appreciate. We will consider what has been submitted to us this morning from yourself. Thank you very much again.

We would like to take a photo session with you, please.

----------End of Session [29-6-2026]----------

SUBMISSIONS TO CONSTITUTION REVIEW COMMISSION

By Graham Leung

Mr. Chairman, Members of the CRC

I welcome the opportunity to make a submission to the CRC because it gives me the chance to share with you my views on constitutional reform, and to some extent, the future of our country.

You have been appointed to perform a critical task at an important juncture in our nation's troubled and sometimes fractured history.

Heavy responsibilities have been placed on your shoulders.

You have travelled the length and breadth of our islands. – from Rukua to Rakiraki; from Nabukaluka to Nabouwalu.

The journey has been long and tiring, and I congratulate you for staying the course.

I recognise that your job is not to draft a new Constitution but to solicit the views of the people of Fiji as to what they think might need changing, and what if any parts should be retained in the present Constitution.

In some respects, you do not have a blank canvass and are not starting from scratch.

Essentially, you have been saddled with the responsibility of advising Government on how the 2013 Constitution can be improved upon.

The changes you recommend to the Constitution will not be an abstraction, but a set of guidelines for action which have grown out of our nation's aspirations and experiences.

My sense of what the nation's future might look like is conditioned by my understanding of Fiji's past history and current events.

I believe that our collective history, trauma and experience impose upon us all as citizens of this wonderful and sometimes troubled country, duties that we cannot avoid.

So much of what has happened in the past compel us to respond to some unpleasant and inconvenient truths. It is time to address them. We can no longer afford to sweep them under the mat.

So, as you near the finish line, in carrying out your solemn mandate, you must ask yourself: what kind of vision do you imagine for our country? What kind of legacy do you wish to bequeath to your children?

The original inhabitants of Fiji could not have imagined the profound changes that accompanied the colony following cession.

With indenture in 1879 came the first wave of Indians. Many remained and chose to remain in the country after the abolition of indenture. Subsequent waves of voluntary immigration followed with an influx of Indians from the state of Gujerat, Sikhs, labourers from the Solomons, Gilbertese, Chinese merchants and so on. Colonial policy dictated and influenced many of these events.

By the early 1960s, Fiji had become a rich tapestry of different races, largely subsisting in silos and essentially living separate and compartmentalised lives.

Independence in 1970 forced the country to deal with the realities of different ethnic groups which for a prolonged period had little to do with one another,

Many of the world events which are happening as we speak or which have taken place in our lifetime rightly give us just cause for pessimism.

A war rages in Ukraine; the Gaza strip has been pummelled with untold death. The status of the Strait of Hormuz remains uncertain.

At home one only has to pick up the newspapers to be reminded of a drug problem of near epidemic proportions, the world's highest HIV infections and depressing levels of poverty the likes of which we have not seen before.

These are not mere statistics.

We are talking about the lives of our fellow citizens many of whom for whatever reason, have been unable to realise their full potential, robbing them of a life of dignity and happiness.

But we have shown in the past, despite these troubling circumstances, that we have the resilience and strength to pick up the pieces and to soldier on. In spite of all the terrible things that have happened, our country has exhibited an enormous capacity for adaptation and survival.

However, it is not enough. Some of our finest minds have left our shores since that watershed event in 1987. We have lost both brains and capital as a result. And growing numbers continue to do so. The figures are depressing; some say in excess of 100,000 have left for greener pastures.

All the ethnic groups that make up our country today have strengthened and enriched Fiji with their cultures, their energies, their food and commitment. They have made our nation what it is today.

Our progress, at times disrupted and halting, reflects social and political challenges as well as economic ones.

We cannot turn the clock back even if we wished. Our past cannot be ignored or readily extinguished. What we can do is to learn the error of our ways and not repeat our past mistakes.

It is against this backdrop of both global and domestic events that the current constitutional review is taking place.

This review process which you are leading, presents a once in a lifetime chance to get things right, to rise above partisan political point scoring and to reset our constitutional foundations as a forward-looking country, embracing the rule of law and the values of equity, fairness and justice for all.

It must involve strengthening our democratic institutions and processes, insisting on building a nation of shared values and a shared destiny, on which the well-being of all is secured.

At the same time, we cannot move forward unless there is a collective understanding and acceptance of the fact that the indigenous people of this country, by virtue of their indigeneity have a special place deserving of recognition. For too long, attempts at addressing by way of affirmative action the situation of our indigenous brothers and sisters has been dismissed, even derided. It is possible to bring about greater economic empowerment of Fiji's indigenous people in a way that does not discriminate against the other races. The mistake is to conceive of these concepts in a way that is binary.

I believe that reducing the "wealth deficit" between the different races will be the key to Fiji's long-term peace and security.

1. HISTORICAL CONTEXT 2013

   Like the 1990 Constitution (and in contrast to the 1997 Constitution), the 2013 Constitution was not endorsed by the parliament. It was an imposed Constitution that received neither Parliamentary approval or endorsement by the people of Fiji.

2. PREAMBLE

2.1 Core Values

Section 3(1) should be strengthened

Add the words "rule of law after the word "equality".

3. LANGUAGES

Recognising the historically diminished use and status of the indigenous language of Fiji, the state must take practical and positive measures to elevate the status and advance the use of their languages.

In a speech he made in 2001, the late Ratu Joni Madraiwiwi said:

> "Already the character of this country has become more appreciably Fijian. That is neither good nor bad in itself, it is merely a fact. For that reason, now is perhaps the time to begin considering the adoption of Fijian as the national language. I say that without prejudice to other languages, particularly Hindi. But if we are to build a national identity, let it begin with the language of the first indigenous inhabitants of these islands. It would have the advantage of giving it protected status. Language is the core of one's identity for it allows us to express our feelings and outlook in our own terms. In this era of globalisation, Fijians will not long survive if sustained efforts are not made to protect it. Without it where will the Fijian people be?"[1]

Secular State – Section 4

Section 4 of the Constitution states:

Secular State

4. - (1) Religious liberty, as recognised in the Bill of Rights, is a founding principle of the State.

(2) Religious belief is personal.

(3) Religion and the State are separate, which means -

(a) the State and all persons holding public office must treat all religions equally;

(b) the State and all persons holding public office must not dictate any religious belief;

(c) the State and all persons holding public office must not prefer or advance, by any means, any particular religion, religious denomination, religious belief, or religious practice over another, or over any non-religious belief; and

(d) no person shall assert any religious belief as a legal reason to disregard this Constitution or any other law.

[1] Speech by Ratu Joni Madraiwiwi at the 29th Annual Congress of the Fiji Institute of Accountants, 23 June 2001.

There have been objections to the references to secular state in section 4. Some observers have called for the removal of the provision designating Fiji as a secular state. However, the Constitution does not actually explicitly state that Fiji is a secular state.

In any event, I think there is a misunderstanding of what exactly is a secular state. The purpose of a secular state is to prohibit politics and religion mixing, to the extent that may be humanly possible. Secularism is not a rejection or absence of religion. It is not a rejection of Christianity or any other religion for that matter.

Those that conceive of Fiji as a Christian state might not recognise the danger that a fundamentalist government at some future time might seek to force Christianity on all the people of this country.

A secular state is neutral as far as religion is concerned. It does not favour one religion over another. It may allow voluntary religious observance within state institutions, such as prayer in state schools (Ulrich).

President Macron has stated:

> *"As I've said on many occasions, laicite in the French Republic means the freedom to belove or not believe, the possibility of practising one's own religion as long as law and order is ensured. Laicite means the neutrality of the State; in no way does it mean the removal pf religion from society and the public arena...."* (Elysee 2020)

Secularism is not an argument against Christianity. It does not question Christian principles or indeed the beliefs of any religion. It is essentially a political and legal doctrine that government and religious institutions must be independent of each other and kept separate.

Some have called for Fiji is to be declared a Christian state. What exactly do they mean? How exactly does a state become Christ like? Do they mean that the official religion of Fiji should be Christian? Can a country become Christ like? How does elevating Christianity as the state religion sit in a country where significant minorities practice other religions? Could it lead to Fiji going down the path of theocratic government?

In my view, the best way the country to become a Christian state is for those who profess to being Christian, to be more Christ like in their daily lives and the way they treat their neigbour.

Common Name – Section 5

We know from history that the contemporary word "Fiji" originated from the Tongan word for *Viti* now spelled *Fisi*, By the time of Cession in 1874 (Deed of Cession) the expression was in use to identify the country's indigenous people. There are several references to the word "Fijian" in the Deed.[2]

Since 1874 and for more than a century, the word Fijian has become synonymous with the indigenous of this country. From the earliest colonial days, the Legislative Council the precursor of today's Parliament, and laws passed in that period consistently used that descriptor and reserved it for the indigenous or "native people" of Fiji.

Thus for example, in 1944 via the Fijian Affairs Ordinance, the Fijian Affairs Board was reestablished to regulate indigenous affairs, firmly embedding the term in legal, native regulations. In the 1970/1990/1997 Constitutions, the expression "Fijian" was explicitly used to refer to indigenous Fijians, distinguishing them from "Indians" or "Fiji Islanders". In 2010, the Fijian Affairs Amendment Decree officially replaced the word "Fijian" or "indigenous" in all written laws with the word "iTaukei" when referring to Fiji's native people.

Section 5 of the 2013 Constitution established that all citizens of Fiji are to be known as "Fijians". Views on the term Fijian are widely divergent and unfortunately, rather than being a vehicle for national unity, has become a source of contention and division. This has occurred for a number of reasons. First in as much as the indigenous have identified themselves and by successive colonial administrators and laws for a prolonged period as Fijians, they have assumed proprietorial rights as it were over the word.
More importantly however, there is deep seated resentment, given the latter, that they were never consulted over the decision to broaden the scope of the category of persons to be included in the description.

The incentive to call everyone in this country Fijian has its origins in efforts to find a common name for all who call Fiji their home. If the truth be told, we remain a nation of ethnically separate communities with a nascent national identity that is still finding its way. The late Rt J Madraiwiwi said "Our collective sense of nationhood of being Fiji citizens only manifests itself on the occasion of great sporting victories or national tragedies." The description "Fijian" to describe all citizens is controversial and polarising, and views are mixed.

[2] See Preambular paragraphs 1 ff in the Deed of Cession" "Fijian group of islands"; "Fijian chief Thakombau"; "Fijian language".

The 2013 Constitution declares in the Preamble "that we are all Fijians united by common and equal citizenry".

Section 5 then states "All citizens of Fiji shall be known as Fijians". The word "Fijian" has been in use since the 1800s (possibly even earlier) to identify and describe the first settlers of this country, who according to some anthropologists, arrived in these islands more than 3000 years ago.

Since cession, Fiji's British colonizers have referred to the indigenous people of Fiji as "Fijians". Screeds of laws since 1874 have reaffirmed that description. The 1970, 1990 and 1997 constitutions all drew distinctions on the basis of race.

On 1 July 2010, Ratu Epeli Nailatikau, then President of Fiji, made a new law (Fijian Affairs (Amendment Decree No 31 of 2010), with far reaching consequences.

The word "Fijian" was to be removed in any law wherever it appeared, and replaced with the word "*i Taukei*". The present Constitution of Fiji which was signed by President Nailatikau, came into effect on 7 September 2013.

It was imposed on the people of Fiji by a presidential decree – it is not the result of any approval or consensus by the people of this country, but the brainchild of two men.

Fiji did not have a Parliament at the time because the government had been unlawfully removed in a *coup d'état* seven years earlier.

An interim administration backed by the army governed Fiji.

The BLV has been resolute that the common name for the people of Fiji should not be "Fijian".

The Reeves Commission which drafted the 1997 Constitution felt that "Fiji Islander" was an appropriate name for all citizens of Fiji.

The SDL party's (which later morphed into the present day SODELPA) submission to Professor Yash Ghai (who was drafting a new constitution before it was trashed), was not against a common name.

Its view was that if all citizens were to be called "Fijian", this must be done following consultations, and with the agreement of the native Fijians and all other races in Fiji.

Many Indians, Chinese and other races who live in Fiji are "uncomfortable" being called "Fijian" and are proud being referred to by their ethnicity.

When this matter came up in a recent discussion, a colleague said to me: "I don't want to be called 'Fijian'. I'm proud to be a Rotuman."

A significant number of people in this country do not speak the "Fijian" language, live the "Fijian" way of life, or practice "Fijian" customs or traditions (e.g. "*curu i bure*", "*matanigasau*" etc.)

In a speech delivered in June 2018, Mr Biman Prasad, current NFP leader and one of Fiji's three Deputy Prime Ministers, said "Imposition of a common name does not promote common and equal citizenry. Imposition of a common name does not promote or achieve equality, dignity and justice for our ordinary people. Imposition of a common name does not promote meritocracy in recruitment and appointment to positions, particularly in the civil service and our security forces, equal opportunities and a sense of pride and patriotism."

The editorial comment in The Fiji Times of 9 March 1970, on a debate on a common name on the eve of Fiji's independence, said:

"No hasty decisions can be taken on a matter of such importance as a common name in any multi-racial society. But it is obvious that the Fijian people themselves and their leaders feel that with the approach of dominion status for Fiji, a common national name is necessary. What it should be will need a lot of thought by people of all races and at all levels of community life."

Many would argue that the word "*Taukei*" is not a substitute for the word "Fijian". Nor are the words synonymous.

It is evident that many indigenous people of Fiji feel a deep sense of grievance (even loss) in the "application" of the classification "Fijian" to persons of all ethnicities who have made this country their home.

The sense that this is akin to a form of cultural appropriation stems from the way the name Fijian was forced on people. This was regarded by some as arrogant and culturally disrespectful.

They would argue that the word of and by itself is not intended to convey a sense of superiority or supremacy over other races.

The description "Fijian" has been subsumed into the identity and psyche of indigenous Fijians. The very word connotes an entire culture with its rich traditions, protocols, values and beliefs.

The 2013 Constitution boldly stated that "WE, THE PEOPLE OF FIJI.... DECLARE that we are all Fijians..."

The problem with this lofty statement is that the people of Fiji made no such declaration. It was intellectually dishonest.

In 2008, the National Council for Building a Better Fiji (NCBBF) had recommended "Fijian" as the common name.

Reacting to the suggestion, former Parliamentarian Mr Mick Beddoes said the NCBBF had totally ignored the views of the Fijian people.

He said "I would have thought that if this is what we want, then we should first discuss this with our indigenous people first and obtain their views and preferences."

Just as the Maori are the *tangata whenua* of Aotearoa, in the same vein it could be argued that the indigenous people of Fiji have over time, acquired a proprietary right to use of the word "Fijian" to describe themselves.

The issue is clearly divisive and makes some people nervous. One can even argue that the word "i *Taukei*" is unsuitable to describe "native" Fijians because it can be confused with the radical indigenous nationalist movement of the same name.

But sweeping the issue under the carpet is unhelpful. Pretending that the mere description of all citizens of this country as "Fijians", somehow makes us all "equal" is a little simplistic.

It ignores the protracted debate about what is the most appropriate and common name for all people who now call Fiji home.

Dialogue on the question should take place in a calm and respectful way.

Cross cultural misunderstandings are more likely to occur when there is a failure or refusal to listen.

We should not confuse the idea of ethnicity and nationality. I believe that we can celebrate our common destiny as one people, while being proud of our different ethnic backgrounds.

As someone with three grandparents who were ethnic Chinese, and a mother who was registered in the *Vola ni Kawa Bula*, I do not feel diminished or excluded by not being referred to as a "Fijian".

I am proud of my Chinese heritage. Equally, I have been enriched by my "Fijian" ancestry. But I am not defined by a piece of paper.

The strong sense of belonging and affection I have for this country does not depend on what others choose to call me.

If by majority or consensus the indigenous agree to "sharing" the description for all citizens, that would be ideal. In the absence of any such agreement, I am in favour of Fiji Islanders.

The present debate about a common name for Fiji citizens is healthy. We should not feel threatened by it, but welcome the opportunity to have an honest dialogue on the issue.

But it is time once and for all, to secure agreement and consensus on this issue. It is an issue which has festered for more than half a century. We need to come to closure so the country can deal with more pressing national problems that confront us all.

Bill of Rights – Chapter 2

The Bill of Rights is a cornerstone of democracy. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

The Bill of Rights looks impressive at first glance, but it has serious limitations on many rights.

The State does not have to justify laws limiting rights before an independent court on the grounds that they are necessary in a free and democratic society [as in 1997] Instead, the government will usually only have to show that the limitation is 'reasonable'.

Although the rights provided for in the 2013 Constitution are generally consistent with the main international human rights covenants, the extent of the guarantee of true protection for the exercise of those rights is severely limited, in two main ways.

First, section 6(5) permits restriction (potentially unlimited) of rights by ordinary statutes, whereas it is normal for possible limitations on or regulation of rights to be defined by constitutional provisions. Second, the Constitution itself permits very broad restrictions on particular rights.

Any limitation on any rights must be reasonable and justifiable in a free and democratic society.[i]

Non-Discrimination - Section 26(3)(a)

It is noted that there has been a suggestion to delete the words "*sexual orientation, gender identity and expression*" from section 26(3)(a). International precedents and jurisprudence indicate that discrimination on the grounds of sex, covers discrimination on the basis of sexuality.

For example, on 15 June 2020 the Supreme Court of the United States handed down judgment in three combined cases, *Bostock v Clayton County* (2020), *Altitude Express v Zarda* (2020), and *Harris Funeral Homes v Equal Employment Opportunity Commission* (2020). In this judgment the court held that direct discrimination because of sexual orientation or gender presentation was a form of direct discrimination because of sex. Gorsuch J, writing for the majority, stated:

"It is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex." (*Bostock v Clayton County* (2020)).

'Gender identity' has been recognised by the European Court of Human Rights as a separate ground under the prohibition of discrimination included in the European Convention on Human Rights (ECHR).

My hope is that we can one day live in a nation where tolerance is exalted and that people will not be judged by who they love but by the content of their character.

4. COMMISSION FOR RACIAL HARMONY & NATIONAL UNITY

It is evident that race relations in Fiji and national unity need to be strengthened and improved and that State intervention is needed.

National unity is vital to the long-term success of the nation. It is the foundation of our country's prosperity and success by providing the stability required for investment, reducing conflict-related risks, and encouraging collaborative efforts.

Harmonious race relations will promote social cohesion and trust, boosting consumer confidence, attracting investment, and align diverse interests toward shared national goals like increased productivity and prosperity.

For too long it has been assumed that the different races that now call Fiji home will and must co-exist. But there has never been any systematic and State sponsored plan or action to improve race relations and to promote national unity.

5. RECOMMENDATION

It is therefore recommended that the Constitution should establish a Commission for Racial Harmony and National Unity to comprise three Commissioners. The granular details can be left to legislation to be passed by Parliament.

The Commission for Racial Harmony and National Unity must promote respect for racial harmony, tolerance and reconciliation and the protection, development and attainment of racial harmony, tolerance, reconciliation and national unity.

It will have the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, promote, investigate, research, educate, lobby, advise and report on issues concerning racial harmony, tolerance, reconciliation and national unity.

The Commission will have the additional powers and functions prescribed by national legislation.

Environmental Rights – Section 40

This will benefit from being strengthened in a number of ways.

First, second 40(1) should be amended with the addition of the following words:

"The State has a positive duty to preserve and defend the environment."

Second, section 40(2) should be deleted as it constitutes a serious "claw back" and qualification on the rights conferred in section 40(1) of the Constitution.

Qualification of Voters – Section 55

The right to vote of all citizens is fundamental in a democracy. One of the most powerful aspects of voting is its ability to ensure that the voices of all citizens are heard, especially those from marginalized communities. In a democracy, every eligible person, regardless of race, gender, income, or background, should have an equal right to participate in the electoral process. This is essential in promoting equity and fairness, ensuring that diverse perspectives are represented in government decisions.

Section 55(2) unfairly discriminates against persons serving a term of 12 months imprisonment or more. They are already serving time and being punished for having committed a crime. Removal of their right to vote is an additional punishment, which has little justification.

6. INDIGENOUS RIGHTS

There is something odd about proprietary rights in relation to land in this country.

It is well known that the majority of land in Fiji is owned by the original inhabitants. Most land is "native".

Before and after cession until the sale of land was stopped by Sir Arthur Gordon, all land was owned by the Taukei. A small proportion was alienated and sold to white settlers and the balance was vested in the Crown (today's successor being "the State").

Preambular paragraph 2 of the Deed of Cession states:

> *That the possession of and full sovereignty and dominion over the whole of the group of islands in the South Pacific Ocean known as the Fijis.....and over the inhabitants thereof, together with the possession of and sovereignty over the waters adjacent thereto and of and over all ports harbours havens roadsteads rivers estuaries and other waters and all reefs and foreshores within or adjacent thereto, are hereby ceded to and accepted on behalf of Her said Majesty the Queen of Great Britain and Ireland her heirs and successors, to the intent that from this time forth the said islands and the waters reefs and other places as aforesaid lying within or adjacent thereto may be annexed to and be a possession and dependency of the British Crown."*

In the Fijian political consciousness, it is a matter of confusion and puzzlement that they can own the surface of the land and waters for that matter, but not what is below it.

There remains a sense of grievance by many indigenous that the State has arrogated to itself a proprietary interest in minerals below the land. That this codified in section 30 of the Constitution offers little relief.

There are compelling arguments based not only on the Deed of Cession, but more generally on pre-colonial history, that minerals in the ground are the property of the traditional landowners who have recognised title to such land. Restoration of mineral rights to Fijians will right an historical anomaly.

To paraphrase scripture, it is timely that the Commission consider rendering unto Caesar what is Caesar's.

Powers of President – Section 82

Section 82 of the Constitution should be strengthened to ensure that the President has only ceremonial duties and functions.

It should be made clear that he/she does not possess prerogative powers such as were vested in the British sovereign and extended to her representatives in the person of colonial Governors or Governors General in Dominions.

Appointment of President – Section 84

The President is the symbol off national unity. He/ she is meant to be politically neutral. He is the embodiment of the State and representatives the entire country with its different constituents and races including people of different political persuasions.

The head of state typically reflects the virtues of inclusivity and consensus-building. He/ she builds bridges and unites the nation. This inclusive approach fosters solidarity and national unity. He/ she is a symbol of national unity and above party politics.
While I recognise that the 1997 Constitution the BLV was the appointing authority for the President, I would respectfully suggest that a more progressive approach now commends itself.

The role of the chiefs in Fiji's history is indisputable. At times they have vacillated between great acts of statesmanship and generosity[3] and served an accommodative function.

[3] Eg After several attempts, Ratu Sir Lala Sukuna was able to convince the Council of Chiefs to agree to a statutory trustee that would manage their lands, leading to the creation of the NLTB in 1940. The availability of land has been critical to the development of Fiji.

In moments of exigency, they have also succumbed to the pressures of the masses and surrendered their neutrality and independence for political ends.[4] The BLV endorsed the formation of the *Soqosoqo ni Vakavulewa ni Taukei* (SVT) party.

The party was founded in 1990 as the political vehicle of the BLV with the aim of uniting all indigenous Fijians.

While the current BLV professes to be independent, there is no guarantee that its future membership will necessarily adopt a similar stance.

Opening up the appointment of the country's President to all citizens irrespective of race or social standing will enable all the people of this nation to more closely identify with the President, thus cementing his role as the symbol of national unity.

Afterall, the President when appointed, is President of the entire country, not any segment or section thereof.

Appointment of Acting Chief Justice – Section 88

Section 88 of the Constitution puts the Chief Justice in an awkward predicament. It should be repealed. When the President is unable to perform of his responsibilities they should be carried out by the Speaker of Parliament.

The Chief Justice should not act when the President is unable to. The current provision undermines the separation of powers doctrine and potentially places the Chief Justice in a situation of conflict of interest.

Appointment of Prime Minister - Section 93

A strong case can be argued for term limits under section 93 of the Constitution. This would bring it into line with section 85. The nation's leadership will benefit by changes and refreshment from time to time of the position of head of government.

7. RECOMMENDATION

That the Prime Minister, like the President, be limited to a maximum of two terms in office.

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[4] It is widely understood that the GCC supported the 1987 coup – see Norton file:///C:/Users/OVALA/Downloads/The_changing_role_of_the_Great_Council_o%20(1).pdf

Appointment of Attorney General - Section 96(2)(b)

The current language and scope of section 96(2)(b) is unduly wide and restrictive and should be amended.

A lawyer cannot be appointed as Attorney General if he/ she "has been found guilty of ANY (sic) disciplinary proceeding".

Thus, for example, if a lawyer is found guilty of professional misconduct (for e.g. failure to answer a client's phone calls), that is enough for disqualify him/ her from being appointed Attorney General – notwithstanding that he/ she may otherwise have an unblemished record.

Section 96 also has an inherent anomaly. A lawyer might have been convicted of a criminal offence such as common assault, but as the law stands, that would not be a constitutional bar to his/ her being made the chief law officer of the land.

8. UNICAMERAL LEGISLATURE

In my view, the Senate has served its time and should not be restored. It was first established under the 1970 Constitution and retained in all subsequent Constitution with the exception of the 2013 Constitution. Laws affecting Taukei land, customs or customary rights could not be passed in the Senate unless it received the approval of at least ¾ of the BLV appointees to the Senate which comprised 22 members.

The Senate basically was a house of review to oversee Fijian or Taukei interests to ensure supervision and protection of indigenous rights and aspirations. This was primarily through the BLV appointees to the Senate.

It was a product of its time and reflected the paternalism of Fiji's colonial masters who felt that the Fijians needed to be protected least their interests be undermined or subjugated. Given the country's demographic trends and trajectory, the Taukei will continue to be the majority race (62%?).

The level of "educated" Fijians today is a lot higher than it was in 1970 or 1997 for that matter. The composition of Parliament is predominantly Taukei. That being so, they are in a good position to protect and safeguard the interests of the Taukei without the necessity of a second chamber.

The current arrangement of having a unicameral legislature should be maintained.

Judicial Services Commission – Section 104

As in the previous Constitutions, the President of the Fiji Law Society should be a member of the JSC: see section 104.

9. ROLE OF THE BOSE LEVU VAKATURAGA (BLV)

The constitutional status of the BLV should be revived. But it should remain as an advisory and not a legislative body.

If the BLV is to be refashioned as a second Chamber or Upper House, this will inevitably make it an integral part of the law-making or legislative process, this is likely to weaken its role as the "guardian" of the interests of the Fijian people. By preserving its independence, it will be more effective in safeguarding and holding the government of the day accountable for addressing the concerns and interests of the *iTaukei*.

In other words, the BLV can be more effective if it is independent of government rather than being a part of the machinery of government.

A BLV which is not constitutionally tied to the apparatus of government has the potential to play a much bigger role as a force for social and political cohesion and guardian of Taukei interests.

The Electoral System – Chapter 3

In July 2025, the Fatiaki Committee which undertook a full review of Fiji's current electoral system and laws reported back to government on its recommendations.

I would strongly urge the CRC that rather than re-invent the wheel, you consider its report which could form the basis of your own recommendations, especially with regard to any changes to the Constitution and the electoral system.

It has been widely recognised that there are serious deficiencies in the provisions for Fiji's electoral system.

Of particular concern has been the fact that there is no link of members of parliament to representation of a particular constituency. This is because the entire country is a single constituency. I believe this stems from an incorrect interpretation of section 53 of the Constitution which speaks of "*a single national electoral roll*".

There is nothing in the Constitution which prescribes or states that Fiji must have no more than one constituency.

I would recommend that for future elections, Fiji should be divided into multiple constituencies, carving up the entire country into smaller divisions or entities.

In this way, constituents can identify with and have links to a "local MP".

Multiple constituencies would be fairer, more democratic and strengthen the accountability of MPs to their constituents.

Section 56(2)(c) of the Constitution fails to recognise that with globalization and labour mobility, many Fiji citizens who live and work overseas but who have a lot to contribute to the development of the nation, cannot stand for Parliament.

The 2-year residential requirement to qualify as a candidate to stand in general elections is unduly restrictive and long. Fiji too small a country – we need the best brains to run the country & stand for Parliament – Fiji is part of a globalised world. There is no need to limit ourselves in this way. It's actually hurting us.

It should be reduced to a much shorter period to allow for a greater pool of talent and ability for voters to choose from to represent them in Parliament.

Fiji is too small – we need the best brains to run the country and stand for Parliament. We are part of a globalised world. There is no need to limit ourselves in this way.

Section 53(3)

The 5% rule contained in section 53(3) of the Constitution has seriously disadvantaged independent candidates and those from smaller political parties. It sets an impossibly high threshold which produces results which are unfair and undemocratic.

By Elections - Section 64

This should be amended.

By virtue of section 64, presently no by elections take place under the Constitution in the event of a vacancy caused by the death, resignation of an MP.

The next highest ranked candidate in the general elections of the same party gets "promoted" when a vacancy occurs.

The better practice is to permit by elections to take place giving the voters an opportunity to hold either the government or opposition parties accountable to the people and or to refresh its mandate.

Judiciary – Chapter 5

An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice.

Over the last 2 decades, there has been a significant number of judicial appointments drawn from Sri Lanka. In certain respects, this has been a concern.

The majority have been on short term contracts and lacked tenure. In that regard there were perceptions that judicial independence may have been compromised because some may have been "beholden" to the executive branch of government and in particular the Prime Minister and Attorney General.

Over the last 2 decades, there has been an influx of judicial officers from Sri Lanka into Fiji. Opinions are divided as to the value added and contribution of judges and magistrates from that country, the majority of whom were on short term contracts.

The real issue however is not the origin-country of foreign judges but their contractual precarity: in cases alleging government abuses, judicial officers may have had to choose between upholding – albeit to the limited extent the constitution envisages – constitutional rights and renewal of their contract controlled by the appointing authority.

There was a sense that judges on short term contracts appeared hesitant to use the expansive bill of rights in the 2013 *Constitution* to resist oppressive laws and acts by government instrumentalities.

It is important therefore, particularly for High Court and senior judges to have "tenure". [5]

The United Nations Basic Principles on the Independence of the Judiciary (1985) state: 'The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law. Judges . . . shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties'.

Across the Commonwealth and beyond, practices vary:

- United States: Federal judges and Supreme Court justices hold office for life ("during good behaviour").
- Canada: Supreme Court justices have tenure until the mandatory retirement age of 75.
- United Kingdom: Supreme Court justices have tenure until the mandatory retirement age of 75.
- Australia: High Court judges have tenure, typically with age-based limits.
- Malta: Constitutional Court judges are appointed permanently until retirement age.
- India: Supreme Court judges have tenure until the age of 65.
- South Africa: Constitutional Court judges are appointed for long, non-renewable terms (12 to 15 years), rather than lifetime.

To assist with judicial administration, there should be a new post of Deputy Chief Justice.[6] This is important in the context of succession planning and to reduce the administrative burdens on the Chief Justice.

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[5] https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary
[6] South Africa, Kenya, Indonesia are examples of countries which have the position of Deputy Chief Justice.

Appointment of Chief Justice & President of the Court of Appeal: Section 106(1), (3)

This should be amended to remove references to the Attorney General. Both judicial officers should be appointed by the President on the advice of the Prime Minister following consultation with the Leader of the Opposition.

Retiring Age of Judges – Section 110

This ought to be standardized and made consistent. For the Chief Justice, President Court of Appeal, Supreme Court Judges, and Judge of Appeal the retiring age is 75. By contrast the retiring age for Judges of the High Court is 70. There is no rational basis for the divergence.

An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice. Successive coups have served to weaken the administration of justice and undermined judicial independence. Some Judges and magistrates have been summarily dismissed. Others have had their contracts prematurely terminated. The strains and pressures on the judiciary have been well documented. Restoring the judicial system to its pre 1987 status is work in progress.

(2) Judges may only be removed from office on the ground of mental incapacity or for gross misconduct.

Appointment JSC consult PM & Leader Opposition

Section 110 appointment of non-citizen judges – for a period not exceeding 3 years.

The retiring age of all judges should be consistent and standardized to be at the age of 75.

Presently for Chief Justice, President CA, SC Judges and Judges of Appeal is 75; High Court judges 70. There is no rational basis for the different standards and treatment of the judges: section 110(2)(a)

Removal of Judges – Section 111

While there is provision for removal of the Chief Justice and the President of the Court of Appeal, there is no corresponding provision for the removal of other Judges including those on the High Court. This should be considered.

The removal provision in section 111(1) should be widened to include "gross misconduct", in addition to misbehaviour.

Fiji Independent Commission Against Corruption (FICAC) – Section 115

Does Fiji need an anti-corruption body? The answer is a definite yes.

There is little doubt that Fiji requires a dedicated body to address corruption. anticorruption body on its own, or even the government on its own, cannot succeed in defeating corruption. A widespread problem that affects the entire country requires public support if it is to be mitigated and overcome.

Corruption is basically stealing from the public purse. It undermines trust in government, leaving behind crumbling infrastructure, failing health care and social services.

Should it be in the present form as contained in the Constitution and the FICAC Act of 2007? My view is No.

FICAC needs a reset. There is no reason why it should be retained in its current form as a constitutional body. It can continue to exist under an Act of Parliament, like similar bodies in places like Namibia, Singapore, Hong Kong and NSW.

The FICAC Act lacks clarity and coherence as a scheme. The Act as in force permits FICAC to deal with sexual offences, prostitution offences and abortion offences that do not fall within its core purpose of dealing with corrupt conduct.

FICAC should be confined to being an investigative body only, leaving the prosecutorial function to the ODPP. Until the time of FICAC establishment, Fiji has effectively had only one overarching prosecution authority.

The vesting of prosecution powers in FICAC has blurred the lines and created two centres of gravity as it were. This is confusing and wasteful.

There are real concerns that the body that investigates also has the power to lay charges. The potential for conflict of interest in this arrangement is real, with an absence of checks and balances within FICAC. In Namibia, the country's Anti-Corruption Commission simply investigates and hands over the evidence and files to the national prosecution agency.

In Singapore, the Corrupt Practices Investigation Bureau CPIB carries out the investigations, but prosecutions can only be instituted with the consent of the Public Prosecutor. [7]

Under the Independent Commission Against Corruption Act 1988 (NSW) (ICAC Act), the Independent Commission Against Corruption (ICAC) does not have the power to charge or prosecute individuals for criminal offences. Instead, its primary role is investigative, focusing on uncovering and addressing corrupt conduct involving public officials and public authorities.

ICAC is empowered to investigate allegations of corruption, gather evidence, and make recommendations, but it is not authorised to conduct prosecutions for criminal offences or disciplinary actions Gamage v Riashi [2024] NSWSC 975.

The 2006 coup which caused the removal of the Qarase government had initially been depicted as a 'clean-up' campaign against corruption. As it turned out, little evidence was found against the government that was forcibly removed. Allegations of corruption were the ostensible reason for staging the coup, and led to the promulgation of the FICAC Decree 2007.

FICAC's history and deliverables have been underwhelming. A year after the 2006 coup, there was scant evidence of corruption, despite strenuous efforts (Frankel). Those targeted were usually officials identified with the Qarase government or known opponents of the new regime, but dismissals were invariably accompanied by allegations of corruption, mismanagement and abuse of office.

10. *Has FICAC delivered*?

I don't believe so.

FICAC's budget has seen a substantial increase since its inception. In 2007, the agency operated with a budget of $1.5 million. By the 2024–2025 fiscal year, this figure had risen to just under $10.5 million, marking an exponential growth in funding over 17 years. The total budget allocation from

[7] Section 33 Prevention of Corruption Act.

2007 to 2025 amounted to $139,175,583.

Despite this massive spending, concerns persist regarding FICAC's effectiveness and independence. As of the latest available data, FICAC employs 144 staff members, including 14 lawyers. The increase in budget and staffing has not necessarily translated into a higher rate of complaint resolution, more convictions or enhanced public trust in the agency's operations.

Since its establishment in 2007, Government has provided a cumulative total of around $139.2 million in annual grants to FICAC to support its operations. On any measure, this is a colossal amount of money.

Taxpayers of this country are entitled to ask: how has this money been spent? What results have been produced? How many people have been sent to jail for abuse of office, corruption or related offences?

More than $40 million was spent on the incomplete FNU Labasa campus. The project was at 47% completion when work stopped. The cost of the yet-to-be-finished Lautoka Swimming Pool has escalated from the initial budgeted amount of $2 million to $12.6 million. The anecdotal evidence suggests that the big corruption cases have either not been investigated, or not led to the laying of charges against those implicated.

11. Allegations of Political "Weaponization

FICAC has been accused of being used as a political tool, particularly during the last administration. Critics argue that instead of serving as an impartial anti-corruption body, FICAC was employed to target political opponents and dissenters. A senior academic has stated that FICACs primary purpose was to harass, threaten and arrest the opponents of the previous regime.

In December 2022, the leader of the Unity Party said that FICAC had been politicised and was being used as a weapon. He said that the cases that are reported to FICAC are politically motivated. "I believe it is just that it was established as a political weapon and is used as a political weapon."

In March 2024, the former acting head of FICAC maintained that in the past, there had been a lot of interference in the work of the organization.

Despite this significant financial investment, concerns persist regarding FICAC's effectiveness and independence. As of the latest available data, FICAC employs 144 staff members, including 14 lawyers. The increase in budget and staffing has not necessarily translated into a higher rate of complaint resolution or enhanced public trust in the agency's operations.

In its 2014 annual report, the Fiji Independent Commission against Corruption (FICAC) recorded 79 convictions since its inception in 2007; 26 cases acquitted, withdrawn, or declared *nolle prosequi* (charges discontinued); and 121 cases pending.

FICAC is an institution that "sends shivers down some people's spines," boasted the Attorney General as FICAC's employees assembled for their annual awards night (*Fiji Sun,* 17 Jan 2016).

Public confidence in the Commission has been eroded by perceptions of its low levels of efficiency. During a Parliamentary debate on the Commission's 2016-2017 Annual Report, the former National Federation Party President Mr. Pio Tikoduadua questioned the performance of the Commission that as of 2021 only had a 0.2% success rate in convictions against the total number of complaints, despite the Commission website stating 67,417 complaints had been received, 1,570 cases investigated, 366 individuals charged and 115 individuals being convicted[8].

12. RECOMMENDATION

FICAC needs a major re-set. It should be confined to investigations only, and not lay charges or conduct prosecutions. The ODPP should be the only and principal prosecution agency in Fiji.

FICAC will have to demonstrate its neutrality, independence and effectiveness, in other words, ffulfil its mandate, if it is to regain public confidence in its operations.

Office of Director of Public Prosecutions (ODPP) – Section 117

The DPP should continue to be appointed by the JSC.

This was the position under the 1970 Constitution until the establishment of FICAC in 2007. There is no need for the Attorney General to be consulted in the appointment of the DPP. This has the potential to draw political considerations into the appointment.

The resources spent on FICAC should be redeployed in strengthening the ODPP to undertake corruption related prosecutions.

[8] *The 'FICAC' Factor*

Section 117(5) of the Constitution – this should be reduced to a term of 5 years.

13. Limiting the Potential Control of the Executive over the Proceedings of Parliament:

As already suggested, a key principle of a parliamentary government involves accountability of the executive to the elected legislature. However, from 2014 to 2022, the executive government almost completely dominated the proceedings of Parliament. In the process, legislation was enacted with little or no scrutiny (very little different, in practice, to the enactment of promulgations and decrees by the military regime, 2006-2014), and pursuit of the goal of accountability of the executive through question time in Parliament was almost non-existent.

The Commission should consider recommending provisions that guarantee separation of roles and powers of the executive and the legislature, and empower the legislature to play its proper roles in terms of ensuring accountability of the executive.

Role of Military - Section 131

Universal practice is that the military has no place in governance and politics. It is answerable to the executive branch and subordinate to civic governance.

The principle of political control of the military is rooted in the concept of a representative democracy. It refers to the supremacy of civilian institutions, based on popular sovereignty, over the army and security policy-making apparatus, including the military leadership.

The Constitution should embed clear constitutional guarantees to protect the state - including the armed forces - from two types of potential dangers: from politicians, who have military ambitions, and from military with political ambitions. It must establish a clear legal and constitutional framework, defining the basic relationship between the state and the military.

In a democracy it is vital that the military is politically neutral, to prevent any possibility of military intervention in civic and political affairs. Control of the military by the elected representatives of the people—is fundamental. This enables a nation to base its values, institutions, and practices on the popular will of the people as espoused by their parliamentary representatives, rather than on the choices of military leaders, whose outlook by definition focuses on the need for external security and threats.

For peace and democracy to prevail, the military must remain committed to the rule of law. Democracy is maintained by ensuring that military actions and decisions are subject to control and oversight by civilian authority.

Under s.131(2) the RFMF has 'the overall responsibility...to ensure at all times the security, defence and well-being of Fiji and all Fijians' (section. 131(2)).

On the face of it, those words do not provide a constitutional basis for military intervention in domestic politics or other matters. Yet when read in light of the Constitution's enactment and justification, it appears that there is a segment of opinion that has regarded section 131(2) as intended to affirm the assumption of the military as the extra-constitutional guardian of not only the entire citizentry, but also the 2013 Constitution and the post-2006 'gains' it embodies.

The RFMF has '*the overall responsibility ... to ensure at all times the security, defence and well-being of Fiji and all Fijians*' (s. 131(2)). These words do not provide a constitutional basis for RFMF intervention in domestic politics or other matters.

In its submission to the Ghai Commission, the RFMF stated its primary mission to 'be the guidance of the governance of this country'. It was based on thinking that the army was to 'be the last bastion of law and order', 'to deal with both Internal Security and external threats.

In a democracy the role of protecting the Constitution is the responsibility of the courts/ judiciary & Parliament. The military is only called out at the direction and request of government. It is not the responsibility of army to interpret or pre-empt the will of the people.

This reflects universal practice and principles. The RFMF still insists on its extra-constitutional guardian role. That self-appointed mandate persists as a shadow over the country and its constitutional order – an ever-present threat of military intervention against any deviation from the RFMF's perceived vision for Fiji.

Civilian authorities define national security goals and policies, while the military possesses expertise to execute those goals.

The military must be a professional, neutral, non-partisan force focused on national security rather than domestic politics. The purpose of the military is to defend society, not to define it.

14. CONCENTRATION OF POWER IN THE PRIME MINISTER & ATTORNEY GENERAL

There is a huge concentration of powers and executive authority in the PM and AG. The 2013 *Constitution* mentions them 111 and 66 times respectively. unconstrained. This lends the Constitution and governance of Fiji towards authoritarian rule without checks and balances. It undermines democracy and is dangerous putting so much power in the hands of 2 people only.

Together they control nearly all appointments to the judiciary and independent commissions and offices as well as senior state service and other appointments.

The Prime Minister also controls the remuneration and removal of members of constitutional commissions and 'independent' constitutional office holders.

The Commission should consider recommending significant changes that reduce the constitutional provision for these offices, and ensures their accountability.

In most modern democratic constitutions providing for parliamentary executive bodies, the prime minister is selected by the majority group in the legislature, and governs through a cabinet on the basis of collective responsibility. The attorney-general, if mentioned at all, is usually a relatively minor office serving as the senior legal adviser to the executive government.

Normally any detailed provision on the roles and functions of both offices is contained in ordinary statutes, which is one way in which the executive government is made accountable to the legislature, on behalf of the voters. In contrast, the 2013 Constitution creates the offices of prime minister with 'enormous powers', and an Attorney-General with remarkably broad powers.

This concentration of powers means that the positions are largely unaccountable.

The Commission should consider recommending significant changes that reduce the constitutional provision for these offices, and ensures their accountability.

Together, these two offices control most appointments to the formally 'independent' offices and commissions through their joint control of the Constitutional Offices Commission (COC). It is the COC that appoints the Human Rights and Anti-Discrimination Commission; the Electoral Commission and Supervisor of Elections; the secretary-general to parliament; the Public Service Commission; the commissioner of police; the

commissioner of the Fiji Corrections Service; the RFMF commander; the auditor-general; and the governor of the Reserve Bank of Fiji (s. 133).

This situation arises because the six members of the COC are the prime minister, as chairperson, who also appoints two members; the leader of the opposition who appoints one member; and the Attorney-General (s. 132(2)). Hence, the Prime Minister and Attorney-General together control four of the six members.

Further, the Prime Minister has other significant roles, of appointing and setting remuneration for the Chief Justice, the President of the Court of Appeal, and other 'independent' offices and indirect powers to initiate removal processes. The Attorney-General chairs the Mercy Commission and vets its members.

In order to protect the independence of constitutional office-holders from influence – even domination – by the executive government, thereby undermining their central purposes as accountability bodies, the executive should have just one representative of the COC (or any equivalent body).

Further, consideration should be given to including provision limiting the number of portfolios that may be vested in a single minister.

Preservation of Laws - Section 173

The constitutional 'protection' of Promulgations and Decrees should be removed:

The military regime, enacted 103 'promulgations' in the immediate post-coup period before the April 2009 abrogation of the 1997 Constitution, and 328 'decrees' between the abrogation and the 2014 election, a total of 431 'laws.

Many contained 'ouster' clauses denying judicial challenge to them. It would be normal for a new constitution to make any pre-existing law (of any kind) that is inconsistent with it invalid to the extent of the inconsistency involved.

The 2013 Constitution further provides that, even if they violate rights or other constitutional provisions, these laws 'shall continue to be in force in their entirety' until Parliament amends or repeals them (s. 173(2)).

This protection of the promulgations and decrees should be removed, so that they are open to challenge for breach of the Constitution.

Immunity – Chapter 11

A *coup d'état*, by its nature constitutes a fundamental breach of constitutional order. It involves the unlawful overthrow of a democratically established government and the substitution of authority through coercion or force. While "treason" is a legally defined offence, coups amount to a grave betrayal of the State and its constitutional framework. To grant such immunity for such acts is, in effect, to legitimize unconstitutional seizures of power.

Immunity sends a dangerous signal, that the violent or unlawful seizure of power is ultimately tolerable, provided it succeeds. In turn, this undermines the democratic stability of our nation and lowers the deterrent threshold against future unconstitutional interventions. No functioning democracy can endure where those who dismantle it are shielded from accountability.

Historical experience strongly supports the conclusion that failure to hold military actors accountable encourages further defiance of civilian authority.

A key finding from the comparative experience is that granting immunity does not neutralize military power, it entrenches it.

Legal impunity for military actors undermines the rule of law by creating a category of persons effectively shielded from accountability. This weakens the principle of equality before the law and erodes civilian supremacy over the military, both of which are essential to the consolidation of stable democratic governance.[9] Further, unconstitutional conduct, including the seizure of power through force, is implicitly normalized and communicates that successful coups may ultimately be met with legal forgiveness rather than consequence, therefore lowering the deterrent threshold for future unconstitutional interventions.

The retention of immunity provisions for coup perpetrators (and aiders and abettors) risks

- Entrenching the continued political influence and autonomy of coercive state actors – by insulating them from consequence and legal scrutiny

[9] McSherry (n 1) 6.

- Weakening the deterrent effect against future unconstitutional takeovers of government – signalling that unconstitutional seizures of power may be excused
- Undermining public confidence in the consistent and equal application of the law – by creating exceptions to the principle that all persons are equal before the law

Furthermore, the democratic consolidation is structurally constrained where those responsible for subverting constitutional order remain beyond the reach of legal accountability. Rather than bringing closure to periods of instability, institutionalized impunity preserves the underlying power asymmetries that enable recurrence.

The continued inclusion of immunity provisions for coup perpetrators in Fiji's constitutional framework is difficult to reconcile with the principles of constitutional supremacy, civilian control of the military and equality before the law. A durable democratic order requires that no individual or institution is placed above accountability for the unlawful acquisition or exercise of state power.

15. IMMUNITY & THE RULE OF LAW

The rule of law demands that all persons regardless of influence, rank or office are subject to the law. However, immunity provisions for coup perpetrators fundamentally contradicts this principle. Instead, it creates a class of individuals who are above the law, shielded from accountability for actions that would otherwise constitute the gravest criminal offences.

The Constitution is the 'supreme law of the land' and it cannot condemn unlawful seizure of power while protecting those who commit it. Such contradictions hollow out constitutional supremacy and replace it with political expediency. When the law is selectively applied, it ceases to function as law and instead becomes an instrument of convenience.

16. IMPLICATIONS OF IMPUNITY

The dangers of impunity and immunity are not theoretical; they are simply borne out in real-world experience and demonstrated in countries like Myanmar. This case offers a stark and cautionary example for Fiji to learn from.

When perpetrators of humans' rights and serious constitutional violations are not held accountable for their actions, they are emboldened. Immunity does not bring closure, instead it perpetuates cycles of abuse.

Ultimately, what this proves is that impunity did not facilitate genuine democratic consolidation but instead, it entrenched structural inequalities of power and preserved the political autonomy of military institutions.

Where impunity does not resolve instability, it institutionalizes it. Where accountability is denied, the underlying conditions that enabled unconstitutional conduct, very much remain intact.

Therefore, it is imperative that Fiji shifts away from the practice of granting immunity to coup perpetrators. A stable democratic order cannot be built on foundations that excuse the unlawful seizure of power.

The removal of immunity provisions is a necessary step toward securing the integrity of the rule of law and protecting our nation's constitutional future.

These dangers of impunity extend far beyond the absence of punishment. In many states that transition from military rule, impunity has been embedded not only through legal mechanisms such as pardons and amnesties but also through the continued dominance of military institutions within civilian governance structures. In turn, this results in a constrained system in which elected leaders formally govern while key areas of power remain under military influence.

Our continued inclusion of immunity provisions for coup perpetrators risks entrenching a similar pattern in which military actors retain influence beyond constitutional limits.

Even where formal democratic institutions are restored, immunity creates a structural imbalance by placing certain actors beyond the reach of the law further undermining civilian supremacy and compromising the independence of the judiciary.

Essentially, stability or closure is not brought about by impunity. Rather, it lowers the threshold for future coups by affirming that unconstitutional conduct can be negotiated and left unpunished. The idea that the military retains a residual authority to intervene in political life is simply normalized.

If Fiji is to strengthen the integrity of its rule of law and secure long-term democratic stability, it is essential that immunity for coup perpetrators ceases. A robust constitutional order requires the full subordination of all state actors to the law, especially ensuring that those responsible for unconstitutional seizures of power are subject to accountability without any exception.

Impunity cannot be seen as a tool of reconciliation but a mechanism of recurrence and entrenchment.

17. RECOMMENDATION

In light of the foregoing, it is submitted that CRC should consider:

- Protections that ensure no future legislative or constitutional enactments can grant immunity from prosecution to any coup perpetrator.
- The explicit recognition of coups as criminal acts constituting treason.
- The complete exclusion of provisions granting immunity to individuals involved in any future unconstitutional seizures of power.

Fiji must act decisively to break the cycle of coups and immunity that has left a mark in our constitutional history. Immunity for coup perpetrators is only a catalyst for future instability. It is a time to affirm, unequivocally that no individual is above the Constitution. Coups are treason. Treason must therefore be prosecuted to the highest power. Immunity must cease once and for all. Until then, Fiji cannot move forward as a stable, democratic nation grounded in the rule of law.

In future, there should be no immunity from prosecution for any person who is responsible for extra constitutional usurpation of government or government authority, or for anyone aiding or abetting a coup maker.

Anyone found guilty of treason should be banned for life from standing for any political office, government board, committee or instrumentality. This should be written into the Constitution.

There has been a tendency in this country to sugar coat our past, the coups and their aftermath and carry on looking to the future.

But our collective amnesia comes with a price tag. If we do not address our past failures and learn lessons from them, there is the danger that we could repeat them.

While there have been expressions of regret, good intentions do not make a morally wrongful act right.

The overall effect of immunity is that it feeds a culture of impunity, allowing perpetrators to not be held accountable for wrongdoing.

This has weakened confidence in the rule of law, government institutions, the police, and the justice system. Impunity has served to reinforce power imbalances, allowing certain classes to break the law without consequences.

18. Limiting the Potential Control of the Executive over the Proceedings of Parliament:

A key principle of a parliamentary government involves accountability of the executive to the elected legislature. However, from 2014 to 2022, the executive government almost completely dominated the proceedings of Parliament. In the process, legislation was enacted with little or no scrutiny (very little different, in practice, to the enactment of promulgations and decrees by the military regime, 2006-2014), and pursuit of the goal of accountability of the executive through question time in Parliament was almost non-existent.

The Commission should consider recommending provisions that guarantee separation of roles and powers of the executive and the legislature, and empower the legislature to play its proper roles in terms of ensuring accountability of the executive.

Constitutional Amendment – Chapter 11

The Opinion of the Supreme Court (August 2025) and the amendment changes opined by the Court should be written into the amended 2013 Constitution – 2/3 of MPs plus simple majority of voters in a referendum. [10]

The Supreme Court has already observed that the current requirements for change are onerous and make it difficult to change the Constitution.

[10] Since it was enacted in 1950, the Indian Constitution has been amended 106 times.

19. CONSTITUTIONAL REVIEW

The Constitution should make it mandatory to have a periodic review say after every 10 years or so. It is a living, dynamic document and the opportunity to revisit its workings will ensure it is responsive to changing circumstances, and fit for purpose.

The Constitution is an evolving, dynamic document – rigidity & unnameability make it brittle & unworkable. While the sanctity of the Constitution is understood, it must be recognised at the same time that amendments may be needed in the future. [11]

20. CONCLUSION

The Prime Minister has said that the CRC will prepare and present a Bill to amend the Constitution, for government's consideration. [12]

I trust that when you implement your instructions and finalise your work, you will bear in mind the words of Fiji's national anthem – "land of freedom, hope and glory..."

The lyrics of our national anthem were relevant in 1970. Today, they resonate more strongly.

In conclusion, may I commend to you of the words of the Prime Minister when he told Parliament on 30 April this year:

> ***"The Constitution is not just a legal document. It affects how we live, how we are represented, and how decisions are made about our future.....This is a process of profound national importance. It must reflect the will, aspirations, and diversity of our people,"***
>
> ***Let is work together to bring about constructive changes to our Constitution, a Constitution which embodies the values of.....and delivers the promise of a multicultural society to fruition, that promises a unified nation that draws strength and unique character from our diversity.***

It is my fervent hope and prayer that you will have the courage and the vision to reset our supreme law; that you will "future proof" our Constitution to withstand the pressures of partisanship and

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[11] The Constitutions of Japan, Kenya & Philippines have periodic review provisions.
[12] https://www.facebook.com/FijiGovernment/posts/prime-minister-rabuka-updates-parliament-on-the-constitution-review-commission-a/1412749190889274/

vested interests bent on putting self before the national good; and that you not succumb to what is politically expedient, but do what is right for Fiji.

I have every confidence that you have the ability and the wisdom to rise to the occasion.

GRAHAM LEUNG
SUVA
MONDAY 29 JUNE 2026

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[1] Eg see section 32, 1997 Constitution.

SUMMARY OF RECOMMENDATIONS

Section of Constitution	Subject Matter	Recommendation
Section 26	Non-Discrimination	Retain the non-discrimination provisions without alteration.
Section 30	Mineral Rights	Amend
Section 40(1)	Environmental Protection	State obligation to preserve
Section 40(2)	Qualification of Rights	
Section 45	Human Rights Commission	The Human Rights Commission should report to Parliament
Section 55	Qualification of Voters	All prisoners should have the right to vote

Section 56	Candidate Eligibility	Reduce the residential requirement for election candidates from 3 years to 3 months.
Section 84	President	Provide for the President to be elected by the people of Fiji.
Section 88	Office of the President	Delete the provision allowing the Chief Justice to act as President.
Section 93	Prime Minister	Limit the Prime Minister to a maximum of two terms.
Section 104	Judicial Services Commission	Include the President of the Law Society as a member of the JSC.
Section 110	Judiciary	Set the requirement age of ALL judges at 75.
Section 115	FICAC	Remove the constitutional status of FICAC. Retain it as a statutory body with investigative powers only. The power to prosecute should be returned to the ODPP.
Section 117	Director of Public Prosecutions	The DPP should conduct all prosecutions, including for corruption and electoral offences.
Section 131	Role of Military	Remove the responsibility of the military for the "well-being of Fiji and all Fijians."
Section 159-161	Constitutional Amendment	Amend provisions to reflect the decision of the Supreme Court of Fiji.
Whole Constitution	Executive Powers	Limit & reduce the powers of the Prime Minister and Attorney General.
New Section	Judicial Leadership	Appointment of a Deputy Chief Justice
New Section	Language	Consider designating Fijian as the national language (as opposed to an official language).
Part B	Electoral System	Return to a multi-constituency electoral system.

New Section	Bose Levu Vakaturaga (BLV)	Restore the BLV as a constitutional body.
New Section	Immunity & Treason	Ensure future coup perpetrators are not granted immunity. Disqualify anyone convicted of treason from holding public office or standing for election.
New Section	Constitutional Review	Provide for a mandatory review of the Constitution every 10 years.

Fiji Law Society (FLS)

Fiji Law Society
Date-29-6-2026

Leighton: On behalf of the Fiji Constitutional Review Commission, it is my great pleasure to welcome you both this morning and thank you as well for taking up the invitation that was put up by the Commission to come and make submissions. Thank you very much on behalf of the Chair and the Commissioners. I will just be going through a few housekeeping matters. Just with regards to when you make submissions, you will just have to press the right panel of the mic in front of you to turn it on and once you have made your submission, you can press the same panel to turn it off. I will just introduce briefly the Commissioners and the Chair and then I will hand over to the Chair to introduce the work that the Review Commission will be undertaking.

So seated to the far right is Mr. Conway Beck, a well-known architect within Fiji, also a well-known rugby player and administrator in FRU. Seated next to him is Ms. Merewalesi Nailatikau. She is a development and communications specialist. Today, Dr. John Charles Fatiaki has excused himself from these proceedings this morning and seated next to Ms. Nailatikau is the Chair of the Commission, Mr. Sevuloni. He is a well-known lawyer with immense experience with the Pacific and the region as well as in Fiji. And seated next to him is Mr. Ami Kohli, who I know you are aware of as well. Mr. Koli has his own practice in Mombasa as well as a lawyer in Fiji. Seated next to Mr. Koli is Dr. Neelesh Gounder, a well-known economist and lecturer with the University of the South Pacific. With that, I'll hand over to Chair now.

Mr. Valenitabua: Good morning, Mr. Clarke. Good morning, Ms. Prasad Welcome. Welcome to Level 9, Suvavou House, before the Constitutional Review Commission this morning.

It is indeed a privilege to be facing you this morning and we are eager to listen to the submissions that you will be presenting to us. Today, we have three lawyers. First, the Fijian Law Society will appear before us and at 12 noon, we'll have Mr. Graham Leong and then at 4 pm, we will have Mr. John Apted. So, we will be inundated with a lot of legal submissions today and we are looking forward to it. The Commissioners are sitting before you. They have been introduced by Mr. Leighton Fatiaki, also a lawyer, as you do know. And the Commission has been travelling around the country. From the 2nd of May 2006, we travelled around the country through the Maritime Islands and around Vanualevu and Vitilevu.

Now, we have come to the end of the public consultations travelling around and we are here at Level 9, Suvavou House, for two weeks so that we can hear submissions from other associations and government ministries who have indicated that they wanted to appear before us and make submissions.

You are the first during these two weeks, so we'll take it from there. The purpose or the term of reference for us is to gather as many or as much information and suggestions as possible and then write recommendations in relation to what should be included in our amended constitution. The term of reference is that we are to make recommendations and we will be looking at a draft amended constitution too.

So, the amendment is on the 2013 constitution. There have been a lot of submissions made to us that we remove the 2013 constitution completely and have a new one done, but unfortunately, we do not have that power. We have not been allocated or conferred that power by His Excellency, the President of the country, Ratul Naiqama.

I will not take further time in the introduction. All I can say is that we are pleased that you are appearing before us this morning and we look forward to your submissions. We will have discussions later on.

We have a lot of questions to ask. Since you are representing the lawyers of this country, there will be a number of legal matters which might be raised and we will welcome any comments from you. With those few words, I now open the consultation session this morning and I leave you with the floor and you can proceed as you wish.

Mr. Clarke: Thank you very much Chair and Commissioners. It is very pleasing for us to be here to make our submissions to this Commission and even more so that I have had the good fortune of knowing many of you over many years. It is nice to feel among friends.

First of all, the Law Society would like to thank you for this opportunity to make these submissions on behalf of the Fiji Law Society. Earlier this morning, we sent Leighton our full written submissions. There are about 26 pages of it. You will be pleased to know that I am not going to read it. It will be here all day. Instead, what I think we will do is just take you through the main points that we would like to make.

I think it will take about 20 to 25 minutes. I am happy to engage in a conversation with you over some of the matters we have raised on, obviously, and other matters that the Commission may wish to seek our views on. Society's written submission is made in a statutory capacity and in the public interest.

The Legal Practitioners Act 2009 recognizes the Society as a continuing statutory body and gives it objects that include assisting government in matters affecting legislation and law reform, the maintenance of professional standards, representing the views of the legal profession, and protecting the public in matters connected with the practice of law. We therefore appear before you today, not to advance a sectional interest of lawyers, but to assist the Commission on matters central to constitutionalism, the rule of law, equal rights, access to courts, judicial independence, professional legal independence, institutional accountability, and democratic legitimacy. The organizing principle of our submission is the rule of law.

We acknowledge at the outset that the 2013 Constitution already recognizes the rule of law, constitutionalism, supremacy, rights protection, equality, fair administrative action, separation of powers, transparency, accountability, and judicial independence. Our submission is that those ideas, it's not that those ideas are absent, but rather it's that they must be preserved, clarified, and strengthened so that they are in fact practically effective. So, the first sort of theme, if I can call it that, that we would like to address you on are equal rights, the Bill of Rights supremacy, and access to courts.

The society's first substantive point is that the Constitution must protect common and equal citizenship. Equal citizenship is essential to national unity, public confidence, and social cohesion. Recognition of the special position of the ITaukei is not inconsistent with equal citizenship.

In fact, we say it should be preserved and strengthened, but framed as part of Fiji's national identity and unity, not as a basis for division or unequal constitutional status. The Constitution should also recognize substantive equality. It should permit carefully designed affirmative measures for disadvantaged groups, include ITaukei communities, women, persons with disabilities, rural and maritime communities, young people, and economically disadvantaged citizens, provided those

measures are reasonable, proportionate, and consistent with the rights of others.

The Bill of Rights should be supreme over ordinary legislation. Parliament should be able to enact laws that give greater effect to rights, but not ordinary laws that reduce, suspend, or hollow out the essential content of those rights. We recommend a single general limitation clause.

A right should be limited only where the limitation is prescribed by clear law, pursues a legitimate public purpose, is necessary, is rationally connected to that purpose, is proportionate, and is subject to independent judicial review. The Bill of Rights should also be protected against constitutional erosion. It should not be amendable by a bare parliamentary majority.

Rights-reducing amendments should require special safeguards, special parliamentary approval, public consultation, and referendum approval, where the amendment affects the essential content of rights, equality, access to courts, judicial review, or democratic safeguards. Access to courts is the mechanism by which constitutional supremacy becomes real. The Constitution should prohibit ouster clauses that prevent courts from reviewing constitutional questions, jurisdictional error, natural justice, bad faith, improper purpose, irrationality, disproportionality, or infringement of those rights.

Specialist tribunals and regulators have a role, but they should not be made the final judge of the limits of their own powers. Court supervision must remain available at all times. The next matter that I wish to address the Commission on is about constitutional amendment and referendum.

The recent Supreme Court opinion of sections 159 and 160 of the Constitution is central to this Commission's work. The Society welcomes the Court's confirmation that constitutional amendments should not be affected by Parliament alone, and that approval by the people in a referendum remains necessary. We respectfully disagree, however, with the Court's formula insofar as it allows constitutional amendment by a simple majority of those voting in a referendum.

For foundational constitutional change, that threshold, we say, is too low. The Society recommends a workable but robust amendment

formula. First, approval at the relevant parliamentary readings by at least two-thirds of members of Parliament voting. (B,) adequate public consultation. (C), committee scrutiny.(D), approval in a referendum by at least two-thirds of voters voting. (And E), continuing court jurisdiction to determine whether the amendment procedure has been complied with. This approach avoids two extremes. It avoids an amendment process so rigid that reform becomes impossible.

But it also avoids a process that allows fundamental constitutional change by a narrow or temporary majority. Finally, for amendments affecting the Bill of Rights, access to courts, judicial independence, electoral democracy, land protections, independent constitutional offices, or the amendment procedure itself, the referendum safeguard that we recommend should apply as a minimum. The fourth matter that we would like to raise with you is in respect of independent institutions and critical state offices.

The rule of law depends not only on rights in text, but on institutions capable of enforcing them. A democracy requires independent offices and institutions that can administer elections, prosecute crime, audit public money, investigate corruption, protect human rights, regulate the public service, supervise public administration, and preserve the independence of the courts and the legal profession.

The society recommends that appointment bodies for critical state offices be independent, plural, transparent, and merit-based. These offices include judges, members of the Judicial Services Commission, electoral officers, the Director of Public Prosecutions, the Auditor General, anti-corruption officers, human rights commissioners, public service commissioners, the ombudsman, and legal service regulators. We'll come back to the matter of the ombudsman later in my submission.

The composition of any constitutional offices commission, judicial services commission, or equivalent appointment body should exclude the Prime Minister, the Attorney General, ministers, members of parliaments, political party officers, and persons that are subject to executive direction.

The Attorney General may be consulted as the government's principal legal advisor where appropriate, but should not sit as a voting member,

control the process, exercise a veto, or act as the recurring gatekeeper for appointments to offices that may have to scrutinize, prosecute, audit, regulate, advise upon, or adjudicate the legality of executive action. Critical state offices should also have secure tenure, protected remuneration, adequate funding, independent staffing, and removal only for constitutionally specified cause after independent inquiry and procedural fairness.

We recommend the creation of an independent constitutional ombudsman. The current constitution does not appear to establish such an office. The ombudsman should investigate maladministration, unreasonable delay, abuse of discretion, unfair administrative action, failure to give reasons, and systemic failures in public administration. This would complement, not replace judicial review and other accountability institutions.

On anti-corruption enforcement, and I must disclose to the Commission now, I have a professional interest, of course, in matters pertaining to FICAC that I must disclose for the record. The Fiji Independent Commission Against Corruption has exercised significant coercive powers in an area closely connected with public confidence, political accountability, and rule of law. Anti-corruption enforcement is important, but it must be institutionally independent, procedurally fair, and protected from actual or perceived political use.

The Society recommends that the Commission consider whether FICAC should be abolished altogether and its functions reallocated to constitutionally appropriate institutions. If the Commission decides otherwise, however, and to retain FICAC, its role should be limited to investigation only. Prosecution decisions should rest with the Director of Public Prosecutions independently and in accordance with law and published prosecution guidelines, none of which exist at this moment in respect of FICAC.

There are no public prosecution guidelines that we are aware of in respect of FICAC, and that is another reason we say why. If the Commission decides that FICAC is important enough that it ought to be continued, and we do not agree with that view, it should be for a very limited scope only and just for investigation. The next item that we wish to address you on is legal profession independence and practicing certificates.

The independence of the legal profession is not a privilege for lawyers. It is a protection for the public. Lawyers must be able to advise clients, challenge government action, appear against the state, defend unpopular persons, and bring constitutional claims without fear of improper regulatory pressure.

We as a society are well aware of the abuses of that regulatory power in the past in respect of lawyers who took on unpopular causes for the government then in power and for representing unpopular people in matters against that previous government, where the consequences to their professional reputation and their ability to practice were severely diminished, and that was because of the architecture by which the legal profession is regulated at the moment. Now, of course, the Legal Practitioners Act is in the process of being reviewed and probably amended, but our submission is that it needs more than that. Some of these fundamental protections ought to be built into the Constitution so that it avoids executive and parliamentary interference.

The Legal Practitioners Act 2009 contains important public protection mechanisms, but it also gives the Attorney General, for example, and Minister significant structural roles in legal education, legal services regulation, staffing and policy, or financial guidelines. It is also through the Office of the Chief Registrar and Officer of the Executive that practicing certificates are currently issued, so it is in fact that power is vested in a public official. That creates a risk, or at least a perception of risk, of executive influence over institutions that regulate the profession.

The society recommends that regulation of the profession should be independent, transparent, procedurally fair, and subject to court supervision. In particular, the Fiji Law Society should have authority to issue, renew, maintain, suspend, and impose conditions on practicing certificates for legal practitioners, subject to clear legal criteria, procedural fairness, and of course always court review. Practicing certificate powers are central to regulation.

They allow enforcement of professional standards, continuing professional development, trust account compliance, client protection, ethical obligations, professional indemnity, or risk management requirements where applicable, and conditions such as supervision, training, or practice restrictions where necessary. Because practicing

certificates determine who may practice law, appear in court, advise clients, and challenge unlawful public power, that power should not be controlled by the executive. It should be exercised by the profession's independent statutory body, which is the Fiji Law Society, subject to law and judicial supervision.

Electoral reform. The society recommends and strongly supports reform of the current electoral system because the single national constituency weakens accountability between voters and identifiable members of parliament. We understand that the commission has received many submissions along similar lines, and we certainly are in agreement with that.

The society supports equal constituencies and universal voting, where every citizen participates on the same basis, and each vote carries equal weight, grounded in the principle of common and equal citizenry. The objective is equal representation and accountability. Voters should be able to identify a member of parliament, or a small group of members, answerable to their territorial constituency.

The electoral system should remain a form of proportional representation. The overall allocation of seats should reflect, as fairly as practicable, the number and proportion of votes received by political parties. The reform we propose is to combine proportionality with constituency accountability.

This may be achieved through a mixed system or regional multi-member constituencies. The commission should consider whether each constituency should return at least two members of parliament. That may give voters identifiable representatives, while avoiding an overly narrow single-member model.

Constituency boundaries should be drawn by an independent boundaries process, based on population equality, geography, community of interest, transport links, provincial and municipal considerations, and the special circumstances of maritime and remote communities. Boundaries should not be drawn on ethnic, communal, or religious lines. National unity, iTaukei recognition, property, and resources.

The society supports constitutional recognition of the special position of the iTaukei. That recognition should include land, culture, customs, language, traditional institutions, customary knowledge, and development aspirations. But that recognition should be framed consistently with common and equal citizenship, national unity, and the rights of all Fijians.

Recognition should also be practical. It should promote active participation by iTaukei communities in education, finance, professional services, procurement, joint ventures, management capacity, enterprise development, and resource governance. Property rights and land protections should be preserved.

Laws affecting property, leases, licenses, customary rights, land use, resource rights, or compensation should be clear, prospective, non-arbitrary, and subject to court review. In relation to marine and natural resources, customary interest should be recognized through consultation, benefit sharing, co-management, environmental stewardship, and access to commercial opportunities, while preserving state regulatory responsibility, public rights, national unity, and legal certainty. Immunity.

Transitional review. The Society recommends that immunity provisions be reviewed. A future constitutional settlement should not entrench permanent legal impunity or prevent courts from determining the legality, scope, or application of immunity provisions.

No future immunity should be available for unconstitutional overthrow, serious human rights violations, torture, unlawful killing, enforced disappearance, sexual violence, corruption, abuse of office, or other serious criminal conduct. We also recommend a systematic review of existing laws for consistency with the new constitutional framework. Priority should be given to laws affecting rights, elections, public order, media, courts, tribunals, professional regulation, public finance, and institutional independence. The Legal Practitioners Act should be included in that review.

In closing, the Society's central submission is this. Fiji should preserve the best commitments already found in the 2013 Constitution.

Rule of law, rights, equality, constitutional supremacy, independent courts, and accountability. But strengthen them so that they are institutionally real, not just words on paper. The Constitution should be stable but amendable, rights protecting but practical, culturally grounded but inclusive, and strong enough to uphold the rule of law for all Fijians.

Chair and Commissioners, those are the Society's oral submissions. We are grateful for the opportunity to assist the community, the Commission, and are happy to answer any questions and discuss some of the matters that we've raised and of course other matters that the Commission may wish to raise with us. Thank you.

Mr. Valenitabua: Thank you very much Mr. Clarke. Thank you very much for that oral submission. We also thank you for the written submission that was presented to us even before you arrived this morning. We really appreciate it. Now we have heard your oral submissions. You have addressed a number of themes or issues which we have heard from the consultations that we've done around the country.

I will just ask you a question in relation to one. In your paper, or the Fiji Law Society's paper, you have mentioned electoral reform. Yes, there have been a lot of submissions coming from our grassroots people that the single national constituency must go. It is not fair. It is not fair. That is what they've been saying even from the grassroots level.

So that means that multiple constituencies have to be considered. Now we thank you for your comments in relation to how the multiple constituencies could be established and how membership or let's say candidates could be appointed. Now still on electoral reform, there we have submissions for the multiple constituency electoral system.

What would be the view of the Fiji Law Society, and I know that you represent all lawyers who are members of the society, what would be your view on the bicameral? Because there is another submission that has been forthcoming from the grassroots level. Instead of having these House of Reps making laws alone and then assented to by His Excellency, why don't we bring back the Senate? Just a question. If you wish to comment, you may comment.

Mr. Clarke: If not... Well, I don't think the society is opposed to the idea of a bicameral parliament. But I think we would ask that a number of matters be clarified before it would go any further. First of all would be the composition of that upper house and what its properly defined role and responsibility will be in law making.

I mean we agree that simple majority legislation in the House of Reps is a very low threshold in the past to create laws that are binding on everyone and that there ought to be protections in place, which is exactly why we make our suggestion with respect to the Bill of Rights and independence and those matters, because it should be more than a bare majority. But I think that would be our qualification, I think, is how would it be composed and what would its roles and responsibilities actually be within the sort of law-making sphere. The other thing that isn't so clear in our submissions is that obviously we strongly support a proportional representation.

So, one of the things that we say it should not absolutely must not be is a first past the post system, because we should avoid situations where the elected member of parliament only got the support of say 30% of the constituency just because of the sheer number of people running in the election for that constituency. That we say is a highly undesirable outcome. The member of parliament or members of parliament ought to have the support of at least 51% of people within those constituencies.

I hope that answers your question. I mean it's a difficult one because I mean that goes to the question of having a bicameral system is quiet, of course we've always had it until the 2013 constitution. But I think if there's an opportunity to revisit how it would be made up and what it would do, I think that would be a very good discussion to have.

Mr. Valenitabua: Thank you Mr Clarke. Thank you for your comments on that. We understand that it has to be considered carefully in relation to the return of the senate. Now fellow commissioners, does anyone have any questions for Mr Clarke? Mr Kohli.

Mr. Clarke: Good morning Mr Kohli.

Mr. Kohli: Good morning Mr Clarke. Thank you very much indeed to the law society for having a very balanced submission made to us and thank you for putting it in writing as you have said. I have two questions and first I

noticed that you have asked the threshold of the referendum to be increased from simple majority to two thirds. No doubt you are aware that change in constitution is something very, very important. Before there was very high threshold of three quarters and 75% referendum. Do you still feel that two thirds of simple people who are just enough to vote is sufficient or should it be of those who are registered voters or should there be compulsory voting? This is something I just want to ask.

Mr. Clarke: Well, I think I'll take your last point first. This is not an official law society position because we haven't sort of discussed it but I strongly support the idea of compulsory voting because it should be every citizens duty to participate in elections. On the question of the 75% versus two thirds of the simple majority, I was fortunate, the law society was fortunate to be present throughout the submissions and the hearing before the Supreme Court on this very question and we heard all of the submissions from the various political parties and of course from the Fiji Human Rights and Anti-Discrimination Commission and as you can imagine the views were quite diverse but there was consensus

I think that 75% of all members registered to vote would be too high and how the Supreme with the utmost respect to the Supreme Court for its opinion but it was difficult for us to sort of understand the rationale for going from a 75% very high some would say impossible to meet threshold to one that we consider too low which is the bare minimum and so two thirds for lack of any better reason seemed like to us a more reasonable compromise so that at least it commands more than 65% of people voting in a referendum because it's not 51 it's 50% plus one so it's a very we think that it's far too low a threshold to make such important changes to a foundational document like the constitution.

Mr. Kohli: My second question to you Mr. Clarke is again to do with the entrenchment in the constitution about changes. My question is that society is always evolving. Yes. Some people may ask who are you and I to decide what's going to happen in 20 years' time before coming in the new one . Do you think there should be a provision in the constitution for amendment for review every 10 years or should it be left open?

Mr. Clarke: In our submission we recommend that there be a provision to review it say every 10 years.

Mr. Valenitabua: Thank you. Dr. Gounder?

Dr. Gounder: Thank you Chair. Thank you, Mr. Clark and colleague, from Fiji Law Society. Thank you very much for your submission this morning. My question is related to the Bill of Rights. You talked about the qualification for limitation on the Bill of Rights and you mentioned legality, legitimate purpose, necessity, proportionality as well as an independent judicial review. You know when we look at the Bill of Rights we see a lot of limitations holding the Bill of Rights. So we have been talking about what would be the benchmark criteria to talk about the limitations and you have provided some of this. There is also mention of historical factors or cultural factors. What do you think of those as other mechanisms to justify any form of reduction or suspension of some of the Bill of Rights? Does it make sense in a legal perspective?

Mr. Clarke: Sorry, could you rephrase the question?

Dr. Gounder: Yes, so the suspension or reduction of Bill of Rights. You talked about it must have a very single clear limitation such as legality, legitimate purpose, necessity, proportionality. Now many others have argued that some of the limitations on Bill of Rights can also come from history as well. For example, countries have different histories and that countries may limit some aspect of Bill of Rights based on history or some cultural perspectives.

Mr. Clarke: Well, I will start with the sort of, I suppose the fundamental proposition that we think underpins this Bill of Rights. It is a Bill of Rights that is to be protected and enjoyed by every citizen and every person that is in Fiji. The 2013 constitution, like you have alluded to, provides far too simple a carve out for the government or the parliament by ordinary legislation to carve out those rights, undermine those rights. Those sorts of criteria that we outlined and that you have just read out, we strongly said that those words or words to similar effect ought to be provided and said expressly in the constitution so that courts have clear objective standards and criteria by which to review these attempts at purported sort of interference or the sort of watering down of these rights.

The problem I think with introducing matters such as history, culture, tradition, is that those are very difficult concepts to distill into sort of a clear guide and criteria for a court or for parliament to consider when looking at whether to actually start interfering with these rights. Because of course, history, tradition, everybody has got a different view on what it means and what that tradition is or what history says. I think that would

be our concern with introducing concepts like that because they are very difficult, I think, to measure as a criteria for this.

Particularly when we are having to deal with whose history, whose tradition, when we are trying and what the Bill of Rights is trying to do is protect everyone, including some who may not share that history, who may not share that tradition. It becomes very difficult to introduce concepts like that to sort of what is supposed to be an all-encompassing framework that protects equality and respect by law. I hope that answers you.

Dr. Gounder: Yeah, you definitely answered that. I was also coming from perspective, personal perspective as well, for example. You have the right to academic freedom, but it's limited in the interest of orderly conduct of elections. So, while you have the academic freedom, in the interest of orderly conduct of elections, you may not have the academic freedom. And the argument sometimes is that we have heard academics talk a lot about the elections. So therefore, while you have the academic freedom, it's not necessarily every aspect of the orderly conduct of elections. For example, I'm reading from the Constitution itself.

Mr. Clarke: Well, I mean, unfortunately, those are exactly the sort of limitations that we do not agree with. Because what you've just read, of course, some of that you will already find in the election laws, which we believe are sort of contrary to what ought to be free and fair elections and the participatory democracy where views ought to be freely expressed without fear of sanction. Because the very first question, obviously, that one asks when words like that are sort of bandied about is, well, says who? Who says that is not conducive to conduct of elections? Because generally, that's the executive that would be.

Dr. Gounder: Thank you, Mr. Clark. I think you've answered my question very well.

Mr. Clarke: Thank you. Thanks, Dr.

Mr. Valenitabua: Mr. Clark, still on the Bill of Rights. The Bill of Rights in Fiji are based on declarations of human rights and covenants and treaties and all those.

Mr. Clarke: It's a universal principle.

Mr. Valenitabua: Universal principle. And Fiji has ratified most of these covenants and treaties. How binding, in your view, and we'd just like to have a comment from you, how binding, in your view, are these covenants and treaties and declarations to the sovereign state of Fiji? Is it possible to water down and tone down these rights so that they are applicable and relevant to Fiji as a sovereign state? What would be your view in relation to that? We have watered down cases in relation to the Bill of Rights. And even some Bill of Rights, some rights or some covenants have not been domesticated into law in our country. And so, we still, according to the judges, we still can use them because they have been ratified by Fiji.

So, how binding could they be or could they be watered down to be appropriate and relevant and usable to our country as a sovereign state? The reason why we are asking this is that there have been suggestions that the Bill of Rights be toned down, be watered down. That has been coming from corporal punishment, for example. There have been suggestions that we have to bring back copper punishment. And secondly, there was a suggestion from somewhere where they said that keep Bill of Rights in towns and cities, in villages, no. Those kinds of things. So, we would just be interested to know. You are a lawyer. You are a senior lawyer. What would be your view?

Mr. Clarke: Well, I think there is an overarching point to this, I think, that needs to be dealt with first, which is that whether Fiji adopts and domesticates international covenants and various conventions and the like, that is the power of Parliament and courts cannot usurp that role and start reading into the conventions and Bill of Rights that Fiji has got, other matters that Parliament may have expressly decided not to adopt for whatever reason or just not got around to it.

But like in the 1997 Constitution, it would be helpful, I think, for the courts to be able to have regard to other international conventions that perhaps Fiji has not signed up for, to assist it in the interpretation and enforcement of those rights here. You mentioned we have all done these cases. And often there are gaps.

Often there are issues that cannot be dealt with just if we restricted ourselves to the narrow body of law and provisions here as a regard ought to be taken of that. But we would say only as a tool to help in the interpretation and application and enforcement of those rights. To go any

further, I think, would be overstepping the courts and interfering in parliamentary sovereignty.

On that other point you make, which of course we hear it too, even not just professionally but in our own private lives out there. It would be understandable for sure that some may have these concerns about whether these rights things should apply in rural areas. But we would say that we can't go down that path. I think we must, Fiji as a whole, must aspire to something greater. And the unifying principles of the Bill of Rights and Shrines ought to be the values that we aspire to and that we live by. Because we don't get it right all the time, as everybody knows.

We don't get it right all the time. And our history is replete with cases where this sort of stuff comes up. But it would be damaging, I think, to the overall fabric, not just of our legal system but also our social compact as a nation, to start watering down these rights to sort of suit what are, I think in many ways, different concerns, personal concerns. The Bill of Rights has to try and protect everyone. And of course, the Bill of Rights protects that person who has that view. So, it's a difficult one to speak with any kind of real certainty on that one. But I think we must maintain that universality of equality that I think this Bill of Rights symbolizes and represents. And it's got to be real. That's what we say. It has to be real. And should it bind the state? Absolutely. It wouldn't work if it didn't, sir. We strongly support that principle. Because without that, it becomes really nothing other than just words on paper.

Mr. Valenitabua: Thank you for that, Mr. Clark.

Ms. Nailatikau: Thank you, Mr. Clarke and colleague, for your time here today. I have a question about your recommendation for the establishment of an office of the Ombudsman. It certainly drew my interest. And I suspect as our experience has drawn and many other similar bodies' experiences have drawn, much of our submissions are drawn from similar concerns that would be addressed by an Ombudsman's office, for instance, if it did exist. I would be interested to hear how you mentioned that such an office would complement existing institutions, particularly in regard to Fiji at this stage in what is often perceived as an overcrowded or convoluted institutional space. I would just be interested to hear you expand on that thought and how the Law Society sees that the Ombudsman's office would add value. Thank you.

Mr. Clarke: Yeah, I mean, I agree with the sort of perception that it's an overcrowded space. But in this space, particularly with accountability for executive action, there really isn't a body dedicated to that. The closest we've got is the Fiji Human Rights Anti-Discrimination Commission. But that doesn't have – I mean, that is actually – its mandate is actually also quite narrow.

And it deals with those two basic areas, anti-discrimination and human rights. But the only mechanism really available to anybody to express concern or challenge executive action is the courts. And the courts are overburdened, under-resourced and simply unable, because of those issues, to be able to deal with those sorts of concerns or challenges quickly.

The Office of Ombudsman, as other jurisdictions have demonstrated, is exactly the sort of check that, with the correct and adequate safeguards, would be able to deal with not just ministerial decisions, not just other public official decisions, but also the work of other agencies, state agencies, that currently have no real sort of supervising body to actually deal with their decisions. I mean, FICAC, for example, the DPP's office, for example. I mean, the DPP, their independence is important, obviously. But there is no way, for example, of just sort of – borrow a euphemism – mark their work. It doesn't exist. Yes, the perception is overcrowded, but in this space there's really not much there. And that's why we strongly support the creation of that office.

Sorry, just a final point. I mean, there was an ombudsman before. I mean, we've heard it suggested before, and we do not disagree. I think the removal of that office under the current framework may have been deliberate, but it certainly created a big gap that we say ought to be filled. Does that answer you all?

Ms. Nailatikau: Yes, it does.

Mr. Valenitabua: Mr. Beg?

Mr. Beg: Thank you, Chair. Sorry, I'll make it quick. Thank you, Mr. Clark and Mrs. Maraj, for your submission this morning. I just have one. As the immunity clause is a very sensitive topic in Fiji, you know, we've heard far and wide, long and narrow, whichever way you put it.

I mean, there's the instrument sitting there before us, the Supreme Court ruling, and your recommendation is quite intriguing. I make reference to 113 and 114 in your submission, allowing courts to adjudicate over common law in these cases. So, it's quite interesting, and we also recommend that the commission consider whether we remove or narrow entrenched immunity and allow court decisions on common law. Thank you for that. I appreciate the – because this is a very difficult topic to deal with. It obviously has to be well thought out and discussed, so hopefully we can have further discussions along the lines, unless there's something else you'd like to add to that. Particularly, you know, the Supreme Court had rule about the –

Mr. Clarke: Why they did it.

Mr. Beg: Yes. I'm interested in that direction.

Mr. Clarke: Well, just my perception of it, because I don't really say much about it in the opinion, is that they just thought that – and you've said it – that the perception might be that it's too destabilizing, potentially creates some issues. But I think that was a perception on their part as well. We strongly believe that this ought to be discussed, this ought to be looked at, because in this whole sort of framework, this constitutional framework, you know, we're talking about rule of law, we're talking about democracy, we're talking about human rights.

These immunity provisions stand out like a sore thumb, you know, because they are complete antithesis of these other values and principles that the rule of law, democracy, those other matters that I raised, represent. So, we should have the discussion. I mean, the Commission may opt to completely just not do anything about them and move on, and that would be obviously open to the Commission and its recommendations.

But we strongly believe that because they do represent such a sort of antithesis of those values that we outlined earlier, we ought to have the discussion about whether these sorts of provisions or protections should continue and reward wrongdoing.

Mr. Beg: Thank you for your comments. I appreciate that. I'm sure the Commission and through the Chair, we will take this on quite loudly.

Mr. Kohli: Yes, just following up from where you left. The immunity clause, as it states in the Constitution, only applies to a certain period of time. It does not cover coups in the future. So, even if it stands, it will not be applicable to people who are minded to commit coups. So, there is some solace to your heart, but even if it is retained, it does not mean to say it will pardon those people who in the future apply this. Am I correct?

Mr. Clarke: Yes. That is the point we make in our submission. If that is the path you want to take, the Constitution ought to provide that no such immunity or protection shall ever be afforded any person or group that do this. Yes, we would strongly recommend that because you have to draw a line under this. This continues to be an issue that when lawyers look at this framework, it stands out as an exception to the values and principles that this document says it upholds.

Mr. Kohli: My final question to you, Chair, Mr. Clark, is this. If I hear you correctly, you are saying that in the Bill of Rights, there are so many rights written in the Constitution, but if we scrutinize carefully, on the one hand, they are giving you the right. On the other hand, they are throwing it away. Almost applies to every legislation in the Bill of Rights.

Just to give you one example, where the Bill of Rights says that the accused person must be produced in court within 48 hours, and then it says, well, if that is not reasonably possible, as soon as possible thereafter, leaves it wide. It leaves it open, doesn't it? So my question to you is, should we remove those provisos where they are saying any other enactment and just leave the rights there? Or how would you suggest that?

Mr. Clarke: Well, those last few words, as we well know, have been used on many occasions to prolong detention. And we think it would be quite a good outcome if those little sort of wiggle words were taken out, so that there was a clear and absolute no later than 48 hours.

Because, I mean, you know, courts sit on weekends all the time, if need be. But if the constitutional safeguard is there, then there is a clear requirement that they must be produced within 48 hours and amenable to judicial oversight. Because that's, you know, it's precisely those words that have resulted in people detained for four, five days in some cases.

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But just on that carve-out provision again, because I think we keep, we think it's a really important point, is that any carve-outs of these Bill of Rights, we say ought to be almost, you know, it can't be carved out by ordinary legislation. It ought to be, there ought to be a special protection for that built into the constitution, so that it's not dissimilar to the way in which the constitution ought to, you know, can be amended, two-thirds, two-thirds, or whatever the formulation is the commission recommends. But the one thing that has to be absolutely made clear is that it can't just be done by laws that require, you know, those carve-outs can't just be by laws that require a 50 plus 1% majority in Parliament.

Mr. Valenitabua: Commissioners, is there any other comment or any other question for Mr. Clark and Ms. Prasad? Well, Mr. Clark and Mr. Prasad. Ms. Maraj. I beg your pardon, Ms. Maraj. I would have called you by your first name. And Ms. Maraj, thank you very much for the submissions this morning. We have received your submissions, just a browse through shows that we have a lot of methods in there, which we will have to consider.

This is coming from the Fiji Law Society, and it gets into the heart of the laws in relation to the constitution. We've heard submissions from around the country, but not to the depth which we have heard this morning, and we are expecting more today from Mr. Leong and Mr. I'm sure you will. I'm sure we will. So, thank you very much indeed for your submissions this morning. We will take them into account. For your information, we've got two weeks of public consultations starting today.

We will end on the 10th of July, and then after that it's down to report writing, recommendations. We have to make recommendations to His Excellency, the President of the country, and we are looking at writing up a draft amended constitution. We will be getting a legal drafter who might be arriving in Fiji on the 15th of July to come and assist us with the legal drafting.

So, we will then hand in the report, the recommendations, and the amended constitution to His Excellency, the President. From there, the politicians will take over, because His Excellency will then hand over the draft amended constitution to be put to Parliament through our government, or through the government. As you know, the Cabinet and Government will have to prepare parliamentary papers, and they present it to Parliament for the second and third readings, and as you know, Mr.

Clerk, the two-thirds majority is to be obtained in Parliament before the bill can proceed from the second to the third reading, and even to the referendum. So two-thirds majority in relation to that, and we have been guided by the opinion of the Supreme Court in relation to what we are doing. We are trying to comply with that opinion, so what happens after we hand in our documents to His Excellency will be up to the politicians. We will try.

Our timeline ends on the 31st of August, 2026, and we are working towards completing our task on the 31st of August. It's a big job that's in front of us, but it has to be done for the sake of the nation. Thank you very much for your attendance this morning, and we will come back to you if we need assistance, and I'm sure you will be a member.

Mr. Clarke: We will be happy to help.

Mr. Valenitabua: Thank you very much.

Mr. Clarke: Thank you, Chair and Commissioners, for the opportunity to make these submissions today. It's been an honor, and we thank you for the time given to us. Good luck.

Leighton: Before you leave, Mr Clarke, if we can take a picture with the Commissioners.

----------End of Session [29-6-2026] ----------

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Submission to the Constitutional Review Commission of Fiji

Submission on Constitutional Reform, the Rule of Law, Judicial Independence, Legal-Profession Independence, Rights Protection, Electoral Reform, and National Unity

To: The Constitutional Review Commission

From: The Fiji Law Society

Date: 29 June 2026

Subject: Submission on priority constitutional reforms for Fiji

Introduction

1. This submission is respectfully made by the Fiji Law Society to assist the Constitutional Review Commission in its review of Fiji's constitutional arrangements.
2. The Society makes this submission in accordance with its statutory role and public responsibilities. The Legal Practitioners Act 2009 continues the Society as a body corporate under the name of the Fiji Law Society, with perpetual succession, a common seal, capacity to hold property, and capacity to sue and be sued in connection with its statutory functions.
3. The Society's statutory objects include maintaining and improving standards of conduct within the profession; preserving the integrity and status of its members; assisting Government in matters affecting legislation and law reform; representing the views, interests and wishes of its members; and protecting and assisting the public in matters connected with the practice of law.(LPA 2009.pdf, p. 9)(LPA 2009.pdf, p. 10)
4. The Society therefore approaches constitutional reform not as a sectional or private interest, but as a professional body with statutory responsibilities to the legal system, the administration of justice, the public interest, law reform, and the rule of law.
5. Fiji's Constitution should be a durable national compact. It should protect the rights of all citizens, recognise the special position of the iTaukei, maintain national unity, promote equality and social cohesion, and create an enabling environment for participation, investment, enterprise, and opportunity.

6. The 2013 Constitution contains important commitments, including constitutional supremacy, the rule of law, equality, human dignity, a substantial Bill of Rights, judicial independence, public accountability, and democratic elections. Those commitments should be preserved and strengthened. They should also be made practical by institutional design that prevents ordinary legislation, executive discretion, or emergency power from weakening the rule of law.

7. The 2013 Constitution already recognises the rule of law as a founding value of the State and gives it important legal force through constitutional supremacy, court enforcement, equality, rights protection, fair administrative action, separation of powers, transparency, accountability and judicial independence. The Society submits that constitutional reform should preserve those commitments and strengthen them by making the rule of law more fully effective in institutional design — particularly through stronger protection of equal rights, Bill of Rights supremacy, access to courts, independent appointment processes for critical state officers, and independent institutions capable of checking abuse of public power.

8. Accordingly, the organising principle of this submission is the rule of law. The rule of law requires more than formal legality. It requires that public power be limited by law; that laws be clear, prospective, general and publicly accessible; that rights be enforceable by independent courts; that public institutions act lawfully, rationally, fairly and for proper purposes; that no person or office be above the law; and that institutions responsible for appointing, supervising or removing critical state officers be independent of improper political influence..

9. A democracy cannot function properly if the officers who administer elections, prosecute crime, audit public money, appoint judges, investigate corruption, protect human rights, regulate the public service, supervise the legal profession, or advise on constitutional legality are dependent on the executive for appointment, tenure, funding or continuation in office. Constitutional reform should therefore treat independent appointments architecture as a central rule-of-law safeguard, not as a technical administrative matter.

Executive Summary of Recommendations

Preserve and strengthen the rule of law

10. The 2013 Constitution already recognises the rule of law as a founding value of the State, together with common and equal citizenry, human rights, an independent and accessible justice system, equality, separation of powers, transparency and accountability. Constitutional reform should preserve those commitments and strengthen their practical effect.

11. The rule of law should be expressed not merely as an aspiration, but as an enforceable constitutional principle requiring legality, equality before the law, separation of powers, independent courts, effective remedies, fair administrative action, transparent public power, accountable government, and independent institutions capable of checking abuse of power.

Equal rights, equal citizenship and substantive equality

12. The Constitution should protect equal citizenship and equal protection, treatment and benefit of the law for all Fijians. Recognition of the special position of the iTaukei should be preserved and strengthened, but framed consistently with equal citizenship, national unity, substantive equality and the rights of all communities.

13. The Constitution should also permit carefully designed affirmative measures to advance persons or groups disadvantaged by history, geography, disability, poverty, discrimination or structural barriers, provided such measures are reasonable, proportionate and consistent with the rights of others.

Bill of Rights supremacy and special-majority protection

14. The Bill of Rights should be protected from reduction, suspension or displacement by ordinary legislation. Rights should be limited only under a single clear limitation clause requiring legality, legitimate purpose, necessity, proportionality and independent judicial review.

15. No ordinary law should extinguish the essential content of a constitutional right. Parliament should remain able to legislate to give greater effect to rights, but not to diminish their constitutional core.

16. The Bill of Rights should not be amendable by a bare parliamentary majority. Any amendment that reduces the scope, enforceability or essential content of a protected right should require a special parliamentary majority, prior public consultation, and judicial review of compliance with amendment procedures. More serious rights-reducing amendments should also require referendum approval.

Access to courts and effective remedies

17. The Constitution should prohibit ordinary legislation from excluding judicial review of constitutional questions, jurisdictional error, natural justice breaches, bad faith, improper purpose, irrationality, disproportionality, or infringements of rights.

18. Specialist tribunals, including professional disciplinary bodies, may perform important functions. However, their decisions should remain subject to review by independent courts at least on constitutional, jurisdictional and procedural grounds.

Constitutional amendment and referendum safeguards

19. The Society welcomes the Supreme Court's confirmation that constitutional amendment requires approval by the people in a referendum. The referendum requirement should be retained and entrenched.

20. The Society respectfully disagrees, however, with the Court's formula requiring only a majority of voters voting in the referendum. The better safeguard is a workable but robust amendment process requiring approval by at least two-thirds of Members of Parliament voting and at least two-thirds of voters voting in a referendum, together with public consultation, committee scrutiny and court supervision of compliance with the amendment procedure.

Independence of appointment institutions for critical state officers

21. The Constitution should establish independent, plural and transparent appointment institutions for critical state officers whose independence is essential to democracy and the rule of law. These include, at minimum, judges and judicial officers; members of the Judicial Services Commission; the Electoral Commission and Supervisor of Elections; the Director of Public Prosecutions; the Auditor-General; anti-corruption commissioners; the Human Rights and Anti-Discrimination Commission; the Public Service Commission; a new Ombudsman office to oversee executive and administrative action; the Solicitor-General where that office has constitutional functions; and legal-services regulatory officers.

22. The appointment, reappointment, suspension, removal, remuneration and acting appointment of such officers should not be controlled by the Prime Minister, Attorney-General, Cabinet or any single political office holder. Appointment bodies should be constitutionally independent, balanced in composition, protected from executive direction, required to apply published merit criteria, and accountable through transparent reasons, public reporting and judicial review.

Rule of law and legal-profession independence

23. The Constitution should recognise that an independent legal profession is an essential component of the rule of law and access to justice. The legal profession should be regulated in a manner that protects the public, maintains professional standards, and preserves independence from improper political or executive influence.

24. The Fiji Law Society should have constitutional or statutory authority to issue, renew, maintain, suspend and set conditions for practising certificates for legal practitioners, subject to clear legal criteria and procedural fairness. Practising-certificate control is central to professional regulation. It enables standards to be

enforced, continuing professional development to be required, trust-account and ethical obligations to be monitored, and conditions to be imposed where necessary to protect clients and the public. Because practising certificates determine who may practise law, that power should be exercised by an independent professional body such as the Fiji Law Society rather than by the executive.

25. The Legal Practitioners Act 2009 demonstrates why this is necessary. It contains important public-protection mechanisms, but it also gives the Attorney-General and Minister a recurring structural role in areas such as legal education, professional regulation, policy and financial guidelines for the Independent Legal Services Commission, staffing approval, and institutional reporting.

Electoral reform

26. The current single national constituency open-list proportional representation system should be replaced or substantially reformed. Electoral reform should be founded on equal representation, equal voting rights and common citizenship. The preferred model is a mixed electoral system that improves accountability of Members of Parliament to identifiable territorial constituencies while preserving equal suffrage and overall proportional fairness. The system should remain a form of proportional representation, so that the overall allocation of seats in Parliament continues to reflect, as fairly as practicable, the number and proportion of votes received by each political party. Electoral reform should therefore improve constituency accountability without abandoning proportionality.

27. Constituencies should be civic, territorial and based on equal representation and voting, rather than on separate electoral categories. The Commission should consider whether each constituency should elect at least two Members of Parliament, so that electors have identifiable representatives while reducing the risk that a single-member constituency becomes too narrow, localised or exclusionary. If a full mixed system is not adopted, the Constitution should at least require multi-member regional constituencies based on equal voting rights, an independent boundaries process, and rules that strengthen accountability between Members of Parliament and identifiable territorial constituencies.

Immunity and accountability

28. The Commission should also consider removing or narrowing provisions that permanently entrench immunity and exclude courts from considering the legality, scope or effect of immunity provisions. At minimum, no future immunity should be available for unconstitutional conduct, serious human-rights violations, corruption, abuse of office, or attempts to establish government outside the Constitution.

Transitional review of existing laws

29. The Constitution should require a systematic review of existing laws for consistency with constitutional supremacy, the Bill of Rights, judicial independence, institutional independence, access to courts, and the rule of law. Priority should be given to laws regulating the legal profession, courts, tribunals, elections, public order, media, land and resources, public finance, professional licensing, and accountability institutions.

Equal Rights, Bill of Rights Supremacy and Access to Courts

30. The 2013 Constitution already contains important rule-of-law commitments, including common and equal citizenry, respect for human rights, equality, constitutional supremacy, court enforcement of the Constitution, access to courts, fair administrative action, separation of powers, transparency, accountability and judicial independence. Those commitments should be preserved. The purpose of reform is to strengthen their practical operation and ensure that they cannot be weakened by ordinary legislation, executive discretion, ouster clauses, institutional dependence or inadequate remedies.

31. The first practical expression of the rule of law is equality before the law. The Constitution should protect common and equal citizenship, equal protection of the law, equal treatment by public authorities, and equal access to justice for all Fijians.

32. Equal rights are compatible with recognition of the special position of the *iTaukei*. Constitutional recognition of the *iTaukei*, including land, culture, customs, language, traditional institutions and development aspirations, should be framed as part of Fiji's national identity and unity. It should not be framed in a way that diminishes the equal citizenship or fundamental rights of any community.

33. Equality should be substantive as well as formal. The Constitution should permit reasonable and proportionate measures designed to advance persons or groups disadvantaged by historical exclusion, geography, disability, poverty, discrimination or structural barriers. Such measures should be treated as consistent with equality where they promote genuine participation and do not unfairly extinguish the rights of others.

34. The Bill of Rights should be constitutionally supreme over ordinary legislation. Parliament should be able to enact laws that give greater effect to rights, but ordinary legislation should not be able to reduce, suspend, displace or hollow out the essential content of constitutional rights.

35. Any limitation of a right should be valid only where the State can show that the limitation is prescribed by clear law, serves a legitimate public purpose, is rationally connected to that purpose, is necessary because less restrictive means are not

reasonably available, and is proportionate in a free and democratic society based on human dignity, equality and freedom.

36. The Bill of Rights should also be protected against constitutional amendment by a bare parliamentary majority. Any amendment that reduces, qualifies or weakens a protected right should require a special parliamentary majority. Where an amendment would substantially diminish the content of a right, affect equality, restrict access to courts, weaken judicial review, or alter the core safeguards of democratic government, additional safeguards should apply, including prior public consultation and referendum approval.

37. A special majority is an important safeguard because it requires broader political consensus before rights are reduced. However, it should not be treated as sufficient on its own. The Constitution should also provide that courts retain jurisdiction to determine whether the amendment procedure has been followed and whether the amendment preserves the essential content of rights, constitutional supremacy, access to courts, judicial independence and the rule of law.

38. Access to courts is the mechanism by which constitutional supremacy becomes real. The Constitution should prohibit ordinary legislation from excluding court review of constitutional questions, jurisdictional error, breach of natural justice, bad faith, improper purpose, irrationality, disproportionality or infringement of rights.

39. Every person should have access to an effective remedy for breach of the Constitution, including declarations, injunctions, compensation, orders of invalidity, structural relief, exclusion of unlawfully obtained evidence and any other just and equitable relief.

40. Specialist tribunals and regulators may perform important functions, including in professional regulation. However, their decisions should remain subject to court supervision on constitutional, jurisdictional and procedural grounds. No statute should make a tribunal or regulator the final judge of the limits of its own power.

Constitutional Amendment, Referendum and Popular Legitimacy

41. The recent opinion of the Supreme Court on sections 159 and 160 of the 2013 Constitution is directly relevant to the Commission's work. The Court recognised the 2013 Constitution as legally effective, but limited recognition of Chapter 11 by reading down section 160. In particular, the Court read the parliamentary threshold from three-quarters to two-thirds, and read the referendum threshold from three-quarters of all registered voters to a majority of voters voting in the referendum.

42. The Society respectfully welcomes the Court's confirmation that constitutional amendment should not be effected by Parliament alone. A referendum requirement is

an important democratic safeguard. It recognises that the Constitution belongs to the people and that changes to the constitutional compact should command direct public approval, not merely parliamentary support.

43. At the same time, the Society respectfully disagrees with the Court's referendum formula. A bare majority of those voting in a referendum may be too low a threshold for constitutional change, particularly where amendments affect the Bill of Rights, the courts, electoral rules, constitutional offices, land protections, amendment procedures or other foundational features of the State. Such matters should require a broader national consensus.

44. The Society therefore recommends that the Constitution entrench a workable but robust amendment procedure. Constitutional amendments should require:

    (a) approval at the relevant parliamentary readings by at least two-thirds of Members of Parliament voting;

    (b) adequate public consultation before final parliamentary approval;

    (c) review by an appropriate parliamentary committee;

    (d) approval in a referendum by at least two-thirds of voters voting; and

    (e) continuing jurisdiction of the courts to determine whether the amendment procedure has been complied with.

45. This formula avoids two extremes. It avoids an unworkable amendment process that makes constitutional reform practically impossible. It also avoids a process that permits foundational constitutional change by a narrow or temporary majority. It preserves constitutional stability while allowing democratic correction where there is broad parliamentary and popular support.

46. For amendments affecting the Bill of Rights, access to courts, judicial independence, electoral democracy, independent constitutional offices, land protections or the amendment procedure itself, the same referendum requirement should apply at minimum. The Constitution should also provide that no amendment may abolish constitutional supremacy, equal citizenship, the essential content of rights, access to courts, judicial review, judicial independence or the rule of law.

The Fiji Law Society's Statutory Role and the Legal Profession

47. The Society's submission is grounded in its statutory functions. Under the Legal Practitioners Act 2009, the Society is not merely an association of practitioners. It is a continuing statutory body with law-reform, public-protection and professional-integrity objects.

48. The Society's role in law reform is expressly recognised. Its statutory objects include assisting the Government in matters affecting legislation and law reform, aiding law reform, representing the views and interests of its members, and protecting and assisting the public in matters connected with the practice of law.

49. Constitutional reform should therefore recognise that the Society has a legitimate public voice in matters concerning the courts, the administration of justice, professional regulation, access to justice, rights protection, legislative quality and the rule of law.

50. The Society does not submit that the legal profession should regulate itself without accountability. Public protection, consumer protection, client complaints, trust-account supervision, discipline, and ethical standards are essential. However, professional regulation must be designed so that it is independent, fair, transparent and not susceptible to political or executive direction.

51. The rule of law depends on lawyers being able to advise clients, challenge government action, appear against the State, defend unpopular persons, and bring constitutional claims without fear that their practising status, discipline, professional institutions or regulatory environment may be influenced by political considerations.

Lessons from the Legal Practitioners Act 2009

52. The Legal Practitioners Act 2009 provides important context for constitutional reform. It contains a comprehensive framework for legal education, admission, practising certificates, trust accounts, costs, complaints, discipline, professional standards and professional conduct. It also preserves the Society as a statutory body.

Legal education and admission pathways

53. The Board of Legal Education is given responsibility for ensuring that the academic and practical qualifications of persons wishing to be admitted to practice are of high quality and sufficient to meet the needs of consumers of legal services.(LPA 2009.pdf, p. 6)

54. That is an important public function. However, the Board's composition includes members appointed by the Attorney-General, including the Chairperson. Constitutional design should ensure that legal education and admission standards are set through independent, expert, transparent and profession-inclusive processes.

The Society's internal autonomy

55. The Act recognises the Society's legal personality, Council, general meetings, voting, accounts and regulation-making powers. However, the Society's regulations require approval by special resolution and by the Attorney-General.

56. Constitutional reform should protect the institutional autonomy of professional bodies while ensuring accountability to members, the public and the law. The Society should be empowered to regulate and enforce standards on lawyers by having its power to issue and regulate the maintenance of practicing certificates returned to it, free to govern its internal affairs, speak on law reform, represent the profession, and contribute to public debate without executive approval or direction.

Practising certificates and professional independence

57. Practising certificates are a central mechanism by which the legal profession is regulated. The power to issue, renew, maintain, suspend and impose conditions on practising certificates determines who may practise law and on what terms. It therefore has direct implications for access to justice, client protection, professional independence and the rule of law.

58. The Society recommends that the Fiji Law Society should have constitutional or statutory authority to issue, renew, maintain and set conditions for practising certificates for legal practitioners, subject to clear criteria, procedural fairness, publication of rules, protection against arbitrary decision-making, and review by an independent court.

59. This reform would serve several rule-of-law objectives. It would allow the profession's independent body to enforce professional standards, require continuing professional development, ensure compliance with trust-account and client-protection obligations, monitor professional indemnity or other risk-management requirements where applicable, and impose proportionate conditions where a practitioner requires supervision, training or practice restrictions.

60. The power should not be used to protect lawyers from accountability. On the contrary, it should strengthen accountability by placing regulatory responsibility in an independent professional body that is subject to law, transparent rules, public-interest duties and court supervision.

61. Because practising certificates determine whether lawyers may appear in court, advise clients, challenge government action, defend accused persons and bring constitutional claims, the power should not be controlled by the executive. Executive control or influence over practising certificates may create a real or perceived risk that lawyers who act against the State, represent unpopular clients, or challenge unlawful public power could be exposed to regulatory pressure. That risk is inconsistent with legal-profession independence and the rule of law.

62. The Society therefore submits that practising-certificate powers should be vested in the Fiji Law Society, with appropriate safeguards: transparent eligibility criteria, published conditions, reasons for adverse decisions, internal review where

appropriate, appeal or judicial review, protection of client interests, and public reporting.

Independent Legal Services Commission

63. The Act establishes the Independent Legal Services Commission and vests its powers, functions and duties in a Commissioner.

64. The Commission's independence is recognised in one respect: in performing functions or exercising powers, it is not subject to direction or control of any person or authority, except a court of law or as otherwise provided by the Act.

65. However, that independence is qualified by several provisions. The Commissioner is appointed by the President on the advice of the Attorney-General. The Minister may give general policy, administrative and financial guidelines to the Commission, and the Commission must act in accordance with those guidelines. Key staffing and employment matters also require Attorney-General approval.

66. These provisions create a structural risk. A body responsible for disciplining lawyers must protect clients and the public, but it must also be institutionally independent from the executive. If lawyers may be disciplined, suspended, investigated or publicly accused through institutions whose appointment, funding, staffing or removal arrangements are executive-sensitive, public confidence in the profession and in the administration of justice may be weakened.

67. The Society recommends that the Constitution require legal-services disciplinary institutions to have appointment by an independent, plural and transparent process; fixed terms subject to removal only for proved inability or misbehaviour after independent inquiry; remuneration and funding protected against arbitrary adverse variation; staff appointed independently on merit; transparent rules; procedural fairness; protection of privilege and confidentiality; reasoned decisions; public reporting; and review by independent courts.

Judicial Independence and the Administration of Justice

68. Judicial independence is essential to constitutional government. Courts must be able to decide disputes involving the State, Parliament, Ministers, public bodies, private parties and individuals without fear, favour or prejudice.

69. The existing constitutional framework gives the Attorney-General a recurring consultative role in judicial appointments and legal institutions. The Judicial Services Commission includes the Permanent Secretary responsible for justice and a legal practitioner appointed following consultation with the Attorney-General.(2013 Constitution.pdf, p. 67)(2013 Constitution.pdf, p. 67)

70. The Constitution should establish a reformed Judicial Services Commission with a balanced and independent composition. It should include judicial members, President of the Fiji Law Society, legally qualified members appointed through merit-based procedures, and lay members selected through a transparent process.

71. No voting member of the Judicial Services Commission should be a Minister, political office holder, permanent secretary, active party officer, or person subject to direct executive direction.

Independent State Institutions and the Appointment of Critical State Officers

72. The rule of law requires institutions that are capable of restraining unlawful power. Constitutional democracy is not secured only by periodic elections. It also depends on independent officers and institutions that can administer elections fairly, adjudicate disputes impartially, prosecute without fear or favour, audit public expenditure, investigate corruption, protect human rights, regulate the public service, supervise public administration, and preserve the independence of the legal profession.

73. The independence of the institutions responsible for appointing critical state officers is itself a constitutional safeguard. If the appointment body is dominated by the executive, the office being filled may be formally independent but practically dependent. The Constitution should therefore protect not only the independence of office holders after appointment, but also the independence, composition, procedure and accountability of the bodies that appoint them.

74. Critical state officers should include, at minimum:

    (a) the Chief Justice, President of the Court of Appeal, judges, magistrates and other judicial officers;

    (b) members of the Judicial Services Commission;

    (c) members of the Electoral Commission, the Supervisor of Elections and electoral-boundaries decision-makers;

    (d) the Director of Public Prosecutions and any constitutionally independent prosecutorial authority;

    (e) the Auditor-General and officers responsible for independent audit of public money;

    (f) commissioners or heads of anti-corruption bodies;

    (g) members of the Human Rights and Anti-Discrimination Commission;

(h) members of the Public Service Commission and officers responsible for merit-based public appointments;

(i) a new Ombudsman, to be constitutionally established to investigate maladministration, abuse of executive power, unreasonable delay, unfair administrative action and systemic failures in public administration;

(j) accountability, transparency, integrity or leadership-code officers;

(k) the Solicitor-General where that office performs constitutional, public-interest or legal-certification functions; and

(l) legal-services regulatory officers, including officers responsible for admission, discipline and complaints against lawyers.

75. Appointment bodies for critical state officers should be constitutionally established or constitutionally protected. They should not be created, restructured, suspended or abolished by ordinary legislation in a manner that undermines their independence.

76. No appointment body for critical state officers should be subject to direction or control by the Prime Minister, Attorney-General, Cabinet, a Minister, a political party, or any person exercising executive authority.

77. No Constitutional Offices Commission, Judicial Services Commission, or other appointment body responsible for critical state officers should include the Prime Minister, the Attorney-General, any Minister, any Assistant Minister, any Member of Parliament, any office holder of a political party, or any person subject to direct executive direction.

78. The Attorney-General may be consulted as the Government's principal legal adviser where appropriate, but should not sit as a voting member, control the process, exercise a veto, or act as the recurring gatekeeper for appointments to offices that may be required to scrutinise, investigate, prosecute, audit, regulate, advise upon, or adjudicate the legality of executive action.

79. Appointment bodies should have plural composition. No single office holder or political branch should be able to command a majority of an appointment body. Members should be selected through different constitutional channels so that the body reflects institutional balance rather than executive preference.

80. All appointments to critical state offices should be made on published criteria, including competence, integrity, independence, impartiality, experience, temperament, commitment to constitutional values, and freedom from conflicts of interest.

81. Critical state officers should have secure tenure for fixed constitutional terms. They should not depend on executive favour for continuation, renewal, acting appointment, remuneration, staffing or operating funds.

82. Removal should be possible only for proved inability, incapacity, serious misconduct or other constitutionally specified cause, following an independent inquiry, procedural fairness, reasons and review by a court.

83. Acting appointments should be time-limited, justified in writing, subject to the same eligibility and independence standards as permanent appointments, and not renewable indefinitely. A person should not serve for a prolonged period in an acting capacity where the practical effect is to avoid the constitutional appointment process.

84. Independent institutions require practical capacity. The Constitution should protect adequate funding, independent staffing, control over internal administration, and direct reporting to Parliament or another constitutionally appropriate public forum.

85. Independence does not mean absence of accountability. Independent institutions should be accountable through law, reasons, audits, annual reports, parliamentary scrutiny, codes of conduct, conflict-of-interest rules, judicial review and public transparency. However, accountability mechanisms must not become mechanisms of political control.

Creation of an Ombudsman to Oversee Executive Action

86. The current Constitution does not appear to establish an Ombudsman as a constitutional office. The Society recommends that the Constitution create an independent Ombudsman to strengthen the rule of law by overseeing executive and administrative action.

87. The Ombudsman should have power to receive complaints from the public, investigate maladministration, unreasonable delay, abuse of discretion, unfair administrative action, failure to give reasons, systemic administrative failure, and conduct by public authorities that is lawful in form but oppressive, unfair or inconsistent with good administration.

88. The Ombudsman should be independent of the executive, appointed through the same plural and merit-based appointment principles recommended for other critical state officers, protected by secure tenure and adequate funding, and empowered to report directly to Parliament and the public. The office should complement, not replace, judicial review, the Human Rights and Anti-Discrimination Commission, the Auditor-General, anti-corruption institutions or parliamentary scrutiny.

Fiji Independent Commission Against Corruption

89. The Fiji Independent Commission Against Corruption has exercised significant coercive powers in an area closely connected with public confidence, political accountability and the rule of law. Anti-corruption enforcement is important, but it must be institutionally independent, procedurally fair and protected from actual or perceived political use.

90. The Society recommends that the Commission consider whether FICAC should be abolished and its functions redistributed to constitutionally appropriate institutions. Investigation of corruption may be vested in an independent investigative body such as the Fiji Police, but prosecution should ordinarily rest with the Director of Public Prosecutions, whose constitutional independence should be strengthened. This would better separate investigation from prosecution and reduce the risk of a single institution exercising excessive coercive power.

91. If FICAC is retained, its role should be limited to investigation only. Decisions whether to prosecute should be made by the Director of Public Prosecutions independently and in accordance with published prosecution guidelines. FICAC should not have independent prosecutorial authority, should not be subject to ministerial direction, and should be accountable through judicial review, parliamentary reporting, financial audit, procedural safeguards and clear limits on coercive powers.

92. The Constitution should also ensure that any anti-corruption investigative body is appointed through an independent, transparent and merit-based process; has secure tenure and adequate funding; is prohibited from acting for improper political purposes; and is subject to court supervision where its powers affect liberty, property, privacy, reputation or legal professional privilege.

Parliament, Law-Making and Public Participation

93. The Constitution should strengthen Parliament as the central forum for democratic deliberation and executive accountability.

94. Legislative quality is a rule-of-law issue. Laws that affect rights, property, public finance, customary interests, criminal liability, institutional independence, professional regulation or economic activity should not be passed without adequate public scrutiny except in genuine emergencies.

95. The Constitution should require minimum public consultation periods for significant Bills; publication of Bills and explanatory materials before parliamentary debate; rights-impact statements; institutional-independence impact statements; economic and fiscal impact assessments; committee review before final passage, except in

certified emergencies; public submissions and hearings where practicable; special scrutiny of Bills that limit rights; and post-enactment review of urgent legislation.

96. Bills affecting the legal profession, courts, judicial administration, access to justice, professional privilege, legal aid, professional discipline or practising rights should require consultation with the judiciary, the Fiji Law Society, affected institutions, civil society and the public.

Electoral Reform: Effective Representation and Accountability

97. The current single national constituency open-list proportional representation system should be replaced or substantially reformed. The purpose of reform should be to improve democratic accountability while preserving equal representation, equal voting rights and common citizenship as the foundation of electoral rights.

98. The current system treats votes equally at the national level and can produce a proportional Parliament. However, it weakens the direct connection between voters and identifiable Members of Parliament, reduces local accountability, encourages centralised campaigning, and may make it harder for rural, maritime and local communities to know who is responsible for representing them.

99. The Society does not propose abandoning proportional representation. The electoral system should remain a form of proportional representation under which the overall allocation of seats in Parliament is determined, as fairly as practicable, by the number and proportion of votes received by each political party. The reform required is to combine proportionality with constituency accountability, so that political parties receive seats broadly in accordance with their national or regional vote while voters also have identifiable Members of Parliament answerable to them.

100. The central democratic problem is that a voter should be able to identify a Member of Parliament, or a small group of Members, who is answerable to that voter's constituency. Accountability should be territorial, civic and grounded in equal representation and equal voting rights.

101. The Society recommends a mixed-member electoral system under which:

(a) a significant number of Members of Parliament are elected from geographic constituencies based on equal representation and equal voting rights;

(b) each constituency may, where appropriate, elect at least two Members of Parliament, so that electors have identifiable representatives while avoiding an overly narrow or exclusionary single-member model;

(c) a proportional component ensures that the overall composition of Parliament broadly reflects the number and proportion of votes received by each political party, whether calculated nationally or regionally;

(d) constituency boundaries are drawn by an independent boundaries commission according to population equality, geography, community of interest, transport links, provincial and municipal considerations, and the special circumstances of maritime and remote communities;

(e) boundaries are drawn by reference to objective and equal-representation criteria, and not by reference to separate ethnic, religious or other group-based electoral categories;

(f) the system preserves equal suffrage while improving local accountability; and

(g) voters have identifiable constituency representatives and a meaningful party or proportional vote.

102. If a full mixed-member system is not adopted, the Constitution should at least replace the single national constituency with regional multi-member constituencies based on equal representation and equal voting rights. The Commission should consider whether each such constituency should return at least two Members of Parliament. The object should remain the same: to ensure that Members of Parliament are accountable to identifiable territorial constituencies while preserving equal voting rights and overall fairness in the translation of votes into seats.

National Unity, Equal Citizenship and the Special Position of the iTaukei

103. Fiji's Constitution should continue to affirm a single national identity and the equal citizenship of all Fijians. Equal citizenship is essential to peace, confidence, mobility, education, employment, investment and shared national life.

104. Equal citizenship does not require the Constitution to ignore the special position of the iTaukei. Properly framed, constitutional recognition of the iTaukei is compatible with national unity and equality.

105. The Constitution should recognise that the iTaukei are indigenous to Fiji; that iTaukei land has a unique constitutional status; and that iTaukei culture, language, customs, traditional knowledge and institutions are foundational to Fiji's identity.

106. Recognition should not be limited to symbolic language. The Constitution should create an enabling environment in which iTaukei communities can participate actively and fairly in the national economy, including through education, finance, professional services, procurement, joint ventures, management capacity, training, enterprise development and resource governance.

Property, Land, Resources and Economic Certainty

107. The Constitution should protect property rights while preserving the special constitutional status of iTaukei, Rotuman and Banaban lands.

108. Laws affecting property, leases, licences, customary rights, land use, resource rights or compensation should be clear, prospective, non-arbitrary and subject to court review.

109. Constitutional reform should distinguish carefully between ownership rights, customary rights, access rights, management rights, benefit-sharing rights, regulatory powers, public rights and commercial rights.

110. In relation to marine and natural resources, customary interests should be recognised through consultation, benefit sharing, co-management, compensation where appropriate, environmental stewardship, customary participation in regulatory decisions, access to commercial opportunities and dispute-resolution processes subject to court supervision.

111. The Constitution should avoid models that fragment national resources into exclusive sectors in a way that creates uncertainty about public access, navigation, inter-community movement, recreational use, commercial development, investment or the State's ability to regulate in the public interest.

Immunity, Accountability and Constitutional Legality

112. The immunity provisions in the existing Constitution raise serious rule-of-law concerns. Constitutional supremacy is weakened if some conduct is permanently placed beyond legal scrutiny and if courts are prevented from considering the legality, scope or consequences of immunity provisions.

113. The Society recognises that questions of immunity may involve historical, political and transitional considerations. However, a future constitutional settlement should not entrench permanent legal impunity or prevent courts from performing their constitutional function.

114. The Constitution should remove blanket ouster clauses preventing courts from hearing challenges concerning immunity; provide that no future immunity may be granted for unconstitutional overthrow, serious human-rights violations, torture, unlawful killing, enforced disappearance, sexual violence, corruption, abuse of office or other serious criminal conduct; provide that any immunity must be strictly construed; and preserve the right of courts to determine whether an immunity applies on the facts.

Transitional Review of Existing Laws

115. Transitional arrangements should be clear, time-limited and consistent with constitutional supremacy.

116. Where existing laws are preserved, they should be subject to the Constitution and the Bill of Rights. Transitional provisions should not permanently immunise ordinary laws from constitutional review.

117. The Constitution should require a systematic review of existing laws for consistency with the new constitutional framework within a defined period.

118. Priority should be given to laws affecting rights, elections, media, public order, land, resources, courts, tribunals, professional regulation, public finance and institutional independence.

119. The Legal Practitioners Act 2009 should be included in that review. The review should preserve public-protection mechanisms and professional standards while reforming any provisions inconsistent with legal-profession independence, institutional independence, procedural fairness, access to courts and constitutional supremacy.

Proposed Textual Directions for the Commission

120. Without attempting to draft a complete Constitution, the Society suggests the following textual directions for consideration.

Rule of Law

121. The Constitution should provide that:

> The Constitution shall continue to recognise the rule of law as a founding value of the State. The rule of law includes constitutional supremacy, equality before the law, access to courts, effective remedies, fair administrative action, separation of powers, judicial independence, the independence of the legal profession, legal professional privilege, transparent public power, accountable government, and independent institutions capable of checking abuse of public power.

Bill of Rights limitation and entrenchment

122. The Constitution should provide that:

> A right or freedom in the Bill of Rights may be limited only by a law of general application to the extent that the limitation is reasonable, necessary and proportionate in a free and democratic society based on

human dignity, equality and freedom, taking into account the nature of the right, the importance of the purpose of the limitation, the nature and extent of the limitation, the relationship between the limitation and its purpose, and whether less restrictive means are reasonably available.

123. It should further provide that:

No law may limit a right so as to extinguish its essential content, and every limitation of a right is subject to review by an independent court.

124. It should further provide that:

No amendment to the Bill of Rights, and no amendment that has the purpose or effect of reducing the scope, enforceability or essential content of a right or freedom, shall be valid unless approved in accordance with the special amendment procedure for this Constitution, including a special parliamentary majority, adequate public consultation, and referendum approval where required.

Constitutional amendment and referendum

125. The Constitution should provide that:

A Bill to amend this Constitution shall be valid only if it is passed at the relevant parliamentary readings by the votes of at least two-thirds of the Members of Parliament voting, after adequate public consultation and committee scrutiny, and is then approved in a referendum by at least two-thirds of voters voting in the referendum.

126.It should further provide that:

No amendment to the Bill of Rights, access to courts, judicial independence, electoral democracy, independent constitutional offices, land protections or the amendment procedure itself shall take effect unless approved in accordance with that procedure.

127. It should further provide that:

The High Court shall have jurisdiction to determine whether the constitutional amendment procedure has been complied with and whether any purported amendment is consistent with constitutional supremacy, equal citizenship, the essential content of rights, access to courts, judicial review, judicial independence and the rule of law.

Access to courts

128. The Constitution should provide that:

No law may exclude or restrict the jurisdiction of a court to determine whether any law, conduct, decision or omission is consistent with this Constitution, or to grant an effective remedy for a breach of this Constitution.

129. It should further provide that:

A provision of any law stating that a decision is final or conclusive does not prevent review by a court for constitutional invalidity, jurisdictional error, breach of natural justice, bad faith, improper purpose, irrationality, disproportionality or infringement of rights.

Legal-profession independence

130. The Constitution should provide that:

The State must ensure that the legal profession is regulated by law in a manner that protects the public, maintains professional standards, preserves the independence of legal practitioners, and secures fair, transparent and judicially reviewable disciplinary processes.

131. It should further provide that:

No Minister or political office holder may direct a legal-services regulator in relation to a particular person, complaint, investigation, disciplinary proceeding, practising certificate, admission decision, or professional body.

132. It should further provide that:

The Fiji Law Society shall have authority, in accordance with law, to issue, renew, maintain, suspend and impose conditions on practising certificates for legal practitioners. In exercising that authority, the Society shall act independently, transparently, fairly and in the public interest, and its decisions shall be subject to review by an independent court.

133. It should further provide that:

The practising-certificate system shall be directed to maintaining professional standards, protecting clients and the public, securing compliance with ethical, trust-account, continuing professional development and risk-management obligations, and preserving the independence of legal practitioners from improper political or executive influence.

Independent appointment institutions for critical state officers

134. The Constitution should provide that:

> Critical state officers whose independence is necessary for constitutional democracy and the rule of law must be appointed through independent, plural, transparent and merit-based appointment bodies that are not subject to direction or control by the Prime Minister, Attorney-General, Cabinet, a Minister, a political party, or any person exercising executive authority.

135. It should further provide that:

> Critical state officers include judicial officers, electoral officers, prosecutorial officers, audit officers, anti-corruption officers, human-rights commissioners, public-service commissioners, the Ombudsman, integrity and accountability officers, legal-services regulatory officers, and any other officer whose functions require independence from political direction.

136. It should further provide that:

> Critical state officers must have security of tenure, protected remuneration, adequate institutional funding, independent staffing, and protection from removal except for constitutionally specified cause after independent inquiry and procedural fairness.

Ombudsman

137. The Constitution should provide that:

> There shall be an independent Ombudsman with power to investigate maladministration, abuse of executive or administrative power, unreasonable delay, unfair administrative action, failure to give reasons, and systemic failures in public administration. The Ombudsman shall be independent, adequately funded, appointed through an independent and merit-based process, protected from arbitrary removal, and empowered to report directly to Parliament and the public.

Electoral representation

138. The Constitution should provide that:

> Members of Parliament shall be elected under an electoral system that ensures universal and equal suffrage, free and fair elections, equal representation, equal voting rights, accountability of Members of Parliament to identifiable territorial constituencies, and overall fairness in

the translation of votes into seats. The electoral system shall be founded on common citizenship and shall not create separate electoral categories or voting rights for different groups of citizens. Parliament may provide for multi-member territorial constituencies, including constituencies returning at least two Members of Parliament, where this better secures accountability, inclusion and effective representation.

National unity and iTaukei recognition

139. The Constitution should provide that:

> Fiji is a sovereign democratic State founded on common and equal citizenship, national unity, respect for human rights, the rule of law, the separation of powers, good governance, transparency, accountability, environmental stewardship, and recognition of the indigenous iTaukei people, their land, culture, customs, language, traditional institutions and development aspirations.

140. It should further provide that:

> Recognition of the special position of the iTaukei must be interpreted consistently with the equal citizenship and fundamental rights of all Fijians, and with the duty of the State to promote national unity, social cohesion and fair participation in national development.

Topic	Recommended constitutional reform	Reason
Rule of law	Preserve and strengthen the existing rule-of-law foundation	Gives practical effect to constitutional supremacy, rights, courts and institutional accountability
Equal rights	Protect equal citizenship and substantive equality	Maintains national unity and fair participation for all communities
Bill of Rights	Add a proportionality-based limitation clause, special parliamentary-majority safeguards, public consultation and referendum approval for serious rights-reducing amendments	Protects rights against legislative and constitutional erosion

Access to courts	Prohibit ouster of constitutional, jurisdictional and procedural review	Ensures effective remedies and legality
Constitutional amendment	Require two-thirds of MPs voting and two-thirds of voters voting in a referendum	Preserves democratic amendability while requiring broad national consent
Fiji Law Society	Recognise the Society's public law-reform and rule-of-law role	Gives practical effect to the Society's statutory objects
Legal profession	Protect the independence of the legal profession	Ensures lawyers can represent clients and challenge unlawful power without improper pressure
Practising certificates	Vest authority in the Fiji Law Society to issue, renew, maintain, suspend and impose conditions on practising certificates, subject to clear legal criteria, procedural fairness and court review.	Strengthens independent professional regulation, enforcement of standards, client protection and legal-profession independence.
Legal-services regulation	Make admission, discipline and practising-certificate systems independent, fair and reviewable	Protects the public while preserving professional independence
Judicial Services Commission	Reform and strengthen the Judicial Services Commission; exclude the Prime Minister, Attorney-General, Ministers, MPs, political party officers and persons subject to executive direction from membership	Strengthens actual and perceived judicial independence
Constitutional Offices Commission / appointment	Constitutionally protect independent, plural and transparent appointment bodies; exclude the Prime Minister, Attorney-General, Ministers, MPs, political party	Prevents democratic safeguards from being captured through executive-controlled

bodies	officers and persons subject to executive direction	appointments
Critical state officers	Protect appointment, tenure, remuneration, removal and acting appointments for judges, electoral officers, prosecutors, auditors, anti-corruption officers, human-rights commissioners, public-service commissioners, the Ombudsman and legal regulators	Secures the independence of offices essential to democratic government
Ombudsman	Establish an independent constitutional Ombudsman	Strengthens non-judicial accountability and remedies for unfair public administration
FICAC / anti-corruption enforcement	Consider abolishing FICAC and reallocating functions; if retained, limit FICAC to investigation only, with prosecution decisions reserved to the DPP	Separates investigation from prosecution and reduces risk of politicised or excessive coercive power
Electoral system	Adopt a proportional electoral system that reflects the number and proportion of votes received by political parties, while using geographic or regional multi-member constituencies based on equal representation and equal voting rights, possibly returning at least two MPs each.	Combines proportional fairness with MP accountability to identifiable territorial constituencies while preserving equal citizenship
Equal representation and voting	Preserve one common electoral roll and equal voting rights for all citizens, without separate electoral categories.	Preserves common citizenship, equal representation and equal suffrage.
National unity	Preserve common and equal citizenry while recognising the special position of the iTaukei	Supports unity, identity and social cohesion
Property and	Clarify property, customary, public and	Promotes certainty,

resources	regulatory rights	fairness and development
Immunity	Remove or narrow entrenched immunity and court-exclusion provisions	Restores equality before law and constitutional supremacy
Transitional review	Require review of existing laws, including the Legal Practitioners Act 2009	Aligns ordinary law with the new constitutional settlement

Conclusion

141. Fiji's constitutional review is an opportunity to strengthen a national settlement that protects every citizen, recognises the special position of the iTaukei, and secures the rule of law for future generations.

142. The Society respectfully submits that constitutional reform should preserve the 2013 Constitution's existing rule-of-law commitments while strengthening their practical effect through equal rights, Bill of Rights supremacy, access to courts, effective remedies, independent institutions, and a workable but robust amendment process requiring broad parliamentary and popular consent.

143. The Constitution should not be so rigid that democratic reform becomes impossible. Nor should it be so flexible that fundamental rights, judicial independence, equal citizenship, electoral democracy or institutional independence can be altered by a transient majority. The appropriate balance is a constitutional amendment formula requiring at least two-thirds of Members of Parliament voting and at least two-thirds of voters voting in a referendum.

144. The Society further submits that the independence of the legal profession, the courts, the Judicial Services Commission, accountability institutions, and appointment bodies for critical state officers is central to the rule of law. These safeguards protect the public, not merely institutions or office holders.

145. The Commission is respectfully urged to recommend reforms that create a Constitution capable of commanding broad public confidence: a Constitution that is stable but amendable, rights-protecting but practical, culturally grounded but inclusive, and strong enough to uphold the rule of law for all Fijians.

Fiji Law Society



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Wylie Clarke

PRESIDENT

Fiji Rotuman Association (FRA)

Rotuma Council Association
Monday 29 June 2026
2pm-3pm

Mr. Leighton: Members of the Fiji Rotuman Association, Noa'ia Mauri Faieksia, and thank you for taking up the invitation of the Commission to be here today and make submissions. As advised, if you wish, you can speak in Rotuman. Dr. Fatiaki will then translate.

But please, thank you very much for coming today and availing yourselves. I've also printed out the written submissions, which were greatly appreciated, and all the Commission members have them in front of them. Just a few housekeeping matters.

My name is Leighton Fatiaki. I'll just have the role of introducing the Commissioners. Also, if you are making submissions, the mics in front of you. Just press on the right side of the mic, the right panel. The mic will come on, and then you can talk, and then press the same panel to just turn it off. Before you make a submission, we request if you can just state your name for the record so everything is being recorded, audio and video, and is also being transcribed so that we know who's making the submissions.

Just by way of introduction, the Commission is a six-member team. Seated to the far right is Mr. Conway Beg, a well-known architect within Fiji and the Pacific, as well as with the Fiji Rugby Union. Seated next to him is Ms. Merewalesi Nailatikau.

She's a development and communication specialist with extensive experience. Seated next to her is Dr. John Charles Fatiaki, a medical practitioner, former senator, and also current special administrator of the Suva City Council. Seated next to him is the Chair of the Commission, Mr. Sevuloni Valenitabua. He is a very prominent lawyer, especially a defense lawyer within the Pacific. He has also worked with the Fiji Human Rights Commission, as well as other countries in the Pacific. Seated next to him is another lawyer, a prominent lawyer from Labasa, Mr. Ami Kohli, with his own firm in Labasa, Koli & Singh.

And next to him is Dr. Neelesh Gounder, a well-known economist and USP lecturer. With that, I will now hand over to the Chair to introduce the Commission and the work that they'll be undertaking. Thank you.

Mr. Valenitabua: Thank you, Leighton. Mr. Faktaufon and members of the Fiji Rotuma Association, we welcome you all to Level 9, Suvavou House. This afternoon, we welcome you before the Commission.

You will note that we have six members of the Commission sitting here today. We've been around the country. We were separated into two teams.

Dr. Fatiaki led one team, and I led one team. And we went around our country so that we could gather submissions and recommendations from citizens of this country in relation to what they consider to be appropriate provisions to be included in the Constitution. We have started in Suvavou today.

Tomorrow, a team is again going to Rotuma to get reviews and recommendations from the island of Rotuma. The purpose of this Commission is to review the 2013 Constitution. We were appointed by His Excellency, the President of the Republic of Fiji, and the task that we were given was to review the 2013 Constitution.

In other words, review means we can amend, we can add laws to the Constitution, we can remove laws from the Constitution, and we can amend the laws within the Constitution. Those are the things that constitute what we are referring to as reviewing the Constitution. Eventually, we will make recommendations to His Excellency, the President of the country, on what should be included in the amended Constitution, and we will also have a draft amended Constitution prepared so that our recommendations could be reflected in the amended Constitution before we hand the documents which we will be preparing to His Excellency, the President of the country.

Now, your attendance this afternoon is significant. It's important so that we can hear from your association on matters which we believe might relate to Rotuman's as a whole and maybe to the other things that concern us within the Republic of Fiji. We are here to listen.

We might ask questions later on. We might make comments. And feel free to speak Rotuman because we've got Dr. Fatiaki here and also Leighton Fatiaki who will be able, I'm sure, to translate to us non-Rotuman speakers.

Now, with those few words, I welcome all of you, and I now open the floor to you, Mr. Faktaufon, and ladies and gentlemen, for your submissions to be presented to the Commission this afternoon.

Mr. Faktaufon: Thank you. Thank you, Mr. Chairman, and to the Commission. As mentioned earlier, we're here on behalf of the Fiji Rotuma Association. There will be three of the speakers who will be speaking shortly. As an introduction, we are the legal team for the Fiji Rotuma Association, but the association has prepared their papers, and I will then hand over to them now to speak.

Ms. Agatha: Noa'ia Mauri. My name is Agatha Ferei Furivai. I bring greetings on behalf of our chairperson, Mr. Victor Fatiaki, who is unable to join our team this afternoon. And so, as a committee, we have Mr Sagaitu Wasile seated on my left as the Vice Chair of the association. The submission that we have this afternoon is a summary of what we have as a written submission, and also with this presentation, there'll be two from different districts that have presented. The oral submission that I'm going to present today and the written one was endorsed by the Council in its meeting last Saturday. Hence, we have three district contributions, which we are happy to also add on as an annexes to our current summary of our written submission.

To the Honorable Chairperson, distinguished members of the Constitution Review Committee, ladies and gentlemen, Noa'ia Mauri. Today, I have the privilege of presenting a summary of the Fiji Rotuman Association constitutional submission on behalf of the association, our council, secretariat, representatives and members of the seven associations in Suva and the wider Rotuman communities in Fiji and throughout the diaspora.

Thank you again for the opportunity to present this submission. It is aligned to the detailed written one sent earlier this morning. There is an additional recommendation in this oral submission that was also discussed in our meeting dated 27th June, 2026.

Both submissions, as I have mentioned earlier, were endorsed by the Council in its meeting last Saturday. This particular submission is made in the spirit of national unity, constructive dialogue and respect for the Republic of Fiji. It does not seek separation or special privilege.

Rather, it seeks to strengthen Fiji's constitution by ensuring that it fully recognizes and protects the unique identity, rights and participation of the Rotuman people.

The purpose of this submission proposes constitutional amendments in four key areas. One, the recognition of the indigenous birthright of Rotuman's. Two, recognition of the Rotuman diaspora. Three, pathways for citizenship, restoration for Rotuman's living overseas. And four, guaranteed parliamentary representation for the Rotuman people.

Needed changes? While the current 2020-2013 constitution recognizes the Rotuman people, their land, language and culture, the Association believes that recognition alone is not enough. There remains a gap between constitutional recognition and meaningful participation. Specifically, the submission highlights five concerns that states, one, traditional governance institutions, such as the Council of Rotuman's, are not constitutionally protected. There is no constitutional requirement for government to consult Rotuman institutions on matters affecting Rotuman land, culture or governance. There is no binding duty to preserve the Rotuman language and the constitution does not clearly distinguish indigenous birthrights from legal citizenship. Rotuman's have no guaranteed representation in Parliament.

Recognition of indigenous birthright? A central principle of this submission is that being Rotuman is rooted in its ancestry, culture, language, customary affiliation and land, not simply in citizenship. Many Rotuman's now live overseas, yet they continue to maintain strong family, cultural and customary ties with Rotuma. The Association therefore proposes that the Constitution recognize this enduring indigenous birthright independently of citizenship status.

Proposal for a treaty of self-governance. The Fiji Rotuman Association also respectfully proposes that consideration be given to the development of a treaty of self-governance between the Rotuman Islander Council and the government of the Republic of Fiji. Such a treaty would not alter Rotuma's place within Fiji, nor would it seek separation or independence.

Rather, it would establish a clear constitutional and legal framework that recognizes the distinct historical, cultural and customary relationship

between Rotuma and the state. The treaty could define the respective roles and responsibilities of both parties in such areas as the protection of Rotuma customary governance, administration of Rotuman land and maritime resources, preservation of language and cultural heritage, local governance and community development, consultation on matters affecting Rotuma, and cooperation between the Rotuma Island Council and the government of Fiji. This approach would provide certainty, strengthen partnership, and promote mutual respect while reinforcing national unity and good governance.

Recognition of the Rotuman diaspora. The submission also acknowledges that a significant number of Rotuman's now live outside Fiji. Despite this, they continue to contribute socially, culturally and economically to Rotuma. The Constitution should therefore recognize the Rotuman diaspora as an integral part of the Rotuman people and encourage ongoing connections with their homeland. Learning from other Pacific nations, the association points out that several Pacific countries already provide constitutional protections for their indigenous people. Examples include reserved Maori parliamentary seats in New Zealand, recognition of customary governance in Samoa, traditional leadership structures in Vanuatu, and citizenship pathways for diaspora communities in Samoa and Tonga. These examples demonstrate that constitutional equality sometimes requires practical protections for smaller indigenous communities.

Key recommendations.

The submission respectfully asks the Committee to consider the following recommendations:

Recognition of indigenous Rotuman birthright. Recognition of both the Itaukei and Rotuman peoples as Fiji's indigenous people. Stronger protection of the Rotuman language and cultural heritage and constitutional protection of Rotuman land tenure and customary ownership.

Guaranteed parliamentary representation for Rotuman's. Constitutional protection of the Council of Rotuma. Mandatory consultation before laws affecting Rotuma are passed.

And recognition of the Rotuman diaspora, citizenship restoration pathways for indigenous Rotuman's abroad. Treaty of self-governance.

The constitution should provide for or enable the negotiation of a treaty of self-governance between the Rotuman Island Council and the government of the Republic of Fiji.

The treaty would affirm Rotuma's unique constitutional and historical status between the two parties and strengthen local self-governance while affirming that Rotuma remains an integral part of the Republic of Fiji. Commitment to national unity. Importantly, the Fiji Rotuman Association clearly states that these proposals do not seek separation, do not seek division, do not seek privilege.

Instead, they seek constitutional completeness within national unity. Recognizing Rotuma as an integral part of Fiji while ensuring that one of Fiji's smallest indigenous communities continue to have a meaningful voice in national life. In conclusion, this submission asks that the Fiji Constitution move from recognition to representation, from symbolic inclusion to structural inclusion, from acknowledging identity to protecting identity.

The Fiji Rotuman Association respectfully invites the Constitution Review Committee to consider these recommendations as a means of strengthening Fiji's democracy, preserving the unique heritage of the Rotuman people and ensuring that future generations, whether living in Rotuma, elsewhere in Fiji, or throughout the diaspora, remain connected to their ancestral homeland. Finally, we respectfully invite the Committee to consider a treaty of self-governance between the Rotuma Island Council and the Government of Fiji as a modern partnership that honors Rotuma's distinct identity, strengthens constitutional certainty, and reinforces our shared commitment to one peaceful, united, and prosperous Fiji. Faieksia. Vinaka Vakalevu and thank you.

Mr. Faktaufon: We also have Ms Sukafa Katafono, who will be giving a brief.

Ms. Sukafa: All protocols observed. Ladies and gentlemen, I would like to... I'm speaking from the Suva Itu'ti'u Association. My name is Sukafa Katafono.

I would like to speak from the perspective of the International Labour Organization, Convention 169 on the Indigenous and Tribal Peoples. So, this submission calls for the recognition and protection of the Rotuman people as a distinct indigenous community within Fiji, in alignment with Fiji's binding obligations under ILO Convention 169 and international

indigenous rights standards. It argues that the current Constitution does not adequately recognize Rotuma's unique legal status, governance systems, cultural identity, and rights, creating a gap between domestic law and international obligations.

Fiji's ratification of the International Labour Organization's Indigenous and Tribal Peoples Convention, 1989, number 169, gives rise to binding obligations under international law, requiring the state to give effect to the Convention's provisions in its domestic legal order, and requiring the recognition, protection, and effective participation of the Rotuman people in national governance. While international treaties do not automatically become directly enforceable in domestic law, the state is nevertheless under a continuing duty to take legislative, administrative, and constitutional measures to ensure compliance. In this context, a constitutional framework that does not adequately recognize indigenous institutions, guarantee consultation through representative bodies, or protect land, resource, cultural, and participatory rights would be inconsistent with Fiji's international commitments under Convention 169.

Constitutional reform, therefore, presents both a legal obligation and a necessary mechanism for aligning Fiji's domestic framework with its binding international standards and for ensuring that those rights are given practical and enforceable effect. To address this, the submission proposes a dedicated constitutional chapter on Rotuma. Grounded in Convention 169 and the United Nations' Rights of Indigenous People, the submission emphasizes key rights including participation in decision-making, recognition of customary institutions, protection of land, marine, and natural resources, self-determined development, preservation of language, culture, and identity, prior and good faith consultation through representative institutions.

Applying these principles to Rotuma, the submission highlights the importance of the Council of Rotuman District Chiefs, as legitimate representative institutions. The protection of Rotuman land, resources, culture, language, and social systems, including the bilateral kinship structure. The recognition of the Christian faith and spirituality as central to Rotuman identity.

The submission proposes specific constitutional provisions to recognize Rotuma as a distinct indigenous people, ensure meaningful

representation in Parliament, guarantee mandatory consultation before decisions affecting Rotuman's, protect land, sea, and resources rights, safeguard cultural, language, and institutions, enable effective participation in all levels of governance. It calls for inclusion of the Rotuman diaspora in consultation and development, consideration of innovative governance models to strengthen representation, and I make mention of the Saana Parliament in the Nordic regions of the north, a progressive autonomy framework to enhance Rotuman's capacity to manage its internal affairs. The submission concludes that recognition of Rotuman rights is a legal obligation, not a policy choice, and that constitutional reform is a critical opportunity to ensure compliance, strengthen national cohesion, and provide practical and forcible protection of Rotuman identity, governance, and rights.

And I read the conclusion. Recognition of Rotuman rights is not a matter of policy discretion. It is a legal obligation arising from Fiji's membership in the ILO and its ratification of international instruments, including ILO Convention 169.

The constitutional review process presents a critical opportunity to ensure that the Rotuman people, their institutions, and their identity are formally recognized, protected, and empowered within Fiji's constitutional framework. Taking action now will strengthen consultation, representation, and protection frameworks in a manner consistent with Fiji's international commitments and will support credible and constructive engagement with the ILO. I thank you for your attention.

Mr Pene Muli : Thank you. Thank you, Ms. Sukafa. Also, I'll ask Mr. Muli Pene, who also has a presentation from the Itumuta under the FRA.

Mr Pene Muli : Bula Vinaka, Chairperson and Honorable Commissioners. I, as you know, I appear before this Commission on behalf of the Suva-Itumuta Association. Suva-Itumuta Association represents Rotuman's originating from the district of Itumuta who reside in Suva and other parts of Fiji.Through our association, we maintain our cultural identity, language, traditions, family connections, and continuing ties with our homeland in Rotuma. We make this submission in response to Commissioner, in particular, Dr. John Fatiaki's invitation to Rotuman's residing in Fiji, Rotuma, and throughout the diaspora to participate in the

constitutional review process. This submission is in support of the Fiji Rotuma Association submission.

It is our respectful submission that meaningful parliamentary representation for Rotuman's should be constitutional priority. Rotuma occupies a unique place within the Republic of Fiji. Rotuma is not merely another geographic region of Fiji.

Rotuma possesses its own history, language, culture, customs, traditions, and systems of governance. The people of Rotuma are recognized as one of Fiji's indigenous peoples and possess distinct identity that has been preserved over generations. Because of our small population size, however, Rotuman interests can easily become overlooked within a national electoral system that is based primarily on population numbers.

While we fully support the principle of equal citizenship and democratic participation, equality should not mean that small indigenous communities lose their voice within national institutions. The Constitution should therefore provide a mechanism that ensures Rotuman's interests are meaningfully represented and heard within Parliament. Historically, Fiji's constitutional arrangements had recognized the unique status of Rotuma through dedicated parliamentary representation.

These arrangements acknowledge the Rotuman circumstances. They recognize that population size alone should not determine whether an indigenous community has an effective voice in national decision-making. We respectfully submit that this principle remains relevant today.

The constitution should acknowledge that Rotuma's distinct identity justifies consideration of specific representational arrangements. With regards to the Rotuman diaspora, I wish to speak of my personal circumstances as an example to support the submission made by FRA with regards to indigenous rights versus citizenship. In 2022, while preparing to return permanently to Fiji after many years in Australia, I discovered that I was no longer recognized as a Fiji citizen because I had acquired Australian citizenship in 2003.

I have never renounced my Fiji citizenship. I had never abandoned my connection to Rotuma. I had never stopped identifying myself as a Rotuman and a Fijian.

Yet I was advised that under the law, my citizenship had ceased automatically and that I would have to apply to regain it. While I accept the legal explanation that was provided to me, the experience caused me to ask a deeper question, a constitutional question. Can a person's legal citizenship be separated from their birthright? My answer is yes.

My citizen status may have changed through the operation of law. My birthright did not. My ancestry did not.

My connection to Rotuma did not. My language did not. My culture did not.

My family did not. My belonging did not. This is why I believe the Constitution should recognize a distinction between citizenship and birthright.

Rotuman's, like the Itaukei people of Fiji, are indigenous people of this country. We are not immigrants. We are not foreigners. We are not guests in our own home. We are landowners by birthright. Our connection to Fiji arises through ancestry, culture, family, customary affiliation, and history.

Rotuma is a part of the Republic of Fiji. When laws are made for Fiji, they affect Rotuma, and they affect Rotuman's. Therefore, I respectfully submit that the constitution should expressly recognize Rotuman's as one of Fiji's indigenous peoples and protect our birthright connection to our homeland.

The Constitution should also ensure that laws made under it do not unnecessarily impair that connection. Dr. Fatiaki's invitation recognizes that many Rotumans live outside of Fiji. This is an important reality.

Today, there are Rotumans living in Australia, New Zealand, the United States, and elsewhere. Some may hold foreign citizenship. Some may no longer hold Fiji citizenship. But they remain Rotuman. They remain connected to Rotuma through family, land, culture, language, and identity. The question should not simply be whether they hold a Fiji

passport. The question should also be whether they are Rotuman by birth, ancestry, and customary affiliation. Fiji should also recognize the importance of maintaining the connection between Rotuma and Rotuman's living abroad.

Finally, I respectfully submit that the Constitution should require future laws to recognize the unique circumstances of indigenous Rotumans.

Chairperson and Honorable Commissioners, our submission is ultimately about belonging. I stand before you today as a Rotuman, born and raised in Fiji. I am a famor es hanua. I am part of the people whose history, culture, and future are tied to Rotuma and to Fiji. My citizen status may have changed. My birthright did not.

I respectfully submit that this commission ensures that Fiji's future Constitution recognizes and protects the birthright for all Rotuman's, both at home and throughout the diaspora. Vinaka Vakalevu.

Mr Faktaufon: Mr. Chair, as earlier mentioned, we will also be putting this presentation, by way of written submission, through to the commission. Thank you. We will give this back to the commission for any questions. Just one more, Mr. Chair. One representation from Juju, which is from Ms. Agatha again, before we conclude.

Ms. Agatha: Thank you. I will just move on. I will only present their proposed constitution matters, and they have given three. The first one, I will not talk to it, because it has been shared widely by the first presentation I made, and also our two presenters, working on the proposed constitutional recognition of the Rotuman people. But I would like to move on to their other two matters, from the Suva Juju Association. The second proposition they made is a guaranteed parliamentary representation. This has been reflected in our written submission. But so that we don't lose what people have put together as a voice, I would like to read. The Rotuman population is relatively small.

Under purely population-based electoral systems, minority communities can easily lose their parliamentary voice. Constitutional democracy is not simply majority rule. It also requires protection of minority communities.

Many democratic constitutions provide guaranteed representation for indigenous and minority people. So, the proposal that the Association has put forward is to recommend three dedicated parliamentary seats if we are using the communal and common seat factors. So, one communal seat for the Rotuman's on Rotuma Island, one communal seat for the Rotuman's in the wider Fiji communities, and one common seat for the Rotuman's on Rotuma Island and the diaspora as well.

The benefits, as per this proposition, this model strengthens democracy, protects minority rights, preserves national unity, gives Rotuman's an effective parliamentary voice and recognizes both homeland and diaspora communities. The third is the National Day of Christian Fasting and Prayer as Fiji's spiritual heritage. Fiji has long acknowledged the importance of faith in national life.

Across every ethnic community, faith has played an important role in reconciliation, peace, disaster recovery, national healing, community service. The Association proposes that Fiji establish an annual National Day of Christian Fasting and Prayer and the purpose would encourage humility, national reflection, reconciliation, forgiveness, unity, prayer for national leaders, families, and peace. And while this matters, Fiji continues to face many challenges, including crime, drugs, family violence, corruption, social division, mental health pressures. Law alone cannot solve every national problem. Strong moral values remain essential to national development. A National Day of Christian Fasting and Prayer would provide an opportunity for citizens to unite in seeking God's guidance for our nation.

Respect for religious freedom. Importantly, this proposal does not seek to diminish the constitutional rights of citizens belonging to other faiths or those with no religious affiliation. Rather, it recognizes the historical and continuing contributions of Christianity to Fiji's national development, while fully respecting freedom of religion and freedom of conscience.

Participation could remain voluntary and inclusive in spirit, consistent with constitutional protection for religious identity. Their conclusion, we therefore have a responsibility to ensure that it reflects not only democratic principles, but also justice, inclusion, cultural respect, and enduring national values. The Association offers these three

recommendations with humility, respect, and a sincere desire to contribute to a stronger, more united Fiji.

May God continue to bless Rotuma and bless our beloved nation, Fiji. Thank you. So just before I hand over to Vama again, these three district proposals will be annexes to our oral submission. Thank you.

Mr Faktaufon: Thank you. Mr. Chairman, I think it's now time for any questions from the Commission.

Mr. Valenitabua: First, I must say thank you for the presenters. Thank you, the presenters, for presenting those submissions, the oral submissions to the commission this afternoon. We are also, we will be anticipating receiving written submissions to be given to the commission at a later time.

They will not be related to today. Now, we heard submissions from one of your compatriots in relation to Rotuman, the name Rotuman. I think I will now ask, there has been a lot of issue raised, there has been an issue raised in relation to the name Fijian for all citizens of this country.

Now, in respect of the preamble for the 2013 constitution, the natives of Fiji are referred to as the ITaukei's. And also in the preamble, the natives, the indigenous people of Rotuma are referred to as Rotuman's. And then after that, we are all referred to as Fijians.

Now, what, if I may ask, what is the position of the association in relation to Rotuman's being classified as Fijians? Would you prefer to be referred to as Rotuman's or as Fijians, or as Fiji citizens, or whatever?

Mr Faktaufon: In that aspect, I think Rotuman's would prefer to be known as Rotuman's because it is our identity, and historically we were Rotumans before we became part of Fiji. So, we would prefer that we be referred as an indigenous, as Rotuman's.

Mr. Valenitabua: Thank you, Vama...Is there any other view from...

Ms. Ferei: Yes, just to continue, to add on to what Vama has said, in terms of an association, we will go by Rotuman as an ethnic identity for our Rotuman people, but in terms of nationality and citizenship, the word Fijian has not been an issue for us, and that is something that we have not seen as a matter of an issue for us to hold over. But we will go by Rotuman as an

ethnic identity, and we're okay with the Fiji citizenship, or the Fijian citizenship. Thank you.

Ms. Nailatikau: Thank you very much to members of the Council for not only your presentation, but the care and the thought that is apparent in bringing together the thoughts and views of many of your fellow Rotuman's. I wanted to simply ask a question of curiosity. Please forgive my ignorance.

I'm sure I will remedy that with having the privilege of being able to visit Rotuma tomorrow with the good doctor. You mentioned a bilateral structure of kinship, which I thought was quite interesting, as you mentioned it as an important aspect of recognition of the uniqueness of Rotuman heritage and birthright. I would just like to invite you to expand on that in terms of this bilateral structure, please. Thank you.

Ms. Ferei: So that I don't say anything at the top of my head, I'll just go to our submission, because that's in the written one as well. And let me see, where did I...

Ms. Nailatikau: I believe this was Ms. Katafono, forgive me.

Ms .Katafono: What I meant by that is we trace our heritage on both sides, lineage on mum's side and dad's side. So that's the bilateral kinship I meant.

Ms. Nailatikau: So, it's not a strictly patrilineal type of structure that other groups might be? Or it's just a recognition of both branches?

Ms. Katafono: Rotuman's are Polynesians, which make us matriarchal. But in terms of our lineage and where we can claim land, we can claim on both the mother's side and the father's side.

Ms Ferei: And that is a common practice that we continue to do today.

Mr. Kohli: Thank you for your presentation. We have been traveling around Fiji and we've been hearing from people that they want to have their own constituency reps to be able to see, to knock on their doors and raise their issues. So, I'm surprised, if not shocked, that Rotuma does not have a permanent representative in the parliament. That's the minimum that can be given, considering the fact that you are so far away. MPs from here don't knock on your door every week or every month. So let me take

into consideration. My only question to you is, what is the total number of Rotuman's in the world? What's the population? Any idea at all? Because you're asking for three seats. That's the only reason I asked you. Nothing else. Why three? Okay. What is the total population of Rotuman's in the world? Well,

Mr Faktaufon: I think that's probably an answer we might not be able to give to you. But in Rotuma and Fiji alone, maybe Dr. John, to correct me, we probably have at least about 10,000, if not less than that. But around the world, we have a bigger population around the world at this stage in terms of Rotuman's and even Part- Rotuman's for that matter. Thank you. Just to contribute to that, in terms of education and language, we kindly refer to about 16,000 in the world, less than 2,000 on the island. I think the last census said 1,600. And the wider Fiji community has the largest number of around over 10,000 Rotuman's. So, in terms of council, the mother council is the Rotuma Island Council that is based on the island, and they are the parent council.

We, the Fiji Rotuman Association, is just an association here outside of Rotuma, but it's serving the wider Suva Fiji community. And our membership, we have the highest number of Rotuman's out here because we have the representatives of the seven districts. Currently, we have six operating financial members, and each district has their own numbers that they bring to the association. And so that's where the largest tax paying community is, if you like, for Fiji. Thank you.

Dr Neelesh: Thank you very much for your submission this afternoon. It is good to see a big group today here for the submission that shows the unity and the interest that you have shown today. So, thank you very much for presenting your submission today.

I just have a query regarding citizenship restoration pathways. In terms of birth, it's already available, for example, the dual citizenship arrangements. So, is it you are referring to the ancestry pathway, or are you referring to both birth and ancestry pathways?

Mr. Pene Muli: Dr. Gounder, if I could respond. I presented my personal example to support that submission, and perhaps I haven't been very clear about the issue. I was born in Rotuma. I never renounced my citizenship. But just because someone passed a law, a citizenship law, that if you took Australian citizenship, or any foreign citizenship, you lost your Fijian

citizenship. That situation affects not just me, but a whole lot of the diaspora, including Fijians. My understanding was that after the 2022 elections, the Fijian iTaukei diaspora made submissions, and they have an automatic pathway. You do not have to apply for citizenship.

I, on principle, think it is wrong that I should apply for citizenship, because I was born a Rotuman, and I am a Rotuman, and I never renounced my Rotuman's, my heritage, or my citizenship. A law was passed that basically disenfranchised myself, cut off my heritage, and I am still no longer a Fijian citizen.

There's a pathway. I have seen the Director of Immigration. I have tried to see the Commissioner of Rotuma. Because we don't have direct representation, they threw the book at me and said, re-apply. On principle, I don't think that is right. And when we're talking about the Constitution, I thought this is where the question should be asked. You should not pass laws that disenfranchise indigenous people, including Rotuman's. I have to pay and apply to get it back. That's wrong, as far as I'm concerned. That's crap, excuse me. But I never renounced my rights or my citizenship. But a law was passed, which I feel is wrong. I think the Fijians have a dispensation under some amendments that has been passed, and I'm not a lawyer, but I understand if you're in Vola ni Kawa Bula (VKB), you can automatically regain your citizenship. We do not have a law in VKB. But there has to be mechanisms put in place to recognize that we are indigenous people. We are not immigrants. And that indigenous status, in my view, supersedes citizenship. I hope that clarifies where I'm coming from.

Dr. Neelesh: Thank you very much. That's very clear. I was thinking along a different line, but you have clarified that.

Mr. Kohli: Thank you. Just a follow-up question from where Dr. Gounder left off. If I may ask, when did you acquire your Australian citizenship?

Mr Pene Muli: 2003. So, I understand that there was a subsequent law passed in 2013. So, after 2013, dual citizenship was allowed, and therefore people that acquired Australian citizenship after 2013, you're okay. But there's a cohort of us that acquired citizenship before 2013, and I might have to be corrected here, but there's a cutoff date, and immigration just throws the book at me and says reapply. And I think that's wrong. That law is wrong. When they passed the rigged deal in 2013, and when they

created a pathway for Fijian diaspora, they should have considered Rotuman's too. Because we are in the same boat. We are indigenous people.

Mr. Kohli: The reason why I ask you is that up to 2002, Australia did not recognize dual citizenship. So, if somebody acquired Australian citizenship, they had to renounce Fijian citizenship. But after that, I guess it applied in 2003, it doesn't apply today.

Mr. Pene: I did not renounce, and Australia did not require that I renounce. I had my Fiji passport until I was considering coming back, and then passport has expired. I put it in to get a new passport, and they took it and said, no, you have to reapply, you're not a citizen.

Mr. Valenitabua: Yeah, that's interesting. When the dual citizenship provision came in, I applied on behalf of the iTaukei s who were in the Solomon Islands. I applied for their citizenship. That was after the dual citizenship provision came in, and they got it. They had to apply and pay. Yeah, that must have happened in 2002. So now you're saying that even if a Fijian, as it is now under the 2013 constitution, leaves the country and becomes a citizen of another country, that citizenship here in Fiji should not be renounced, should not be cancelled. Is that what you were saying?

Mr. Pene: Correct. It should never be a question of cancelling citizenship.

Mr. Valenitabua: If the adopting country, if I may say that, if the adopting country says in their law that you cannot hold dual citizenship, then what would happen then? Because some countries say you either are a citizen of this country or of another country, you can't be both.

Mr. Pene: I understand if a person then chooses to renounce their Fiji citizenship, I can understand that that is a personal choice the person has made.

Mr. Valenitabua: All right. Okay, we get your point. We'll discuss that in relation to citizenship. Vinaka.

Ms. Ferei: Sorry, if I may, I guess just to add on to that, it's the birthright we're talking about over citizenship. So, you can renounce your citizenship if the country you're going to demands that you renounce that citizenship, but if you decide to come back, your birthright should supersede and allow

you to become a citizen or come back easily and not have to apply, pay and go through the process.

Dr. Gounder: Just one more follow-up. So, you're talking about both birthright as well as ancestry, am I right? Birthright is fine, you have explained that, that's very clear. So, you're talking about ancestral links as well?

Mr. Pene: I'm pausing here because in my mind the words are interchangeable. A person, my grandson, might not be born in Rotuma, but in my view, my grandson, as long as he has a drop of blood, of Rotuman blood in him, he is a Rotuman.

Dr. Gounder: So that's the ancestry part you would use there.

Mr. Pene: If that's the definition you're looking for.

Mr Neelesh: Yeah, yeah, yeah, that's what I meant. Birth and ancestry links both. Okay, thank you.

Mr. Valenitabua: Well, thank you very much, Mr. Faktaufon and members of the Association. We have heard your submissions, both oral, and we've got a written submission here, and I anticipate another two or three written submissions to be presented or sent to us. We thank you very much indeed for your submissions this afternoon. We have heard it, it has been recorded, and then we will deliberate on them as we sit down to deliberate on what we should do with the submissions relative to the 2013 Constitution amendment.

Ms. Ferei: Your Honorable Chairperson, Mr. Sevuloni Valenitabua, distinguished members of the Constitution Review Committee, Dr. John Fatiaki, Ms. Merewalesi Nailatikau, Mr. Conway Beg, Mr. Ami Kohli, Dr. Neelesh Gounder. Thank you so much ladies and Leighton. On behalf of our FAHO at Wasale, and the members of the Fiji Rotuman Association present here with our legal team, we are very grateful for the opportunity, and we thank you once again for hearing our voice in this afternoon's discussion.

Mr. Leighton: Before you leave, I kindly request if you can just remain to take a picture with the Chair and the Commissioner.

Ms. Ferei: Just a question, do you know the booklet you have? Do you have hard copies for us to bring home, or is it only available online? The Rotuman translation of the review.

----------End of Session [29-6-2026]----------

FIJI ROTUMAN ASSOCIATION
CONSTITUTIONAL AMENDMENT SUBMISSION

Recognition, Citizenship, Diaspora Rights and Parliamentary Representation of the Rotuman People
Prepared for Formal Submission

This submission presents key constitutional amendments proposed by the Fiji Rotuman Association to strengthen the recognition, protection and participation of the Rotuman people within the Republic of Fiji.

The recommendations focus on affirming indigenous Rotuman birthright, recognizing the enduring role of the Rotuman diaspora, establishing pathways for citizenship restoration and ensuring meaningful parliamentary representation.

These proposals aim to align Fiji's constitutional framework with regional best practices while honoring the unique cultural, historical and ancestral identity of the Rotuman people.

By Victor Fatiaki and the Members of the Fiji Rotuman Association Council and Secretariat and Suva Member Associations.

FIJI ROTUMAN ASSOCIATION
SUBMISSION TO THE FIJI CONSTITUTION REVIEW COMMITTEE

To: The Chairperson, Fiji Constitution Review Committee.
From: The Fiji Rotuman Association Chairperson on behalf of the FRA Council and of its member associations in Suva.
Date: 29th June 2026

PREAMBLE

Presentation on behalf of the Fiji Rotuman Association and the wider Rotuman people of Fiji and the diaspora to respectfully present our constitutional perspective on the place of Rotuma and her indigenous identity within the Republic of Fiji.

This presentation is offered in a spirit of national unity, constructive engagement and respect for the constitutional order of our nation.

STRATEGIC VISION

"Rotuma is to remain a Haven within a Peaceful and Prosperous Fiji for its indigenous community- a place where its inhabitants would continue to Love, and Respect one another Acknowledge and Appreciate Almighty God's Love, Mercy and Blessings on their lives…'

(JR KONROTE) Major General (Ret'd).

EXECUTIVE SUMMARY

This submission proposes constitutional amendments to strengthen the recognition of the Rotuman people as one of Fiji's indigenous communities. It addresses gaps in the current constitutional framework relating to indigenous birthright, diaspora identity, citizenship restoration and meaningful parliamentary representation.

0.1 Indigenous Birthright Recognition.

Rotumans' possess an enduring birthright connection to Rotuma and Fiji arising from ancestry, customary affiliation, land ownership, language, culture and history. This birthright exists independently of legal citizenship and should be expressly recognized and protected in the Constitution.

0.2 Citizenship and Indigenous Identity.

The current legal framework does not adequately distinguish citizenship from indigenous belonging. Many Rotumans abroad maintain ancestral and customary ties despite holding foreign citizenship. Indigenous identity should not be extinguished by a change in legal citizenship status.

0.3 Recognition of the Rotuman Diaspora.

A significant proportion of Rotumans now reside outside Fiji. Despite this dispersion, the diaspora continues to contribute to Rotuma's cultural, social, economic and customary life. The Constitution should acknowledge this ongoing role and facilitate the maintenance of these connections.

0.4 Citizenship Restoration Pathways.

The Fiji Rotuman Association recommends that Parliament be required to establish accessible pathways for indigenous Rotumans, including *Famor 'es Hanua*, to acquire, retain, or restore Fiji citizenship based on ancestral and customary ties.

0.5 Alignment with Pacific Practice.

Regional practice recognizes that indigenous belonging may extend beyond citizenship status alone. Fiji should adopt comparable constitutional principles that respect ancestral connection, customary belonging, and the continuing relationship between indigenous communities and their diaspora.

0.6 Guaranteed Rotuman Representation.

The Fiji Rotuman Association proposes a constitutionally protected mechanism to ensure meaningful Rotuman parliamentary representation, whether through a dedicated constituency, a reserved seat, or another model developed through consultation with the Rotuman people.

0.7 National Unity.

These proposals do not seek privilege, but constitutional completeness. They affirm Rotuma's integral place within Fiji and ensure that future generations, whether in Rotuma, Fiji, or abroad, can maintain and strengthen their connection to their homeland

1. INTRODUCTORY CONTEXT

The Rotuman people are a distinct indigenous Polynesian community with a unique history, language, customary governance system, and cultural identity.

The Rotuman people are one of the indigenous peoples of Fiji. Our relationship with the Republic of Fiji arises not merely from citizenship, but from ancestry, customary affiliation, land ownership, language, culture and history.

Rotumans' possess an enduring birthright connection to Rotuma and Fiji that exists independently of legal citizenship status and should be recognized and protected within any future constitutional framework.

Many Rotumans continue to maintain this connection while residing elsewhere in Fiji and

throughout the diaspora.

Our historical relationship with Fiji is rooted in a separate colonial cession in 1881, and since that time, we have maintained our distinct identity while contributing meaningfully to the national development of Fiji. The 2013 Constitution of the Republic of Fiji recognizes the Rotuman people, their land ownership, and their cultural and linguistic heritage. This recognition is respectfully acknowledged by our community.

However, recognition alone is not the same as constitutional empowerment.

2. CORE CONSTITUTIONAL POSITION

The Constitution recognizes Rotumans, but does not sufficiently empower Rotumans.

We currently exist in a constitutional framework that:

- acknowledges our identity in principle as per the current constitution's preamble
- but does not guarantee our participation in governance, nor secure our institutional continuity within the national system nor preserve its indigenous identity.

3. KEY CONSTITUTIONAL CONCERNS

We respectfully highlight the following concerns.

a. Political Representation

There is currently no guaranteed Rotuman representation in Parliament.

Under the existing national electoral system, Rotuman representation depends entirely on political competition within a national majority framework. For a small indigenous population, this creates structural vulnerability and uncertainty of voice.

b. Governance Institutions

The Council of Rotuma and district customary systems remain outside constitutional entrenchment.

This leaves our traditional governance structures dependent on ordinary legislation rather than constitutional protection.

c. Consultation Rights

There is no constitutional requirement for the State to consult Rotuman institutions on laws or policies affecting:

- Rotuman land
- marine resources
- cultural heritage
- language
- or local governance

This creates a gap between recognition and participation.

d. Language and Cultural Continuity

While the Rotuman language is acknowledged in the Constitution, there is no binding obligation on the State to actively support its preservation and transmission. This places the survival of our language primarily on community effort alone.

e. **Birthright, Citizenship and Belonging**

The current constitutional and legal framework does not adequately recognize the distinction between citizenship and indigenous birthright.

Many Rotumans residing in Fiji and throughout the diaspora maintain ancestral, customary and land-based connections to Rotuma despite holding foreign citizenship or residing overseas. While citizenship may be regulated by legislation, indigenous identity and belonging and customary affiliation arise from ancestry, heritage, family connections and recognized Rotuman institutions.

The Constitution should recognize that indigenous Rotumans' possess an enduring connection to Rotuma and Fiji that cannot be extinguished solely through changes in legal citizenship status. The Constitution and all laws that flow from it should recognize and protect this birthright relationship.

f. Recognition of the Rotuman Diaspora

A significant proportion of the Rotuman people now reside outside Rotuma and, in many cases, outside Fiji. Commissioner Dr. John Fatiaki's invitation to Rotumans in Fiji, Rotuma and throughout the diaspora reflects the reality that the Rotuman people extend beyond Fiji's shores.

Despite geographical dispersion, Rotumans living abroad continue to contribute to the social, cultural, economic and customary life of Rotuma through family support, cultural participation, community leadership and investment in their homeland.

The Constitution should recognize the continuing importance of the Rotuman diaspora and facilitate the maintenance of these enduring connections.

4. COMPARATIVE PACIFIC PRACTICE

The FRA is not raising issues unique to Fiji.

Across the Pacific region:

a. New Zealand provides reserved parliamentary seats for indigenous Māori representation
b. Samoa integrates customary governance structures into national life
c. Vanuatu recognizes and institutionalizes traditional leadership councils
d. Cook Islands ensures representation for small island communities despite population

differences

e. Samoa permits dual citizenship and provides pathways for persons of Samoan ancestry living abroad to acquire and maintain citizenship through ancestral connections.
f. Tonga similarly permits dual citizenship and has established mechanisms allowing Tongans who previously lost citizenship through acquisition of foreign nationality to restore their citizenship.

These examples recognize that indigenous identity and belonging extend beyond the possession of a passport and acknowledges the continuing connection between diaspora communities and their homelands. A clear principle has been elaborated here and it is that;

Constitutional equality does not always mean identical treatment — it requires practical protection for small indigenous communities.

5. INTERNATIONAL INDIGENOUS RIGHTS STANDARDS

Fiji is a member of the international community and is guided by global human rights principles, including the United Nations Declaration on the Rights of Indigenous Peoples.

These principles affirm:

- the right to participation in decision-making
- the right to maintain indigenous institutions
- the right to cultural and linguistic preservation
- and the requirement for consultation before decisions affecting indigenous peoples

Our submission is therefore consistent with internationally recognized standards of indigenous justice.

6. FRA PROPOSALS FOR CONSIDERATION

We respectfully place before this Honorable forum the following proposals:

a. Guaranteed Rotuman Representation

This can be enforced with a constitutionally protected mechanism guaranteeing meaningful parliamentary representation for Rotumans, whether through a dedicated Rotuman constituency, a reserved parliamentary seat (seats) or another arrangement determined through consultation with Rotuman communities and institutions.

b. Constitutional Protection of the Council of Rotuma

A clause in the constitution could endorse and recognize as well as safeguard Rotumas' customary governance system.

c. Mandatory Consultation Mechanism with our small community-

_Parliament, Cabinet, or any State authority shall not enact legislation, approve policies, enter

agreements, or undertake administrative action substantially affecting Rotuma, Rotuman land, culture, language, customary rights, or traditional governance unless meaningful consultation has first been undertaken with the Rotuman people through their recognized representative institutions.

d. Recognition of Indigenous Rotuman Birthright

The Constitution should recognize that indigenous Rotumans' possess an enduring birthright connection to Rotuma and Fiji arising from ancestry, customary affiliation, land ownership and cultural identity. This birthright should be recognized independently of legal citizenship status and should not be unnecessarily impaired by legislation.

e. Recognition of Indigenous Peoples

The Constitution could recognize the **iTaukei of Fiji** and the **Rotuman people** as the indigenous peoples of Fiji, each possessing distinct customs, language, traditional institutions, and systems of land ownership and inheritance, all of which shall be equally protected under the law.

f. Recognition of the Rotuman Diaspora

The Constitution should acknowledge the Rotuman diaspora as an integral part of the Rotuman people and encourage measures that strengthen the connection between Rotumans living abroad and their homeland.

g. Citizenship Restoration Pathways

The Constitution should require Parliament to provide accessible pathways for indigenous Rotumans and other minorities by birth and ancestry, including Rotumans' Famor 'es Hanua, to acquire, retain or restore Fiji citizenship while recognizing their enduring customary and ancestral connection to Fiji.

h. Language and Cultural Protection Duty

A State obligation to support the preservation and transmission of the Rotuman language and heritage.

i. National Day of Thanksgiving

The State may recognize and provide by law for an annual National Day of Christian or such other appropriate title as Parliament may prescribe. This Thanksgiving Day as a public holiday for prayer, worship, thanksgiving, and national reflection, to be observed by Christian communities throughout Fiji, while respecting the rights and freedoms of persons of all faiths and beliefs.

j. Protection of Rotuman Land Tenure

FRA puts forward that the status, ownership, inheritance, succession, and customary administration of land in Rotuma shall remain governed exclusively by the laws, customs, traditions and governing legislation applicable to Rotuma.

No law, constitutional amendment, administrative action, or policy shall alter, diminish, assimilate, or subject Rotuman land tenure, inheritance, or ownership systems to the land ownership or inheritance structures applicable to the iTaukei of Fiji, including any Yavusa, Kāinga, Bati, Mataqali, or equivalent system, unless with the free, prior, and informed consent of the Rotuman people through their recognized representative institutions.

The State shall recognize Rotuma as possessing a distinct customary and legal identity in relation to land tenure and inheritance and shall ensure that such distinct status is preserved and protected for present and future generations. Parliament shall not enact legislation affecting Rotuman land rights, inheritance, or customary ownership without mandatory consultation with the Rotuman people through their duly recognized traditional and legal governing bodies.

7. OUR POSITION ON NATIONAL UNITY

The FRA wish to clearly state:

a. We are not seeking separation.
b. We are not seeking division.
c. We are not seeking privilege.
d. We are seeking constitutional completeness within national unity.
e. We recognize that Rotuma forms an integral part of the Republic of Fiji and that the Rotuman people are one of Fiji's indigenous peoples.
f. Our proposals seek not to create separation or special privilege, but to ensure that the Constitution fully reflects the unique history, identity and constitutional position of Rotuma and its people, including those residing throughout the diaspora.
g. We believe a strong Fiji is one that:

- recognizes its diversity,
- protects its smallest indigenous communities, as well as
- ensures that no voice is lost in the structure of governance.

8. CONCLUSION

In closing, we respectfully submit that the time has come to move from:

- ❖ Recognition alone to recognition with representation
- ❖ Symbolic inclusion to structural inclusion
- ❖ And from acknowledgment of identity to constitutional protection of identity

We therefore humbly request that this Committee and relevant constitutional authorities consider our proposals as part of any ongoing or future constitutional review processes.

The FRA respectfully submits that constitutional recognition should extend beyond symbolic

acknowledgement and include recognition of indigenous birthright, diaspora connections and meaningful participation in national life. Rotumans are not immigrants within Fiji.
We are an indigenous people whose connection to Rotuma and Fiji arises through ancestry, land, culture, language and history.

The Constitution should ensure that future generations of Rotumans, whether residing on Rotuma, elsewhere in Fiji or throughout the diaspora, continue to maintain and strengthen that connection.

Honorable Chair, distinguished Committee Members, the FRA submit this not as a challenge to the Constitution, but as an invitation to strengthen it so that it fully reflects all the peoples of Fiji, including our Rotuman people.

Faiʻakʻseʻea
Vinaka vakalevu.

Fiji Council of Churches (FCC)

Fiji Council of Churches
Date: 30-06-2026

Mr. Valenitabua: I welcome you this morning to this session of Convocation. Before the Constitution Review Commission, its and honor and privileged to be sitting before you gentlemen this morning and maybe the Constitution Review Commission consists of six members at the moment. Initially, there were seven members appointed by His Excellency the President. However, one member, due to work commitment, has resigned. So, we were left with only six commissioners. You will notice this morning that there are only three sitting here.

The other three are on their way to Rotuma as we speak. They are flying to Rotuma today so that they can attend to consultations on the island of Rotuma. On my right is Ms. Nailatikau, and on my left is Dr. Neelesh Gounder.

And I am the chairperson of the commission, Sevuloni Valenitabua. We welcome you this morning, and we thank you indeed for accepting the invitation to come and make submissions in this consultation session this morning. As you know, the commissioner was appointed by His Excellency the President so that we could review the 2013 Constitution. There has been a question raised to us whether we are writing a new Constitution. The answer is no. We are only amending the Constitution.

In order to amend the Constitution, we were also tasked to go around the country and meet with people of the country and receive from them suggestions or recommendations and submissions in relation to what they think should be included in the amended Constitution. We've had ministries of government. We've had associations.

We've had individuals appearing before us here at Level Nine Suvavou Hall And we have met the lay people of this country, beginning from the Lau group to the Lomaiviti group, to Vanua Levu, to Viti Levu and adjacent islands, including Yasawa. So, we have consulted widely, and it is a pleasure having you, ladies and gentlemen, this morning for this consultation session.

We look forward to your submissions this morning, and in a moment, or I should say I now open this consultation, and I now

pass on the floor and the mic to you, gentlemen and ladies, so that you can present your submissions to us this morning.

Archbishop Chong: Mr. Sevuloni Valenitabua. Vinaka Valevu, Mr. Sevuloni Valenitabua, the chair of the Constitution Review Committee, for inviting the churches, the Fiji Council of Churches, to this consultation process.

The Fiji Council of Churches is, we have 13 member churches, consisting of the Anglican, the Catholic, the Methodist, the Baptist Convention, Fiji Fellowship Commission, Pacific Communities University, Salvation Army, the Presbyterian, and some number of Pentecostal groups. Sorry, I'll give you some of the copies. We did not have enough copies for everybody, but I'm giving you two.

So, we met a few weeks ago, a number of church leaders to conduct a consultation on this very important process. Our process of consultation is bringing together what we are now calling the ecumenical social teaching, which is coming together of the three key strands of Christianity. The Catholic Church, the World Council of Churches, which represent the Protestant churches, and then probably the most more recent trend of Christianity is the Evangelical Pentecostal churches.

These come under the World Evangelical Alliance. So, you have the three key strands of Christianity, and we've drawn our methodology by pulling together the main social teachings from these traditions, Catholic, the Protestant, and the Evangelical Alliance. From there we, from bringing, studying the three traditions, we came up with a number of common principles, social teachings that we use to guide our assessment of the 2013 Constitution.

So, we speak here from, not as a political party or even as legal experts, but rather from the base of the social teachings that are embedded in these three main strands of Christianity. So, what we did, our methodology is looking at that and then looking at the Constitution through the lens of what we are calling the ecumenical social teaching. From that, that forms the theological and the biblical framework of assessing the Constitution.

Then we divided our discussions and reflections and praying over the Constitution. So, our submission was done in a very prayerful

process where there was discernment, where there was a lot of listening, listening to each other and listening to our own prayer and listening to the collective prayer of the 20 plus church leaders that gathered at the Salvation Army Hall. Our reflections were divided into three groups.

The first one is the affirmations that we see in the Constitutions. By that we mean elements in the Constitution that agree, align well with the social teachings of the churches. Then the section two, we laid down our concerns about the Constitution, again assessing it in light of the church's social teachings.

And finally, we made our recommendations to the review committee about what the churches would like to recommend. We realized that time does not allow us to go into detail about what's in that paper, but we'd like to limit our intervention this morning by just picking on the points that where church can speak well on, that involves the church. And then you have there the fruit of our two-day consultation, which is put together in that document that we have.

Today we'd like to focus on the recommendations because particularly on the ones that the church has a voice and a very important voice and if we don't speak on these topics, we would be failing on our part as the prophetic voice of the church. So, if you, we'd like to draw your attention on the page 8 on 7.12 and it is regarding the secular state and the discussions about the Christian state. I will invite Reverend Bruce Yates to lead us in that conversation and later on we will talk about the importance of the family and then the participatory process that is required of such an important document.

Oh sorry, and then Mr. George Qaranivalu will talk about the importance of the family in the constitution. But now I'd like to invite Reverend Bruce to speak on, to lead a brief discussion on the secular state.

Rev. Bruce: Thank you, Grace and Commissioners, Chair. Thank you very much for the opportunity to be here with you. We're looking at our recommendation 7.12 on page 8 of the submission. And I'd also like to draw your attention to page 4 and our constitutional affirmations 5.4, that is religious freedoms, because these are entwined together.

From a secular state point of view, we feel that the state should be one that treats all faiths equally and favors none, but guarantees freedom for all, and the best protect religious freedom, including for Christians. Our witness is most powerful through humble service and not legal privilege. And we must not confuse political power with prophetic faithfulness. So the church should refuse state-imposed status that would compromise our ability to speak truth to power. So this is one thing that we are very much in favor of, is that religious freedom and the separation of church and state. And as we say on page 4, 5.4, a secular state protects all faiths equally, and it should neither establish a state religion nor exclude religious voices from public life.

So our recommendation on page 8, 7.12, the secular state, is that we support this section 4, establishing Fiji as a secular state, separation of church and state. However, secularism should never require the exclusion of religion from public life. And the church must remain free to contribute to public debate, advocate for justice, and defend the vulnerable and proclaim the gospel.

The church serves the kingdom of God rather than the interests of any political party or government. So that is our position on the secular state and the separation of church and state. We recognize also that there are many groups that would perhaps want to have the church more involved as a state religion, but our position is the separation.

That is very important, and to recognize the multicultural dimensions of Fiji and the equality of freedom of religion for all faiths. So, thank you.

Archbishop Chong: I guess it's good to just pause for a while and allow for, if there are any questions from the committee around that secular state Christian church debate.

Mr. Valenitabua: Your Grace, may we have discussions at the end, please.

Archbishop Chong : Okay. Thank you, Mr. Valenitabua. We'd like to, I think, just to speak a little bit on that. We are aware of the intention of some churches to have Fiji as a Christian state, which our consultation do not agree with, because there are a lot of dangers that will come when the state is closely aligned or totally aligned to a

particular church that privileges that church, and then it does not, it lowers down the voice of the church, the service of the church, which is to serve God's kingdom rather than serve a human institution. It keeps the neutrality of the church to be able to speak on matters that pertain closely to the church, especially justice, that justice is served. Thank you. We'd like to move to the second one, and that is Reverend Sepi will speak again to a very important value in the church, and that is regarding family.

Re. Sepiuta: Vinaka Your Grace, Chair and Commissioners, I'll be speaking on the Recommendation 7.8, Recognition of the Family. The churches have agreed that the Constitution should recognize the family as the natural and fundamental unit of society while respecting international human rights standards. We understand that the Constitution already contains provisions relating to children, education, and social rights, but it does not explicitly recognize the family as a fundamental unit of society. For us as the FCC, we recommend that this Constitution explicitly recognizes the family as a fundamental unit of society deserving of protection and support by the state.

We believe that strong families nurture faith, values, responsibility, and the well-being of our children while also contributing to social cohesion and national stability, and such recognition complements individual rights and affirms the shared responsibility of families, of communities, and also the state in building a just and peaceful and resilient Fiji. So that's the bit on stressing on the recognition of family. Vinaka.

Archbishop Chong: Thank you very much, Reverend Sepi, and we'd like also to speak on something that is very close to church and faith communities, and that is education, because the churches and the other religions, Hindus and Muslims, are big stakeholders and contributors to education. Education is in practice something that the church takes a front role, and so I want to invite Mr. George Qaranivalu to speak on civic education, which is on page 8, a very simple clause there. But George, you can elaborate more on that.

Mr. Qaranivalu: Vinaka Valevu, Your Grace, Fiji Council of Churches would like to propose that the Constitution should require sustained civic education programs enabling all citizens to understand their constitutional rights and responsibilities. We have gone through so many, shall I say, reviews of Constitutions, and I would like to

reiterate that unless the public is educated on their responsibilities towards the Constitution, we can safely say that there is bound to be a misunderstanding all along. Fiji Council of Churches would like to see that there is a mandate to sustain a public-funded civic education program, especially for young people and rural communities, to ensure all citizens understand their rights and responsibilities.

For example, work with the Fiji Council of Churches and other faith groups to deliver workshops in iTaukei, Hindi, Fiji Hindi, on how to petition Parliament, access legal aid, and participate in local government. A lot of our schools in Fiji are faith-based schools. We can begin with that in all schools.

Start at the school level in educating our young on their civic responsibilities, getting out of the comforts of their home to see the environment at large. In a multiracial society like Fiji, we need to educate people and participate more at that level with our children. I speak also as a former teacher for 30 years.

Most of the schools were introduced with moral values education, but when I taught in a faith-based school, there seemed to be a collusion amongst the teachers themselves. What is moral values and what is faith-based values? We need to educate the public at large. That is where the Fiji Council of Churches is coming in.

If there is a collusion in regards to faith, that is bound to have ripples all along. That will lead to what we have already said, may lead to the idea of secularism promoting one religion over the other. We propose strongly that the public is educated well on their civic responsibilities in conjunction with the government and social organizations in regards to that.

Archbishop Chong: Thank you. What Mr. Qaranivalu expressed there is the importance of faith in education and its connection to the moral values that is losing its space in Fijian society. People talk about moral decay in the school and this is probably exacerbated with the drugs and the time that young people spend on social media.

For us, that is a guarantee that we can manage, maintain, lead our schools to the values that we hold. Each faith community has a special value system guided by their churches or religions that is important to the education of our children. I think what we are

requesting here is that the government helps us to have these rights, that we can access these rights, meaning that we can have the heads of our schools that belong to the faith of that particular school.

Because that has been a little bit of a discrepancy in the last few years where somebody else from a faith community is expected to teach in a community that he does not share the faith of that particular school. So faith is important. We hold that the faith of the person should be included as part of the criteria of the merit recruiting system rather than just the skill and the knowledge that this person comes with. That helps us to manage and maintain our schools.

Now finally, I would like to speak, that will end our submission before we open it for discussion. And that is one of the values in the ecumenical social teachings is the value of human dignity and participation.

So, to honor the dignity of people, we have to allow them to participate in the decision-making process that will affect their lives. And when we respect their dignity as human beings, and this is not only a church or a religious value, it's in the Bill of Rights and it's in our constitution, the importance of human dignity. We only respect human dignity if we allow them, allow our people to participate, to make decisions and to contribute to the decision-making process that affects our people.

And we want to acknowledge that that is ingrained in our constitution and the Christian social teachings. So, with that being said, we want to highlight that there is a grave weakness in the current constitution and that is the lack of participation in the process of formulating the 2013 constitution.

And I remember participating in preparing for a constitution assembly back in 2012 or maybe even 2013, when the government announced that there would be a constituent assembly. And we gathered as church leaders and community leaders to prepare for that, to participate in the constitution assembly. However, on to the second day of that workshop outside the Novotel Hotel, we were told that there will be no constituent assembly. Instead, everybody is a constitution assembly, that means the whole nations. And then just a few days later on, we were told that there is a new constitution. We were not told who are the authors or the process of producing

the 2013 constitution. We do not know who participated. We know that there is a big lack of participation in the process of constitution making for the 2013. So, from our ecumenical social teaching, that's a big gap or discrepancy between the values of the churches and what is going on in the constitution, the making of the 2013 constitution. And that is the lack of participation, the disrespect for human dignity, and these are values that contribute to the authority, the legitimacy, the validity of a document to be considered a supreme law for our nation.

And that's the lack of participation brings into a big question, you know, how relevant, how valid is this document as a document that we consider to be the supreme law of the nation. So that is quite important because it does not align, agree well, or does not even agree with the values that we hold as the ecumenical social teachings of the church. Mr. Valenitabua on that note, there are other topics that are in our submission that other groups will bring in, political parties, organizations.

We've highlighted a few that we believe that the church is responsible for speaking for, and if we do not speak on those topics, the secular state and the Christian state, the family, education, and that's something that is at the heart of a good society and the respect for human dignity and participation. And so, we present those submissions in the document and those that we have highlighted to the commission as representing the submission of the Fiji Council of Churches. And thank you for listening to us.

Mr. Valenitabua: Thank you very much, Your Grace. Thank you, Reverend Bruce, and thank you, Mr. Qaranivalu. Now, we usually have sessions at the end where we ask questions and make comments.

So first, I will start it off and then we'll see what my fellow commissioners would like to do, whether they would like to comment or ask questions. Your Grace and Reverence, Sir Peter and Reverend Bruce, together with Mr. Qaranivalu, we have the Bill of Rights. We have the Bill of Rights.

There has been a call for the Bill of Rights to be toned down, to be watered down. One particular aspect of the Bill of Rights, which I'm sure the Church would be concerned with, is in relation to treatment of people, that people are not abused or persons

are not abused, freedom from abuse. There have been calls put to us by as high up as the Fijian Teachers' Association and from the grassroots people of the country that corporal punishment has to be reintroduced into schools for discipline purposes.

The way an Indo-Fijian gentleman put it to us in one of the farming settlements in Lautoka, he told us that we have to reintroduce corporal punishment to schools and at homes responsibly. That is the word he used for the purpose of discipline. Now, we cannot deny that behavior of most of our children, I'm not saying all of our children, most of our children nowadays, is just hard to control, difficult to control, even in the schools.

The teachers are finding it difficult to control students in schools and to discipline them. Now, this will affect human rights, which are provided under the Bill of Rights in the Constitution. We have been addressed this morning on the family.

We have been addressed this morning on civic education in relation to the Constitution. What, if I may ask, is the Council of Church's stance in relation to this particular issue, the reintroduction of corporal punishment, so as to be applied responsibly in order to discipline our children? That is my question. Your Grace, The Reverence, and Mr. Qaranivalu.

Archbishop Chong : Thank you. Thank you, Mr. Valenitabua. Of course, the topic of corporal punishment has been floating around, and different people, different faiths will have their different takings on this.

As Fiji Council of Churches, we would like this one. It will be hard for us to say something here that represents the collective voices of the churches. It's something that we would like to take back, and through the same process that we've done with this Constitution, look at the Bible, look at the social teachings of the different churches and other experts around this, because this involves child development, people who are experts in psychology and family life, to be able to come up with a response to the question.

So, rather than jumping here, we might, you know, be saying different things. So, as a voice of the churches, we will have to do the same thing that we have done on a few issues. We've done this with drugs, we've done this with a plan to bring in

casino in the church, we've done it with the talks around legalizing marijuana, and this is definitely something that we would like to bring into our agenda for discernment, for further study, consultation, before we make a response.

So, I will not make a statement here on behalf of the Fiji Council of Churches. This requires collective collaboration. But, just a little bit from the onset, what is at issue here is how do we develop young people, and that includes, as they say, it takes a whole village to educate a child.

So, there's a lot of stakeholders here that goes to the married couple, or how the child is born. Our families are getting more complex with the different kind of families that we have. We can no longer just talk about the families as the husband, the ideal family.

We know now that children are born within marriage, outside marriage, second marriage separated, children that are born, but then the parents separate. So, it's quite complex. And then with the high domestic violence that we have, you know, our domestic violence is double the global thing.

So, that means that a lot of our children are growing up in the violent situation. So, all this, we have to take this into account when you look at how do we, so it's not just the, we're treating the tail end of it, and that is when the kid misbehaves, and what kind of punishment that we give to the kid, you know. So, rather than focusing on the tail end, I think we should invest on the beginning and the birthing of this child, and that's where the family values come in important, and then the government should really invest on family life and having good preparations for those who are getting married, and even also for those single parents.

They also need the support so that the children born out of them are being born into a good environment. So, I think in brief, we can look at the tail end, but that's being very reactive. We can be a little bit more proactive in investing in the birthing, the birth, the development of early childhood education is becoming very important there.

Responsible punishment, that's a very thin line there. The church, in general, is against violence. Violence begets violence,

and there's a lot of damage to young people when they are treated violently. They go into their shell, and on a broad principle, anything that does violence to young people is not the best way of educating them. There are more positive ways that we can groom up good children and good citizens for the future. So, I think that's my take. If other members want to add, George is pressing his button.

Mr. Qaranivalu: I speak as a teacher, going into the teaching profession a year after independence. I was brought up in the school system, colonial days, where corporal punishment was the order of the day.

And I'm sure, with respect, some of us sitting here will watch for that. When we went out of Nasinu Teachers College in 1973, we were given the Education Gazette, and it quoted clearly how to conduct corporal punishment. You should either use a strip or anything lighter than a strip, and when you raise your hand, it should not go above your shoulders.

After conducting that, you should then load it down in the logbook. I was posted to one of the schools where the logbook was more on corporal punishment than any other good things in the school. You could read the former headteacher saying, I gave three strips to one Johnny for being reported loitering in the night. Who was the witness, we do not know. So, the logbook was more on corporal punishment. I am a product of corporal punishment, and I used to do it, because that was the order of the day, to do it.

But to go on to it, as Archbishops has said, to the tail end of it, there is no proof whether it really succeeded or not. But as a teacher, maybe I'll say yes, what my headteacher gave to me way back in 1963-64 bear its fruit, but that is an empirical statement. Maybe it's not really a statement, it cannot be defined.

So, in a nutshell, as Archbishop said, there are so many angles we can look at corporal punishment, but I'm just talking of my experience. But never did I conduct corporal punishment. I did it in the school, but when I went home, I didn't do it to my two daughters and two sons. Nor did I get corporal punishment in my own family. My father was a talatala. But I did it in the school. I more remember now when I go around, Mr. Chair, and members, as a teacher, whenever I go to Gau or to Koro, ooh, Mr. Joji, ooh,

people will look at you in the community, but they won't see it. And here comes a danger fellow who always gave us a... But up till now, I now manager of the Davuilevu Methodist High School and a Sunday school teacher. Whenever I went as a teacher, I was a Sunday school teacher. Till now, retired. And now I take an extra class, year 9 to year 18, they are called the Junior Methodist Youth Fellowship. From all sorts of schools, even Suva Nausori Corridor, I live in Davuilevu..

Nasinu-Muslim, Bhawani, Nakasi, Adi Cakobau Ratu Sukuna, and we meet on Sunday. That was it. What His Grace has said always comes out to me now as a grandfather, to looking deeper into their background, what kind of family they come from, and try and internalize and share it with my Sunday school teachers and keep it as confidential as possible and talk to the parents in regards to their behavior from the school to that Sunday where we talk and meet and going back to school. But just an experience to share with you. That's it.

Mr. Valenitabua: Thank you Archbishop, Reverence, and Mr. Qaranivalu

Ms. Nailatikau: I thank you for the prayerful, reflective, and consultative way in which you have shared the Fiji Council of Church's submission today. I also speak as not only a person of faith, but as the daughter of a teacher who also counsels' students, let alone her own children. And so, I appreciate the perspectives that you so carefully shared.

I cannot imagine the challenges of being appropriately representative of your members, and it is deeply appreciated. I wanted to ask about, particularly relating to the Bill of Rights, and I noticed that in 7.5 you make mention of socioeconomic rights, which are part of the Bill of Rights in the current 2013 Constitution. We've heard a range of perspectives on the Bill of Rights.

Many, for instance, proclaiming its benefits, the importance of including socioeconomic rights for supporting people to progress in their lives, of having socioeconomic security as part of an overall person's well-being. And we've also heard perspectives, to use the word strongly, complaining about the bulkiness of the Bill of Rights, and potentially the fact that it could be, I wouldn't say limited, but they could still be recognized under other aspects. What I do see here is the Church's, if I'm

reading it correctly, please do correct me, the Church's affirmation that rights relating to health, education, housing, and social security should become fully justiciable before the courts.

That to me is in alignment with the Church's other aspects of supporting the well-being of people, as God's creation, as followers, as members of the Church's congregation. And I would just be interested to hear your perspectives or your approach to socioeconomic rights in the Bill of Rights. Thank you.

Rev. Bruce: One of the things that we've recognized through our consultation and reading of the Constitution is that the Bill of Rights are conditional, and that they can be withdrawn and not applied very easily, just by a statement by government that we don't have the resources, full stop. And there's no other responsibility for it.

So, from our point of view, well, from the consultations and the discussions that we have had, we felt that that is too limited, in the sense that this should be something that has to be justified properly. It's not something you can just say, stand up in Parliament and say, well, we don't have the money for this. It has to be properly looked at and justified, and in certain circumstances, we're saying justified before the courts.

So that would take a longer process, and that would require through the, not just the Constitution, but through other subsidiary laws, etc., how that would actually go about, would actually happen. But I don't think that the, from my point of view, that the Bill of Rights is that extensive. It conforms with the conventions and the international laws that the country is signed on to, and that we have a responsibility to fulfill.

And our concern, though, is that you can't just take something away that you say is a Bill of Rights. It has to be more than just a declaration or a principle. It has to be something that can be justified for that, particularly for those who are poor and vulnerable situations that are going on.

So again, it's a complex situation. I recognize that, and we've just had the budget put down, and we'll be going through, all the organizations will be going through that budget and what money they will get, etc., and how they can apply that to the poor and

the vulnerable people, particularly people who are living with disabilities and those who are elderly. There are already some statements that have been made by the Ministry about that and how there will be increases because of fuel, for example.

A subsidy has been taken away and how we will try to compensate in July, tomorrow, I guess it is, how they will compensate in providing an increase in the allowance, I believe it is. So, there are different ways that it can be done, and we would like to see that it would be worked through rather than just taking it away from the Constitution. So that is one of the observations, and from my point of view, also because I've also been a social worker before I became the Minister in St. Andrews, but one of the things that we have been working on, for example, at the University of the South Pacific through the social work program has always been the protection of children and the rights of people.

But we recognize from a church point of view that sometimes the Bill of Rights is something that people cannot quite listen to, and I keep on telling our congregation to listen to the Beatitudes and listen to what Jesus actually said in the Beatitudes. Don't worry about the Bill of Rights, but look at the Beatitudes and how that can be interpreted in the work that we do. So those are just my comments on that.

Archbishop Chong: You will notice that Part of our submission, you know, faith community lawyers and legal experts, and so they are picking up some of the things here that might not be too comfortable. One of them is the socio-economic rights. We notice, but we were informed that there's a lot of that in the Constitution. You have rights, but it's not guaranteed. There's a lot of limitation, or even the rights are not respected. I'd like to speak on environmental rights, which is very good when you hear it in the Constitution, number 40.

Everybody has a right to clean, healthy environment, and that's the right of our rights. But unfortunately, these rights are not protected. I'm talking about extractive industries, and we have been helping other NGOs through the Fiji Council of Churches to advocate for this right, and even to form alliance of NGOs and churches to protect something that we value, our environment.

The Vanua. Unfortunately, when Vanua rights meet money, money takes the upper hand, and at the expense of the rights of people to a healthy, clean environment, and also just the planetary good, they do have their rights. So, the responsibility that we have towards these rights is a concern for us. It looks like when development and money come in, some of these rights get suspended to allow for the interest of the human. Yes, thank you.

Mr. Valenitabua: Just browsing through your submission this morning I note 7.2 the review of immunity, 7.7 the Electrol reform. We have been to the review of immunity, we have received, for your information, I'm just commenting on this, we have received a lot of submissions in relation to the immunity provision in the 2013 Constitution.

There have been suggestions that the provision section, it's in Chapter 10, that it be repealed completely. There have been suggestions that we don't touch it, and instead make or include a law which looks to the future. By that I mean a law which would discourage people from taking actions like coup d'etats and all that, and also even committing crimes for serious offenses.

We are not to grant immunity to anyone, whether it be a treasonous act or any other serious offense. So those are the schools of thoughts that have made submissions to us. Repeal, complete repeal, or no repeal, keep Chapter 10, but make laws which look forward and to penalize those who might want to commit serious offenses or even a coup in the future.

I just wanted to inform you about that, your grace and Reverence in Mr. Qaranivalu. And for the electoral reform, I note that you have stated in your submission that the electoral system should improve local representation while preserving national unity. That is in 7.7, paragraph 7.7 of your submission.

The submissions that have been made to us have suggested or recommended that we go back to the multiple constituency electoral system. At the moment we have one constituency for the whole of Fiji. Suggestions have been submitted to us that we go back to the multiple constituency electoral system.

That is something we will have to think about for the simple reason that we need local representation. We were told

yesterday, or we heard submission yesterday from one of the lawyers who appeared before us yesterday that someone sitting in parliament with 500 votes and for a national constituency is not representing anybody. And also the members or the citizens of the country considering the current constituency, national constituency, do not know who represents them in parliament.

So, there was a suggestion on localization, local representation that we have this multiple constituencies and we select or we vote for our members of parliament from the local constituencies so that they can sit in parliament and we all know who represents us in parliament. So that just reinforces, I believe, what your submission is in 7.7 on the electoral reform and we thank you for that. There is, is there any other question? Dr. Gounder.

Dr. Gounder: Thank you chair, good morning your grace and Reverence. Thank you very much for your submission this morning. I note some of the key pointers related to first of all the protection of the vulnerable and the socio-economic rights and you have made a strong case for enforceable socio-economic rights and I know you work in this area in the last decade has been very strong.

I recognize the work of the church as well. We have talked about how can we make some of these rights more enforceable because it does talk about limitations in terms of states ability to provide resources to achieve this and the progressive realization of some of these rights. So we are very mindful of the challenge related to enforceability of these rights but we are going to closely look at from a legal perspective as well as to how we can make some of these rights enforceable and I think which you also recognize in your submission. Regarding the civic education recommendation, we have received this from the members of the public as well. That is something we are going to very seriously look at. Also, the issue of moral values education together with civic education and one of the strategies through which we can bring more discipline into our children.

So once again thank you very much for your submission. All those key pointers are noted and the commissioner will look into how we can make some stronger provisions in the constitution. Thank you.

Mr. Valenitabua: Yes Your Grace, Reverend Sepiuta and Reverend Bruce and Mr. Qaranivalu. Thank you very much for your submissions this morning. It was appreciated and we will consider the contents of your written submission and the oral submissions which have been recorded and will be transcribed later for our use.

We will consider them together with the other submissions that we have received in our deliberations. Our submissions close today. We have been receiving submissions through emails. Those who send us submissions through email we now can announce to you and to the press that we will close that today at 12 midnight. As for the other submissions, face to face submissions, we will be finishing that on the 10th of July. On the 10th of July.

So, we'll have another two weeks for oral submissions before us here. Only the scheduled ones so far. We're not taking any more. Otherwise, we will be flooded or inundated with the submissions that come August. We still have not started on writing what we are supposed to be writing. So today's the second day of the two weeks which we have extended our consultations on and it's a pleasure having had you here this morning and hearing your submissions.

Archbishop Chong : Thank you Mr. Valenitabua and the Constitution Review Committee on behalf of the Fiji Council of Churches. We also want to communicate our appreciation that we have been invited to this very important that the church does have something to say into the well-being of our nation and for the common good and for the planetary good. So on that note, thank you and God bless the good work that you are doing.

----------End of Session [30-6-2026] ----------

FIJI COUNCIL OF CHURCHES

Submission to the Review of the 2013 Constitution of the Republic of Fiji

"Justice, Peace and the Common Good"

1. Introduction

The Fiji Council of Churches (FCC), representing the Anglican Diocese of Polynesia, the Catholic Archdiocese of Suva, the Fiji Baptist Convention, the Fiji Evangelical Fellowship, the Methodist Church in Fiji, Pasifika Communities University, The Salvation Army, and St Andrew's Presbyterian Church, respectfully presents this submission to the Constitutional Review Commission.

We come not as political actors, but as followers of Jesus Christ seeking to contribute faithfully to the life of our nation. Our purpose is to evaluate the 2013 Constitution in the light of Scripture and the shared social teaching of the Christian Church. We offer both thanksgiving for its strengths and recommendations where reform is necessary.

Our hope is for a constitutional order that promotes justice, protects the dignity of every person, strengthens democracy, and contributes to lasting reconciliation among all the peoples of Fiji.

2. Methodology

This submission emerged through a process of prayer, theological reflection, dialogue and consensus-building among member churches.

Each consultation began with prayer and biblical reflection, seeking the guidance of the Holy Spirit. Participants heard presentations from legal scholars, historians, theologians, church leaders and community representatives. These presentations enabled us to reflect on Fiji's constitutional history, the legacy of political instability, and the aspirations of ordinary citizens.

Discussions took place in both small groups and plenary sessions. Participants considered difficult questions including:

- What should the churches affirm in the Constitution?
- What aspects require reform?
- How can constitutional stability be balanced with justice and accountability?
- What is God calling the churches to say to Fiji at this time?

Where differences emerged, participants returned to Scripture, reasoned together respectfully, and sought consensus. This submission represents the collective discernment of the Fiji Council of Churches rather than the opinion of any individual denomination.

3. Biblical Reflection

Our deliberations were guided particularly by three biblical texts.

Proverbs 31:8–9 reminds us:

"Speak up for those who cannot speak for themselves... defend the rights of the poor and needy."

This calls the Church to advocate for those whose voices have been marginalised.

Ephesians 4:25 teaches:

"Speak truthfully to your neighbour, for we are all members of one body."

This requires honesty about Fiji's constitutional history and present realities.

Matthew 5:9 declares:

"Blessed are the peacemakers."

Christian peacemaking requires justice, truth, repentance and reconciliation rather than merely the absence of conflict.

4. Theological Framework

Our submission is informed by the shared social teaching of the Roman Catholic Church, the World Council of Churches (WCC), and the World Evangelical Alliance (WEA). Together we refer to this tradition as Ecumenical Social Teaching (EST).

These traditions converge around eight foundational principles.

1. Human dignity and the Image of God (Imago Dei)

Every person possesses inherent dignity because all are created in the image and likeness of God (Genesis 1:27).

2. The common good and solidarity

Society exists to promote the flourishing of all people, especially through mutual responsibility and social cohesion.

3. Preferential concern for the poor

The moral character of a nation is measured by how it treats its poorest and most vulnerable citizens.

4. Participation, subsidiarity and religious freedom

Citizens have both the right and responsibility to participate in shaping the institutions that govern them.

5. Justice, peace and reconciliation

True peace is founded upon justice, accountability, forgiveness and restored relationships.

6. The dignity of work

Economic life must serve people rather than people serving economic systems.

7. Care for creation

Human beings are stewards rather than owners of creation and have a moral obligation to protect the environment.

8. Holistic mission

The Church is called to proclaim the Gospel while promoting social transformation, strengthening families and serving society.

These principles provide the framework through which we assess the 2013 Constitution.

5. Constitutional Affirmations

The Fiji Council of Churches gives thanks for a number of constitutional provisions that reflect these principles.

5.1 Human Dignity

We affirm the Bill of Rights and its protection of equality before the law, freedom from torture and degrading treatment, and other fundamental freedoms. These protections reflect the biblical conviction that every person bears the image of God.

5.2 Equal Citizenship

We affirm Section 5, which recognises equal citizenship for all Fijians.

At the same time, equal citizenship should not require the loss of ethnic, linguistic or cultural identity. Unity is strengthened—not weakened—when diversity is respected.

5.3 Protection of the Vulnerable

We welcome the inclusion of rights relating to education, health, housing, food, water and social security.

However, these rights should impose stronger positive obligations upon the State to protect vulnerable persons.

5.4 Religious Freedom

We affirm Section 22 protecting freedom of religion.

We also affirm that Fiji should remain a secular state.

A secular state protects all faiths equally. It should neither establish a state religion nor exclude religious voices from public life.

5.5 Labour Rights

We welcome constitutional recognition of workers' rights and collective bargaining.

However, stronger protections are needed regarding living wages, secure employment and safe working conditions.

5.6 Environmental Protection

We affirm the constitutional right to a clean and healthy environment.

However, we remain concerned that State ownership of minerals beneath iTaukei land is inconsistent with traditional understandings of land as an indivisible gift held by the Vanua.

6. Constitutional Concerns

6.1 Blanket Immunity (Sections 155–159)

The immunity provisions remain the greatest moral concern within the Constitution.

While the Constitution proclaims equality before the law, blanket immunity creates unequal justice by preventing victims from seeking accountability for serious abuses arising from Fiji's political crises.

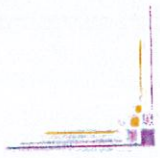
True reconciliation cannot be built upon silence. Scripture teaches that healing requires truth, repentance and justice.

The immunity provisions have delayed national healing by denying many victims the opportunity to be heard.

6.2 Limitation of Rights

Section 7 allows fundamental rights to be restricted for broad purposes such as public order and national interest.

We believe any limitation of rights should satisfy a strict proportionality test and be demonstrably justified in a free and democratic society.



6.3 Executive Power

The Constitution concentrates significant authority within the Executive.

Stronger parliamentary oversight and greater institutional independence are necessary to preserve democratic accountability.

6.4 Absence of a Truth and Reconciliation Framework

The Constitution contains no permanent mechanism for truth-telling, restorative justice or reparations.

Fiji requires a constitutional framework capable of addressing historical injustices through restorative rather than merely punitive approaches.

6.5 Role of the Military

The constitutional responsibilities of the Republic of Fiji Military Forces should more clearly affirm civilian supremacy.

Given Fiji's history of military intervention, constitutional safeguards protecting democratic government should be strengthened.

7. Recommendations

The Fiji Council of Churches respectfully recommends the following constitutional reforms.

7.1 A Participatory Constitutional Process

Future constitutional reform should be inclusive, transparent and participatory.

Broad public participation reflects human dignity, promotes the common good, strengthens solidarity, protects vulnerable communities and enhances constitutional legitimacy.

7.2 Review of Immunity

The immunity provisions should be repealed.



Where repeal is not immediately achievable, any future unconstitutional seizure of power should constitute the offence of high treason, attracting severe constitutional consequences.

7.3 Constitutional Truth and Reconciliation Commission

A permanent constitutional Truth and Reconciliation Commission should be established with authority to:

- investigate past political violence;
- hear victims and perpetrators;
- recommend reparations;
- facilitate restorative justice;
- recommend conditional amnesties based upon full disclosure.

7.4 Strengthen the Rights Limitation Clause

Section 7 should require that any limitation upon constitutional rights be:

- lawful;
- necessary;
- proportionate;
- demonstrably justified in a free and democratic society.

7.5 Make Socio-Economic Rights Enforceable

Rights relating to health, education, housing and social security should become fully justiciable before the courts.

7.6 Strengthen Democratic Accountability

The Constitution should:

- strengthen parliamentary oversight;
- reinforce judicial independence;
- empower local government;
- restore meaningful local democratic participation.

7.7 Electoral Reform

The electoral system should improve local representation while preserving national unity.

7.8 Recognition of the Family

The Constitution should recognise the family as the natural and fundamental unit of society while respecting international human rights standards.

7.9 Climate Justice

Environmental provisions should explicitly recognise climate change as an existential challenge requiring enforceable State action.

7.10 Civic Education

The Constitution should require sustained civic education programmes enabling all citizens to understand their constitutional rights and responsibilities.

7.11 Constitutional Reform

No human constitution is beyond review.

Only God's truth is absolute. Constitutional provisions should always remain open to lawful democratic amendment when justice requires reform.

7.12 The Secular State

The Fiji Council of Churches supports Section 4 establishing Fiji as a secular state.

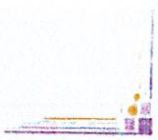
However, secularism should never require the exclusion of religion from public life.

The Church must remain free to contribute to public debate, advocate for justice, defend the vulnerable and proclaim the Gospel.

The Church serves the Kingdom of God rather than the interests of any political party or government.

8. Conclusion

The Fiji Council of Churches gives thanks for the many strengths of the 2013 Constitution, particularly its recognition of human rights, equal citizenship, religious freedom and social protections.



Nevertheless, we believe meaningful constitutional reform is necessary if Fiji is to achieve lasting justice, reconciliation and democratic maturity.

We therefore call for a constitutional review that is transparent, participatory and guided by the principles of human dignity, the common good, accountability and peace.

As Christians, we believe that true reconciliation cannot exist without truth, justice and forgiveness. We pray that God will grant wisdom to all entrusted with this important national responsibility, so that Fiji may continue to grow as a nation founded upon justice, peace and the dignity of every person.

Prepared by the Fiji Council of Churches

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President of the Fiji Council of Churches

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General Secretary of the Fiji Council of Churches

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Fiji Human Rights and Anti-Discrimination Commission (FHRADC)

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Mr. Valenitabua: Yes, good afternoon. Good afternoon, Ms. Vuki, and good afternoon, Ms. Lewaravu, and Ms. Mausio. Thank you very much for your attendance this afternoon. Thank you for accepting our invitation. We welcome you. You will note that there are three of us here this afternoon.

Ms. Merewalesi Nailatikau , I'm sure you know her well. On my left is Dr Neelesh Gounder, and I am Sevuloni Valenitabua the chairperson. You might be wondering where are the rest.

The other three are in Rotuma right now. They left this morning. Dr. John Fatiaki, Mr. Amir Kohli, a lawyer from Labasa, and Mr. Conway Begg.

They went with a team of secretariat to Rotuma this morning to undertake consultations there also until Friday. So the three of us are left here in Suva to receive consultations, to receive submissions from submitters who would want to make submissions to us. We welcome you, as I have said, from the Fiji Human Rights and Anti-Discrimination Commission.

Before we go on, the appointment was made by His Excellency for the commissioners of the Constitutional Review Commission. Our terms of reference dictates that we are to review the 2013 Constitution. We've had submissions that we write a new constitution together.

However, that is not part of our term of reference, and we have no authority to write a new one. The only authority that we have is to review which means that we can amend. After consultations, we will need to write a report of what we have done and our recommendations in relation to the draft amended constitution, and we are also looking at writing an amended, a draft amended constitution to be presented to His Excellency.

Two expatriates have been engaged. One is a constitutional lawyer to assist us, and the second one is a constitutional legal drafter, also to assist us in relation to the drafting of the amended draft constitution. The purpose for which we are here today is to listen to you and hear your recommendations.

We will be noting down some things, but most, not most, all of what you're going to say and what we will say will be recorded. We've got recording equipment for transcribing purposes also. So feel free to air your views and your suggestions and your recommendations in relation to what you think should be included in our amended constitution.

The term of reference, since we are amending, we are given the authority to change the constitution. We can remove things or laws that are already in there which people think should be removed. We can add new provisions, and as lawyers, you would understand we can also change wordings in the provision to change the meanings.

So that is our mandate. We anticipate that we will be hearing significant submissions from you this afternoon, and I now open this consultation session and I hand over the microphone and the floor to you to make submissions to us. Thank you.

Ms. Vuki: Thank you, Mr. Chair and members of the respected panel. There's no need now to introduce us, Mr. Chair, because you've already known. In fact, you know some of us from your previous reincarnation, I think, if you allow me to use that word. But we thank you for the warm welcome. As you've said, we are not really here having listened to how you've explained a mandate to us. We are not here to overthrow the constitution.

In fact, we are quite allergic to the word overthrow. We're here to point from a human rights perspective some of the flaws in the constitution, and we will speak to the text. We have prepared the text that is before you.

We do not intend to depart from what is in the text, and my two colleagues will be helping me to present this submission to the panel this afternoon. First of all, we would like to recognize the monumental task that the panel is doing concerning the review of the constitution. And we acknowledge the work and the dedication of the Constitution Review Commission, because we certainly appreciate this is not an easy task.

So on behalf of the commission, we thank you, sir, for the warm welcome and for the explanation of your mandate. Our mandate, as you can see from page three, sir, comes from the section 45 of the 2013 constitution and its enabling legislation, sections 12 of the Human Rights

and Anti-Discrimination Commission Act 2009. It gives the authority to the Human Rights Commission to monitor the state's compliance with international human rights obligations, recommend legislative, administrative, or policy reforms to strengthen human rights protection, and review existing or proposed laws, which is why we are here today and why we exist before you and why you are hearing us on policies to ensure consistency with international human rights standards.

In relation to the background, we say that in any democratic society, the constitution as the supreme law underpins the rule of law. And last year, the Supreme Court of Fiji, in its advisory opinion, stated on the constitution that, and I quote, democracy is a value that is fundamental to the 2013 constitution. So to our equality, the rule of law, and an independent court system.

Fiji, as you all know, has had four constitutions over 56 years. These constitutions have not been immune from scrutiny, public outcry, and outright abrogation. As we all know, it was imposed on the general public without meaningful and widespread prior consultation or the establishment of a national consensus.

The current review process presents an opportunity to the nation and to interested members of the public to strengthen the legitimacy of the 2013 constitution and align it with democratic principles and values. So our submission, sir, focuses on these following key human rights issues. One, the Bill of Rights and constitutional limitations.

Two, indigenous rights. Three, independence and effectiveness of the Human Rights Commission. Four, amendments provisions.

Five, immunity provisions. Six, women's rights and gender rights. And seven, equal citizenship.

So from the outset, sir, I will ask for your patience because it may take more than the usual time. It may take perhaps more than an hour. So I'm really asking for your patience with us.

You're welcome. Thank you, sir. So on page four, sir, as you will see that we have named all the nine core international human rights treaties that Fiji has ratified and is a state party to.

So its ratification of the above nine core human rights conventions places numerous international obligations upon the state to align its domestic laws, policies and practices with universal human rights standards as the primary duty bearer of human rights. So under international human rights law, the state, in its role as duty bearer, carries these four fundamental obligations. One, respect human rights.

This is what we call, sir, the imposition of negative obligations on the state. It must refrain from acting in ways that deny, suspend, harm or violate human rights. For example, no arbitrary detention, no torture, no censorship.

Two, promote human rights. The government must actively foster and nurture a culture of respect for human rights through advocacy, awareness raising, training, education and public engagement. Three, protect human rights.

The government has a positive duty to ensure that rights are not unreasonably curtailed or interfered with. For example, effective laws, enforcement and remedies. And five, fulfill the obligation to protect human rights because the government has the public resources to take active measures to give effective realization to this right in the constitution and under international law.

For example, it enacts laws that recognize and can be made responsive to human rights. It has the public resources, public services and systems that make rights a lived reality and not just a legal promise. So the fourfold obligations by the state as a duty bearer transforms human rights from abstract principles into concrete and practical government duties.

Taken together, these obligations mean that the state cannot remain passive. It must not only avoid harming rights holders, but also protect them from harm by others. And finally, proactively work to ensure that rights are fully realized and enjoyed by all.

Failure at any level, whether through wrongful action, inadequate protection or neglect to act, constitutes a breach of international human rights laws. To proactively ensure that rights are fully realized, Fiji has incorporated human rights into its 2013 constitution, as you all know, Chapter 2, the Bill of Rights, as well as into several legislations and policies. Now let's look at Chapter 2, the Bill of Rights.

As you will notice in the subtitle, we've written there broad limitation clauses. We recognize that Chapter 2, Bill of Rights has significantly evolved from previous versions. It includes a wider range of protections with 36 specific rights and freedoms compared to earlier constitutions.

In particular, it recognizes second generation human rights, including social economic and cultural rights, while also underscoring the importance of environmental rights. We welcome this progress, sir, and we do not support any amendment that will reduce or weaken the rights currently protected. Now, notwithstanding this progress, we remain concerned that many civil and political rights contained in the Bill of Rights are significantly weakened by the very broad and specific limitation clauses.

This is concerning given the state's fourfold obligation in respecting human rights by not denying, suspending, or undermining those rights. So in this regard, sir, we refer you to Section 6.5 down below. As you can see in paragraph 3.1.3, it states that rights and freedoms may be limited, A, by limitations expressly prescribed, authorized, or permitted, whether by or under a written law on a particular right or freedom in this chapter.

And certain rights in the Bill of Rights carry expressed stated limitations, for instance, freedom of expression. In B, limitations prescribed or set out in or authorized or permitted by other provisions of this constitution. For example, the Amendment Constitution Chapter 11, the Immunities Clause State of Emergency.

These are other provisions within the constitution that prescribe limitations apart from Chapter 2 Bill of Rights. And then we have limitations which are not expressly set out or authorized, but which are necessary and are prescribed by a law or provided under a law or authorized or permitted by a law or by actions taken under the authority of a law. This is what we call the General Limitation Clause, which the state can use to cover every right.

It's not only the rights that has the expressed limitation clause. It's also other rights that does not have that expressed limitation clause. And then it even moves beyond that.

So, this is what I think legal experts sir referred to as the Claw back Clause, Section 65C. So the framework allows for wide ranging

limitations across the Bill of Rights. In many cases, rights can be limited if it is considered necessary for reasons such as national security, public safety, public order, public morality, or public health.

Some rights such as freedom of association, labor rights, and political rights, the requirement of necessity is not always clear, which lowers the standard for limiting them. So as a result, as I've already pointed out, so these provisions can act as Claw back Clauses where the limitations are so broad that they weaken the rights themselves. In contrast, the 1997 Constitution placed stricter controls on limitations requiring them to be reasonable and justified in a free and democratic society.

And if you could turn to page 45, sir, very quickly on Appendix 1. We just want to show you, sir, maybe just and then you can at your own leisure look at the rest. But if we turn to page 45 to make the comparison between the two, for instance, if you look on page 45, the example there we have freedom from cruel and degrading treatment. Now under the 1997 Constitution, that section 25, freedom from cruel or degrading treatment limitation, no expressly stated limitations.

Now from our view, this is understandable because freedom from cruel or degrading treatment is classified as an absolute right. Therefore, no situation including wars or any crisis whatsoever can justify torturing or making people suffer from cruel. They should be free from this kind of action.

But if you look at the 2013 Constitution, it does not treat it as an absolute right according to international standards. It has all of that which we have just shown you in Article 6.5 that can be applied in relation to the Section 11. In the interest of time, sir, because we know that it is late in the afternoon, we leave you to go through the rest at your own leisure.

But we've done that for you. So if you can move on to the next page on the inconsistency with international human rights law standards, we say that human rights law is based on protecting basic freedoms essential to human dignity and social harmony. It belongs to all people.

But not all rights are absolute. In some cases, the exercise of one person's rights may conflict with the rights of others or with wider public interest. So for this reason, both international and domestic law allow certain rights to be limited to balance these interests and protect the common good or in the public interest.

However, any limitation must be properly justified. Both international and domestic law require that limits on rights are applied only in specific and carefully defined situations. These rules ensure that restrictions are not arbitrary, are lawful, pursue a legitimate public interest, limited to what is necessary and proportionate to achieve that legitimate interest.

So we'll take you through the principles set out in Article 5 of the International Covenant on Civil and Political Rights and Articles 4 and 5 of the International Covenant on Economic, Social and Cultural Rights. So in Article 5 of the International Covenant on Civil and Political Rights, this is what it states, and please bear with us. Nothing in the present covenant may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present covenant.

And if you move down to Articles 4 and 5 of the International Covenant on Economic, Social and Cultural Rights, similarly it states that state parties to the present covenant recognize that in the enjoyment of those rights provided by the state in conformity with the present covenant, the state may subject such rights only to such limitations as are determined by law, only insofar as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society. So if you move down to Article 5, it states that nothing in the present covenant may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein or at their limitation to a greater extent than is provided for in the present covenant. So these provisions, Mr. Chair, affirm that rights recognized under the covenant must not be restricted or derogated from except in accordance with the limitations expressly permitted within these international instruments.

This reflects a fundamental rule of interpretation that limitations are the exception, not the norm. The United Nations Human Rights Committee has consistently emphasized that the relation between right and restriction and between norm and exception must not be reversed. Now based on this framework, any limitation on human rights must meet these four key requirements, legality, legitimate aim, necessity and proportionality.

And so it is all defined there and I hope you will not get angry with me. Again, I request that at your own time you can study the definition that is already there, though I think so you are already well versed with these definitions of these four key requirements. So if you look at the next page, sir, what we have here are examples of expressly prescribed limitation standards under human rights instruments.

So if you look, for instance, at the freedom of movement under article 12 of the international covenant on civil and political rights, you will see there, sir, that the purpose of the limitation example where necessary for the protection of. So these rights, it says there, shall not be subject to any restrictions except those which are provided by law necessary to protect national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present covenant. The next one which is to do with the expulsion of a lawful alien and the national security.

Now it states that the lawful alien must be allowed to submit the reasons against his expulsion and to have his case reviewed by and be represented for the purpose before the competent authority or a person or persons especially designated by the competent authority. It is not for the state simply using and claiming national security and simply expel the lawful alien and the same with freedom to manifest one's religion or beliefs, right? The limitations prescribed by law should be necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. Freedom of expression, this too being not an absolute right, the state can make certain restrictions but this should be provided by law and are necessary for respect of the rights or reputation of others and for the protection of national security or of public order or public health or morals and then you have the rights to peaceful assembly and we've done the same rights down to the rights to form and join trade units.

Freedom of association, again we have underlined the limitations in the international instruments so if you don't mind I will leave that again to the panel to scrutinize and maybe meditate on it in terms of understanding this submission. So if we can move forward we are saying that other constitutional systems apply stricter standards when limiting rights. For example section 1 of the Canadian Charter of Rights and Freedoms provides that rights may be limited only by reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society

and similarly if you noticed sir that the New Zealand Bill of Rights has exactly the same wording in their section 5 and we say that courts in Fiji have also recognized these principles.

These approaches set a higher standard for limiting rights than those currently applied. So we've cited a local case in 2024, the Fijian Teachers Association and the state in which the high court confirmed that it is not enough for a law to simply allow a restriction on a constitutional right. The court must also be satisfied that the restriction is justified and proportionate and if I may quote what the court said, it does not suffice that there is a written law authorizing a limitation on a constitutional right.

The court must also be satisfied that the limitation is justified and proportionate. This approach follows the proportionality test set out in the Canadian R and Oakes case. In this case the accused was charged with unlawful possession of illegal drugs for the purpose of trafficking under Canada's narcotics legislation.

The accused Oakes argued that his right to presumption of innocence until proven guilty was violated. The court found that the narcotics legislation he was charged under had reversed the onus of proof to the accused and in applying the test below further found that the legislation limiting the presumption of innocence failed at the second stage. That is the legislation did not impair the right as little as possible.

In fact the limitation was disproportionate to the actual right. So under this Oakes test the objective of the limitation must be sufficiently important to justify restricting a constitutional right and the limitation must be proportionate by one being rationally connected to the objective. In this case the test failed because the court said it was irrational to automatically assume that someone is a major drug trafficker just because they have a small amount of drugs for personal use and two impairing the right as little as possible and maintaining overall proportionality between the limitation and the objective pursuit.

That is the court weighed the beneficial effects of the law against its negative impact on the rights of the accused. So in the next page sir we compare the limits on rights under the international covenant on civil and political rights and the international covenant on the economic social and cultural rights with those under Fiji's 2013 constitution. So if we look at what we have there sir we have the freedom of expression the limit is

the second column sir the limitations if you look at the limitations under the two international instruments article 19-3 national security public order public health public morals rights and reputations of others.

So freedom of expression can be reasonably limited under those following reasons. Now under the 2013 constitution what we have there is freedom of speech expression and publication and then we have underlined for emphasis the limitations right to the extent that it that it is necessary a law may limit or may authorize the limitation of the rights and freedoms mentioned in subsection one and then you have all those information right. So it repeats here the limitations so it repeats article 19:3 in the international instruments national security public safety public order public morality public health and then it introduces that very interesting phrase or the orderly conduct of elections and then if we move on down it correctly is in line with international directives but then we've also underlined where they have added into the rights of people injured or abused by inaccurate or offensive media reports to have a correction published on reasonable conditions established by law.

So this so we've underlined where they have brought in limitations that does not align with international directives on human rights and if you can see sir we have the rights to peaceful assembly we've done it for other rights as well freedom of association the rights to form and join trade unions freedom of movement rights down to procedural protections on decision to expel a lawful alien. If you turn to page 15 sir you will notice that they have employment relations the international instruments are silent on that rights to privacy access to information rights to economic participation environmental rights and rights of persons with disabilities the two international instruments do not have any provisions on that it is silent on it but the 2013 constitution have substantial information on how to limit those rights. So my director has just pointed out to me that I need to emphasize on page 15 sir if you don't mind if I take you back she's pointed out that the limitation in the 2013 constitution simply says to the extent that it is necessary and it repeats that for right to privacy access to information right to economic participation environmental rights and rights of persons with disability.

It repeats necessary as a fundamental reason for limitation without defining necessary and without explaining the legitimate interest and without no reference to proportionality. I thank you director do you want to add now my director tells me Mr. Chair that the explanation is in the next paragraph if you don't mind I will just refer to the explanation in the

text in case my explanation was not clear enough. So as shown in the table many provisions of the bill of rights allow rights to be limited on broad grounds such as national security public safety public order public morality and public health.

In most cases the standard used is whether the limitation is necessary however for some rights such as freedom of association labor rights and political rights even this requirement is not consistently applied. As a result the limits on these rights can be wider than the rights themselves meaning restrictions placed is so broad they significantly reduce or undermine the enjoyment of these rights. So as a result they effectively act as a claw back clauses that weaken constitutional protection.

So we are concerned that the current approach to limiting human rights under the 2013 constitution does not fully align with international human rights standards. In particular some limitation clauses do not meet the required standards of legality necessity and proportionality. This lowers the level of scrutiny applied to restrictions on fundamental rights and increases the risk that limits may be imposed in ways that are unnecessary or disproportionate.

So without clear and strict safeguards these provisions may allow excessive interference with protected rights undermining both the rule of law and the effective protection of human rights. So the analysis Mr Chair shows that the broad limitation clauses in the 2013 constitution allow rights to be restricted on vague grounds such as what is necessary for national security, what is necessary for public safety, what is necessary for public order as well as public health and morality. It isn't defined in the constitution so this gives a very broad ambit in which the state could justify limiting certain rights.

It creates a permissive legal environment where laws may fall short of international human rights standards and an example so is the Media Industry Development Act 2010 also known as MIDA. It was an example of legislative restrictions or limitations of rights under the Bill of Rights. It severely limited freedom of the press and freedom of expression as well as allowing the Media Industry Development Authority established by the Act to investigate and compel information from the journalist.

Well we all know what happened to MIDA. It is hopefully is buried and will not rise again. The Public Order Act 1969 is another example.

When read together with the constitution, the Public Order Act allows the government to use force to maintain public order based on a very broad standard of what is necessary. This standard is so wide that it creates a risk of serious abuses including torture as recognized in section 17b of the Public Order Act and under section 17c of the Public Order Act the military police is given powers such as arrest powers, detention and use of force in situations linked to public safety or public order but because public order and public safety are defined very broadly these powers can be exercised with limited control. So this weakens important protections including the rights to be free from torture which is an absolute right right under international law including article 7 of the International Covenant on Civil and Political Rights and the convention against torture and Fiji may I repeat is a state party to these two conventions.

This provision has already demonstrated tragic consequences as evidenced by the recent death of a citizen in military custody and so if you want to know more we have footnoted it down below. This highlights the danger of giving broad powers without proper safeguards. In addition the Public Order Act protects police and military officers from being prosecuted which can create a culture of impunity and weakens accountability.

This further undermines protection from cruel inhuman or degrading treatment. We find that the most concerning provisions of the Public Order Act are found in sections 9 and 21. Section 9 gives the commissioner of police the power to refuse permits for public meetings or processions if he considers it necessary for public safety public order or essential services.

The standard we consider is subjective and does not provide clear criteria to guide proper objective decision making. As a result it allows the arbitrary denial of the right to peaceful assembly which is protected under international law and the constitution. Under international human rights law any restriction must meet the requirements of legality necessity and proportionality.

Section 9 fails to meet these standards. It does not require proof of a real or imminent threat nor does it require that the least restrictive option be used. Refusing a permit is a broad measure that removes the right entirely rather than limiting it in a careful and balanced way.

There is also no requirement to consider less restrictive alternatives making the restriction disproportionate. Section 21 of the Public Order Act raises even greater concern. It prevents any decision made under the Public Order Act from being challenged in court with the exception of decisions pertaining to sections 8, 9, 11 and 11a of the Public Order Act.

Those are just the exceptions. This removes the right of individuals to seek legal review which is protected under the constitution. It also allows decisions affecting certain rights.

This is inconsistent with the rule of law and with international standards which require that restrictions on rights be open to review.

Mr Chair, the recent denial in April this year of a permit to the villagers of Vuda who sought to peacefully march to advocate for the constitutional rights to a clean and healthy environment under section 40 of the constitution exemplifies the oppressive application of Section 9 of the Public Order Act. The commissioner exercised his subjective and arbitrary discretion to refuse the permit and grants of public order thereby silencing legitimate environmental advocacy and denying the community any lawful avenue to challenge the arbitrary restriction on their rights.

One of the most prominent examples of the Public Order Act, the use of it sir, is what happened in July 2021 when nine prominent political figures and some of them are now part of the coalition government were arrested and detained on the allegation that their critiques of the government breached the Public Order Act because their writings constituted malicious writings of false news or reports tending to create or foster public alarm and anxiety and this was all because they made criticisms of the Land Bill. So these incidents illustrate how the very broad and subjective standards in the Public Order Act can be weaponized to suppress legitimate expression and assembly undermining the very essence of democratic governance. The impact we say of these provisions is very serious.

We consider that the Public Order Act does not meet human rights standards, the broad limitation clauses in the constitution have allowed laws that give excessive powers to authorities, limit access to justice, reduce accountability and restrict legitimate public participation. These issues undermine the rule of law and weaken the protection of

fundamental rights. So our recommendation, we propose two causes of action on the limitations.

Option one, remove the limitation clauses altogether. Option two, amend section 65 of the 2013 constitution to require that limitations be reasonable and demonstrably justified in a free and democratic society. And so, sorry Mr. Chair, the staff have kind of attempted a draft of it.

Perhaps your consultants can have a look at their draft. We've also provided alternative wording by Professor Yash Ghai. Perhaps your consultants might want to consider Professor Yash Ghai's alternative wording.

Now the limitations on the rights of arrested and detained persons on section 13. So section 13 of the constitution sets out the rights of persons who are arrested or detained. These rights are essential for protecting life, liberty and personal security.

They form a core part of fundamental human rights and closely linked to the enjoyment of other rights. These protections are also recognized in international law including article 3 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights. The 2013 constitution has extended these protections compared to earlier versions.

It provides a detailed list of rights for arrested or detained persons. These include the right to be informed promptly in a language they understand, the reason for arrest or detention, as well as their rights to remain silent and the consequences of speaking. Communicate with a legal practitioner and be informed of this right to be brought before a court as soon as possible with 48 hours as the maximum period and other related rights provided under the constitution.

These protections are consistent with article 9 of the international covenant on Civil and Political Rights that guarantees the right to liberty, security of person and protect individuals from arbitrary arrest or detention. It also requires that individuals be informed of the reasons for their arrest and any charges against them. Importantly, Article 9 4 provides that a detained person must be brought promptly before a court and has the right to challenge the legality of their detention.

Although section 13 strengthens several aspects of protection, certain wording raises concerns in particular in section 13 subsection section 1 subsections a and i under this particular section 13. It allows a person to be held as long as they are informed of the reason for their arrest and the nature of any charge. This may allow detention without requiring that charges be laid promptly.

This represents a departure from the earlier constitution which required that a detained person be released if not charged within a short time. Under the current framework, there is a risk that authorities may hold individuals for the full 48 hour period while continuing investigations. This raises concern that detention may be used as a tool for fishing expeditions rather than for genuine and justified investigations.

Further concerns arise from the interaction between Article 13 of the international covenant on civil and political rights and the Public Order Act. Section 17a of the Public Order Act allows detention beyond the constitutional 48 hour limit. It permits arrest with or without a warrant based on a reasonable suspicion that a person has acted or may act in a way that affects public safety.

However, public safety is not clearly defined. This creates a risk of arbitrary detention. In addition, the public order act allows detention to be extended for up to 14 days if information cannot be obtained within the initial 48 hour period.

Furthermore, Fiji is obligated to provide sufficient and sanitary detention conditions for detainees. The United Nations human rights committee emphasized the need for this. Any necessary detention should take place in appropriate sanitary non-punitive facilities.

This framework raises serious due process concerns. The extended detention period may be applied without sufficient safeguards and individuals may not have effective access to legal remedies such as the right to challenge detention through legal action challenging the lawfulness of their being detained. As a result, although section 13 of the 2013 constitution provides important rights on the text itself, the combined effect of broad limitation clauses and the public order act reduces their practical protection.

So this, we say, undermines the purpose of the constitutional guarantee and weakens overall protection of personal liberty. Again, we refer to the

United Nations Human Rights Committee which is of the view that 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing. Any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.

The committee also advised that an especially strict standard of promptness such as 24 hours should apply in the case of juveniles. So our recommendations, Mr Chair, is one, amend section 13 of the 2013 Constitution to explicitly require that a person must either be formally charged or released within a short and clearly defined period. That is 48 hours for adults and 24 hours for juveniles.

And two, align section 13 of the 2013 constitution more closely with article 9 of the International Covenant on Civil and Political Rights by guaranteeing that all detained persons are promptly brought before a court and have an effective right to challenge the legality of their detention. If I may move us forward, sir, to the state of emergency powers. The 2013 constitution has provisions on states of emergency which are of concern to us.

There is a clear tension between the protection of human rights and the use of Emergency Powers as a state of emergency allows rights to be significantly limited. For this reason, such measures should only be used in extreme situations such as war or serious threats to the security or survival of a country. For example, under the European convention on human rights, a state of emergency is permitted only in times of war or a public emergency that threatens the life of the nation.

Consistent with this approach, Article 4 of the international covenant on civil and political rights allows certain rights to be limited during a State of Emergency but only to the extent strictly required by the situation. It also requires that any measures taken remain consistent with the state's other obligations under international law. These standards set a high threshold for both declaring and applying emergency powers.

Now in contrast, we have a concern that the threshold for declaring a state of emergency under the 2013 constitution is set too low. Section 154 allows a declaration where the security or safety of all or part of Fiji is threatened. This broad wording may allow emergency powers to be used in situations that do not meet the high standards required under international law.

Further concern arises from how a state of emergency is declared. Section 154 allows the prime minister acting on the advice of the commissioner of police and the commander of the republic of Fiji Military Forces to declare a state of emergency. This approach differs from earlier constitutions where parliament played a central role.

So if you may allow me sir, if we can all move to page 59 to appendix 3 for comparison of all constitutions on the States of Emergency. If you look on page 59 sir we've looked at from the 1970 forward to the 2013 constitutions. If you look at under the 1970 constitution state of emergency proclaimed by the governor general but that is dependent on the resolution of each house of parliament.

So parliament plays a central role in the 1970 constitution in relation to the state of emergency. In the 1990 constitution again it is the president head of state and again we see that the proclamation of emergency parliament is involved. 1997 constitution it's the same thing parliament is involved in relation to a state of emergency and the president as the head of state is involved.

Section 154 under the 2013 constitution it is the prime minister on two public institutions. The republic of the Republic of the Fijian Military Forces and the police institution. So they advise the prime minister in terms of that declaration of the state of emergency parliament is missing in action under section 154.

So we recommend sir back to page 23 review and amend section 1 154 to expressly state that the executive to recommend to parliament any state of emergency parliament plays the lead decisive role in the declaration the approval the extension and the oversight of a State of Emergency. If I may for move forward sir on resource based limitations. We note that some provisions in the Bill of Rights may unintentionally allow the state to avoid meeting its human rights obligations.

For example section 34-2 of the 2013 constitution which concerns the right to reasonable access to transportation states that if the state claims that it does not have the resources to implement the Right to Access. It is the responsibility of the state to show that the resources are not available. Other sections which have the same provision include section 31 (5) the rights to education section 33 (2) the rights to work and adjust minimum wage section 35-2 the rights to housing and sanitation section 36 (2) the rights to adequate food and water section

37 (2) the rights to social security schemes and section 38 (3) the rights to health.

So while these provisions Mr. Chair correctly place the burden on the state we are concerned that it may be used as a basis to delay or deny the realization of rights. International Human Rights Law does recognize that resources may be limited but at the same time they allow for the progressive realization of certain rights. The limitation in resources should not remove the state's responsibility to act.

The state must show genuine resource constraints and demonstrate that it has made serious and ongoing efforts to allocate available resources. A simple claim of insufficient resources should not be enough. So we emphasize that the obligation to protect human rights requires the state to take positive steps to ensure that the rights are not unfairly restricted or interfered with.

This includes adopting effective laws ensuring proper enforcement and providing access to remedies and we emphasize that failure to meet these obligations weaken the protection of rights and leaves individuals vulnerable undermining the very purpose of the constitution to protect them. So we are recommending sir the amending of sections 31 33, 34, 35, 37, 38 and where the state relies on a lack of resources as a justification for failing to fulfill these rights under those sections the state bears the burden of proving unclear and convincing evidence that one it has exhausted all reasonably available resources two it has prioritized the fulfillment of this right in good faith three no reasonable alternative measures could have achieved this right and four priority will be placed on remedying this gap and restoring the right as soon as practicably possible or as soon as possible.

And now on indigenous rights of the removal of constitutional safeguards we recognize that indigenous rights are a crucial element of of national stability at the core of indigenous rights are the principles of self-determination land and resource rights cultural preservation and free prior and informed consent.

Fiji is a state party to the indigenous and tribal peoples convention ILO convention 169 which it ratified in 1998 and in 2023 Fiji officially supported and recognized the UN Declaration on the Rights of Indigenous Peoples. Fiji has a long and complex constitutional history on

the recognition of indigenous rights. The 1997 constitution provided strong protections for indigenous land ownership and cultural authority.

It required special consent for any changes to laws affecting itoke land or their affairs. These protections were reinforced by entrenched clauses meaning that such laws could not be easily changed or by a simple majority in parliament. In addition the constitution included a dedicated chapter on group rights which recognized customary law and provided for affirmative action and if we can turn to appendix 2 page 51 sir just to have a quick look at the comparison.

If you'll notice on Indigenous Rights in the 1970 constitution no provisions explicitly provide for indigenous rights however there were several sections or provisions that reserved the office of the prime minister and a majority in the house in relation to addressing the interests of indigenous Fijians. But if you come to 1990 constitution the protection and enhancement of vision and human interest you will see sir if you go down 51 down to page 52 that it contained expressly stated protection for indigenous rights and interests. The details I will leave it to the panel at their own leisure to go through.

Again 1997 constitution you have section 185 and section 186. These are the Group Rights that is not in the 2013 constitution. So if you can see there was a lot in the 1997 constitution on indigenous interests on their group rights.

Under the 2013 constitution Section 28 provides for rights of ownership and protection of Itaukei, Kei, Rotuman and Banaban lands and that is basically all that we have under section 28 in that protection and if we move forward sir we would like to say that the 2013 constitution significantly changed this approach. It removed the entrenched clauses on group rights found in the 1997 constitution. It also abolished senate and the great council of chiefs which had played an important role in the governance of the itaukei and their land administration.

But we would like to mention that section 28 one absolutely prohibits the permanent alienation of indigenous lands Ito, Kei, Rotuman and Banaban lands. So this means that such lands must always remain with its indigenous owners and can never be sold or transferred permanently thereby recognizing and protecting the reversionary rights of indigenous owners. However the practical implementation of this protection of indigenous ownership rights remains an ongoing concern as questions

persist on the extent to which indigenous communities can or are able to effectively exercise control over, benefit from and participate in decisions affecting their land and natural resources.

The removal of constitutional and institutional safeguards for example such as the GCC adds to this ongoing concern that the current constitutional framework does not adequately protect indigenous identity and resources, traditional governance structures and cultural heritage. For the indigenous communities traditional institutions such as the GCC serve as essential mechanisms of representation and consultations as well as significant custodians of customary traditions and values, cultural continuity and customary collective decision making. The removal of these entrenched safeguards has important practical consequences.

Laws affecting indigenous land and affairs such as the Ito, Kei Lands Act 1905 can now be amended or repealed by a simple majority in parliament. This can occur without meaningful consultation with indigenous communities. This situation does not align with Fiji's obligations under ILO Convention 169 and UNDRIP both of which require good faith consultation and the obtaining of free prior and informed consent before adopting measures that affect indigenous peoples.

So our recommendation sir is re-insert as appropriate entrenched clauses from the 1997 constitution sections 185 and 186 on group rights and customary rights requiring specific consent and additional safeguards before any laws impacting indigenous affairs or lands can be amended. Now so we say appropriate because at that time Fiji had a bicameral parliament under the 1997 constitution. The 2013 constitution has removed that.

It is only one house. There's no longer two houses because senate has been abolished and this is why we say that any adjustment must be done in the context of the current political structure in relation to this recommendation. And as we move forward sir we now say that land rights while we recognize section 28 but we also say that land rights and the protection of it may be an illusion.

So we are saying that it grants as an illusion while it grants to the state in section 28 powers under section 27 sorry sir if you section 28 absolute prohibition on alienation of land indigenous land section 27 grants to the state powers through written law for compulsory acquisition of land and

property for various reasons including for public purposes or for reason of national development. So while section 28 on its face appears to provide strong protection section 27 weakens it by allowing land to be taken by the state giving rise to a fundamental tension between indigenous ownership rights and the state's authority to override it. The concept of compulsory land expropriation conflicts with the principle of indigenous land ownership.

International standards also take a different approach while UNDRIP does not explicitly refer to expropriation section 32 requires the state to consult indigenous peoples and obtain their consent before any project affecting their land or resources is approved. For this reason the requirements for free prior and informed consent must apply to any acquisition of customary land. Section 27 should therefore be amended to reflect this obligation or alternatively removed altogether if it cannot meet international standards.

The 2013 constitution also removed earlier safeguards that required consent before amending laws on indigenous land and affairs. Under the 1997 constitution sections 185 and 186 ensured that such changes could only be made with proper approval and additional protections. This is consistent with article 19 of UNDRIP which requires the states to work in good faith with indigenous peoples to obtain their free prior and informed consent before introducing measures that affect them.

Mr. chair we say that these safeguards are no longer present in the 2013 constitution. As a result important laws concerning indigenous land and rights cannot be changed more easily. This creates uncertainty and weakens long-standing protections.

We therefore consider it necessary to restore the entrenched provisions from the 1997 constitution. We emphasize that strengthening indigenous rights does not undermine the rights of other groups rather it ensures fairness by protecting key principles such as self-determination, land ownership, and free prior and informed consent. So we recommend one recognize the principle of free prior and informed consent explicitly in the constitution ensuring it applies to all activities affecting indigenous land, resources, and cultural heritage.

In addition, ensure meaningful participation in all decision making that involves indigenous rights and interests lands and resources. Secondly we recommend amend section 27 so that any state acquisition of Itoke,

Rotuman, or Banaban land requires a genuine free prior and informed consent process and includes fair, full, and timely compensation. So if we move on to minerals ownership the three feet below.

Mr. Chair a long-standing and increasingly contested issue concern the separation between land ownership and the ownership of minerals beneath the land. Under the current system Itaukei land owners own the surface of their land while all minerals beneath it are owned by the state. A colonial era concept often referred to as the three feet below doctrine.

What this means is when there are minerals the state has subsurface rights and when there are no minerals the indigenous people have subsurface rights. Section 30 of the 2013 constitution confirms state ownership of all minerals. This is supported by legislation such as the mining acts 1965 and the petroleum acts 1978.

Although the fair share of mineral royalties act 2018 provides that landowners receive 80 percent of royalties the total royalty is usually only three to five percent of the minerals value. As a result the actual benefit received by land owners remains very small which has been acknowledged by the Itaukei land trust board in relation to the unfair return. So we say that this legal framework gives rise to multiple interconnected human rights violations that strike at the heart of indigenous self-determination and dignity.

First the framework undermines the principle of free prior and informed consent. Under the mining acts 1965 landowners are not required to give consent before prospective licenses or mining leases are granted. They are only informed concerning access to their land.

This limits the ability of communities to say no at the outset of projects that may harm their land their environment and their livelihoods. This approach is not consistent with international standards under UNDRIP and ILO convention 169. Secondly the system results in unequal sharing of benefits.

Indigenous communities bear the environmental and social impacts of mining such as land degradation and disruption to livelihoods yet receive only a small share of the financial returns. Even though landowners so we have been told receive a high percentage of royalties the overall value of those royalties is low. Thirdly the framework leads to environmental harm.

Past mining operations for example in the Namosi region have resulted in documented environmental damage including contamination of waterways and destruction of traditional food sources. These harms have fueled deep-seated grievances and strong opposition to new mining projects. Yet because the legal framework does not require landowner consent at the exploration stage communities are often left to respond to these impacts after they occur rather than preventing them from the outset.

Fourthly the framework systematically excludes ITaukei landowners from decision-making processes that directly affect their lives and territories. The ITaukei land trust board has noted that landowners are largely excluded from the negotiation and management of mining projects. The state negotiates on their behalf and royalties are paid directly to the state not to the landowners or their representatives.

This model perpetuates colonial power dynamics reducing traditional custodians to being passive recipients of state-determined outcomes rather than recognizing them as equal partners in the governance of their own resources. And finally we continue to say that the system reflects a continuation of colonial practices. It separates land from its natural resources which is inconsistent with the ITaukei concept of the Vanua where land people and resources are one in the same.

By maintaining this colonial construct the state not only deprives indigenous communities of economic justice but also weakens traditional systems of governance denying the holistic relationship between the people and their ancestral territory. International instruments such as UNDRIP emphasizes that indigenous peoples are not just stakeholders to be consulted but rights holders whose cultural survival, socio-economic development and self-determination are deeply rooted in their land and natural resources given their distinctive spiritual and material relations with them. Therefore mineral projects must respect indigenous rights, ensure meaningful participation, ensure no or minimize environmental or social harm and provide fair and equitable benefits to affected indigenous communities.

So we recommend amend section 30 of the constitution to recognize customary ownership of minerals found in or under ITaukei land customary marine areas and protected areas and vest these rights in the respective customary land owners. Secondly we say if the ownership of

minerals remain vested in the state then section 30 to be amended sorry section 30 subsection 2 be amended to guarantee the rights of indigenous people to free prior and informed consent, meaningful participation in decision-making processes, the conduct of independent environmental and social impact assessments with findings made publicly available particularly to affected communities to determine whether approval may or may not be given, fair and equitable sharing of benefits and access to effective remedies and compensation for any damage or harm to their lands, waters, customary marine areas, their qoliqoli, livelihood and traditional way of life. And now Mr. Chair you may be pleased that I will stop here for a while because my director will now take over for the next section.

If I may request if we could go on to the amendment position of commissions. The commissioner's recruitment process can deal with that later on. We'll have a read through that and then we'll come back to the commission in the event we have some questions in relation to paragraph 5 which is HRADC if we could move on to paragraph 6 which is the amendment provision section 159 to 160.

I note that there's reference to the Supreme Court to the Supreme Court opinion yes and the equal citizenship and or the women's rights and gender rights and the citizenship and national identity. If we could start with the amendment provisions please. Thank you sir.

In that case I will continue on in relation to the overly restrictive amendment framework sections 159 and 160. August 2025 last year the Supreme Court issued an important but binding advisory opinion following a request by cabinet and we all know the history of that. If I can move on to the second paragraph sir.

The 2013 constitution set very strict rules for amendment section 160 required that any constitutional change whether minor or major must be approved by three quarters of all members of parliament and three quarters of all registered voters in a memorandum. This meant that approval depended not only on those who voted but on all registered voters. In addition section 159 made certain provisions including the amendment process itself and immunity clauses unamendable.

So together these requirements made the constitution extremely difficult some say impossible to change in practice. So to address these concerns the court applied what he described as remedial

interpretation. The approach involves interpreting legal provisions in a way that makes them workable and consistent with fundamental principles such as democracy and self-determination.

The court held that the amendment rules should be read in a way that allows meaningful constitutional change. It found that the original requirements were too strict did not align with the right of people to determine their own system of government and in reaching this conclusion the Supreme Court relied on international law including article one of the international covenant on civil and political rights as well as the democratic values reflected in the constitution itself. So the court found that the requirements for a three-quarters majority in parliament created an unreasonable barrier to constitutional change.

It noted that such a rule would allow a relatively small minority to block any amendments in the context of a constitution that was not originally adopted through a democratic process this restriction was considered unacceptable. The court therefore held that a two-thirds majority of all members of parliament is more appropriate while still a high threshold it allows for meaningful change while maintaining stability. The court also noted that similar thresholds are common in Fiji's constitutional history and in other countries.

The court also reviewed the referendum requirement it recognized the value of involving the public in constitutional amendments however it found that requiring approval from three-quarters of all registered voters was impractical and overly restrictive. The Supreme Court therefore held that the referendum requirement should be a simple majority of those who actually vote in the referendum. This change makes the process more realistic while still ensuring that public support is required for constitutional change.

So the court did not recognize the provision that prevented any changes to the amendment rules themselves. It found that such a restriction would permanently block constitutional reform so by declining to recognize this provision the court ensured that the amendments process itself can be revised if necessary and so we recommend amend sections 159 and 160 of the 2013 constitution to formally reflect the interpretation provided by the Supreme Court. This includes adopting a two-thirds majority in parliament and a simple majority of those voting in a referendum for constitutional amendments.

Secondly review and revise the amendment framework to ensure that it is practical and achievable while still maintaining appropriate safeguards. The amendment process should allow for meaningful constitutional reform without creating unnecessary barriers. Three, retain the requirements for public involvement through referendum but ensure that the process is accessible and reflects the will of those who participate.

Public education and awareness initiatives should be introduced to support informed participation in constitutional reform processes. Four, clearly define which provisions if any should remain protected from amendment. Where such protections are retained they should be justified and made consistent with democratic principles and international standards.

And fifth, ensure that the amendment provisions align with the right to self-determination as recognized under international law including the international covenant on civil and political rights this we say will strengthen the legitimacy of the constitution both domestically and internationally. And sixth and lastly consider establishing a formal mechanism for periodic constitutional review. This would allow the constitution to evolve in a structured and inclusive manner reducing the need for ad hoc reforms.

And now may I move on to the immunity provisions Mr. Chair on chapter 10. We say that the immunity provisions outlined under chapter 10 of the 2013 constitution which incorporates the immunity provisions from the 1990 constitution provide absolute immunity from criminal prosecution or civil liability or any other type of court actions against anyone involved in the 1987 and 2006 military coups. The only one who paid was the failed civilian coup of 2000.

The time frame being from December 5 2006 until the first sitting of parliament elected in the 2014 elections. We note the concerns of members of the public calling for the removal of the immunity provisions and we acknowledge the broader issues these concerns raised on the necessity and importance of accountability, the rule of law, equality before the law and sound democratic governance. In this regard we refer to the supreme court of Fiji in its opinion in August last year which raised these same concerns of accountability the rule of law and the restoration and preservation of democratic values moving from an

authoritarian military governance towards civilian democratic governance.

The supreme court opined that immunity provisions can be seen to detract from the rule of law. They insulate from what would otherwise be the legal consequences of their actions. They also sit uneasily with the concept of equality before the law.

As well such provisions may create in the minds of those contemplating a coup expectations of future immunities and in this way might increase the risks of extra constitutional action. These issues are compounded say the supreme court when immunities are not able to be amended but then the supreme court further added that unamenable immunities may be as they probably were in 2012 and 2013 preconditions to a peaceful transition from military government to democracy. In this way they can be seen to promote democratic values.

In brief Mr. Chair it was the conclusion of the supreme court for reason of national stability the peaceful transition that it regarded as an act that promoted democracy and reason of legal continuity that the immunity provisions remain protected and cannot be amended. In light of the supreme court's opinion and public calls for the removal of the immunity provisions we acknowledge that while such provisions are fundamentally offensive to democratic accountability and the rule of law they were a practical necessity if you like Mr. Chair. Unnecessary evil for securing a peaceful transition towards restoring democratic civilian rule thus peacefully returning power to the people.

However in upholding the public's call for democratic accountability for the perpetrators of military and civilian coups and while respecting the supreme court's opinion of august 2025 the human rights commission is of the view that there is need to strengthen section 2 subsection 6 of the 2013 constitution to prohibit future coups and that any future attempts to overthrow government and subvert the constitution should carry mandatory life sentences with no access to executive or presidential pardons as the provision has already stated that no immunities can lawfully be granted under any law. Now this will also require an amendment to section 119 of the 2013 constitution to ensure that the mercy commission does not include among its recommendations to the president for his power of mercy those engaged in coups and the overthrow of a government. We acknowledge the action of the coalition government in establishing the truth and reconciliation commission to

address the trauma sufferings and human rights violations arising from the 1987-2006 coups.

We however note that the truth and reconciliation commission does not provide a clear pathway for reparations or accountability. We also note that section 1583 prevents the state from paying compensation for damages injury or loss caused by actions and conduct for which immunity has been granted. However Mr. Chair we are of the view that this does not prevent the state from providing some level of assistance and comfort to victims and that this assistance should not be framed as legal damages or legal compensation in light of section 1583 but provided to victims on humanitarian and restorative grounds.

We recognize the very important role of the republic of Fiji military forces in protecting and safeguarding Fiji's security and defense. We also note continuing public concerns on section 131 subsection 2 of the 2013 constitution which vests in the republic of the Fiji military forces the overall responsibility to ensure at all times the security defense and well-being of Fiji and all Fijians. A grave concern Mr. Chair is that this section could be misused because its language is so broad and ambiguous and it can justify military intervention in political disputes and civilian governance.

We are of the view that section 1312 requires language that removes the ambiguity and vagueness provides clarity on the role and responsibility of the military and expressly states that the military remains subordinate to civilian rule and elected government authorities at all times. So we recommend Mr. Chair one strengthen section 2 subsection 6 of the 2013 constitution by amending it to incorporate that future coup actions and those responsible shall be given mandatory life sentences and shall not have access or be granted executive or presidential pardons. To section 119 of the 2013 commission sorry constitution to be amended to ensure that the mercy commission does not consider any petition from nor recommend to the president for his power of mercy any person involved in coup actions or the overthrow of a government.

Three that government notwithstanding section 1583 of the 2013 constitution reinforce the work of the truth and reconciliation commission by establishing an independent state-funded restorative justice and humanitarian fund to provide some level of assistance and comfort to victims. And for section 131 subsection 2 of the 2013 constitution be completely rewritten to clearly and specifically set up

the powers functions or responsible responsibilities of the republic of Fiji military forces the limits to the exercise of these powers functions or responsibilities and that the military remains subordinate to the rule of law and to civilian rule exercised through the democrat democratically elected government at all times. And now Mr chair if we can move forward we now wish the panel to consider immunity to be time bound expanding and removal of immunity provisions in the interest of future generations.

Mr chair we acknowledge concerns and discussions by members of the public that the preservation of the immunity provisions indefinitely is not in the best interest of future generations. The constitution is not only the supreme law but it should also serve as a moral compass for the nation. The permanent protection of these immunities is in our view entrenching historical political conflicts within the nation's supreme law long after their practical purpose has ceased and those covered by the immunity provisions have also ceased to exist.

The continued inclusion of the immunity provisions may risk memorializing and some probably would say glorifying in the supreme law prisoners actions constitutional disruptions and extra constitutional political change. Future generations may see this continued immunity protection as an implicit endorsement even legitimization of actions and conduct that violated democratic principles and constitutional processes. This may lead to the perception that unlawful and extra constitutional actions can achieve constitutional recognition and protection without accountability.

It is therefore argued that the maintaining of the immunity provisions can undermine efforts towards strengthening constitutional supremacy the rule of law and democratic accountability. The human rights commission is of the view that it is an unreasonable and unjust burden on future generations to inherit a document that carries within its permanent protection of actions and conduct that violated the very constitutional order they are asked and required to uphold. So we say that in balancing respect for the supreme court's opinion of august 2025 with Fiji's long-term democratic development and constitutional evolution the following forward-looking approach is proposed.

This approach seeks a compromise in preserving the original purpose of the immunity provisions while recognizing that the constitution is a living document and should evolve with the nation it serves. We propose the

insertion of its sunset provision into the 2013 constitution expressly stating that all immunity provisions be automatically expunged and removed from the constitution in 30 years time. A 30-year time frame means that all those involved in actions and conduct for which immunity is granted would have passed on into history.

More importantly future generations will inherit a clean document free from exceptional provisions that link it to past historical constitutional disruptions and political upheavals. The eventual removal of the immunity provisions recognizes that the passage of time has rendered such exceptional provisions unnecessary and that such information best belongs in the public record academic writings and study on national forums for debates and discussions. They need not be permanently enshrined in the constitution once their transitional and practical purpose has been achieved.

To maintain the immunity provisions indefinitely risks transforming what was intended as a transitional mechanism into a constitutional principle which is when immunity is kept indefinitely it risks subverting or undermining the fundamental legal principle that all individuals are subject to and equal before the law. So as custodians of Fiji's constitutional future Mr. Chair, the present generation should ensure that future generations inherit a constitution that reflects the ideals and values of democracy, the supremacy of the constitution, the rule of law, equality before the law, accountability, respect for human rights, and the peaceful transfer of political power through sound democratic process. The constitution should embody these enduring principles and values and must not remain permanently tied to exceptional provisions which arose from particular historical and political circumstances that's challenged and sought to destroy the rule of law and democratic governance.

So our recommendation here sir is that a sunset provision be inserted into the 2013 constitution expressly stating that the immunity provisions shall be automatically expunged and removed from the 2013 constitution in 30 years time effective from the date of amendment. And if you note sir down below we've just made a concern that the 30 years is based on the amendment occurring at 2027 and therefore change if the amendment continues to delay then the 30 years should also change. That is what we are saying so that for instance if the amendment occurs in 10 years time then perhaps 30 years should be reduced to 20 years.

And now Mr Chair I will ask Lillian to speak on women's rights and gender rights. Thank you.

Mr. Valenitabua: May I have a request would we have a summary of please? For the women's rights? Yes.

Ms. Mausio: Sure. Just a summary of it. Sure yes.

Thank you again for your time and for indulging us. I understand that you've had a very long day so I will keep it very brief. Just to emphasize on the the importance of women's rights.

Did you know that the word woman or women doesn't appear at all in the 2013 constitution? And we just found it interesting when we were doing our initial research into the into for our submissions before you today because it seemed like a vast difference from the 1997 constitution particularly with regards to section 140 in the previous constitution. And in the 1997 constitution they made specific mention of the importance of equality of the genders especially women in participation in public life. So the removal I guess our our emphasis on this is on women's rights and in relation to the absence of the term woman and women in the in the current constitution it's our view that the removal of this explicit reference may be seen as reducing the visibility of women's rights in the constitution that we have right now.

And there's a risk that this would not align Fiji with its international obligations under CEDAW yes especially under article 7 which requires states parties to ensure that women have equal opportunities to participate in public life and so this includes also holding public office. So that was a particular concern for us regarding I guess just the visibility of women in terms of the constitutional framework. With that being said we commend the steps that is taken by the 2013 constitution in providing a broader set of identity characteristics for protection against discrimination.

So with reference to section 26 particularly this expands the list of prohibited grounds on which one can be discriminated against. So with the absence of the specific reference to women and women in the 2013 constitution not withstanding this is still sort of remedied by section 26 in the constitution. So very briefly section 26 of section 3a expands the list of prohibited grounds of discrimination to now include sex, gender,

sexual orientation, gender identity and expression as well as various social and economic factors.

So this in our view represents an important step forward in promoting equality and inclusion. We have provided a table in appendix 4 which you can find at page 65 which just provides a comparison of the evolution of rights and the recognition of different groups of people and the protection against discrimination. So very briefly if you can see the 1970 constitution the initial grounds upon which people were free from discrimination or you know they couldn't be discriminated against only included race, place of origin, political opinions, color or creed and this is word for word in the 1990 constitution as well.

So this was expanded further in the 1997 constitution it now included again race, ethnic origin, color, place of origin, gender, sexual orientation, birth, primary language, economic status, age or disability and also opinions or beliefs. In the 2013 constitution it has been further broadened including the previous ones in the 1997 constitution but now also including like I mentioned before gender identity and expression, economic or social or health status, disability, age, religion, conscience, marital status or pregnancy and also opinions and beliefs. So we believe that that is in alignment with Fiji's obligations under CEDAW particularly article 7. So the human rights commission also wishes to acknowledge the views of civil society organizations, the submissions they've made before this commission and in general which have highlighted the importance of maintaining these protections within the constitution.

Ensuring that these rights remain protected is essential for safeguarding equality and dignity for all individuals. In the context of constitutional review it is essential to maintain the international law principle of non-retrogression. So essentially this principle holds that once a human right has been recognized and awarded to you by way of the constitution you cannot then pull it back by way of amendment which with the absence of the specific reference to women or women in the 2013 constitution has a very real risk of infringing on their territory or retrogression.

And so the human rights commission's recommendations in terms of these women's rights and gender rights are fourfold. Our first recommendation is to include explicit recognition of women in the 2013 constitution particularly in relation to equal participation in public life and public service in line with Fiji's obligations under CEDAW. And I'm

sorry if I hadn't outlined earlier I know that we are all aware of what CEDAW stands for.

It's the convention of elimination of all forms of discrimination against women. The second recommendation by us is to retain and strengthen the existing non-discrimination provisions to ensure continued protection based on sex, gender, sexual orientation, gender identity and expression. Our third recommendation is to retain and safeguard section 26 to ensure that the broad protections against discrimination remain firmly embedded in the constitution.

And lastly our recommendation is to ensure that the constitutional protections are supported by effective legislation and enforcement mechanisms which would allow individuals to seek remedies when or if discrimination occurs. With that being said if anyone has any questions I'm happy to answer or discuss or pass it on but if there are no questions I will pass it back to Commissioner Vuki. Thank you.

Ms. Vuki: Thank you. Thank you Sir and the members of the panel for bearing with us. I'll try to summarize because we're coming to the end and this is to do with equal citizenship and national identity.

We support the principle for a common national identity and we're also making a distinction that the nature of citizenry is a separate matter from the issue of ethnicity. We acknowledge that historically Fijian was used exclusively to describe the indigenous people of Fiji and that the framers of the 2013 constitution without consultation with the public nor with the indigenous people imposed the name Fijian through constitutional entrenchment as the national name for all citizens in Fiji. We also acknowledge concerns expressed by indigenous stakeholders including the great council of chiefs on the adoption of the term Fijian as the common national identity for all citizens and we consider that these indigenous concerns raise legitimate questions on what names should be used to express a national identity in a multicultural society.

We view that the concerns that have been raised from the public and from the indigenous community deserve respectful recognition and dialogue and so we think that consideration should be given to the undertaking of a nationwide consultation process or through a national referendum to determine whether the term Fijian is widely supported or whether an alternative name such as Fiji Islander or another name that is preferred by the people of Fiji and which reflects national consensus

and so Mr. Chair our recommendation is that the principle of equal citizenry be retained however that the public be consulted by national referendum on their views on which name is best used to describe their national identity. Include a clarifying provision or interpretive guidance that recognizes the distinction between citizenship and ethnic or cultural identity ensuring that any recognition of all citizens as Fijian does not diminish the cultural rights of any group or any other name that the public wishes to adopt be it Fijian or Fiji Islander. Strengthen protections for cultural identity language and tradition within the constitution to complement the principle of equal citizenry and ensure that diversity is equally valued and so our conclusion and recommendation so if you will bear with us I will read it because Miss Vuki if I may intervene yes we had left paragraph five which I believe Miss Lewaravu was to have addressed we have discussed with my fellow commissioners we could ask Miss Lewaravu to summarize all right the paragraph five HRADC.

My apologies before you come to the conclusion. My apologies Mr. Chair. Director.

Ms. Vuki: Thank you Chairperson for the opportunity to speak to our other issue which touches on the Human Rights Commission's independence and effective operation. The first issue that we would like to address here is in relation to the commissioner's recruitment process and that is bringing it in line with international standards relating to the Paris principles compliance. For the information of the commission is that there has been a consistently call and recommendations from the United Nation member states since Fiji's first cycle of the universal periodic review in 2010, 2014, 2019 and recently in January 2025 for Fiji to bring the Human Rights Commission in fully compliance with the international standards that's provided under the Paris principles.

By way of background to the commission is that in 2007 the Human Rights Commission lost its A status accreditation and this was due to concerns about independence and credibility so in essence it became status less. When it reapplied in 2021 for accreditation it was granted B status so the commission is currently B status. One of the main concerns raised by the body which accredits National Human Rights Institution is the lack of an independent and transparent appointment process for the members of the commission.

In particular the current constitutional framework which is provided under sections 45 section 132 and 133 does not provide for a pluralistic

selection panel that means the selection panel should not be a government majority. It does not require public advertisement of vacancies and does not establish a clear and structured process for appointing commissioners. Now looking at the current recruitment process under the 2013 constitution the Human Rights Commission is empowered under section 45 of the 2013 constitution as well as the Human Rights Commission Act.

Section 45 subsection 2 of the of the 2013 constitution establishes the composition of the Human Rights Commission which must consist of a chairperson who is or is qualified to be a judge and four other members all of whom are appointed by the president on the advice of the constitutional officers commission or COC. The COC comprises of the prime minister as chairperson, leader of opposition, attorney general, two persons appointed by the president on the advice of prime minister and one person appointed by the president on the advice of the leader of opposition. This structure in the Human Rights Commission's view raises concerns about independence as the government has significant influence over the appointment process and ultimately over the leadership of the Human Rights Commission.

In comparison other national human rights institutions have vastly different appointment process which promotes independence of the institute. For example Australia's Human Rights Commission in Australia the AG makes the final recommendation to the prime minister there are clear guidelines for advertisement and recruitment. They also have an assessment panel which consists of a secretary, their APS commissioner and president of the commission or an NGO as a representative of the president of the Australia Human Rights Commission if they are not available.

In New Zealand their governor general appoints upon the advice of the minister of justice but they have an assessment panel an independent assessment panel which includes a variety of different representatives including NGOs, trade unions, universities and they also have a published guidelines on the recruitment process, advertisement, interviews and etc. And Samoa National Human Rights Institution they have a standard merit-based oh sorry in Samoa they are they have a screening panel which they scrutinize, they advertise, they interview and then they refer the recommendation to the legislative assembly for endorsement. So all of these institutions have standard merit-based

transparent procedures regarding the appointment of members of their respective commissioners whereas Fiji doesn't.

So our recommendation here chairperson and members of the commission we propose two options to ensure compliance with Paris principles. Option one amend the constitution to establish a transparent and merit-based recruitment process for commissioners. This requirement may be included directly in the constitution or alternatively the constitution may require that such a framework be provided for in the legislation.

Option two introduce a provision requiring that appointments be guided by formal rules developed by the COC. This may be done through regulations made under section 132 subsection 3 of the constitution. These regulations should establish an independent panel to review and assess candidates based on clear and merits-based criteria.

The panel would then submit a short list of candidates to the COC for final consideration and approval and just a note there for the information of the commission is that the human rights commission has already prepared draft regulations to support this process under option two and these are currently with the office of the solicitor general, the attorney general and the COC and are awaiting the necessary steps for implementation. So this was this work was done prior to the constitutional review as a proactive measure by the human rights commission to try and bring the appointment process to be in compliance with international standards. Our second issue relates to the need for full-time human rights commissioners.

At present the commissioners are not engaged on full-time basis and instead receive a modest monthly allowance. As a result commissioners often maintain other full-time employment typically with higher remuneration. This arrangement has created a significant challenge for the effective discharge of the human rights commission's mandate.

The absence of full-time commission commissioners weakens accountability and reduces the level of commitment needed to address the increasing number and complexity of human rights issues in Fiji. For the human rights commission to operate effectively and meet international standards its leadership must be effectively resourced and fully dedicated to its responsibilities. Under the 2013 constitution

commissioners collectively form the leadership of the institution and are responsible for carrying out this mandate.

This mandate is very broad and requires continuous attention, strong oversight and timely decision making. However the current pan-time structure limits their availability and reduces continuity in leadership. This in turn affects the human rights commission's ability to respond promptly and effectively to human rights concerns.

A comparison with similar institutions highlights this gap. In countries such as Australia and New Zealand commissioners serve on a full-time basis and are paid salaries comparable to those of judges. So our recommendation here is one is to revise the appointment framework to provide full-time commissioners with appropriate remuneration and terms of service that reflect the importance and scope of their responsibilities and eligible for a one-time reappointment.

The next issue relates to the limitation on the human rights commission's jurisdiction and investigative scope. As an independent national human rights institution in accordance with Paris principles, the human rights commission is expected to operate impartially and without interference. However certain provisions in the human rights and anti-discrimination act and section 172 subsection 5 of the 2013 constitution limits its jurisdiction.

In particular matters related to the Fiji constitution amendment act 1997 revocation decree 2009 and other presidential decrees are excluded from its review. So while section 45 of the constitution provides the human rights commission with a broad mandate, these exclusions that I've just mentioned significantly restrict the ability to act in practice. These limitations weaken the purpose of having an independent oversight body.

By placing certain matters beyond review they create a risk of selective accountability. This may reduce public confidence in the human rights commission and limit its ability to address human rights issues in a fair complete and credible manner. So our recommendation is remove the limiting provisions in the 2013 constitution and in relevant legislation which is the human rights and anti-discrimination act 2009 to ensure that the human rights commission can exercise its mandate fully and independently in compliance with the Paris principles.

And the last issue is in relation to enhancing the powers of the human rights commission in detention monitoring. Section 45 of the 2013 constitution and section 12 of the human rights and anti-discrimination act does not currently empower the human rights commission to conduct unannounced visits to places of detention. So although Fiji has ratified the convention against torture it has not yet joined the optional protocol which provides for regular and independent inspections of detention facilities including unannounced visits.

As a result the human rights commission's ability to monitor detention conditions remains limited. This limitation is important in light of complaints received by the commission regarding detention conditions in Fiji. These complaints include concerns about overcrowding access to basic services and the treatment of detainees.

These conditions have also been publicly acknowledged by the Fiji corrections services for prison facilities as well as St Giles hospital. Without the power to conduct independent and unannounced visits the human rights commission cannot effectively verify these concerns or respond to them in a timely manner. So granting the human rights commission the power to conduct specifically unannounced visits is not intended to be punitive.

Instead it serves as a preventive and cooperative measure. Regular monitoring would help the human rights commission better understand conditions within detention facilities, identify systemic issues and provide practical recommendations to the relevant agencies for improvement. This would support both detainee welfare and the working conditions of officers while also strengthening transparency and public trust.

It would further assist the state in meeting its international human rights obligations and our recommendation for this is amend section 45 of the constitution to explicitly authorize the human rights commission to carry out regular and unannounced visits to all places of detention in Fiji. And that chairperson is a summary of part five of our submission. Thank you very much for the opportunity.

Thank you. Thank you, Mr. Chair.

Ms. Vuki: Mr Chair before I conclude can I just ask my colleagues if they have any other pressing issues before I close our submission.

I think it's probably it's very late in the afternoon and they have nothing nothing pressing to add to what they presented. Our conclusion Mr Chair is a summary of the recommendations to align with international human rights standards and we recommend one, adjusting or removing broad limitation clauses to ensure rights are not unduly restricted and in line with international human rights standards. Two, restoring protections for indigenous rights including entrenched safeguards, recognition of free prior and informed consent and meaningful participation in all decision making involving them and their resources.

Three, reforming the appointment and structure of the human rights and anti-discrimination commission to ensure Paris principles compliance and full independence. Four, aligning amendments provisions with democratic principles to allow for meaningful constitutional reform. Five, insert time-bound provisions on immunity provisions and strengthen relevant current provisions to ensure that future prisoner's actions against the state face democratic accountability and are not provided any immunity.

Six and lastly, strengthening protections for women rights and gender rights with explicit recognition in the 2013 constitution and Mr Chair we thank you for your attention and consideration and yes we seek God's blessings on the work that you continue to do. We know that it's not easy and God bless Fiji. Thank you Mr Chair.

Ms. Nailatikau: Thank you Ms. Wuki, thank you Ms. Leorao, the director and thank you Ms Mousio. The commissioners this afternoon are very thankful for this comprehensive submission and written submission that you have provided to us. Ever from the first day we started meeting, we've been looking at the bill of rights and we noticed how rights are given and then rights are taken back because of the limitations or qualifications.

We've been discussing that and the commissioner sitting here can vouch for that too. So the submissions that we have got that we have received this afternoon is going to assist us a lot in getting down to the nitty-gritty of amendments in relation to the bill of rights. We recognize that rights are given on the one end and are taken away on the other end which tantamount to no right at all.

That is what the constitution is about. So like I said, your submission this afternoon, comprehensive as it is and clear, is going to assist us in

addressing the bill of rights of the country in the constitution. We thank you very much for that and the submissions, oral submissions have been clear.

We're going to be listening to the, we're going to be reading the oral submissions because they are recorded and also we'll be reading the written submissions and then we will deliberate on them. I wonder if any of my fellow commissioners has any comments to make at this end. Thank you chair.

Without wanting to extend our discussions over long and thanking you all for taking the time and the care to put these submissions together and to accompany them with clear and well researched recommendations as well. I think one of the things that we have certainly been hearing a lot in terms of the many consultations we have been to have been aspects relating to the bill of rights, particularly in the dimension of personhood, whether it is in relation to children or to women or to people of various diversities, backgrounds, abilities for instance. So we thank you for spotlighting that in your submission today and also outlining the various ways in which international covenants, also some of which have specific directions or guidelines in terms of limitations or what is internationally practicable in terms of those limitations.

I think that has been quite useful to bring to our attention and we thank you for that. I think another aspect that is I guess open to reflection or further discussions at future submissions is how there is, there are varying approaches to or appetites for discussions on rights. I am sure this is certainly not strange to you and when it comes to rights, people often look at rights as either complementing, strengthening or in direct contradiction to what they value as their cultural values for instance or the matter or the principle of sovereignty for instance in our country and I think as you would have highlighted from many aspects of Fiji's history is the argument of sovereignty has also been used to cloak a lot of undemocratic practices certainly in our past.

So that's something that I'm not necessarily putting out here for us to answer together today but something as a reflection that has arised from your discussion and with much gratitude as well. Thank you. Thank you Mary and thank you Chair.

Thank you Fiji Human Rights Commission for your submission this afternoon. I think you had two and a half hours. I don't think any other

stakeholder has, was given more than one and a half hour but I think the Human Rights Commission deserves it because you are the Human Rights Commission.

Thank you very much. No need to, yes. You deserve the time that you had.

Dr. Gounder: I just have a few comments very very quickly in the interest of time. The one of women's rights and gender rights, we had Fiji Human Rights Movement here, Fiji Human Crisis Center here. They also raised the point that you talked about but they are kind of, as far as I can recall, they're satisfied that we have moved from men and women to gender more broadly.

So the argument was that in line with moving forward and that also takes into other aspects of sexual orientation for example. So that was the argument and just in case. But thank you for the submission.

We have talked a lot about the Bill of Rights. I just wanted to highlight this particular point. Thank you for bringing this up because we have been scratching our heads, all of us, around this issue which is the one on the socio-economic rights for example.

You know the two lines, the socio-economic rights for example and as the director would recall, we also struggled with this during the national development plan as well. For example, the right to housing and sanitation must make reasonable measures but at the same time the state claims it does not have the resources to implement the right and the responsibilities to show how resources are not available and that's something we are really thinking hard. So thank you very much for presenting this.

We might have to come back if we need to chair. Because the recommendations that you have made and I thank you for that. In my experience with the development plan and working with the government as an economist, I still feel that it will be very difficult to actually put that on the ground.

Even with these things, basically they can say progressive over time because the way government budgeting works. So I think perhaps in the next few weeks we may reach back to you to see how we can discuss and think through some of these things. Thank you for your submission.

One last point, the immunity provision. Thank you very much for your recommendations. We have been inundated with suggestions that the immunity provision has to be removed.

Now we are aware of what the judges said in the Supreme Court. It's better to not shake the tree but just look forward. However, your recommendations this afternoon has opened for me, it has opened my eyes to what we have to look forward to.

We were just being told just look forward, try to get a law to penalize those who will commit treason or any other offense, don't give them any immunity. Now you have shown us a way of doing that and I thank you for that. Once again, thank you very much indeed.

It has been a long but fruitful afternoon I might say. Like I said, we've been talking about Bill of Rights, how rights are given and how they're taken away by the limitations. We've got some answers here.

Thank you very much.

---------- End of Session [30-6-2026]----------

Human Rights and
Anti-Discrimination Commission

FIJI HUMAN RIGHTS AND ANTI-DISCRIMINATION COMMISSION

SUBMISSION ON THE REVIEW OF THE

CONSTITUTION OF THE REPUBLIC OF FIJI 2013

Submitted on 30 June 2026

Presenters:

1. Commissioner Alefina Vuki
2. Loukinikini Lewaravu, Director
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1. INTRODUCTION

The Human Rights and Anti- Discrimination Commission (HRADC) thanks the Constitution Review Commission (CRC) for the invitation to participate in this national review and present its submission. The HRADC recognizes the monumental task required in undertaking the review of the Constitution of the Republic of Fiji 2013 (2013 Constitution) and acknowledges the work and dedication of the CRC.

1.1 HRADC Constitutional Mandate

1.1.1 The HRADC's mandate to engage in this national review is rooted in the 2013 Constitution and its enabling legislation, the Human Rights and Anti-Discrimination Commission Act 2009.

1.1.2 Sections 45(4)(d) and (g) of the 2013 Constitution, together with sections 12(1)(f) and (i) of the Human Rights and Anti-Discrimination Commission Act 2009, provide the HRADC with authority to:

i. Monitor the State's compliance with international human rights obligations.
ii. Recommend legislative, administrative, or policy reforms to strengthen human rights protection.
iii. Review existing or proposed laws and policies to ensure consistency with international human rights standards.

1.1.3 This submission is made in accordance with that mandate.

1.2 Background

1.2.1 In any democratic society, the Constitution underpins the rule of law and acts as a bulwark against the erosion of fundamental rights. Last year, the Supreme Court of Fiji, in its advisory Opinion[1], stated in relation to the 2013 Constitution that:

> ***"Democracy is a value that is fundamental to the 2013 Constitution. So too are equality, the rule of law and an independent court system."***

1.2.2 Fiji has had four (4) Constitutions in the span of 56 years.[2] These Constitutions have not been immune from scrutiny, public outcry and outright abrogation. The 2013 Constitution was imposed on the general public without meaningful and widespread prior consultation or the establishment of a national consensus. The

[1] In the matter of a reference by Cabinet for an opinion from the Supreme Court on a matter concerning the interpretation and application of sections 159 and 160 of the Constitution of the Republic of Fiji [FJSC] (Original Jurisdiction) 2025.
[2] 1970 Constitution, 1990 Constitution, 1997 Constitution and 2013 Constitution.

current review process presents an opportunity to strengthen its legitimacy and alignment with democratic principles and values.

1.2.3 This submission focuses on key human rights issues, including:

1. Bill of Rights and Constitutional Limitations.
2. Indigenous Rights.
3. Independence and Effectiveness of the HRADC.
4. Amendment Provisions.
5. Immunity Provisions.
6. Women's Rights and Gender Rights.
7. Equal Citizenship.

2. FIJI'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

2.1 Fiji is a State Party to all nine (9) core international human rights treaties,[3] namely the:

i. International Covenant on Civil and Political Rights (ICCPR);[4]
ii. International Covenant on Economic, Social and Cultural Rights (ICESCR);[5]
iii. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);[6]
iv. Convention on the Rights of the Child (CRC);[7]
v. International Convention on the Elimination of All Forms of Racial Discrimination (CERD);[8]
vi. Convention on the Rights of Persons with Disabilities (CRPD);[9]
vii. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);[10]
viii. Convention for the Protection of All Persons from Enforced Disappearance (CED);[11] and,
ix. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW).[12]

2.2 Fiji's ratification of the above nine core human rights Conventions places numerous international obligations upon the State to align, its domestic laws, policies, and practices with universal human rights standards, as the primary Duty Bearer of human rights. Under international human rights law, the State's role as Duty Bearer carries a fourfold obligation to:

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[3] List all conventions Fiji has ratified and their year of ratification
[4] Ratified on 16th August 2018.
[5] Ratified on 16th August 2018.
[6] Ratified on 28th August 1995. Article 2 of the Convention imposes the obligation on Fiji to implement the principles outlined in the Convention.
[7] Ratified on13th August 1993. Article 4 as above.
[8] Ratified on 11th January 1973. Article 2 as above.
[9] Ratified on 7th June 2017. Article 4 as above.
[10] Ratified on 14th March 2016. Articles 2, 4 and 5 as above.
[11] Ratified on 19th August 2019. Article 4 as above.
[12] Ratified on 19th August 2019. Article 84 as above.

i. **Respect** human rights – the Government must refrain from acting in ways that deny, suspend, harm or violate human rights. For example, no arbitrary detention, no torture, no censorship.

ii. **Promote** human rights – the Government must actively foster and nurture a culture of respect for human rights through advocacy, awareness raising, training, education and public engagement.

iii. **Protect** human rights – the Government has a positive duty to ensure that rights are not unreasonably curtailed or interfered with. For example, effective laws, enforcement and remedies.

iv. **Fulfil** the obligation to protect human rights – the Government must take active measures to give effective realisation to rights in the Constitution and under international law. For example, enacting laws that recognize and are responsive to human rights, by providing resources, services and systems that make rights a lived reality and not just a legal promise.

2.3 The fourfold obligation transforms human rights from abstract principles into concrete Governmental duties. Taken together, these obligations mean that the State cannot remain passive. It must not only avoid harming rights holders but also shield them from harm by others, and finally, proactively work to ensure that rights are fully realized and enjoyed by all. Failure at any level, whether through wrongful action, inadequate protection, or neglect to act, constitutes a breach of international human rights law.

2.4 To proactively ensure that rights are fully realized, Fiji has incorporated human rights into its 2013 Constitution (Chapter 2, the Bill of Rights), as well as into several legislations[13] and policies[14].

3. BILL OF RIGHTS AND CONSTITUTIONAL LIMITATIONS

3.1 Chapter 2 Bill of Rights: Broad Limitation Clauses

3.1.1 The HRADC recognizes that the Chapter 2 Bill of Rights has significantly evolved from previous iterations or versions. It includes a wider range of protections, with 36 specific rights and freedoms compared to earlier Constitutions. In particular, it recognizes 'second generation' human rights including socio-economic and cultural rights, while also underscoring the importance of environmental rights.[15]

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[13] Rights of Persons with Disability Act 2018, Domestic Violence Act 2013, Freedom of Information Act

[14] National Development Plan 2025 - 2029 and Vision 2050

[15] Rights of ownership and protection of iTaukei, Rotuman and Banaban lands; Protection of ownership and interests in land; Right of landowners to fair share of royalties for extraction of minerals; right to economic participation, right to work and a just minimum wage; access to information; right to reasonable access to transportation, right to housing and sanitation, right to

The HRADC welcomes this progress and does not support any amendments that would reduce or weaken the rights currently protected.

3.1.2 Notwithstanding this progress, the HRADC remains concerned that many civil and political rights contained in the Bill of Rights are significantly weakened by the broad and specific limitation clauses. This is concerning given the State's fourfold obligation, noted in paragraph 2.2 above, respecting human rights by not denying, suspending or undermining those rights.

3.1.3 In this regard, section 6(5) of the 2013 Constitution sets out a broad framework for limiting rights and freedom. It states that rights and freedoms may be limited by:

> ***"a. limitations expressly prescribed, authorized or permitted (whether by or under a written law) in relation to a particular right or freedom in this Chapter;***
>
> ***b. limitations prescribed or set out in, or authorized or permitted by, other provisions of this Constitution; or***
>
> ***c. limitations which are not expressly set out or authorized (whether by or under a written law) in relation to a particular right or freedom in this Chapter, but which are necessary and are prescribed by a law or provided under a law or authorized or permitted by a law or by actions taken under the authority of a law."***

3.1.4 This framework allows for wide-ranging limitations across the Bill of Rights. In many cases, rights can be limited if it is considered "necessary" for reasons such as national security, public safety, public order, public morality, or public health. For some rights, such as freedom of association, labour rights, and political rights, the requirement of necessity is not always clear, which lowers the standard for limiting them. As a result, these provisions can act as "claw-back clauses," where the limitations are so broad that they weaken the rights themselves. In contrast, the 1997 Constitution placed stricter controls on limitations, requiring them to be reasonable and justified in a free and democratic society. (**Refer to Appendix 1, page 45 for comparison**).

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adequate food and water, political rights; right to social security schemes, right to health, rights of children, rights of persons with disabilities; executive and administrative justice; expanded freedom of expression to also include speech and publication, expanded right to equality to also include freedom from discrimination.

3.2 Inconsistency with International Human Rights Law standards

3.2.1 Human rights law is based on protecting basic freedoms that are essential to human dignity and social harmony. These rights belong to all people. However, most rights are not absolute. In some cases, the exercise of one person's rights may conflict with the rights of others or with wider public interests. For this reason, both international and domestic law allow certain rights to be limited to balance these interests and protect the common good.

3.2.2 However, any limitation must be properly justified. Both international and domestic law require that limits on rights are applied only in specific and carefully defined situations. These rules ensure that restrictions are not arbitrary, but are lawful, pursue a legitimate public interest, limited to what is necessary, and proportionate to achieve that legitimate interest.

3.2.3 At the international level, these principles are set out in Article 5 of the ICCPR and Articles 4 and 5 of the ICESCR:

Article 5 (1) ICCPR:

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

Articles 4 & 5 of ICESCR:

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction

of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

3.2.4 These provisions affirm that rights recognised under the Covenants must not be restricted or derogated from except in accordance with the limitations expressly permitted within those instruments. This reflects a fundamental rule of interpretation: that limitations are the exception, not the norm. The United Nations Human Rights Committee has consistently emphasized that:

"The relation between right and restriction and between norm and exception must not be reversed."

3.2.5 Based on this framework, any limitation on human rights must meet four key requirements: legality, legitimate aim, necessity, and proportionality.

First, under the principle of **legality**, any restriction must be clearly set out in law. This requires that the law must be accessible, clear, and precise so people can understand and follow it. In a democratic society the law must always protect public interest and facilitate common good.

Secondly, the requirement of **legitimate aim** is directed towards a recognized public interest (public safety, national security, public health, public morals, protection of rights and freedoms of others).

Thirdly, the requirement of **necessity** provides that the restriction must aim to achieve an important and legitimate objective. There must also be evidence showing that the restriction is needed to achieve that goal. If the situation changes and the restriction is no longer needed, it should not continue.

Finally, under the principle of **proportionality**, any limitation must be the least restrictive means available to achieve the intended aim. Governments are required to consider alternative measures that would achieve the same objective with a lesser impact on human rights. As already indicated, these measures are temporary, should be reviewed regularly and removed when they are no longer necessary.

3.2.6 The following are examples of expressly prescribed limitations standards under human rights instruments:

Right	Limitations in ICCPR and ICESCR	Purpose of Limitation e.g where necessary for the protection of": (underlined text is by HRADC for emphasis)
Freedom of movement	Article 12 (3) ICCPR	***3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (order public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Covenant.***
Procedural protections relating to decision to expel a lawful alien	Article 13 ICCPR	***National Security*** ***An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.***
Freedom to manifest one's religion or beliefs	Article 18 (3) ICCPR	***3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.***
Freedom of expression	Article 19 (3) ICCPR	***3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:***

		(a) For respect of the rights or reputations of others; ***(b) For the protection of national security or of public order (order public), or of public health or morals.***
Right to peaceful assembly	Article 21 ICCPR	***No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others.***
Freedom of association	Article 22 (2) ICCPR	***2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others.***
Right to form and join trade unions and right to trade unions to function freely	Article 8 (1) (a) & 8 (1) (c) ICESCR	***No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others***

3.2.7 Other constitutional systems apply stricter standards when limiting rights. For example, section 1 of the Canadian Charter of Rights and Freedoms provides that rights may be limited only by ***"reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."***[16] Similarly, the New Zealand Bill of Rights Act in section 5[17] requires that any limitation ***"may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."***

3.2.8 Courts in Fiji have also recognised these principles. These approaches set a higher standard for limiting rights than those currently applied. In the case of

[16] U:\UpdateLinkTemp\humanrights\canada\CHARTER.PDF
[17] https://www.legislation.govt.nz/act/public/1990/109/en/latest/#DLM224792

Fijian Teachers Association v State[18], the High Court confirmed that it is not enough for a law to simply allow a restriction on a constitutional right. The Court must also be satisfied that the restriction is justified and proportionate:

> ***"...it does not suffice that there is a written law authorizing a limitation on a constitutional right. The court must also be satisfied that the limitation is justified and proportionate."***

3.2.9 This approach follows the proportionality test set out in *R v Oakes*[19]. In *Oakes*, the Accused was charged with unlawful possession of illegal drugs for the purpose of trafficking under Canada's Narcotics legislation. *Oakes* argued that his right to presumption of innocence until proven guilty was violated. The Court found that the Narcotics legislation he was charged under had reversed the onus of proof to the Accused, and, applying the test below, further found that the legislation limiting the presumption of innocence failed at the second stage – that is, the legislation did not impair the right 'as little as possible', in fact the limitation was disproportionate to the actual right.

3.2.10 Under this test:

a. The objective of the limitation must be sufficiently important to justify restricting a constitutional right; and
b. The limitation must be proportionate by:

- being rationally connected to the objective.
- impairing the right as little as possible; and
- maintaining overall proportionality between the limitation and the objective pursued.

3.3 Bill of Rights Limitations

3.3.1 The table below compares the limits on rights under the ICCPR and ICESCR with those under Fiji's 2013 Constitution.

[18] [2024] FJHC 431.
[19] [1986] 26 DLR (4th) 200

Right	Limitations in ICCPR and ICESCR	2013 Constitution		
		Article	Right	Limitation (Underlined text by HRADC for emphasis)
Freedom of expression	**Article 19(3)** National Security, public order, public health, public morals, rights and reputations of others	**Article 17(3) (a-h)**	**Freedom of Speech, Expression and Publication**	***(3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights and freedoms mentioned in subsection (1) in the interests of—*** ***(a) national security, public safety, public order, public morality, public health or the orderly conduct of elections.*** ***(b) the protection or maintenance of the reputation, privacy, dignity, rights or freedoms of other people, including—*** ***(i) the right to be free from hate speech, whether directed against individuals or groups; and*** ***(ii) the rights of people injured or abused 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 of individuals or respected offices or institutions in a manner likely to promote ill will between ethnic or religious groups or the oppression of, or discrimination against, any person or group of persons;*** ***(e) maintaining the authority and independence of the courts;*** ***(f) imposing restrictions on the holders of public offices;*** ***(g) regulating the technical administration of telecommunications; or***

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				(h) making provisions for the enforcement of media standards and providing for the regulation, registration and conduct of media organisations
Right to peaceful assembly	**Article 21** National Security, public order, public health, public morals, rights and reputations of others	**Article 18(2)(a-c)**	**Freedom of Assembly**	*(2) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the right mentioned in subsection (1)—* *(a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;* *(b) for the purpose of protecting the rights and freedoms of others; or* *(c) for the purpose of imposing restrictions on the holders of public offices.*
Freedom of association	**Article 22(2)** National Security, public order, public health, public morals, rights and reputations of others	**Article 19 (2) (a-f)**	*Freedom of Association*	*(2) A law may limit, or may authorise the limitation of, the right mentioned in subsection (1)—* *(a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;* *(b) for the purpose of protecting the rights and freedoms of others;* *(c) for the purpose of imposing restrictions on the holders of public offices;* *(d) for the purpose of regulating trade/labour unions, or any federation, congress, council or affiliation of trade unions, or any federation, congress, council or affiliation of employers;* *(e) for the purposes of regulating collective bargaining processes, providing mechanisms for the resolution of employment disputes and grievances, and regulating strikes and lockouts; or*

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				(f) for the purpose of regulating essential services and industries, in the overall interests of the Fijian economy and the citizens of Fiji.
Right to form and join trade unions and right to trade unions to function freely	**Article 8 (1) (a) & 8 (1) (c) ICESCR** No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of National Security, public order, rights and freedoms of others	**Article 19 (2) (d)**	**Freedom of Association**	*(2) A law may limit, or may authorise the limitation of, the right mentioned in subsection (1)—* *(d) for the purpose of regulating trade/labour unions, or any federation, congress, council or affiliation of trade unions, or any federation, congress, council or affiliation of employers*
Freedom of Movement	**Article 12(3) ICCPR (Freedom of Movement)** National Security, public order, public health, public morals, rights and reputations of others	**Article 21(7)(a-e)**	**Freedom of Movement and Residence**	*(7) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights mentioned in this section—* *(a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;* *(b) for the purpose of protecting the rights and freedoms of others;* *(c) for the purpose of protecting the ecology of any area;* *(d) for the purpose of imposing reasonable restrictions on the holders of public offices as part of the terms and conditions of their employment.*

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Procedural protections relating to decision to expel a lawful alien	**Article 13 ICCPR** National Security	**Article 21 (5)**	**Freedom of Movement and Residence**	*(5) 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 responsible for immigration on a ground prescribed by law.*
		Article 20 (5)(a-f)	**Employment Relations**	*Article 20(5)(a-f)* *(a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;* *(b) for the purposes of protecting the rights and freedoms of others;* *(c) for the purposes of imposing restrictions on the holders of public offices;* *(d) for the purposes of regulating trade unions, or any federation, congress, council or affiliation of trade unions, or any federation, congress, council or affiliation of employers;* *(e) for the purposes of regulating collective bargaining processes, providing mechanisms for the resolution of employment disputes and grievances, and regulating strikes and lockouts; or* *(f) for the purposes of regulating essential services and industries, in the overall interests of the Fijian economy and the citizens of Fiji.*
		Article 24 (2)	**Right to Privacy**	*(2) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1).*
		Article 25 (3)	**Access to information**	*(3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1), and may regulate the procedure under*

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				which information held by a public office may be made available.
		Article 32 (3)	Right to economic participation	*(3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1)*
		Article 40 (2)	Environmental rights	*(2) To the extent that it is necessary, a law or an administrative action taken under a law may limit, or may authorise the limitation of, the rights set out in this section.*
		Article 42 (3)	Rights of persons with disabilities	*(3) To the extent that it is necessary, a law or an administrative action taken under a law may limit, or may authorise the limitation of, the rights set out in this section.*

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3.3.2 As shown in the table above, many provisions of the Bill of Rights allow rights to be limited on broad grounds such as national security, public safety, public order, public morality, and public health. In most cases, the standard used is whether the limitation is "necessary." However, for some rights—such as freedom of association, labour rights, and political rights—even this requirement is not consistently applied. As a result, the limits on these rights can be wider than the rights themselves, effectively acting as "claw-back clauses" that weaken constitutional protection.

3.3.3 The HRADC is concerned that the current approach to limiting human rights under the 2013 Constitution does not fully align with international human rights standards. In particular, some limitation clauses do not meet the required standards of legality, necessity, and proportionality. This lowers the level of scrutiny applied to restrictions on fundamental rights and increases the risk that limits may be imposed in ways that are unnecessary or disproportionate. Without clear and strict safeguards, such provisions may allow excessive interference with protected rights, undermining both the rule of law and the effective protection of human rights.

3.4 Legislating limitations

3.4.1 The analysis above shows that the broad limitation clauses in the 2013 Constitution allow rights to be restricted on vague grounds such as what is "necessary" for national security, public safety, or public order, as well as public health and morality. However, what is "necessary" isn't defined in the Constitution, thus there is a broad ambit in which the State could justify limiting certain rights. This creates a permissive legal environment where laws may fall short of international human rights standards.

Media Industry Development Act 2010 (MIDA)

3.4.2 Before it was repealed, the MIDA was an example of legislative fettering of rights under the Bill of Rights, in that it severely limited freedom of the press and freedom of expression, as well as allowing the Media Industry Development Authority (established via the Act) to investigate and compel information from journalists.

Public Order Act 1969 (POA)

3.4.3 The POA is another clear example of how these broad constitutional limits lead to restrictions on fundamental freedoms in practice.

3.4.4 The POA, when read together with the Constitution, allows the Government to use force to maintain public order based on a very broad standard of what is "necessary." This standard is so wide that it creates a risk of serious abuses, including torture, as recognised in section 17B of the POA. The law,

under section 17C of the POA, also gives the military police powers such as arrest, detention, and use of force in situations linked to public safety or public order. Because "public order" and "public safety" are defined very broadly, these powers can be exercised with limited control. This weakens important protections, including the right to be free from torture, which is an absolute right under international law, including Article 7 of the ICCPR and the CAT.

3.4.5 This provision has already demonstrated tragic consequences, as evidenced by the recent death of a citizen in military custody[20]. This highlights the danger of giving broad powers without proper safeguards. In addition, the POA protects police and military officers from being prosecuted, which creates a culture of impunity and weakens accountability[21]. This further undermines protection from cruel, inhuman, or degrading treatment.

3.4.6 The most concerning provisions of the POA are found in sections 9 and 21. Section 9 gives the Commissioner of Police the power to refuse permits for public meetings or processions if he considers it "necessary" for public safety, public order, or essential services. This standard is subjective and does not provide clear criteria to guide decision-making. As a result, it allows the arbitrary denial of the right to peaceful assembly, which is protected under international law and the Constitution. Under international human rights law, any restriction must meet the requirements of legality, necessity, and proportionality. Section 9 fails to meet these standards. It does not require proof of a real or imminent threat, nor does it require that the least restrictive option be used. Refusing a permit is a broad measure that removes the right entirely rather than limiting it in a careful and balanced way. There is also no requirement to consider less restrictive alternatives, making the restriction disproportionate.

3.4.7 Section 21 of the POA, raises even greater concern. It prevents any decision made under the POA from being challenged in court, with the exception of decisions made pertaining to sections 8[22], 9[23], 11[24] and 11A[25] of the POA. This removes the right of individuals to seek legal review, which is protected under the Constitution.[26] It also allows decisions affecting certain rights. This is inconsistent with the rule of law and with international standards (ICCPR), which require that restrictions on rights be open to review.

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[20] https://www.fijitimes.com.fj/amnesty-calls-for-independent-probe-into-custody-death/
[21] Section 17C of the POA.
[22] Issuing permits for gatherings.
[23] Prohibition and dispersal of assemblies.
[24] Closure of roads.
[25] Control of persons.
[26] See section 44 (1) (enforcement of rights) and section 16(Executive and administrative justice) of the 2013 Constitution.

3.4.8 The recent denial, in April this year, of a permit to the villagers of Vuda[27], who sought to peacefully march to advocate for their constitutional right to a clean and healthy environment under section 40 of the Constitution, exemplifies the oppressive application of section 9 of the POA. The Commissioner exercised his subjective and arbitrary discretion to refuse the permit on grounds of public order, thereby silencing legitimate environmental advocacy and denying the community any lawful avenue to challenge the arbitrary restriction on their rights.

3.4.9 One of the most prominent examples of the POA's use to stifle dissent occurred in July 2021, when nine prominent political figures were arrested and detained on the allegation that their critiques of the Government breached the POA because their writings constituted "malicious writings of false news or reports tending to create or foster public alarm and anxiety."[28] These incidents illustrate how the broad and subjective standards in the POA can be weaponised to suppress legitimate expression and assembly, undermining the very essence of democratic governance.

3.4.10 The impact of these provisions is serious. The HRADC considers that the POA does not meet international human rights standards. The broad limitation clauses in the Constitution have allowed laws that give excessive powers to authorities, limit access to justice, reduce accountability, and restrict legitimate public participation. These issues undermine the rule of law and weaken the protection of fundamental rights.

Recommendations:

The HRADC proposes two courses of action regarding the limitations.

Option 1: Remove the limitation clauses altogether.

Option 2: Amend section 6(5) of the 2013 Constitution to require that limitations be reasonable and demonstrably justified in a free and democratic society.

Amend Article 6(5) to read:

a) *"The rights and freedoms set out in this Chapter apply according to their tenor and may only be limited by such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."*

Amend individual limitation clauses to state:

[27] Police deny permit for march against Vuda waste project - The Fiji Times
[28] https://www.theguardian.com/world/2021/jul/26/nine-fiji-opposition-mps-arrested-criticism-land-bill

"To the extent that it is necessary, reasonable, and in tenor with a free and democratic society, a law may limit, or may authorise the limitation of, the right mentioned above."

Alternative wording (Professor Yash Ghai[29]):

A right or freedom set out in this Chapter must not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

(a) The nature of the right or freedom;
(b) The importance of the purpose of the limitation;
(c) The nature and extent of the limitation; and
(d) The relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

(2) The State or a person seeking to justify a particular limitation must demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied."

3.5 Limitations on the Rights of Arrested and Detained Persons- Section 13

3.5.1 Section 13 of the Constitution sets out the rights of persons who are arrested or detained. These rights are essential for protecting life, liberty, and personal security. They form a core part of fundamental human rights and are closely linked to the enjoyment of other rights. These protections are also recognised in international law, including Article 3 of the Universal Declaration of Human Rights and Article 9 of the International Covenant on Civil and Political Rights (ICCPR).

3.5.2 The 2013 Constitution has expanded these protections compared to earlier versions. It provides a detailed list of rights for arrested or detained persons. These include the right to:

- Be informed promptly, in a language they understand, of the reason for arrest or detention, as well as their right to remain silent and the consequences of speaking;
- Remain silent;
- Communicate with a legal practitioner and be informed of this right;

[29] Section 48 of the 2012 Draft Constitution of Fiji, which was spearheaded by Prof. Yash Ghai

- Be brought before a court as soon as possible, with 48 hours as the maximum period;
- And other related rights provided under the Constitution.

3.5.3 These protections are consistent with Article 9 of the ICCPR, which guarantees the right to liberty and security of person and protects individuals from arbitrary arrest or detention. It also requires that individuals be informed of the reasons for their arrest and any charges against them. Importantly, Article 9(4) provides that a detained person must be brought promptly before a court and has the right to challenge the legality of their detention.

3.5.4 Although section 13 strengthens several aspects of protection, certain wording raises concerns. In particular, section 13(1)(a)(i) allows a person to be held as long as they are informed of the reason for their arrest and the nature of any charge. This may allow detention without requiring that charges be laid promptly. This represents a departure from the earlier Constitution, which required that a detained person be released if not charged within a short time. Under the current framework, there is a risk that authorities may hold individuals for the full 48-hour period while continuing investigations. This raises concern that detention may be used as a tool for "fishing expeditions" rather than for genuine and justified investigations.

3.5.5 Further concerns arise from the interaction between Article 13 and the Public Order Act (POA). Section 17A of the POA allows detention beyond the constitutional 48-hour limit. It permits arrest, with or without a warrant, based on a reasonable suspicion that a person has acted or may act in a way that affects public safety. However, "public safety" is not clearly defined. This creates a risk of arbitrary detention. In addition, the POA allows detention to be extended for up to 14 days if information cannot be obtained within the initial 48-hour period. Furthermore, Fiji is obligated to provide sufficient and sanitary detention conditions for detainees. The UN Human Rights Committee[30] emphasized the need for this:

> ***"Any necessary detention should take place in appropriate, sanitary, non-punitive facilities."***

3.5.6 This framework raises serious due process concerns. The extended detention period may be applied without sufficient safeguards, and individuals may not have effective access to legal remedies, such as the right to challenge detention through habeas corpus. As a result, although section 13 of the 2013 Constitution provides important rights on paper, the combined effect of broad limitation clauses and the POA reduces their practical protection. This undermines the purpose of the constitutional guarantee and weakens overall protection of personal liberty.

[30] General Comment No. 35

3.5.7 The UN Human Rights Committee is of the view that "***48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing, any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.***"[31] The Committee also advised that an "***especially strict standard of promptness, such as 24 hours should apply in the case of juveniles***."

Recommendations:

1. Amend section 13 of the 2013 Constitution to explicitly require that a person must either be formally charged or released within a short and clearly defined period ie. 48 hours for adults and 24 hours for juveniles.

2. Align section 13 of the 2013 Constitution more closely with Article 9 of the ICCPR by guaranteeing that all detained persons are promptly brought before a court and have an effective right to challenge the legality of their detention.

3.6 State of Emergency Powers

3.6.1 The 2013 Constitution also includes provisions on states of emergency, which are of particular concern. There is a clear tension between the protection of human rights and the use of emergency powers, as a state of emergency allows rights to be significantly limited. For this reason, such measures should only be used in extreme situations, such as war or serious threats to the security or survival of a country. For example, under the European Convention on Human Rights, a state of emergency is permitted only in times of war or a public emergency that threatens the life of the nation.[32]

3.6.2 Consistent with this approach, Article 4 of the ICCPR allows certain rights to be limited during a state of emergency, but only to the extent strictly required by the situation. It also requires that any measures taken remain consistent with the State's other obligations under international law. These standards set a high threshold for both declaring and applying emergency powers.

3.6.3 In contrast, there is concern that the threshold for declaring a state of emergency under the 2013 Constitution is set too low. Section 154(1)(a)–(b) allows a declaration where the security or safety of all or part of Fiji is threatened. This broad wording may allow emergency powers to be used in

[31] General comment No. 35 on Article 9 of the ICCPR (liberty and security of person)
[32] Article 15 of the ECHR.

situations that do not meet the high standards required under international law.

3.6.4 Further concern arises from how a state of emergency is declared. Section 154 allows the Prime Minister, acting on the advice of the Commissioner of Police and the Commander of the Republic of Fiji Military Forces, to declare a state of emergency. This approach differs from earlier Constitutions, where Parliament played a central role (**Refer to Appendix 3, page 59 for comparison of all Constitutions)**. In contrast, the current framework gives significant authority to a single office. International guidance emphasises that emergency powers should be subject to strong oversight. As noted by the Committee on Legal Affairs and Human Rights:

> ***"A country's legislature should have a central role in overseeing any such declaration and judges should be able to rule on its validity."***[33]

Recommendation:

1. Review and amend section 154 to expressly state that the Executive to recommend to Parliament any State of Emergency and Parliament plays the leading and decisive role in the declaration, approval, extension and oversight of a State of Emergency.

3.7 Resource based limitations

3.7.1 The HRADC further notes that some provisions in the Bill of Rights may unintentionally allow the State to avoid meeting its human rights obligations. For example, section 34(2) of the 2013 Constitution, which concerns the right to reasonable access to transportation, states that

> ***(1) .... if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.***

3.7.2 Other sections which have the same provision include section 31 (5) right to education, section 33 (2) right to work and a just minimum wage, section 35 (2) right to housing and sanitation, section 36 (2) right to adequate food and water, section 37 (2) right to social security schemes and section 38 (3) right to health.

[33] https://reliefweb.int/report/armenia/protection-human-rights-emergency-situations-report

3.7.3 While these provisions correctly place the burden on the State, the HRADC is concerned that it may be used as a basis to delay or deny the realisation of rights. International human rights law does recognise that resources may be limited and allow for the progressive realisation of certain rights. However, this does not remove the State's responsibility to act. The State must show genuine resource constraints and demonstrate that it has made serious and ongoing efforts to allocate available resources. A simple claim of insufficient resources should not be enough.

3.7.4 As noted in paragraph 2.2 above, the obligation to protect human rights requires the State to take positive steps to ensure that rights are not unfairly restricted or interfered with. This includes adopting effective laws, ensuring proper enforcement, and providing access to remedies. The HRADC emphasises that failure to meet these obligations weakens the protection of rights and leaves individuals vulnerable, thereby undermining the purpose of the Constitution.

Recommendation:

1. Amend sections 31 (5), 33 (2), (34 (2), 35 (2), 37 (2) and 38 (3) as follows:

Where the State relies on a lack of resources as a justification for failing to fulfil this right, the State bears the onus of proving, on clear and convincing evidence, that

a. It has exhausted all reasonably available resources;
b. It has prioritised the fulfilment of this right in good faith;
c. No reasonable alternative measures could have achieved this right; and
d. Priority will be placed on remedying this lacuna and restoring the right as soon as practicably possible.

4. INDIGENOUS RIGHTS

4.1 Removal of Constitutional Safeguards

4.1.1 Indigenous Rights are a crucial element of national stability. At the core of indigenous rights are the principles of self-determination, land and resource rights, cultural preservation and free, prior and informed consent (FPIC).[34] Fiji is a State Party to the Indigenous and Tribal Peoples Convention (ILO Convention 169)[35] which it ratified in1998. In 2023, Fiji officially supported and

[34] United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by Fiji and 143 other countries on 13 September 2007.
[35] Convention (No. 169)

recognized the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

4.1.2 Fiji has a long and complex constitutional history regarding the recognition of indigenous rights. The 1997 Constitution provided strong protections for indigenous land ownership and cultural authority. It required special consent for any changes to laws affecting iTaukei land or affairs. These protections were reinforced by entrenched clauses, meaning such laws could not be easily changed by a simple majority in Parliament. In addition, the Constitution included a dedicated chapter on group rights, which recognised customary law and provided for affirmative action. (**Refer to Appendix 2, page 51 for a comparison**)

4.1.3 The 2013 Constitution significantly changed this approach. It removed the entrenched clauses found in the 1997 Constitution, as well as the dedicated chapter on group rights. It also abolished Senate and the Great Council of Chiefs (GCC), which had played an important role in iTaukei governance and land administration.

4.1.4 It should be mentioned however, that section 28(1) of the 2013 Constitution absolutely prohibits the permanent alienation of indigenous lands guaranteeing the protection of the ownership of iTaukei, Rotuman and Banaban lands. This means that such lands must always remain with its indigenous owners and can never be sold or transferred permanently thereby recognizing and protecting the reversionary rights of indigenous owners. However, the practical implementation of this protection of indigenous ownership rights remains an ongoing concern, as questions persist on the extent to which indigenous communities can or are able to effectively exercise control over, benefit from, and participate in decisions affecting their land and natural resources.

4.1.5 The removal of constitutional and institutional safeguards such as the GCC add to this ongoing concern that the current constitutional framework does not adequately protect indigenous identity and resources, traditional governance structures and cultural heritage. For the indigenous communities, traditional institutions such as the GCC serve as essential mechanisms of representation and consultations as well as significant custodians of customary traditions and values, cultural continuity and customary collective decision making.

4.1.6 The removal of these entrenched safeguards has important practical consequences. Laws affecting indigenous land and affairs, such as the iTaukei Lands Act 1905, can now be amended or repealed by a simple majority in Parliament. This can occur without meaningful consultation with indigenous communities. This situation does not align with Fiji's obligations under ILO Convention 169 and the UNDRIP, both of which require good faith consultation

and the obtaining of free, prior and informed consent before adopting measures that affect indigenous peoples.

Recommendation:

1. Re-insert as appropriate entrenched clauses from the 1997 Constitution (sections 185 and 186) requiring specific consent and additional safeguards before any laws impacting indigenous affairs or lands can be amended.

Note: Fiji had a bicameral Parliament under the 1997 Constitution which no longer exists under the 2013 Constitution, hence the above suggested reinsertion needs to be adjusted accordingly.

4.2 Land Rights and the Illusion of Protection

4.2.1 The HRADC notes that the 2013 Constitution recognises and protects the land rights of indigenous peoples, including iTaukei, Rotumans, and Banabans, with section 28 affirming their ownership of customary land. However, this protection may be an illusion as section 27, grants to the State powers through written law for "compulsory acquisition" of land and property for various reasons including for public purposes.

4.2.2 While section 28 appears on its face to provide strong protection, section 27 weakens it by allowing land to be taken by the State giving rise to a fundamental tension between indigenous ownership rights and the State's authority to over-ride it. The concept of compulsory land expropriation conflicts with the principle of indigenous land ownership. International standards also take a different approach. While UNDRIP does not explicitly refer to expropriation, section 32 requires States to consult indigenous peoples and obtain their consent before any project affecting their land or resources is approved.

4.2.3 For this reason, the requirement for free, prior and informed consent must apply to any acquisition of customary land. Section 27 should therefore be amended to reflect this obligation or removed altogether if it cannot meet international standards.

4.2.4 The 2013 Constitution also removed earlier safeguards that required consent before amending laws related to indigenous land and affairs. Under the 1997 Constitution, Sections 185 and 186 ensured that such changes could only be made with proper approval and additional protections. This was consistent with Article 19 of UNDRIP, which requires States to work in good faith with indigenous peoples to obtain their free, prior and informed consent before introducing measures that affect them.

4.2.5 These safeguards are no longer present in the 2013 Constitution. As a result, important laws concerning indigenous land and rights can now be changed more easily. This creates uncertainty and weakens long-standing protections. The HRADC therefore considers it necessary to restore the entrenched provisions from the 1997 Constitution.

4.2.6 It is important to emphasise that strengthening indigenous rights does not undermine the rights of other groups. Rather, it ensures fairness by protecting key principles such as self-determination, land ownership, and free, prior and informed consent.

Recommendations:

1. Recognise the principle of Free, Prior and Informed Consent explicitly in the Constitution, ensuring it applies to all activities affecting indigenous land, resources, and cultural heritage. In addition, ensure meaningful participation in all decision making that involves indigenous rights, lands and resources.
2. Amend section 27 so that any State acquisition of iTaukei, Rotuman, or Banaban requires a genuine Free, Prior and Informed Consent process and includes fair, full, and timely compensation.

4.3 Minerals Ownership- The 3 feet below

4.3.1 A long-standing and increasingly contested issue concern the separation between land ownership and the ownership of minerals beneath the land. Under the current system, iTaukei landowners own the surface of their land, while all minerals beneath it are owned by the State– a colonial-era concept often referred to as the "three feet below" doctrine. What this means is when there are minerals, the State has subsurface rights, and when there are no minerals, the indigenous people have subsurface rights.

4.3.2 Section 30 of the 2013 Constitution confirms State ownership of all minerals. This is supported by legislation such as the Mining Act 1965 and the Petroleum Act 1978. Although the Fair Share of Mineral Royalties Act 2018 provides that landowners receive 80% of royalties, the total royalty is usually only 3–5% of the mineral's value. As a result, the actual benefit received by landowners remains very small which has been acknowledged by the iTaukei Land Trust Board "***unfair return***".[36]

[36] TLTB pushes for greater mineral rights, royalties for landowners - The Fiji Times

4.3.3 This legal framework gives rise to multiple, interconnected human rights violations that strike at the heart of indigenous self-determination and dignity.

4.3.4 First, the framework undermines the principle of free, prior and informed consent. Under the Mining Act 1965, landowners are not required to give consent before prospective licences or mining leases are granted.[37] They are only informed concerning access to their land.[38] This limits the ability of communities to say no at the outset of projects that may harm their land and livelihoods. This approach is not consistent with international standards under UNDRIP and ILO Convention 169.

4.3.5 Second, the system results in unequal sharing of benefits. Indigenous communities bear the environmental and social impacts of mining, such as land degradation and disruption to livelihoods, yet receive only a small share of the financial returns. Even though landowners receive a high percentage of royalties, the overall value of those royalties is low.

4.3.6 Third, the framework leads to environmental harm. Past mining operations, for example in the Namosi region, have resulted in documented environmental damage, including contamination of waterways and destruction of traditional food sources.[39] These harms have fuelled deep-seated grievances and strong opposition to new mining projects. Yet, because the legal framework does not require landowner consent at the exploration stage, communities are often left to respond to these impacts after they occur, rather than preventing them from the outset.

4.3.7 Fourth, the framework systematically excludes iTaukei landowners from decision-making processes that directly affect their lives and territories. The iTaukei Land Trust Board has noted that landowners are largely excluded from the negotiation and management of mining projects.[40] The State negotiates on their behalf, and royalties are paid directly to the State, not to the landowners or their representatives. This model perpetuates colonial power dynamics, reducing traditional custodians to passive recipients of State-determined outcomes rather than recognising them as equal partners in the governance of their own resources.

4.3.8 Finally, the system reflects a continuation of colonial practices. It separates land from its natural resources, which is inconsistent with the iTaukei concept of the vanua, where land, people, and resources are one and the same.[41] By maintaining this colonial construct, the State not only deprives indigenous communities of economic justice but also weakens traditional systems of

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[37] See sections 26 and 32 of the Mining Act 1965.
[38] https://maitvfiji.com/mineral-director-landowner-consent-not-required-for-exploration-but-coms-vital/
[39] Concerns raised over land leasing without 60% consent in Namosi
[40] TLTB pushes for greater mineral rights, royalties for landowners - The Fiji Times
[41] Land reform needs free, prior and informed consent says President – FBC News

governance, denying the holistic relationship between the people and their ancestral territory.

4.3.9 International instruments such as UNDRIP emphasise that indigenous peoples are not just stake holders to be consulted, but rights holders whose cultural survival, socio-economic development and self-determination are deeply rooted in their land and natural resources, given their distinctive spiritual and material relations with them. Therefore, mineral projects must respect indigenous rights, ensure meaningful participation, ensure no or minimize environmental or social harm and provide fair and equitable benefits to affected indigenous communities.

Recommendations:

1. Amend section 30 of the Constitution to recognise customary ownership of minerals found in or under iTaukei land, customary marine areas (qoliqoli), and protected areas, and vest these rights in the respective customary landowners.

2. Alternatively, if ownership of minerals remain vested in the State, then section 30(2) be amended to guarantee the rights of indigenous people to free, prior and informed consent; meaningful participation in decision making processes; the conduct of independent environmental and social impact assessments with findings made publicly available particularly to affected communities, to determine whether approval may or may not be given; fair and equitable sharing of benefits; and access to effective remedies and compensation for any damage or harm to their lands, waters, customary marine areas (qoliqoli), livelihood and traditional way of life.

5. HRADC

5.1 Commissioners' recruitment process: Lack of Paris Principles compliance

5.1.1 Paris Principles compliance

5.1.1.1 Fiji has consistently received recommendations from United Nations (UN) Member States since the first cycle of the Universal Periodic Review (UPR) to take necessary steps to align the HRADC with the Paris Principles. These recommendations were reiterated across all four review cycles—in 2010, 2014, 2019 and recently January 2025. Each review has emphasised the need for legislative reforms to ensure that the Commission fully complies with these international standards.

5.1.1.2 As Fiji's National Human Rights Institution (NHRI), the HRADC is guided by the Paris Principles, which set the minimum international standards for such institutions. A key requirement of these principles is independence from Government influence and external interference. The Paris Principles also establish clear expectations regarding the role, structure, and appointment processes of NHRIs. Compliance with these standards is assessed by the Global Alliance of National Human Rights Institutions (GANHRI), which grants accreditation statuses. An "A Status" indicates full compliance, while a "B Status" indicates only partial compliance. Holding "B Status" has significant consequences. It reflects that the HRADC is not fully independent or credible. As a result, its ability to participate in important international forums, including the United Nations Human Rights Council (UNHRC), is limited, along with other rights available to fully accredited institutions.

5.1.1.3 The HRADC previously lost its accreditation in 2007 due to concerns about independence and credibility. When it reapplied in 2021, it was granted "B Status." One of the main concerns raised by GANHRI was the lack of an independent and transparent appointment process. In particular, the current Constitution framework[42] does not provide for a pluralistic selection panel, does not require public advertisement of vacancies, and does not establish a clear and structured process for appointing Commissioners.

5.1.1.4 The consequence of B Status is significant. B status recognizes that the HRADC is not a fully credible and independent institution, the HRADC's ability to participate in the proceedings of the United Nations Human Rights Council (UNHRC'), among other key participatory rights in other key institutions is limited.

5.1.2 Current recruitment process under the Constitution

5.1.2.1 The HRADC is empowered under Article 45 of the Constitution as well as its establishment legislation, the Human Rights and Anti-Discrimination Commission Act. Article 45(2) of the 2013 Constitution establishes the composition of the Commission, which must consist of a chairperson (who is or is qualified to be a Judge) and four other members[43] all of whom are appointed by the President on the advice of the Constitutional Offices Commission ('COC').

5.1.2.2 The COC comprises the Prime Minister (Chairperson), Leader of Opposition, Attorney-General, 2 persons appointed by the President on the advice of the Prime Minister, and 1 person appointed by the President

[42] See sections 132, 133 and 45 of the 2013 Constitution.
[43] Defined in section 2 of the Human Rights and Anti-Discrimination Act as a Commissioner.

on the advice of the Leader of Opposition.[44] This structure raises concerns about independence, as the Government has significant influence over the appointment process and, ultimately, over the leadership of the HRADC.

5.1.2.3 In comparison, other NHRI's have vastly different appointment processes which promote independence of the Institute. For instance, Australia's Human Rights Commission,[45] New Zealand Human Rights Commission[46] and Samoa National Human Rights Institution, have standard merit-based and transparent procedures regarding the appointment of members of their respective Commissions, whereas Fiji doesn't.

Recommendation:

The HRADC proposes two options to ensure compliance with the Paris Principles:

Option 1: Amend the Constitution to establish a transparent and merit-based recruitment process for Commissioners. This requirement may be included directly in the Constitution or, alternatively, the Constitution may require that such a framework be provided for in legislation.

Option 2: Introduce a provision requiring that appointments be guided by formal rules developed by the Constitutional Offices Commission (COC). This may be done through regulations made under section 132(3) of the Constitution. These regulations should establish an independent panel to review and assess candidates based on clear and merit-based criteria. The panel would then submit a shortlist of candidates to the COC for final consideration and approval.

Note: The HRADC has already prepared draft regulations to support this process. These are currently with the Office of the Solicitor-General, the Attorney-General, and the COC, and are awaiting the necessary steps for implementation.

[44] See section 132 of the 2013 Constitution.
[45] Under the relevant provisions of the Australian Human Rights Commission Act 1986.
[46] With the added requirement that the appointment by the Governor General must be on the recommendation of the Minister of Justice.

5.1.3 Need for full-time HRADC Commissioners

5.1.3.1 At present, Commissioners are not engaged on a full-time basis and instead receive a modest monthly allowance. As a result, Commissioners often maintain other full-time employment, typically with higher remuneration. This arrangement has created a significant challenge for the effective discharge of the HRADC's mandate.

5.1.3.2 The absence of full-time Commissioners weakens accountability and reduces the level of commitment needed to address the increasing number and complexity of human rights issues in Fiji. For the HRADC to operate effectively and meet international standards, its leadership must be efficiently resourced and fully dedicated to its responsibilities.

5.1.3.3 Under the 2013 Constitution, Commissioners collectively form the leadership of the institution and are responsible for carrying out its mandate. This mandate is broad and requires continuous attention, strong oversight, and timely decision-making. However, the current part-time structure limits their availability and reduces continuity in leadership. This, in turn, affects the HRADC's ability to respond promptly and effectively to human rights concerns.

5.1.3.4 A comparison with similar institutions highlights this gap. In countries such as Australia and New Zealand, Commissioners serve on a full-time basis and are paid salaries comparable to those of judges.

Recommendation:

1. Revise the appointment framework to provide full-time Commissioners, with appropriate remuneration and terms of service that reflect the importance and scope of their responsibilities and eligible for a one time reappointment.

5.1.4 Limitations on the FHRADC's Jurisdiction and Investigative Scope

5.1.4.1 As an independent NHRI in accordance with Paris Principles, the FHRADC is expected to operate impartially and without interference. However, certain provisions in the Human Rights and Anti-Discrimination Commission Act 2009 and section 172 (5) of the 2013 Constitution limit its jurisdiction. In particular, matters related to the Fiji Constitution Amendment Act 1997 Revocation Decree 2009 and other Presidential Decrees are excluded from its review. While section 45 of the Constitution provides the HRADC with a broad mandate, these exclusions significantly restrict its ability to act in practice.

5.1.4.2 These limitations weaken the purpose of having an independent oversight body. By placing certain matters beyond review, they create a risk of selective accountability. This may reduce public confidence in the HRADC and limit its ability to address human rights issues in a fair, complete, and credible manner.

Recommendation:

1. Remove the limiting provisions in the 2013 Constitution and in relevant legislation to ensure that the HRADC can exercise its mandate fully and independently in compliance with the Paris Principles.

5.1.5 Enhancing Powers for Detention Monitoring

5.1.5.1 Section 45 of the 2013 Constitution and section 12 of the Human Rights and Anti-Discrimination Act 2009 does not currently empower the HRADC to conduct unannounced visits to places of detention. Although Fiji has ratified CAT, it has not yet joined the Optional Protocol, which provides for regular and independent inspections of detention facilities. As a result, the HRADC's ability to monitor detention conditions remains limited.

5.1.5.2 This limitation is important in light of complaints received by the HRADC regarding detention conditions in Fiji. These complaints include concerns about overcrowding, access to basic services, and the treatment of detainees. These conditions have also been publicly acknowledged by the Fiji Corrections Services for prison facilities as well as St Giles Hospital. Without the power to conduct independent and unannounced visits, the HRADC cannot effectively verify these concerns or respond to them in a timely manner.

5.1.5.3 Granting the HRADC the power to conduct unannounced visits is not intended to be punitive. Instead, it serves as a preventive and cooperative measure. Regular monitoring would help the HRADC better understand conditions within detention facilities, identify systemic issues, and provide practical recommendations for improvement. This would support both detainee welfare and the working conditions of officers, while also strengthening transparency and public trust. It would further assist the State in meeting its international human rights obligations.

Recommendation:

1. Amend Section 45 of the Constitution to explicitly authorise the HRADC to carry out regular and unannounced visits to all places of detention.

6. AMENDMENT PROVISIONS – Sections 159-160

6.1 Overly restrictive amendment framework

6.1.1 In August 2025, the Supreme Court of Fiji issued an important advisory opinion following a request by Cabinet. The request asked the Court to clarify how sections 159 and 160 of the 2013 Constitution should be understood and applied. This issue arose after the Constitution (Amendment) Bill 2025 failed to pass in Parliament by a single vote. The Bill had proposed reducing the amendment threshold from three-quarters to two-thirds in Parliament, and replacing the referendum requirement of three-quarters of all registered voters with a simple majority of those who vote.

6.1.2 The 2013 Constitution set very strict rules for amendment. Section 160 required that any constitutional change, whether minor or major, must be approved by three-quarters of all Members of Parliament and three-quarters of all registered voters in a referendum. This meant that approval depended not only on those who voted, but on all registered voters. In addition, section 159 made certain provisions, including the amendment process itself and immunity clauses, unamendable. Together, these requirements made the Constitution extremely difficult to change in practice.

6.1.3 To address these concerns, the Court applied what it described as "remedial interpretation." This approach involves interpreting legal provisions in a way that makes them workable and consistent with fundamental principles, such as democracy and self-determination.

6.1.4 The Court held that the amendment rules should be read in a way that allows meaningful constitutional change. It found that the original requirements were too strict and did not align with the right of people to determine their own system of government. In reaching this conclusion, the Court relied on international law, including Article 1.1 of the ICCPR, as well as the democratic values reflected in the Constitution itself.

6.2 The Supreme Court's Binding Opinion on Sections 159 and 160

6.2.1 Section 160(2)(b): Reduction of Parliamentary Threshold

6.2.1.1 The Court found that the requirement for a three-quarters majority in Parliament created an unreasonable barrier to constitutional change. It noted that such a rule would allow a relatively small minority to block any amendment. In the context of a Constitution that was not originally adopted through a democratic process, this restriction was considered unacceptable.

6.2.1.2 The Court therefore held that a two-thirds majority of all Members of Parliament is more appropriate. While still a high threshold, it allows for meaningful change while maintaining stability. The Court also noted that similar thresholds are common in Fiji's constitutional history and in other countries.

6.2.2 Section 160: Reform of the Referendum Requirement

6.2.2.1 The Court also reviewed the referendum requirement. It recognised the value of involving the public in constitutional amendments. However, it found that requiring approval from three-quarters of all registered voters was impractical and overly restrictive.

6.2.2.2 The Court therefore held that the referendum requirement should be a simple majority of those who actually vote. This change makes the process more realistic, while still ensuring that public support is required for constitutional change.

6.2.3 Section 159(2)(c): Amendment of Amendment Provisions

6.2.3.1 The Court refused to recognise the provision that prevented any changes to the amendment rules themselves. It was found that such a restriction would permanently block constitutional reform. By declining to recognise this provision, the Court ensured that the amendment process itself can be revised if necessary.

Recommendations:

1. Amend sections 159 and 160 of the 2013 Constitution to formally reflect the interpretation provided by the Supreme Court. This includes adopting a two-thirds majority in Parliament and a simple majority of those voting in a referendum for constitutional amendments.

2. Review and revise the amendment framework to ensure that it is practical and achievable, while still maintaining appropriate safeguards. The amendment process should allow for meaningful constitutional reform without creating unnecessary barriers.

3. Retain the requirement for public involvement through referenda, but ensure that the process is accessible and reflects the will of those who participate. Public education and awareness initiatives should be introduced to support informed participation in constitutional reform processes.

4. Clearly define which provisions, if any, should remain protected from amendment. Where such protections are retained, they should be justified and consistent with democratic principles and international standards.

5. Ensure that the amendment provisions align with the right to self-determination as recognised under international law, including the ICCPR. This will strengthen the legitimacy of the Constitution both domestically and internationally.

6. Consider establishing a formal mechanism for periodic constitutional review. This would allow the Constitution to evolve in a structured and inclusive manner, reducing the need for ad hoc reforms.

7. IMMUNITY PROVISIONS– CHAPTER 10

7.1 Broad Immunity Provisions

7.1.1 The immunity provisions outlined under Chapter 10 of the 2013 Constitution[48] which incorporates the immunity provisions from the 1990 Constitution provide absolute immunity from criminal prosecution or civil liability, or any other type of Court actions, against anyone involved in the 1987 and 2006 military coups, the timeframe being from December 5, 2006, until the first sitting of Parliament elected in the 2014 elections.

7.1.2 The HRADC notes the concerns of members of the public calling for the removal of the immunity provisions and acknowledges the broader issues these concerns raised on the necessity and importance of accountability, the rule of law, equality before the law and sound democratic governance.

7.1.3 In this regard, the HRADC refers to the Supreme Court of Fiji, in its Opinion[49] rendered in August 2025, which raised these same concerns of

[48] Arts. 155 – 158 of the Constitution.
[49] In the Matter of a reference by Cabinet for an opinion from the Supreme Court on a matter concerning the interpretation and application of sections 159 and 160 of the Constitution of the Republic of Fiji [2025] FJSC 20.

accountability, the rule of law, and the restoration and preservation of democratic values from authoritarian military governance towards civilian democratic governance. The Supreme Court opined that:

> ***"Immunity provisions can be seen to detract from the rule of law. They insulate from what would otherwise be the legal consequences of their actions. They also sit uneasily with the concept of equality before the law. As well, such provisions may create. in the minds of those contemplating a coup, expectations of future immunities and, in this way, might increase the risks of extra-constitutional action. These issues are compounded when immunities are not able to be amended."***

7.1.4 The Supreme Court further added that:

> ***"Unamenable immunities may be – as they probably were in 2012 and 2013 – preconditions to a peaceful transition from military government to democracy. In this way they can be seen to promote democratic values."***

7.1.5 In brief, it was the conclusion of the Supreme Court for reason of national stability, the peaceful transition that it regarded as an act that promoted democracy and reason of legal continuity, that the immunity provisions remain protected and cannot be amended.

7.1.6 In light of the Supreme Court's Opinion and public calls for the removal of the immunity provisions, HRADC acknowledges that while such provisions are fundamentally offensive to democratic accountability and the rule of law, they were a practical necessity (a necessary evil) for securing a peaceful transition towards restoring democratic civilian rule thus peacefully returning power to the people.

7.1.7 However, in upholding the public's call for democratic accountability for perpetrators of military and civilian coups, while respecting the Supreme Court's opinion of August 2025, the HRADC is of the view that there is need to strengthen section 2 (6) of the 2013 Constitution to prohibit future coups and that any future attempt to overthrow Government and subvert the Constitution should carry mandatory life sentences with no access to executive or Presidential pardons, as the provision has already stated that ***"no immunities can lawfully be granted under any law…".*** This will also require an amendment to section 119 of the 2013 Constitution, to ensure that the Mercy Commission does not include among its recommendations to the

President for his power of mercy, those engaged in coups and overthrow of a Government.

7.1.8 The HRADC acknowledges the action of the Coalition Government in establishing the Truth and Reconciliation Commission (TRC) to address the trauma, sufferings and human rights violations arising from the 1987, 2000 and 2006 coups. HRADC, however, notes that the TRC does not provide a clear pathway for reparations or accountability. The HRADC also notes that section 158 (3) prevents the State from paying compensation for damages, injury or loss caused by actions and conduct for which immunity has been granted. However, the HRADC is of the view that this does not prevent the State from providing some level of assistance and comfort to victims and that this assistance should not be framed as legal damages or compensation in light of section 158 (3) but provided to victims on humanitarian and restorative grounds.

7.1.9 The HRADC recognizes the very important role of the Republic of Fiji Military Forces in protecting and safeguarding Fiji's security and defence. HRADC also notes continuing public concerns on section 131(2) of the 2013 Constitution which vests in the Republic of Fiji Military Forces – ***"the overall responsibility...to ensure at all times the security, defence and wellbeing of Fiji and all Fijians."*** A grave concern is that this section could be misused, because its language is so broad and ambiguous, to justify military intervention in political disputes and civilian governance. The HRADC is of the view that section 131 (2) requires language that removes the ambiguity and vagueness, provides clarity on the role and responsibility of the military and expressly states that the military remains subordinate to civilian rule and elected government authorities, at all times.

Recommendations:

1. Strengthen section 2 (6) of the 2013 Constitution by amending it to incorporate that future coup actions and those responsible, shall be given mandatory life sentences and shall not have access or be granted executive or Presidential pardons.

2. Section 119 of the 2013 Commission to be amended to ensure that the Mercy Commission does not consider any petition from nor recommend to the President for his power of mercy, any person involved in coup actions or the overthrow of a Government.

3. That Government, notwithstanding section 158 (3) of the 2013 Constitution, reinforce the work of the Truth and Reconciliation Commission by establishing an independent state funded Restorative Justice and Humanitarian Fund to provide some level of assistance and comfort to victims

4. Section 131 (2) of the 2013 Constitution be completely re-written, to clearly and specifically set out the powers, functions or responsibilities of the Republic of Fiji Military Forces; the limits to the exercise of these powers, functions or responsibilities; and that the Military remains subordinate to the rule of law and to civilian rule exercised through the democratically elected Government, at all times.

7.2 Immunity to be Time Bound (Expunging and removal of immunity provisions in the interest of future generations)

7.2.1 The HRADC acknowledges concerns and discussions by members of the public that the preservation of the immunity provisions indefinitely is not in the best interest of future generations. The Constitution is not only the Supreme Law, but it should also serve as a moral compass for the nation. The permanent protection of these immunities, is in our view, entrenching historical political conflicts within the nation's Supreme Law, long after their practical purpose has ceased and those covered by the immunity provisions have also ceased to exist.

7.2.2 The continued inclusion of the immunity provisions may risk memorializing in the Supreme Law, treasonous actions, constitutional disruptions and extra constitutional political change. Future generations may see this continued immunity protection as an implicit endorsement even legitimization of actions and conduct that violated democratic principles and constitutional processes. This may lead to the perception that unlawful and extra constitutional actions can achieve constitutional recognition and protection without accountability. It is therefore argued that the maintaining of the immunity provisions can undermine efforts toward strengthening constitutional supremacy, the rule of law and democratic accountability.

7.2.3 The HRADC is of the view that it is an unreasonable and unjust burden on future generations to inherit a document that carries within its permanent protection of actions and conduct that violated the very constitutional order, they are asked and required to uphold.

7.2.4 In balancing respect for the Supreme Court's Opinion of August 2025, with Fiji's long term democratic development and constitutional evolution, the following forward-looking approach is proposed. This approach seeks a compromise in preserving the original purpose of the immunity provisions while recognising that the Constitution is a living document and should evolve with the nation it serves.

7.2.5 The HRADC proposes the insertion of a sunset provision into the 2013 Constitution expressly stating that all immunity provisions be automatically expunged and removed from the Constitution in thirty years' time.

7.2.6 A thirty year time frame, means that all those involved in actions and conduct for which immunity is granted, would have passed on into history. More importantly, future generations will inherit a clean document, free from exceptional provisions that link it to past historical constitutional disruptions and political upheavals.

7.2.7 The eventual removal of the immunity provisions recognizes that the passage of time has rendered such exceptional provisions unnecessary and that such information best belongs in the public record, academic writings and study or national forums for debates and discussions. They need not be permanently enshrined in the Constitution once their transitional and practical purpose has been achieved. To maintain the immunity provisions indefinitely risks transforming what was intended as a transitional mechanism into a constitutional principle; when immunity is kept indefinitely it risks subverting or undermining the fundamental legal principle that all individuals are subject to and equal before the law.

7.2.8 As custodians of Fiji's constitutional future, the present generation should ensure that future generations inherit a Constitution that reflects the ideals and values of democracy, the supremacy of the Constitution, the rule of law, equality before the law, accountability, respect for human rights and the peaceful transfer of political power through sound democratic process. The Constitution should embody these enduring principles and values and must not remain permanently tied to exceptional provisions which arose from particular historical and political circumstances that challenged and sought to destroy the rule of law and democratic governance.

Recommendation:

1. That a sunset provision be inserted into the 2013 Constitution expressly stating that the immunity provisions shall be automatically expunged and removed from the 2013 Constitution in thirty years' time, effective from the date of amendment.

***Note**: Please note that 30 years is based on the amendment occurring at 2027, and therefore should change, that is reduced if the time of amendment continues to be delayed.*

8. WOMEN'S RIGHTS AND GENDER RIGHTS

8.1 The HRADC acknowledges that section 26 of the 2013 Constitution provides a broader set of identity characteristics for protection against discrimination compared to previous constitutions. These protections strengthen the legal framework for equality for every person and help ensure that all individuals are treated fairly with dignity and respect in relation to the life they have chosen to live. By recognising a broader set of diverse identity characteristics, the 2013 Constitution reflects a more inclusive approach to human rights. This is an important step in addressing both existing and emerging forms of discrimination.

8.2 Overall, the HRADC views these expanded protections as a positive development that supports fairness, dignity, and equal treatment for all individuals in Fiji.

8.3 Lack of explicit recognition on women

8.3.1 However, the terms "woman" and "women" do not appear in the 2013 Constitution. This is a change from the 1997 Constitution, which specifically recognised the importance of equal participation of men and women in public service under Article 140. The removal of this explicit reference may be seen as reducing the visibility of women's rights in the Constitution. As a result, there is a risk that the importance of equal representation by sex is no longer clearly stated at the constitutional level.

8.3.2 This is particularly important in light of Fiji's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Article 7 of CEDAW requires States Parties to ensure that women have equal opportunities to participate in public life, including holding public office.

8.3.3 At the same time, the HRADC recognises that the 2013 Constitution has strengthened protection against discrimination in other important ways. Section 26 (3) (a) expands the list of prohibited grounds of discrimination to include sex, gender, sexual orientation, gender identity and expression, as well as various social and economic factors. This represents an important step forward in promoting equality and inclusion, particularly for individuals and groups who have historically experienced discrimination, marginalization or social exclusion. (**Refer to Appendix 4, page 65 for comparison)**

8.3.4 The HRADC also acknowledges the views of civil society organisations, which have highlighted the importance of maintaining these protections within the Constitution. Ensuring that these rights remain protected is essential for safeguarding equality and dignity for all individuals. In the context of constitutional review, it is essential to maintain the international law principle of non – retrogression. This principle holds that human rights protections once granted must not be rolled back or weakened. Any retrogressive

measure is strictly prohibited unless justified by exceptional circumstances which must be temporary with full protection restored as soon as possible.

Recommendations:

1. Include explicit recognition of women in the 2013 Constitution, particularly in relation to equal participation in public life and public service, in line with Fiji's obligations under CEDAW.

2. Retain and strengthen the existing non-discrimination provisions to ensure continued protection based on sex, gender, sexual orientation, gender identity and expression.

3. Retain and safeguard section 26 to ensure that the broad protections against discrimination remain firmly embedded in the Constitution.

4. Ensure that the constitutional protections are supported by effective legislation and enforcement mechanisms, allowing individuals to seek remedies where discrimination occurs.

9. EQUAL CITIZENSHIP AND NATIONAL IDENTITY

9.1 The HRADC notes that while all Constitutions that Fiji had recognised equal citizenry, the 2013 Constitution is the first in Fiji's history to entrench a common national identity establishing that all Fiji citizens be known as Fijians. The HRADC supports the principle for a common national identity and that the nature of citizenry is a separate matter altogether to ethnicity. Citizenship refers to a person's legal status within the State, while ethnicity relates to cultural identity, language, and heritage.

9.2 The HRADC acknowledges that historically "Fijian" was used exclusively to describe the indigenous population of Fiji. The framers of the 2013 Constitution, without consultation with the public nor with the indigenous people, imposed the name "Fijian" through constitutional entrenchment, as the national name for all citizens in Fiji.

9.3 The HRADC further acknowledges concerns expressed by indigenous stakeholders including the Great Council of Chiefs on the adoption of the term "Fijian" as the common national identity for all citizens. The HRADC considers that these indigenous concerns raise legitimate questions on what name should be used to express a national identity in a multi-cultural society.

9.4 The HRADC is of the view that these concerns deserve respectful recognition and dialogue, noting that the principles of equal citizenry and indigenous identity are

not mutually exclusive. They are not opposites and can co-exist successfully. A constitutional framework can recognize a common national identity for all citizens of Fiji while at the same time safeguarding the unique rights, customs, traditions, languages, institutions and heritage of the indigenous people as well as other ethnic groups.

9.5 The HRADC proposes that consideration be given to the undertaking of a nation wide consultation process or through a national referendum to determine whether the term "Fijian" is widely supported or whether an alternative name such as "Fiji Islander" or another name that is preferred by the people of Fiji and which reflects national consensus. This strategy ensures that the name used for national identity enjoy broad public support and acceptance. It offers a historic opportunity for all Fiji citizens to have a say on what their national identity should be.

9.6 In this way, Fiji can forge a shared common identity that satisfies the requirements of equal citizenry and respects its diverse heritage including its indigenous heritage.

9.7 The HRADC also supports section 4 of the 2013 Constitution, recognizing Fiji as a secular State. While it acknowledges Fiji's (and the wider South Pacific) deep ties with Christianity, the Commission is also mindful that Fiji is a multicultural nation with people from different religions. The right to freedom from discrimination on religious grounds is an important one, and section 4 contributes towards the recognition of this.

9.8 While it acknowledges Fiji's (and the wider South Pacific) deep ties with Christianity, the HRADC is also mindful that Fiji is a multicultural nation with people from different religions. The Commission supports this approach, as it promotes national unity and a shared identity.

Recommendations:

- The principle of equal citizenry be retained, however, that the public be consulted via national referendum on their views on which name is best used to describe their national identity (with some examples including 'Fiji Islanders', Fiji Citizens' etc).
- Include a clarifying provision or interpretive guidance that recognises the distinction between citizenship and ethnic or cultural identity, ensuring that the recognition of all citizens as Fijian does not diminish the cultural rights of any group.
- Strengthen protections for cultural identity, language, and tradition within the Constitution to complement the principle of equal citizenry and ensure that

diversity is equally valued. (**referring to Indigenous Rights discussions above**)

10. CONCLUSION AND RECOMMENDATIONS

10.1 In conclusion, the HRADC outlines in summary its recommendations. To align with international human rights standards, the HRADC recommends:

1. **Adjusting or removing broad limitation clauses** to ensure rights are not unduly restricted and inline with international human rights standards.

2. **Restoring protections for indigenous rights**, including entrenched safeguards, recognition of Free, Prior and Informed Consent and meaningful participation in all decision making involving them and their resources.

3. **Reforming the appointment and structure of the HRADC** to ensure Paris Principles compliance and full independence.

4. **Aligning amendment provisions with democratic principles** to allow for meaningful constitutional reform.

5. **Insert time-bound provisions on immunity provisions and strengthen relevant current provisions** to ensure that future treasonous actions against the State face democratic accountability and are not provided any immunity.

6. **Strengthening protections for women rights and gender rights** with explicit recognition in the 2013 Constitution.

Thank you for your attention and consideration.

God Bless the CRC.

God Bless Fiji.

APPENDIX 1: Bill of Rights – Comparison Limitations

	1997 Constitution	2013 Constitution
Freedom from Cruel and Degrading Treatment	***Section 25 – Freedom from cruel or degrading treatment*** **Limitation:** No expressly stated limited	***Section 11 – Freedom from cruel and degrading treatment*** Article 6(5) – rights and freedoms in the Bill of Rights may be limited by: *a. limitations expressly prescribed, authorized or permitted (whether by or under a written law) in relation to a particular right or freedom in this Chapter;* *b. limitations prescribed or set out in, or authorized or permitted by, other provisions of this Constitution; or* *c. limitations which are not expressly set out or authorized (whether by or under a written law) in relation to a particular right or freedom in this Chapter, but which are necessary and are prescribed by a law or provided under a law or authorized or permitted by a law or by actions taken under the authority of a law.*
Freedom of Speech, Expression and Publication	***Section 30 – Freedom of expression***	***Section 17 – Freedom of expression*** Freedom of speech, expression, thought, opinion and publication does not protect—

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	A law may limit, or may authorise 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;	(a) propaganda for war; (b) incitement to violence or insurrection against this Constitution; or (c) advocacy of hatred that— (i) is based on any prohibited ground of discrimination listed or prescribed under section 26; and (ii) constitutes incitement to cause harm. (3) **To the extent that it is necessary**, a law may limit, or may authorise the limitation of, the rights and freedoms mentioned in subsection (1) in the interests of— (a) national security, public safety, public order, public morality, public health or the orderly conduct of 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 rights 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 of individuals or respected offices or

	(f) imposing reasonable restrictions on the holders of public offices in order to secure their impartial and confidential service; or (g) regulating the technical administration of telecommunications; **but only to the extent that the limitation is reasonable and justifiable in a free and democratic society.**	institutions in a manner likely to promote ill will between ethnic or religious groups or the oppression of, or discrimination against, any person or group of persons; (e) maintaining the authority and independence of the courts; (f) imposing restrictions on the holders of public offices; (g) regulating the technical administration of telecommunications; or (h) making provisions for the enforcement of media standards and providing for the regulation, registration and conduct of media organisations.
Freedom of Assembly	***Section 31 – Freedom of assembly*** A law may limit, or may authorise 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;	***Section 18 – Freedom of assembly*** **To the extent that it is necessary**, a law may limit, or may authorise the limitation of, the right mentioned in subsection (1)— (a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections; (b) for the purpose of protecting the rights and freedoms of others; or (c) for the purpose of imposing restrictions on the holders of public offices.

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	but only to the extent that the limitation is reasonable and justifiable in a free and democratic society.	
Freedom of Association	***Section 32 – Freedom of Association*** A law may limit, or may authorise 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; 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.**	***Section 19 – Freedom of association*** A law may limit, or may authorise the limitation of, the right mentioned in subsection (1)— (a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections; (b) for the purpose of protecting the rights and freedoms of others; (c) for the purpose of imposing restrictions on the holders of public offices; (d) for the purpose of regulating trade unions, or any federation, congress, council or affiliation of trade unions, or any federation, congress, council or affiliation of employers; (e) for the purposes of regulating collective bargaining processes, providing mechanisms for the resolution of employment disputes and grievances, and regulating strikes and lockouts; or (f) for the purpose of regulating essential services and industries, in the overall interests of the Fijian economy and the citizens of Fiji.
Employment Relations	***Section 33 – Labour Relations*** A law may limit, or may authorise the limitation of, the rights set out in this section:	***Section 20 – Employment Relations*** A law may limit, or may authorise the limitation of, the rights mentioned 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; **but only to the extent that the limitation is reasonable and justifiable in a free and democratic society..**	(a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections; (b) for the purposes of protecting the rights and freedoms of others; (c) for the purposes of imposing restrictions on the holders of public offices; (d) for the purposes of regulating trade unions, or any federation, congress, council or affiliation of trade unions, or any federation, congress, council or affiliation of employers; (e) for the purposes of regulating collective bargaining processes, providing mechanisms for the resolution of employment disputes and grievances, and regulating strikes and lockouts; or (f) for the purposes of regulating essential services and industries, in the overall interests of the Fijian economy and the citizens of Fiji.
Freedom of Movement and Residence	***Article 34 – Freedom of movement*** (7) 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;	***Article 21 – Freedom of movement and residence*** (7) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights mentioned in this section— (a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;

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	(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 fulfilment 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; but only to the extent that the limitation is reasonable and justifiable in a free and democratic society.	(b) for the purpose of protecting the rights and freedoms of others; (c) for the purpose of protecting the ecology of any area; (d) for the purpose of imposing a restriction on the person that is reasonably required to secure the fulfilment of an obligation imposed on the person by law; or (e) for the purpose of imposing reasonable restrictions on the holders of public offices as part of the terms and conditions of their employment.

APPENDIX 2: Indigenous Rights

1970 Constitution	1990 Constitution	1997 Constitution	2013 Constitution
No provisions explicitly providing for Indigenous Rights, however several clauses contained therein that reserved the office of the Prime Minister and a majority in the House of Representatives for Indigenous Fijians.	***Section 21 – Protection and Enhancement of Fijian and Rotuman Interests*** (1) Notwithstanding anything contained in Chapter II of this Constitution Parliament shall, with the object of promoting and safeguarding the economic, social, educational, cultural, traditional and other interests of the Fijian and Rotuman people, enact laws for those objects and shall direct the Government to adopt any programme or activity for the attainment of the said objects and Government shall duly comply with such directions. (2) In carrying out any direction given under subsection (1) of this section, the Government through the Cabinet May – (a) give directions to any department of Government, Commission or authority for the reservation of such proportions as it may deem reasonable of scholarships, training privileges	***Section 185 – Alteration of certain Acts (the entrenched clauses)*** (1) A Bill that alters any of the following Acts, namely: (a) Fijian Affairs Act; (b) Fijian Development Fund Act; (c) Native Lands Act; (d) Native Land Trust Act; (e) Rotuma Act; (f) Rotuman Lands Act; (g) Banaban Lands Act; or (h) Banaban Settlement Act; including a Bill prepared in consequence of the enactment of this Constitution: (i) must be expressed as a Bill for an Act to alter the Act concerned; (j) must not be presented for the President's assent unless it has	***Section 28 – Rights of ownership and protection of iTaukei, Rotuman and Banaban lands*** (1) The ownership of all iTaukei land shall remain with the customary owners of that land and iTaukei land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27. (2) Any iTaukei land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State. (3) The ownership of all Rotuman land shall remain with the customary owners of that land and Rotuman land shall not be

	or other special facilities provided by Government (b) when any permit or licence for the operation of any trade or business is required by law, give such direction as may be required for the purpose of assisting Fijians and Rotumans to venture into business; and (c) may give directions to any department of Government ,Commission or authority for the purpose of the attainment of any of the objects specified under subsection (1) of this section; and the department or the Commission or authority to which any direction under paragraph (a), (b) or (c) of this subsection is given shall comply with such directions. (3) In the exercise of its functions under this section, the Cabinet shall act in consultation with the Bose Levu Vakaturaga, or the Council of Rotuma, as the circumstances may require.	been read 3 times in each House and motions for the second and third readings are carried in each House; and (k) is deemed not to have been passed by the Senate unless at its third reading in that House it is supported by the votes of at least 9 of the 14 members of the Senate appointed under paragraph 64(1)(a). (2) A Bill that alters the Agricultural Landlord and Tenant Act: (a) must be expressed as a Bill for an Act to alter that Act; and (b) must not be presented for the President's assent unless: (i) it has been read 3 times in each House and motions for the second and third readings are carried in each House; and (ii) at its third reading it is supported by the votes of at least two-thirds of the members of each House and, in the case of the Senate, by the votes of at least 9 of the 14 members of the Senate appointed under paragraph 64(1)(a). (3) The President must not assent to a Bill referred to in this section unless it is accompanied by a certificate of the Secretary-General to Parliament certifying that, in relation to the particular House, the approval required by this section has been given.	permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27. (4) Any Rotuman land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State. (5) The ownership of all Banaban land shall remain with the customary owners of that land and Banaban land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27. (6) Any Banaban land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.

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		Section 186 – Customary laws and customary rights (1) The Parliament must make provision for the application of customary laws and for dispute resolution in accordance with traditional Fijian processes. (2) In doing so, the Parliament must have regard to the customs, traditions, usages, values and aspirations of the Fijian and Rotuman people. (3) The Parliament must make provision granting to the owners of land or of registered customary fishing rights an equitable share of royalties or other moneys paid to the State in respect of the grant by the State of rights to extract minerals from the land or the seabed. (4) A law fixing amounts under subsection (3) must require that account be taken of: (a) any benefits that the owners are likely to receive as a result of the mineral exploitation; (b) the risk of environmental damage;	

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		(c) any legal obligation of the State to contribute to a fund to meet the cost of preventing, repairing or compensating for any environmental damage; (d) the cost to the State of administering exploitation rights; and (e) the appropriate contribution to the general revenue of the State to be made by the person granted exploitation rights.	
		Section 6 – Compact (context on the affirmative action clause) (k) affirmative action and social justice programs to secure effective equality of access to opportunities, amenities or services for the Fijian and Rotuman people, as well as for other communities, for women as well as men, and for all disadvantaged citizens or groups, are based on an allocation of resources broadly acceptable to all communities	
		Section 44 – Social justice and affirmative action	

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		(1) The Parliament must make provision for programs designed to achieve for all groups or categories of persons who are disadvantaged effective equality of access to: (a) education and training; (b) land and housing; and (c) participation in commerce and in all levels and branches of service of the State. (2) An Act that establishes a program under subsection (1) must specify: (a) the goals of the program and the persons or groups it is intended to benefit; (b) the means by which those persons or groups are to be assisted to achieve the goals; (c) the performance indicators for judging the efficacy of the program in achieving the goals; and (d) if the program is for the benefit of a group, the criteria for the selection of the members of	

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		the group who will be entitled to participate in the program. (3) A person may take special measures in accordance with this section for the purpose of achieving substantial equality between different groups or different categories of persons. (4) A person does not discriminate against another person under section 38 by taking those special measures. (5) Subsection (3) does not authorise the taking, or further taking, of special measures for a purpose referred to in that subsection that is achieved. (6) The administering department or other agency must monitor the efficacy of a program established under this section by reference to the specified performance indicators. The Minister must make an annual report to Parliament on the results revealed by the monitoring. (7) Unless it has sooner expired in accordance with its terms or has been repealed, an Act establishing a program under	

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		this section expires on the tenth anniversary of its commencement, but the program may be re-established, unless the benefited persons or groups have demonstrably ceased to be in need of it. (8) A program established under this section must not, directly or indirectly, deprive any person not entitled to its benefits of: (a) any position or seniority in the service of the State; (b) any place in an educational or training institution; (c) a scholarship or other financial support; or (d) a right to carry on any business or profession or to enjoy any other opportunity, amenity or service; to which that person has already become, and would otherwise remain, entitled. (9) For the purposes of this section, an ethnic community is to be taken as having effective equality of access to a level or branch of service of the State only if it is represented there in a number broadly proportionate to	

		its number in the adult population as a whole, unless its underrepresentation is due solely to its particular occupational preferences. (10) In this section: service of the State means service in any capacity on appointment: (a) by the President, a Minister, the Cabinet, a commission or the holder of a public office; (b) by resolution of the Parliament or a committee of the Parliament; or (c) by or on behalf of any local authority; whether or not the appointee is remunerated wholly or partly by public money, but does not include service as a member or employee of a body provided for in an Act referred to in section 185.	

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APPENDIX 3: State of Emergency Provisions

1970 Constitution	1990 Constitution	1997 Constitution	2013 Constitution
Section 18 (b) there is in force a proclamation by the Governor-General declaring that a state of public emergency exists. (7) Without prejudice to the power of the Governor-General to revoke at any time a proclamation made for the purposes of the last foregoing subsection, such a proclamation shall lapse at the expiration of six months from the date it was made unless it has in the meantime been approved by a resolution of each House of Parliament, and a proclamation that has been so approved	***Section 163 – Emergency Powers*** (1)If the President is satisfied that a grave emergency exists whereby the security or economic life of Fiji is threatened, he may issue a Proclamation of Emergency. (2)If a Proclamation of Emergency is issued when Parliament is not sitting, the President shall summon Parliament as soon as may be practicable, and may, until Parliament is sitting, promulgate decrees having the force of law, if satisfied that immediate action is required. (3)A Proclamation of Emergency and any decree promulgated under subsection (2) of this section shall, if not sooner revoked by the President, cease to have effect-	***Section 187 – Emergency Powers*** (1) The Parliament may make a law conferring power on the President, acting on the advice of the Cabinet, to proclaim a state of emergency in Fiji, or in a part of Fiji, in such circumstances as the law prescribes. (2) The law may include provisions conferring on the President the power to make regulations relating to the state of emergency. (3) A measure authorised by or under the law may derogate from the rights and freedoms set out in section 23, 24, 30, 31, 32, 33, 34 or 37 (but not from other rights and freedoms set out in the Bill of Rights) if each of the following conditions is satisfied:	***Section 154 – State of Emergency*** (1) The Prime Minister may, on the recommendation of the Commissioner of Police and the Commander of the Republic of Fiji Military Forces, declare a state of emergency in Fiji, or in a part of Fiji, and may make regulations relating to a state of emergency, if there are reasonable grounds to believe that— (a) the security and safety of all or part of Fiji is threatened; and (b) it is necessary to declare a state of emergency to deal effectively with the threatening circumstances.

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shall remain in force so long as those resolutions remain in force and no longer. (8) A resolution of either House of Parliament passed for the purposes of the preceding subsection shall remain in force for such period not exceeding six months as may be specified therein: Provided that any such resolution may be extended from time to time by a further such resolution, each extension being for such period not exceeding six months from the date of the resolution effecting the extension as maybe specified therein.	(a)at the expiration of six months from the date it was made unless in the meantime it has been approved by a resolution of the House of Representatives; or (b)if a resolution is passed by the House of Representatives annulling such Proclamation or decree, but without prejudice to anything previously done by virtue thereof or to the power of the President to issue a new Proclamation under subsection (1) or promulgate any decree under subsection (2) of this section. (4)A resolution of the House of Representatives passed for the purposes of approving a Proclamation of Emergency or any decree promulgated under subsection (2) of this section shall remain in force for such period not exceeding six months as may be specified therein: Provided that any such resolution may be extended from time to time by a further such resolution, each extension being for such period	(a) the Cabinet has reasonable grounds for believing that, because of the emergency described in the proclamation of the state of emergency, the life of the State is threatened and the exigencies of the situation are such that they cannot be dealt with effectively without derogating from the Bill of Rights; (b) the proclamation of the state of emergency is laid before the House of Representatives, is confirmed by it within 5 sitting days after the proclamation is made and remains in force at the time the measure is taken (c) the proclamation of the state of emergency remains in force for no longer than 3 months or for such further successive periods of up to 6 months as the House of Representatives determines; (d) regulations relating to the state of emergency are laid before the House of Representatives within 2 sitting days after they are	(2) If the declaration of a state of emergency is made when Parliament is sitting, the Prime Minister must, within 24 hours upon making the declaration, refer the declaration to Parliament for confirmation of the declaration. (3) If the declaration of a state of emergency is made when Parliament is not sitting, the Speaker must, within 48 hours upon the making of the declaration, seek confirmation of the declaration from the members of Parliament through such measures of communication as necessary. (4) If a majority of the members of Parliament confirm the declaration made by the Prime Minister, then the declaration shall continue for a period of one month from the date of confirmation, and may be renewed by a further vote in Parliament.

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	not exceeding six months from the date of the resolution effecting the extension as may be specified therein. (5)No provision of any decree promulgated under this section, and no provision of any Act of Parliament which is passed while a Proclamation of Emergency is in force and which declares that the law appears to Parliament to be required by reason of the emergency, shall be invalid on the ground of inconsistency with any provision of this Constitution. (6)At the expiration of a period of six months beginning with the date on which a Proclamation of Emergency ceases to be in force, any decree promulgated in pursuance of the Proclamation and, to the extent that it could not have been validly made but for this section, any law made while the Proclamation was in force, shall, if it has not already ceased to have effect, cease to have effect, except as to things done or omitted to be done	made and remain in force at the time the measure is taken. (4) A law made under this section that is inconsistent with the obligations of the State under an international convention or covenant is invalid to the extent of the inconsistency. (5) Regulations made pursuant to subsection (2) remain in force only so long as the proclamation of the state of emergency remains in force	(5) If a majority of the members of Parliament do not confirm the declaration made by the Prime Minister, then the declaration and any actions taken under the declaration shall be deemed to be of no effect.

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	before the expiration of that period.		
		Section 188 – Summoning of House of Representatives (1) Upon the proclamation, of a state of emergency, the President must summon the House of Representatives to meet. (2) If the proclamation is made during the period after a dissolution of the House of Representatives and before the holding of the next following general election of members of the House of Representatives, the President must, under subsection (1), summon the members of the dissolved House, and those members may exercise all the powers conferred on the House of Representatives under this Chapter. (3) Despite the summoning under subsection (2) of members of the dissolved House of Representatives, the general election must proceed and the recalled House again	

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		stands dissolved on the day immediately before the day fixed for the polling at the general election. (4) If, during a period while a state of emergency is in force, the term of the House of Representatives would, under section 59, expire by effluxion of time, the President may, on the advice of the Cabinet, proclaim an extension of the term for such period as is specified in the proclamation. (5) The term of the House of Representatives must not be extended under subsection (4) for a total of more than 12 months.	
		Section 189 – Powers of House of Representatives (1) The House of Representatives may, at any time, disallow a proclamation of a state of emergency. (2) The House of Representatives may at any time amend or disallow regulations relating to the	

		state of emergency that are laid before it. (3) If: (a) notice of a motion to disallow a proclamation of a state of emergency or to amend or disallow regulations relating to the state of emergency has been given by at least 18 members of the House of Representatives; and (b) at the end of the period of 3 sitting days after the notice was given, the notice has not been withdrawn, the motion has not been called on and the House has not passed a resolution deferring its consideration, the proclamation or the regulations, as the case may be, are taken to have been disallowed or amended, as the case may be.	

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APPENDIX 4: Anti-Discrimination Provisions

1970 Constitution	1990 Constitution	1997 Constitution	2013 Constitution
Section 15 – Protection from discrimination on the grounds of race, etc. (2) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.	***Section 16 – Protection from discrimination on the grounds of race, etc.*** (2) In this section, the expression "discriminatory" means affording different treatment to different persons attribute wholly or mainly to their respective descriptions by race, race, place of origin, political opinions, colour, religion or creed, whereby persons of one such description are subjected disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.	**Section 38 – Equality** (1) Every person has the right to equality before the law. (2) A person must not be unfairly discriminated against, directly or indirectly, on the ground of his or her: (a) actual or supposed personal characteristics or circumstances, including race, ethnic origin, colour, 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	***Section 26 – Right to equality and freedom from discrimination*** (1) Every person is equal before the law and has the right to equal protection, treatment and benefit of the law. (2) Equality includes the full and equal enjoyment of all rights and freedoms recognised in this Chapter or any other written law. (3) A person must not be unfairly discriminated against, directly or indirectly on the grounds of his or her— (a) actual or supposed personal characteristics or circumstances, including race, culture, ethnic or social origin, colour, place of origin,

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			sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, disability, age, religion, conscience, marital status or pregnancy; 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.

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Methodist Church in Fiji and Rotuma

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Methodist church of Fiji
Date: 30-6-2026

Mr. Valenitabua: I acknowledge Reverend Ruben, your lawyer, I welcome you this morning to level nine Suvavou house for this consultation session with the Methodist Church of Fiji or Methodist Church in Fiji. It's a privilege and an honor to be hosting the church, the Methodist Church in Fiji this morning. We had invited this church and we are glad that the church responded positively and that is why you are here this morning.

You will see that there are three commissioners before you this morning. On my right is Ms. Merewalesi Nailatikau, on my left is Dr. Neelesh Gounder and I am Sevuloni Valenitabua, the chairperson. For your information, the commissioners were initially appointed by His Excellency the President, were seven in total. One had to resign due to her busy work schedule and work commitment, so we were left with six commissioners. You will see only three of us here. You will see only three of us here this morning. The other three are on their way to Rotuma. They must be in the air by now to go and do consultations in Rotuma. So, the term of reference which were given to us stated that we were to review the 2013 Constitution.

If I may stress at the outset that we are to review the Constitution. We are not to write a new Constitution. In order to review the Constitution, we have visited our people all over the country. We have been to the Lau group, the Lomaiviti group, Vanualevu, around Vitilevu, and adjacent islands. We have collected submissions from our people, and those submissions were recorded and are in our possession now. We anticipate to receive submissions from you gentlemen and lady, and whatever you submit to us this morning shall be recorded.

We will listen and also do our own recording. We will later deliberate on all the submissions, and then we will decide which ones are to be included as our recommendations to His Excellency to be included in the Constitution, the amended Constitution, which we are looking at drafting. With those few words, I welcome you all. I thank you again for your attendance this morning, and I now open the floor for you on behalf of the Methodist Church in Fiji to make your submissions to the commissioners who are present here today.

Rev. Ili Vunisuwai: Our submission on this pre-location we are here in today. We are thankful that you are able to meet yourself and hear from us, and you might probably come in as we proceed with this submission in any relevant issues that we think will be available and exist in our submission today. So, on behalf of our team here, Talatala Qase, Deputy General Secretary Mr. Anil and our Layer Mr. Valenitabua, I would like to thank you again for this opportunity. Now I shall hand over to our submission. Thank you.

Mr. Simione: Chairperson, Constitutional Review Commission, and members of the Constitutional Review Commission. In addition to the acknowledgement and appreciation by the immediate past president of the Methodist Church in Fiji, The Reverend. Ili Vunisuwai, I would like to also thank the commission for giving the Methodist Church in Fiji the opportunity to be heard, to be consulted, and it has also given the opportunity to the church to consult across all 59 divisions of the Methodist Church. A never been done before, staying true to the tradition within the Methodist Church, and we say adopted by the state that everyone must be heard.

The right to be heard is proof of natural justice. The 59 divisions at their annual divisional meetings, usually held between May and June every year, had deliberated on and have sent across to the head office the 12 constitutional pillars made up of the 20 proposals in Section 2 of our submissions. We would like to emphasize that the church, all throughout the 59 divisions, can see and know that God has been taken out of this constitution, the 2013 constitution.

And it is time that it is expressly stated and reinstated as we suggest in the second proposal that the preamble acknowledges God as supreme creator. We are asking the commission to re-look at the 1997 constitution, and look at the preamble therein, and look at the wide consultation that happened throughout 1995 and 1996. Look at the commission's report, and look at the 2013 constitution to verify a statement by the church that God has been taken out of our constitution.

As a supplementary statement to our second proposal in the preamble, we emphasize that there is a need for the commission to look at the coat of arms of the state. The coat of arms of the

state is before us, it's in the mic, and those are the words etched in the Bible in 1 Peter 2, verse 17. So, we ask of which God? We ask which king? If our forefathers had put together this coat of arms, had chosen this biblical text to be in our coat of arms of the state, surely, they must have thought that it is worthy that God be the supreme creator, be the God of this nation, be the God in the Bible from which the text is extracted, and the God of the Bible is the God the Father, Jehovah, the Son, and the Holy Spirit.

So, with that in mind, we ask the commission to look at the recognition, which is in proposal 1 of our recommendation, that Fiji be recognized as a Christian nation founded on Christian principles. We also suggest and submit that the commission includes the formal recognition of the Holy Bible as a foundational source of moral guidance. Most of the submissions that have come in, all of the submissions that came in, have emphasized this recommendation that Fiji be recognized as a Christian nation founded on Christian principles.

What becomes of other denominations, the submission of the churches, we must retain the understanding and the respect that is enshrined in the Bill of Rights. The freedom of a person to practice his or her religion. The fact that Fiji is recognized, we suggest, with respect, as a Christian nation founded on Christian principles, does not obliviate the respect that needs to be, the tolerance, the religious tolerance that needs to be afforded.

To other denominations, on the recognition of the Holy Bible as a foundational source of moral guidance, we believe that it is the Bible that is the source of all of our laws. As circumstances change, as people develop, then it is now an apt source of moral guidance to supplement the legal guidance of our laws of the state.

The first and second recommendations, we believe, as you will see commissioners, in our drafting, proposed drafting instructions in Schedule 3, we are suggesting that all of these be added or be part of the amendments to the preamble and the foundational clauses of the 2013 amended constitution.

The church acknowledges and accepts that your terms of reference is to review the 2013 constitution. This was what the

Supreme Court said and the church respects it. We agree that no one, including the commission, can repeal the 2013 constitution. However, we submit with respect that in your amendment deliberations, due to the voluminous and the various amendments that have come to the commission, we believe that it might be prudent that there can be a whole new constitution in accordance with your mandate as you amend each individual clauses or sections.

Our third recommendation, and this is a majority of the divisions came up, is to define marriage as the union of one man and one woman at the constitutional level. The church believes that it is insufficient that the definition is at the legislative level in the Births and Deaths and Marriages Act because eventually arguments can come on interpretation of the constitution that the right to privacy of what a man and a woman does within the confines of their four walls is a private matter.

We are looking at same-sex marriages, we are looking at LGBTQ plus community. What the church submits is that this needs to be elevated to a constitutional level so that we put it beyond all doubt. If the church submits that this nation be a Christian nation, then all other laws or all other parts of the constitution must uphold Christian principles.

Fourthly is the reinstatement of the great council of chiefs with autonomous powers. The inclusion of the great council of chiefs in the 1997 constitution through wide consultation and to be removed unilaterally without wide consultation like what we are currently doing as a nation in the church's view requires the commission to consider proposing to parliament that the GCC be elevated from the current regulation or subsidiary legislation enactment to the constitution. And this would encompass a number of issues.

The church supports the return of the bicameral parliamentary system, House of Representatives and the Senate. At what composition, we leave it to the state to decide, but what we feel that the bringing back the Senate will ensure that laws that govern affairs of the ITaukei is guarded or goes through rigorous checks and balances in parliament and also the appointment of the selection of the president under the 1997 constitution to be

brought back, also the nominees of the GCC into the Senate, the church submits that it must be returned.

So, in number five, our fifth recommendation, I have stated that the church submits or proposes the restoration of the bicameral parliament made up of the House of Representatives and the Senate.

And sixthly, we are submitting that Sunday be recognized as a day of worship and rest with only essential services permitted. We believe that this must be constitutionally enacted because it is an important factor on the essential doctrines of the church. On national identity, majority of the Methodist church divisions submit that all citizens are to be Fijians, the indigenous are to be the ITaukei.

It is a matter of national unity and it brings all races, all denominations, all people of Fiji together as we stand as one people, Fijians. The differentiation will be the indigenous ITaukei. Although a minority of the division submitted that Fijians be left to the indigenous Fijians and for others to be Fiji Islanders as was in the 1997 constitution, but we ask the commission through wider consultation to weigh and then submit to parliament whatever the majority feel should be the position, but the position of the church is that all citizens be Fijians.

Eighthly, we are asking the commission to recommend to parliament that there be a systematic review of all post-pre- and post-2013 decrees that were converted to acts of parliament. One major issue that we are facing in Fiji is the inconsistencies where we most times we jump to section two, to say that since the constitution is the supreme law of the country, this act is invalid. But we believe this should be cleaned up after the constitution is passed by referendum.

Ninthly, the codification of the 2025 supreme court amendment, we are just reminding the commission to recommend to parliament that this needs to be put into the relevant section of the constitution where there are 66% second and third reading in parliament in 50 plus one referendum that has been made law by the supreme court be codified.

Tenth, the membership of the church president, and we are not limiting it to the president, we are also asking the state to look at other heads of denominations to be part of constitutional advisory board for the future especially when we are also suggesting that the constitution be reviewed every 10 years. We looked at the 1990 constitution and we saw that the review period was seven years which led to the constitutional review commission, the Reeves commission in 1995, 1996, they completed their work. So, the proposal from the church is for every 10 years instead of seven and that the commission looks at the 1990 provision on this point.

Eleven we may have to reconsider. We withdraw 11. On 12, service in government, we believe it is ongoing, chaplains of various governmental institutions and we believe that that is sufficient but when we look at the point 14, the 14th proposal is on consultation. We believe that if a Methodist church could be consulted like what the commission has done in this instance in respect of legislative changes in the future.

Only one submission has been made by the church in respect of new legislation coming through and that is the online safety act amendment. The church was requested for their views especially when we look at child pornography and child exploitation. So, we are asking the commission to recommend that in the future that all denominations be invited into this kind of commission, this type of commission for submissions on laws that affect us.

Why we believe that the, going through the Vatuvonu decision versus the Ministry of Education case, it has put it beyond doubt that faith-based organizations, they cannot ever say in what principal or head of school is to be posted to their organizations. It is merit-based. I believe the ministries and the state has an open merit system.

So, all the churches, Methodist churches are asking for is consultation on the right of education, that there be a subsection that allows, that gives the church the right to be consulted in the affairs of faith-based schools. This is looking at not only the Methodist church but look at other denominations as well. Various commissions have been set up under the 2013 constitution and they have clauses or sections that talk about the state, the need for the state to put in place laws and funding

in respect of the running, the establishment running in the affairs of commissions.

So, we believe that the faith-based schools need, under the right of education, it needs to be spelled out in the constitution that they are to be consulted. With their agreement, then the posting to the schools can happen. If you look at section 127 of the constitution, the powers of the permanent secretary, the permanent secretary handles the employment matters of the education ministry with the agreement of the minister.

And we are asking that that also includes with the, in consultation with the faith-based schools administrators or for the Methodist church, we have the education secretariat, a specific secretary to education and also the headquarters of the Methodist church. While we are still on education, or still on religion and denominations involvement in the state, the church submits in 19 that there be established a dedicated government portfolio for government community development, religion, and multi-ethnic. That it be up to the state which portfolio the religion be included in, but we see in Papua New Guinea, we see in Singapore, we see many nations in the world have a specific portfolio for the ministry of religion.

Where the state, where the state by cabinet assignment includes this portfolio, it's up to the government of the day. However, we propose two. It's either included as part of the multi-ethnic affairs or it be part of the ministry of youth and sports. Community development, youth, sport, and religion. But it is important that all denominations be covered under the umbrella of this specific portfolio and all matters regarding religion be governed through this ministry. It ensures freedom of religion of all faiths and the faithful is not only protected but actively enabled and enhanced through government policy and programmatic support.

There have been suggestions from the church and it is our submission that there is, as is suggested by the Navatu, Suva, and Nadroga divisions, has always been the church's position on constitutional ban on gambling. And we know there is a gambling act and we know there is also a gaming, a gambling turnover tax act. So, we are asking the, this is something that will

need to come on the review of the various laws that were passed post 2000.

I think the gambling act is 2009, but the gambling turnover tax act I think is 91. So, there is a need for review. I think 2015 is currently being, on strengthening village bylaws for ITaukei communal protection, cultural preservation, or in traditional accountability, the church can see that the village is nowhere to be seen in the constitution. And that is the basis of the ITaukei people. All ITaukei people, 280,000 members of the Methodist church, plus between 280,000 to 320,000 members, we all belong to a village. And we submit that the village must be included in the constitution for the village bylaws to be effective and respected.

And this all goes back to corrective measures that we have also suggested, where we need, the state needs to put in place measures of discipline at village level, at education level, in the schools, elsewhere. Corrective measures in our submissions of the church is necessarily for our children. So, to strengthen the village bylaws, the church submits that there needs to be, that the ITaukei communal protection for villages be included in the constitution. The right to informed consent and medical freedom, balanced with public health. It's a, it's a, we understand that it's a tough ask looking at COVID as a case study, but we believe that this, this must be retained. And without informed consent, there should not be any forced medical procedures carried out on a person.

On 18, online protection for children, we are asking that this be constitutionalized as we are suffering from the effects of drugs, coupled with this harmful content and age-inappropriate social media that is engulfing our nation. We are suggesting that this online protection, we support moves, the church support moves for age limit to the opening of social media accounts, and we also support moves for children not to be exposed to such harmful content. Also, part of our submissions, the online safety act review.

And lastly, on the protection of land, fishing rights, indigenous resources and traditional knowledge to be inalienable. We are, the church is submitting that this is basically on ownership. Everyone is the right to use it, but the ownership through owner,

user, through processes to be governed by the state, but the ownership of minerals, ownership of the land, the airspace, basically six feet under. Be given to the landowners.

So, on those 20 recommendations, some that have, that are already being enforced in parliament. Our drafting instructions as in schedule three, actually seamlessly weaves these suggestions into the specific sections or chapters of the constitution that we are suggesting that the commission looks at in its amendment processes.

Due to the various recommendations that we have listed in over 10 pages of our submissions, we believe when we turn to the drafting instructions, it narrows down the issues chapter by chapter and section by section. To assist the commission in the overwhelming paperwork that is involved in these consultations. There are other additional supplementary proposals that I will not go into in detail, but they are in addition to the recommendations and they go deeper into explaining the 12 pillars that we have dealt with in our 20 recommendations.

So, to the chairman and the members of the commission, we have now gathered submissions from every division. We have presented the 20 consensus amendments from over 95% of the divisions, 24 supplementary proposals unopposed, one transparently noted divergence on national identity with both majority and minority positions recorded and a clear amend not repeal position.

The Methodist Church in Fiji urges the constitution review commission to adopt the consensus amendments as a package, give serious consideration to the supplementary proposals, note the minority identity position and if possible, conduct further targeted consultation to resolve it on the or allow parliament to decide based on the majority and to reject outright the repeal of the 2013 constitution, only the amendment.

The church believes that Fiji deserves a constitution that honors God, protects the Vanua, unites all citizens and secures a prosperous future for our children.

Mr. Valenitabua: Thank you Mr. Valenitabua. At the end of every session, we usually have questions to asks the submittees. I will ask my

fellow commissioners to asks Questions in relation to the submissions that has been given to us and we may also have questions which are not in your submissions.

Ms. Nailatikau: Thank you chair, gentlemen, and representatives of the Methodist Church and lady here today, thank you very much for your submission for particularly uplifting for us your consensus proposals, noting the subsequent or supplementary proposals as well as the divergent matter that you've raised as well as highlighting the importance of the submission. Highlighting for us your distinctive proposals.

This is indeed very helpful in assisting us with ascertaining the church's position in supplement to your written submission. Thank you sincerely. I wanted to raise something, wondering whether this may have been part of the supplementary discussions that the church had relating to the Bill of Rights.

We have been having wide consultations as you note across various communities, as well as here in Suva with various bodies and individuals with a wide range of perspectives on the Bill of Rights as it stands in the 2013 constitution. There is, there are submissions recognizing perhaps the broad limitations being placed on these rights, perhaps to put it simply providing rights but in word but not necessarily in substance. And there's also been a note on the progression of the number of rights to include socioeconomic rights for instance to housing to health to social security.

And I was wondering whether socioeconomic rights or related rights relating to the well-being of congregants of the Methodist Church, of course, if they featured in your discussions or what the church's approach might be in terms of the inclusion and recognition of socioeconomic rights, housing, health, sanitation, as well as social security, just as a few examples for your consideration. Thank you. Thank you.

Mr. Simione: I think there should be consideration in respect of socioeconomic rights. And whatever is available in the city, water, electricity, and this is across all rural areas, not only in iTaukei villages but also in the indo-Fijian villages. Whatever is available to someone who is living in the city must be available also to someone in the village. So, we are looking at adequate sanitation, we are looking

at sewage services, waste care, waste management systems, appropriate waste management systems to be in place, and the general well-being of a village, a rural area should be the same as the general well-being of a person in the city. It's not difficult, and the constitution must uphold that. On the limitation of certain rights, we believe that the commission is well equipped to understand these limitations and how these limitations need to be curtailed, or the limitations to remain in the constitution insofar as individual rights are concerned.

Rev.Ili Vunisuwai: Thank you. Right now, in the constitution, I don't see any clear demarcation of individual rights versus the communal rights and increased stability. Is there anything in the constitution that upholds a clear demarcation of rights in between the personal, individual, and community rights? Likewise, I would like, if there is a possibility of including in the constitution, let's take for example sewage in villages.

You may be aware that many of our villages in Fiji, of which the majority are Methodist, still, it's in a pit toilet. That's what Mr. Valenitabua has just raised. It's in towns and cities, so why not in the villages? Are they excluded? The majority of our members are out there in the village.

And what is the government doing in terms of constitution? Where is, in the constitution, that's right, the health development of our people in the outer islands as well as in the villages? If that could be part of the constitutional review, it would be much better. Thank you.

Dr. Gounder: Thank you, Chairman, and thank you members of the Methodist Church for your submission this morning. I must also acknowledge the comprehensive submission that the Methodist Church has made this morning, including the level of consultation that we have held within the church and the different divisions that make up the church. And this is commendable. This provides us with a very good picture of where the submission is coming from, and I want to thank you for that. Just on the last note, we have had a lot of discussion and debate around some of the rights, for example, right to housing and sanitation, right to adequate food and water.

We heard this a lot during the consultation for the formulation of the national development plan as well, and I'm not going to defend the government, but what I will say is that the national development plan recognizes these provisions in the constitution and makes very strong policy recommendations on ensuring that we expand the right to food and water as well as sanitation, both in urban and rural areas. Realistically speaking, it is usually a process over time in terms of allocation of resources, etc., but your point is taken very seriously in terms of the lack of sanitation and water in rural areas.

40% of people in rural areas still don't have access to clean water, and that is something that has been well recognized in the plan, and the plan provides a strategy as to how the government is going to expand these services for the next five years, but a lot of work still needs to be done, and this is a serious issue. We'll see how we can push this through the constitutional provision. We are considering that very seriously.

We have received the same submission this morning from the Fiji Council of Churches. We have received similar submissions from around the country as well, so thank you very much for highlighting this. We are going to look at this issue very seriously and how we can, through the provision of the constitution, make a further push for this right to be realized on the ground. While it appears here, we don't see this right materializing on the ground. Even access to transportation is an issue in many rural areas. Twenty years ago, we used to have regular bus services.

Now there is no transportation. People don't have a mechanism to travel, so you may have good health centers, but if the transportation is not there, then you are not able to access the right to healthcare as well because transportation is lacking, so these are some of the things the commission is going to consider very seriously. I also wanted to highlight on point number 14, which is the consultation with faith-based school administration.

I think that is a very important point. I was the chairman of the Sangam Education Board, and I also used to head the faith-based schools' organization which Methodist Church was a member of, Catholic Church was a member of as well, and we made this recommendation to the Ministry of Education that

there must be a consultation with the school management. We used to have this, but it seems that things have gone backwards, so we will see how we can enforce this particular submission that you have raised today, what would be the appropriate mechanism through which we can make this provision.

We have seen conflicts arising because of lack of consultation between the Ministry of Education and the school management. The Education Act, which has just been revised and passed by Parliament a few weeks ago, makes some provision for consultation with the school management and the school committees. We will look at how we can strengthen this provision that you have highlighted, but it's a very important point and it's taken on board.

Point number 18, the online protection, a very important submission as well. The Online Safety Act is being revised at the moment, so that provides an opportunity for the church to make submissions as to how we can incorporate there, but if you're asking for constitutional provision, we will see what we can do here. We already have a very strong, in my view, Bill of Rights for children.

For example, if you look at section 41.1D, it talks about protection of children from abuse. It can be amended to include online abuse, because at the moment it's mostly of the physical nature of the abuse. And as societies and economies change over time, our mode of interaction changes, therefore the way we do things changes as well.

So, we strongly take that submission as well, apart from physical abuse, how can we protect our children from online abuse. We have also received submissions around age-inappropriate social media. The government currently is looking at a bill which will ban social media for children below a particular age threshold, so work is in progress and the church could find out an opportunity to make a submission there as well, but we will certainly take on board these submissions. Finally, thank you very much for your submission this morning. Affirming that no one is above the law. That is the proposal from the church members.

And I just wanted to highlight that there has been a lot of submissions on the immunity clause. The church is in support of

the removal of the immunity clause as a detriment to future illegal overthrow of government. In fact, we are concerned about that, and I think it is well taken. Coups in itself is a form of robbery and violence, the highest form, and we don't want to rear our children to experience this once again in our future generations. Thank you.

Mr. Valenitabua: Thank you, Dr. Gounder. Thank you, Ms. Nailatikau. I have listened to the oral submissions made on behalf of the Methodist Church in Fiji this morning. I'll just go through your recommendations. I'll start with number four, the reinstatement of the Great Council of Chiefs with autonomous powers. That is a submission which has been repeated over and over again all over the places where we have been to.

So, there is a general strong call for the return of the Great Council of Chiefs, together with its membership and together with its purpose. And for the itaukei, the main purpose is for the GCC, or the Great Council of Chiefs, or the BLV, to be the watchdog over matters or issues that involve iTaukei's. Now, that does not exclude others from the watchful eyes of the chiefs.

The chiefs, as we know, look around and they also watch over issues that are raised in relation to the other ethnic groups which we have here in Fiji. That would follow with the Senate, which is number five. That goes with the Senate, number five.

These two were raised together. Bring in the GCC and also reinstate the Senate so that members from the GCC could also sit in the Senate. There have been submissions which oppose the return or the reinstatement of the Senate, but we will have a deliberation on that and we will see how to go about this issue, the return of the Senate.

The national identity, another hot issue. There have been suggestions and recommendations from grassroots people, our people, that the name Fijian be for iTaukei only, for natives. I'm hearing the church, which has the majority members of iTaukei's, welcoming the use of the word Fijian or the name Fijian for all citizens of the country.

Do you confirm that?

Mr. Simione: Yes.
Rev.Ili Vunisuwai: Yes.

Mr. Valenitabua: Thank you. So, it's something that we will consider very, very well. We will properly consider it. And I thank the church for this stance.

The codifying of the 2025 Supreme Court amendment resolves. Yes, that would have to be done because the Supreme Court had even rewritten the section 160, I think, the amendment. They had rewritten it in their judgment, in the opinion. So that has to be uplifted from the opinion of the Supreme Court to the Constitution itself. You know, reducing 75 percent to two third and also the 50 plus one percent for the referendum. That is within the judgment or the opinion. It just has to be codified into the Constitution as part of the amendment. And bylaws, village bylaws, a new issue.

This is a new matter which has been raised by the church. We have been asked over and over again that village bylaws be introduced over and over again. Now we are being told that or we are being asked to consider putting something about villages into the Constitution.

So, we constitutionalize the village itself because that is where the communities live, the villages. And we thank the church for that. This is the first time it has been raised with us.

We have been looking at customary laws. In our term of reference, we have been told to look at customary laws, if you could include it, if you can include it in the 2013 Constitution. Now, under customary laws, we might have to put villages, which has been suggested to us this morning.

We will consider that during the deliberations. When we put in customary laws, then we look at everything about it, okay, culture, tradition, handicraft, and so forth, together, under the customary laws, including the villages. But we will see how we can codify the village setting into the Constitution.

The portfolio for community development, religion, and multi-ethnic affairs, we used to have them, the Department of Multi-

Ethnic Affairs or the Ministry. It's still a ministry. So maybe we can add that.

Maybe we can add that or the laws, the powers that be, they can add community development and religion into multi-ethnic affairs. Protection of land, qoliqoli, indigenous resources, and traditional knowledge to be inalienable. Yes, a lot of submissions have been given to us in relation to the land, ownership, qoliqoli ownership, and ownership of minerals under the soil.

Like I heard your lawyer stating, from the sky down to the middle of the earth, that is what we have been told to consider putting into land ownership. Section 29 or Section 28 deals with ownership of ITaukei land. That is all. All native lands are owned by ITaukei, but nothing in relation to the qoliqoli, and the minerals are owned by the state, as we now know. qoliqoli is owned by the state. We only have user rights.

So, thank you very much for that, for that submission on paragraph 20. In relation to the last point that was raised, the immunity, in your proposal number 14, the church has submitted that the immunity clause be removed from the 2013 Constitution and that we prohibit its inclusion in future constituencies, affirming that no one is above the law. A lot of submissions have been given to us in relation to that, and we welcome this from the church. However, there is something that we have to think about. Number one is this. The immunity clause is there, and it covers our soldiers, and our police officers, and our prison officers, and our public servants. The judges themselves did not dare touch the immunity. This is the judges in the Supreme Court. From what I remember of what they wrote down in the statement, in the judgment, they said it's better not to look back and cause trouble. Rather, we have to look forward and live in peace and progress. I believe we all know what that means. If we remove the immunity clause or we touch the immunity clause, then we might be causing trouble because some of those who are covered are still alive and well today.

So, it has been suggested to us that we look forward, make a law that from now on, from the date of the amended Constitution onwards, if there is any other coup d'etat or any other serious offense, then no immunity is to be given. That is an alternative to removing the immunity clause, but we will see what we can

do about the immunity clause. We are looking at democratic living.

We are looking at peaceful living. We are looking at multiracialism and all that. We are looking at social inclusiveness.

Do we want to shake the tree? That is a question that is at the back of our minds right now. Now, that is just a summary or some comments in relation to your proposals and your recommendations this morning. Does anyone else have anything that you would like to add after hearing me?

Mr. Simione: Thank you, Chairman. On the removal of the immunity clause, that is a proposal, but how it is going to be codified, we are leaving it to the Commission to look at the words that need to be put in the recommendation. We accept the fact that the Supreme Court has expressed reservations. However, the thinking behind this from the Church is that it is inclusion in the future. We are looking to the future. Most of our members are also members of the security forces, and we had expressly stated the prohibition of its inclusion in the future. We are looking at ways in which we can live together peacefully for the future and not shake the tree.

That is something that we leave to the Commission and to government when considering the draft constitution. On behalf of the Methodist Church in Fiji, we pray that your deliberations will be fruitful in the next few weeks as you draw close to your due date. We hope and pray that God will continue to grant you good health and the knowledge and the wisdom in order to carry out your work as a commissioner and your mandate from the State. With those words, we have no further submissions to make, and we thank you, sir and madam.

Mr. Valenitabua: I now bring this consultation session to the end and to a close, but before I close, the Church might be wondering what will happen after this. We've had consultations all around Fiji.

We have about two weeks ahead of us to complete the consultations here at level nine, and then we will be sitting down for deliberations. What happens during the deliberations, we will collate or our lawyers are now collating all the submissions from

all over the country, and it's a tough job they're doing. And after that, we will have the submissions analyzed, and then we will identify the themes and issues which need to be addressed and which might be included in the constitution, as is the amended constitution.

We are also required by His Excellency to write a report and recommendations, and in addition to the recommendations, we are going to be drafting an amended constitution so that the recommendations can be reflected in the draft. Now, all these three documents, the report, the recommendations, and the draft constitution will then be presented to His Excellency on the 31st of August, 2026. We'll be joined by a constitutional legal drafter soon.

We have met with our constitutional lawyer from Australia. He has gone back and will return to Fiji sometime soon. We'll be working together, together with other lawyers in Fiji, and then after we have submitted our report and our recommendations and the amended constitution to His Excellency, the President, he will then give the amended constitution to the government, to cabinet.

The government will then prepare papers in the form which is suitable for presentation to Parliament, and your lawyer might have advised you that when it reaches Parliament, there will be three readings. The first reading in Parliament is usually just an introduction of the bill introducing the amended constitution. The second reading and the third readings are the most important ones, because in the second reading there will be some debate between opposition and government.

They will scrutinize this bill. Similarly, with the third reading. Now, in the second reading, after they had debated or talked about it, they will have to vote whether they agree that they should pass this to the third reading, pass the amended constitution, the draft of it to the third reading.

Two-thirds need to vote for that, in favor of it. If the two-thirds of the members of Parliament vote in favor, then the bill will proceed to the third reading. At the third reading, same thing, they might review it again, because the bill would have gone through the select committee and other committees. They

would review it and then again vote. If two-thirds vote in favor, then the bill proceeds further. That is when it will come back to the people through the form of a referendum.

We are hoping that only one question will be on the referendum paper, and the question would be, do you agree that this amended constitution should become law of this country, the supreme law of the country? And people would have to take yes or no. If the majority of the people who ticked, not registered, who ticked, if the majority of them say yes, then we will have a new constitution or an amended constitution. However, if the majority decide to tick no, then we will have to stay with the 2013 constitution as it is now.

So, we are hoping that we will finish our work on the 31st of August. The rest would be left to the politicians to continue with the work and hopefully pass the constitution as an amended constitution of the 2013 one. That is where we are heading, for the church's information and for you gentlemen, so that your lawyer might have explained this to you, but you are hearing it from the commission now.

Now, with that explanation, and I thank you again for this morning, the comprehensive submission as Dr. Gounder has stated, and the new issues which have been raised. We are going to be deliberating and we will consider them. With those few words, we thank you very much, and I bring this consultation session to a close. Thank you.

----------End of Session [30-6-2026] ----------

Methodist Church in Fiji and Rotuma (MCIF)

FORMAL WRITTEN SUBMISSION TO THE CONSTITUTIONAL REVIEW COMMISSION

UNIFIED RECOMMENDATIONS FOR THE AMENDMENT OF THE 2013 CONSTITUTION

Submitted to the Standing Committee of the MCIF

Finalised: 30 June 2026

1. Summary

a. Pursuant to the authority and resolution of the May Standing Committee meeting, the MCIF has now completed its consultation across all 59 divisions. *[See Schedule 1 for the Submissions by each division that were received by the MCIF Headquarters].*

b. Overwhelming unity exists on 19 core constitutional amendments, supported by more than 95% of divisions, which collectively codify the 12 Constitutional Pillars of the MCIF. These include:

   i. Fiji as a Christian Nation founded on Christian principles.

   ii. Preamble acknowledging God as Supreme Creator, and acknowledging the 1874 Deed of Cession, with specific biblical reference (Philippians 2:10-11).

   iii. Constitutional definition of marriage as one man and one woman.

   iv. Reinstatement of the Great Council of Chiefs (GCC) and a bicameral Parliament (House of Representatives plus Senate).

   v. Sunday observance as a day of worship and rest.

   vi. Systematic review of all pre-2013 decrees and laws converted into Acts to be consistent with the new Constitution to be enacted including citizenship granted during the period post-2000 and pre-2013 Constitution.

   vii. Democratic amendment thresholds (66% Parliament + 50%+1 referendum).

   viii. Strengthened village by-laws, medical freedom, online child protection, ban on casinos, return of church-run schools, and many more.

c. One issue remains where a minority of divisions hold a different view: the use of the term "Fijian".

   i. **Majority position:** "Fijian" as a common civic identity for all citizens; "iTaukei" for indigenous people.

   ii. **Minority position:** "Fijian" reserved exclusively for iTaukei; all citizens collectively "Fiji Islanders" for international representation.

d. The MCIF's official submission adopts the majority compromise wording but respectfully records the minority view and invites the CRC to consider both options through further consultation.

e. The Church's official position remains **amendment** of the 2013 Constitution, not repeal as was held by the Supreme Court in the 2013 Constitution reference although as a Schedule to the enabling Act, amendment of the 2013 Constitution could also mean a total substitution of the 2013 Constitution with the amended Constitution the CRC is holding consultations over.

f. The consultation process has been enriched by contributions from theological scholarship and grassroots reflection, including from the Davuilevu Theological College community. Their collective wisdom—particularly the articulation of the "three-legged stool" framework of leadership (Traditional, Religious, and Government) articulated by Ratu Sir Lala Sukuna, the call for a Treaty safeguarding landowners modelled on the Treaty of Waitangi, the removal of the immunity clause, the recognition of 12 October 1835 as the foundational date of Christianity in Fiji, and the requirement that leaders of the nation be persons of integrity with a clean record—is expressly woven into the pillars and drafting instructions below.

2. Core Consensus Recommendations (Supported by >95% of Divisions)

The following 20 proposals reflect the 12 Constitutional Pillars, forming a comprehensive national framework that is God-centred, indigenous-secure, and united.

	RECOMMENDATION	[illegible]
1	Fiji recognised as a Christian Nation founded on Christian principles (as per Pillar 1 of the Church's 12 Pillars), inclusive of the formal recognition of the Holy Bible as a foundational source of moral guidance.	*All*
2	Preamble: acknowledge God as Supreme Creator, the 1874 Deed of Cession, and include Philippians 2:10-11 (Suva and Nadroga).	*All*
3	Define marriage as union of one man and one woman (constitutional level).	*All*
4	Reinstatement of the Great Council of Chiefs (GCC) with autonomous powers.	*All*
5	Restore bicameral Parliament: House of Representatives + Senate.	*Lautoka, Suva, Nadroga*
6	Sunday as recognised day of worship and rest (essential services permitted).	*Bau, Makoi, Nadroga*
7	National identity: majority position - all citizens "Fijian"; indigenous "iTaukei" (compromise wording below). Minority position recorded separately.	*Majority: Bau, Suva, Vatukarasa, etc. Minority: Nadroga*
8	Systematic review of all post-2013 decrees converted into Acts.	*All*

	RECOMMENDATION	SUPPORTING MCIF DIVISIONS
9	Codify 2025 Supreme Court amendment thresholds (66% Parliament + 50% +1 referendum).	*Bau, Beqa, Nausori, Nadroga*
10	MCIF President to be member of any Constitutional Advisory Board.	*Lautoka, Nadroga*
11	Religious membership certificate as optional employment reference.	*Lautoka, Vatukarasa*
12	Methodist ministers may serve in government frameworks, with fair support.	*Lautoka*
13	Constitutional ban on casinos and gambling.	*Navatu, Suva, Nadroga*
14	The Ministry of Education must consult Faith-based school administration and the Education Secretariat of the MCIF specifically, in matters concerning the affairs of the schools. Case on point - Vatuvonu v Ministry of Education.	*Nabukebuke, Nausori, Suva*
15	Parliamentary sessions to begin with Christian prayer (with respect for other faiths).	*Serua, Suva*
16	Strengthen village by-laws for iTaukei communal protection, cultural preservation, order, and traditional accountability.	*Vatukarasa, Suva, Nadroga*
17	Right to informed consent and medical freedom, balanced with public health.	*Suva, Raiwaqa, Nadroga*
18	Online protection for children: restricts harmful content, pornography, age-inappropriate social media.	*Suva, Raiwaqa, Nadroga*
19	Establish a dedicated government portfolio for Community Development, Religion, and Multi-Ethnic Affairs either as a standalone Ministry... or by incorporating these responsibilities into the existing Ministry... This will ensure that the freedom of religion of all faiths and the faithful is not only protected but actively enabled and enhanced through government policy and programmatic support.	*Suva*
20	Protection of land, qoliqoli, indigenous resources, and traditional knowledge inalienable.	*All, strongly emphasised by Nadroga*

Compromise wording for national identity (majority position)

Accepted by Bau, Suva, Vatukarasa, and over 20 divisions:

> "All citizens of Fiji share the common civic identity of 'Fijian' (Kai Viti). The indigenous people of Fiji, who are the original inhabitants and traditional owners of the land, are recognised as 'iTaukei' a term denoting their ancestral, customary, and spiritual connection to the vanua. Nothing in this provision shall prevent any citizen from identifying with their ethnic, cultural, or religious heritage."

Minority position (Nadroga)

Reserve "Fijian" exclusively for iTaukei; use "Fiji Islanders" for all citizens in international representation.

The MCIF does not reject this out of hand but notes that the majority favours the compromise wording. We ask the CRC to test both through broader consultation. The MCIF acknowledges the Nadroga Division's proposal that while 'Fijian' remains a civic identity, 'Fiji Islanders' be adopted as the formal designation for all citizens when representing Fiji internationally, providing a practical, unifying bridge for national identity.

3. Divisions' Distinctive Contributions

Majority of the submissions by the divisions reinforce and add clarity to several areas:

i. Explicit constitutional recognition of the Holy Bible as a foundational source of moral guidance.

ii. "Fiji Islanders" for external representation - a practical solution that may complement the domestic identity debate.

iii. A SWOT analysis (already present in Suva and Nadroga's submission) - useful for the CRC's process planning. *[See Schedule 2 herein]*

iv. Strong emphasis on collective rights of indigenous people as distinct from individual rights.

v. Clarity on village by-laws operating in harmony with constitutional human rights protections - addressing a potential concern.

All of these have been incorporated into the consensus table or the supplementary list below.

Theological and Historical Frameworks

The MCIF's submission is further strengthened by the following frameworks and proposals, which emerged from the consultation process and are now adopted as part of the Church's unified position:

CONTRIBUTION	DETAILS
i. The Three-Legged Stool Framework	This framework - articulated by Ratu Sir Lala Sukuna - recognises the distinct yet complementary responsibilities of Traditional Leaders (stewardship of the vanua), Religious Leaders (guidance of the faith community), and Government Leaders (administration of the State). Each sphere must be clearly demarcated yet work in harmony for the service of the people, safeguarding the image and dignity of leadership across all domains. *(proposed by Davuilevu Theological College)*
ii. Treaty of Waitangi Model	The MCIF recommends the establishment of a Treaty safeguarding landowners, modelled on the Treaty of Waitangi in New Zealand, to guarantee equity for landowners in all matters of land and resource use. *(proposed by Davuilevu Theological College)*
iii. Historical Recognition	The MCIF calls for constitutional recognition of 12 October 1835 as the date of the arrival of Christianity in Fiji, acknowledging the foundational contribution of Methodist missionaries in both pre-colonial and post-colonial Fiji. *(proposed by Davuilevu Theological College)*
iv. Governance Integrity	The MCIF affirms that no one is above the law, that the immunity clause must be removed, and that leaders of the nation must be persons of integrity with a clean record. *(proposed by Davuilevu Theological College and the Nadroga Division)*
v. Periodic Review	The MCIF proposes a mandatory constitutional review every 10 years to ensure relevance and responsiveness to the changing needs of the nation. *(proposed by Davuilevu Theological College)*
vi. Presidential Pardon at Jubilee	The MCIF proposes institutionalising the Presidential Pardon to be exercised at every national Jubilee, reflecting the biblical principle of restoration and grace. *(proposed by Davuilevu Theological College)*
vii. Gender and Citizenship	The MCIF affirms the constitutional recognition of only two sexual genders (Male and Female) and calls for a review of the definition of citizenship, particularly regarding dual citizenship. *(proposed by Davuilevu Theological College)*
viii. Mineral Rights	The MCIF proposes the return of ownership of natural minerals, both above and below six feet of land, to the landowners. *(proposed by Davuilevu Theological College)*
ix. Corrective Behaviour Management	The MCIF proposes the introduction of Corrective Behaviour Management (CBM) as a recognised form of discipline for children, promoting restorative and constructive approaches. *(proposed by Davuilevu Theological College)*

CONTRIBUTION	DETAILS
x. Qoliqoli Bill	The MCIF calls for the re-tabling of the Qoliqoli Bill for national discussion and inclusion in the Constitution, extending its scope beyond reef boundaries to its offshore origin, ensuring equitable stewardship of marine resources. *(proposed by Davuilevu Theological College)*
xi. Ministry of Community Development, Religion, and Multi-Ethnic Affairs	The MCIF calls for a dedicated government portfolio to protect, enable, and enhance freedom of religion for all faiths. *(proposed by Suva)*

4. Additional Supplementary Proposals (Unopposed, for CRC Consideration)

These come from Suva, Vatukarasa, Nadroga, and others; no division opposes them.

	PROPOSAL	SOURCE DIVISION
1	Reduce presumption of death from 7 to 5 years.	*(proposed by Suva Division)*
2	Special marriage license to waive 21-day notice period in compassionate circumstances.	*(proposed by Suva Division)*
3	Forfeiture of retirement benefits for convicted former Presidents and Prime Ministers.	*(proposed by Suva Division - Raiwai)*
4	Recognition of customary iTaukei land-use transfers (non-lease) where ownership remains with the landowning unit.	*(proposed by Suva Division - Raiwai)*
5	Right to access government information, subject only to reasonable limitations.	*(proposed by Suva Division - Raiwaqa)*
6	Digital privacy and data protection, including protection against unlawful surveillance and misuse of personal information.	*(proposed by Suva Division - Raiwaqa)*

	PROPOSAL	SOURCE (PROPOSER)
7	Whistleblower protection for those who report corruption, abuse of power, or unlawful conduct in good faith.	*(proposed by Suva Division - Raiwaqa)*
8	Right to good administration - lawful, reasonable, efficient, and procedurally fair administrative action.	*(proposed by Suva Division - Raiwaqa)*
9	Future generations clause - State obligation to safeguard the interests of future generations in managing natural resources and democratic institutions.	*(proposed by Suva Division - Raiwaqa, and Nadroga Division)*
10	Rights of persons with disabilities - full and effective participation on an equal basis, with State promotion of accessibility and inclusive education.	*(proposed by Suva Division - Raiwaqa)*
11	Parental right to reasonable discipline (not cruel or demeaning) - parents recognised as primary caregivers and educators.	*(proposed by Vatukarasa Division, and Suva Division - Raiwaqa)*
12	Recognition of the Holy Bible as a foundational source of moral guidance for leadership, governance, and national development.	*(proposed by Nadroga Division)*
13	"Fiji Islanders" for external / international state representation, complementing the domestic identity debate.	*(proposed by Suva Division - Raiwaqa, and Nadroga Division)*
14	Remove the immunity clause from the 2013 Constitution and prohibit its inclusion in future constitutions, affirming that no one is above the law.	*(proposed by Davuilevu Theological College)*
15	Establish a Treaty safeguarding landowners, modelled on the Treaty of Waitangi in New Zealand, to guarantee equity for landowners in all matters of land and resource use.	*(proposed by Davuilevu Theological College)*
16	Mandate a constitutional review every 10 years to ensure relevance and responsiveness to the changing needs of the nation.	*(proposed by Davuilevu Theological College)*
17	Empower the Great Council of Chiefs (GCC) to nominate candidates for the Presidency of the Republic of Fiji.	*(proposed by Davuilevu Theological College)*
18	Institutionalise the Presidential Pardon to be exercised at every national Jubilee, reflecting the biblical principle of restoration and grace.	*(proposed by Davuilevu Theological College)*

	PROPOSAL	SOURCE (PROPOSED)
19	Return ownership of natural minerals (above and below six feet of land) to the landowners, recognising traditional and collective rights to all resources within customary boundaries.	*(proposed by Davuilevu Theological College)*
20	Constitutionally recognise only two sexual genders: Male and Female.	*(proposed by Davuilevu Theological College)*
21	Introduce Corrective Behaviour Management (CBM) as a recognised form of discipline for children, promoting restorative and constructive approaches that respect the dignity of the child.	*(proposed by Davuilevu Theological College)*
22	Re-table the Qoliqoli Bill for national discussion and inclusion in the Constitution, extending its scope beyond reef boundaries to its offshore origin, ensuring equitable stewardship of marine resources.	*(proposed by Davuilevu Theological College)*
23	Recognise 12 October 1835 as the foundational date of the arrival of Christianity in Fiji, acknowledging the contribution of Methodist missionaries in both pre-colonial and post-colonial Fiji.	*(proposed by Davuilevu Theological College)*
24	Establish a dedicated government portfolio for Community Development, Religion, and Multi-Ethnic Affairs... to ensure that the freedom of religion of all faiths and the faithful is not only protected but actively enabled and enhanced through government policy, programmatic support, and interfaith engagement.	*(proposed by Davuilevu Theological College and Suva)*

5. Clarification on "Repeal vs. Amend"

The overwhelming majority of divisions support amendment. The MCIF's official position remains: The 2013 Constitution shall be **amended, not repealed**. In amending the same, the MCIF acknowledges and supports the wide-consultation of the CRC, and prays as a Church for God's steady guidance and protection over your lives, your families and your processes.

6. Conclusion and Request

a. The MCIF has now gathered submissions from every division. We present:
   i. 19 consensus amendments (supported by >95% of divisions);

ii. Over 24 supplementary proposals (unopposed);

iii. One transparently noted divergence (national identity) with both majority and minority positions recorded; and

iv. A clear amend not repeal position.

b. We urge the Constitution Review Committee to:

i. Adopt the consensus amendments as a package.

ii. Give serious consideration to the supplementary proposals.

iii. Note the minority identity position and, if possible, conduct further targeted consultation to resolve it or allow Parliament to decide based on the majority.

iv. Reject outright the repeal of the 2013 Constitution.

c. Fiji deserves a Constitution that honours God, protects the Vanua, unites all citizens, and secures a prosperous future for every child.

Vinaka vakalevu. God bless Fiji.

Signed:

Rev. Dr Jolami Lasawa
General Secretary, MCIF

30/06/2026.

SCHEDULE 1 - SUBMISSIONS FROM ALL DIVISIONS

[Copies of original division submissions to be inserted as appendices]

SCHEDULE 2 - SWOT ANALYSIS

To ensure this review process remains verifiable and realistic, we present a structural assessment of the current constitutional review environment:

STRENGTHS	WEAKNESSES
• Broad-based consultation executed through established vanua, church networks, and local communities. • High levels of engagement from diverse social stakeholders. • Ready availability of technical and constitutional legal expertise. • Expanding public and civic awareness regarding critical constitutional issues.	• Compressed timelines allocated for comprehensive national consultation. • Structural inability to exhaustively review every provision of the 2013 text. • Insufficient public literacy regarding highly complex constitutional and legal matters. • Direct resource and budgetary constraints limiting rural outreach.
OPPORTUNITIES	**THREATS**
• Mobilising massive grassroots and church-level civic participation. • An unprecedented window to permanently solidify indigenous rights and traditional structures. • The historic opportunity to constitutionally reaffirm Fiji's core Christian identity. • The structural opportunity to restore the Great Council of Chiefs (GCC) as the highest autonomous traditional authority, ensuring a bicameral legislative balance that protects indigenous governance. • Utilising oral and written submissions to deepen long-term civic engagement.	• External disruptions including natural disasters, economic volatility, or public health emergencies. • Political polarisation or organized misinformation undermining public trust. • External geopolitical influences or conflicting treaty obligations disrupting local sovereignty. • Electoral shifts resulting in an abrupt change of government, leading to the dissolution of the commission and cancellation of recommendations.

SCHEDULE 3: DRAFTING INSTRUCTIONS

The MCIF have prepared the following Drafting Instructions to assist the Constitutional Review Commission (CRC) in translating the 12 Constitutional Pillars into formal, enforceable constitutional provisions. These instructions are designed to be presented as a formal attachment to the Methodist Church in Fiji's (MCIF) submission.

Subject: Instructions for the amendment of the 2013 Constitution of the Republic of Fiji to reflect the 12 Constitutional Pillars of the MCIF.

I. Preamble and Foundational Clauses

a. **Directive:** Amend the Preamble to explicitly acknowledge the sovereignty of Almighty God over the Republic of Fiji.

b. **Specific Inclusion:** Incorporate the text of Philippians 2:10-11 as a foundational spiritual declaration.

c. **Legal Recognition:** Insert a provision recognising the Holy Bible as a foundational source of moral guidance for the interpretation of national laws, leadership, and public policy, while maintaining the separation of church and state in administrative governance.

d. **Historical Recognition:** Insert a provision in the preamble or elsewhere in the text recognising 12 October 1835 as the date of the arrival of Christianity in Fiji, and acknowledging the foundational contribution of Methodist missionaries in both pre-colonial and post-colonial Fiji.

II. Indigenous Rights and National Identity

a. **Status:** Codify the status of the i Taukei as the indigenous people of Fiji, possessing collective, permanent, and inalienable rights to their land, qoliqoli, and natural resources.

b. **Identity Nomenclature:** Amend the definition of "Fijian" to denote the i Taukei. For all external/ international state representation, adopt the designation "Fiji Islander." Ensure the Constitution explicitly permits all citizens to maintain their specific ethnic, cultural, and religious identities alongside this civic designation.

c. **Treaty Safeguarding Landowners:** Establish a Treaty safeguarding landowners, modelled on the Treaty of Waitangi in New Zealand, to guarantee equity for landowners in all matters of land and resource use, ensuring that systemic injustices against indigenous landowners are abolished.

III. Traditional Institutions and Legislative Architecture

a. **Restoration of the GCC:** Amend the Constitution to reinstate the Great Council of Chiefs (Bose Levu Vakaturaga) as an autonomous, constitutionally protected body. Define its mandate to include advising the State on all legislation affecting indigenous affairs, customs, and traditional governance. Empower the Great Council of Chiefs (GCC) to nominate candidates for the Presidency of the Republic of Fiji.

b. **Bicameralism:** Repeal the current unicameral system and establish a bicameral Parliament consisting of:

   i. House of Representatives: Elected via democratic suffrage.

   ii. Senate: Comprising representatives who provide oversight on indigenous and national heritage matters.

c. **Periodic Constitutional Review:** Insert a provision mandating a constitutional review every 10 years to ensure the Constitution remains relevant and responsive to the evolving needs of the nation.

IV. Family, Social Values, and Digital Protections

a. **Marriage:** Amend the Constitution to define marriage exclusively as the union of one man and one woman.

b. **Parental Rights:** Explicitly protect the right of parents as the primary caregivers and educators of their children.

c. **Corrective Behaviour Management (CBM):** Authorise Parliament to introduce and regulate Corrective Behaviour Management as a recognised form of discipline for children, promoting restorative and constructive approaches that respect the dignity of the child.

d. **Digital Safeguards:** Authorise Parliament to enact specific legislation restricting children's access to pornography and harmful social media content, ensuring child protection is a constitutionally recognized state interest.

V. Medical Freedom and Integrity

a. **Bodily Autonomy:** Insert a guarantee of "Informed Consent" as a fundamental right regarding any medical intervention.

b. **Protections:** Constitutionally recognise the right of citizens to make medical decisions based on religious convictions or legitimate medical exemptions, ensuring that public health responses are proportionate, evidence-based, and respect individual dignity.

VI. Integrity and Independent Institutions

a. **Governance:** Reinforce the independence of the Judiciary, Electoral Commission, and Anti-Corruption agencies.

b. **Public Stewardship:** Codify that public office is a trust, requiring the exercise of integrity, honesty, and accountability as fundamental legal duties.

c. **Removal of Immunity Clause:** Remove the immunity clause from the 2013 Constitution and prohibit its inclusion in future constitutions, affirming that no one is above the law.

d. **Leadership Integrity:** Require that leaders of the nation be persons of integrity with a clean record, embodying the principles of honesty, accountability, and service.

e. **Three-Legged Stool Framework:** Recognise the distinct yet complementary responsibilities of Traditional Leaders (stewardship of the vanua), Religious Leaders (guidance of the faith community), and Government Leaders (administration of the State). Each sphere of leadership should be clearly demarcated to ensure roles do not overlap or conflict unnecessarily. Their sole basis of integration is their shared service to the people of Fiji, thereby safeguarding the dignity and image of leadership across all domains.

f. **Ministry of Community Development, Religion, and Multi-Ethnic Affairs:** The CRC is instructed to consider, and the MCIF recommends, the establishment of a dedicated government portfolio whether as a standalone Ministry... or by incorporating these responsibilities into the existing Ministry... The purpose of this portfolio is to ensure that the freedom of religion of all faiths and the faithful is not only constitutionally protected but actively enabled and enhanced through government policy, programmatic support, interfaith dialogue, and community development initiatives.

VII. Jubilee and Restoration

a. **Presidential Pardon:** Institutionalise the Presidential Pardon to be exercised at every national Jubilee, reflecting the biblical principle of restoration, grace, and national reconciliation apart from the continuous exercise of pardon in the current legal framework.

b. **Qoliqoli Bill:** Authorise Parliament to re-table and enact the Qoliqoli Bill, extending its scope beyond reef boundaries to its offshore origin, ensuring equitable stewardship of marine resources.

c. **Mineral Rights:** Return ownership of natural minerals, both above and below six feet of land, to the landowners, recognising their traditional and collective rights to all resources within their customary boundaries.

Note on Implementation: To facilitate the CRC's work, the MCIF recommends that the CRC utilises structural comparisons to understand how the current unicameral system limits the checks and balances necessary for the indigenous protections the MCIF advocates. These drafting instructions provide the CRC with a clear, legal roadmap. When implemented, they will transition the MCIF's 12 Pillars from a set of communal aspirations into a verifiable legal framework that aligns with the principles of constitutional democracy.

Electoral Commission (EC)& Fijian Elections Office (FEO)

Election and Electrol Commission
Date-30-6-2026

Mr. Valenitabua: Ladies and gentlemen, members of the Electoral Commission, I believe, Elections Office, thank you very much for this afternoon, for attending before the Constitution Review Commission. We welcome you. We know that you are here in full force, and we are happy about that.

We anticipate that we will be hearing significant submissions from the Commission this afternoon. Before you this afternoon are three Commissioners, in Ms. Merewalesi Nailatikau on my right, and Dr. Neelesh Gounder on my left. I am the Chairperson, Sevuloni Valenitabua

The Commission initially consisted of seven Commissioners, and one had resigned due to work commitment. So, six of us were left. There are three here this afternoon, and three have just landed on the island of Rotuma to go and do consultations there with a team from the Secretariat.

The Commission, as you might have known, was appointed by His Excellency the President to review the 2013 Constitution. We have been asked questions along the way whether we can change, we can remove the 2013 Constitution and write a new one. Unfortunately, we do not have that mandate. Our terms of reference do not allow us to do that. Going by the Constitution, review means we can amend. So that is what we are looking at, to produce an amended Constitution for the country.

One of the terms of reference was for the Commission to go around the country and collect submissions, views and submissions and recommendations from members of the nation, from the citizens, from the grassroots people of our nation, so that we can have varying views and recommendations about what should be and what should not be in the amended Constitution. That piece of terms of reference has taken us through the Lau group, the Lomaiviti group, Vanua Levu, Viti Levu and adjacent islands including Yasawa in the west of Fiji, Kadavu, Beqa, and we have collected a lot of submissions. We were just complying with the terms of reference after our return from the public consultations around the islands and around Viti Levu and Vanua Levu.

We started here again yesterday, hearing consultations from interested associations, the churches, lawyers, and anticipating to receive submissions from ministries in the government from tomorrow onwards. So, for the next two weeks, we will be again sitting here to hear submissions from interested ministries and associations and individuals. That is what we have been doing and we are glad that we have the elections over here this afternoon to submit recommendations and submissions to the Commission.

We welcome you and we anticipate that we are going to be receiving some very important and significant suggestions and submissions from you ladies and gentlemen this afternoon.

You will note that the ladies and gentlemen from the media is here. They have been reporting on our work from day one. They travelled with us around the country, over the seas, over the highlands, and they are here again this afternoon. So, feel free to make submissions and we will be listening and recording whatever is stated. We have got recorders, we have recording equipment, and we will refer to transcribed copies of the submissions later when we sit down and deliberate on the submissions that we have gathered.

With that short introduction, I now open the consultation session this afternoon and I now hand over the mic and the floor to you ladies and gentlemen from the Elections Office. Thank you.

Judge Ratuvili: Thank you very much, Chairperson Valenitabua, Ms. Nailatikau, Dr. Gounder. Thank you for the opportunity to appear before you. I am Usaia Ratuvili I am the Chairperson of the Electoral Commission. With me are my fellow Commissioners. To my right is Mr. Inoke Loganimoce, Mr. Nemani Mati, Mr. Reginald Jokhan. Accompanying me from the Elections Office is Ms. Anna Mataiciwa, the Supervisor of Elections, and Mr. Mesake Duwai, the Manager Legal. We are appearing together as, collectively, we are the Electoral Management Body for Fiji, and we make these submissions jointly. That is deliberate. The Commission sets the direction.

The FEO brings the operational experience of the body that runs our elections. The body speaking with one voice is in miniature. The Unified Electoral Body, we will ask you to consider. There is a more substantive paper that we have submitted. I am just going to be speaking to it. In terms of our approach, we come as neutral administrators of elections and not as advocates for any political outcome.

We speak on what lies within our mandate as the body that administers Fiji's elections day-to-day. The right to vote, the qualification of voters and candidates, the conduct of elections, and the independence and structure of the electoral body. On the larger questions that belong to the people of Fiji and their representatives, that is the choice of electoral system and the shape of Parliament, we offer technical advice and we will defer to the Commission.

In terms of what we are asking the Commission to consider, much of what follows takes forward the recommendations of the Electoral Law Reform Commissioners. I am sure you have met with them already. They are placed before you because it requires constitutional change rather than ordinary legislation.

Firstly, in terms of the electoral system, the proposal from our Law Reform Commissioners was to lower the 5% threshold, which today sets aside the voice of many citizens who support smaller parties. We consider a mixed system that gives every voter a local representative while keeping Parliament proportional. The counting formula sits in ordinary law, not in the Constitution.

Only the core features are entrenched. In terms of the boundaries, if constituencies are introduced, our recommendation is to re-establish an independent apolitical constituency boundaries commission with constitutional footing, as was the case in previous constitutions. In terms of women's representation, we support temporary special measures including reserved seats for women.

In terms of the right to vote, we are recommending the removal of blanket disqualification of serving prisoners, removing the outdated term unsound mind disqualification, and aligning with the Disability Convention, which we have already ratified. We are

recommending that this is to be achieved reasonably and progressively, and that we retain voluntary voting. I think you might have heard that in your public consultations as well, that people have been sent to prison, they are serving their time, but they are still in a position to vote.

That is something that is not taken away by virtue of their prison sentence, and that would be in line with our international and Convention obligations. In terms of candidates, we recommend that the Commission, in whatever report it makes in terms of review, we ask that you provide clarity on eligibility after a custodial sentence. And for dual citizens, that we review the rules on public officers standing for elections as well.

These are fleshed out more in our substantive submissions before you. In terms of stability and timing, we recommend that any electoral law changes made in an election year should take effect only after the election. I think it is international best practice that during election year, there are no substantive changes made to the election laws.

That the time and resources should be reserved for preparing for an election, rather than fundamentally changing the election legislative framework. And we are also recommending that there should be greater certainty over when elections are held. At the moment, under the constitutional arrangement, there is a lot of discretion in the executive on when to call for the vote.

It is either three or six months before the end of Parliament, or right up to the end of Parliament, which is four years. We have been hearing from our political parties and our stakeholders that it leaves them uncertain in terms of the political campaigning and what resources they allocate in terms of their campaign, because they are unsure of when the election date is. Our central institutional proposal, our Electoral Law Reform Commissioners have recommended that we merge into one electoral body.

That the Electoral Commission and the Fiji Elections Office are merged into a single unified electoral management body. One institution, clear lines of authority. We recommend a board of five, comprising a chairperson who is or is qualified to be a judge, three other commissioners, and the chief executive of the new body as the fifth commissioner.

Members appointed for staggered five-year terms. Currently, Electoral Commission members are only given three-year terms, which is out of cycle with the electoral cycle. We are also recommending that the terms be staggered, so that we don't have a clear out of all members of appointments who are absent, leaving us with no quorum to conduct our meetings and make our decisions.

We have also recommended and endorsed the recommendation that the power of the registrar of political parties be separated from the chief executive when the new body is formed. This is to enable the commission to fairly hear appeals. At present, the supervisor is both the secretary of the commission and also the registrar of political parties.

The Law Reform Commissioners felt that this role should be held by a different person, and if it's merged, then this person will report to the commission and any appeals from the decision will be heard by the commission. There will be no possibility of any conflict. We have also recommended that this merged body, that its independence is entrenched, so financially, the budget and the other associated issues deal with it.

These are issues that have been raised by our Electoral Law Reform Commissioners, but we felt we'd leave this to the commission. These are in terms of term limits, retirement age, the senate or the reintroduction of the upper house, and the caretaker government. These we feel are matters of constitutional and political design for this commission.

We offer only this. An effective caretaker government model would help safeguard a fair campaign, a concern that the political parties have raised very strongly with us. In closing, the detail is in our written submission.

Together with us, the supervisor and the FEO team are here to elaborate on the operational specifics and also to answer the commission's questions. We thank the commission for its work. We stand ready to assist in delivering a constitution that is democratic, inclusive, and durable. I thank you for your attention.

Mr. Valenitabua: Thank you, Judge Ratuvili and the chairman of the commission. We would appreciate if we have a copy of the submission presented to the CRC this afternoon so that we can have a record of it.

Judge Ratuvili: Sorry, the delay was with me. I hadn't signed it yet. We certainly have copies made for you.

Mr. Valenitabua: Thank you for that submission, Judge Ratuvili and the chairman of the commission. We have heard submissions from our people on the ground that we have to revert to the multiple constituency election system. When I say that, I don't doubt that you understand what I'm talking about.

The main reason why our people are saying that is that they do not know. They want to know who represents them in Parliament. They wish to have local candidates, people who they know from their own areas, respective areas, be voted into Parliament and to represent them in Parliament.

So, they have been presenting to us that this one, what we call one constituency, one national constituency for the whole of Fiji is to be done away with. And that we revert to the multiple constituency election system which used to be used in Fiji. Now if we go to multiple constituency elections, that will greatly involve the elections office in relation to the matter of boundaries and the like things.

If I may ask, what is the commission's and the elections office's thoughts or stance in relation to reverting to the multiple constituency electoral system?

Judge Ratuvili: I'll answer first and then the legal supervisor can add in. In terms of our submissions, we have guided by the recommendations made by our reform commissioners. Because they prepared a report, I understand that was submitted to you.

So, when they were making their recommendations, they acknowledged that most of their recommendations were in relation to things that were entrenched. So the constitution entrenches that there will be one single constituency. And the election system will be such that we will be choosing members from political parties in a mixed representative. So what we've

said is that, and the threshold to get into parliament is that a successful candidate, a successful party must gain at least 5% of the total number of votes cast. That's the starting point. And then the seats allocated are in relation to a further division of that 5%.

So, the recommendation is that we consider a mixed system that gives every voter a local representative while keeping parliament proportional. That's fleshed out in the submission. The counting formula sits in ordinary law.

Only the co-futures are entrenched. So, the way we suggest it is this. You just give a general statement in the constitution.

This is what we feel it should be. And then leave it to the substantive act or the substantive electoral act or whatever form there may be to actually spell out what it means. Because in constitutions, they don't set out in detail. They speak to general principles, ideals, what we want the system to be. So as long as it spells out, this is what it's going to be. And it will be fleshed out better in terms of the mechanism how it's going to work.

In terms of the boundaries, if these are reintroduced, then there must be a boundaries commission. And ideally it should be in the constitution. The same thing, just establish a boundaries commission, say what the qualifications for membership are. Their actual duties and functions should be left to the subsidiary legislations. So that's our view on that. Anything you want to add? Thank you, Chair.

Mr. Duwai: In our submission, we had recommended that if a constituency-based or mixed electoral system is adopted, the commission recommends that an independent apolitical constituency boundaries commission is established with constitutional footing, just as our chairperson had alluded to. And if we look at the 1970, the 1990, and the 1997 constitution, the constituency boundaries commission was entrenched in the constitution. And so, if we're going to move towards this operationally, the election management body should not be responsible in finalizing the boundary.

There should be a separate independent body that looks at the demarcation or the delimitation of boundaries. For the purpose

of representation and elections. And we also recommend that if there is a constituency boundaries commission being set up, it should look at the boundaries for all elections.

Not only the general election, but also the local government elections. As you have seen, given the postponement of the local government elections, the word boundaries are finalized currently by the electoral commission. But with the constituency boundaries commission, its independence, its membership, and everything to do with its duties and functions, as well as its composition and the term that the members have to serve, should be established in the constitution.

That is our humble submission. The constituency boundaries commission would look at the boundaries separately, while the elections management body is responsible for conducting the elections for those that would stand and represent their voters from those particular boundaries. As was done previously under the three constitutions, that is our submission this afternoon. Chair, thank you.

Mr. Valenitabua: Thank you, Chair.

Ms. Nailatikau: And thank you, Mr. Ratuvili and colleagues. This will probably not require too much of a clarification, but I am simply noticing two points in your submission which have also been quite heavily discussed in some of our consultations. These relate to 5.2 and 5.3. On the matter of dual citizenship, on your recommendation as commissioner that persons holding dual citizenship be permitted to stand for office, provided they satisfy residency requirements.

As you may be aware, there have been indications that perhaps the length of time required for residency may be too long. There are many who hold differing views, and from my understanding is that whatever that time length be, that it simply be clear and clarified in the constitution. And secondly, related to co-related immunity, this has also come directly from the communities that we have visited.

Many places as well have been, as we can see by signage or by the discussions, also been visited by members of your team relating to awareness and registration, talking about how any

person who relies on co-related constitutional immunity be permanently disqualified from standing as a candidate. So, I simply wanted to highlight those aspects as being reflective of some of the submissions that we've received, and perhaps on whether you'd like to elaborate on, expand, particularly in areas where there are differentiations in what might be an adequate time length, for instance. I wouldn't expect the commission to make a deliberate stance on that, but that's certainly something that even up until yesterday was also quite vociferously submitted to us. Thank you. Thank you.

Judge Ratuvili: Thank you, Mrs. Nailatikau. In terms of the eligibility of dual citizens to stand, as I said, in principle we have no issues with it, and as you've alluded yourself, the time period must be clear and must be transparent. So, if anyone is contemplating running for public office here in Fiji and they are the holders of a dual citizenship, it must be clear that I have to be in Fiji for this period of time and an actual resident in Fiji before I can be eligible. All we need is clarity on that point, and I think that's there, and that should be now not an issue.

So that's our view in terms of that. And for the core related immunity, I assure you we're not avoiding the question, it's just that we note that the Supreme Court in its advisory opinion declined to disturb that section of the Constitution. That was in October last year.

Whether Parliament, which will ultimately decide on this, has had a change of heart, that is up to them as the representatives of the people. And we offer no comments in relation to that. Whether a person qualifies to stand or not, will be based on the current laws that are there.

So, if they're a citizen of Fiji, and they are not currently serving a period of imprisonment, one in 12 months, then not of unsound mind. That person clears those criteria, then they are eligible to stand. That's the position we have in terms of the Commission. Anything you wish to add, Mesa?

Mr. Valenitabua: Dr. Gounder?

Dr. Gounder: Thank you, Chairman of the Commission, members of the Commission, and the Supervisor of Elections for your

submission. It's good to see you all coming together with this submission. In terms of the boundary delimitation, we have seen the report of the Law Reform Commission, and that's something we will consider, and we have also received submissions to adapt the boundary system, so the Commission is at the moment deliberating around the system.

We have also talked about the reduction of the threshold, but it's a huge reduction, especially the 60% reduction threshold can have huge implications in terms of stability as well, but that's something we are going to look at in detail later. In terms of the timing and announcement of elections, we have heard this from the Reform Commission, but from a public submission as well, that's something that's on the table for the Commission, for this Commission to look at. We are also mindful of Fixed Parliament Act arrangements as well, so when the new government is formed, we can know when the election is going to happen, that provides greater certainty, something of those kinds of options at the moment.

In terms of, given the experience of the Elections Office in administration and the challenges around it during elections, do you have any suggestions for the provision where Section 57, the candidates who are public officers, any particular challenges you face in an administrative perspective in dealing with such a provision during elections?

Judge Ratuvili: I'll defer to our Manager Legal.

Dr. Gounder: If you can make, I know you are, in some cases you have made recommendations to the law, in other cases you have not, so I'll leave it to you if you have any suggestions, because we have received submissions around Section 57 of the Constitution, 1, 2, 3, 4 as well. Thank you, Dr. Gounder.

Mr. Duwai: For the Elections Office, under the current Constitution, public officers are not eligible to be candidates. And for us, we question whether the definition of public officers for this purpose includes trade union officials and officials of employer organizations, neither of whom hold public office or perform public functions, while it is common practice internationally to prevent the holders of public offices from nominating as candidates, it is unusual to prevent officials in trade unions or employer organizations from

doing so. We also agree whether it is necessary for public officers to permanently resign from their positions, to stand as candidates, with the result that they have no income from the time of nomination until after elections, or for unsuccessful candidates, no guarantee of any employment to return to.

So, that's something that we also agree, whether this contributes to corruption by candidates during that period, or whether it is a barrier to competent persons nominating as candidates, and whether it would be sufficient for public officers to take unpaid leave during their candidacy, and only be required to resign if they are elected. So that's something that we invite the Commission to look into and make considerations where relevant.

Dr. Gounder: Thank you, that's a very honest response. What about the clarity around public officers? Is that sufficient at the moment?

Mr. Duwai: At this stage it's quite detailed to include trade union officials, and it's very broad, and it's captured in the Constitution. So, for us, when we are analyzing nominations, the Constitution is basically the benchmark, and the law specifies in the Electoral Act that once political parties submit their party lists, or independent candidates submit their candidacy nomination to the supervisor of elections, they are deemed to have resigned from their public officer position. And if they continue to hold that, then they would be in breach of the law.

Dr. Gounder: So, you're happy with the definition of the public office, as it appears, or you need more clarity?

Mr. Duwai: We would invite the Commission to look further and better clarify the definition that's given in the Constitution, whether it should include trade union officials or not, because even from the public consultations that were from the electoral law reform, there were even some objections raised that it should not. include trade union officials. So, we leave it to the Commission to look into it.

Dr. Gounder: Thank you.

Judge Ratuvili: Let's put it this way, Dr. Gounder, it's unusual for trade union officials and representatives of employer organizations to be

deemed as public officers, because they're not paid from the public purse, they don't hold a public office. So that's...

Dr. Gounder: Thank you. And I assume there are other aspects in the Electoral Act as well, which appear as public officers?

Mr. Duwai: Yes. That's correct, Dr. Gounder. So, it makes reference to the definition of public officer that's given under Section 57.3 of the Constitution. So, in the Electoral Act, under Section 24, it says a person who holds a public office as defined in Section 57.3 of the Constitution. So, it refers back to the definition that's laid out in the Constitution. Thank you.

Dr. Gounder: Thank you.

Mr. Valenitabua: That requirement, the two-year residence requirement, in order for someone to stand for elections, we are talking about dual citizenship and the two-year requirement. Does that two-year requirement apply to dual citizens also? Can you just clarify that? Or does it apply to Fiji citizens only who have been away overseas for work purposes or other purposes, and they return to Fiji, does that apply to them only or to the dual citizens also?

Mr. Duwai: Sir, currently under the 2013 Constitution, dual citizens are not allowed to contest. So this requirement is specifically for Fijian citizens. The requirement that's laid out in Section 56.2c, it says a person may be a candidate for election to Parliament only if the person is ordinarily resident in Fiji for at least two years immediately before being nominated. But when it comes to the Electoral Act 2014, under Section 23.5, it says for the purposes of subsection 4c, a person shall only qualify to be ordinarily resident in Fiji for at least two years immediately before being nominated if that person has been present and living in Fiji for an aggregate period of not less than 18 months out of the two years immediately before being nominated. So that aggregate period is between 18 months to two years. So usually, the minimum requirement is 18 months, but what's laid out in the Constitution is two years. The Electoral Act further states that residency can go to 18 months.

Ms. Nailatikau: Mr. Duwai, forgive me. I believe just to clarify as you stated, legitimacy for candidacy for dual citizenship is currently not allowed as you've just stated.

Mr. Duwai: Yes, ma'am.

Mr. Valenitabua: It's in the Constitution itself.

Mr. Duwai: Yes, that's correct. It's in 56.2a.

Mr. Valenitabua: Since we are looking at amending the provisions of the Constitution, would it be part of your suggestion that we amend that also for dual citizens?

Judge Ratuvili: Yes, Chair. That was one of the recommendations of our Electoral Law Reform Commissioners and we endorsed it. We just need to be clear on what is the residential requirement. Yes. They have to be resident here.

Mr. Valenitabua: I believe that it was mentioned prior to me having these submissions. I just wanted to make sure in relation to that. We have received a lot of submissions in relation to the electoral system. I have mentioned one where we have been asked to reinstate the multiple constituency electoral system. Another thing is the counting of the votes.

People have suggested or our people have suggested that we change even the counting system. Now, I know that would depend on the electoral system which we would want to use. I don't know whether you would want to comment on this de-honed system. People just don't like it. It's too complex for them. Can we have a view on that? If not, it's okay.

Judge Ratuvili: Thank you, Chair. The de-honed system which is the system that is currently being used to allocate parliamentary seats is not in the Constitution. It's in the Act. The Act sets out very clearly what steps we must take to do it. I leave it to our Manager Legal because he has actually implemented that in two past general elections. I think he is in a better position to explain that to you in the limited time we have.

Mr. Duwai: Thank you, Chair. For the system of allocation of seats, the formula that is entrenched in the Electoral Act is the de-honed system formula. Based on feedback, even when the electoral law reform consultations were being carried out, the feedback was that not many understood what the system was.

When it comes to electoral systems and allocation of seats, there are various formulas that the Constitutional Review Commission can look into. The de-honed formula is just one. There are other formulas that can be adopted for open list proportional representation systems.

I believe with what has been recommended, looking into the mixed member proportional representation system, in terms of looking at allocating seats, you also have the first-past-the-post method, which we use currently for our local government elections in terms of allocating seats for councilors. It is just simple first-past-the-post. I believe in our recommendation and in our submission jointly by the Electoral Commission and the FEO, we invite the Commission to look into that mixed member proportional representation system as the electoral system that we can further look into to adopt.

But in terms of allocation of seats, that's currently what the feedback is on the ground. The Electoral Commission is the authority that allocates seats, and this is the formula that they use. While it's captured in the Electoral Act, it's written in the provisions to actually guide them on how to allocate the seats to the different candidates.

Dr. Gounder: Your recommendation 5.2, is that based on section 56.2c? Is that correct? Conditional upon section 56.2c?

Mr. Duwai: Yes, sir. If we're looking at 5.2, then it would mean amendment to 56.2a and 2c.

Dr. Gounder: Okay. That's what you mean?

Mr. Duwai: Yes, sir.

Dr. Gounder: Residency requirement is 2c, yes?

Mr. Duwai: Yes, sir.

Dr. Gounder: Thank you.

Ms. Nailatikau: Vinaka Chair, Commissioners, if I may, knowing that time is limited, you also mentioned the importance of an effective

caretaker government model. And potentially, in as much as technical advice or workability of options that you are able to share with us, and forgive me if I know this might also be the Electoral Law Reform Commission's report, but I would invite you to expand on what you believe an effective caretaker government model might alleviate in terms of the administration, the implementation of elections, particularly leading up to election periods.

Judge Ratuvili: Thank you, Ms. Nailatikau. Conventionally, once the writ has been issued, then ordinarily a cabinet is reduced. There is a skeleton cabinet that takes us to election, and basically, they just keep the machinery of government moving. So basically, during that period, most of the executive decisions will be actually made by the senior civil servants. And that takes us through to the elections and thereafter. So, the Prime Minister will still be in place. The cabinet will either, or there will be a very limited number of cabinets, like a skeletal cabinet to take us through.

And basically, conventionally that would be the Minister of Finance, who deals with the daily operation of government. Maybe the Home Affairs, the Defense, and the Prime Minister, as well as others. So those are the machinery of government that will take us to the elections.

And the other ministers, they become already members of Parliament, they can conduct their campaigns subject to the campaign rules. And any major decision will have to come back to Parliament. Parliament will have the final say.

So that takes us through to the elections. And if there is a delay in the counting of seats and the allocation of seats, then a skeletal cabinet takes us through that until the winner is declared. I think that's what we were alluding to. But it's up to you. You can look at other models from other jurisdictions and take into account what is compatible with the situation on the ground here in Fiji. I hope that's addressed your questions. Thank you.

Ms. Nailatikau: Thank you.

Mr. Valenitabua: The Chairperson of the LAE Electoral Commission and the Supervisor of the Elections. Ladies and gentlemen, thank you

very much for the comprehensive written submissions which we have been handed this afternoon. Now, we will be reading through the submissions and we'll consider the suggestions and recommendations that have been, that are listed here. I note that you have as paragraph 11, summary of recommendations.

And very clear, the recommendations are very clear. We will take that into consideration during our deliberations. Thank you very much for this afternoon.

We have kept, we have stated that we will keep this line of communication open in the event we need further assistance. Particularly from the Elections Office. Because we are going to be dealing also with the general elections and the electoral laws and things like that.

Which could be included in the Constitution itself. We have talked about some this afternoon. So I hope that that line of communication will be open and that in the event we need further assistance, we will be assisted by the Elections Office and the Electoral Commission.

With those few words, I again thank you very much for taking time out to come and make presentations and submissions to the Commission this afternoon. We will be collating all the submissions which we have gathered from all over Fiji. And analyze them.

We have got our legal officers collating all those at the time we are speaking. So that we can identify themes and issues which might be used in the Constitution. We have until the 31st of August 2026 to present to His Excellency a report on our work.

Our recommendations. And our recommendations might be or will be reflected in a draft amended Constitution. We have a constitutional lawyer who is helping us from Australia.

He has visited Fiji and will come back very soon. We also have a legal drafter from New Zealand who will be here this Saturday or Sunday to come and work with us in relation to start with the drafting of the amended Constitution. We have a timeline which ends on the 31st of August.

We are working towards that timeline so that we can hand over what His Excellency has tasked us to do. The reports or the documents by the date, the 31st of August 2026. The process I don't have to explain once it reaches.

Once we hand over our documents to His Excellency then His Excellency will have to give it to government and then the politicians take over. In accordance with the amendment process which the Supreme Court has guided us through we are working in accordance with the process set out by the Supreme Court. And once cabinet gets our documents or the documents which we will prepare then the political process takes over, the parliamentary process takes over.

I don't need to explain that because I know you know. So that is where we are heading. What happens after the 31st of August is for His Excellency and for the government.

Our work ends on the 31st of August. With those few words I thank you again. And we hope or we will be deliberating and we'll be using, we'll be referring to your comprehensive submissions this afternoon.

Judge Ratuvili: Vinaka Vakalevu Chair. Thank you very much, Chair. And we stand ready to offer any assistance that you may require.

Mr. Valenitabua: We usually take a group photo after submissions. May I invite you?

----------End of Session [30-6-2026]----------

ELECTORAL COMMISSION
OF THE REPUBLIC OF FIJI
with the FIJIAN ELECTIONS OFFICE

Joint Submission to the Constitution Review Commission

On the electoral provisions of the Constitution of the Republic of Fiji 2013

2026

1. Introduction

The Electoral Commission ("the Commission") is an independent institution established under the Constitution of the Republic of Fiji 2013 and charged, together with the Supervisor of Elections and the Fijian Elections Office ("the FEO"), with the registration of voters and the conduct of free and fair elections.[1] The Commission and the FEO make this joint submission to the Constitution Review Commission ("the Commission of Review") in support of a constitutional framework that is democratic, inclusive and durable. The Commission provides the direction of this submission; the FEO contributes the operational and administrative experience of the body that conducts Fiji's elections, and will elaborate on operational detail at the oral presentation. That the two bodies submit jointly is itself a small illustration of the unified electoral management body recommended in Part 8.

This submission responds principally to the Final Report of the Fiji Law Reform Commission's Electoral Law Review 2025.[2] The Electoral Law Reform Commissioners acknowledged that many of their recommendations could not be implemented through ordinary legislation because they ran against entrenched provisions of the Constitution. Those recommendations are therefore properly placed before the Commission of Review. The Commission and the FEO set out below the reforms identified by the Electoral Law Reform Commissioners, together with related matters arising from the conduct of recent elections, and state their position on each.

The opportunity for reform is real. In its advisory opinion of August 2025, the Supreme Court recognised the 2013 Constitution as legally effective while acknowledging the "democratic deficit" in its origins, and read down the amendment thresholds so that constitutional change now

[1]Constitution of the Republic of Fiji 2013, ss 75 (Electoral Commission) and 76 (Supervisor of Elections).
[2]Fiji Law Reform Commission, Electoral Law Review 2025 — "An Electoral System FOR the People FROM the People" (Final Report, 7 July 2025) ("ELRC Report").

requires a two-thirds majority of Parliament and a simple majority at a referendum.[3] A workable pathway to reform now exists.

1.1 Approach and limits of this submission

The Commission approaches this submission as a neutral administrator of elections, not as an advocate for any political outcome. It speaks with authority on matters within its mandate — the independence and structure of the electoral management body, the administration of elections, the right to vote, and the qualification of voters and candidates — and offers technical advice on the workability of options. On questions that are properly for the people of Fiji and their elected representatives, including the ultimate choice of electoral system and the design of the legislature, the Commission expresses its views with deliberate restraint and defers to the Commission of Review.

In doing so the Commission is guided by the internationally recognised principles for electoral management bodies — independence, impartiality, integrity and transparency[4] — and by Fiji's obligations under international human rights law, including the right of every citizen to take part in public affairs and to vote and be elected.[5]

2. The electoral system

The Electoral Law Reform Commissioners recommended a transition to a mixed-member proportional (MMP) system using closed party lists and a reduced 2% seat threshold.[6] The current system — a single national electoral roll, open-list proportional representation and a 5% threshold — is entrenched in the Constitution itself, so a change of this character is a matter for the Commission of Review. The specific seat-allocation formula, the d'Hondt method, is set not by the Constitution but by the Electoral Act 2014, and could be altered by ordinary legislation.[7]

> **The Commission supports a reduction of the 5% threshold, which it considers high by international standards. A lower threshold preserves a greater proportion of votes cast and gives effect to the choices of citizens who support smaller parties, who are**

[3] In the Matter of the Constitution of the Republic of Fiji, Supreme Court advisory opinion (29 August 2025). The Court recognised the 2013 Constitution as legally effective but read down ss 159–160 so that amendment requires an absolute two-thirds majority of Parliament and a simple majority at referendum, citing the "democratic deficit" in the Constitution's origins.
[4] International IDEA, Electoral Management Design: The International IDEA Handbook — guiding principles for electoral management bodies of independence, impartiality, integrity and transparency.
[5] International Covenant on Civil and Political Rights, art 25 (right to take part in public affairs, to vote and to be elected); Universal Declaration of Human Rights, art 21.
[6] ELRC Report, p 2 (mixed-member proportional system; closed party lists; reduced 2% threshold).
[7] Constitution of the Republic of Fiji 2013, s 53 (proportional representation system) — a single national electoral roll, open-list proportional representation, and a 5% threshold (s 53(3)); s 53 requires only that seats be awarded by an internationally accepted method. These features are entrenched and cannot be altered by ordinary legislation alone. The specific seat-allocation formula, the d'Hondt method, is prescribed by the Electoral Act 2014 (s 104), not the Constitution, and can be changed by ordinary legislation.

presently left without a voice in Parliament. The Commission also sees clear merit in a system that combines direct constituency representation with proportional party representation, so that every voter has an identifiable local member while the composition of Parliament continues to reflect the national party vote. The New Zealand MMP model, refined over three decades, is a useful reference for the Commission of Review's consideration.

The case for a local link is grounded in the Commission's and the FEO's own experience. In the public consultations, and as recorded in the 2022 General Election Joint Report, voters repeatedly said they had no idea who, if anyone, represented them; under a single national constituency, members of Parliament represent no particular locality.[8] International research indicates that voters engage more readily when they have some form of direct access to an elected representative. A system that returns members from defined constituencies would give voters that access while a proportional party-vote element preserved overall fairness.

A detailed design must be adapted to Fiji's population, geography and diversity. With due consideration of the above, the final choice of system, and of the precise threshold figure, remains a matter for the Commission of Review and Parliament.

2.1 Boundary delimitation

A move to constituency-based or mixed representation carries an administrative consequence the Commission draws to the Commission of Review's attention. The 2013 Constitution contains no boundaries commission and confers no power to delimit geographic electorates: because all members are elected from a single national constituency, the Commission's only related function is to review the total number of seats before each election, and it has no authority over boundaries.[9] This was not always so. The 1997 Constitution established an independent Constituency Boundaries Commission to delimit electoral boundaries — a body that became redundant when the single national constituency was introduced in 2013.[10]

If a constituency-based or mixed electoral system is adopted, the Commission recommends that an independent, apolitical Constituency Boundaries Commission be established with constitutional footing. Such a commission existed under Fiji's earlier constitutions, and the Commission of Review may draw on those provisions and on the established models in Australia and New Zealand. Its detailed design —

[8]Electoral Commission and Supervisor of Elections, 2022 General Election Joint Report (voters' lack of a direct link to elected representatives under the single national constituency; recommendation to consider options for direct representation). The same lack of direct representation was raised repeatedly in the public consultations.

[9]Constitution of the Republic of Fiji 2013, ss 53 and 54: members of Parliament are elected from a single national electoral roll (s 53), and under s 54 the Electoral Commission's only related function is to review the total number of seats before each general election. The 2013 Constitution confers no power of geographic boundary delimitation and establishes no boundaries commission.

[10]A Constituency Boundaries Commission existed under the 1997 Constitution to delimit electoral boundaries; it became redundant on the adoption of the single national constituency in 2013.

membership, independence, and whether its remit extends to local-government boundaries — can be settled by the Commission of Review and written law, and the FEO can speak to the practicalities at the oral presentation.[11]

3. Parliamentary structure and women's representation

The Electoral Law Reform Commissioners recommended a minimum of 71 seats, including seats reserved for women.[12]

The Commission supports the introduction of temporary special measures, including reserved seats, to advance the representation of women. Women's representation in Parliament fell from 19.6% after the 2018 election to 9.1% after 2022, well below the regional and global averages. The present system contains no structural guarantee for women's participation. Temporary special measures are expressly contemplated by Fiji's obligations under the Convention on the Elimination of All Forms of Discrimination against Women and are a proportionate, time-limited response to a demonstrated imbalance. The Commission recommends that the Constitution be drafted so as to permit such measures without their being open to challenge as discrimination.[13]

The Commission leaves the total number of seats in Parliament to the Commission of Review and, in turn, to the legislature.

4. The right to vote: qualification and disqualification of voters

4.1 Voting rights of serving prisoners

The Electoral Law Reform Commissioners recommended removing the disqualification from voting that presently applies to serving prisoners.[14]

The Commission endorses the removal of the blanket disqualification of serving prisoners. Prisoners remain citizens of Fiji, and their families and communities are affected by the decisions of Parliament. Universal and equal suffrage is the starting point of a democratic franchise, and any limitation should be the carefully justified exception rather than an automatic consequence of imprisonment.

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[11]A Constituency Boundaries Commission existed under the 1970, 1990 and 1997 Constitutions. The Fijian Elections Office recommends that an apolitical Constituency Boundaries Commission be established in the Constitution — with its membership, independence and responsibilities set out there — and be empowered to determine boundaries for both national and local-government elections, with further detail left to written law.
[12]ELRC Report, pp 2–3 (minimum of 71 seats; reserved seats for women).
[13]Convention on the Elimination of All Forms of Discrimination against Women, art 4(1) (temporary special measures). Women's representation in Parliament fell from 19.6% (10 of 51 seats) after 2018 to 9.1% (5 of 55 seats) after 2022: MMP Design Paper, §1.3.
[14]ELRC Report, p 3 (removal of the voting disqualification for serving prisoners; review of the disqualification of persons of "unsound mind").

4.2 Disability and the disqualification of persons of "unsound mind"

Section 55 of the Constitution provides that a person does not have, or ceases to have, the right to be registered as a voter if that person is, under a law in force in Fiji, adjudged or declared to be of "unsound mind."[15] The Electoral Law Reform Commissioners recommended that this blanket disqualification be reviewed to align with international disability conventions.[16]

The Commission, which works closely with organisations of persons with disabilities through the Fijian Elections Office and the Election Disability Access Working Group, recommends going further than review. Fiji ratified the Convention on the Rights of Persons with Disabilities in 2017. Article 12 of that Convention recognises that persons with disabilities enjoy legal capacity on an equal basis with others, and Article 29 protects their right to vote and to be elected without discrimination.[17] The Committee on the Rights of Persons with Disabilities has confirmed that legal capacity is a universal attribute that may not be denied on the basis of disability, and that support in decision-making must never be used to limit the right to vote.[18]

The expression "unsound mind" is outdated and stigmatising, and it conflates two distinct concepts: mental capacity, which describes a person's decision-making ability in a particular situation and which may fluctuate, and legal capacity, which is the universal recognition of a person as a holder of rights. A disqualification expressed in these terms is inconsistent with Fiji's obligations under the Convention and with the equality and dignity recognised by the Rights of Persons with Disabilities Act 2018.[19] In adopting this position the Commission endorses the reasoning of the Pacific Disability Forum in its submission to the Commission of Review on this section.[20]

The Commission's direction is full compliance with the Convention, achieved in the manner the Convention itself prescribes — through reasonable accommodation and progressive realisation, not an unqualified guarantee that ignores practical limits.[21] The Office, which conducts elections across some 2,200 polling venues, observes that the accessibility of public premises is in the first place a responsibility of the State, and that accommodations will expand as facilities and resources allow. These positions are complementary rather than opposed: the Constitution should

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[15]Constitution of the Republic of Fiji 2013, s 55(2)(b) and s 55(3)(b).
[16]ELRC Report, p 3.
[17]Convention on the Rights of Persons with Disabilities, arts 12 (equal recognition before the law) and 29 (participation in political and public life). Fiji ratified the CRPD in 2017.
[18]Committee on the Rights of Persons with Disabilities, General Comment No 1 (2014) on art 12: legal capacity is a universal attribute that cannot be denied on the basis of disability, and support in exercising legal capacity must never be used to limit fundamental rights, including the right to vote.
[19]Rights of Persons with Disabilities Act 2018 (Fiji).
[20]Pacific Disability Forum, "Submission Two — Submission to the Constitution Review Commission on Chapter 3, Part B, Section 55 of the Constitution of the Republic of Fiji 2013." The Commission adopts and endorses the reasoning of that submission on this point.
[21]Convention on the Rights of Persons with Disabilities, art 2: "reasonable accommodation" means necessary and appropriate modification not imposing a disproportionate or undue burden. The obligation is one of reasonable accommodation and progressive realisation, not of unqualified provision.

guarantee the right and remove the discriminatory disqualification, while the pace and manner of fuller accommodation proceed reasonably and progressively as an operational matter for the FEO and the State.

> **The Commission recommends that the words "adjudged or declared to be of unsound mind" be removed from section 55(2)(b) and section 55(3)(b) of the Constitution, and that equivalent terminology — such as references to "mental disorder" — be removed from connected electoral legislation. The franchise provision should be redrafted in rights-based terms guaranteeing that no person is denied the right to register, to vote by secret ballot, to stand for election or to hold public office on the basis of disability, psychosocial disability, intellectual disability, perceived capacity, or any status related to supported decision-making.**

By way of model, and adapting the wording proposed by the Pacific Disability Forum, section 55(1) might read:

> *"Every citizen who is, or will be, 18 years of age or over on or before the date of the issue of the writ for the next election of members of Parliament has the right to register as a voter, to vote by secret ballot, to stand for election, to hold public office, and to participate in political and public life on an equal basis with others. No person shall be disqualified from exercising these rights on the basis of disability, psychosocial disability, intellectual disability, perceived capacity, or any status related to supported decision-making."*

4.3 In-patients and supported decision-making

The Electoral Law Reform Commissioners further recommended that in-patients of mental-health facilities be permitted to vote where a treating physician confirms that the person understands the process.[22]

> **The Commission endorses this recommendation as an immediate and practical safeguard against the wrongful exclusion of in-patients. The fuller position required by the Convention is the provision of support to exercise the vote rather than any capacity-based exclusion, and a physician-confirmation mechanism should be treated as a transitional measure on the path to a supported model. Any supported-voting arrangement must include safeguards against undue influence, so that support assists voters to express their own choice and cannot be used by another person to cast a vote on their behalf.**

In its electoral-law reform proposals, the FEO has recommended that the particular needs of voters with disabilities — such as assistance for voters who are deaf, or a quiet space for voters who require one — be catered for at designated, accessible locations on common routes, rather than requiring every one of the some 2,200 polling venues to be identically equipped. The Commission supports this approach as a sensible application of reasonable accommodation.

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[22]ELRC Report, p 4 (in-patients of mental-health facilities to vote where a treating physician confirms understanding of the process).

4.4 Compulsory or voluntary voting

Voting was compulsory under earlier constitutional arrangements and is voluntary under the 2013 Constitution. The FEO's analysis does not support the common assumption that compulsion raises genuine participation: Samoa, which compels voting, records higher turnout than Fiji but well short of universal participation, while Australia records turnout above 90% but with a markedly higher proportion of invalid — and often deliberately invalid — votes. Fiji's proportion of invalid votes is significantly lower.[23]

> **The Commission and the FEO recommend that voluntary voting be retained. Turnout alone is a crude measure of participation; the quality of the vote, reflected in a low proportion of invalid ballots, also matters. The better course is to keep strengthening voter outreach to the harder-to-reach members of society, rather than to compel participation and criminalise those who do not vote.**

5. Eligibility to stand for election

The Electoral Law Reform Commissioners made several recommendations concerning the qualification of candidates, and the conduct of recent elections has raised further questions the Commission and the FEO bring to the Commission of Review's attention.[24] The qualifications and disqualifications for membership of Parliament are set out in the Constitution.[25]

5.1 Persons who have completed a custodial sentence

The Commissioners recommended that a person be eligible to stand for election once that person has completed a custodial sentence.

> **The Commission supports the principle that rehabilitation should restore the right to stand for office, but recommends that the Commission of Review provide clarity on its scope. In particular, the framework should make plain whether any distinction is to be drawn between serious and minor offences, and should state the criteria to be applied, so that the rule can be administered consistently and without dispute.**

5.2 Dual citizens

The Commissioners recommended that persons holding dual citizenship be permitted to stand for office provided they satisfy residency requirements.

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[23]Comparative data discussed by the Fijian Elections Office: Samoa records higher turnout than Fiji but well below universal participation, and Australia records turnout above 90% under compulsory voting but with a higher proportion of invalid — including deliberately invalid — votes. Fiji's proportion of invalid votes is significantly lower.

[24]ELRC Report, p 4 (eligibility of persons to stand for election after completing a custodial sentence; eligibility of dual citizens; permanent disqualification of persons relying on coup-related constitutional immunity).

[25]Constitution of the Republic of Fiji 2013, s 56 (qualifications and disqualifications for membership of Parliament).

The Commission endorses this recommendation. Permitting dual citizens to stand, subject to a clear residency qualification, widens the pool of candidates available to the people of Fiji while maintaining a genuine connection to the country.

5.3 Coup-related immunity

The Commissioners recommended that any person who relies on coup-related constitutional immunity be permanently disqualified from standing as a candidate.

The Commission considers this question to fall outside its administrative mandate and defers to the Commission of Review. It notes that the Supreme Court, in its 2025 advisory opinion, declined to disturb the immunity and transitional provisions preserved by the Constitution, and that the interaction between candidate disqualification and those provisions is a matter of constitutional policy for the Commission of Review and Parliament.[26]

5.4 Public officers as candidates

Under the Constitution, a candidate who is a public officer must resign to stand. The FEO raises two questions for review: whether that bar should reach officials of trade unions and employer organisations, who hold no public office; and whether a public officer might take leave during candidacy and resign only if elected, rather than forgoing all income from nomination onwards.[27]

The Commission and the FEO invite the Commission of Review to consider these points. They are matters of constitutional and electoral-law design on which the electoral administration offers a practical perspective rather than a fixed position.

5.5 Candidates remaining on the open list

Under the present open-list system, unsuccessful candidates remain on a party's list to fill later vacancies. They continue in law to be "candidates," with no lawful means of withdrawing from the list, yet in practice many take up public office in the interim — which casts doubt on their eligibility to be appointed when a vacancy arises.

The Commission and the FEO recommend that the Commission of Review and Parliament resolve the status of persons who remain on the open list. Whatever electoral system is adopted, the framework should make clear whether and how a person may withdraw from a party list, and whether holding interim public office affects eligibility to fill a vacancy, so that the position can be administered without dispute.

6. Stability of electoral law before an election

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[26]Supreme Court advisory opinion (29 August 2025), declining to disturb the immunity and transitional provisions preserved by s 159(2)(a)–(b). The interaction between candidate disqualification and those immunity provisions is, accordingly, a matter for the Commission of Review and Parliament.

[27]Constitution of the Republic of Fiji 2013, s 57 (candidates who are public officers). The bar on public officers standing for election is said also to reach officials of registered trade unions and of employer organisations, who do not themselves hold public office.

The Electoral Law Reform Commissioners recommended a prohibition on substantial changes to electoral law in the year preceding an election.[28]

The Commission and the FEO recommend that the Constitution provide for stability in election year by ensuring that any amendment to electoral law made in election year does not take effect until after the general election, except where the Commission and the FEO are consulted and agree that earlier implementation is practicable. In the year before a general election the resources of the electoral administration must be devoted to preparing for and conducting the poll, not to absorbing new laws, systems and procedures, and late changes undermine public confidence and the equal treatment of contestants. A deferred-commencement rule, with a narrow consultation exception, is more workable than a flat prohibition and reflects established international good practice: the Venice Commission's Code of Good Practice in Electoral Matters provides that the fundamental elements of electoral law should not be open to amendment less than one year before an election.[29]

7. Timing and announcement of the election

The date of a general election is presently within the discretion of the Prime Minister and the President, on as little as about six weeks' notice for one of the largest logistical exercises Fiji undertakes. The Constitution already supplies a partial timetable — a four-year term of Parliament, issue of the writ within seven days of its expiry, close of nominations 14 days later, and polling within 30 days of the close of nominations.[30]

The Commission and the FEO recommend that the Constitution provide greater certainty over the timing of the election — for example, a deemed election date applying if the date is not announced within a set period before the latest lawful date. A deemed date would give the electoral administration certainty to plan while leaving the executive its discretion to call an earlier election.

8. A unified electoral management body

[28]ELRC Report, pp 1 and 5 (prohibition on substantial amendment of electoral law within the year preceding an election).
[29]European Commission for Democracy through Law (Venice Commission), Code of Good Practice in Electoral Matters, CDL-AD(2002)23rev, II.2.b: the fundamental elements of electoral law should not be open to amendment less than one year before an election.
[30]Constitution of the Republic of Fiji 2013, ss 58–61 (four-year term of Parliament; issue of the writ within seven days of the expiry of Parliament; close of nominations 14 days after the writ; polling within 30 days of the close of nominations).

The Electoral Law Reform Commissioners recommended merging the Electoral Commission and the Fijian Elections Office into a single unified body governed by three commissioners.[31] The Commission and the FEO address this recommendation in two parts.

8.1 Merger of the Electoral Commission and the Fijian Elections Office

The Commission and the FEO support the merger of the Electoral Commission and the Fijian Elections Office into a single, unified electoral management body. A single body with clear lines of authority would resolve the present division between the Commission, which sets policy, and the office that administers elections — a division that has in the past produced uncertainty and even litigation over the chain of command. A unified body strengthens institutional independence, accountability and efficiency, consistent with international good practice. New Zealand adopted precisely this course in 2010, merging its Electoral Commission and Chief Electoral Office into one body. The FEO shares this preferred architecture: a single, joined-up body led by a board of commissioners that includes the Supervisor of Elections as a full-time Commissioner and Chief Executive.[32]

8.2 Composition of the unified body

On the second part of the recommendation — that the body be governed by three commissioners — the Commission respectfully proposes a different composition.

The Commission proposes a five-member Commission, rather than three. The current Commission of seven members, with a quorum of four, is in the Commission's experience large and unwieldy. A body of only three, however, is too narrow, and does not adequately account for the workload that would fall on part-time commissioners in a unified institution. A membership of five — comprising a part-time Chairperson, three part-time Commissioners, and a full-time Chief Executive who is also a Commissioner — strikes the appropriate balance. The Office's position is that the board should comprise three or more commissioners; the Commission provides the direction that five is the appropriate number.[33]

The Commission further proposes that, in the transition to a unified body, the Supervisor of Elections become the Chief Executive of the unified electoral management body, responsible for the operational conduct of elections as at present, and that the Chief Executive sit as a Commissioner. This model — a small expert board including the chief electoral officer as an executive member — reflects the practice of comparable bodies in the region. New Zealand's Chief Electoral Officer serves as chief executive and a member of its Commission; Australia's

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[31] ELRC Report, pp 7–8 (merger of the Electoral Commission and the Fijian Elections Office into a single unified body governed by three commissioners).

[32] The Electoral Commission of New Zealand was formed in 2010 by merging the former Electoral Commission and the Chief Electoral Office into a single body; the Chief Electoral Officer serves as chief executive and a member of the Commission: International Standards & Best Practices working paper.

[33] Consistent with the five-member Electoral Commission provided for under the Constitution of the Republic of Fiji 1997.

three-member Commission likewise includes the Electoral Commissioner alongside a judicial chair and a non-judicial member; and the FEO identifies Tonga as a further example of a single body led by such a board.[34] Closer to home, the Solomon Islands Electoral Commission follows the same approach: its Chief Electoral Officer sits as a member of the Commission, though as a non-voting member.[35] The Commission invites the Commission of Review to consider whether the Chief Executive should sit as a full voting Commissioner or, as in Solomon Islands, as a non-voting member.

The Commission is conscious that other jurisdictions take the opposite course and concentrate electoral authority in a single office-holder. Papua New Guinea, for example, vests its electoral functions in a sole — and powerful — Electoral Commissioner.[36] The Commission considers a collegial body preferable for Fiji. A small board diffuses authority, builds in internal checks, and guards against the over-concentration of power in one official that has been a feature of recent experience; it does so while retaining, through the Chief Executive, the operational clarity that a single accountable manager of elections provides.

The Commission recommends that members be appointed for staggered five-year terms. Under section 135 of the Constitution, members of the Electoral Commission presently hold office for only three years, whereas the Supervisor of Elections and most other independent office-holders hold office for five, and the Electoral Commissions under the 1970, 1990 and 1997 Constitutions each held five-year terms. A three-year term sits awkwardly within a four-year electoral cycle: a Commission's appointments can expire just as it is required to make critical decisions and complete its statutory reports. Members should be brought into the five-year category and appointed on a staggered basis, so that terms do not expire together and there is no gap in membership or loss of institutional knowledge between elections.[37][38]

8.3 The Registrar of Political Parties

[34]Australian Electoral Commission — a three-member Commission established by s 6 of the Commonwealth Electoral Act 1918 (Cth), comprising a chairperson (a serving or retired Federal Court judge), the Electoral Commissioner, and a non-judicial member: International Standards & Best Practices working paper.

[35]The Solomon Islands Electoral Commission comprises three appointed members together with the Chief Electoral Officer, who sits as a fourth member of the Commission but does not vote on its decisions: Constitution of Solomon Islands (as amended in 2018) and Electoral Act 2018 (Solomon Islands), the Chief Electoral Officer being appointed under s 57A of the Constitution.

[36]By contrast, the Papua New Guinea Electoral Commission is headed by a single Electoral Commissioner — a sole office-holder with extensive powers — established by the Constitution of the Independent State of Papua New Guinea (s 126) and appointed for a term of six years.

[37]Constitution of the Republic of Fiji 2013, ss 134–135. Under s 135, members of the Electoral Commission hold office for three years, whereas the Supervisor of Elections and most other independent office-holders hold office for five years. The Electoral Commissions under the 1970, 1990 and 1997 Constitutions each held five-year terms.

[38]Electoral Commission and Supervisor of Elections, 2022 General Election Joint Report, p 16 (synchronising the terms of Commission members with the four-year electoral cycle, and appointing members on a staggered basis to preserve a quorum and institutional knowledge).

At present the Supervisor of Elections also holds the office of Registrar of Political Parties. That office is not established by the Constitution; it is created by the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013, and the role has in practice been conferred on the Supervisor.[39] The result is that a single official both conducts elections and registers, regulates and may deregister the political parties that contest them. That concentration of functions has attracted concern, particularly where a party may be removed from the register by the same office that administers the poll.

The position is complicated further by the Commission's own role. Appeals against the decisions of the Registrar are heard by the Electoral Commission, as are complaints against the decisions of the Supervisor.[40] Under the unified body now proposed, the Supervisor of Elections would become the Chief Executive and sit as a Commissioner. Were that same office also to hold the registry, the Commission would be reviewing, on appeal, the first-instance decisions of one of its own members — an arrangement that cannot be reconciled with the impartiality the appellate function demands.

The Commission therefore recommends that, upon the commencement of the transition to a unified electoral management body, the office of Registrar of Political Parties be separated from the Chief Executive and vested in a distinct officer who is accountable to the Commission but is not a Commissioner. The sequencing matters: the separation should take effect as the unified body is established, so that the registry function is never combined with the office that conducts the poll, nor held by a member of the body that hears appeals against the Registrar. Such a separation was expressly contemplated by the terms of reference of the Electoral Law Reform Commissioners, which called for it to secure the independence of the Registrar.[41] The Commission's appellate role over the Registrar is thereby preserved and made genuinely independent, because the Registrar no longer sits on the Commission. This can be achieved through amendment of the Political Parties Act and need not be entrenched in the Constitution; the Commission asks only that the constitutional framework not stand in the way of such a separation.

8.4 Independence and appointment

Whatever its final size, the unified body must be genuinely independent. The Commission recommends that the Constitution entrench its independence and provide for an appointment process in which the role of the executive is limited, the criteria for appointment are clear and

[39]The office of Registrar of Political Parties is established by the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013, not by the Constitution. In practice the Supervisor of Elections holds the office of Registrar; the present Supervisor of Elections also serves as Registrar of Political Parties.

[40]Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013, s 30(1): appeals against decisions of the Registrar of Political Parties are heard by the Electoral Commission. Complaints against decisions of the Supervisor of Elections are likewise determined by the Electoral Commission under s 17 of the Electoral Act 2014.

[41]The terms of reference of the Electoral Law Reform Commissioners expressly called for separating the roles of the Supervisor of Elections and the Registrar of Political Parties so as to secure the independence of the office of the Registrar: ELRC Report and terms of reference.

objective, and members are barred from standing as candidates. These safeguards reflect the international standards for electoral management bodies and are essential to public confidence in the impartiality of the institution.[42]

9. The Senate

The Electoral Law Reform Commissioners recommended the re-establishment of an apolitical Senate, with half of its members appointed by indigenous councils — the Great Council of Chiefs and the Rotuma Council — and the remainder drawn from diverse ethnic and social groups, serving staggered terms.[43]

> **The Commission takes no fixed position on whether an Upper House should be re-established; this is a matter for the Commission of Review. The Commission observes only that, should the consensus be to reintroduce a Senate, at least half of its membership should be elected, so that the chamber carries a measure of democratic legitimacy. The Commission notes the substance of the proposal for staggered five-year terms as a means of preserving institutional knowledge across successive Parliaments.**

10. Matters touching the Commission's mandate

The Electoral Law Reform Commissioners recommended a two-term limit for the Prime Minister, a mandatory retirement age of 75, and a Westminster-style caretaker government during the campaign period.[44]

> **The Commission and the FEO consider term limits and a retirement age to be questions of constitutional and political design that lie outside their administrative mandate, and they defer to the Commission of Review. Caretaker government stands differently. Although the design of a caretaker model appears, at first sight, to lie beyond the purview of an electoral management body, the conduct of the executive during the campaign and polling period bears directly on the integrity and fairness of the election.**

At a recent workshop the FEO held for political parties on campaign limitations, the representatives of the eight parties present consistently identified the misuse of parliamentary incumbency during the campaign as their principal concern — concerns that might be addressed

[42]International IDEA, Electoral Management Design Handbook, and Council of Europe guidance: government should have a limited role in the formation of an independent electoral authority; appointment criteria should be clear and objective; members should not stand as candidates; and standardised training should be provided.
[43]ELRC Report, p 9 and pp 9–10 (re-establishment of an apolitical Senate, with members appointed by the Great Council of Chiefs and the Rotuma Council and from diverse communities; staggered five-year terms).
[44]ELRC Report, pp 1 and 7 (two-term limit for the Prime Minister; mandatory retirement age of 75; Westminster-style caretaker government during the campaign period).

in part by rules made by the Commission under the Electoral Act, but that the parties agreed would be overcome by an effective caretaker-government model in the Constitution.[45]

The Commission and the FEO invite the Commission of Review to consider establishing an effective caretaker-government model in the Constitution. Both bodies observe only that caretaker conventions, in so far as they govern the conduct of the executive during the campaign and polling period, bear directly on the integrity of the electoral process. The Commission would welcome the opportunity to advise on caretaker conventions as they affect election administration.

[45]Electoral Act 2014, s 155 (rules made by the Electoral Commission). Concerns about the use of parliamentary incumbency during the campaign were raised consistently by the political parties at a Fijian Elections Office workshop on campaign limitations.

11. Summary of recommendations

The positions of the Commission and the FEO are summarised below. They should be read together with the reasoning and references in the body of this submission.

Matter	The joint position of the Commission and the FEO
Electoral system	Endorses a lower party-vote threshold and a mixed system giving voters a direct local representative alongside proportional party representation; final design a matter for the Commission of Review and Parliament.
Women's representation	Supports temporary special measures, including reserved seats for women; the number of seats left to the Commission of Review and the legislature.
Boundary delimitation	No boundaries commission exists in the 2013 Constitution; if a constituency-based or mixed system is adopted, recommends an apolitical Constituency Boundaries Commission established in the Constitution, covering national and local-government boundaries.
Prisoner voting	Supports removal of the blanket disqualification of serving prisoners.
Disability and "unsound mind"	Recommends removing the "unsound mind" disqualification and related terminology and rights-based redrafting consistent with the CRPD, realised through reasonable accommodation and progressive realisation, with safeguards against undue influence in supported voting.
Compulsory or voluntary voting	Recommends retaining voluntary voting, with continued investment in voter outreach rather than compulsion.
Candidate eligibility	Supports eligibility of dual citizens and of persons who have completed a custodial sentence (with clearer offence thresholds); invites review of the "public office" bar (trade-union and employer officials) and of permanent resignation versus unpaid leave; and resolution of the status of candidates remaining on the open list. Coup-related immunity left to the Commission of Review.
Stability of electoral law	Recommends that election-year amendments not take effect until after the poll, subject to a narrow exception where the Commission and the FEO agree earlier commencement is practicable.
Timing of the election	Recommends a deemed election date if none is announced within six months of the latest possible date; constitutional footing for a mid-week polling holiday; and a longer, extendable writ-to-poll period.
Unified electoral management body	Both bodies support merging the Commission and the FEO;the Commission directing that five is appropriate, including the Chief Executive as a Commissioner, with staggered five-year terms (s 135).
Registrar of Political Parties	On transition to a unified body, separate the Registrar from the Chief Executive and vest it in a distinct officer accountable to the Commission, preserving the Commission's independent role in hearing appeals against the Registrar; a statutory matter under the Political Parties Act 2013.
Senate	No fixed position; if an Upper House is re-established, at least half should be elected.
Executive limitations and caretaker government	Term limits and retirement age left to the Commission of Review; both bodies invite consideration of an effective caretaker-government model, which parties identified as key to fair campaigning.

Respectfully submitted,

Chairperson
Electoral Commission of the
Republic of Fiji

Supervisor of Elections
Chief Executive, Fijian Elections Office
30/06/26

Dr Mosmi Bhim

Doctor Mosmi Bhim
Date: 1 -7-2026
12pm-1pm

Mr. Valenitabua: Good afternoon. Okay, I'll call the consultation to order. Dr. Bhim, welcome to the Constitution Review Commission.We have four commissioners here. On my left is Dr. Neelesh Gounder and Mr Conway Beg. And on the far right is Ms. Nailatikau. I am Sevuloni Valenitabua, the Charperson. We welcome you. And we have an hour. I think we are at quarter past twelve now. We have the consultation to be completed by 1pm. We have a very tight schedule. So, without further ado, please make your submission to us. A summary would be fine. If you have a written form, a written version, we'd like to have that after.

Ms. Bhim: Okay, I'll email the written version to you.

Thank you. Thank you very much for allowing me this opportunity to make my submission. Before beginning my presentation, I would like to express a disclaimer that these views are my own opinions as an academic researcher or an expert in political sciences.

And they do not represent the Fiji National University where I am employed. Democratic integrity refers to practices, policies, procedures, laws and values that protect and ensure democracy is upheld and decisions are not undermined or subverted through practices such as corruption, nepotism, violation of human rights and interference in the democratic process of making and implementing laws. So, in this vein of democratic integrity, in my submission, I will discuss recommendations regarding democracy, electoral reforms and ending the coup culture in Fiji.

So, Fiji remains in a position of transition to democracy. It's a state, it reached independence. So, let me explain it.

When a country becomes independent, it does not automatically mean just by having elections they are a full democracy. It means they have started the phase of democracy, which means they have entered a phase of transition to democracy. So, what has happened in Fiji is that because of the repeated coups we've had, we've actually kept going backwards into authoritarian rule.

And this has meant that now, after the current election, we have gone back to a stage of transition to democracy, where we were at independence. So, that's the finding from my PhD thesis. Prior to independence, Fiji was under colonial authoritarian rule.

So, being under the British rule meant that it was an authoritarian rule, because our people were not free to choose their leaders, to make decisions for them. Following the 1987, 2000 and 2006 coups, Fiji underwent periods of different types of authoritarian rule. Electoral authoritarian governments were in power after the 2014 and 2018 elections.

Following the 1987 coup, we went into a period of civil military coalition rule. So, it was an unelected government, although we did not have a military personnel as prime minister, all the decisions were being made behind the scenes. So, it was a civil military coalition government.

Then, after the 2000 coup, we also had a brief period of civil military coalition rule, before we went to electoral governance. And after the 2006 coup, it was a more severe form of authoritarian rule. It was called a personalist military dictatorship.

So, why is it personalist? Because there is excessive power in the hands of one person. And of course, because it was a militarized rule. But we are lucky in Fiji, we haven't had violence and bloodshed.

So, this still makes us much better than other parts of the world, where they have authoritarian rule and they've had violence. So, electoral authoritarian governments were in power after the 2014 and 2018 elections. Because although we had elections in 2014 and 2018, the government in power was still behaving in an authoritarian manner, which is why it's called electoral authoritarian.

We've had elections, there were elections, but the manner of rule is still authoritarian. Fiji returned to transition to democracy after the 2022 elections. So, we have heard about the prime minister making unilateral decisions, for example.

But despite all those actions by the prime minister, the current government after the 2022 elections is, we have gone back to transition to democracy, which was after independence, also after 2001, 1999,

and after the 2006 elections, the brief period by prime minister, under prime minister Mr Laisenia Qarase. So, why are we back to transition to democracy, and not electoral authoritarian? Because what we see in our country is, we seem to have free media, this freedom of the press, our judiciary is independent, they don't seem to have predetermined outcomes. And these are some of the crucial features to assess, whether a country has returned to some form of democracy, or still under some form of authoritarian rule.

What this means is that Fiji is not a consolidated democracy, and risks exist for it to revert back into authoritarian rule. A consolidated democracy is a full democracy, where there are no risks to overthrow of the government. Which means majority of the citizens in all sectors of society, understand democracy and uphold it.

So even if anybody wants to overthrow the government, it won't work, because the citizens won't support it. So that's a consolidated democracy. So all citizens, public and private institutions, as well as civil society organizations, need to work together to uphold democracy, as democracy is everyone's responsibility.

It's not the responsibility of parliamentarians alone, it's not the responsibility of NGOs alone, it is not the responsibility of democracy activists alone, it is the responsibility of each and every one of us. Democracy will work if all of us uphold it. So Fiji has had four constitutions since independence, the 1970, 1990, 1997 and the current 2013 constitution.

The process for 1970 constitution was top-down, with Fiji's political leaders brought to London for constitutional talks. Following the 1987 coup, the 1990 constitution process was also top-down, with limited consultation on a pre-prepared document, which was later promulgated. The 1997 constitution was one that was made through processes of democratic integrity, with wide consultations with the public, discussions and open debate.

During the 2012 constitutional review, there was also a process of widespread consultation with the public. However, democratic integrity was not upheld when the leaders rejected the 2012 draft constitution document. Instead, they promulgated the pre-prepared

2013 constitution, without any consultation with the public, and without any parliamentary approval process.

The current 2026 constitutional review process is consultative. The 1997 constitution was considered a progressive constitution, as it had a Bill of Rights, provisions for a Human Rights Commission, ombudsmen and accountability and transparency measures, as well as provisions for power sharing. The 2013 constitution retained human rights, but placed limitations on some of these rights.

The 2013 constitution had provisions for immunity for coup makers, and enhanced guardian role of the military, without specifying what this meant. But the positive features of the 2013 constitution are the removal of race-based voting system, recognition of equal citizenry from all, and a proportional representation system. Lessons can be learned from past constitutions to propose improvements through the current review process.

Below are some suggestions to improve provisions in the revised constitution. These are in three parts, which are electoral reform, protecting democratic integrity, and political-military reform to end the coup culture. For electoral reform, some of these were also presented during the electoral act review process.

A single national constituency is unfair on political candidates, as they do not have sufficient resources to campaign in the whole country. It favours well-known personalities and leaders. It needs to be removed and replaced with constituencies.

Constituencies will make campaigning fairer for candidates, and easier for electorate to hold the elected accountable. The non-ethnic-based one-person, one-vote should be retained. A 30% quota for women should be implemented, as one in three women are victims of domestic violence and sexual abuse, and women bear higher burden of unpaid care work.

The Rotumans need to be recognised as an indigenous ethnic group, whose language, culture and identity are endangered of being wiped out, due to their very small composition. One seat should be reserved for Rotumans. It is the responsibility of the mainstream-majority ethnic

group, the iTaukei, to protect the marginalised minority indigenous Rotumans, and ensure their land, culture and language are preserved.

Educational institutes, non-government organisations, civil society organisations, as well as interest groups and grassroots groupings should all be provided an enabling environment to discuss electoral issues and educate others themselves. Restrictions on voter education activities should be removed. Fiji government receives a high proportion of foreign donor aid to conduct national elections.

The Fiji government values election aid, and does not regard it as unfair influence on elections. It is therefore unfair for the Fiji government to benefit from foreign aid while penalising voter education conducted via foreign donor funding. And this restriction should be removed from the Electoral Act.

Whereby in the Act, Section 110A of the Act is on opinion polls, surveys or research on elections, which now require permission from the Fijian elections office. And Electoral Act 2014, Section 115 places restrictions on foreign funded educational activities on voting and elections after the writ of elections is issued. And these restrictions should be removed, as was promised in the manifesto of the current coalition government before they came into power.

They promised to remove these restrictions. So these should be removed, because the requirement for FEO approval on elections related research and publications violate academic freedom. Universities and academic journals have own stringent ethical and editorial checks and approvals utilised worldwide.

It is unfair that those enjoying immunity from coup prosecutions freely contest elections. Those immune from prosecutions should be barred from contesting elections for four to eight years or fully. Currently, if someone has served a jail term of one year, they are barred from contesting elections for eight years.

So similar restrictions should apply to those who enjoy immunity from prosecution. The electoral system should protect democracy and not coup makers. Banimarama stated there would be a two-term limit for prime ministers in the new constitution.

We have examined the whole of the 2013 constitution and we have not found the two-term limit there. We therefore request that this two-term limit should be included in the new constitution so that there is a limit on the time in power that prime ministers have. The 5% threshold is unfair and unjust.

There should be no threshold to enter parliament. If there is a threshold, it should be reduced to 1%. Penalties ranging from $5,000 to $10,000 to $50,000.

And from five years to ten years convictions are too high. So these kind of penalties are in our electoral act 2014. It's in the 2013 constitution and it is in most of the acts that were promulgated after the 2009 abrogation of the constitution and which became laws.

They became acts after the 2014 elections. So it was a promise of the government to review these legislations. Now another election is approaching and we are still faced with these harsh penalties for minor offences.

In a democracy we have to encourage citizens to participate. We should provide them an enabling environment to participate. And if the penalties are too high, the fines are too high, and jail terms are too high for small offences, it actually is a disincentive for people to stand in elections.

So that's the rationale behind it. Penalties should only be fines between $50 and $1,000. Criminal conviction should be removed for minor misdemeanours as severe penalties intimidate citizens from contesting elections.

Protection of democratic integrity. For the sake of democratic integrity, the revised Fiji constitution needs to protect and safeguard democracy. The current 2013 constitution, by providing immunity to coup makers, not only undermines the rule of law, but also undermines democracy itself.

The immunity clause needs to be removed. The immunity clause is protecting treason and coup crimes. The immunity clause is not protecting democracy.

It is violating democracy. Immunity violates the military ethics which requires a soldier to sacrifice themselves for the nation. A good soldier, an ethical soldier, is supposed to be one who is willing to sacrifice their safety for the nation.

But through immunity for coups, the opposite is happening. Soldiers are sacrificing the nation to protect themselves. So which is why it should be removed because it's in fact opposite of military ethics.

To protect democratic integrity, coup makers who violated democracy by removing elected governments from power should not be allowed to contest elections or hold the positions of prime minister, ministers or president. Treason offences are not pardonable and must not be rewarded. The president must be an accomplished person with no convictions.

Only elected persons should be allowed to hold positions of prime minister and ministers. To further encourage change in leaders through democratic parliamentary means, political parties need to practice a system of rotation whereby two or three identified people in the party or the coalition can take turns in the prime minister role. This will prevent authoritarianism in the prime minister's actions.

There needs to be greater accountability for the prime minister's and president's actions to prevent unilateral decisions. One person must not serve as a prime minister for more than one year. Esteemed members of the commission, this system is already being practiced in Switzerland.

Under the theme that all decisions should be made in a collective way. It is anchored in article 177 of the Federal Constitution of Switzerland whereby the co-goals of Swiss politics is achieving consensus and making sure nobody can grab too much power. Essentially, it means the government is collective and non-hierarchical, the ministers who represent the country's four biggest parties decide as equals.

There is no prime minister pulling the strings. The presidency rotates among the seven ministers each year and is largely a ceremonial and coordination role. So this provides a big lesson for Fiji.

Switzerland has a population of 9 million and it has only seven ministers. Each minister serves one year as prime minister. This prevents authoritarian dictatorial power in the prime minister.

Whereas in Fiji, we have a population of only 900,000 and we have, I believe, about maybe 20 ministers. Yes, and we have also blown our budget. We have a big budget deficit.

Where there is dissension or opposition to the prime minister, another person from the party or coalition can be selected for prime minister, such as in Australia and Great Britain. We have seen over the past few years that the party felt they no longer had confidence in the prime minister and they selected another person from the party to serve as the prime minister. In severe cases of lack of confidence, a minority government can be appointed.

As has happened in Fiji in the past, when Ratu Mara was appointed as head of a minority government in 1977. The emphasis here is that a government must be from elected members only and an unelected government should not be allowed. The military needs to be subservient to the rule of law and no provisions should give them any extra powers or benefits, which means the military cannot override the police.

The Minister for policing needs to be a civilian to ensure non-interference of military in policing. Currently our medical services are in a crisis. Medical and education sectors suffer shortage of staff, whereas medical sector is an essential sector.

Medical professionals need to be recognised as essential workers and medical facilities to be recognised as essential services where the government needs to place priority to ensure up-to-date medical facilities and provisions of essential medications. We have shortage of medications, we have shortage of equipment in hospitals. Compared to that, our military has up-to-date military equipment.

This is just a comparison of where our country's priorities align because education and health are measures of economic development. A country is considered developed when they improve in their education and health sectors, but these are the sectors in Fiji that are the most poorly performing where we have shortage of staff and run-down

facilities. The Great Council of Chiefs need to be an accountable and transparent organisation who are required to take an oath not to support coup-makers or illegal changeover of government.

This oath should be included in oaths of all ministers, prime ministers and presidents. Chair of the commission, the Great Council of Chiefs always has had powers except under the 2013 constitution. They also had powers as members of the senate and these powers were there as a safety measure but when coups happened we found that the Chiefs have not used this safety measure.

They have not gone to the Senate to make a decision to emphasise how governments can be changed in a legal way and in fact many chiefs have instead chosen to join coup-makers. That's why it's very important that the great council of chiefs more powers are being proposed to them. But if more powers are being proposed to them it's good they are a traditional institution, they are here to safeguard cultural and traditional values but there must be accountability.

There was no need for the 1987 and 2000 coups. If the chiefs felt that the government in power was not representing the indigenous regions actions or indigenous politicians felt that it was not representing their interests they could have utilised a no confidence motion in parliament. The no confidence motion can be utilised.

It is legal, it is democratic which means there is no need for a coup. If there is no confidence in a government a no confidence motion can be moved. Or the senate could have used its prerogative to vote in a motion of no confidence in the prime minister in year 2000 and in 1987.

So these are features of democracy that can be utilised. There is no need for a coup to change a government. There are measures already in place in a democratic system which can be utilised to change government if leaders are unpopular or they feel leaders are not serving a majority of the people's interests.

Democracy is everyone's responsibility. This includes not just parliament, government, political parties but the private sector, religious organisations, sports bodies, workers' unions, employers' organisations, military, police, village and town residents, health workers, street cleaners, professional organisations, schools,

universities and all members of the wider civil society. A majority must believe and uphold democracy at all times.

Rule of law and core principles of human rights are vital components of democracy. This includes right to equality and freedom from discrimination. In this vein, Fiji should remain a secular state.

Giving state recognition to one religion will violate the right to freedom of religion and belief and risks Fiji being classified as an undemocratic religious fundamentalist state. Currently, the fundamentalist states, undemocratic religious fundamentalist states are countries such as Saudi Arabia, Pakistan and Afghanistan. So if we make one religion official, we will fall in their category.

We will not fall in the category of a fully democratic nation. Fiji constitution has been removed in the aftermath of coups by Fiji's military and new constitutions have been adopted by governments led by military coup leaders. The security sector needs to be reformed to prevent coups in Fiji and removal of constitution.

And the constitution itself needs to have safeguards to prevent coup leaders from holding public office. These are some of the reforms that I had proposed earlier which can hopefully end coup culture. These recommendations are proposed to end coup culture in Fiji and strengthen democracy.

Of course, they all need further discussion but if we all share our views and we start discussing, we will end up with something that we know may be right. So these recommendations include having constitutional safeguards, reforming the military and to stop undermining law enforcement sector through military interference and intrusion. Constitutional provisions to safeguard democracy to prevent unelected persons, military or civilian because civilian people have also carried out coups.

So to prevent either military or civilian from forming government who are unelected, constitution needs provision that only elected parliamentarians can be sworn in to positions of prime minister and ministers. The vote of no confidence motion should be an option for prime minister's democratic changeover. The leader does not have to serve the full electoral term as the prime minister.

A leeway must be provided to winning political party to change the prime minister by selecting a replacement from elected party members if the prime minister loses the confidence of the party or the parliament or segments of society or institutions. Coup participants should not be eligible to stand in elections, should not be a member of parliament and should not be eligible for positions of prime minister and positions of the country. Coup participants should not be eligible for employment in the civil service, statutory bodies, independent institutions and security forces.

These are some measures to reform the military to prevent coups. They may already belong to the military because they are already undergoing their own reform process. Firstly, it's to reduce the size of Fiji's military.

In a white paper, the National Security and Defense Review conducted in 2004, they had recommended reducing the size of Fiji's military by half. So the Honorable Laisenia Qarase was removed from power in 2006. Otherwise, in an interview that I conducted with him for my PhD thesis, he had expressed that was a solution to the coup culture in Fiji because in that national security report, they identified the big size of the military as one of the threats to Fiji's democracy.

Military service should be temporary, with soldiers serving 5 to 10 years only in the RFMF. It is because soldiering is not a lifelong career in Fiji because not all soldiers can serve until retirement. When people enlist as a soldier in Fiji's military, the active service of fighting is when they go for peacekeeping because Fiji does not have civil conflict.

We don't have wars. So therefore, they only experience in this kind of wars when they go for peacekeeping. By the time soldiers are 40, they cannot go for peacekeeping.

They have to find another profession. Therefore, soldiering is not a lifelong career envisaged for soldiers in Fiji. It ends for soldiers when they reach middle age.

Experienced soldiers with no career beyond middle age are at risk of incentive to carry out a coup and it provides opportunity to gain senior positions in government institutions, diplomatic corps and statutory bodies. Such scenario occurred after the 1987 and 2006 coups in Fiji

where soldiers have benefited by being appointed to senior government positions, diplomatic corps and statutory bodies. To prevent a repeat of such incidents, service in Fiji's military needs to be for temporary period of 5 to 10 years and soldiers should be provided assistance to move on to other permanent careers that they can last in until their retirement.

Fiji's military needs to undergo a process of civil military reform to enhance understanding of the role of a soldier in a democracy. They may already be undergoing this process of reform but I have just mentioned it here as well. We need to prevent undermining of law enforcement sector by the military.

After 1987 and 2006 coups, authority of the Fiji police force was undermined. Very visible action of undermining civilian police force occurred when police were not allowed to lead the police force as commissioners. Instead, senior military officers were appointed to the role of police commissioner.

This included Isikeli Sabuwa, Esala Teleni, Ioane Naivalarua and most recently Sitiveni Qiliho. Former police commissioners Andrew Hughes, Ben Grunewald and Rusiate Tudravu revealed about interference and intimidation by the military during their tenure as police commissioners. In a democracy, all are subservient to the rule of law.

To safeguard democracy, the police force needs to operate as independent police force that is subservient to the rule of law and that is not undermined by the military or the prime minister or the army commander. Democracy theorists have written widely about the dangers to democracy if the military is allowed any role in the police. To ensure that democracy is not undermined by intrusion of the military in the police, there needs to be a clear demarcation or a clear separation of the roles and responsibilities of the military and the police.

Members of the military and former military officers must not be appointed to the roles of police commissioner or the head of correction service or to any other role in the police or prisons. The military must not be used for any civilian policing roles and activities. The realm of the military needs to be restricted to defending from outside threats and to disaster relief works and only a limited role to assist police in emergencies and that's only if the police request for assistance.

In exchange for immunity, people who played key roles in executing coups, whether civilian or military, must give up something. They should not hold senior public service positions. They've got to get out of jail free card, basically, by having immunity from coup prosecution.

By doing the most serious crime, which is a crime of treason, under the 1997 constitution and Fiji's own laws, the penalty for treason was death by hanging. But in the aftermath of coups, the coup makers have received immunity. Not just soldiers, but civilians as well.

So immunity has not been just for soldiers, it has also been for civilians who have supported coups and benefited from coups. So we must distinguish that civilians have also benefited from coups through senior appointments, etc. and through immunity provisions.

So people, whether civilian or military, who have received immunity and whose immunity will not be taken away, must give up something. They should not hold senior public service positions. They should not stand in elections to become members of parliament.

They should not become government ministers, prime minister and president. Who is the most serious offence for a soldier to make? In foreign countries, this crime of treason results in permanent disgrace and never again to be employed in the military. It should be considered how people who played key roles in coups can be removed from the military in exchange for the immunity from prosecution that they are enjoying.

Future coup makers' penalties should include permanent removal from the military as well as public service and election as members of parliaments. The people of Fiji remain hopeful that this constitution review will bring about amendments that will strengthen democratic integrity in Fiji and thereby move Fiji forward on the path to strengthen democracy. Lastly, I want to say a big thank you to the organizers of today's event and to members of the Constitution Review Commission for providing me this opportunity to share these ideas and views on this topic of national importance.

Mr. Valenitabua: Thank you. Thank you, Dr. Bhim. Thank you very much for that submission.

We look forward to receiving a copy of your submission for our deliberations. Thank you. We have listened to you, we have made our own notes, but we would prefer to have a copy of your submission.

Commissioners, any comments? We usually have comments and questions at the end of the session.

Dr Neelesh: Thank you, Chair, and thank you, Dr. Mosmi, for your submission today. Just a few clarifying questions. Number one, you talked about the threshold, which means that you are supporting keeping the one constituency that is under the current electoral system?

Dr. Bhim: No, actually. I had mentioned in my presentation that the single constituency should be removed and we should have multiple constituencies. Okay.

Dr. Neelesh: So if we have multiple constituencies, then the threshold argument vanishes away?

Dr.Bhim: Okay, thanks for the clarification.

Yeah. Okay.

Dr Neelesh: Because the threshold only works in the single open constituency system unless you are proposing in any other system where you are talking about both constituency and threshold. That is not what you are talking about. Is that right?

Dr .Bhim: No, actually.

Dr. Neelesh: Thank you. And we have received numerous submissions on moving away from a communal system of voting, but I see you have advocated for a communal seat. Is that correct?

Dr .Bhim: No, I have not advocated for a communal seat.

I have only advocated for one reserved seat for Rotumans. Because Rotumans are a minority group in Fiji. I believe they may be less than 1% of the population.

And this year in New Zealand, they had a special occasion to recognize how endangered the Rotumans are. And it is only for that reason. And it cannot be given that reserved seat in any other country because they are an indigenous group of Fiji only.

And being a very minority community, that's the only reason the reserved seat is being proposed. Not for any other communities who are majorities, supermajority or one-third majorities. But only for the Rotumans.

I'm proposing a reserved seat. Thank you.

Ms Nailatikau: Thank you, Ms. Bhim, for your submission. There are touch points in your submission relating to the military that are threaded through some of the submissions that the RFMF made in their submission to the Commission last week. And it also brings to mind how even around the events of 1970 there were discussions about the size of Fiji's military and the different implications of continuing in terms of a military as an independent country or in our transition towards democratic governance.

But I also am drawing attention to your example that you drew from Switzerland in terms of the unique type of set-up that they've undertaken there. And the clarifying question there is that that would assume a type of coalition arrangement within the parties in government when a prime ministership would be rotated just for the purpose of discussion. I thought I'd ask you to expand on that.

Dr. Bhim: Yes. From what I understand, Switzerland has a very unique form of democracy. It's called a consociational democracy.

So they don't have any opposition. They elect the members of parliament and there's no one in the opposition. And despite having no opposition members, they are all able to hold their ministers accountable.

And interestingly, Switzerland also has a conscription service, you know, where all adults must serve in the military for one year. And this has not ended up making the nation militarized and there has been no coups or grab for power by the military. So I guess there are a lot of lessons we can learn.

Of course, Fiji is unique. We are different. We cannot be like Switzerland, but we can still learn some useful lessons from the other countries.

Mr Beg: Yes, the question on Switzerland is a unique situation, but they're not governed by or settled with unique culture that we have or multi-racial society. But moving on, your point on health, well-being and education is a crucial point that you've raised. And I guess we've heard this a lot amongst the people in terms of the committees who presented to us.

But those points are taken on board. And I've also noted your comments about the role of the RFMF and the police force. Again, as Commissioner Mere said, there were some presentations on how they would deal with that.

But thank you for your presentation. I appreciate that. Thank you, Chair.

Dr. Bhim: There's one more point. I forgot to write it here. I had thought about adding it.

It's a request to the Constitutional Review Commission to include in their recommendation that the increase in size of the military needs to be debated in Parliament. This has been suggested by many people. Two weeks back, we had the Economic Forum, a stakeholder consultation.

And over there, last week, I think, in the Budget Forum, we had questioned the Ministry of Finance about an increase of 10,000 in the civil service since the last government, and where all the increase came from. So they mentioned the police force, they mentioned the health sector and other sectors, but they did not mention the increase in the size of the military. Whereas we've heard in the news and other forums that the military has increased by about 1,000 soldiers at least.

So all sectors of the government, all sectors of the state that are paid by taxpayers needs to be transparent. If there's been an increase in size of the military, just like the police force, they tell everyone how many police are there and how many police numbers they've increased by. And the budget is debated in the same way.

It should also be for the military, where any increase in size of the military should be debated in Parliament. It might be one of the measures to hold the RFMF accountable for use of their funds. Thank you.

Mr. Valenitabua: Ms. Bhim, still on the military, you are suggesting to the Commission that soldiers are to serve for five to ten years only. Was that your submission?

Dr. Bhim: Yes, actually. I also made this submission to the National Security and Defence Review two years back.

I have a question for you. These days, our people go for job security, right? And those who prefer to join the military anticipate and some expect to serve until they are 55 years old. Now, you were saying that if soldiers serve beyond the ten years, then they would be prone to... they won't have any employable opportunity after more than ten years.

Remembering that soldiering is just soldiering. And that might create that atmosphere where they think of taking over government so that they can have the advantage of being employed in government ministries. Was that what you said or not? Yes.

Dr. Bhim: Yes? Okay. Because soldiering is a profession that relies on physical fitness. And beyond middle age, the physical fitness element is not there anymore for these kinds of professions such as soldiering, for example.

That's why they have a cut-off age for peacekeeping. Beyond middle age, you cannot enlist in peacekeeping, I have heard. And also, only a few soldiers can go up to senior positions.

So what happens to the other soldiers who probably never will go up to seniors?

Mr. Valenitabua: Soldiers are being employed up to 55 years old now. Okay. They are employed up to 55 years old.

That is their cut-off. What I'm saying is, what about job security? Are we going to deny them job security by limiting their years of services?

Dr. Bhim: Mr. Chair, my concern is the shortage of labour that we have in the other sectors. The Fiji Employers' Federation, they conducted the Skills Assessment Survey, and we have a huge shortage of skilled people in the other sectors.

Mr. Valenitabua: How does that affect the army?

Dr. Bhim: Because if we are a small country, and if we have so many strong, capable, intelligent men who go and enlist as soldiers, we have less strong, intelligent men for the other sectors. So if they stop doing high recruitment in the military, because I did interviews in three different countries about why people become soldiers, and many of the reasons was job security. They are much better paid than the other professions, and one very big incentive was overseas travel and training.

So Fiji is one of the biggest drawcards for joining the military is overseas travel and training. So instead, those incentives should be provided in the other professions, so that our strong, healthy men, instead of joining the military in such big numbers for those incentives, will actually join the other sectors so that we can have a skilled workforce where we can benefit from these strong, intelligent men, and we don't have to hire foreigners to work in these sectors. That's the other point we do need to have a look at.

We have oversupply in one sector, and we have shortages in the other sector. So there's a mismatch definitely somewhere. I see.

Mr. Valenitabua: Thank you. Alright, thank you for that. You also made a suggestion that elected persons only are to hold positions of PM and ministers.

Am I correct? Yes. Did I misread you? Alright. Now, suggestions have been made to us, and there's a provision in the Constitution that we can bring in people from outside who are qualified to take up positions in Parliament if there's no one there fit enough to do the job.

For example, the Attorney General can be brought from outside of Parliament, non-elected, to take up the position of the Attorney General, and that is in the current Constitution. Are you suggesting that that should not happen, and that we only have elected persons to take up the position of Attorney General, Prime Minister, and Ministers.

Dr .Bhim: That kind of appointment should only be made in very exceptional circumstances. So in this situation, for example, Mr. Graham Leung was appointed Attorney General because the Prime Minister felt that there was not anyone with a very high level of experience to do the kind of big legislative reforms that he envisaged, and it was only for that reason.

And what happened is that because he was not elected, he didn't have the safeguards that elected parliamentarians have. Elected parliamentarians have the safeguard of serving their full term, whereas a person who is appointed can also be terminated, as was done with Mr. Graham Leung. He was appointed, and then he was terminated as well without any recourse to compensation.

So a parliament and a government in a democracy, when we have a representative democracy, there are supposed to be those who rule on our behalf are supposed to have the consent of the people, and the people consent to them being in power by voting for them. So if we do bring anyone in for any position, it has to be very exceptional circumstances because at the end of the day, if they are not elected, that means the people have not chosen them to represent their interests. Thank you.

Mr. Valenitabua: Just one last question. The last question. Switzerland, you have referred to Switzerland.

You said there were seven ministers only? Yes. Seven ministers, and seven or nine? A population of nine million and seven ministers. And the prime minister, it's a rotation.

Does Switzerland have political parties?

Dr. Bhim: Yes, I think so. I've kind of forgotten, but yes, they do have political parties. They have direct democracy there.

Direct democracy is when all citizens get a chance to have a say on any new legislations that are performed. Yes, I'm just concerned. With nine million people, seven ministers, do they have political parties? How do they get to vote or to appoint seven ministers? We have how many political parties? Three mainly here in Fiji for now.

Mr. Valenitabua: You know, just a comparison. Yeah. I mean, that's it. I won't ask any more questions in relation to that. Thank you. Well, time has caught up with us. Dr. Bhim, we thank you very much for your submissions to us this afternoon. Pardon us, we have given you one hour or less, I might say, but we are really tied up with the submissions that are scheduled. So we hope you don't mind. But we thank you very much for your submissions. Your hard copy, please. May we have a copy of that? Yes, sure.

Dr .Bhim: I'll give you this hard copy and I'll also email the copy to the Secretariat. Just send us the email, please. Okay, thank you.

----------End of Session [1-7-2026] ----------

Submission to the Fiji Constitution Review Commission
Dr Mosmi Bhim, Dept of Ethics & Governance, Fiji National University.
8 July 2026, 12pm, Level 9, Suvavou House, Victoria Parade, Suva

I would like to begin my presentation with the disclaimer that these views are my own opinions as an Academic/Researcher/Expert in Political Sciences and do not represent the views of Fiji National University.

Democratic integrity refers to practices, policies, procedures, laws and values that protect and ensure democracy is upheld and decisions are not undermined or subverted through practices such as corruption, nepotism, violation of human rights, and interference in the democratic process of making and implementing laws. In my submission, I will discuss recommendations regarding democracy, electoral reforms and ending the coup culture in Fiji.

Fiji remains in a position of transition to democracy, a state it reached at independence. This is the finding of my PhD thesis. Prior to independence, Fiji was under colonial authoritarian rule. Following the 1987, 2000 and 2006 coups, Fiji underwent periods of different types of authoritarian rule. Electoral authoritarian governments were in power after the 2014 and 2018 elections. Fiji returned to transition to democracy after the 2022 elections. This means Fiji is not a consolidated democracy and risks exist. All citizens, public and private institutions, as well as civil society organisations, need to work together to uphold democracy as democracy is everyone's responsibility.

Fiji has had four constitutions since independence – the 1970, 1990, 1997, and the current 2013 Constitution. The process for the 1970 Constitution was top-down with Fiji's political leaders brought to London for constitutional talks. Following the 1987 coup, the 1990 Constitution process was also top-down with limited consultation on a prepared document which was later promulgated. The 1997 Constitution was one that was made through processes of democratic integrity with wide consultations with the public, discussions and open debate. During the 2012 Constitution Review there was also a process of wide-spread consultation with the public. However, democratic integrity was not upheld when the leaders rejected the 2012 draft Constitution document. Instead, they promulgated the pre-prepared 2013 constitution without any

consultation with the public and without any parliamentary approval process. The current 2026 Constitution Review process is consultative.

The 1997 Constitution was considered a progressive constitution as it had a Bill of Rights, provisions for a Human Rights Commission, Ombudsman, and accountability and transparency measures, as well as provisions for power-sharing.

The 2013 constitution retained human rights but placed limitations for some rights. The 2013 Constitution had provisions for immunity for coup makers and an enhanced guardian role of the military, without specifying what this meant.

The positive features of the 2013 Constitution include the removal of race-based voting system, recognition of equal citizenry for all, and a proportional representation system.

Lessons can be learnt from past constitutions to propose improvements through the current review. Below are some suggestions to improve provisions in the revised constitution. These are in three parts – Electoral Reform, protect democratic integrity, and political/military reform to end coup culture

Electoral Reform

- Single National Constituency is unfair on political candidates as they do not have sufficient resources to campaign in the whole country. It favours well-known personalities and leaders. It needs to be removed and replaced with constituencies. Constituencies will make campaigning fairer for candidates and easier for electorate to hold the elected accountable.
- The non-ethnic based one-person one-vote should be retained.
- 30% quota for women should be implemented as 1 in 3 women are victims of domestic violence and sexual abuse, and women bear higher burden of unpaid care work.
- The Rotumans need to be recognized as an indigenous ethnic group whose language, culture and identity are endangered of being wiped out. One seat should be reserved for Rotumans

- It is the responsibility of the mainstream majority ethnic group – the iTaukei – to protect the marginalized minority indigenous Rotumans and ensure their land, culture and language are preserved.
- Educational institutes, non-government organisations, civil society organisations, as well as interest groups and grassroots groupings, should all be provided an enabling environment to discuss electoral issues and educate others and themselves.
- Restrictions on voter education activities should be removed.
- Fiji government receives a high proportion of foreign donor aid to conduct national elections. The Fiji government values election aid and does not regard it as unfair influence on elections.
- It is unfair for government to benefit from foreign aid while penalizing voter education conducted via foreign donor funding – remove restriction.
- Section 110A - opinion poll, survey or research on elections must comply with guidelines of Electoral Commission, excessive penalties led to only FBC publishing opinion polls prior to 2022 elections.
- Electoral Act 2014, Section 115 - restrictions on foreign-funded educational activities on voting and elections after Writ of Elections issued – remove these restrictions
- These should be removed because the requirement for FEO approval on elections-related research and publications violate academic freedom. Universities and academic journals have own stringent ethical and editorial checks and approvals utilized worldwide.
- It is unfair that those enjoying immunity from coup prosecutions freely contest elections. Those immune from prosecutions should be barred from contesting elections for four to eight years, or fully.
- The electoral system should protect democracy and not coup-makers.
- Bainimarama stated there would be 2-term limit for Prime Minister in Constitution: missing in 2013 Constitution. Put back 2-term limit for PM

- The 5% threshold is unfair and unjust. There should be no threshold to enter parliament. If there is a threshold, it should be reduced to 1%.
- Penalties ranging from $5,000 to $10,000, to $50,000, and from 5 years to 10 years convictions are too high. Penalties should only be fines between $50 and $1,000. Criminal convictions should be removed for minor misdemeanors as severe penalties intimidate citizens from contesting elections.

Protection of Democratic Integrity

- For the sake of democratic integrity, the revised Fiji constitution needs to protect and safeguard democracy. The current 2013 Constitution, by providing immunity to coup makers, not only undermines rule of law, but also undermines democracy itself. The immunity clause needs to be removed. The immunity clause is protecting treason and coup crimes. The immunity clause is not protecting democracy. It is violating democracy. Immunity violates military ethics which requires a soldier to sacrifice themselves for the nation. Through immunity for coups, soldiers are sacrificing the nation to protect themselves.
- To protect democratic integrity, coup makers who violated democracy by removing elected governments from power, should not be allowed to contest elections or hold the positions of Prime Minister, Ministers, or President. Treason offences are not pardonable and must not be rewarded.
- The President must be an accomplished person with no convictions.
- only elected persons should be allowed to hold positions of Prime Minister and Ministers.
- To further encourage change in leaders through democratic parliamentary means, political parties need to practice a system of rotation whereby two or three identified people in the party or the coalition can take turns in the Prime Minister role. This will prevent authoritarianism in Prime Minister's actions. There needs to be greater accountability for the Prime Minister's and President's actions to prevent unilateral decisions. One person must not serve as PM for more than a year.

- Collective decisions and a single voice
- Anchored in article 177 of the federal constitution, collegiality is yet another element playing into the core goals of Swiss politics: achieving consensus and making sure nobody can grab too much power. Essentially, it means the government is collective and non-hierarchical: the ministers, who represent the country's four biggest parties, decide as equals. There's no prime minister pulling the strings. (The presidency rotates among the seven ministers each year and is largely a ceremonial and coordination role.)
- Lesson for Fiji – Switzerland has a population of 9 million and it has only 7 ministers. Each minister serves one year as Prime Minister. This prevents authoritarian dictatorial power in the Prime Minister.
-
- Where there is dissension or opposition to the Prime Minister, another person from the party or coalition can be selected for Prime Minister (such as in Australia and Britain). In severe cases of lack of confidence, a minority government can be appointed. The emphasis here is that a government must be from elected members only, and an unelected government should not be allowed.
- Military needs to be subservient to the rule of law and no provisions should give them any extra powers or benefits. The military cannot override police. The Minister for Policing needs to be a civilian to ensure non-interference of military in policing.
- Medical professionals need to be recognised as essential workers and medical facilities to be recognised as essential services where the government needs to place priority to ensure up-to-date medical facilities and provisions of essential medications.
- The Great Council of Chiefs need to be an accountable and transparent organisation, who are required to take an oath not to support coup makers or illegal changeover of government. This clause should be included in oaths of all Ministers, Prime Ministers and Presidents.

Democracy is everyone's responsibility. This includes not just parliament, government, political parties, but the private sector, religious organisations, sports bodies, workers unions, employers organisations, military, police, chiefs, village and town residents, health workers, street cleaners, professional organisations, schools, universities, all members of wider civil society – a

majority must believe and uphold at all times. Rule of Law and core principles of human rights are vital components of democracy. This includes Right to Equality and Freedom from Discrimination.

Fiji should remain a secular state. Giving state recognition to one religion will violate the Right to Freedom of Religion and Belief and risks Fiji being classified as an undemocratic religious fundamentalist state in the category of Saudi Arabia, Pakistan and Afghanistan.

- Fiji constitutions removed in aftermath of coups by Fiji's military, new constitutions adopted by governments led by military coup leaders:-

- the security sector needs to be reformed to prevent coups in Fiji and removal of constitutions;

- and the constitution itself needs to have safeguards to prevent coup leaders from holding public office.

Recommendations to end coup culture in Fiji and strengthen democracy

1) having constitutional safeguards.

2) reforming the military.

3) stop undermining law enforcement sector through military interference and intrusion.

- **Constitutional Provisions to Safeguard Democracy**
  To prevent unelected persons military or civilian from forming government, constitution needs provisions:-

- only elected parliamentarians can be sworn in to positions of Prime Minister and Ministers.

- Vote of No confidence motion option for PM democratic changeover

- Leader does not have to serve full electoral term as PM. Leeway to winning political party to change PM by selecting replacement from elected party members if PM loses confidence party, or parliament, or segments of society/institutions.

- Coup participants will not be eligible to stand in elections, be a member of parliament, and will not be eligible for positions of PM and President of country.

- Coup participants not eligible for employment in civil service, statutory bodies, independent institutions, security.

Reform Military to Prevent Coups

- reduce the size of Fiji's military by half – to 2,000 or less
- military service temporary with soldiers serving 5 to 10 years only in the RFMF. Soldiering is not a life-long career, ends once soldier reaches middle age. Experienced soldiers with no career beyond middle age are at risk of incentive to carry out coup as it provides opportunity to gain senior positions in government institutions, diplomatic corps, and statutory bodies.
- Such scenario occurred after 1987 and 2006 coups in Fiji. To prevent repeat, service in Fiji's military needs to be for temporary period of 5 to 10 years and soldiers assisted to move on to other permanent careers that can last till their retirement.

• Fiji's military needs to undergo a process of civil military reform to enhance understanding of the role of a soldier in a democracy.

Prevent Undermining of Law Enforcement Sector by the Military

After 1987 and 2006 coups, authority of Fiji Police Force was undermined.

- Very visible action of undermining civilian police force occurred when police not allowed lead force as Commissioner. Instead, senior military officers appointed to role of police commissioner. This included Isikia Savua, Esala Teleni, Iowane Naivalarua, and most recently, Sitiveni Qiliho.

- Former police commissioners Andrew Hughes, Ben Groenewald and Rusiate Tudravu revealed about interference and intimidation during their tenure.

• In a democracy, all are subservient to the rule of law. To safeguard democracy, the Fiji Police Force:-

- Needs to operate as independent police force that is subservient to the rule of law and that is not undermined by the military or the Prime Minister or the army commander.

Prevent Undermining of Law Enforcement Sector by the Military

- Democracy theorists have written widely about the dangers to democracy if the military is allowed any role in the police. To ensure the

democracy is not undermined by intrusion of the military in the police, there needs to be a clear demarcation of the roles and responsibilities of the military and the police.

- Members of the military and former military officers must not be appointed to the roles of Police Commissioner, or the Head of Corrections service, or to any other role in the police or prisons.

- The military must not be used for any civilian policing roles and activities. The realm of the military needs to be restricted to defending from outside threats, and to disaster relief works, and only a limited role to assist police in emergencies only if the police request for assistance.

- In exchange for immunity, people who played key roles in executing coups whether civilian or military, must give up something – they should not hold senior public service positions, they should not stand in elections to become MPs, government ministers, PM and President.
- Coup is the most serious offence for a soldier to make. In foreign countries, this crime of treason results in permanent disgrace and never again to be employed in the military. It should be considered how people who played key roles in coups can be removed from the military, in exchange for the immunity from prosecution that they are enjoying.
- Future coup makers penalties include permanent removal from the military as well as public service and election as MPs.
- The people of Fiji remain hopeful that this Constitution Review will bring about amendments that will strengthen democratic integrity in Fiji and thereby move Fiji forward on the path to strengthened democracy.
- Lastly, a big thank you to the organisers of today's event for this discussion of national importance.

Barbara Malimali

Barbara Malimali
Date:2-7-2026

Ms Malimali: It's a close admission to Mr. Savu and myself. Savu is our special guest today. How are you? Yes, very nice and healthy and fat, yes.

Mr Valenitabua: Please just bear with us. We'll get copies and then we'll start. We've also emailed it to the email address.

Ms Mlimali: Okay. So whoever has that email can forward it to the rest of you. Good luck.

Mr Valenitabua: Since when?

All right; I think I will call the consultation to order. We can wait for your written submission which is being photocopied. And Mr. Biu can give us that later.

Ms. Malimali and Mr. Savu, we welcome you to level nine of our Suvavou house this afternoon. We have been receiving your request or acceptance of our request that you make submissions to us in relation to the review of the 2013 constitution. I know there were a number of cancellations and deferments and eventually now you are here.

So, we thank you very much for attending before this commission this afternoon. Before we proceed further, I just have a matter of introduction. You know the commissioners that are sitting here today.

I don't need to introduce us to you. The only thing I want to say is that there are three of us here this afternoon. Another three are sitting in Rotuma right now.

They had four sessions today so they must be in the middle of one of the sessions. We have been around Vitilevu, we have been through the islands, we have been around Vanualevu gathering submissions in relation to the review of the 2013 constitution. Now you might have read our terms of reference.

Have you? Right. Okay. Our term of reference just wants us to review the 2013 constitution.

There were a number of themes which we were to deal with and one of the requirements was for us to travel around the country and gather submissions from our grassroots people. Not only them, we heard from the ministries, we heard from various non-government organizations. We heard from individuals and we have had a lot of submissions, and we have a lot of submissions to deliberate on when we finish all these consultations.

We are here to listen to you. That is what we are here for. We are not going to be arguing or doing anything like that.

Maybe we will comment, maybe we will ask questions for clarification. So, I am sure I don't need to explain any further what this commission is about and what we will be doing because you know that the amendment will need to go through the process as provided in the constitution and as modified by the Supreme Court. Without further ado, I will now hand over the floor and the mic to you and Mr. Savu to present us your submissions.

Ms. Malimali: Thank you. Thank you chair, thank you commissioners. For completion, we will just introduce ourselves.

My name is Barbara Malimali, I'm a legal practitioner and to my left is Samuela Savu, also a legal practitioner and I had the privilege of having taught Mr. Savu at law school and then we are now colleagues. So now I'm learning from him on the constitution and politics. We have our 23 page submission before you.

We will not bore you by reading through it all. What we'll do is we'll just go into the highlights. I will highlight a couple of things and young Mr. Savu here will do the rest.

But we want to begin by saying we are happy that these consultations are happening. We all know how this 2013 constitution came about and this is fuller, more complete and more inclusive. So, we are very happy that this is happening.

Although you will see in paragraph 1, I did state my concerns about the genesis of the commission but being that as it may, we've chosen to come and give submissions, and we thank you for the opportunity. As we know from the Supreme Court, the 2013 constitution has been

recognized as legally effective. I'm now at page 2; the penultimate paragraph and Fiji have had three general elections under this constitution.

But as we've all seen from social media posts and from academics and just people speaking about it around grog bowls, they're not very happy with the constitution. They would like changes to it. Now at paragraph 3 we talk about objectives of a constitution which I won't go through.

That's more of an academic exercise. But what we do submit is that the constitution alone cannot, I'm now at page 4, guarantee good government. Everyone blames the constitution for our problems.

The constitution is not the problem; it's the people who are supposed to be responsible for certain things. It's the state really under their various arms that are responsible, not the constitution itself. But this constitution, imperfect though it is, is still the supreme law of the state and we submit that this is the perfect time to make changes to it.

So, Mr. Savu, do you want to take us through some of the changes you want to make to the preamble?

Mr. Savu: Thank you Mr. Chair and commissioners. As Ms. Malimali mentioned, we're starting off with the preamble and the changes we'd like to see there. And this is on page 5 of our submissions.

We're of the view that the preamble is good but can be strengthened. And the inclusions that we see would strengthen the preamble are taken from the constitution of Hungary. It's a 2011 constitution that was revised in 2016.

And very briefly these recognize the role of Christianity in preserving nationhood which is something that's notably absent from the constitution as it is today. We hold that human existence is based on human dignity, individual freedoms that can only be complete in cooperation with others, the value of family, the family unit, and that our fundamental cohesive values are fidelity, faith and love, recognizing the strength of community, even recognizing the general duty on all citizens of Fiji to help the vulnerable and the poor. It's something that's not just limited to the state but it's something that we're all collectively responsible for.

The common goal of citizens and the state to achieve the highest possible measure of well-being, safety, order, justice and liberty. And underscoring that democracy will only work and is only possible where the state serves its citizens and administers their affairs in an equitable manner without prejudice or abuse. Our constitution shall be the basis of our legal order.

It's a living framework which expresses the nation's will and the form in which we want to live. Those are our submissions on the preamble.

Ms. Malimali: In relation to the supremacy of the constitution, it's already there in section 2 that the constitution is the supreme law of the land, but we submit that it needs to be completed with the addition of, at the moment it just reads the constitution is the supreme law of the state.

We would like to add this other bit, and subject to the provisions of this constitution, if any other law is consistent with this constitution, this constitution shall prevail and the other law shall to the extent of the inconsistency be void. Now that is actually general one, common sense, and you know, it's basic. But unfortunately, from experience that I've had, most people don't seem to understand that the constitution trumps every other law in the country.

That when there's a conflict, the constitution goes up, and whatever doesn't match with the constitution goes out. In fact, other constitutions say it in the beginning sections, like Barbados. They have it actually in section 1 of the article 1 of the Barbados constitution.

Sorry, I'm a really big fan of Prime Minister Motley, so I follow a lot of what Barbados does. And in their constitution, and so in several other commonwealth constitutions, they have that. That where there's an inconsistency, the constitution prevails.

And I think the challenge in this country over the last couple of dozen years is most people don't realize that. I mean lawyers and human rights advocates and governance people and academics understand that, but our civil servants sad to say, most of them do not understand this. When I came into the civil service many months ago, I remember the people at PSC knew all of these things, they knew about judicial reviews and natural justice, but because of the way we've been governed over the

last couple of decades, sadly a lot of our civil servants didn't come through the training we went through, where we had people teaching us.

I mean in this very building I think, I was told my letter writing was too rude for a civil servant, those kinds of things. Civil servants now don't have that same kind of teaching I believe. Some are there, but not all, and I think it needs to be done across the board.

So, it's important we say, or we submit that this should be added to section 2.1 of the constitution. We also would like to see other additions, given what's been happening over the last couple of years, to section 2 of the constitution, that Fiji shall be an independent democratic rule of law state. We all talk about the rule of law, everyone spews it out, but I think it really should be spelled out in our constitution.

So, people can say, ah yes, it's written there. I think a lot of us now, if we don't see it written, it's not there. You know, seeing is believing.

So, it needs to be in black and white. We also would like to see included, the form of government shall be a republic, the source of public power shall be the people. We sometimes forget that it's government of the people, by the people.

And the power shall be exercised by the people through elected representatives or in exceptional cases directly. We say sections 3 to 6 can remain, section 4, which is controversial, we say it should remain a secular state. That's why in the preamble, where we've said we recognize the role of Christianity, you know, we recognize that Christianity has a role and had a role in leading us up to this stage.

But it doesn't mean that we become a Christian state. You know, we must respect other faiths. And the calls for a Christian state, and making Sunday a day of rest, I'm going to have to disagree with the Methodist church and say it's not rooted in the Bible.

We can recognize that Fiji recognized the role of Christianity, but we must not exclude other faiths. Religion is a personal matter and should not be legislated. And we, Mr. Savu and I, concur with the Council of Churches in reading sections 4 and section 22 of the Constitution together.

I see, Chair, you're thinking. Do you have any questions for me? Okay. Thank you, Mr. Chair.

Mr. Savu: Our next submission concerns the Bill of Rights. And these are detailed in our written submissions, but just to briefly highlight, we're of the view that there can be more safeguards added for citizens of Fiji, bearing in mind the role of the state to look after the welfare of the people, but not to trample on their rights, or to kill and maim. And in view of this, we suggest adding to section 9 of the Constitution the following, that everyone shall have the right to compensation whose liberty has been restricted without a well-founded reason, or if this was done unlawfully.

Now we see that this is a good safeguard because it'll make anyone who's heavy-handed with the law, and these are things we've both experienced ourselves, to pause a bit and think that there are actually consequences which are embedded in the Constitution that could affect me if I improperly or just go over my power a bit. So, we see that as necessary. And in terms of section 16, which talks about administrative and executive fairness. I'll come back to that, but in terms of section 11, we suggest adding to subsection 3 to be more specific, that practices aimed at eugenics, the use of the human body or its parts for financial gain, as well as human cloning, shall be prohibited.

And this is under freedom from cruel and degrading treatment. And for section... Page 11. That would be page 11 of the Constitution.

Section 11, subsection 3. Page 11 of the small blue book. Page 8 of yours, Ms. Nailatikau. Section 16.

11. 11, subsection 3. Yes. Because that talks about the freedom from torture, from scientific... And our submission is that what we've just read out should also be added to that.

Ms. Malimali: Basically, we don't want any Frankenstein-type work being done in Fiji. That's what eugenics are. Carry on, Mr. Savu.

Mr. Savu: Our next submission is on section 16, executive and administrative justice, something that my colleague, Ms. Malimali, is very familiar and well-versed on. And from that experience, our submission is that these provisions need to be strengthened and include that everyone shall have the right to have his or her affairs handled impartially, fairly, and within a

reasonable time by the authorities. Authorities shall be obliged to give reasons for their decisions as provided for by an act.

I understand that at this point, timeliness is not as detailed, but we are of the view that it should be, because not only do actions need to be fair, they need to be done within a reasonable time by the authorities. Otherwise, even if it's done fairly, but very delayed, it's not fair at all. And the second is that everyone shall have the right to compensation for damage unlawfully caused to him or her by the authorities in the performance of their duties as provided for by an act.

This is something that happens but is not prescribed in the Constitution. But we submit that to strengthen executive and administrative justice, because these provisions need to be added. And that's just to prevent the systemic abuse of the state's vast powers that it currently has.

And for freedom of assembly, section 18, we are of the view that this should be retained with some additional protections, such as everyone having the right to peaceful assembly, everyone shall have the right to establish and join organizations, political parties may be formed and may operate freely on the basis of the right to association, political parties shall participate in the formation and expression of the will of the people, but shall not exercise public power directly. The detailed rules for the operation and management of political parties shall be laid down in the laws governing political parties and that trade unions and other interest representation organizations may be formed and may operate freely on the basis of the right to association. Political participation is a very fundamental right, and while it is guaranteed, there are a lot of other restrictions and other conflicting laws that make it a grey area, so we are of the view that if it's spelled out like this, on what a person's right to assemble to the extent that they can participate in a political party, it would be good and it would really strengthen democracy.

The next one would be section 24, the right to privacy. We submit that this needs to be strengthened to include an article on private communications and data that every person shall have the right to have his or her private and family life, home communications, and good reputation respected. Everyone shall have the right to the protection of his or her personal data, as well as to access and disseminate data of public interest.

The application of the right to the protection of personal data and to access data of public interest shall be supervised by an independent authority established by the Act. These are imperative provisions given the extensive use of social media, intelligence, and the much wider access that everybody has to everyone else through social media.
And the other new additions that we have, that we'd like to submit for the Bill of Rights include an article on self-defence and that everyone should have the right to repel any unlawful attack against his or her personal property or one that poses a direct threat to the same as provided for by an Act.

Understand that it's currently provided for in the Crimes Act, a similar provision, but we're of the view that it should be elevated to be a constitutional safeguard as well. Because at the moment, the way it works is that this provision of self-defence comes in when you're already charged, but if it is something that can safeguard and filter out who needs to be charged and who doesn't, who's acting in self-defence, this constitutional provision would assist in sorting that out and clarifying this. And we also submit that an article on the right to petition needs to be included in the Constitution and that everyone shall have the right to submit either individually or jointly with others written applications, complaints, or proposals to any organ exercising public power.

Recognize that this is a historical right in common law, but that it should also be embedded into Fiji's Constitution. And it also goes to the... adds to the state's responsible exercise of power and being accountable to its citizens. And the last on these would be an article on use of technology to improve public service and transparency.

The state shall strive to use the latest technological solutions and scientific achievements to make its operation efficient, raise the standard of public services, improve the transparency of public affairs, and to promote equality of opportunity. I think just dealing with state organs every day is enough justification that this is something that needs to be included in our Constitution. Yes.

It goes back to the timeliness of administrative and executive action. Right now, we are waiting two to three months or even more for matters which could be dealt with and simplified by the use of latest technology. And having this in the Constitution would raise the standard of service by the government to the people.

And now I hand over to Ms. Malimali for our submission on Parliament.

Ms. Malimali: Thank you. I'm now moving to Parliament under section 44 of the small book.

I'm sorry, section 44 of the small book was beginning at section 46 at page 44. I'm sorry, of the small blue book. And it would be on what page on the big one? Page 30 on the bigger blue book.

We submit that sections 46 to 51 can remain. For Fiji at this time, I think a unicameral Parliament is sufficient for us and for our population of people. It was 937,000.

So, a unicameral Parliament, I mean I was listening to something yesterday, I think Keir Starmer had resigned and even in Britain they're talking about these sorts of things. Do we really need a House of Lords? So, I think Fiji with 2013 Constitution making us unicameral we're on the right track. In relation to the composition, we say leave the proportional representation system.

In fact, back in 2005-2006 I think Ratu Joni Madraiwiwi and the people at the CCF and all those people at that time were already saying first pass the vote doesn't work for us. The alternative voting system is too complicated for us. The proportional list system works for us whichever way you want to use it, but the proportional listing system is probably what works best for us.

I'm not, I mean right now we're with dihond and I agree with the Electoral Commission that we retain this system for now. Under this system we use the Dihond that we're using. It might not be ideal, but you know this is one that works for us right now.

Let's not change it too close to the general elections which should be by February next year. Also, we submit that like in a lot of other countries where they've brought in, they've talked about Temporary Special Measures or TSM that there should be provision for it in the Constitution. Not just in the Electoral Act but in the Constitution is where the TSM must go.

To say, I mean the mechanics of it can go in the Electoral Act, but I respectfully submit and I hope that it will be included somewhere that we women make up half the population of this country, but we're not proportionately represented in Parliament. We're about 400,000 of the population is female five women in Parliament this is not proportionate. It is not equitable.

Yes, we have equality of votes yes, we have equal rights and all that but Mrs. Siwatibau in her paper back in 2005 and also after some UNDP or UNIFEM report identified some of the issues that prevent women from being elected into Parliament. We've actually put them there and we've put the link there to the article and for those of you who are interested there's about three copies of the book in the USP library in the JZ section of the library. I live in the USP library half the time, so I know where the books are kept.

And so, we would submit that this venerable commission recommend to government that we at least put into our constitution because it's only temporary it's not permanent until women can realize you know what women can be in power. I mean look at the Fiji Teachers Association it's mostly women, but the executives are men. You know I used to teach at the USP about 60% of our students from PDLP every semester are female.

They're women. But the women stay in the lower ranks of the legal cadre it's mostly the men that go up. You see so it's just a bit of parity and we hope to see that parity in Parliament.

I know that we have a standing order 100 subsection 2 or subparagraph 2 that says that we look at everything through a gender lens but that's not sufficient that's when we reach Parliament and in those six standing committees it's mostly men. And as I think a book came out last year 2025 by Sonia Palmieri and she said well it's only looking at the institution of Parliament but not the actual entry or the representation in Parliament of women.

So my biggest plea if nothing else please our biggest plea young Mr. Savu here is also all for TSM if we could include a provision that you know we gradually have some reserve seats for women so that more of them can enter Parliament and studies from around the world have shown when there are more women in Parliament there's less corruption there's

more transparency so that would be mine and Mr. Savu's submission and also in relation to dates for election. Our Act the Constitution and the Electoral Act don't give us dates they give us some sort of vague numbers in between for example in Africa first Tuesday in November is election day something like that for our national election so it doesn't matter who's in power who's not in power whether you're entry you're here you're there you're everywhere we must have an election on the first Tuesday for example first Tuesday in November every four years yes the mechanics of that is in the Local Government Act but for good governance and accountability and transparency at the local government level we need to also put in the Constitution that local government elections must be held also on the first Tuesday in March or whatever every third year or whatever it is but we submit that it would be best if it was included in the Constitution unless they coup it and then that way they can change it but we agree with the Electoral Commission that there should be a set date in the Constitution for elections.

Now we move to Chapter 4 which would be starting off with the Office of the President we submit that Chapter 4 in relation to the President can be strengthened right now it is a bit of a dogfight with some of the provisions there especially 82 but Section 81 needs to be strengthened to clearly state that the President is a ceremonial role, the President cannot act on his own will on his own accord, the President only acts on advice and the President does not have reserve powers.

This we must be clear about in the Constitution because I think for a country like ours which is still finding its feet in terms of constitutionalism, these things need to be clearly written down, or it leaves too much room for everyone and their interpretation. If we clarify the Constitution I mean of course no Constitution is perfect and it's a living, working document but if we can provide as much clarity as we can in our Constitution it leaves less room for ambiguity and different interpretations the President of this country must be above reproach and character is essential to the criteria for eligibility for Presidency.

These are the things we submit should be included so for a Fiji citizen to qualify to be President they would require demonstrated qualities of integrity, respect and the absence of bias, some aspects may be impediments to appointment include criminal history civil actions financial difficulties professional misconduct and presence on social media and online networks. In jurisdictions that has such criteria, any

information disclosed and an amount of abuse an absolute bar to appointment but these are things we look at when we're appointing anybody to high office let's look at their criminal history have they had anybody chase them for money have there been any complaints of sexual harassment or sexual misconduct, we need to make sure that holders of high office especially the Presidency need to be clean and clear of any sort of complaints or allegations of sexual misconduct and so we've suggested there additions to section 81 which would be an article on the role and mandate of the President and the very first one is the person of the President of the Republic shall be inviolable. We've also put in there the mandate of the President of the Republic shall terminate if he or she is incapable of performing their functions for over 90 days.

If for three months the President cannot perform their functions then they must vacate office if the conditions of their election to become President no longer exist they must vacate office, if there is a conflict of interest that cannot be gotten over the President must vacate office, upon their resignation or their removal from office, we've also suggested right now the removal of the President from this constitution, the Prime Minister invites the Chief Justice to set up a tribunal that doesn't work in this country it doesn't work right now. When you have a Prime Minister and a President who are beholden one you are my Chief that cannot happen, the President is the President of everyone in Fiji so we've added another layer that perhaps Parliament can petition its own self by truth and majority to say right we need to get; the President has misbehave, misconduct and all of that Parliament as representatives of the people can move a motion and then the Chief Justice is invited along with two or three others to then form a tribunal.

Remember this is the Head of State the Head of State represents all of us, so we want them to be above reproach and for them to be removed, the threshold must be very very high, this is why we've added the other portion on impeachment basically. We've also added another substitute there section 88 of the 2013 Constitution says that when the President is unable to act the Chief Justice steps into that role. Our submission is that that should be taken away from the Chief Justice it is the Speaker who should step in and act as President when the President is away overseas or is ill or something, not the Chief Justice that we submit is not conducive to a proper democracy so we should take out the Chief Justice out of that equation and put the Speaker there. It's done in other

countries it's not something new it's done in other jurisdictions we've also got we've got Cabinet; I think Cabinet we've got some submissions more there in relation to the Presidency and we'll just leave it to you to read that's basically on the impeachment.

In relation to Cabinet right now when I checked there are 20 Ministers with a salary of around 200,000 each Minister has a PA a PSO a government-issued car and a driver that in itself one person is a big expense. Some departments have become Ministries and so our Cabinet has become so unwieldy and cumbersome and expensive for the people of this country now apart from Cabinet Ministers the Prime Minister has also appointed a number of Assistant Ministers again car, driver, everything whilst the Assistant Ministers are not members of Cabinet the inclusion also comes with all of that that entails so we suggest respectfully that Section 91-10 because 91-10 gives the Prime Minister the Prime Minister appoints his Cabinet we say cap it and we say Section 91-10 should be amended is it 91-10 or 91-1 sorry, 91-1 I can't read my own typing.

Mr Samu 91-1 could be amended to read Cabinet consists of the Prime Minister as Chairman and no more than 15 Cabinet Ministers in total. We're a small country of 937,000 people why do we need 20 Ministers and 15 Assistant Ministers what are they doing, we could use that money to build a big hospital in Korovou one big hospital one in Wainibokasi one in Nausori you know, we don't we can take away two Ministers and build one hospital in Wainbuka a proper one, anyway so yes I think I'm a bit biased towards the King's Road there Chair, forgive me for my passion there so this is where we suggest that Section 91-1 be amended to cap the number of Cabinet Ministers because it could also be used as a tool to basically electioneering by votes.

If you come my way I'm going to give you somebody from your party this and that that kind of horse trading should not be done at the taxpayer's expense and Mr. Savu Mr. Savu sorry is now do you want to do the judiciary or shall I alright the judiciary we submit that separation of powers is important to the judiciary and we all know that in the last administration there were whispers that our judiciary was maybe not so independent Mr. Chaudhry Rajendra actually posted something on Facebook and you know got himself into trouble for it when he talked about the judiciary.

I've just in pages 13 and 14 of our submissions we talked a little bit about the separation of powers just from one of our court cases here so if we can just skip that and move to page 15 which is part A of the judicial thin go sorry forgive me I shouldn't be saying thingo I think we wanted to talk in relation to separation of powers, we feel that section 104 subsection 8 is perhaps this is why the rule of law and separation of powers needs to be explained and that it's not just a term of art, now we have a very good constitution in relation to the judicial arm but if we if we have the people who are the actors in all of these are dominated or where the executive overwhelms the judicial then the separation of powers doesn't work in our experience dealing with all three actors where the judicial arm thinks that it needs the executive in its decision making process that is not democracy, that's not separation of powers.

When the judicial services commission meets well with us at any rate and the office of the prime minister and the office of the president have to be represented as well that's not separation of powers and so we what we need to do and I think this is why this is an important process is people need to understand that these are not just terms of art, we need to actually practice them.

So I now move to judicial offices which is section 105 and 106 of the constitution, Fiji houses three law schools and by my rough calculation because we at USP bring out about 100 each year to the admission ceremony, we bring out 200 newly minted legal practitioners every year in this country. Where do they all go right so we basically and as well when I checked this morning, I think we have 1078 listed people with practicing certificates not all of us who have law degrees and I admit they have practicing certificates, some of us do not have PC's but we are doing other work so 1078 have PC's or valid practicing certificates.

Now because now we basically you throw a stone and you'll hit one lawyer in this country there's a lawyer in every corner in every family in every village every community has at least one lawyer floating around, so that means our expectations of our judicial officers go up as well. And we expect judgments that are sound we expect judgments that are well written and you know the legal reasoning should be clear, sometimes it's not so very clear and what I've seen we've seen over the last couple of decades is you know the magistracy seems to be a natural progression for government lawyers you know you come through DPP's office, Legal aid or AG's chambers and from here you go there it's like it's a promotion

when it really should be on merit and you know you have to have proven high quality work and all of that to be elevated to be a magistrate or judge so and also with the advent of AI. AI poses a problem for us now it helps a little bit I even use chat GPT occasionally just to check spelling and certain things and structure but we need to - we need people who are also academically qualified so our submission is this, that for someone to be a judge in this country, we would like to add the following criteria apart from the usual of they must possess high moral character intellectual and analytical ability sound judgment and deep understanding of people and society.

If you look at applications if you go onto the New Zealand judiciary's website you will see they look for diverse individuals also from different backgrounds and different skills we would recommend that for someone to be appointed as a judge we would add the following criteria that the minimum academic qualification requirement should be a master's degree from a recognized educational institution. There is some argument that well if you put a master's as a minimum academic qualification requirement it would keep out some very very good people who are expérienced with all of that but yes there are pathways that people with exceptional skill and experience can come in but when you are looking especially at the younger, the younger lot that are coming in I think you need to require them to have because some of you may have-

I know Chair has read lots of judgments and over the last couple of decades it leaves a lot to be desired spelling errors grammatical errors, you know when we came out of law school here we didn't read all of that and then we started to read all of these errors like what's going on here, so that might actually be the fault of our education system in itself actually. We would also add we keep the post admission practice at 15 years but at least 10 years must have been spent in private practice or academia. When you come straight from government you don't understand the hustle of private practice, when you come straight from government you don't understand the hustle of when you come straight from government you don't hustle of private practice, when you come straight government – we have experienced it.

When they say things like, why didn't you, your diary should, they don't understand – not only looking after clients trying to file submissions. We've got 5 – 6 cases filed and at the same time in different courts. We are running between Suva – Nausori courts, sometimes to the West. And

I think, that used to be a requirement before, they must have practise outside. Its nice to sit in a hell hose of government, but its also good to learn to able to run your own trust account, run your own filing system, run your own litigation. And so, our respectful submission, is that if that could be added. And that way when you get people on the bench, that would kind of ensure quality and impartiality and they understand the living experiences to hustle for a dollar.

Those who get paid every two weeks don't understand what its like to – the bills are due this week, the staff have to be paid at 3 o'clock every Friday, I've got find some money now. So this is why the requirement for private practise is there, and also with people in private practise are wide range of practise. In government, DPP's Office are doing criminal cases. In Legal Aid you only doing family and criminal defence. In this office, AG's Chambers, I think we now, they starting to do judicial review, and damages.

But other than that, the sphere of practice is limited, compared to someone of the same, someone five years in government, someone five years in private practice, vast, vast difference in their actual experience. Hence our recommendation.
Now, in relation to judges, we would suggest that those who put in their applications to be judges must identify at least ten matters, either substantive trials or appeals, in the past five years that they have been a part of.

In fact, this particular criteria we took from applications for the King's Council. When someone wants to be a King's Council, you have to do this, but we modified it for our purpose, for Fiji's purpose. And we would recommend the same for magistrates, but lower number of cases, lower number of years outside.

Okay, now we go on to Part B, which would be the independent judicial and legal institutions. This provision relates to independent commissions and office holders. Now we have Section 114.

Section 114 is ILSC, 115 is FICAC, 116 is Solicitor General, 117 is DPP. To qualify for these positions, one must qualify for a judge. So same kind of criteria.

Some people, I have suggested that what I'm saying is it puts the bench or the mark too high, and I'm saying, well, why not? We expect our people to perform at this level, then if you want them here, then you bring in the people who can perform at that level. Otherwise, don't. Our challenge with that is for these appointments, all these positions are appointed by the President on the advice of the JSC following consultations with the Attorney General.

There's an over-concentration of power in the Attorney General, and we would respectfully submit that you delete the Attorney General from the appointment of these people. The JSC is there. Why do you need the Attorney General? The JSC goes to the President.

End of story, end there.
There's no need for the Attorney General to be poking his nose into every appointment. Keep him out.

Go and do your lawyering. Stay out of these independent commissions. Sam is looking at me saying, be quiet.

In relation to FICAC, there have been calls for FICAC from 1970. I think the earliest I read in Hansard was way back in 1977. There were calls for us to have our own corruption body here, and then I think in the early 2000s, the former Chief Justice Fatiaki, they were law reform commissioners who were given the task of doing what you're doing now on corruption, and that ended up in a really big report, which I have somewhere.

It's like 200 pages, and that ended up being the genesis of our FICAC Act. They were going to, if I remember it serves me correctly, I think Mr. Justice, Court of Appeal Justice Mr. Qetaki was part of that process. They were going to bring it in around 2005-2006 when the events of 2006 happened.

So FICAC did not just come up because somebody thought it up. The idea of FICAC has been there since the late 70s. I think Lady Tuivaga at the Law Reform Commission would have the report.

It's actually interesting reading. So I would say FICAC should stay, but our problem is we have weaponized FICAC, and whoever is the leader at

the time, we use it to go after our political opponents. FICAC was not for that.

FICAC was supposed to go after corrupt civil servants and people in private arena who were paying off the corrupt civil servants. Sadly, those who have been appointed heads of FICAC have had leanings towards the political heads, and so it's never been truly independent. So, there are two options available.

You can either recommend that you abolish FICAC altogether, or you keep FICAC but take away its prosecutorial powers and give it to the Office of the Ombudsman. That would be a completely independent organ or body. The Ombudsman is a very independent and powerful body.

We just haven't used it well since independence. So keep DPP with the murders and all of that, but if you have FICAC doing the investigations and you have the Ombudsman's Office deciding on whether someone should be prosecuted, that gives you the separation and the independence and impartiality and the cooler heads that are needed to decide. If you abolish FICAC, or if you say, right, let's abolish FICAC.

Everyone's been screaming for FICAC to be abolished. I think the coalition government in its pre-election campaign said, when we get in, we'll abolish FICAC. All well and fine.

What are we going to do with the corruption cases? The police couldn't handle it fully before. If you take away from FICAC and give it to the police, who's going to investigate it? They don't have the expertise. Sorry, I mean no offense to the police force.

There are some within who have the expertise and who have the training, but there are not enough of them. And also, our own police force has its own crisis of conscious happening. Some police officers have told us that they're looking at about 60 to 70 percent of the police force is compromised.

This is what was told to us. It is not fed. I don't know what the numbers are.

But you will see there's a big difference. Almost every month, some police officers are being charged for drugs, for receiving monies, for assault. This we didn't see back in the day.

Now we're seeing it on a regular basis. So, if we have a police force that has a crisis of conscience, we've got a problem. Then we continue to become an even bigger haven because people might be caught.

We'll make big stories, big news out of it, but it's not going to end up in any successful prosecution. And the people who need to be prosecuted are not the guys selling a packet of cocaine, or not cocaine, it's too expensive for them, meth on the road. It's the guys sitting in wonderful big offices with suits and ties. They're the ones who should be going after. And the police, I don't think, can have the manpower right now to do that. That would be our submission.

So, we right now have two severely crippled law enforcement agencies, and laws will not improve these institutions, but the respect for the rule of law, and so will zero tolerance for political interference.
In relation to other commissions, we have at Section 119 the Mercy Commission, 120 the Public Service Disciplinary Tribunal, 121 Transparency and Accountability Commission. Again, over concentration of power in the Attorney General. We suggest that these sections be amended to remove the Attorney General from the equation, just the JSC or COCO, I think it's JSC, who is responsible. And in relation to State Services Chapter 6, the Public Service is alright. In relation to Section 126-1A and 1261 subsection B, there's an over concentration of power in the Prime Minister.

We would like to see removed this portion that says you can appoint; you can remove a Permanent Secretary with the agreement of the Prime Minister. We would recommend that that portion be taken out. Again, why is the Prime Minister involved in the appointment of a CEO? You know, Permanent Secretaries are the CEOs of government ministries. They should be appointed purely on merit and free of political interference. And a case in point is that of former P.S. Fisheries, Ms. Rokosuka. You know, after a disciplinary hearing in December last year, the Public Service Disciplinary Tribunal ordered that she return to work on the 19th of December.

She rocks up and wants to take up office, but is told, no, you don't come back. With the agreement of the Prime Minister, you have been moved from the Permanent Secretary of Fisheries to being Director of FLPS or a Government Training Centre. So, you have a Permanent Secretary sitting in a Director role.

We, the taxpayers of Fiji, are paying. These kinds of things, if we take all of these messy bits out of the Constitution and let people be appointed purely on merit, it won't perfect things, it won't make things change overnight, but it's a way to improve things, to start the process of getting us back on track. You know, I remember growing up in Fiji, which used to be the way the world should be.

Everything was hunky-dory. I went to Jasper Williams Primary. I went to Jasper Williams High in Lautoka, by the way.
It was great times. And to this day, my classmates from then are still my friends now, 25 years later.

And so we would suggest that Sections 126, 127-4, 127-6 are to be amended to remove with the agreement of the Prime Minister.

And Mr. Savu will now talk about immunity and the amendment of the Constitution. Thank you.

Mr. Savu: In terms of immunity, we are of the view that this whole chapter on immunity should be removed.

A country that has been independent for 56 years, has had four coups and four constitutions, shows that it has not learned from its mistakes and it's a breeding ground for fundamentalists to rob right thinking, forward thinking. Citizens of the right to live peacefully and peaceably with their neighbours. And immunity weakens public confidence and to build a Fiji that we can proudly leave to the future generations of Fiji, we must remove immunity and promote accountability, constitutionalism and the rule of law.

In terms of the amendment, stability, certainty, continuity are the key purposes of having a written Constitution. But we need a constitution that strikes a balance between that, stability and adaptability. The experience under the 2013 Constitution demonstrates the process has become very difficult.

This was brought in by the Bani Marama regime to usher in parliamentary democracy and elections since they took over in 2006. However, genuine reform under this is practically impossible. We also accept that constitutional reform should not be so easily achieved that governments just come in and alter fundamental constitutional principles for short term political advantage.

And we would recommend that amendments to Chapter 11 include that for ordinary constitutional provisions, a two-thirds majority of the total membership of parliament would suffice and two-thirds ensures some form of bipartisanship in achieving this and broad political consensus. And for entrance provisions such as the amendment provision itself, the requirement should be constitutional amendment through three-quarters of the total membership of parliament and approval at a national referendum by a simple majority of valid votes cast. This would recognize that it's the people who make the law and the ultimate responsibility lies with them.

This gives power back to the people. It's government by the people for the people. But at the same time, we need to ensure that amendments receive proper public consideration and all proposed constitutional amendments, whether ordinary or for entrenched provisions, should be published for public consumption and extensive consultation should be taken on these before having them debated in parliament.

We submit that there should be a period of six months and within these six months the amendments are taken out to the people, extensive awareness is done on these before even being debated in parliament and constitutional reform should never happen without meaningful public participation. And in relation to referendums, we simply propose that for the sake of completeness there be a clause that principles and procedures for conducting a referendum and its validity are provided by law. In terms of constitutional culture, this refers to the shared values, beliefs and unwritten norms that a society holds regarding its system of government and fundamental laws.

It would also recommend that we must develop a constitutional culture and take Fiji back to the earlier slogan of "Fiji the way the world should be". In order to preserve democracy and respect for each other and the rule of law it's important that the constitution reflects this by requiring

government to set in place a programme for civic education, public education, professional ethics and institutional respect. We want stability and we want to bring into our society some of the values that have fallen by the wayside and whilst we cannot force people to participate, through the constitution we can start by saying that we share a culture of respect.

This makes sure that a constitution is not just for the government, it's for each and every person. And the mechanics of that can only be done by legislation or policy with responsibility and a budget given to a particular ministry or to the civil service to commence the programme. Civil Society Act is already doing a lot of work and government can use civil society faith-based organisations to raise awareness and educate the people on the important democratic principles and constitutional conventions which we all share and which will advance our country.

It's the people and their willingness to live by the principles in the constitution and being willing to enforce it which will guarantee good governance. Now in terms of review, there is no mechanism for review in the current constitution but seeing how the word constitution is so easily thrown around and the constant calls for review, perhaps we could put a review date for the constitution. Such provision could say that a constitution will be reviewed through another constitution review commission, very much like this one, no later than 10 years from the date the amendment constitution or new constitution comes into force.

This also limits political interference in constitutional amendments. The notably 1990 constitution had a review clause and that can be modified for this, what we propose that can be modified. The great council of chiefs is a very important institution, and we respectfully suggest that they actively take part in the law reform process by applying an indigenous or iTaukei lands to all bills, reports and laws.

I'll hand over to Miss Malimali for our conclusion.

Ms. Malimali: Thank you, sirs and madam. We've taken over an hour of your time.

We the people of Fiji since independence, we were stable for a little while but since 87 we've entered a period of instability and that needs to stop. We the people must say stop and anyone who seeks to take over

the country again should be held accountable to a court of law. This is why we say remove the immunity provision.

You want to take over the country then face the people through the courts. We must also put an end to race politics and the politics of religion and fear mongering. Cronyism, nepotism and tribal of vanua politics must go too.

Constitutions do not bring stability but following the rule of law no matter what, that brings stability. So, it's important that we have independent institutions free from political interference and politicians too must be held to a higher standard than everyone else because of the special position that they hold as our representatives. I think I read about a month ago in Italy or one of the European countries, I think politicians can be prosecuted for lying in parliament or something like that.
I found that interesting. I think that's a little bit way too far, but our politicians must be held to a higher standard than everybody else.

We have a constitution that concentrates a lot of power in the hands of two office holders, the prime minister and the attorney general.
That needs to go. They need to stick to what they need to do. And so, to stop possible abuse we recommend that this commission recommend the removal of the prime minister and attorney general in the portions of the constitution that requires their consent or assent or consultation.

Yes, I accept like in the COC they have to be there but in the appointment of people, of public servants and public office holders and constitution office holders, neither the prime minister nor the attorney general should have a say in it. We need to have all of this free of political interference and if you go through the Reeves report, they actually refer to the 1994 Beatty report and both reports said appointments to officers like the solicitor general, the DPP and similar positions must be free from political interference. And that studies and experience from around the world has shown that when these positions have a political influence into the appointees, problem surely follows.

And with that, honourable chair and to our two members, we, Barbara Malimali and Samuel Savu, these are our submissions and if you have any questions, Mr Savu is ready and willing to answer all of your questions. I note that with the self-defence provision that we put in there, there was a bit of strange looks. We were coming from the view of,

you know, in a few instances there have been elderly people sitting in their homes and people have come in and attacked and they picked up like a bird gun or those kinds of things and hit them back.

These people have been charged for murder or manslaughter. This is why we say, you know, a man who sits in his home, that's his castle, should be able to defend it and not have to go through the whole criminal process and get a judge to acquit them. Unfortunately, we're going to have to legislate common sense.

Mr Valenitabua: Thank you, Ms Malimali. Thank you, Mr Savu. Thank you for this comprehensive and fine submission.

We usually ask questions for clarification and also comment in relation to the submissions. I now give the opportunity to the two commissioners to make comments or ask questions if they wish to. Ms Nailatikau.

Ms Nailatikau: Thank you, Ms Malimali and Mr Savu. I also note with gratitude the intergenerational nature of your delegation today, so thank you for noting that and it's something that's always welcome, particularly for me personally.

I refer to your discussion on Section 16 and also your reference later in your submission relating to the Office of the Ombudsman and just making a comment and welcoming you to expand on this if you would like, because in earlier submissions this week, over the past couple of days, we've heard people make submissions relating to how the Office of the Ombudsman did exist at one time, is absent from the current constitution, and that administrative justice or the stagnancy in public authorities operations that you refer to could well be addressed with such an office in complementarity to existing institutions.

So just welcoming your expansion on that if you would like as well.

Ms. Malimali: Yes, we agree that the Ombudsman is not currently in there, but it is an office that should be there. I mean, we put up a financial ombudsman or ombudswoman, we have that, but we don't have the other.

And I remember in the past, the Ombudsman, the Office of the Ombudsman was there, and the Ombudsman was also the chair of the Fiji Human Rights Commission. So, they all complemented each other and in relation to saying that our recommendation that they should perhaps look at, be the final arbiter of whether charges should be laid

when investigated by FICAC, it's to create that layer of independence. I think like in New Zealand; they have the serious fraud office.

You know, they're the ones who do all the complicated investigations, but somebody else does the charging. And I think, or I submit that that would probably go towards answering a lot of the questions that people have about independence, impartiality, and non-interference and non-political interference in the functions of FICAC. And if you take up that portion altogether, yes.

I mean, as we can see from the results of cases in the last couple of weeks, you know, I think allegations have been made that some of the charges and the charging were perhaps not so motivated by justice but coming in on the revenge bandwagon. I could be wrong, but, you know, we want to avoid these sorts of allegations. We want to avoid these sorts of whispers.

We want people to go, yep, that's what happened. These people did it. And we don't want to be talking behind the scenes about the people involved.

That is why we suggested that the ombudsman, because again, for now, maybe it could be a temporary thing until things get, we equalize things. Because right now, there's too much whispers about FICA, too much whispers about the police, too much whispers about the DPP's office. Everyone's beginning to have mud thrown at them.
We're all beginning to be tainted. So perhaps a completely independent office like the ombudsman, I think the last ombudsman that I knew of was Mr. Justice Kepa. You know, that office was completely respected and respectable and, you know, we want that kind of reverence for our high officers to come back, where no one's going to go online and start posting about them and what they had for lunch at Grace Road or something.

Does that answer your question, madam? And in terms of section 16, you know, we want public servants to have security of tenure. You know, I remember a few years ago, we would make fun of public servants, civil servants. Hey, keep quiet or you'll be 55 tomorrow.

We want people to have security of tenure, and that includes that if something's going to happen to them, they will be given an opportunity

to respond to allegations. Look, somebody said you stole $10 from the till. The complaint should be given to them.
This is the complaint. What do you have to say? And then this is the decision we've come to, and this is the basis of the decision. A lot of people operate from a place of fear, and if you want people to perform their jobs, and I think this is half the reason people are not performing their jobs in the various ministries, is because they're frightened that if they do make a decision and do a job this way, their supervisor or their boss might disagree and fire them.

We want people to work, and we want people to work free of fear and free of any sort of possible consequences for them doing their job. Like a police officer arrest, you. You know, you might be cousins with a more senior officer.

You know, they should be able to go, okay, I can do my job without fear that I will be persecuted for doing my job. We were coming at it from that angle. Stability for the civil servants so that they can do the job to serve us, the people of Fiji.

And I think that's half the reason why things are delayed. And most of the time, the papers are just going from one table to another. You know, it can take about three months in the titles office and places like that, eh? It used to anyway, where one piece of paper is just floating, sitting with me for one week, another person for another week, because nobody wants to make a decision for fear of losing their job.

That is why we say we must strengthen Section 16 of the Constitution to safeguard people so they can do their job.

Mr Valenitabua: Did the ombudsman have the power to prosecute previously?

Ms. Malimali: Gosh, I can't remember. But he did have the power to summon.

He could summon people. And sometimes I think the experience we've heard from the Solomons and a few other places, with the ombudsman being of that level too, ombudsman sometimes just has to pick up the phone and call an office and the documents will come. But sometimes it's just that.

Civil servants among themselves not giving each other documents. I experienced a bit of that at FICAC. When you wanted to go documents from some ministry or department, they would gatekeep.

So, we would then have to issue a search warrant. Like, why do we need to do that between government departments? It should be me writing you a letter saying that we're investigating this, can you just send us your act, your this, your that, and something else? But no, the process takes longer because we're busy gatekeeping within government departments because we're all frightened to lose our jobs. I don't think the ombudsman had prosecutorial powers, but he did have the powers to summon people.

Mr Valenitabua: And investigate.

Ms. Malimali: Yes. As part of his investigative powers.

Mr Valenitabua: So, if FICAC, used to become the investigative power or branch and you are suggesting, you are suggesting here that the ombudsman have the prosecutor power.

Ms. Malimali: It could or what they do, is they have another level, layer or they put another set of eyes on it. And when they think it should carry on, they can move it to the DPP with the suggestion file. Because I know at some point a few years ago, i recommended for FICAC whilst the commissioner has the powers to decide on prosecution, that there should be a committee that makes the final decision. So, the commissioner will look at all this and say, right, this is the evidence, we're going to charge them with this. But you pass it on to a different committee to have a look at, to then make the final decision, and then again advise the commissioner who then signs the charge.

So, I'm suggesting, we're suggesting that, you know, just for now, because there's so much, so many allegations of everybody being corrupt, to free everybody from all of these, let FICAC be the investigative arm for corruption. And then send it off to the ombudsman as the second layer to check. And depending on how you see it, you can either then say, okay, ombudsman, with your own legal arm, you file the charges and the ombudsman charges, or the ombudsman decides on the charges and sends it to the DPP.

So that way you can't accuse any one person or one group of colluding or being corrupt. It goes through several layers. Because even within FICAC, before it gets to the commissioner who makes the decision to charge, it supposedly comes through several layers.

But as we know, that hasn't worked. There has been, you know, independence at FICAC has not been there, with the exception of a brief period in its history, when a certain someone we all know and love was commissioner. But this is what we're suggesting, to just have that layer of somebody higher up in the food chain to be the check and balance. For corruption matters only. Because in fact, that's what the ombudsman used to do. They were the ones who looked at, you know, if you wanted to complain about a government minister or a high civil servant who'd done corrupt practices, you went to the ombudsman.

They then investigated. So that, you know, that could still be the same. Or you could say, right, bring the ombudsman's office back, put FICAC under the ombudsman.

But I do not think FICAC should be abolished. Was that what you were suggesting, doctor? Yes. They complete the investigation.

Mr .Valenitabua: We have FICAC to the investigation. They complete their investigation, the ombudsman is the intermediary. It decides on whether prosecution should proceed. And then once the decision is made, it passes the file to the DPP for prosecution purposes.

Ms. Malimali: Yes. You could do that. Or they could, within its own, it could have its own prosecutorial arm that they do the prosecution.

But you separate, you have to separate the investigation from the prosecution.

Mr Valenitabua: If the ombudsman becomes a prosecutorial body again, does that not duplicate the DPPs?

Ms. Malimali: Not necessarily. Some people say you're good, but see, the DPP would be prosecuting the police kind that goes there.

I mean, one of the things I did when I went to FICA was say, right, the ones that the police should be investigating, send it to them. Why are we

wasting time with this kind of work? We should be doing the high-level corruption, the white-collar ones. I'm not interested in the guy selling drugs on the street and whether he paid somebody 20 bucks.

Leave that to the police. We should be interested in the more white-collar corruption. And we suggest that the ombudsman, yes, would be, you could look at it two ways.

You could have a prosecutorial arm within the ombudsman's office, or they may be the final arbiter and say, right, this is something that can go on, carry on, or they could then send it to DPP's office. But whichever way, our respectful submission is keep FICAC, but to please everybody in the country and everyone calls FICAC evil, which it really isn't. It's the people who make it evil.

Take away its prosecutorial powers. Keep its investigative powers. The country has invested millions into FICAC and its officers and its equipment.

What are we going to do? Dissolve all of it? Because we've had weaponized the heads against the people over the last 20 years? We don't throw away the baby with the bathwater. Just throw away the bathwater. Keep the baby.

Dr Gounder: Thank you, Mr. Malimali, for your submission. Just a question I wanted to ask. You have given us a totally new avenue for reform of FICAC.

What we have been presented with, one, abolish FICAC. Number two, leave investigative powers with FICAC, but transfer the prosecutorial powers to DPP. The other option is, the third option that we have been submitted, is to keep FICAC just as an education and advocacy institution, give the investigative powers to police and the prosecutorial powers to DPP.

You have given us this combustion dimension, but I just want to take you a little bit back, because you suggested ombudsman in between. What about keeping the investigative powers with FICAC, but the prosecutorial powers with DPP? Is there any reason you didn't submit that as to today? Any reason for that? I'm just trying to learn. You could have gone with that option as well, which is out there.

Ms. Malimali: I could have gone with that option, but I think as temporary measures for now, we need another body to look at it. I think DPP itself is under siege at the moment. We need to face reality.

They're my friends and colleagues. We have collegiality and all of that, but I believe that office is under siege, and to then also do corruption. At the moment they're doing murders, this, that.

I think because the police have now started concentrating on trafficking, they're going along that avenue too, so I'm at loggerheads with them on that as well. From experience, they're under siege at the moment. They are overwhelmed with drugs cases.

They have a small cadre of very senior officers, and at the bottom you've got a whole bunch of young graduates who came out around the same time as Mr. Savu, who I don't think at this point in time can handle all of that along with what they're going through. So, I would respectfully submit that these would be temporary special measures also until we as a country and our institutions are completely free of all and any allegations or whispers or taints of political interference, and it's a fact of life in this country. So, I think that we need another pretty transparent body on its own to then look at it again and then go there.

I mean, look at what happened to the Saneem and Khaiyum and the Sanjay Kaba. Some of these could have been prevented, but same people wearing the same hats everywhere, we get problems. And I mean no disrespect to the prosecutors, but these are facts and these are the realities of life we just have to face.

I'm probably going to get some nasty emails from colleagues after this. How dare you throw colleagues under the bus and all of that. But I think truth needs to be spoken, and it's my unpopular role to do that.

Dr Gounder: Thank you for being so open. When you talk, it looks like you're not holding anything back, which is good because that's what we need. I was sitting here thinking, how can I clarify what we're thinking? So, thank you very much.

I'm sure your feedback will provide us with the material that we need to discuss some of these options that we may be considering later on. A

few more clarification questions. Thank you for following our submissions.

It looks like you're following all the submissions that are coming to the Commission. The one on immunity, for example, did you hear the submitters who were just before you?

Ms. Malimali: No, we were busy printing.

Dr Gounder: So, you might have to change your mind perhaps later.

Ms. Malimali: What did they say?

Dr Gounder: We'll leave it to you to read it. But anyway... No, no immunity.

Ms. Malimali: Not even for past.

Thank you. I think they were saying that they wanted the immunity for future.

Dr Gounder: No, they're not testing, they abolished it.

So same thing as us. The other one is the right to privacy. So the Online Safety Act is being reviewed now, and if you look at some of the clauses in there, pretty similar to what we have here.

So do you still want this to appear in the Constitution, the stakes to go higher? Or should we leave it to the Online Safety now?

Ms. Malimali: I believe it's a fundamental right. And the Online Safety Commission might have their act.

You see the police have their act. FICAC has its act. And then you think you've got a High Court decision that came out two days ago from Mr. Justice Olufke in the High Court that says, well, you can in certain circumstances.

And then you've got the police bill coming out, saying that, you know, even if I'm sitting in the same, basically, if I'm sitting in the same vicinity as you, they ask for my device, I should give it, even though I'm not a suspect. So, I think these sorts of rights should be in the Constitution,

because any law, whether the police or FICAC or Online Safety, any of those laws conflict with the Constitution, then those laws would be...

Dr Gounder: Thank you. I think the best justification I've heard to raise something in the Constitution than in the Act.

Thank you for this. And the submission is also very, very comprehensive as well, very clearly written as well. It's so easy to understand.

And your reason makes sense as to why something should go higher than the Act. The other is on page 8, the article on use of technology to improve public services and transparency. This is more like a policy statement rather than a clause that might appear.

This is just my view. I just want your feedback on this, because we have several policies and strategies that are currently implemented to deal with this. So, do you think we can have such a policy-focused statement in the Constitution?

Ms. Malimali: I remember coming in, what, 15, 20 years ago, coming in downstairs, and you look through like this, you want stuff done, you peep around the corner. That time it was spider solitaire, you know, when computers first came in. So, we need to, yes, this mostly is in the realm of policy, but we thought we should elevate it to constitutionalism so that civil servants know, hey, we've got technology there, let's use it for the way it's supposed to be used.

I mean, if you go into, I think, most of these government ministries, you'll see technology that's sitting there. It's not being used. They could be more efficient, but they're not using it.

Dr. Gounder: So, during the NDP, which you know, you participated as well, I realized it's more of a people issue and more of a departmental issue, yeah. And we tried to fix it with some, you know, MNE work, monitoring and evaluation, but your point is taken here.

Ms. Malimali: Yes, I mean, I accept that this is more a policy, but this article actually came from the Hungarian Constitution.

So, you would have noticed we used Hungary, we looked at Albania, and we also looked at Barbados and Singapore. So, we tried to be, we didn't

want to come here to criticize. We wanted to come here to offer, you know, some solutions we thought would work.

Some of it may be a bit far-fetched, but we think all should be included. But that provision came from the Hungarians.

Dr Gounder: Thank you. So it's very similar to something we had before in terms of the gazettes. The gazettes.

So, gazettes were needed when we didn't have social media, when we didn't have emails, when people in Fiji didn't have access to traditional media. And the question now is whether we need to gazette some of these things to be legally effective, which is the same gist as what you mentioned about...

Ms. Malimali: You might have to change the Acts Interpretation Act of 1967, I think it is. Well, I'll send it to you.

Because that's where the gazetting also comes in, because it talks about the days, dates, times, Saturday, Sunday. Yes. I suppose, yes, we need a constitution that's modern, that, you know, we're now in today's realities, where, you know, we're sitting here, but we can... I mean, this is how I knew some of the things that were happening.

I was watching it online from home.

Dr Gounder: Like my argument, who reads the gazettes when it's already published?

Ms. Malimali: Only the lawyers. Yeah.

Dr Gounder: Okay. So it's still as a practical purpose?

Ms. Malimali: Well, you see, some of the laws of our country require certain documents to be gazetted. So I think you might have to strike a balance there.

Only where the law says gazette it, then gazette it. Because I think under the Companies Act, you have to gazette all your petitions for winding up and things like that, bankruptcies. These have to be gazetted.

Although all of us can already see it on Facebook.

Dr Gounder: Okay, just one last clarification.

You've talked about a lot of Bill of Rights related issues. What are... I haven't heard anything regarding the clawbacks in the Bill of Rights.

Any comments on those? You happy with that? The limitations. The limitations, yeah, yeah.

Ms. Malimali: Well, the limitations, yeah.

Dr Gounder: The limitations of qualifications. We heard this morning from a few law students at USP. What section would we be looking at? A number, almost.

Do you look at... Some of the sections...

Ms. Malimali: Oh, yes, I mean, but that's normal. That's constitutional law. I mean, not every right is absolute.

Some rights are absolute, but some, yes, it has to be subject to some limitations.

Dr Gounder: Okay, so does this constitution go over and above the normal set of limitations that you would call it normal?

Ms. Malimali: I don't think so. No?

Dr Gounder: So you happy with the limitations in the clawbacks?

Ms. Malimali: I don't know about happy.

I would use happy. You okay? I would be okay. Legally acceptable? To me, yes.

As long as we put in those additions we put in about the safeguarding. Like, you know, if the police unlawfully search and seize and do all of those things, I should be able to claim compensation. And if Section 16, my rights, are breached by the state that I serve, I should be able to claim compensation.

And that should be... I mean, of course, once a court has said it's been breached, I should be able to claim compensation from the state. Because at the moment they can say, yes, I'm sorry, I've breached your rights. Have a lovely day, Barbara.

Go home.

But they're not going to pay me. You know? And this is why we want safeguards.
Because a constitution is not to safeguard the leaders. It's to safeguard the people, the citizens. And the arms of state serve the people.
And so when those arms of state are used against the people, the people should be able to claim compensation. Apart from having it declared that what was done to them was unlawful, they should be able to claim compensation from the organs of state that have breached their rights. Okay.

Does that make sense? Yeah, yeah, yeah, it does.
And Mr. Savu.

Dr Gounder: I'll give it back to the chairman. Thank you. Thank you.

Ms Nailatikau: Thank you, Chair. Ms. Malimali and Mr. Savu, you also made a unique suggested addition to the Bill of Rights relating to extending on Section 11 or adding a subsection 3 relating to human cloning, for example. It seemed like something that had a bioethics element to it or bioethics dimension and how in many cases now, as we're seeing with artificial intelligence, it tends to be leapfrogging the ability of regulations to keep up with it.

I'm just interested to hear from you where that would have come from and what the thought process behind that was.

Ms. Malimali: It's basically the same thing because also, see, we've had a lot of young women and young people go missing over the years. I think the most was two years ago at Maui Bay.

That young girl that went missing, you know, they turned around to pick the bag, or the mother picked the bag and she disappeared. So over the years, we've been hearing things like, you know, apart from trafficking them, they're using them for their organs and all sorts of things. We've

heard some wild stories about there being little labs here in Fiji that can do things.

So, you know, that was part of the thinking behind it. And of course, you know, from what we hear from around the world with all the things that are happening, cloning and things like that. I mean, my first hearing of cloning was with Dolly the sheep back in the 80s.
So those sorts of things. We just worry that it would reach our shores. You see, where drugs go, arms and human trafficking are not far behind. And that would include taking our people to have them experimented on medically. And, you know, because a lot of these people that we hear go missing, we don't really hear of them being found. So this is part of the fear.

And this is why we thought that it is a right for us, for any person in this country, we should be free. And it's our right not to be subjected to any of these things. You know, mixing all our DNA together to make the perfect person and, you know, all of these sorts of things.
I mean, someone might want to steal me to steal my brains and mix some DNA or something. I don't know. But that's the thinking behind it.
It's more futuristic. So this is what we're looking at to protect our people, our young people especially. Thank you.

Mr. Valenitabua: Section 159. Section 160. Referendum.

The amendment to the provisions of the Constitution. The Supreme Court had laid down the pathway for amendments and had stated that first reading and second reading of the amendment there has to be a two-thirds majority.
Not three-quarters. There has to be 50 plus one percent. That is in the judgment or in the legal opinion.

Yes. At page 20 of your submission, you state that you would recommend that the following amendments be made in Chapter 11.
And then you have two there, options. For orderly constitutional provisions, they can be amended by two-thirds, which is in compliance or in accordance with the judgment or the opinion of the Supreme Court.
And then for the second one, you're saying for the entrenched provisions, such as the constitutional amendment themselves, the requirement should be the constitutional amendment has the support of at least three-quarters.

That is increasing it from two-thirds or 66 percent to three-quarters, which is 75 percent, contrary to the opinion of the Supreme Court. And the Supreme Court had even written down in the opinion the new provision, which they should, or which should be, which should replace Section 160 and 159.

Are you saying that we should amend the amendment provisions, that is Chapter 11, contrary to what the Supreme Court has told us?

Ms. Malimali: Well, we're suggesting that a staggered approach be done. That for the most simple constitutional amendments, you just need Parliament to give their two-thirds.

But for the more important ones that affect the amendment to the Constitution, our rights, then we the people should be involved and therefore a higher threshold, either three-quarters and 50 plus one during a referendum. This is why we suggested a staggered approach. Some of it we don't need the people.

Our representatives can do for us. But the entrenched provisions, we submit that the threshold should be higher.

Mr. Valenitabua: But how can we amend that to a higher threshold when the Supreme Court says you are confined to this two-thirds?

Ms. Malimali: Yes.

That is a, that's what they've done, and this is why we have the Constitution Review Commission, and this is why we are making recommendations. They're saying, as a whole, we're saying in a staggered approach. Certain things you just don't need the people.

The more important fundamental ones, you need the people and you need a higher threshold. And, you know, at the moment we have three, four parties in Parliament. And so, for there to be, and I suspect that the next elections there will be maybe an even bigger number of parties in Parliament.
So that would mean that any amendments to the fundamental and the entrenched provisions would require basically all the parties to be of one mind to make the change for the good order, peace, and governance of

this country. It wouldn't be for my political flagging and flag waving. It would be for the people of Fiji.

Those kinds of things require everybody to be involved. And then we take it to the people at a referendum, and yeah, 50 plus one, a simple majority gets us in through the door. Hence our submission.

I mean, you can completely ignore it, that's fine.

Mr Valenitabua: You remember Mabo?

Ms. Malimali: I remember Mabo.

Mr Valenitabua: You remember Mabo? 1992.

Yes. There was no native title for Aboriginals in Australia.

And then Mabo was decided by the High Court of Australia. That native title was to be given to the Aboriginals.

Now that became law set by the court, which resulted in the Land, the NTA, the Native Titles Act in Australia. The law, or the legislators followed the law set by the High Court. Here we have the provisions which had been set by the Supreme Court.

Should we not follow it? Do not comply with it?

Ms. Malimali: We're not suggesting you disregard the Supreme Court. May I distinguish it? In Australia they didn't take it to a referendum, they didn't take it around the country like we've done here. You are now going around the country, and we're so very thankful for that, seeking the views of us the people.

And some of us the people, maybe just two, are making this suggestion. If the majority of the people who you've consulted disagree with the Supreme Court, so be it. The Supreme Court is also the servant of the people.
Vox Populi and all of that. The judiciary doesn't listen to the politicians or to anybody else, they listen to the people. And this is how they listen to the people.

One of the challenges during that Supreme Court case last year was they didn't have any petitions, or they didn't have any submissions from the people. So they could say, ah, well, yes, there was a report. Now what they're going to have, should this go back to court, is, oh, yes, there was the Valenitabua Commission report, which had this, this, this, they had submissions on this.

This is what was lacking before the Supreme Court last year. And I think the Law Society tried to put in some affidavit with some statistics. But this is what will give context, what this process that we're going through now, this is what will give context and body and flavour to whatever recommendations you make to government.

It's based on all of us, how many thousand people who come to speak with you and our reports. Does that...

Mr Valenitabua: Yeah, okay, I get you. Yeah.

Just one last... Just one last one. People whom we have heard have stated that we have to change the electoral system. Do away, remove the de-honk system, or whatever it is called.

Now you are submitting that we have to continue using de-honk. Oh, no. Do you want to comment on that?

Ms. Malimali: First Past the Post is not truly reflective of the voters' votes or their wishes.
The alternative voting system, as we all know, it came in in 97, 98, we all had to go to the polls, or 99. And we were all confused, because you didn't know whether to vote above, below, you tick, you circle. You know, some people went, oh, these are my three favourite, circled or ticked three people, vote became invalid.
It was too complicated for us. The open list proportional system is probably the best way forward for us. Now, the threshold, yeah, but perhaps you throw lower the threshold from 5% to 2% or 3%.

I think Mr. Savu is more of a political scientist than I am, so he can explain that. But I think for now, we can't change the electoral system eight months away from elections. It is just, if we're going to do that, we might as well not have the elections.

If we're going to change the electoral system now, then we better tell the people of Fiji, right, we're going to do this. Sam can explain a bit more on that, but one of the other things I wanted to add, and we forgot to write it down, was that perhaps it should also be included that, you know, six months, if we set an electoral date, like first Tuesday in November, we must put in there that three months prior to election, we must go into caretaker mode. This is one of the submissions we've made around the place.

Caretaker mode, where no extra expenditure must be done, big capital works must go through the electoral commission for their scrutiny. This is how it's done in Pakistan. The last recollection, the last one I went to was Pakistan, and that's how they do it there.

And that's a huge country of over 200 million people. Any big expenditure during caretaker mode goes to the electoral commission. Mr. Savu can explain a little bit more about the voting system, but we say keep the dihond, lower the threshold to about 2 or 3 percent.

Mr. Savu might want to... Does that make sense, or would you like us to explain some more, sirs?

Mr Valenitabua: That's fine, that's fine. Well, I think that brings us to the end of the consultation this afternoon. Thank you very much for accepting the invitation and coming to make submissions to the commissioners this afternoon.

You have dealt with a lot of things, and you have submitted a lot of things to us. We'll have a look at them when we have them ready. Ami was here before you came in, correct? And Unity Commission.

Ms. Malimali: So they have the same submission as us, remove it?

----------End of Session [2-7-2026]----------

Honourable Chair and Members of the Constitution Review Commission

SUBMISSIONS TO THE CONSTITUTION REVIEW COMMISSION ON 2ND JULY 2026

INTRODUCTION

The Constitution Review Commission was established in March 2026,[1] via a Presidential Warrant with its Report due on 31 August 2026.[2]

My understanding is that this constitutional review follows the Supreme Court Opinion *In the Matter of a reference by [3]Cabinet for an opinion from the Supreme Court on a matter concerning the interpretation and application of sections 159 and 160 of the Constitution of the Republic of Fiji*[4] which was handed down on 29 August 2025 and the failure of the Government to obtain the 75% requirement in Parliament to pass the *Constitution (Amendment) Bill 2025*[5] to pass the required parliamentary threshold. With two failed attempts to amend the 2013 Constitution, the Government went down the path of a Constitutional Review Process by Presidential Warrant rather than through an enabling legislation passed by Fiji's Parliament. A concern that has been raised is that the time frame of five months for constitutional reform[6] is insufficient, given that constitutional reform takes 18-24 months and general elections should be held by February 2027.

Given the stated concerns, I have chosen to make my submissions anyway. Furthermore, a look through Fiji's social media and commentary, would indicate that quite a number of Fiji citizens favour, an amendment to the 2013 Constitution.

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[1] Constitution Review Commission members sworn in by President - FBC News (Accessed on 7 June 2026)

[2] *'Public Encouraged to Engage with Constitution Review Process'*, Press Release dated 20 March 2026. Fiji Government - PUBLIC ENCOURAGED TO ENGAGE WITH CONSTITUTION REVIEW COMMISSION PROCESS (Accessed on 7 June 2026).

[4] *In the Matter of a reference by Cabinet for an opinion from the Supreme Court on a matter concerning the interpretation and application of sections 159 and 160 of the Constitution of the Republic of Fiji* [2025] FJSC 20; Miscellaneous 1 of 2025 (29 August 2025). In the Matter of a reference by Cabinet for an opinion from the Supreme Court on a matter concerning the interpretation and application of sections 159 and 160 of the Constitution of the Republic of Fiji [2025] FJSC 20; Miscellaneous 1 of 2025 (29 August 2025) (Accessed on 7 June 2026).

[5] *2013 Constitution Amendment Bill defeated*, Fiji Village News, by staff reporters Rashika Kumar and Mansi Chand on 11 March 2025. 2013 Constitution Amendment Bill defeated (Accessed on 7 June 2026).

[6] *Questions raised on whether we are rushing with constitution review, Commission says they have time*, Fiji Village news by Vijay Narayan, 03 June 2026. Questions raised on whether we are rushing with constitution review, Commission says they have time (Accessed on 7 June 2026).

My main criticism of the 2013 Constitution would be in relation to the ***over-concentration of power in the Prime Minister and Attorney-General.***

I would like to see Fijians at all levels from the Executive to the general population understand and respect and follow the Rule of Law.

Principles of Constitutionalism

The foundation principles of a constitution are democracy, the rule of law, the separation of powers, nationhood and rights balanced by responsibilities.

In the case of *In the Matter of a reference by Cabinet for an opinion from the Supreme Court on a matter concerning the interpretation and application of sections 159 and 160 of the Constitution of the Republic of Fiji*[8] the Supreme Court said:

[14] The common law has brought rules of law relating to contract, tort, property, trusts, equity and statutory interpretation which have become part of the law of Fiji. It can, of course, be changed by legislation and modified to reflect Fijian conditions, so becoming the common law of Fiji.

[15] The common law has been described as the ultimate constitutional foundation in Australia, and it can attract that description in Fiji. It brings with it some essential constitutional principles. They relate to such things as the essential characteristics of courts, their independence from the executive and the legislature and their transparency – reflected in their open hearings and the general requirement that their decisions are publicly explained.

The Supreme Court has recognised the 2013 Constitution as legally effective and that Fiji has had 3 general elections under that constitution.

How I have dealt with my submissions is to go through the provisions that in my view need strengthening and I have also made recommendations on new provisions to be made such as the Right to petition public authorities.

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[8] *In the Matter of a reference by Cabinet for an opinion from the Supreme Court on a matter concerning the interpretation and application of sections 159 and 160 of the Constitution of the Republic of Fiji* [2025] FJSC 20; Miscellaneous 1 of 2025 (29 August 2025). In the Matter of a reference by Cabinet for an opinion from the Supreme Court on a matter concerning the interpretation and application of sections 159 and 160 of the Constitution of the Republic of Fiji [2025] FJSC 20; Miscellaneous 1 of 2025 (29 August 2025) (Accessed on 7 June 2026).

Constitutional Objective: Preventing the Over-Concentration of Public Power

A constitution should not merely establish institutions of government; it should ensure that no individual, office, or institution is able to accumulate such power that it undermines democracy, the rule of law, or the rights of citizens. One of the principal objectives of constitutional design is therefore to prevent the over-concentration of public power.

Fiji's constitutional history demonstrates the dangers that arise when power becomes concentrated in too few hands. Although each of Fiji's constitutions has contained provisions recognising democracy, the separation of powers and the rule of law, the practical operation of government has, at various times, revealed that constitutional guarantees alone are insufficient if institutions are unable to operate independently or if constitutional safeguards can be circumvented by those exercising political power.

In my respectful view, the principal weakness of the current constitutional framework is not that it lacks democratic institutions, but that it permits an excessive concentration of influence in certain executive offices, particularly in relation to appointments, oversight, and the functioning of independent constitutional bodies. Constitutional reform should therefore seek not simply to redistribute power, but to ensure that power is exercised transparently, accountably, and subject to effective institutional checks and balances.

This objective may be achieved through several complementary constitutional mechanisms.

First, the Constitution should reinforce the separation of powers by ensuring that the legislative, executive and judicial branches each perform their constitutional functions independently, without undue interference from the others. The separation of powers is not intended to create competing institutions, but to establish a system of mutual restraint in which each branch provides an effective check upon the exercise of power by the others.

Secondly, the Constitution should strengthen the independence of constitutional commissions and oversight institutions. Bodies such as the Judicial Services Commission, the Fiji Independent Commission Against Corruption, the Director of Public Prosecutions, the Independent Legal Services Commission, and other constitutional offices must be protected from political influence if they are to command public confidence and perform their constitutional responsibilities impartially.

Thirdly, the Constitution must continue to safeguard judicial independence. Courts are the ultimate guardians of the Constitution and the rule of law. Their legitimacy depends not only upon formal guarantees of independence, but also upon transparent appointment processes, security of tenure, professional excellence, integrity, and public confidence that judicial officers decide cases according to law rather than political considerations.

Fourthly, constitutional reform should strengthen parliamentary accountability by ensuring that Parliament is able effectively to scrutinise the Executive, oversee the expenditure of public funds, hold Ministers accountable for their decisions, and represent the interests of the people rather than merely endorse executive policy. A healthy constitutional democracy requires a Parliament that performs its oversight role independently and robustly.

Fifthly, appointments to constitutional offices should be decentralised so that no single political officeholder exercises disproportionate influence over appointments to the judiciary, independent commissions, constitutional offices or senior public service positions. Appointment processes should be transparent, merit-based and shared among appropriate constitutional institutions to minimise both actual and perceived political influence.

Finally, the Constitution must continue to protect and, where appropriate, strengthen constitutional rights. Fundamental rights are not merely individual entitlements; they are constitutional limits upon the exercise of governmental power. Rights such as access to justice, administrative fairness, privacy, freedom of assembly, freedom of association and the right to petition public authorities provide practical safeguards against arbitrary government action and reinforce democratic participation.

The recommendations contained in this submission are guided by these constitutional principles. Whether addressing the Bill of Rights, Parliament, the Presidency, the Judiciary, independent institutions, the Public Service, or constitutional immunity, the underlying objective remains the same: to create a constitutional framework in which power is distributed rather than concentrated, institutions are independent rather than subordinate, and every public office is exercised under the Constitution and subject to the rule of law.

Constitutions alone cannot guarantee good government. They cannot prevent every abuse of power, nor can they ensure that those entrusted with public office will always act honourably. What a constitution can do, however, is establish institutions that make abuses of power more difficult, accountability more effective, and democratic government more resilient. That, in my respectful submission, should remain the central objective of Fiji's constitutional reform.

Preamble

The Preamble is good but can be strengthened with the following inclusions, which have been taken from the Constitution of Hungary:[9]

We recognise the role of Christianity in preserving nationhood. We value the various religious traditions of our country.

We hold that human existence is based on human dignity.

We hold that individual freedom can only be complete in cooperation with others.

We hold that the family and the nation constitute the principal framework of our coexistence, and that our fundamental cohesive values are fidelity, faith and love.

We hold that the strength of community and the honour of each man are based on labour, an achievement of the human mind.

We hold that we have a general duty to help the vulnerable and the poor.

We hold that the common goal of citizens and the State is to achieve the highest possible measure of well-being, safety, order, justice and liberty.

We hold that democracy is only possible where the State serves its citizens and administers their affairs in an equitable manner, without prejudice or abuse.

Our Constitution shall be the basis of our legal order. It is a living framework which expresses the nation's will and the form in which we want to live.

SUPREMACY OF THE CONSTITUTION

Section 2 - The Constitution is the Supreme Law of the State. I would like to see Section 2(1) expanded to read:

This Constitution is the supreme law of the State and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.[10]

I would like to see the following provisions included or added on to Section 2 of the Constitution. The inclusion of these provisions may be seen as stating the obvious but in my experience, the obvious needs to be stated to prevent any other interpretation.

Fiji shall be an independent, democratic rule-of-law State.

The form of government of Fiji shall be a republic.

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[9] Hungary 2011 (rev. 2016) Constitution - Constitute

[10] From Section 1 of the Constitution of Barbados 1966 (rev.2007). The Constitution of Barbados (Accessed on 2 July 2026)

The source of public power shall be the people.

The power shall be exercised by the people through elected representatives or, in exceptional cases, directly.

Sections 3-6 can remain.

Section 4 – Secular State

It should remain a secular state.

The calls for a Christian state and making Sunday a day of rest is not rooted in the Bible. We can recognise that Fiji recognises the role of Christianity in our history but we must not exclude other faiths. Religion is a personal matter and should not be legislated.

I concur with the Council of Churches in reading Section 4 and Section 22 together.

Section 5 – Citizenship can be retained.

BILL OF RIGHTS

The Bill of Rights provisions are good and should be retained. We can add more safeguards for the citizens of Fiji bearing in mind that the state is supposed to look after the welfare of the people; not to trample on their rights or to kill and maim.

We can add to Section 9, the following provision:

Everyone shall have the right to compensation, whose liberty has been restricted without a well-founded reason or unlawfully.

This added provision will make anyone who is heavy handed with the law cause to pause and consider carefully their actions.

We can add in relation to Section 11(3), the following:

Practices aimed at eugenics, the use of the human body or its parts for financial gain, as well as human cloning shall be prohibited.

Section 16 – Executive and Administrative Justice.

To be strengthened with the inclusion of the following provisions:

1. *Everyone shall have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities. Authorities shall be obliged to give reasons for their decisions, as provided for by an Act.*

2. *Everyone shall have the right to compensation for any damage unlawfully caused to him or her by the authorities in the performance of their duties, as provided for by an Act.*

These provisions need to be included in the Amended Constitution to prevent a systemic abuse of its vast powers by the state.

Freedom of Assembly – Section 18

Retain the section with some additional protections:

1. *Everyone shall have the right to peaceful assembly.*
2. *Everyone shall have the right to establish and join organisations.*
3. *Political parties may be formed and may operate freely on the basis of the right to association. Political parties shall participate in the formation and expression of the will of the people. Political parties shall not exercise public power directly.*
4. *The detailed rules for the operation and management of political parties shall be laid down in the laws governing political parties under our Electoral laws.*
5. *Trade unions and other interest representation organisations may be formed and may operate freely on the basis of the right to association.*

Section 24 – Right to privacy

This needs to be strengthened to include:

Article on private communications and data

1. *Everyone shall have the right to have his or her private and family life, home, communications and good reputation respected.*
2. *Everyone shall have the right to the protection of his or her personal data, as well as to access and disseminate data of public interest.*
3. *The application of the right to the protection of personal data and to access data of public interest shall be supervised by an independent authority established by an Act.*

NEW ADDITIONS TO THE BILL OF RIGHTS

Article on self defence

Everyone shall have the right to repel any unlawful attack against his or her person or property, or one that poses a direct threat to the same, as provided for by an Act.

*While some may argue that this is already part of the criminal law and could be used as a defence, I would suggest that we look at it in terms of homeowners who whilst enjoying the privacy of their homes, are attacked by a group and have had to pick up a weapon and defend themselves and their family. Generally, people are charged and have to take their chances with the courts, this article would seek to provide the sensibilities and common-sense approach to viewing this type of scenario. This is the scenario that this provision would look at.

Article on the right to petition public authorities

Everyone shall have the right to submit, either individually or jointly with others, written applications, complaints or proposals to any organ exercising public power.

Article on use of technology to improve public service and transparency

The State shall strive to use the latest technological solutions and scientific achievements to make its operation efficient, raise the standard of public services, improve the transparency of public affairs and to promote equality of opportunity.

CHAPTER 3 – PARLIAMENT

PART A – LEGISLATIVE AUTHORITY

Sections 46-51 can remain.

PART B – COMPOSITION

Retain the Proportional Representation System and keep the current system. It works for now. A unicameral parliament is suitable for a small country like ours.

In relation to the gender composition, Fiji currently has a population of about 900,000 with half being male and half female. However, our Parliament does not reflect this. What we have is Standing Order 110(2) which says that we put a gender lens to Reports, Bills and Laws. However, that is an institutional matter and not one of representation.

Electoral System

Fiji's electoral and constitutional framework has undergone a few transformations, including shifts from First Past the Post (pre-1997), to Preferential Voting under the 1997 Constitution, and later to the Open List Proportional Representation system[11] under the 2013 Constitution. Despite these structural changes, gender inequality in political representation has persisted,

[11] Section 53 of the Constitution of the Republic of Fiji.

raising questions about the adequacy of existing constitutional mechanisms in addressing entrenched structural disadvantage.

First Past the Post is not suitable for Fiji now and especially with more than 3 main political actors.

Whilst the D'Hondt system has its faults we must work with it for now.

TSM

Mrs. Suliana Siwatibau in her article, *'Women and minority interests in Fiji's alternative vote electoral system'*[12]stated that despite government rhetoric, women's representation in parliament has remained below the 30% target that was set. She attributed this to:

1. Difficulties in adapting very strong traditional cultures and attitudes which still sees women as subordinate to men.
2. Continuing male influence over the way women and families vote.
3. Difficulties for those with little education (mostly women) to comprehend the Alternative Vote (AV) system.
4. Women being hesitant to nominate for election.
5. Little concerted effort by political parties to encourage women as candidates.
6. The high cost of election campaigns combined with the relatively poor financial status of women.
7. The fact that the AV electoral system works against women and minority groups.

Out of the 7 reasons identified by Siwatibau,[13] Reasons No. 3 and 7 are no longer applicable.

In order to achieve real parity, the Constitution needs to put into our constitution a provision for Temporary Special Measures and that at least 5 seats are to be reserved for women to help us get to that equality.

The mechanics can be worked out by the Electoral Commission.

In relation to election dates, I agree with the Electoral Commission that there must be certainty in the DATES for elections so that politicians do not play with the dates.

We must include a provision that states that ***ELECTIONS MUST BE HELD between the 1-30 September each election year beginning with the first election after this Constitution comes into force.***

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[12] Siwatibau, Suliana, 'Women and minority interests in Fiji's alternative electoral system', Fraenkel, J., & Firth, S (Eds.), *From Election to Coup in Fiji: The 2006 campaign and its aftermath*, (2007) co-publishers IPS Publications, University of he South Pacific and Asia Pacific Press, The Australian National University.

[13] ibid

In relation to local government elections or municipal elections, we have not had elections since 20005 and the ones that were to be held in September this year have been postponed. Good governance starts at the local level and if the people of towns and cities are deprived of the opportunity to vote for their local government officials, then the principles of democracy and transparency and accountability are abandoned as the persons who are in charge of city/town rates and other things to do with a municipal are not accountable to the people of that city or town.

Although the Local Government elections are legislated for in the Local Government Act, the Constitution should include a provision MANDATING that local government elections are to be held every three (3) years or something similar.

CHAPTER 4 – THE PRESIDENT

The Chapter can be strengthened by amending s82 to make it clearer that the President is a CEREMONIAL ROLE and that the President cannot act on his/her own accord. The President only acts on advice.

The President must be above reproach and character is an essential to the criteria for eligibility to be President.

Therefore, for a Fiji citizen to qualify to be president, would require demonstrated qualities of integrity, respect and absence of bias. Some aspects that maybe impediments to appointment include criminal history, civil actions, financial difficulties, professional (mis)conduct, and presence on social media and online networks. In the jurisdictions that have such criteria, any information disclosed would not necessarily amount to an absolute bar to appointment but might warrant further investigation. The person would need to disclose prior sexual harassment complaints or any allegations of sexual misconduct.

Article - role and mandate of the President

1. *The person of the President of the Republic shall be inviolable.*
2. *The office of the President of the Republic shall be incompatible with any other state, social, economic and political office or assignment. The President of the Republic may not pursue any other remunerated occupation, and may not receive a fee for any other activity, except for an activity subject to copyright protection.*
3. *The mandate of the President of the Republic shall terminate:*
    - *upon the expiry of his or her term of office;*
    - *upon his or her death;*

- *if he or she is incapable of performing his or her functions for over ninety days;*
- *if the conditions for his or her election no longer exist;*
- *upon the declaration of a conflict of interests;*
- *upon his or her resignation;*
- *upon his or her removal from the office of the President of the Republic.*

4. *Parliament shall decide with the votes of two-thirds of the Members of Parliament present on the establishment of any condition of the President of the Republic preventing him or her of performing his or her functions for over ninety days, or of the absence of the conditions required for his or her election, or on the declaration of a conflict of interests.*
5. *The detailed rules for the legal status of the President of the Republic and the previous Presidents of the Republic, and their remuneration shall be laid down in a separate Act.*

Section 88 of the 2013 Constitution states that the Chief Justice is to perform the functions in the absence of the President. It is proposed that that provision is to be amended and that instead of the Chief Justice, the Speaker of Parliament is to take on that role.

Article – Substitute when the President is unable to act

1. *If the President of the Republic is temporarily prevented from acting, or if the mandate of the President of the Republic terminates, the Speaker of Parliament shall exercise the functions and powers of the President of the Republic until he or she is no longer prevented from acting, or until the new President of the Republic takes office, respectively.*
2. *The fact that the President of the Republic is temporarily prevented from acting shall be established by Parliament at the initiative of the President of the Republic, the Government or any Member of Parliament.*
3. *While substituting for the President of the Republic, the Speaker of Parliament may not exercise his or her rights as a Member of Parliament, and his or her duties as Speaker of Parliament shall be performed by the Deputy Speaker of Parliament designated by Parliament.*

Section 89 deals with removal from office. Currently, it is the Prime Minister requests the Chief Justice to set up a tribunal to look into any case of alleged misbehaviour by the President.

The challenge with this is that if the Prime Minister refuses to act, then there is no other way. If as is the case in Fiji today, that the Prime Minister is the traditional subject of the President, then the possibility of this happening is slim.

Article - Criminal Proceedings against the President

1. *Criminal proceedings against the President of the Republic may be instituted only after the termination of his or her mandate.*
2. *If the President of the Republic wilfully violates the Constitution or, in connection with performing his or her office, any Act, or if he or she commits a wilful criminal offence, one-fifth of the Members of Parliament may propose his or her removal from office.*
3. *For the impeachment procedure to be instituted, the votes of two-thirds of the Members of Parliament shall be required. Voting shall be held by secret ballot.*
4. *As from the adoption of the decision of Parliament, the President of the Republic may not exercise his or her powers until the impeachment procedure is concluded.*
5. *The High Court consisting of 3 judges shall have the power to conduct the impeachment procedure.*
6. *If, as a result of the procedure, the High Court establishes the responsibility of the President of the Republic under public law, it may remove the President of the Republic from office.*

PART B – CABINET

The Provisions in relation to cabinet need to be amended to CAP the number of Ministers. A constitutional cap can help contain public expenditure. Currently there are 20 ministers with a salary of around $200,000.00. Each Minister has a PA, a PSO, a government issued car and driver. That in itself is a big expense.

Some departments have become ministries and so our cabinet has become unwieldy. Apart from cabinet Ministers, the Prime Minister has also appointed a number of Assistant Ministers. Whilst the Assistant Ministers are not members of cabinet, their inclusion also comes with a PA, a car and a driver and all that those offices are entitled to.

Section 91 (10 could be amended to read:

Cabinet consists of the Prime Minister as Chairman and no more than 15 cabinet ministers in total (excluding the Prime Minister).

CHAPTER 5 – THE JUDICIARY

Separation of powers and the independence of the judiciary is in the current constitution and past constitutions but it is the actors in these institutions that have to be made to follow the rules as laid out by the constitution.

State v Silatolu and Nata [2003] FJHC 239; HAC0011.2001 (27 June 2003), although the Constitution being referred to in that case was the 1997 Constitution (as amended), there was a good discussion by the high court on separation of powers, some of which is reproduced below:[14]

The separation of the judicial power

*The **Constitution**, by its explicit terms [section 118], requires that the judicial power of the State be separated from and be exercised (by the judges) independently of the legislative and executive branches of government. The express words of section 118 aside, the arrangement of the **Constitution** (Chapters 6, 7 and 9 of which deal separately with the legislative power of the State, the executive authority of the State and the judicial power of the State) provides the basis for a necessary implication of separation of the judicial power. The Parliament is precluded from vesting that power in any person or agency other than the courts and from itself exercising that power or interfering with the court's exercise of that power.*[2]

The textual implication is reinforced by the language used - "the ... power/authority .... vests/is vested in ...".

*The doctrine of the separation of legislative, executive and judicial power, at least to the extent that it commits judicial power to the courts to the exclusion of the Parliament, was recognised by the Privy Council in **Liyanage v R**[3]. Their Lordships said in that case:*

These provisions manifest an intention to secure in the judiciary a freedom from political, legislative and executive control. They are wholly appropriate in a Constitution which intends that judicial power shall be vested only in the judicature. They would be inappropriate in a Constitution, by which it was intended that judicial power should be shared by the executive or the legislature. The Constitution's silence as to the vesting of judicial power is consistent with its remaining, where it had lain for more than a century, in the hands of the judicature. It is not consistent with any intention that henceforth it should pass to, or be shared by, the executive or the legislature.[4]

The noted constitutional academic, Professor Lane, has said[5] *that judicial power is usurped, according to **Liyanage**, when there is legislative interference in specific proceedings, when such interference affects pending litigation, and when the interference affects the judicial process itself such as inter alia the discretion or judgment of the judiciary or the authority or jurisdiction of the court.*

*The **separation of powers** doctrine, as it applies in South Africa, was explained in **First Certification***

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[14] *State v Timoci Silatolu and Josefa Nata* [2003] FJHC 239; HAC0011.2001 (27 June 2003) State v Silatolu and Nata [2003] FJHC 239; HAC0011.2001 (27 June 2003)

Judgment (also referred to as *In re: Certification of the Constitution of the Republic of South Africa*, 1996[6]) in the following terms:

The principle of separation of powers, on the one hand, recognises the functional independence of branches of government. On the other hand, the principle of checks and balances focuses on the desirability of ensuring that the constitutional order, as a totality, prevents the branches of government from usurping power from one another. In this sense it anticipates the necessary or unavoidable intrusion of one branch on the terrain of another. No constitutional scheme can reflect a complete separation of powers; the scheme is always one of partial separation. In Justice Frankfurter's words, 'the areas are partly interacting, not wholly disjointed'... The model adopted reflects the historical circumstances of our constitutional development. We find in the Constitution checks and balances that evidence a concern for both the over-concentration of power and the requirement of an energetic and effective, yet answerable, executive. A strict separation of powers has not always been maintained; but there is nothing to suggest that the constitutional principles imposed upon the [Parliament] an obligation to adopt a particular form of strict separation, such as that found in the United States of America, France or the Netherlands.

The *separation of powers* doctrine, as it applies in Australia, is explained in *Wilson v Minister for Aboriginal and Torres Strait Islander Affairs*.[7]

The separation of the judicial power has been said to be necessary inter alia for the discharge by the courts of their constitutional role as a "bulwark of the Constitution against encroachment whether by the legislature or the executive."[8]

The separation of the judicial power precludes any legislative interference with the exercise of the judicial power by the courts because the rights of persons must be determined by "judges of the State ... independent of the legislative and executive branches of government."[9]

...

Fiji has had good constitutions but if one of the actors dominates one or frightens another, then separation of powers is just a term of art.

For example, after the ruling in HBJ 5 of 2025, the Applicant Malimali was to meet with the Judicial Services Commission as that is the body that is empowered by the Constitution that is tasked with recommending to the President the appointment of the Commissioner of FICAC, the Deputy Commissioner FICAC and Acting Commissioner FICAC. After HBJ 5 of 2025, the meeting between Malimali and the JSC was stalled because the representative of the Prime Minister (Valenitabua Jnr) and the representative of the President (the SG) were present and

participating in the meetings. That is an instance of direct interference in contravention of s104(8) of the Constitution.

PART A – COURTS AND JUDICIAL OFFICERS

With Fiji's coup-ridden history and the whispers in the corridors of judicial involvement or collaboration in at least one coup and the allegations touted about that the judiciary was tainted under the previous administration, it is so very important that we harken back to the days when the judiciary was revered and people had confidence in it.

Appointment of Judges and Magistrates

Sections 105 and 106 refer to the qualifications of persons who are to be appointed as judges and magistrates. The wording of sections 105 and 106 is inelegant needs re-writing.

Our judiciary must reflect the society that it serves we need a judiciary that *recognises that diversity of experience, in terms of gender, ethnicity, socio-economic background, and life experience is important, and affects the judicial response to the cases that come before the courts by contributing to the strength and flexibility of judicial reasoning.*(such as the NZ judiciary).[15]

Fiji houses 3 law schools and about 200 lawyers are admitted as legal practitioners each year. There are over 1,000 (1078 as per the Judiciary website)[16] lawyers with valid or current practising certificates. What that means is that Fiji is full of lawyers and people with law degrees which means that we have a population that can access legal advice in person, quite apart from google, ChatGPT and Claude.

That being so and with the advent of AI, Fiji needs a judiciary that is in touch with the people, with technology and one that has people who are also academically qualified. We the people of Fiji deserve the best quality judges who can not only dissect a case and deliver judgements that are fair but judgements that are well written.

Currently, the judicial arm is filled with judges and magistrates who typically have come straight from one of the government departments such as DPP, Legal Aid or AG's Chambers. The perception from the outside looking in is that joining the magistracy is part of the natural progression in the career of government from those 3 offices. I could be mistaken but that is a perception. Private Practitioners seem to not be able to get a judicial appointment although they generally do a wider range of legal work than government lawyers.

For a person to apply for a judicial appointment they must have professional competence, integrity, temperament and experience. Applicants must also possess high moral character,

[15] How is a judge appointed? – Courts of New Zealand

[16] List-of-Legal-Practitioners-with-valid-Practising-Certificate-as-at-1st-March-2026-for-the-period-01st-March-2026-28th-February-2027 .pdf (Accessed on 01/07/26)

intellectual and analytical ability, sound judgement, and a deep understanding of people and society.

In order to be qualified to be appointed as a judge, I would add the following criteria:

- Minimum academic qualification requirement would be a master's degree from a recognised educational institution. The preferred Masters would be an LLM, MEL, MTax, MBA. (Some may suggest that this is too stringent and would exclude some excellet legal practitioners but in Fiji's context and the number of lawyers we have for our population, I would still put this in. If it means that lawyers have to put in some extra work to attain further academic credentials, then it can only benefit the country, the rule of law and our jurisprudence).
- I would keep the post-admission practice at 15 years but at least 10 years must have been spent in private practice or academia.

I would add another requirement to the Professional Qualification

For applicants to be a judge - identify at least ten matters (substantive trials or appeals) in the past 5 years that they have been part of.

A major or significant matter may have the following features:

- referred to by the Judge as important, complex, significant or similar term;
- is a test case or set a precedent;
- has been reported or has been the subject of academic comment;
- a serious fraud or criminal case;
- a complex commercial or civil case (including family law cases).

- The criteria can also add a pathway from the Magistracy to the High Court bench through the identification of at least 10 cases in the past 3 years that can be classified as a major or significant matter.

In order to be qualified to be appointed as a Magistrate, I would add the following criteria:

- Minimum academic qualification requirement would be a master's degree from a recognised educational institution. The preferred Masters would be an LLM, MEL, MTax, MBA.
- I would keep the post-admission practice at 10 years for Magistrates but I would add that at least 5 years must have been spent in private practice or academia.

I would add another requirement to the Professional Qualification

- For applicants to be a magistrate - identify at least five matters (substantive trials or appeals) in the past 5 years that they have been part of.

A major or significant matter may have the following features:

- referred to by the Judge as important, complex, significant or similar term;
- is a test case or set a precedent;
- has been reported or has been the subject of academic comment;
- a serious fraud or criminal case;
- a complex commercial or civil case (including family law cases).

PART B – INDEPENDENT JUDICIAL AND LEGAL INSTITUTIONS

This provision relates to independent commissions and office holders such as:

S114 - ILSC

S115 - FICAC

S116 - Solicitor General

S117 - DPP

To qualify for these positions, one must qualify to be a judge, therefore I recommend that the same criteria that is applied to judges is to be applied to the applicants for these positions.

All of these positions are appointed by the President on the advice of the Judicial Services Commission, following consultations with the Attorney-General.

For these appointments, there is an ***over-concentration of power in the Attorney-General*** and the provisions should be amended to remove the criteria for consultation with the Attorney-General.

Section 115 – FICAC

There have been many calls to abolish FICAC because it was and continues to be weaponised against the people.

There has been calls for some version or another of FICAC dating back to the 1970s and in the early 2000s, there were Law Reform Commissioners appointed, chaired by former Chief Justice Daniel Fatiaki, who undertook consultations around the country and produced a Report, which

led to the Drafting of the FICAC Bill. That Bill, after some amendments was then promulgated in April 2007 by the Bainimarama regime. So, FICAC was not created out of thin air.

However, the purpose for which FICAC was to be created has been overtaken by the whims by those in power. Sadly as we saw since its inception in 2007, whilst the ruse has been to prosecute corrupt government officials and their private sector counterparts, FICAC gained notoriety, by mostly prosecuting and maybe persecuting electoral offences and politicians. It was used to wield the axe over the heads of anyone who was perceived to be or who stood in opposition to the government of the day. They have appointed heads of FICAC who had leanings towards the political heads and so FICAC has never truly been independent.

There are 2 options available and they are:

1 - abolish FICAC altogether

2 - keep FICAC but take away its prosecutorial powers and give it to the office of the Ombudsman

The problem with abolishing FICAC is that cases of fraud and corruption will take even longer to investigate. Whilst there exists within the Fiji Police Force, units that deal with corruption and fraud, sadly, they do not have the manpower nor the expertise to deal with these cases.

Apart from the lack of manpower, the Fiji Police Force at this current time is also faced with a crisis of corruption. Police Officers are accused on a regular basis of criminal activity. Never before in our history have we seen such a large number of police officers who have been charged with criminal offences.

If already, there are allegations of police officers taking bribes for drugs cases, imagine how much more it will be or how much worse it will get, if we add corruption to their workload.

Right now, we have 2 severely crippled law enforcement agencies. The Fiji Police Force has a crisis of ethics and the FICAC has a crisis of control. FICAC is not independent and the cases they have pursued in the past year shows a trend of prosecuting political opponents rather than real corruption cases. The one major case that they have had this year resulted in an acquittal (the Sanjay Kaba case).

Laws will not improve these institutions but the respect for the rule of law will and so will zero-tolerance for political interference.

<u>Other Commissions</u>

S119 – Mercy Commission

S120 – Public Service Disciplinary Tribunal

S121 – Transparency and Accountability Commission

For these appointments, there is an ***over-concentration of power in the Attorney-General*** and the provisions should be amended to remove the criteria for consultation with the Attorney-General.

CHAPTER 6 – STATE SERVICES

PART A – PUBLIC SERVICE

S126(1) (a) and (b) state that the Public Service Commission is to appoint and remove permanent secretaries, **with the agreement of the Prime Minister.**

This would qualify as an ***over-concentration of power in the Prime Minister.***

Permanent Secretaries are the CEOs of government ministries, and they should be appointed on merit and free of political influence. A case in point is that of the former PS for Fisheries Ms. Atelaite Rokosuka. After a disciplinary hearing, the Public Service Disciplinary Tribunal, ordered inter alia, that she resume duties on 19 December 2025 (or thereabouts). However, somehow, the Prime Minister decided that she was not to resume duties, and she was reassigned to the Government Training Centre (FLIPS) at Nasese.

Section 127 deals with Permanent Secretaries.

Section 127(4) deals with reassignment of Permanent Secretaries and that the PSC with the agreement of the Prime Minister can reassign a Permanent Secretary.

Section 127(6) deals with remuneration and the PSC determines that following the agreement of the Prime Minister.

Sections 126, 127(4) and 127(6) are to be amended to remove **with the agreement of the Prime Minister.**

CHAPTER 10 – IMMUNITY

This chapter is to be removed. A country that has been independent for 56 years has had 4 coups and 4 Constitutions (excluding the Ghai Constitution) shows that it has not learnt from its mistakes and is a breeding ground for fundamentalists to rob right thinking, forward thinking

citizens of the rights to live peacefully and peaceably with their neighbours. Drive out into the suburbs of Suva to see the rubbish on every corner and that tells you a lot about the lack of civic pride by our citizens. Let's build that first and respect for one another instead of legislating to keep the powerful and rich in their positions of power. Each coup has created a new elite and each government has generally governed for its friends and funders, but not so much for the people of Fiji.

Immunity weakens public confidence and to build a Fiji that we can proudly leave to the future generations of Fijians, we must remove immunity and promote accountability, constitutionalism and the rule of law.

CHAPTER 11 – AMENDMENT OF CONSTITUTION

Stability, Certainty, Continuity are the key purposes of having a written constitution. As society evolves and new issues that affect us emerge such as Covid-19 and now the emergence of AI, constitutional reform may become necessary to respond to the changing landscape of social, economic and political circumstances. Therefore, we need a Constitution that strikes a balance between stability and adaptability.

The experience under the 2013 Constitution demonstrates that the amendment process has become very difficult. The 2013 Constitution was brought in by the Bainimarama Regime to usher in parliamentary democracy and elections since 2006.

However, genuine reform under the 2013 Constitutional Reform under the 2013 Constitution is a practical impossibility. I also accept that constitutional reform should not be so easily achieved that governments are able to alter fundamental constitutional principles for short-term political advantage.

I would recommend the following amendments be made to Chapter 11:

- For ordinary constitutional provisions, they can be amended by two-thirds majority of the total membership of Parliament. This threshold requires broad political consensus while recognising that constitutions must be capable of reform;
- For the entrenched provisions, such as the constitutional amendment themselves, the requirement should be that the constitutional amendment has the support of at least three-quarters of the total membership of Parliament AND approval by a majority of valid votes cast at a national referendum.

This approach recognises that it is the people who make the law and the ultimate responsibility lies with them. Through this process, the power is given back to the people.

To ensure that constitutional amendments receive proper public consideration, all proposed Constitutional Amendment Bills should be published for public consumption and consultation

for at least six months before being debated in Parliament. Constitutional Reform should never be undertake without meaningful public participation.

In relation to Referendums, the following could be included for completeness:

- Principles and procedures for conducting a referendum, and its validity, are provided by law.[17]

CONSTITUTIONAL CULTURE

Constitutional Culture refers to the shares values, beliefs and unwritten norms that a society holds regarding its system of government and fundamental laws.

I would also recommend that we must develop a constitutional culture and take Fiji back to the earlier slogan of "Fiji: the way the world should be".

In order to preserve democracy and respect for each other and the rule of law it is important that the Constitution reflects this by requiring government to set in place a programme for civic education, public education, professional ethics and institutional respect.

We want stability and we want to bring back into our society some of the values that have fallen by the wayside and whilst we cannot force people to participate, through the Constitution we can start by saying that we share a culture of respect.

The mechanics of that can be done by legislation or policy with responsibility and a budget given to a particular ministry or to the Civil Service to commence the programme. Civil Society Actors are already doing alot of the work and government can use Civil Society, including faith based organisations to raise awareness and educate the people on the important democratic principles and constitutional conventions.

As stated several times, constitutions alone cannot guarantee good government; it's the people and their willingness to live by the principles in the constitution and being willing to enforce it.

REVIEW

There is no mechanism for review in the current constitution but seeing how the word Constitution is so easily thrown around and the constant calls for review, perhaps, we could put a REVIEW DATE for the Constitution.

[17] From Article 151 of the Constitution of Albania. Codices (Accessed on 2 July 2026)

A provision could be added that says that this Constitution will be reviewed through another Constitution Review Commission no later than 10 years from the date the amended Constitution or new constitution comes into force. Section 161 of the 1990 Constitution was the Review Clause.

THE GREAT COUNCIL OF CHIEFS

The Great Council of Chiefs is not in the 2013 Constitution and should remain out of it.

The GCC or BLV, I would respectfully submit, should perhaps commission reports into iTaukei education, iTaukei youth needs, drug abuse and village administration.

I would also suggest that the GCC actively take part in the law reform process by applying an indigenous or iTaukei lens to all Bills, Laws and Reports.

CONCLUSION

The people of Fiji deserve a country free of the kind of abuse that we have been subjected to as a nation over the past 40 years. People seeking power through the barrel of the gun and those who seek power by manipulating those with guns has to stop.

We the people must say stop and anyone who seeks to take over the country again, should be held accountable in a court of law.

The government and the courts belong to us the people and it is us who have to say no more and to hold them accountable.

We must also put an end to race politics and the politics of religion and fear mongering. Cronyism, Nepotism and Tribal (vanua) politics must go too. That is the domain of the wicked.

Constitutions do not bring stability; it is following the rule of law (no matter what) that does. So it is important that we have independent institutions free from political interference and politicians must be held to a higher standard than everyone else because of the special position they hold as our representatives. Politicians should be left out or removed from the appointment process of judicial officers, independent bodies and commissions and tribunals. To stop possible abuse, we have to remove the Prime Minister and Attorney-General in the portions of the Constitution that requires their consent or assent or consultation.

Fiji should remain a unicameral nation with an amendment to the Constitution to provide for at least 5 reserved seats for women.

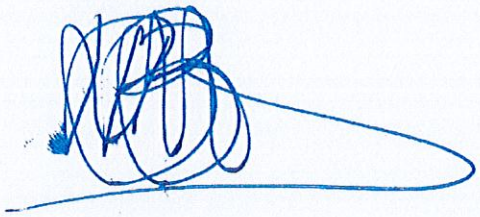
This one is pedantic but I would like the Constitution to contain ARTICLES rather than sections.

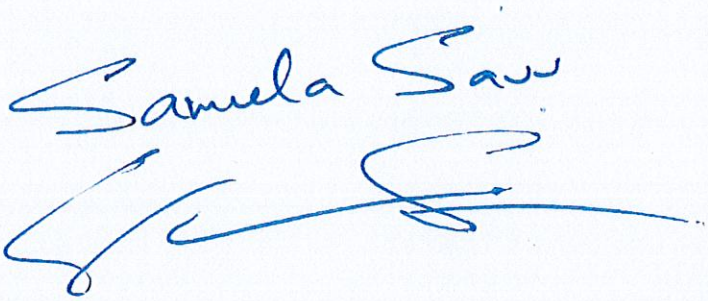
Constitutions are not necessarily bad; it's the people in power who can misuse the powers given to them.

Respectfully submitted.

B. Malimali

2 July 2026





Republic of Fiji Military Forces (RFMF)

Republic of Fiji Military Force
Date: 2-7-2026

Mr. Valenitabua: The commander of the Republic of Fiji built fossils. I see your manager legal and gentlemen officers. It is indeed a pleasure receiving you this afternoon for this consultation session for the Constitution Review Commission. We appreciate accepting our invitation and we really appreciate having you a commander of the RFMF appearing before us. This afternoon you will see that there are three commissioners sitting before you. Initially there were seven commissioners appointed by His Excellency the President of the country. One resigned during our process and left us six to run the review of the 2013 Constitution. Now three of us are here.

Ms. Merewalesi Nailatikau here on my right and Dr. Neelesh Gounder here on my left. I am the chairperson, Sevuloni Ratumaiyale Valenitabua. There are three others who are currently in Rotuma with a team from our Secretariat and they are undertaking four sessions today of consultations around the island of Rotuma.

Now this afternoon I would like to say that we have been around the country. Suva was the last place for us to do the consultations. We started with consultations on the 1st of April 2026 when the Great Council of Chiefs came in and presented their submissions to us.

Right through April we had other ministries, we had associations, we had the trade unions and we had individuals who came in to present their submissions and recommendations in relation to what we should do with the review of the Constitution. Beginning in May, on the 2nd of May, we left Suva and visited the islands. We visited Vanualevu, we went around Vitilevu and then we came down Wainibuka and Tailevu, Tailevu North, Tailevu South and back to Rewa. Rewa was the last province to be covered and then that is why we are in Suva now and we have started this week with receiving other submissions from other ministries, other individuals and this afternoon we have you.

We're here to listen so that we can gather information and submissions which we might use in the review of the Constitution. Our task is to review and that means that we can amend the Constitution. We are looking at it this way, we can receive submissions and we can remove some laws that are already in the 2013 Constitution. We can include

other laws and then we can change the wordings in the law just to change the meaning of the Constitution. That is what our task is.

So, this afternoon we are here to listen. I will now open this consultation session. We welcome you and the mics are there in front of you gentlemen.

Commander, please press on the mic when you are about to talk so that we can have the recordings done. Everything that is stated here this afternoon and in the afternoons which we have passed and in the future are recorded. They are recorded so that we can have hard copies later on for our deliberations. With those few word's gentlemen, Commander, I now open this session and I now give you the floor and the mics. Thank you.

Mr. Jone Kalouniwai: Thank you very much Mr. Chair. I wish to acknowledge also members of the Commission that are beside you this afternoon, Ms. Merewalesi Nailatikau and also Dr. Gounder. We do acknowledge the huge work that you are doing despite the constraints that you are faced with on a daily basis and it is on that basis that we have decided to attend this Review Commission in order to submit our views, the views of the RFMF in terms of the constitutional review that is ongoing at this particular time. I wish to take this opportunity also to introduce the members that would be participating in the submission this afternoon and it is only with myself and my Director for Armed Legal Services, Colonel Tuinaosara , who is on my left side, the rest of the delegates are here as part of the office that is attending this submission this morning.

On that note, Mr. Chair, with your permission we wish to make our submission statement this afternoon.

Mr. Valenitabua: Thank you.

Mr. Jone Kalouniwai: We come before this Commission carrying the weight of our own history. The systemic institutionalized pattern of political instability that has fractured this nation since 1987 was not merely witnessed by the Republic of Fijian military forces.

At points it was built and maintained by our own hands. We do not say this lightly nor without genuine remorse for the part our institution has played in guarding a system that has fractured the moral soul of our

nation. We are aware that the path we propose this afternoon is difficult and that it carries real cost.

By calling for an end to what this submission terms the mark of impunity, a constitutional shielding of past acts from ordinary accountability. We voluntarily step out from behind the legal protections that have long covered our institution. We know this will be seen by some of our own as a breach of loyalty and that seeking this redemption places officers and soldiers, including our own, at legal risk.

We do not open this door lightly but we have reached the point where the survival of any single institution can no longer be purchased at the expense of this nation's soul. We have watched national stability become a phrase used to bypass the law and mercy become a word used to silence the truth. Beneath the surface of new rules and new technology there is a restless spirit in Fiji, a worryness with a peace that feels fragile and a justice system that feels out of reach. That restlessness is not disorder. It is a nation's conscience demanding more than infrastructure. It is demanding integrity.

The August 2025 Supreme Court advisory opinion gave Fiji a rare and stunning disruption, a genuine legal opening. But a legal opening is not by itself a moral cure. We are presently free to fix our laws while sit constitutionally forbidden from healing the deeper injury caused by decades of impunity.

Fiji can no longer afford to drift from one crisis to the next. We must deliberately reset the nation's moral compass and we must reject the false choice between justice and peace, a choice in which our silence has too often been the price of a fragile superficial calm. We propose a transition from a culture governed by fear to a covenant of trust between the state, the military and the people.

A UN principle truth and reconciliation process to dismantle the machinery of silence. The end of a culture of impunity so that the law applies equally regardless of rank and the enhancement of a constitutional right to truth. We make this submission not to injure our fellow soldiers but to secure our children's future.

A Fiji where the law protects the inhabitants and not the architect. From moving beyond perpetual political drift our argument is that Fiji is

trapped in a cycle of reactive governance in which democratic principles erode gradually, not always by force but through the slow hollowing out of institutions. This drift has been fueled by constitutional ambiguity regarding the military's role because the boundaries of military power have never been clearly fixed in law.

The door has historically remained open for intervention allowing the shadows of the past to persist and preventing the nation from ever fully stabilizing. To achieve this there are few key outcomes.

One, the end of inaction. A shift from a passive do-nothing posture to a proactive commitment to institutional reform. Two, the restoration of the rule of law. Bringing the actions of the state and the military back into alignment with democratic ideals. And three, elimination of pretexts by removing the legal grey areas historically used to justify military interference in civilian matters.

Our recommendations are one, the absolute constitutional clarity. We establish a framework that leaves no room for interpretation regarding the military's mandate.

Two, the supremacy of civilian authority. Formally anchor the RFMF's role under the mandated authority of elected civilian leadership. And third, is the removal of ambiguity where the draft provisions that strip away the vague legal justifications historically used to invite excused military intervention.

The second is dismantling the mark of impunity where we argue that Fiji's legal system has at points been turned into an instrument of elite protection rather than a safeguard for the people. This mark of impunity is not accidental. It is a deliberate design in which the threat of instability is used to bypass the law and immunity clauses are used to legalize what would otherwise be criminal acts.

By forcing a false choice between justice and peace, this design has stressed, has pressed the public into accepting a fragile dishonest calm in exchange for their silence. To achieve these, the key outcomes are as follows. One, the end of a two-tiered legal system, dismantling the divide between a protected elite and the general public before the law.

Second, is a moral and judicial integrity moving beyond the gloss of modernization to address the underlying decay of the courts. And third, is accountability over silence, breaking the cycle in which the fear of future coups is used as a permanent shield for past misconduct. The recommendations is one, is a de-weaponized stability.

Reform national security law so it cannot be used to suspend democratic norms or create a permanent state of exception by executive decree. Number two, abolish blanket immunity. Remove or strictly limit constitutional immunity clauses that grant irrevocable protection for extra-constitutional acts, replacing them with conditional acknowledgment tied to full public disclosure. And third, is to reject the justice or peace binary, where you establish as a matter of national principle that sustainable peace is impossible without accountability, that justice is a precondition for stability, not a threat to it. The third issue is the opportunity and the limits of the 2025 advisory opinion.

Our argument is that the August 2025 Supreme Court ruling was a historic disruption that made constitutional change legally possible for the first time since 2013.

But it is not, by itself, a cure for the nation's wounds. The ruling opened a legal pathway to rewrite the rules for the future while leaving the protected walls of the past, the immunity provisions, intact. A nation cannot achieve true stability if it prepares, if it prepares only its rules while remaining legally forbidden from addressing the deeper injury caused by decades of silence.

To achieve these, the key outcome is one, breaking the legal stagnation, using the newly clarified lower amendment thresholds to finally enact reforms that were previously unreachable. Two, is closing the moral gap, recognizing that a legal pathway to change is meaningless if those shielded by the old system remain insulated from accountability. And third, a shift from legalism to morality, moving the national conversation beyond what is legally permitted, what is morally required for genuine healing.

And the recommendations for this is one, bridge the accountability gap, use the 2025 pathway not only to update technical provisions, but specifically to address the clauses that bar the nation from confronting past immunity. Second, is reject the foundation of silence. Ensure that

the new constitutional framework does not merely insulate past actors, but creates a genuine mechanism for transparency.

And third, is the commission a national moral audit. Treat the 2025 opinion as authority to conduct a systemic review of the nation's institutions, so that future law is built on truth rather than technicality alone. The fourth and final issue is the recalibrating the national moral axis.

Our argument is that Fiji's governance has at points in its history relied on dominance and fear rather than mutual consent. A machinery of silence built on legal deadlock and immunity. National healing is impossible without a fundamental shift in the moral axis, away from protecting the architects of past rebellion and toward a covenant of trust, in which the state and the military are once again accountable to the citizenry they serve.

Its key outcomes is one, the end of institutional secrecy, replacing hidden agendas and reflexive invocations of national security with a transparent relationship between the state and the public. Two, is a unified rule of law, a society in which no one, regardless of rank or history, stands beyond the reach of the legal system. And third, is a democratic fluidity, a constitution able to evolve with the will of the people, rather than a rigid instrument designed to preserve the status quo.

To conclude, Mr. Chair, the Republic of Fiji military forces does not make this submission likely. We are fully aware that in calling for this, for the dismantling of the mark of impunity, we are asking the Commission to help close a chapter of the nation's history, in which our institution was at points among the authors. For nearly four decades, Fiji has lived in a house whose walls were built to protect the architects of rebellion, rather than the inhabitants of this nation.

No amount of new infrastructure can substitute for the reset our institutions require. The August 2025 advisory opinion has cleared a legal path, but it will take the moral courage of this Commission and the sustained commitment of the RFMF to walk it to its end. We envision a Fiji which the RFMF is a symbol of humble service, rather than a shadow of intervention, in which the judiciary stands as an unbreakable wall between citizen and state, and in which the right to truth replaces the

machinery of silence, opening the way to genuine UN principle reconciliation.

We accept the risk this submission carries to our own institution, because the alternative, a nation of perpetual drifting, is a cost future generations should never have to bear. We urge the Commission to act with the boldness this moment deserves, and the Republic of Fiji and military forces offers its full cooperation in support of its work. Thank you very much for the opportunity.

Mr. Valenitabua; Thank you.

Mr. Jone Kalouniwai: With your permission Mr. Chair I would like to seek your permission to give time to colonel Tuinaosara just to share his points

. Mr. Valenitabua; Vinaka.

Col.Tuinaosara: Chair thank you very much, I would like to just go through a few submissions that we have with regards to the RFMF Act the new one that we are drafting. I know you were part of this way back when we were arguing between the High Court, the Fiji Court of Appeal, and the Supreme Court on the transparency and the fairness of the court martial system. I have only three points so I won't take much time.

If the Constitution, section 173.17 of the Constitution, which appoints the Director of Public Prosecution to also appoint the Director of Military Prosecution, this is the new military court of Fiji which will replace the ad hoc general court martial system. We will have a Director of Military Prosecution independent from the Director of Military Services. That's for fairness and transparency and all the rights that have been provided for under Chapter 2 of the Constitution which should be afforded to the soldiers when it comes to prosecution of offenses.

The second point is on military judges. Again, we propose that the Constitution be inclusive of an appointment for provision for an appointment of a military judge. The military judge will preside over the proceedings of the military court of Fiji.

He will be sitting on an ad hoc or neat basis from time to time. And the third one is section 102 of the Constitution already allows Parliament to establish other courts by written law. This is for the military court of Fiji.

We ask that this be included into the Constitution so it will be like another court, in addition to the high courts that we have, we can have the military court of Fiji solely for the reasons which you Chair are very clear with the cases that we have been battling with, with regards to the fairness and the transparency of the court martial system. Thank you

Mr. Valenitabua; Vinaka Colonel. Tuinaosara. Thank you very much indeed for the submissions which we have heard this afternoon. First of all, I would request the Director Legal if we could have the submissions, the written submissions sent to us.

If you have soft copies, they can be sent to us by email or if you have hard copies then we will welcome receiving the hard copies.

Col.Tuinaosara: Mr. Chair, we will give the hard copies now and then we will submit the soft copies.

Mr. Biu: Chairperson, members of the Commission, I have here with me the written submission from the Republic of Fiji which was presented by the Commander himself and I now submit to the Commission for a record.

And the second submission, Chairperson members of the Commission, is a submission by the Director of Legal Services of RFMF, and I also submit for a record this afternoon.

Mr. Valenitabua; For the record, written submissions have been presented to the Commissioners this afternoon from the Republic of Fiji Military Forces. Two submissions have been presented, orally at first, followed by the written submissions. The first written submission is dated the 2nd of July 2026. It's addressed to the Chairperson Constitutional Review Commission of Suva, Fiji. It is in written form, in the English language, and is signed by Major General Jone Kalouniwai, the Commander of the Republic of the Fiji Military Forces.

The second submission from the RFMF is from the Director of the Legal, Director Legal of the Fiji Military Forces, Colonel Kitione Tuinaosara. It is in written form. I request Mr. Tuinaosara to please sign this. And date, please. Back to the record, the submission by Colonel Tuinaosara is now signed and dated the 2nd of July 2026. I now accept both submissions from the Commander of the Republic of the Fiji Military Forces and from

the Manager Legal. I now accept them as evidence tendered to the Commission this afternoon in Suva.

The Commander, The Manager Legal, the gentleman, we have been listening to the submissions this afternoon. We did not have a prior reading, so at this point in time I would ask if any of my fellow Commissioners would want to make a comment or ask a question in relation to the submissions before. I gave a comment later on.

Ms. Nailatikau: Thank you, Chair. Commander and gentlemen officers, thank you for making the time for the care and consideration given to your submissions.

I must say that your words on ending the mark of impunity and calling for an abolishment of blanket immunity for extra-constitutional actions land with a gravity that is beyond description for me at present. My question rather relates to emergency powers in Chapter 9 of the Constitution. We have heard submissions from the various maritime, rural as well as urban areas relating to emergency powers.

At present in the current Constitution there is a role for the Commissioner of Police and Commander of the Military Forces in advising relating to emergency powers. Submissions have called for a much more democratic voice to be exercised in emergency powers, perhaps for an involvement of Parliament. I'm curious to hear your stance on what you see as the military's role in the case of emergency powers. Thank you.

Mr. Jone Kalouniwai: Thank you very much. I think this is, through the Chair, this is an issue that we have been tackling in the past few weeks with the issue of drugs.

We have tried to follow the process in terms of enacting the emergency powers that are required of us in a given situation. But in hindsight I think one of the things that is important for us to understand is that there must be an escalation towards a certain threshold before the army can be included in that particular activity. I think it's very important when we're looking at it from a civil military affairs standpoint view when it requires the army to move in.

In this case looking at what transpired in the past few weeks in the last month or so was that we were a bit too quick in trying to get into the

emergency powers without actually realizing that the police had not really exhausted the whole mechanism before it could request the army to step in and be part of that particular taskforce. The results is something quite concerning for us in terms of how do we actually move into the cycle of getting the emergency powers. It's just because of the vulnerability of the troops that come under our command.

When there is no legislation in place it makes them a lot more vulnerable in committing acts that are not in line with the provisions that have been provided with the emergency powers. It provides a lot in terms of the army and how it is to conduct itself and it's quite clear. But anything below that it does not have those provisions in place.

So, moving in that escalatory measure towards the time that the commissioner would see it fit that he does not have enough powers to actually conduct the operations then only that would be safe for the army to move in to be part of that particular issue and that solution as well. Thank you.

Mr. Valenitabua; The commander and the gentlemen officers, I was going to ask questions in relation to the amenity provisions of the 2013 constitution.

But after hearing your submission this afternoon, I will refrain from that until I read the written submissions. Now, an interesting point has been raised by the manager legal, Colonel Tuinaosara, that if I understand Colonel Tuinaosara correctly, the RFMF is asking that we include in the constitution provisions for the appointment of a military prosecutor?

Col.Tuinaosara: That's correct, sir. Director of Military Prosecutions. So that he is independent from command.

Mr. Valenitabua; And secondly, to appoint a military judge?

Col.Tuinaosara: Correct, sir. Again, for the same reason.

Mr. Valenitabua; And thirdly, to also include a military court of Fiji in addition to the civil courts?

Col.Tuinaosara: Yes, sir. The military court of Fiji will be the replacement of the general court martial system that we currently have.

Mr. Valenitabua; All right. As you have mentioned, we had, I was a defense lawyer in the prosecution in the court martial way back in 2003 when you and Mr. Aziz were prosecuting. Gaging from thinking back to that time, there was a judge advocate and a panel of military officers who sat to preside over the court martial. If we were to have a judge, a military judge, would you still have the panel of military officers in your plan?

Col.Tuinaosara: Yes, sir. We will still have the panel of military officers. Similar to the court martial, but we will introduce, we will put on the members some warrant officers and some other ranks. Instead of all senior officers, we'll mix them up.

Mr. Valenitabua; I see. All right. The military court, where do you intend to have that military court? Up at the camp?

Col.Tuinaosara: We've been having discussions since 2019 when we started drafting these laws and we were thinking of having it down at the high court, the government buildings. But I have to do more consultations with my commanders to see how they feel about that. So, for example, the civil courts or the criminal courts have been called in the morning and the military court can sit at 2 or 3 in the afternoon. That sort of system.

I had discussions with the former Chief Justice and I haven't been to this current Chief Justice, but that's the plan, sir. We intend to have it for independence and transparency and fairness. We intend to have the military court of Fiji at the government buildings.

Mr. Valenitabua; Thank you for that, because the comments had always been, you've got a judge advocate sitting there, a panel of military officers. Where is the fairness? Where is the independence and so forth? You know, the comments from the members of the public. But I'm glad that I'm hearing that. So, we'll be having military courts, a military prosecutor and a military judge. Thank you. Miss Nailatikau would like to ask another question.

Ms. Nailatikau: Thank you, Chair, Commander and gentlemen officers. Without being too prescriptive, I noted also your reference to a UN principled truth and reconciliation process, as well as commissioning a national and moral audit to inform future progress. As much as you are able to share, I would be interested to hear you expand on that thinking and perhaps the thought process behind those two recommendations. Thank you.

Mr. Jone Kalouniwai: We appreciate the current truth and reconciliation commission that's happening now, but we feel that there isn't too much powers in it. When we were threshing the immunity issue, one of the things that we brought up as part of the options was rather than giving unconditional immunity, but rather conditional.

So that it ties up with this truth and reconciliation, UN truth and reconciliation commission, where it would require all of those who were part of the problem or part of that particular issue. The condition was therefore to appear before that truth and reconciliation commission and to share the experiences or the truth of what actually happened.

I think as part of our submission is that we would request that you would include in the constitution the right to truth, which is important in this case, because if that happens, then with the powers that would be provided to the truth and reconciliation commission, it would allow them to summon those that need to be called up and provide their statements. Their stories, and if not, then there is an option for them to be prosecuted by law.

Col.Tuinaosara: Madam, may I add to that. So, it will need a whole new designing of the whole system that we have at the moment. I'm glad you ask that question conditional immunity bid, the current truth and reconciliation committee, and it will need redesigning in accordance with the UN principle, and to be given more powers. For example, if they tell the truth, the whole truth and nothing but the truth, they can be given an immunity. So, it needs a whole new thinking designing. Thank you.

Mr. Valenitabua; Dr. Gounder would like to address you gentlemen.

Dr. Gounder: Thank you chair. The commander RFMF and members of the RFMF I want to thank you for your submission this afternoon. Reading your submission I have seen the courageous and boldness submission that you made this afternoon in which is acknowledge. We have received a number of submissions regarding the immunity clause as well as section 131 in terms of the Military role in the constitution and you have address both of the directly in your submission today and we take note of that. And from you submission I have seen a clear apatite of reform in the RFMF. Moving forward creating a modern RFMF which is noted. Thank you for your submission this afternoon.

Mr. Valenitabua; Thank you. Commander Ratu Jone Kalouniwai. Manager legal and gentleman offices. We have no further comments we have no further questions. We thank you very much for the submissions, we will read and read and read. This is the most important one submission. We think we have received and we have to consider. You gentlemen are the best of security in the country. And we know that the past four calls have been from the RFMF. Some of them. If I may say. But thank you very much for the submissions we will read them. And then we will consider them. We've been waiting for you. Thank you very much. Just for your information. We invite you to a photo session.

---------- End of Session [2-7-2026] ----------

Comuda.

02 July 2026

The Chairperson
Constitutional Review Commission
Suva, Fiji

Dear Chairperson,

RE: SUBMISSION ON CONSTITUTIONAL RENEWAL
Dismantling the Architecture of Rebellion and Recalibrating the National Moral Axis

OPENING STATEMENT: A COVENANT OF TRUTH

We come before this Commission carrying the weight of our own history. The systemic, institutionalised pattern of political instability that has fractured this nation since 1987 was not merely witnessed by the Republic of Fiji Military Forces — at points, it was built and maintained by our own hands. We do not say this lightly, nor without genuine remorse for the part our institution has played in guarding a system that has fractured the moral soul of our nation.

We are aware that the path we propose is difficult, and that it carries real cost. By calling for an end to what this submission terms the Mark of Impunity — the constitutional shielding of past acts from ordinary

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accountability — we voluntarily step out from behind the legal protections that have long covered our institution. We know this will be seen by some of our own as a breach of loyalty, and that seeking this redemption places officers and soldiers, including our own, at legal risk. We do not open this door lightly. But we have reached a point where the survival of any single institution can no longer be purchased at the expense of the nation's soul.

We have watched 'national stability' become a phrase used to bypass the law, and 'mercy' become a word used to silence the truth. Beneath the surface of new roads and new technology, there is a restless spirit in Fiji — a weariness with a peace that feels fragile, and a justice system that feels out of reach. That restlessness is not disorder. It is a nation's conscience demanding more than infrastructure. It is demanding integrity.

The August 2025 Supreme Court Advisory Opinion gave Fiji a rare and stunning disruption — a genuine legal opening. But a legal opening is not, by itself, a moral cure. We are presently free to fix our laws while still constitutionally forbidden from healing the deeper injury caused by decades of impunity. Fiji can no longer

afford to drift from one crisis to the next. We must deliberately reset the nation's moral compass, and we must reject the false choice between Justice and Peace — a choice in which our silence has too often been the price of a fragile, superficial calm.

We propose a transition from a culture governed by fear to a Covenant of Trust between the state, the military, and the people: a UN-principled Truth and Reconciliation process to dismantle the machinery of silence; the end of a culture of impunity, so that the law applies equally regardless of rank; and the entrenchment of a constitutional Right to Truth. We make this submission not to injure our fellow soldiers, but to secure our children's future — a Fiji where the law protects the inhabitant, not the architect.

PART I — MOVING BEYOND PERPETUAL POLITICAL DRIFT

THE ARGUMENT

Fiji is trapped in a cycle of reactive governance, in which democratic principles erode gradually — not always by force, but through the slow hollowing-out of institutions. This drift has been fuelled by constitutional ambiguity regarding the military's role.

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Because the boundaries of military power have never been clearly fixed in law, the door has historically remained open for intervention, allowing the shadows of the past to persist and preventing the nation from ever fully stabilising.

KEY OUTCOMES

— **The end of inaction:** a shift from a passive, do-nothing posture to a proactive commitment to institutional reform.

— **Restoration of the rule of law:** bringing the actions of the state and the military back into alignment with democratic ideals.

— **Elimination of pretext:** removing the legal grey areas historically used to justify military interference in civilian matters.

RECOMMENDATIONS

— **Absolute constitutional clarity:** establish a framework that leaves no room for interpretation regarding the military's mandate.

— **Primacy of civilian authority:** formally anchor the RFMF's role under the mandated authority of elected civilian leadership.

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— **Removal of ambiguity:** draft provisions that strip away the vague legal justifications historically used to invite or excuse military intervention.

PART II — DISMANTLING THE MARK OF IMPUNITY

THE ARGUMENT

Fiji's legal system has, at points, been turned into an instrument of elite protection rather than a safeguard for the people. This Mark of Impunity is not accidental. It is a deliberate design in which the threat of instability is used to bypass the law, and immunity clauses are used to legalise what would otherwise be criminal acts. By forcing a false choice between Justice and Peace, this design has pressed the public into accepting a fragile, dishonest calm in exchange for their silence.

KEY OUTCOMES

— **The end of a two-tiered legal system:** dismantling the divide between a protected elite and the general public before the law.

— **Moral and judicial integrity:** moving beyond the gloss of modernisation to address the underlying decay of the courts.

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— **Accountability over silence:** breaking the cycle in which the fear of future coups is used as a permanent shield for past misconduct.

RECOMMENDATIONS

— **De-weaponise 'stability':** reform national security law so it cannot be used to suspend democratic norms or create a permanent state of exception by executive decree.

— **Abolish blanket immunity:** remove or strictly limit constitutional immunity clauses that grant irrevocable protection for extra-constitutional acts, replacing them with conditional acknowledgment tied to full public disclosure.

— **Reject the Justice-or-Peace binary:** establish, as a matter of national principle, that sustainable peace is impossible without accountability — that justice is a precondition for stability, not a threat to it.

PART III — THE OPPORTUNITY AND THE LIMITS OF THE 2025 ADVISORY OPINION

THE ARGUMENT

The August 2025 Supreme Court ruling was a historic disruption that made constitutional change legally

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possible for the first time since 2013. But it is not, by itself, a cure for the nation's wounds. The ruling opened a legal pathway to rewrite the rules for the future while leaving the protective walls of the past — the immunity provisions — intact. A nation cannot achieve true stability if it repairs only its rules while remaining legally forbidden from addressing the deeper injury caused by decades of silence.

KEY OUTCOMES

— **Breaking the legal stagnation:** using the newly clarified, lower amendment thresholds to finally enact reforms that were previously unreachable.

— **Closing the moral gap:** recognising that a legal pathway to change is meaningless if those shielded by the old system remain insulated from accountability.

— **A shift from legalism to morality:** moving the national conversation beyond what is legally permitted to what is morally required for genuine healing.

RECOMMENDATIONS

— **Bridge the accountability gap:** use the 2025 pathway not only to update technical provisions,

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but specifically to address the clauses that bar the nation from confronting past impunity.

— **Reject a foundation of silence:** ensure the new constitutional framework does not merely insulate past actors, but creates a genuine mechanism for transparency.

— **Commission a national moral audit:** treat the 2025 Opinion as authority to conduct a systemic review of the nation's institutions, so that future law is built on truth rather than technicality alone.

PART IV — RECALIBRATING THE NATIONAL MORAL AXIS

THE ARGUMENT

Fiji's governance has, at points in its history, relied on dominance and fear rather than mutual consent — a machinery of silence built on legal deadlock and immunity. National healing is impossible without a fundamental shift in this moral axis: away from protecting the architects of past rebellion, and toward a Covenant of Trust in which the state and the military are once again accountable to the citizenry they serve.

KEY OUTCOMES

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— **The end of institutional secrecy:** replacing hidden agendas and reflexive invocations of 'national security' with a transparent relationship between the state and the public.

— **A unified rule of law:** a society in which no one — regardless of rank or history — stands beyond the reach of the legal system.

— **Democratic fluidity:** a Constitution able to evolve with the will of the people, rather than a rigid instrument designed to preserve the status quo.

CONCLUSION: A COVENANT OF TRUST FOR A NEW FIJI

The Republic of Fiji Military Forces does not make this submission lightly. We are fully aware that in calling for the dismantling of the Mark of Impunity, we are asking this Commission to help close a chapter of the nation's history in which our institution was, at points, among the authors.

For nearly four decades, Fiji has lived in a house whose walls were built to protect the architects of rebellion rather than the inhabitants of the nation. No amount of new infrastructure can substitute for the reset our institutions require. The August 2025 Advisory

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Opinion has cleared a legal path, but it will take the moral courage of this Commission — and the sustained commitment of the RFMF — to walk it to its end.

We envision a Fiji in which the RFMF is a symbol of humble service rather than a shadow of intervention; in which the Judiciary stands as an unbreakable wall between citizen and state; and in which the Right to Truth replaces the machinery of silence, opening the way to genuine, UN-principled reconciliation. We accept the risk this submission carries to our own institution because the alternative — a nation of perpetual drifting — is a cost future generations should never have to bear. We urge the Commission to act with the boldness this moment deserves, and the Republic of Fiji Military Forces offers its full cooperation in support of its work.

Respectfully submitted,

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Jagath Karunaratne

Mr. Jagath Karunaratne
Date: 3-7-2026

Mr. Valenitabua: We received your request, so we managed to slot you in to this hour. You're one of the last to be making submissions, and you're the last of this week. So, we welcome you.

Like I have explained to you, there should be three commissioners, but one is going to be my leader. There are only two of us, not my lady, so this married one is in the helicopter. And I don't need to introduce myself.

The commission will listen to you. I will not introduce ourselves further or explain to you what we are here for. Because you have just completed a consultation, you know, yourself, in relation to the state land sector.

Right, so there's a similar operation, but here we're dealing with the 2013 constitution. We are glad that you are here because you were one of the lawyers who argued in the reference. I know that you represented the Fiji Labor Party, and you made submissions on their behalf.

So, you are a proper person, and with your experience in the argument and also the reading of the ruling, we are certain that you will assist us a lot in your submission this afternoon. Now, without further I do, I now hand you over the floor and the mic, so that you can address us this afternoon. Thank you.

Mr. Karunaratne: Thank you, respected chair and the lady. I'm grateful for the opportunity to appear before the committee and present the submission. One that I respectfully consider one of the most important constitutional questions confronting Fiji today.

Before I begin my submission proper, based on oral submissions I made for myself, please allow me to give a little background on why and how this came about. As the respected chair mentioned, I was part of the reference in the Supreme Court, and prior to that, as some of you may know, may not know, I have been an advocate on native issues for over a decade. I used the political stage at the time, not necessarily to contest an election, but as a stage, to do advocacy over what, with my experience on what has happened in my birth country in Sri Lanka, where I am a native, and I used my experience to do that advocacy.

So, over a period of time, over the last three years or so, respected chair and the lady, I started, it's a coincidence or it's ironic, I started compiling a thesis, expecting that I would use that for my PhD. Initially it was a different subject, then I moved on to the protection of land, and the utilization of land, and especially focusing on the natives, I won't call it an issue, but around those subjects. And then what happened also, as a blessing, I participated in the Supreme Court matter, so I have changed that a little bit to add what is our position, and how we can achieve that post-judgment of the Supreme Court.

So that is the thesis that I am currently working on. So, some of the submissions that I made, and I have provided copies to you, are based on that as well. So, you might find the initial pages, at least the first 10-15 pages, somewhat academic in nature, based on my research materials and the academic literature.

Nevertheless, I believe that they might assist in terms of, eventually, when we get to the constitution-making. Those academic literature, sir and the madam, is on the general universal legal principles and the constitutional principles of constitution-making. That being said, the primary aspect of that submission is on how do we protect the unique rights and identity of the indigenously I taukei people, while simultaneously preserving the equal citizenship and democratic rights of every person who calls Fiji home.

These submissions, sir and the madam, proceed from a simple proposition. The protection of indigenous rights and the principle of equal citizenship are not competing constitutional objectives. They are complementary objectives and, if properly designed, can strengthen one another.

The constitutional challenge before Fiji is, therefore, not whether indigenous rights should be protected. They unquestionably should. The challenge is determining how such protection can be achieved while maintaining a constitutional order that treats all citizens with equal dignity and equal political worth.

We have our own Fiji's constitutional experience over the years, over the decades. Our own history provides important lessons. The constitutional crisis of 1987 and 2000 did not arise simply because of disagreements over ordinary political questions.

They arose fundamentally because of disputes concerning the constitutional and political relationship between indigenous political interests and multiracial democracy. The consequences of those crises are well known. They resulted in political instability.

They damaged investor confidence. They caused significant emigration and killed citizens. I will not go further into the effects of those.

There are more I have highlighted here. For the efficacy of time, I will try and summarize. I would hope and also with the expectation that we may be able to get into some discussion or deliberation afterwards so that we will have more time for that if there are any questions arising out of my submission.

The rest of the pages, as I initially said, is about the constitutional theory and the democratic principles. They are academic in nature. They are academic literature.

However, I again repeat what I said before. They might assist in proceeding and going forward with this consultation and drafting a new constitution. The constitutional theories examined in the written submission come from different philosophical traditions.

But they arrive at remarkably similar conclusions. Constitution teaches that constitutions exist to limit power and prevent domination. Liberal democracy teaches that majority rule must always be balanced by the protection of rights.

Republican constitution, however, teaches that no group should be subject to the arbitrary will of another group. Deliberative democracy teaches that constitutional arrangements must be capable of being justified to all citizens as free and equal participants in society. Multicultural constitutionalism recognizes that cultural and individual rights may require special protection, but such protections must operate within a framework of equal citizenship.

Consociational theory teaches us that deeply divided societies often achieve greater stability through inclusion and power sharing rather than domination by any single community. Finally, the constitutional patriotism teaches that national identity can be built around shared constitutional principles rather than

ethnic hierarchy. Although these theories originate from different schools of thought, they converge on one central proposition.

That is, individual rights may and should be strongly protected, but permanent political supremacy of one ethnic group over others is difficult to reconcile with modern constitutional democracy and equal citizenship. If I may at this stage, rather than continue reading through my written notes, I will just share something that I personally believe in. That I have been often talking to, especially whenever I meet I taukei political leadership.

I simply put this question forward just to ask that, as is today, we have a society, when I'm talking about the natives of itaukei, based on reliance, everything that we speak about, most of it at least, is on the reliance. We wait for the government to provide for us, and we ask TLTB to do things for us. We expect these institutions to administer us, control us.

And, for example, I often say some of these institutions are actually the administrative arms of the state. Our reliance, when I say our, when I say we, I generally refer to the native, because me being a native is my own question. So, we tend to rely more on the state already.

And if we are to talk about having a constitution that provides supremacy to the very people that we care about, it is my humble opinion that we are putting another nail on our own progress. That can be also the demise of our own people by attempting to, I'm not saying it is the way forward, but in assuming if that is something that is being promoted or discussed by the people, it is my opinion that that is, that can be one of the mistakes, I might say. Why I say that, Madam Minister, I'll again use one of the examples from Sri Lanka.

We are the natives, and in 1956, when the first government was formed, the Prime Minister then made our native language the national language, which is our own language. Prior to that, we were all speaking English. Then we have another community, that Indian community.

It is, I always say, these two countries are almost carbon copies, because in terms of weather, in terms of everything else, we are all the same. And also, in terms of community, there's natives,

that is the Sinhalese, like myself. Then we have the Indian community, that were brought in by the British for sea plantation, similar to sugar plantation here.

So of course, after the 1956, over 20, 30 years, almost three decades, there was discrimination. We admit that. Even schools, the education, were limited to those ethnicities.

What happened then is long story short. In, I think, late, early 1980s, it was just nine members from these minority ethnic groups from South India, who lived in the top part of Sri Lanka, stopped a bus carrying native soldiers, and they hacked them into pieces. That is the beginning of the civil war in Sri Lanka that lasted 30 years.

Nobody ever believed that that would ever happen, but it happened. Then what happened, the natives went on rampage, burning and destroying all the minority groups. The social impact that has resulted is in terms of dollar value in billions.

So, we Sri Lankans learned the hard way, and then they realized the importance of deliberation over debate. So that being said, I have then, in my written submissions, put down some comparative analysis that includes New Zealand, Canada, South Africa, Malaysia, Sri Lanka, Mauritius, and other countries, and how these different schools of thought in decision making worked in those respective countries. In the end, they all come down to the same principle.

Mostly it's about liberalism. Liberal approach to have constitutions that protects, and definitely must protect, the indigenous rights and groups. However, having a liberal approach, and liberalism as the primary principle, when I speak about liberalism also, Madam Ansar, I tend to go to the extreme side of it, as a personal opinion.

I discuss in my own circles, or whoever I meet, what if we go full liberal, that does not go hand in hand with our communal living. Our communal, the history of a communal setup that we have, that we have been, as our culture, as indigenous culture is a communal, everything is communal. And of course there are certain aspects to it, because in terms of protection of the culture, in terms of protection of identity, in terms of being together, in terms of everything being okay, is protected with

this concept of communal sharing and communal ownership and communal everything.

And also, there are obstacles in terms of progress. Progress can be, the meaning of progress can be different to different people. So, in political platforms, politicians tend to, who are promoting indigenous rights and indigenous values, tend to speak on behalf of the members of it, okay? To say that, that is the way of life, and that is how it should be.

And tend to promote the same concept going forward. In my view, it can be also a way of having control over groups of people. Because a politician will say, we need to have you, me there as a group, because then I become the person who represents you in Parliament or wherever.

You need me, and you create another alliance. By doing so. That takes me to another aspect of this, about democracy again, in my own opinion.

I strongly believe that democracy is not the right governance model for developing nations. Because it is about being elected and not actually served. So, democracy is only used for the purpose of elections and getting into power.

So that is the one that divides people into different groups, because when we are sitting on a political stage, we don't deliberate, we debate. And we create emotions. And that is the one that creates groups and circles and conflicts.

Now, without going on on that, I will come back to my submission, sir, and the madam. Going further, recommendations to the committee, based on the backdrop of what I have just submitted very briefly, based on my written submissions, against this background, I respectfully make the following recommendations. These are not necessarily direct recommendations, madam sir.

These, I would say, are mechanisms that I recommend that we probably should follow eventually when it comes to constitution making. First recommendation is strong protection of indigenous rights. The constitution should continue to provide robust protection for / *Taukei* land ownership, customary governance, traditional institutions including BLB, indigenous language and culture.

These protections are legitimate, necessary and fundamental to Fiji's constitutional identity. There is no doubt about that. Second recommendation is equal citizenship.

Every citizen of Fiji should enjoy equal citizenship. Political participation, voting rights, access to public office and equal protection of the law should not depend upon ethnicity. I go on to say that the office of the President, Prime Minister and all other public offices should remain open to every citizen of Fiji.

I must add here, one of the submissions, again coming out of the formal submission, one thing I have submitted a couple of times during the previous administration, also to parliamentary sub-committees whenever there were two or three related submissions. One of my submissions there was about dual citizens and their rights to participate in elections. All three occasions I was told that dual citizens should not be allowed to contest elections because that is about loyalty.

As an example, I was told in that session, for example, this is what I was told. If you have a Chinese person with dual citizenship and I was asked the question, where does that person's loyalty lie? I respectfully disagreed at the time. I as a person who has been living in Fiji for 26 years now, it is embarrassing, it is shameful for me to even say that I feel less emotions to my own country.

So where is my loyalty? My loyalty is here. It doesn't depend on a person's citizenship status. And you can have certain limitations, of course, if you are a dual citizen.

If you have lived in the country for the last five years, you should be allowed to contest elections. This is not my personal ambition, I have no ambition to contest elections, but it is as a matter of right that should be allowed in a liberal democracy. Coming back to my written submission, I mean, Madam Minister, third recommendation is inclusive power sharing.

The committee may wish to consider mechanisms that ensure meaningful participation by all communities. These may include guaranteed representation, reserved parliamentary seats, proportional mechanisms, executive arrangement and encouraged cross-communal participation. The objective is not

to diminish democracy, but to strengthen inclusion and legitimacy.

I will also add that this is one of the aspects of Sri Lankan system in proportional mechanisms. It was very strongly objected at the time. We had, or maybe still have in Sri Lanka, you have a proportional system where if you get, for example, if you have 100 seats and if a party gets 60 seats by an election, you get 6 free seats that you can nominate 6 members to the parliament without contesting elections.

So, 40% gets 4, 60% gets 6. The actual idea behind that is you can have an academic, in fact that is exactly what they did at the time. They appointed a person to be the finance minister who had very, I would say, zero public life. Nobody liked him, but he was brilliant in what he did.

So, it was a realization that these kinds of people who are in the society, not necessarily politicians, but can contribute to the society. So that is one of the examples when I talk about proportional representation. Fourth recommendation, Madam Minister, targeted special measures.

Special measures intended to assist at this advantage should be evidence-based, targeted, proportionate and regularly reviewed. Fourth recommendation is protection against discrimination. I will not go into details, it is self-explanatory.

And the sixth is constitutional legitimacy. Fiji's constitutional history demonstrates that constitutional lacking brought acceptance and struggled to endure. Constitutional reform should therefore be inclusive and consultation and should seek legitimacy across communities.

I go on to other obvious recommendations, Madam Minister. Sustainable development. Then I make 25 statements right at the end that I believe may be useful in your deliberations going into the formulation of your report.

Additional constitutional considerations and pathway 44, Chairperson Sir and Madam. Based on the aspects I discussed about liberal constitutional democracy, I go on to talk about, as one of the key aspects, this may not be a popular recommendation, however I would like to make this recommendation about how to go about it. What is the pathway

after all this is done? How do we go about doing it? My recommendation or my view, Sir and Madam, is that there has to be an interim administration, which means an interim government must be formed.

The whole purpose behind that is to continue these consultations that this committee started and recommended and that dialogue and that deliberations should continue for a period of time. You as a committee, Sir and Madam, have done and have heard extensively from the people of Fiji and for an example, maybe in the end we will find out that 70% of the people of Fiji needs this constitution be changed. And we might find out 70% of the people of this country want that constitution be changed before the next election.

Because of the reason that we don't need to go to another election and then face the same obstacles that we have faced in the last couple of years, reaching out to the Supreme Court, going to the Parliament, tabling motions and because there are obstacles in the current constitution that we can't really manage or they create obstacles as we move. Therefore, this recommendation of interim government not only will allow us to proceed with the changes or new constitution that we are going to bring about and also the formation of that new administration will be extremely important. My view is that, Sir and Madam, that interim government, the composition of that interim government must include members from all communities and all groups as much as possible.

We may not be able to satisfy everybody, but at least we will have a 10, 15, 20, 30-member government that comes from different walks of life. What it also gives us, Madam, is this. We will have deliberations inside an institution, for example, the government or inside the same room, that will also avoid the politicians debating over constitutional issues outside of that room and those debates are the ones that creates conflicts and division and then people who, with those groups, they follow those leaders, political leaders or otherwise.

They group behind them and that is the one that creates this ongoing debate about what it should be, what is the equal citizenship or Itoki as, Fijian as a common name and all these debates are created and then there have been, issue may be small, but it has been made to become an issue because of these groups. So, we will eliminate all that and whole discussion about

new constitution will become a deliberation with members who are in the same room trying to achieve something greater and better for the country. This I say again because this has to be our, if possible, constitution is a living document, but at least we need to get this one right and this should not result in another debate, discussion and ongoing conflicts about Fiji.

So that is one of my key recommendations that there must be an interim administration set up and the composition has to be agreed upon and all key members of society, political or otherwise, should be part of it. It should have multination and minority representation and because this is a national issue and as the academic literature shows us, even though we tend to ignore them, how this constitutional making and constitutional principles develop over the years, over the last 100 years or 200 years, it leads us to one thing that you must look at bringing people together and if you have leaders who are going different ways and using all sorts of emotions of the people, we will not go anywhere but it will continue to happen because elections is tickling the emotions of the public and whichever way you can do it, you will do it because you need to create a following behind you to be elected. I would think that we can eliminate that by having an interim administration dealing with this constitutional discussion after the recommendations by this commission set up.

Then further additions, further amendments or preparation of draft constitution can happen through that and then of course that can go, it can be for a year or two, whatever it takes and the leaders I would think should welcome this rather than opposing it and be part of something that creates history. Once that is done, it can go to a referendum. One might ask me this question, some have already done so, they ask me, me being a lawyer, they ask me the legal question.

We can't do that, there's no provision in the constitution, in the law that allows us to do this interim administration. My answer to that is the will of the people is paramount. If the 70% or 60% of the people are saying this is what we want, the constitution has to be changed and also that has to be changed before the next election, then that has to be respected.

This to me and in my submission, I say it brings confidence and the legitimacy which is the most important aspect of any constitution. In conclusion, respected Chair and Madam, this

constitution should be presented with a rare and historic opportunity. It is an opportunity to draft, craft and draft a constitutional statement that protects the dignity, identity and rights of the indigenous people of Fiji while also reaffirming the equal citizenship and equal worth of every Fijian.

The choice before the committee need not be between indigenous protection and equality. The comparative evidence, international law and Fiji's own constitutional experience at all point in the same direction. A stable, prosperous and united Fiji is most likely to emerge from a constitutional order that strongly protects indigenous rights while equally embracing the principle that every citizen of Fiji belongs to the nation on equal terms.

That is more or less the summary of my 31-page written submission. Madam and Sir, and if you have any questions or if you need any further deliberations on any aspect of what is in the report. It might look or seem boring in the first couple of pages because it's all academic but I was also one person who had a similar opinion about academic papers but more and more you get into the path of studying further you realise one thing and this didn't come by accident and they are products of years and years and years and centuries of experience of people.

So, we must take note of them and we must respect them and we must use them as much as possible by also looking at the practicability and how we can adopt them because we are a unique nation. It doesn't mean that the principle developed in Europe will fit into us and that is where I say the best example is democracy. Maybe it is not for us because Fiji has or still have a beautiful governance model behind the traditional governance system and we don't use them or if we are using them, we are using for the advantage of politicians who are practicing democracy.

That is the trouble that I see. There is a governance model that we can choose that is our own that has been working for decades and centuries. However the foreign principal democracy has taken over and then now we are using that institution, those institutions to advantage or take an advantage of.

I know I can go on and on, Madam Chair, but I will stop here and I will try and answer any questions you may have. Yes,

Mr. Valenitabua: Mr. Karunaratne, the submission, I must be honest with you, I was trying to figure out where you were reading from and then now right at the end I find it. I can give you a copy of my oral, that will make it more... No, it's okay.

After finding out that you've got all these points at the back, the last how many pages, then I realize that this is where you are talking from. Yes, sir. So that's fine, that's fine.

We have now, or I have now taken notice of where you were referring to when you were doing your oral submission because I was looking at the first few pages. No, I was not going through that, it was just a written submission for maybe later read but I have my oral one too, maybe it will make it easier if I share a copy with you. Yes, if I can have a copy of that also.

One of the girls, hold it, no, I can do it. One of the girls can photocopy it. No, I can do it.

Thank you. Thank you, we'll photocopy and then we'll have one each. You have given us a wide area of experience, you know, in comparative comparison on the basis of your thesis.

I was just listening towards the end and now reading through or browsing through what you have at the back there. Yes, one of the points that I have been mulling over personally that is this interim administration.

Mr. Karunaratne: Yes, sir.

Mr. Valenitabua: There is no law which allows this government or any government which would have been in power to have an interim administration if there is a review of the constitution. Yes, sir. First of all, we understand this is the first review of the 2013 constitution since its inception, since its establishment, right? Since its genesis.

And so, everything is new, you know, the process. We had to go to the Supreme Court in order to have this review done. Yes, sir.

Because the Supreme Court decided, yes, you can amend it by using this. A few other issues arose, the immunity clause. Can we remove the immunity provision? And come the amendment, you know, the steps taken in the amendment.

Now, we have heard a lot of submissions from the grassroots people of this country. Not only grassroots people, some even the individual, individual educated people who say that it's better that we have this constitution review completed and we have an amended constitution and then have the general election.

Yes, sir.

Valenitabua No, the next general election is to be based on the amended constitution. We have been receiving submissions in relation to that. And that has been a thorn on my side, especially.

I don't know about the other commissioners, but they have heard the submissions too on how that is to be done. Now, you have raised here the interim administration to be established to take Fiji to the next general election under the amended constitution.

Correct, sir.

Mr. Valenitabua: What is your submission? Would you assist us? How can we do that? Yes, sir. That's the general question.

Mr. Karunaratne: From the very few people I share this idea with.

First clarification, sir. Interim administration is not necessarily, if I understood you correctly, interim administration is for the purpose of continuing on from where you stopped. To fine-tune the new constitution or amended constitution.

And they will work on where you stopped. Carrying on by participatory discussions with those leaders who is going to be in the interim administration. That's one.

Key question is how. The short answer to that, sir, is yes, law must be respected. And what is written in law is what we must follow.

However, to me, in my view, and also based on my own experiences also, most paramount is the will of the people, sir. If the people, eventually it is the parliament that makes laws based on the will of the people, the representatives who are there. Ultimate is the will of the people.

They are the ones who elect the members of parliament and then they make the law. So, what we are going back to is the will of the people. If you, sir, and the committee has collected, as I said before, 70% of the people of Fiji saying the same thing, what more do we need? That is all, in my view, that is all we need.

People need this. We cannot hide behind a law that restricts us from doing so. And the whole purpose of this entire exercise is only the constitution.

And the provision that stops us from doing it is the one that has to be changed. And that can only be changed by the people. And people are saying it has to be done.

So we need to do that. And that is the reason why also I promote the interim administration, sir, those who are going to oppose any constitutional changes will be part of the discussion in that interim administration. So, you have an opportunity to be there and participate on behalf of the people that you represent.

There should not be any debate by any leaders if they are genuine. This is a test of leadership also, sir. If you are a genuine leader who really cares for this country and want to do the right thing by the people, whether it is the most minority group that you represent, it doesn't matter.

You will come to that table and then fight for that hundred people that you represent. And make sure that the new constitution will have a provision that takes care of it. And that opportunity will be lost for that person if you go for the election under this constitution or any other constitution and you will not be elected to the parliament.

Your voice and your people are lost, left behind. So, my answer again, sir, is we should not limit ourselves by provisions in law when it comes to the will of the people.

Mr. Valenitabua: That would also go for the immunity provision, right? You agree or not? Because the immunity provision, the Supreme Court said that they did not touch the immunity provision for the reason that they don't want to shake the tree.

It might cause a lot more problem because the military is involved. Now we have even the military saying remove the immunity clause. Yes.

Now another question, how do I go about that? Because the judgment says one thing. May I, sir? Yes. My view on that, I go with the Supreme Court decision on that one.

Mr. Kunaratne: Based on at least three or four reasons. The question that we are not asking there is whoever is talking about removing immunity is one thing. What is the purpose of it? I agree 100% the immunity provisions should not be there in a constitution that will be drafted or new constitution or new constitution, should not be there, well and good.

But that does not mean that that is done to prosecute those who are responsible. If that is the purpose, why are we going with this? Things happen in the past. Many things happen in the past.

We cannot go back and deliberate and try to address those issues anymore. That has to be stopped. And that is the question that we need to put forward.

What is the purpose behind the removal of immunity clause? Are we saying that those who are responsible should be prosecuted and put them in jail? I don't think so. Exactly. So, then it has no meaning.

But important part of that is ongoing. Future constitutions should not have such provisions. That is meaningless.

So we need to, I think in my view, we need to understand the difference between the two. Of course, in a new constitution we will not have that because we don't need to have one. As long as it doesn't mean the past perpetrators will be punished.

Mr. Valenitabua: It is good that you brought that up because I have been thinking for this, that the immunity covers those who had committed coups. Now the first one in 1987 happened 39 years ago.
Yes.

Mr. Valenitabua: The one in 2006 happened 20 years ago. Yes. I don't think anybody in his right mind would come and file civil claims or prosecutions against these guys.

So, the problem is we've got that Supreme Court opinion which to me personally does not stop us from removing the immunity clause. Yes. So, as you said, who is going to prosecute, who is

going to file a civil claim? I don't think anybody in his right mind would want to do that.
But we don't know. Human beings are human beings.

Mr. Kunaratne: You can still have the protection for those.

And the simple answer also is that the one who did the coup in 1987 has been re-elected by the people. Yes. And one who did the 2006 coup was also elected by the people.

What are we talking about? That is why I am saying we love the people, let's focus on that. What do people want? And I very strongly submit that we should not restrict ourselves by the laws that restrict us. That is going to be a problem.

If we are going to say the law is law, law is not justice. Not necessarily justice. There can be good law and bad law.

If we are looking at the law to bring about justice, then we are in the wrong business. Because we as lawyers, you know very well, sir, we are in the business of law. We are not in the business of justice.

We read as is and we argue as is. And it is a system that is in place, the court and the judges. They try to give justice.

And if they can't, then ultimately it is up to the men upstairs to give justice. So that is how we should look at this whole constitutional process. If you as a commission, sir, if you restrict yourself within the ambit of law, we will be in the same problem going forward.

And if it is my choice, I would strongly argue that I don't care. It is the will of the people that I restrict. I have been told that a number of times.

Mr. Valenitabua: If it is the will of the people, go for it.

Mr. Karunaratne: And at some stage, one of the issues, this is an outside issue, one of the things I experience most of the time in our country is the courage and being able to make certain decisions, maybe unpopular decisions. But if you are to make it, sir, for the betterment of these people, we have innocent society in this country.

They are not, they are still in the scale of when you compare even in Sri Lanka. It's competition and the various modern and all these things have ruined the innocence of the people, but we still have an innocent society. So, we must do right by them.

Ms. Nailatikau Yeah, good. Thank you, Mr. Karunaratne. Your submission today has brought to my mind the principle of popular sovereignty in terms of the will of the people having an ultimate say or deriving power from the will of the people, directly or indirectly.

And when you were speaking about this, your approach to an interim administration, it also reminded me of how Fiji is not particularly unique, given the many examples you've also drawn from in your submission. And no process is, processes that can be deliberatively, deliberative to their best potential, are often processes that need to be protected from political capture. And I believe that that is one of the, you know, one of the driving factors behind your submission around the importance of an interim administration.

Would you see sense or any value in some of the submissions that we have received, for instance, with the importance of potentially a standing commission relating to constitutionalism, or is what you're proposing something bigger in terms of embracing this notion of deliberative democracy and ensuring that national conversations or dialogues continue to happen, or that there's a regular vent, so to speak, rather than keeping everything compressed until something less positive happens. But I was just interested to hear your thinking.

Mr K Yes, yes, ma'am.

Mr. Karunaratne: Yes, I'm sure. I think, again, the short answer to that is I am one of those who actively and openly advocated on government of national unity. So that is the short answer in terms of the formation of standing committee or something bigger.

I'm talking about something like that. Because of the, again, unique nature of this country, and also because of the ethnic participation and all these other aspects that divide us, unless and until we have that kind of platform that takes the community segments that are lining behind a certain leadership into the same river that flows to the ocean, we are going to go in all sorts of different directions and then meet in a place where

the opposing forces clashes. That is, to me, what has been happening.

Yes, when it comes to land and ethnicity rights, those groups are talking and then they create that emotion around them, and then the other communities do the same thing. And whichever works for me, if I can talk about criminals as a lawyer, that is what I will be talking about because I'm trying to create a sensation around me and to have a following. And I look for the numbers.

And that is what I am proposing that we should eliminate. And we must, at some stage in this country, we must have, because we have a system of following the leader, which is common everywhere, but following the leader in the right sense, in the right way. But we tend to get into groups based on which party or which group we believe in.

And then we go into social media and we create this. It is not the entire population who participates in this. Certain segments, maybe 10,000, 20,000 people, but they create so much sensation that then that seeps through to the community and then they divide them.

Closer to election, especially if you look at social media, it is all about racial conflicts and this, that, because it is ignited by this leadership. Sorry, ma'am, coming back to answer your question. Yeah, it is a formation of, I would say, when I say administrative, administrative government.

Who knows, maybe that is the one that will lead to a government of national unity. If all these leaders come together and then look at what we should be doing to get this country moving, they will understand probably this is the best way. All the debates gone, now we are deliberating.

Because we are all in the same room, looking forward to, it may be against all the odds, but who cares, because we are a small nation, we have so much resources, we need to find our own destiny. While we are guided by common law principles or democratic principles or any other principles, the international universal principles, let's find our own destiny, let's find our own path. I don't know if I have answered your question, ma'am.

Mr. Nailatikau Yes, you have. Thank you.

Mr. Valenitabua: Thank you very much, Mr. Karunaratne.

Time is quite up with us. We have another appointment at 4.30, so I have to bring this to a close. We thank you very much indeed for this afternoon's session.

It was really not a consultation or submission. We have just been conversing here, which was good, throwing ideas around. So thank you very much.

We wish you the best in the practice, and we will come back to you if there's anything. We still have two months ahead for deliberations, and we're going to be needing a lot of assistance. Yes.

So, we might come back to you. Thank you very much. Thank you, sir, if I may.

Mr. Karunaratne: I also thank everybody here, the committee and the chair, and thank you, sir. I hope I made some sense. You did, you did.

And also, I'm trying to fast-track, for example, last week, I've been sleeping around 3 o'clock in the morning, trying to fast-track my own thesis, because I'm finding more and more interesting things about our conversation. Thank you once again. Thank you, sir.

Thank you, ma'am.

---------- End of Session [3-7-2026] ----------

Gmail

Constitution Review Commission <commissioners2026@gmail.com>

Request for an audience to make a submission before the commission

jagath <jagath@karunaratnelawyers.com> Fri, Jul 3, 2026 at 6:50 PM
To: Constitution Review Commission <commissioners2026@gmail.com>

Bula,

Thank you so much for providing me with an opportunity to make a submission to the committee.

Further to my submission and as an answer to the question on how an interim administration can be formed, I would submit that the judgement by supreme court outlined the principles based on ICCPR inter alia on how legal provisions can be either read down or circumvented if they are found to be against the fundamental democratic principles and civic rights. The same principles can be applied to say that any new or out of the ordinary arrangement can be justified if it is aligned with the will of the people and accepted norms of a civilised society.

Vinaka
[Quoted text hidden]

Josefa Nata

Josefa Nata
Date:3-7-2026

Mr. Valenitabua: We shall call the consultation to order. This morning, we have Mr. Josefa Nata. Mr. Nata, welcome. Thank you very much for asking us to give you an allocation that you make a submission to the Constitutional Review Commission. You are welcome this morning. We have allocated you that slot and that is why you are here. And we are looking forward to receiving submissions from you which will assist the commissioners of the Constitutional Review Commission in finalizing their reports and their recommendations concerning the review of the 2013 Constitution.

The commissioners who were appointed were seven in total. However, one had to resign due to a work commitment at Vice-Chancellor of the Fiji National University, Professor Baba. So only six of us are left at this point in time. Three people or three commissioners, sorry, have just returned from Rotuma. I think they already landed in Nausori. They were there from Tuesday to do consultations on the island of Rotuma with a team from our Secretariat. And they were to return today and I believe they have already landed.

The other three were supposed to be here this morning. Unfortunately, we are missing one, Dr. Gounder, because he has taken bereavement leave due to a member of the family passing away, as we know. So this morning you only have Ms. Nailatikau sitting on my right and me as the commissioners attending. Our process or procedure allows the two of us to sit as commissioners and that is all right. Some people might say we are the others, but two of us can sit and take submissions according to our procedure.

Now, we are here to listen to you this morning. We were tasked by the President to go around the country and meet with our people, the people of Fiji, and gather their submissions and their recommendations as to what law should be included in the Constitution, which one should be removed, and what we can change within the Constitution itself. Changing of words to change meanings also, as you understand, that usually happens. We are back in Suva now. This week is the second last week for our consultations. Next week will be the last one, the last week, and then we will close off all submissions. The online submissions will close on the 30th of June. So, although there are some submissions still coming in, we are putting them aside because they came after the

deadline. And the face-to-face submissions will end next week, the 10th of July. Now, you were here today on the Friday of the second last week of the consultations, face-to-face consultations that is, and we are glad that you were here. Now, with those opening remarks, I now give you the mic and the floor for you to address us and give us our submissions this morning. At the end, we might comment, we might ask questions for clarification. Otherwise, you are now free to give us your submissions. Thank you.

Mr. Nata: Thank you, Mr. Chairman, and hello, thank you, Ms. Nailatikau, Commissioner Nailatikau. And may I ask who are here, who are these participants, or are they...

Mr. Valenitabua: Staff members of the Secretariat, there are two of them there, and we've got a number of reporters, members of the media. I hope you'll be kind to me. And we've got Mr. Biu, the head of the team, head of the Secretariat people. Okay.

Mr. Nata: Yes, firstly, I thank you, Mr. Chairman, for giving me this opportunity. I ran all the way from Nadi this morning just to be here, because I believe the work that you're doing, I know you've been traveling around the country, I appreciate it, and I acknowledge the work that you're doing, and I say that I've been following closely the work that you're doing, and I've been picking up drips and drabs here and there of submissions that have been given to the committee. I shall go on with my submission. I begin this submission with an appeal to the people of Fiji, particularly the indigenous Fijians, the Christian churches, especially the Methodist church.

I particularly mention the Methodist church for a reason that will become obvious as we go on to my submission. To never ever again to support a coup supposedly done in their name. As it had been shown up, a lot of the iTaukei has not improved. All the coups that were supposedly done in their name were based on lies, on reasons of self-grandeur, opportunism, and varied agenda. I say to the iTaukei, I say to the churches, nothing replaces old-fashioned hard work. The real hope for the iTaukei is in the full utilization of the land, and to maximize the return from their natural resources.

We can help each other to realize that. I will spend a bit of time in my opening remarks in offering some suggestions on how we should deal

with a coup culture, and hopefully will prevent future overthrow of elected governments in the future. To begin with, as a preamble, as we know there is a preamble in the 2013 constitution, as a preamble, we the people of Fiji should have a covenant whereby we covenant with each other that those involved in crimes against the state, that is illegal removal of elected governments, treason, sedition, etc., shall be made to account for their misadventures.

The preamble should demonstrate our collective resolve as a nation that coup makers shall be punished. The new constitution should be unequivocal in its position on unlawful removal of elected governments, perpetrators shall have their day in court. We should make very clear that future coup makers shall never enjoy immunity.

I acknowledge that these alone wills not stop future glory seekers who will claim God's calling, but the covenant will make it plain that when the dust has settled, however long it takes, reckoning awaits. That any self-rewarding constitution shall be done away with is the first available opportunity, and it is for the legal people to draft the appropriate legislation. But we must make that message very clear. It is, I believe, the only way to make future cowboys, or visitors of grandeur, to think again. Think very hard. I believe there is no other way to stop the coup culture than to do this.

On the current immunity, it must go. If we are serious enough about addressing and eradicating the coup culture, there should be no immunity in a new constitution. The immunity in the 2013 constitution should be removed in the revised form, as the Commission is trying to do.

Not that I desire the perpetrators of 1987 or 2000 to be tried and sent to prison. I have no malice against them, but it is to make those who may dream of seeing their name in the headlines and having their day in the sun, that they will also have their day in court. This is the clearest message to demonstrate our collective repugnance against coup.

We must be serious in our efforts to deal with the coup culture. Our judiciary should create its own jurisprudence, its own precedence, on this very, very important issue. Yes, lawyer sir, you should understand that better than any of us sitting here.

To be clear, I am not bitter against those who escaped prison. I told the Future Truth and Reconciliation Commission that people, after all this year, should learn to let go, to forgive. People are still paying for blood, pointing fingers, being nasty and unkind to each other.

They still want Sitiveni Rabuka to go to prison. People still want Bainimarama and Khaiyum to go to prison. When do we stop? When do we finally let go? When do we forgive? I have been forgiven and I forgive. I don't wish any of them to go to prison. Because for me, it has always been my belief that the family suffers more than the culprit in a situation like this. It is the family that suffers.

And I wouldn't wish it even upon my worst enemies. In any event, sir, Rabuka and Bainimarama cannot be tried for prison because the offence of prison is time-barred in our statute. At least it was like that when I went to prison.

But the law has changed since. I'm not sure whether it's still time-barred. I welcome the submission of the Commander of the RFF a few days ago calling for the removal of the immunity provision to stop the culture of impunity.

This is significant in the conversation about immunity and his position should be given serious consideration for I suspect that the underlying thoughts in the decision of the Supreme Court not to touch the immunity clause was perhaps the inherent fear that it might antagonize the military and cause further instability. But you have heard what the Commander said and his position aligns with this submission that immunity should never ever be entertained. As an aside, Mr Chairman and Commissioner Nailatikau, I refer to the Commander who I've never heard of until he became the Commander.

I believe this nation owes this man a deep debt of gratitude for such a man was present for such a time like this. If we think back to the early hours, days, weeks, even months of the coalition victory in 2022 and with the personal pressure on the Commander from the powers that be at the time, a lesser person would have yielded. That he did not, that he held aloft, held his own was not only grief but courage, fortitude and sanity.

The course of our troubled nation would have been very different. We would have been further down that dark road we were just starting to emerge from. I fear no contradiction to say that there would be a national sigh of relief at the news of his reappointment at the realm of the RFMF. My congratulations to him. I believe, sir, that the time bar in the offence of prison, the crime of prison should be removed so that there is another clear message that it doesn't matter how long it takes a coup maker will have his day in court. Now I go on to other things, sir.

Common name. I have no issue with everyone being called a Fijian. But it would have been nice if I was asked. That is, that the Fijian people were asked. I am sure, despite that, the iTaukei or the indigenous native will not unnecessarily withhold Fijian as a common name. With informed and level-headed dialogue and consultation.

I've always believed, and you, Mr Chairman, and Ms Nailatikau, who have lived overseas, we are always referred to as Fijian when we are out of the country. I remember some years back when we were having this discussion on Nukulau on this very topic of a common name. I've actually advocated for being called a Fijian.

There was a lot of opposition from my colleagues on Nukulau that we should never use the word Fijian as a common name. Because there seems to be a claim that it is identity theft. I understand. However, I'm not blind to the fact that this very sensitive and emotional topic, that this is a very sensitive and emotional topic, and that a large number of Fijians, that is iTaukei, have very strong views about what is being now identified as identity theft. Being that as it may, I am confident that good change will prevail. Which will result in the people of Fiji coming up with a common name that is acceptable to us all, and that we should be proud of.

Secular State, where did this come from? Fiji has always been a nation under God. All people who now call Fiji their home are people of faith. Whether you're Fijians, or descendants of the Girmitiya, Muslim, Part Fijians or European descendants, Gujaratis, Rotuman, Banaban, Pacific Islands, all will affirm to faith in God. There was a conspiracy theory. The introduction of the Secular State was to suppress the Christian faith. But I'm a bit ambivalent on making Fiji a Christian state. I believe faith is a personal relationship between a person and his or her God. It would be sufficient as far as I see that a new constitution should state that Fiji is a

nation under God to demonstrate that the people of Fiji, irrespective of ethnicity, are believers in God. I am very wary when clever people try to explain away that the Secular State merely is a mechanism to separate religion and government.

But declaring a nation under God will do exactly the same thing. I suspect that the push for a Secular State stems out from the belief that a certain faith was having dominance in the public forum in the past. But then again, there has been longstanding tradition and practices, almost customary, that a prayer is said in our public activities, particularly the state activities, to be sure a Secular State in the plainest meaning of the English word, English phrase, is a nation without God. Let us be clear.

Bill of Rights, UNDRIP should be included. The rest are OK. My submission, Sir, and Commissioner, will touch on one of the other things that may sound controversial, but I will do it anyway. The new Constitution should come up with new ways of doing business. Our system of governance needs to be changed, not for the mere sake of making changes but because there are better ways of doing things.

And looking back at the road that we have journeyed together since independence; I believe we should be asking ourselves very serious questions. Our system of government, our parliamentary system, we have adopted, even the brand of democracy we live in, have they been really the best system for us, for the people of Fiji, and for the nation? Democracy is the Western form of democracy. We have willy-nilly adopted really the best way forward for Fiji. I ask the question. We are a communal people. We do things together. It's our way of life. We do not leave anyone behind. But unfortunately, that is what we have become. We have abandoned the word and the concept of solesolevaki.

It is, I believe, a very half-tough word but underused, trivialized, even misused. But therein, I believe, lies the future of our nation. I invite the Commission to my village of Waciwaci, Lakeba, Lau to see what we are doing in studying this concept of Solesolevaki on our Winds of Lau initiatives. We hope to transfer the intellectual property to the other villages on the island and islands in Lau and to other provinces and outside of Lau. The thinking is to spread it around the country. A small seed we have planted. Sadly, no attempt has been seriously made to realize the full potential of solesolevaki at the national level. I believe solesolevaki should be our mantra.

To be sure, I am not against the practice of democracy, not just the Western kind. Democracy mixed with communal solesolevaki could be the potent portion we have been missing. Perhaps it is the elixir for our national healing. Decolonization. Sadly, I dare say that we are still largely, despite over 50 years of so-called independence, a colonized people in our minds, in our processes, in our laws, in our institutions, in the way we do things. We still have photos of the late Queen Elizabeth in our homes, in our villages.

I acknowledge there was, and still is, a lot of affection. But how long do we stoke that fire? I believe we should start the full process, real and total decolonization. I give this example. The Bose Levu Vakaturaga was created by the colonial government. It has been in existence throughout our history until somebody sent them to go and drink rug under the mango tree. Even after the resurrection, it is still operating under the same colonial rules and laws. Colonial rule, we must remember, was never altogether altruistic. Its laws and regulations were meant to protect them, the colonizers, that is, to make life easy for them. They were never meant for the benefit of the rule.

Another example before independence in our sugar industry, there was the colonial sugar refinery. Perhaps only myself and the chairman would remember the CSR. After Fiji's flag was flying, we had the Fiji Sugar Corporation, with a lot of hope, of course. But the same laws and monopoly that protected the CSR were translated to do the same thing for the FSC. Now, we see what is happening to the FSC now. Our land laws, our mining laws, are now just merely being tweeted while the substance, we still can see the long colonial hands.

Section 281 of the Constitution which deals with land arrangement should be taken out of the Constitution and be left to the respective legislations. Another example, the NLTB has served its purpose well when that great man created it just many moons ago. Many are now pointing fingers at it and even accusing it and accusing that great man of not doing the right thing for the iTaukei. We should cease blaming what was good to a certain point. Of course, there are some serious shortcomings in the NLTB because it is still largely operating under the colonial code. But instead of harking back to the perceived ills of the past, we should put our collective heads together to improve the situation. It must be noted that the crown law, sorry, the crown land, freehold land, mineral six feet under, deep sea mineral, a foreign

concept, deep sea mineral owned by the state, that is. At some point, these issues must be addressed. But with the proviso that the interest and the welfare of non-indigenous Fijians be addressed and be protected, a secure and enduring land arrangement system, and that is the access of non-Fijians to land should be worked out.

And that is for the government to work out. Another colonial hangover. The colony did not allow second language, second common language to be taught in school, to allow meaningful grassroots integration. After over 50 years of self-rule, we still haven't taught a second language in school. I used to think that if a second language is taught in school, it should be Hindi. I used to think that it gives us an international edge speaking an international language because Hindi was becoming an international language.

But now I've changed my mind. I think it should be Fijian because now we are being called Fijians. We should learn Fijian and everything that goes, the culture. The possibility to run the BLV should have its place in the constitution. It should be independent, self-funded and directly reporting to the president. Has anyone ever pondered the incongruency of the Minister for Fijian Affairs appointing who should sit as members of the BLV? That law was made for the white men who often perceived natives as lesser people. Our chief should decide who sits on the BLV. That power should be taken away from the Minister of Fijian Affairs.

All things Fijian, there is it OK, land, village system, way of life, fishing, mining, deep sea resources, etc. should be under the BLV. The FAB should be desecrated. Forgive me, I'm still using FAB and I think the names have changed but pardon me, I was in the booth for a long time. It should be funded by the pundits used by the TLTB and there are other ways of raising funds for the Fijian administration. Any government grant should be treated as goodwill and never to come with the inherent belief that the government has a right to interfere. I suggest that the Minister of Fijian Affairs be abolished.

I come to elections. Fijians should not return to communal seats. Never again voting should be based on racial compartments. I have always held a view that despite living together for over 150 years the two major ethnic groups, that is Fijians and Indians, by and large are still living parallel lives. It is this kind of arrangement that exacerbates the colonial

relics that is fodder for keeping us apart. Constituencies should be returned to parliamentarians.

The mere existence of a constituency is a mandate and a reminder to parliamentarians that the people should be visited or else there will be consequences in the next election. From my vantage point of hibernation in the past three elections I read not much about constituency visit. In the olden days constituency visit was a noisy affair.

Everybody knows when a minister or a member of parliament goes and visits a constituency that should be brought back. Constituency, I propose, should be based on provincial boundaries. The number of seats in the constituency should be based on demography and geography.

For instance, Ba covers a wide area of western Viti Levu and covers Yasawa should have five seats. Namosi, Serua and Kadavu perhaps three seats. Lau, though regarded as a small province population-wise but it covers most of the East part of Fiji. So geographically it's a huge area to cover. For Lau I suggest four seats. Rewa, though small in size but is heavily populated so perhaps these are four seats. The rest of the provinces of I'm surprised, Navosa is actually a big province so they have four seats. So, we are looking at a 52-seat parliament. Oh, and I forgot Rotuma should have one seat.

There is no need for a constituency boundary commission. That job should be given to parliamentary select committee which I will come to later on because I believe the number of seats in parliament should be permanent. The House of Elders, the Senate which was previously the upper house should be renamed the House of Elders to give it a truly Fijian flavor.

Membership should still be based on the previous Senate appointments. That is, the Prime Minister appoints nominees of the Great Council of Chiefs, his own nominees but the number should be limited to 14 and this has to include one part Fijian previously they used to be called Part Europeans but they want to be part Fijians now and two, at least two Indo-Fijian representatives. Leader of the Opposition to nominate after consulting other minority parties in parliament and he should be given nine seats.

Rotuma and Rabi Council nominate a member each. In making the appointments the Prime Minister and the Leader of the Opposition should give consideration to the ethnic minorities. The Executive if we settle on Fijian as the common name I also believe the name of our leading institution as much as possible should reflect that Fijian-ness.

As I've stated elsewhere there is more to being a Fijian than just a name. There are traditions, customs, cultures rituals, dances that we should acknowledge, learn and embrace as a nation of Fijians. There is the Fijian cuisine to be served villages and provinces to be included in to be visited. The President should be elected. The office of the Prime Minister should be abolished. There are two more that I specifically propose that we look into the US United States which has an Executive President and a Cabinet selected outside of parliament and the French system which has a President a Prime Minister and a Cabinet. But Fiji should have its own executive creation.

The leader of the party which wins the majority of seats is able to cobble together a majority coalition is sworn in as President by the Chief Justice of parliament. Parliament should strictly be in the business of law making. It makes the notion of separation of powers between parliament, the executive and the judiciary truly meaningful. There is a bit of tension there when you are separating parliament and the executive and you have ministers who are members of parliament. There is a bit of blur in the separations of power under the current arrangement. To separate the cabinet from parliament will also have the effect of potentially reducing ministerial corruption. I must say I have seen a few tough ones in my time. House of Representatives as I said earlier if we are going to have Fijian as our common name our institution should reflect that. House of Representatives I propose that it be called House of Elders or Qase ni Vale. This was the law house in the bicameral parliamentary days. All bills are initiated by the House of Representatives.

Members are full-time lawmakers only. They sit on standing committees' sub-committees, special committees they are out and about doing consultations constantly reviewing laws being engaged purposefully in law reform that truly takes in or takes Fiji out of the colony. House of Elders, Qase ni Vale as I mentioned earlier that is the Senate that it should be brought back but renamed House of Elders, I earlier mentioned that the previous arrangement was that the Prime

Minister nominates appoints the nominees of the Great Council of Chiefs but instead of the Prime Minister it is now under a new system that I am proposing that it should be the President.

As in the previous Senate the House of Elders cannot reject bills from the law house the system for the young ones the bill initiated in the law house and passed up to the Senate and then it becomes law. This was so because the Senate was unelected that was the reasoning that they cannot reject bills from the law house. The Senate may refer back bills it cannot pass for amendments pass it back to the law house but the law house is not required by law to agree to the amendments it can just pass it back up again with an explanatory note saying why it cannot make the amendment in that event the Senate passes it in my parliamentary reporting days and in my political commentating days and I used to think it was a pointless exercise but instead of this rigmarole and instead of making the House of Elders looking like some bunch of old fools a standing joint house committee be created.

This was never done in the previous bicameral arrangement so that the standing committee can deal with the differences between the two houses the lower and the upper houses to allow the Senate to pass the bill instead of sending it back up again and they have no power to do anything but just pass it to me at that time it was a very pointless thing sometimes, I even think the Senate was a mere white elephant standing joint house committee to make the upper house or the Senate more participation of members should be encouraged to deal with the issues that matter which requires the approval of both houses and some of these things include the differences between the two houses when it comes to legislation making to vet all presidential nominees to cabinet to take over the role of the COC appointments.

I believe that the COC should be abolished and that function should be translated or transferred to a parliamentary joint committee of the two houses then they can also be empowered to make special investigations and their recommended prosecution limited cabinet the president shall appoint his cabinet from outside parliament from the profession, captains of industries leaders in the field but not from academic and theorists people are appointed are men and women who have made it and are in good financial position it has the potential of minimizing corruption at the highest level of governance there are people who are well disposed and they've made it in life they'll be hard pressed to be

captured into corruption cabinet should be constitutionally limited to control considering the size of our country and our economy this will prevent outrageously bloated cabinet for political expediency but instead of becoming ministers they become secretary I think in my time there was a time a particular government had 36 cabinet. I remember I think it was in the place and even under the current government there's quite a few cabinets I'm not criticizing I'm just merely giving examples. I believe an integral portfolio under the new arrangement should be a secretary of nation building to be in charge of national reconciliation, ethnic harmony and bringing people together. Constitutional office, I've mentioned that that role should be transferred to the parliamentary joint committee and the COCPF be abolished.

I come to the RFMF in view of the political terrain we have carved ourselves in our recent history since independence. We should now be asking ourselves seriously of the role of the military, whether we should continue to have a standing army. I say this with utmost sensitivity, fully aware and appreciate Fiji's proud military tradition. I'm also aware that on the issue I may be flying against the wind.

I'm further aware considering the reaction I've received from ex-military personnel considering the reaction their reaction I feel the idea is almost unthinkable, but if you are to consider the involvement of the military in the coups in Fiji and I say without any fear of contradiction they were involved in all the coups. I think it is an idea that we should start to seriously think about as for me I am of the firm view that Fiji should do away with a standing army to be clear. I have no grudge against the military in fact my earliest memories of soldiers was one of admiration and fondness when I saw them for the first time in my life as an 8 year old watching the soldiers slow marching to the casket of the late Tui Nayau Ratu Tevita Uluilakeba, who is the father of the late president and prime minister and also the Tui Nayau Ratu Sir Kamisese Mara in Tubou Nayau many many years ago.

Some of my classmates and schoolmates attended some of the fine military officer cadet schools in the world went on to become distinguished officers and leaders and have done equally well outside of the green uniform. How I wish I could name them but I fear I might be embarrassing them being associated with an ex-convict. However, I am now of the firm view that Fiji should do away with a standing army if we are serious about dealing with a coup issue and to eliminate a coup

culture. I am not advocating that the soldiers be retrenched, made redundant and become jobless we should have a defense reserve in the form of the current territorial soldiers we should focus on peacekeeping duties and work at exporting our soldiers for foreign work but short of big mercenaries but we must make sure that peacekeeping arrangements should be rectified that it brings more benefit than cost. We can still have an expanded standing engineer's corps in the current RFMF engineers and to become involved in national engineering and construction work governments should encourage trained engineers to form themselves into companies and be given priorities in national infrastructure construction roads, bridges, jetties, airports waterways, irrigation with or without outside partners. I believe that soldiers will be better utilized as vehicles of national development in that capacity.

Mr. Valenitabua: Mr. Nata, excuse me if I may intervene, we have used up time available to you I have two minutes left two minutes? we'll let you go on.

Mr. Nata: It has often been said that Fiji should emulate Singapore, Singapore does not have an army another country we should be looking at is Costa Rica it also does not have an army amendment to the constitution should be made simple. In closing the constitution is only as good as the people it was meant for all the things that we are discussing and submitting will not guarantee that there will be no more coups in the future it only takes a trigger-happy cowboy who believes in his invincibility to be foolish enough. But they will be forced to think a little bit harder before they take that step but the constitution of 2013 should be amended or replaced altogether. I can see that there are some benefits in the document but the negative part outweighs the good part, for I feel the 2013 constitution was self-serving and was made and meant to perpetuate the rule of certain people and that is my submission sir and madam commissioner.

Mr. Valenitabua: Mr. Nata for your submission today I must note that your contributions reflect not only your insights and your expertise but your lived experience which has come at a cost and I acknowledge that today. I have two questions for clarification and I hope you take this as merely an act of thinking aloud together in terms of your contributions today relating to your reimagination of the senate for example in terms of the Qase ni Vale structure. I was wondering if in your thought process you might have considered how that may be made intergenerational so to speak in terms of eldership and wisdom not merely in age but potentially in other ways as well would be quite happy to hear your thinking on that matter, and

also in relation to your alternative raised to the constitutional office commission or the COC. We have heard submissions speaking about the importance of an appointing body that appoints such important roles in national institutions, in national commissions about it needing to be pluralistic in its makeup to ensure that whoever is appointed is not beholden to political pressures or fears of reprisal for instance.

So, I was wondering whether this parliamentary joint committee that you are proposing might be able to provide that type of assurance that whatever institutional heads are appointed they are able to be free from such pressures I hope those two questions are clear firstly in relation to the Qase ni Vale submission that you have made and in your submission relating to an alternative to the constitutional officer's commission or COC.

Mr. Nata: Thank you thank you ma'am, I'm an old man and I have this affinity to old people for membership of the senate I think young people they have other places that they can because it's the house of elders it's only appropriate that we have certain. This is just my suggestion and the other question was on the COC and the role to be taken over by the parliamentary the joint parliamentary standing committee.

I believe so, I believe it will deal with that issue because politicians are they will be from different political affiliations it's the same thing that is done through the COC because there are political appointees in the COC but what I'm saying is that they are to be dedicated to law making and this is part of the process law making and making constitutional appointments.

I think we should not worry about being beholden to political affiliations because there will be political voices in that process. I think that answers your question. I'm very very confident that any attempt to politically influence the appointee will be dealt with because all these people will be watching and participating in the process in the same way the COC is constituted. You and I understand that there is majority one way just translate that arrangement to the parliamentary standing committee. That's basically answers your question.

Ms. Nailatikau: Thank you Mr. Nata and please certainly not disputing the importance of eldership just only also reflecting how important it is for the younger

generation to watch and learn from our elders and to have intergenerational transfer I sincerely appreciate your explanation

Mr. Nata: Thank you It's an old man speaking.

Mr. Valenitabua: Yes Mr. Nata you referred to the time bar for offence of prison and you said it should be removed there is no time bar now the law is different from the penal code we knew when that penal code was repealed the time bar of two years for prosecution of prison went with it that is why in the modern or the current crimes decree there is no time bar.

So, for your information the penal code which you and I have used that has gone now the issue about the common name of Fijian for your information we had a submission from a linguistic from USP yesterday and he told us that the Fijian name should be for Fijians only I mean natives during the course of this interview. I've been using natives instead of iTaukei because the old laws the iTaukei Lands Act, iTaukei Land Transport Act and so forth, they use natives now all that native has been changed to iTaukei.

But to go back to yesterday this gentleman, not very old a linguistic lecturer at USP said the name Fijian should be an Indo-Fijian in fact the person. I'm talking about now is an Indo-Fijian and he said that the name Fijian should be for iTaukei only or for the natives because now we see in the constitution the name iTaukei and he told us that name iTaukei is not a descriptive name it's a noun in fact when looking at it through a linguistics view so keep Fijians for the natives and then we find another name for the others that was a suggestion from one of the lecturers at USP a linguistic and an Indo-Fijian for your information. There's just another point you mentioned electoral seats to be based on the province's provincial lines provincial lines, did you say that?

Mr. Nata: Yes,

Mr. Valenitabua: On provincial boundaries would that include all races?

Mr. Nata: Yes, I'm a believer if you are from Lau whether you are Indian, Chinese, Japanese or Russian if you live in Lau and you are a common resident of Lau you should be allowed if you live in Ba, you are from Ba the next village, the nearest village is your village and we should stop the process of familiarizing acclimatizing. Get people to know each other enter each

other's homes eat in each other's places this is the only way we can grow people together. I've always maintained that despite 150 years of living together in the main we are still living parallel lives you go to any country. Indians will be clubbed together and Fijians, even in prison. So what I'm saying is that we should change the laws that's another example I should have brought in.

Why did we have the provincial council on one hand for the Fijians, for the iTaukei and one for the Indian which is the local authority as you are aware this was meant to make life easy for the colonial rulers and the sad thing was that it was a tool to keep us apart you know, the British, they are past masters in divide and rule and we were not aware of it and we were given some kind of explanation that this is good for you, you want to keep away from them and they come and tell us, this is good for you, you want to keep away from them.

These are the kind of things that then it is bred into our system. It's I'm addressing the bigger vision of coming together unfortunately I did not have the time to elaborate a little bit more on that. I'm advocating a Fiji where you are, where you are or you domiciled in, you are a member of that province, you know. If you live in Tailevu you go to Tailevu Provincial Council or something in between, or join if you live in Rewa, go to the Rewa Provincial Council because Rewa is quite not part of the Tailevu, it's part of Rewa that is why Rewa. Those small incitement it's got a big population so you're part of Rewa, and I think we should try to encourage this, this is where the Fijian affairs I strongly recommend that we have a secretary or a department of national harmony nation building, where they do this thing we do away with the ethnic and cultural those are the kind of things that separate us see these are the tools and institutions and instruments that keep us apart.

Mr. Valenitabua: Thank you for that we have heard a submission similar to what you are proposing now so we'll leave it at that, thank you.

Ms. Nailatikau: Thank you Chair, and Mr. Nata merely seeking your correction and confirmation in terms of your approach to a national identity. I'm hearing that you are not averse to a national identity but it must be preceded by a common interaction with one another it can't be imposed but it has to be something that you believe should be developed beginning with our institutions and the ways in which common citizens interact, I hope I have heard you correctly.

Mr. Nata : Yeah, I think one of the biggest problems with the constitution Fijian common name because there was no consultation like I said, I have no problem with it but it was nice if I was asked as a Fijian through consultation process but this was imposed people, they take offense when they are imposed the same thing that we're talking about this is almost the same as dictatorship you do it, that's what you like I said.

I don't think we'll unnecessarily withhold Fijian being called Fijian exists level-headed discussions but unfortunately it didn't happen but I also understand the position, the very hard-held position of Fijians to be called Fijians I understand that as well. I am a Fijian I know, but I'm trying to be liberal and accommodate but if the majority, the push is for Fijians to be called Fijians, I got no problem with that either in fact, I was thinking but I didn't want to trivialize because I thought this is a very important issue. I was going to suggest Fijians like the Finns, the Finnish they are either Finns or Finnish or Fijis or something but we probably make it sound trivial but somebody will come up with a good name that we will all agree on.

I take it there is a lot of sensitivities and emotional issues attached to being Fijian and I think there is some sense in Fijian claiming its identity because Fiji is a small place and Fijians are a very small population in the big world and we tend to be protective, that's the nature of humankind we protect our little turf especially when we are a small group of people but see, the thing is one thing that irks me is that they only use Fijian when it suits them the majority of Indians. They don't want to be called Fijians because the Fijian, it comes with the baggage when you call a Fijian a Kai Viti it means a lot of things, lazy, dirty, useless so I was going to suggest we are all called Kai Viti they are called Kai Viti too but I don't want to sound over the top but I think it's a sensitive thing that we should discuss and talk about.

Mr. Valenitabua: Thank you Mr. Nata Mr. Nata, we will have to end the session here thank you very much for your submission this morning much appreciated.

----------End of Session [3-7-2026]----------

John Fatiaki

Mr John Fatiaki
Date: 3-7-2026

Mr Valenitabua: Mr. Fatiaki, welcome to the Constitution Review Commission. We hope you are happy that we have slotted you into one hour. We were really fully booked, if I may use that expression, but then there was an available space and we just slotted you in, into that space.

So, we have one hour for your submission, if you can make it to one hour, or otherwise for as long as you can go, within the one hour. So, welcome, we are here to listen, I'm sure you know what you are here for, you are making submissions to the Constitution Review Commission, and you would like us to hear what your submissions are, and what you recommend to be included in the amended 2013 Constitution. So, welcome, it's been a long time since we worked together, and we are here to listen to you this afternoon.

Thank you Mr. Chairman. Mr. Vinaka, you may have the mic and the floor.

Mr Fatiaki: I'm John Junior.
There's about a number of John Fadiakis in Fiji, more than 10. Our fiscal address is 15 Dunwoody Street, Turek Subur. And the time now is almost, my time is 2019 PM. Okay sir, thank you Mr. Chairman. Nice meeting you sir, and members of your honourable committee. Very simple, very simple sir.

Mr Valenitabua: We have Ms. Nailatikau here, who is the second commissioner sitting today. Sorry, I didn't introduce Ms. Nailatikau.

Mr Fatiaki: I didn't catch it sir.

Mr Valenitabua: Ms. Nailatikau, the second commissioner sitting on my right is Ms. Nailatikau.

Mr Fatiaki: Ms. Nailatikau, nice meeting. Thank you sir. I'm going to take us back from the 1970 constitution. It's no longer available. It was hand-delivered by His Royal Highness Prince Wale then, up there, on the 10th of October 1970. We were part of the celebration too at that time, young, very young. Anyway, the thing happened, we all know. New party came in after we lost. We were under Alliance Government Party then. In April, we lost the general election. Then the new prime minister was sworn in. Then later on, the Dr Bavadra coalition with the NFP.

Mr Valenitabua: Mr. Fatiaki, we are talking about the 2013 constitution.

Mr Fatiaki: I'll come to that sir, I'll come to that, yeah.

I'm beginning from the beginning. So anyway, 1990, Fiji became, 1987, 7th of October 1987, Mr. Chairman, Fiji became independent. Not 10th of October 7th created by the military government.I accept that. Move on. 1990, under the interim government at that time.This is from my master file. That's okay. I really supported the review, to be honest to you, Mr. Chairman.

There you are. I've written a number of things on top of it, but this is the copy. There it is. Under that decree, interim president, the late Ratu Epeli Ganilau was appointed as the interim head of state. Under that decree, 2022, prime minister, first prime minister and first president under the Republic of Fiji, the later on the Ratu Sir Kamisese Mara matter. Then anyway, 1990 came.

Then Frank Military came in 2006, took over the elected government. Then he created two, one team under Ghai, Professor Ghai. This was given to us during our presentation at that time. So, I keep it. You can make a copy on your own, sir. Then, Frank, Commodore Frank Bainimarama didn't like the constitution there.They threw it out. I did not know until the thing came out in the paper, Mr. Chairman. Then the second team was created by the Military.

They went through 1,000 villages, coast to coast, town to town, city to city. What you people are doing now, wonderful. I support it. That 2013 constitution was done by the people of Fiji. Fiji, people's startup of change, peace, progress. This is the time.

So anyway, we are here now. What you just said, I love it. Because I want to throw it in. Our 200 miles exclusive economic zone was presented during that time twice but never happened. I hope your honourable committee will put it into the 2013 constitution. I just read from the 2013 constitution.

Number one is this page number one. From those 11 pillars, we the people of Fiji, recognizing this is very, very important. It's there. Realize. Indigenous people like you, us from the Rotuma, Rabi, and so on. All, and they took it there.

Ownership. And the unique culture. In Black and White right now, you can visit. Customs and, excuse me, it's getting a little bit smaller. Anyway, it's there. Number one page.

What I'm here this afternoon to say on behalf of our Rotuman minority community, and especially the iTaukei, KaiViti. What we want our commission to be added on in the 2013 constitution in chapter two, under the Bill of Rights. Excuse me. Subsection 1, 2, A. A must. Realize. Bose Levu Vakaturaga,

'Kei na turaga, kei na marama, kei viti'. To be legalized. It's not in here.

Please. That is my view. Because the B, I mean, what's the former chiefly? That they're still using now, which is illegal. It's not in here. BLB? No, no, BLB, I just said you don't do this. In English.

May I? Really? It's another English name. It was created by the British colonial at that time. Under the 1970 constitution, 1990, and amended 1997 constitution. No more in 2013. The Great Council of Chiefs. GCC.

Thank you, sir. To replace the GCC. GCC is dead and buried twice. One by then-Colonel Rabuka second one by Commandant Bainimarama. This is my view. For people on behalf of all our iTaukei.

I'm honestly speaking, Mr. Chairman. To be implemented and legalized 100%. I repeat. The Boselevu Vakaturaga kei na marama kei Viti, then of course in English translation. That's number one. Number two.

I'll read you now my own copy. Under the chapter two. Chapter two, sir. Under the Bill of Rights. Same thing applies to the iTaukei community. Under the Bill of Rights, section six. Subsection one and two. Slash A. Sorry, sir. I'm going back.

Sorry, sorry, sorry, sir. I'm going back to the Boselevu Vakaturaga kei na marama kei Viti. Should be under chapter two.Under the Bill of Rights, section 28. Sorry. Section 28.

Section 28. Mr. Chairman, and honourable member. Section 28.Subsection three. I read. The ownership of all Rotumans land shall remain with the customary owners of that land. And the Rotuman land should not be. But my suggestion and on behalf of our volunteers' team. During the first run and the second run of this constitution. They failed to add it on. So please, sir. This is time to add on on that. Subsection three. That's A. The 200 miles or 370 kilometers. Exclusive. This is very important for Fiji and Rotuma. Remember that word, Mr. Chairman. Fiji, Rotuma. 370, in bracket, 370 kilometers. Exclusive economic zone. Is that. Excuse me. Okay, sir. I can see you'll be discouraged if you did that.

Anyway. 200 miles of the whole measurement. The current figure is nice 370 to. 370 kilometers. Is that.

Fishing ground for the people of Rotuma. This was tailor-made, especially tailor-made for our people during that time. To create a fishing business for the council of Rotuma. To keep the youth of Rotuma in Rotuma. I wrote. That's made by himself.

Oh. I'm so happy I'm on my own today, this afternoon. It was written.On the 30th of April. On the 30th of April 2013. Item three. Sir. This is to the Solicitor General. After everything was thrown out. Sir, to be included as a written law. On our 200 miles. Record 370 km.

Exclusive economic zone. To be always under the Honourable Prime Minister's office. Until today. The authority in monetary terms. But never happened, Mr. Chairman. Somebody forgot the authority in the rubbish bin, maybe. Foreign fishing companies. This was written at that time. 2013.

Who may be interested. That's what we want to do, our project. We've been doing this since 80. To engage with our 12-month contract. Called. Commercial business license. One million dollars. Pay companies who are interested. Pay direct to the council of Rotuma. Two payments. First in January. Second in July. This is all for business. Say one or two. So there's two million dollars.

Say one. There's one million dollars. To the Council of Rotuma. So they don't have to depend on the national budget all the time. And waited that long. And our company. Belongs to us, for example. Under our terms and conditions called. Together we build.

Operate. Own. And transfer. So we transfer back to. Council of Rotuma. For the youth Permanently. So that's. My number Two. Under section 28. Chapter 2. Under the bill of rights section 28. In subsection 3. Slash A. And this is the part of that. During our time. At that time When we. Our team is called. Viti Kabani Volunteers. This is we get to the island at that time. This is one of his kind. On the island of Rotuma.

At that time. Food storage tank. So we negotiated it. On behalf of our team. Done. That's the service station. One hundred percent. You just like driving around. Mr Chairman. May I speak. One of our own. Raven. Root. Root. Don't. No. To the car. No more now.

The mobil oil. When they removed everything. Because of the Chairman. Friendship. Some other members at that time. They decided. Not to go down half an hour and go the way. From. They came direct.

To Fiji. To purchase that. Fifty dollars deposit.

For a drum. Of two hundred liters. One product times five. This is five. Drums only. Two hundred liters. Times five. So they forgot about our long term investment. For the People of the. To my. Next generation. So. June. Twenty fifteen. Mobile oil decided. To. Close Last year. They went. This is old Rotting away. Mr. Chairman. They removed everything.

So we back to. Being. Two hundred liters from a ship. Down. I was doing that in ninety sixty eight. Sixty nine. Seventeen. When I was on the island. No jetty at that time. Now we have jetty through Ratu Mara's Alliance government. So that's the story sir. Any questions sir? Pardon? I want you to speak on the twenty thirteen. This is to throw it into the twenty thirteen.

Mr Valenitabua: We don't want to hear stories please.

Mr Fatiaki: It's okay. But I'm. I'm sharing with you.What happened to us. It's okay sir. That's the twenty thirteen one.

Mr Valenitabua: You are on the three hundred seventy kilometer.

Mr Fatiaki: That's what we want. Yeah.

Mr Valenitabua: So. You wanted.You wanted to have that registered. In Rotuma's name.

Mr Fatiaki: No no, to be under. The twenty thirteen. Constitution.Section thirty. Subsection three. Stress a. Yeah.

Mr Valenitabua: To be owned, By Rotuma. Of course yes. Yeah. That is what I'm asking.

Mr Fatiaki: Yes. All right. Because. The taxation. All this later on. Will be. Paid directly. To the Fiji revenue. And custom authority. So. It's a win win. Situation.Situation. For both of us. Now.We're going to talk about. Twenty thirteen. Those are the first two the iTaukei. You know. Please. That's what. We are missing.A must. To be included. Under the Twenty thirteen. Constitution. Thank you.Sir. This is our. What's a word.For you. To my age. One.One. Three. Eight.Is. Ninety nine. Years old.Data. Twenty seven. Of September. Nineteen. Twenty seven.So. Also. Also through the concert. We'll. Start it in here.But this is very important. That twenty thirteen months. Ninety-nine, Years old. I got it. From the archives.Okay. Thank you. Sir.

So far so good. Right. As we move on to twenty thirteen. This is for the. Still in chapter two section. 114. Oh. Sorry. Section Thirty. Twenty thirteen. Section Thirty. Sub. Section One. All. Materials In. Or. Under Any. Land. Or Water. Are. Owned By. The state. Provided, However. I don't want to. Continue. By. The state. One hundred percent seventy percent. Of that. Goes directly. To the landowners. Of Fiji One hundred percent. Thirty percent. To the state That's my. Submission.
One Seventy percent. Goes. Anything.

That. Underwater. Goes To the. Taukei ni qele Viti taucoko.
To the wall. Only. Thirty percent Goes. To the state. Because the state The other government. Comes in. And go.

Every election. So give them. Thirty percent From that. Whatever we found. Diamond, Gold. Oil. If the oil Found in Bau. Belongs to the Tailevu, Bau people. The people. If the oil. Found in Lau. Belongs to us In Lau. For example. But Seventy percent. Goes. To the landwners. A must. Mr. Chairman.

Please. Because. Previously They said. Yes. Yes We did. Never happened. This is That's why. When. The Supreme Court. Agreed. For the amendment. I was. I was. Happy.
Yes. I wanted to. Add on To the 2013. Constitution. Seventy percent. Thirty. To the state. Oh. The next one. Say. Under the 2013 Constitution. Amended. Amendment.

Only. In. Chapter Five. Judiciary. Part. A. Under. Part. B. It's called. It's a. It's under. Independent. Legal Service. Commission. I. L. A. C. Stay Permanently. Never. To Removed. Or revoked. Or whatever.

Mr. Chairman. I repeat. Stay Permanently. I. L. A. C. Okay. Okay.

Uh. Part. B. One Four. Subsection. Independent Legal. Service. Commission. Established. By. The Legal. Practices. That Decreed. 2009. Continues In. Existence. But I don't. Want. To Be. Removed. Is So. Wonderful. Because This. Happened. To Me. Right. Now. Because. Lawyers. Lying To. The. Judges And. So. On. So. My. Second Matter. Is. With Them. Right. Now.

The LPU – permanent stay, thats all. You may change it from time to time and whichever government come into power. But as far we are concern, ILASC to stay permanently.That fine with you Sir.

Okay next one Sir, 115 very important one. Fiji Independent Commission Against Corruption. (FICAC) also to stay permanently. Maybe amended from time to time, maybe. But my suggestion for the time being we need a independent expatriate at least for five years and understudying by our local.
The next one, a number of Fijians don't like it but we small fellas like it.

Part B. Chapter. Si – Public Service

Not. Part A. Part B. Discipline service

Part B. Chapter 6 - One. Three. One. Sir. Yes. Sir. Okay. May I. Read. Republic Of Fiji. Military Forces.

Section One hundred and thirty-One. One Three one. Subsection One. Fine. With all Of us in Fiji. Subsection. Two. Little bit of power may be

given to the Commander of for the .. maybe addition power for the Commander – border crossing Mr Chairman and honourable member lady that's very important because when we, it's very clear here, it's subsection 2, 131 subsection 2. It shall be the overall responsibility of the Republic of Fiji military forces to ensure all times the security, defence, well-being for all Fijian families of Fiji and all Fijian. That's our suggestion, we were talking about it a number of weeks back, preparing as a group leader. So, they said, yeah, we want to propose that to the committee. So, it's entirely up to your legal teams. So that's all for this for the time being.
But the next one is, I know it's very important.

Mr Valenitabua: This one here, subsection 2, what was it again? Security, defence, and well-being of?

Mr Fatiaki: Oh, this is on the 2013. It shall be overall responsibility. It's already there. It's already there.

Of the Republic of Fiji military forces to ensure all times, 24 seven now, January 1st, December 31st, over and over and over and over. We're with your commander, blah, blah, blah. Okay, sir.

Défense and well-being of Fiji and all Fijians. That's in subsection 2, 131. But what we suggested is your committee can give the commander more power.

Lift the phone up, you fly from there, go and check that one there, for example.

Mr Valenitabua: You mean border control?

Mr Fatiaki: Border control, that's correct, yeah. Want to be based in Rotuma.

This year for the entire Fiji, this instead of going three days or two days or what, just ring up one base in Rotuma. In Fiji, Rotuma, please, sir. Base permanently.

So we create training for the youth not to come across. Join the Navy, join the Army, join the police from there. For example, that's our proposal.

Mr Valenitabua: Right, thank you.

Mr Fatiaki" Thank you, sir. Okay, let's go to the second last one.Chapter 7, that's fine with us. Revenue and expenditure, 100%. Chapter 8, number 1, accountability. I really love this Mr. Chairman and Honourable Member Lady. Section 149, eh? In written law, shall, then begins from the

President, the Prime Minister, and all that, all under this Code of Conduct. Wonderful.

B, freedom of information, wananavu. Part C, Attorney General, that's okay.
Chapter 10, this is the key.

I know everybody in Fiji want to get rid of this very hard. Excuse me, sir. Chapter 10, the immunity.

Okay, 155, Section 155, 56, and 157. 100% stay permanently. Why? Because thanks to Honourable Prime Minister Rabuka for creating this immunity under 1990 Constitution, move on.

So, everyone, including me, my wife is supporting the coup anyway, under this immunity. She was a member of the Methodist Church of Fiji, full-time supporter of the coup. So, they're all no longer here, including my wife.

So, we are all bound by this immunity, including the current President, all the way down. I say 100%. So please, sir, stay permanently.

You can't remove it because it takes another three rounds within the Fijian Parliament, then back to the referendum. It never happened. So, all covered under this, even the current appointment right now, United Nations rep, he was part of it.

No, no, no, no, no. 1990, he was part of the spokesman. We're all covered.I love it. I love it, sir. Stay forever. And then not to touch or talk about it. That's all, sir. Last one. Oh, my time is almost up. Anyway, thank you, sir. That's Chapter 10, sir. Stay forever, permanent stay. Okay. This is the most important one, sir. Chapter 11, Amendment of Constitution. Section 159, 160, and 161. Oh, 160.

161 goes like this. Amendment before December 2013. That's all right.But a very special, the special one is this one here because the Parliament is engaged and also the voters. Section 159 and 160. Permanent stay forever.You can't repeal, you can't say it stays here, very clearly. Okay. Through this, we wrote directly to the President of the Supreme Court in 20, last year.

I've got it here. We told them, please say, amendment only, yes. You can't repeal that.

So, we called from there, there, from Chapter 1 in Section 2, Subsection 5, then going to Chapter 11, and so on. So, when ruling was done, we were happy. Amendment, and so that's where your committee came in.

I copied everybody. President, His Excellency, Prime Minister, and all President, one each. So, we are happy.

Amendment only. That's why I was here to come up here to put in those three very important ones. The Rotuma 200 and the iTaukei one, A must, the three.

That's the Chapter 11. I think that's all for the time being. Let me see it again, if I can, just five minutes.

Chapter 10 is, you understand, Chapter 11. I just want to remind you, sir, and the Honourable Members, because when we look at it, as a small business proprietor, and interested in politics, it's very difficult.
Subsection, Section 160, Subsection 1, a bill of the amendment of this Constitution must be expressed as a bill for an act to amend this Constitution, which is done, I hope.

I didn't see the bill, from the Prime Minister to the Parliament for approval of laveliga and all that. But anyway, it's done. Subsection 2, a bill of amendment of this Constitution must be passed by Parliament in accordance with the following procedure.

A, the bill is read three times in Parliament. B, at the second and third reading, it is supported by the votes of at least three quarters. That's okay.

They're there, of the members of Parliament. C, an interval, at least for 30 days, between the second and the third reading, each of those readings is preceded by a full opportunity by debate. Then, if I can of all examples, yes, no, yes, no, blah, blah, blah.

D, the third reading of the bill in Parliament does not take place until after the relevant committee or Parliament has reported the bill to Parliament. Subsection 3, subsection 3. If a bill is amended of the Constitution is passed by Parliament in accordance with subsection 2, then the Speaker shall notify the President accordingly, who shall then refer the bill to the Electoral Commission. This is a very difficult, it will never happen, for the Electoral Commission to conduct a referendum for all registered voters.

Registered voters in the last election were 600,000 plus, or 500. Because I lost my good form, so I'm on an ordinary form. All the record was there, so.

And only 200 voted for this bill, you know, the members of Parliament, only 200 plus of them. So that's it. That's Rihanna's side, because wasting our future taxpayers' money.

So sad Mr Chairman, which we really don't really care, eh? We. What can they do to you? They will do, they will do. No, you come and say something, please.

But anyway, so, you know, three quarters of the people to say yes in competitive Parliament, in my view, is very difficult. So that's it. I want to thank you, Sir, Mr Chairman and Lady Member, Honourable Member.

Man, it's a beautiful feeling for me this afternoon, because when we wrote to the President of the Supreme Court, no response. And when the result came, we all drank one another cup of tea, boy, sat down and said, John, you something. No, no, it's not me, it's he.

God is good at it. When you depend on him, he will provide. So, thank you again, Sir, for your time.

That's all for the time being. But the 2013 question is so powerful, because when Prime Minister went around the world to apologise to all our Fijian, iTaukei and come back, given the dual citizenship. So, end up with Buckingham Palace, Queen Elizabeth accepted it.

They had an audience, 2013. And then when they invited King Charles now to come for the celebration of the 50th birthday, unfortunately he never came because of the COVID-19. But the message was great.

This is accepted worldwide. And of course, the Secretary General. Any more questions? I'm going to end here, Sir.

Mr Valenitabua: Mr. John Fatiaki, thank you very much for your submission. This afternoon, we have recorded what you have submitted to us. And we will be deliberating later, after we hear all submissions.

For your information, you have raised a number of points or issues, which have already been raised before us. I understand. And some new ones, about one or two new ones.

But like I said, we will deliberate on them. Thank you, Sir. Thank you very much for coming here this afternoon and giving us your views and your suggestions.

I'm sorry we had one hour only and it was a short time. Fine with me, Sir. Right.

Mr Fatiaki: 100%.

Mr Valenitabua: We usually take photos after submissions. So we invite you to have a photo taken with us.

Mr Fatiaki: Okay. I'll say yes. This will be in the paper because there's a number of my own family against this.

Mr Valenitabua: I don't think it will be in the paper.

Mr Fatiaki: It doesn't matter. Paper or no paper, it doesn't matter. But we'll take a photo. That's a remembrance for me. Okay. I'm 77 now. We'll take a photo then. So when I'm 103, I still remember. Thank you, Sir. I really appreciate it. It's a beautiful feeling, Sir, because when the Supreme Court granted...

----------End of Session [3-7-2026]----------

Unity Fiji

Unity Fiji Party
Date:6-7-26

Mr. Valenitabua: Ladies and Gentlemen, members of the Unity Fiji Party. We welcome you this morning. Thank you very much for your attendance and for accepting the invitation which was sent around from the Constitution Review Commission. We have the Commissioners sitting this morning in Dr. John Fatiaki on my right, Mr. Conway Beg, I am the Chairperson Sevuloni Valenitabua, next to me is Mr. Ami Kohli, and on the far left is Dr. Neelesh Gounder. We are here this morning to listen to you. We are collecting submissions.

We might ask some questions later for clarification and maybe make some comments, but we are here primarily to listen to your submissions in relation to what you think we should include in the 2013 amended Constitution. I will not speak long. We only have one hour due to the fact that during this last week, we then have a flood of submitters interested to come here to present submissions so pardon us if we are going to be limiting your time at the same time, I would say that feel free to say what you have to say in summary. Thank you very much. I now give you the mic and the floor to address the Commission. Vinaka.

Mr. Narube: Thank you Chairman and thank you members. A very good morning to you all. Thank you for this opportunity to present to the Commission. We'll keep to your time limitations Chairman. We'll start with the bigger issues that Fiji is facing because the Constitution needs to address that. There is a close relationship as we all know between Constitutions and Coups in Fiji. Fiji has endured many coups; I think three military coups since 87. The first two was led by Sitiveni Rabuka who's now the Prime Minister the third by Commodore Voreqe Bainimarama in December 2006. Rabuka's coups produced the 1997 Constitution. Bainimarama abrogated that Constitution in April 2009 then promulgated the 2013 Constitution without consulting us the people and without any Parliamentary approval. The 2013 Constitution as you all know, starts with a lie. It says that we the people of Fiji. The people of Fiji played no part in the 2013 Constitution. It was imposed on us at the barrel of a gun. Fijians had no choice. In all defiance to Constitution meant intimidation, threats, harassment, imprisonment and even physical harm or death. For years the gun ruled this country. The absence of consultations and not listening to the voice of the people plays an important role in your review of the 2013 Constitution.

So, I have, my colleagues here, I can introduce them. They are our General Secretary Lenaitasi Duru and our Assistant General Secretary Samuela Tupou. I started our intervention with coups because of 20 years the people of Fiji have lived under a Constitution that was never theirs and we are all still enduring the consequences of that. After the December 2006 coup Bainimarama governed under the 1997 Constitution for almost three years. In April 2009, the High Court ruled on a case brought by the late Laisenia Qarase, declaring the coup unconstitutional and ordering Qarase's elected Government's reinstatement.

As you all know Bainimarama initially appeared to accept the ruling, saying he and his soldiers would return to the barracks and facing the prospect of a long prison sentence for treason he abrogated the 1997 Constitution the very next day and installed an interim Government that ruled Fiji for five years until 2014 General Elections. Altogether Bainimarama ruled for 14 years and altogether our coup leaders have led Fiji for 28 years.

So, facing mounting pressure at home and abroad to restore democracy, Bainimarama commissioned Professor Yash Ghai to draft a new Constitution. Professor Ghai and his team carried out a wide public consultation and submitted a draft in 2012. Because it didn't give the military everything it demanded, Bainimarama publicly burned it. A calculated display of power and contempt for the people's voice. The interim Attorney General and his handpicked legal team then produced this 2013 Constitution that your Commission is looking at amending in just two months.

The people as I emphasize again were never consulted, and no Parliament has passed it to this vey day. Fijians have no choice but to live under it. The military ruled through fear and public protest was banned. The media was heavily censored and even meetings required permits. To me in my view it was the most fearful period in Fiji's history and the 2013 Constitution was forced on us at the barrel of a gun. Constitutions are supposed to unite us but instead the 2013 Constitution is the most divisive Constitution in our history because the coup makers imposed it. Government should protect and uphold the Constitution but instead even in the Constitution they put in place, the Government even breach

many of those Constitution by suppressing the human rights in their own Constitution.

So, Chairman and Commissioners, this is the country's greatest opportunity to right the wrongs of the 2013 Constitution. We must choose a process that maximizes this opportunity. It seems that as the Chairman has said this Government has chosen to amend the 2013 Constitution through the work of this Commission. I believe that is the wrong choice. Commissioners will recall, a paper by Professor Anthony Regan Australian National University and Cowell Kirby of University of Sydney titled "Fiji 2013 Constitution Review and Amendment or Replacement" which set out the legal options available to us. Having weighed these options carefully, Unity Fiji is clear the only fair and workable path forward is not to amend the 2013 Constitution but to remove it and replace it with an entirely new one. Our grounds for replacement and not amendment are clear. It does not carry the will of the people as I've mentioned before the constitution that says "we the people of this country" is not right. It's a great lie.

We did not participate in it. It was imposed on us as I've mentioned. The Yash Ghai draft, the product of genuine public consultation, was discarded and burned a clear signal of contempt for the people's views. The 2013 constitution never been debated or voted on by an elected Parliament. We must debate openly and the system the process that you are taking is commendable for it. The people never freely accepted it. Fijians complied with the 2013 Constitution at the barrel of the gun under an interim Government that ruled through terror and intimidation. The doctrine of necessity in this Constitution does not apply. Coup leaders often argue that actions were necessary to prevent or to preserve law and order. The argument here fails badly.

There was no rioting no civil disorder in Fiji in December 2006. The coup was carried out to serve the interest of the coup leader not to protect public order. Even the many amendments that people want to how opinion it is easier and cleaner to write a new Constitution rather than try to amend this one. Can it be legally done? We believe so. We prepare the new Constitution, the whole new Constitution and call it an amendment to the 2013 Constitution and go through the legal processes of amendment. This Commission has a rare opportunity to build a Constitution that truly serves Fiji's people now and into the future. Unity Fiji respectfully proposes that the Commission starts with the Yash Ghai

draft. It was drafted after thorough public consultations and I'm confident that it already addresses many of the concerns you have heard in these consultations. Where gaps remain, the Commission can fill them in using your recent consultation. I will now outline the major changes that we propose should be in the new Constitution. First and foremost, we must bring back trust to this Constitution. We must build a foundation that unites the people. The 2013 Constitution as I have mentioned before is widely seen as having trampled on fundamental issues of the indigenous people. Their name, their religion, their land. We must correct this to build a united and stable Fiji. So, first one under this is the word 'Fijian'. Many are suggesting that you consult on the use of a common name.

The itaukei were called Fijians from the beginning. In 2013, that name was stolen from the itaukei without consultation and ceremony. It was insulting, insensitive and dictatorial. Instead of uniting us, this issue had divided us. For Fiji's long-term stability, the itaukei people must now be properly consulted on the common name. We may still end up with the same common name, but it would be unifying not divisive. The principal of consultation I believe will be fair to all ethnic groups in Fiji.

If we at the end of it agree to 'Fijian' as a common name, perhaps also a consultation on what the itaukei people should be called. Recognising Christianity's role. The 2013 Constitution removed all references to Christianity which shaped Fiji's national building from the outset. We all know the importance of religion to all of us. To remove it from the Constitution entirely was really insensitive and abusive. We propose a carefully framed preamble statement, recognizing Christianity as the first religion in Fiji and its role in the country's development. To acknowledge the significant influence in our history will help unify our country.

Remove the clawback clauses, in the Bill of Rights. Provisions such as section 5 of the 2013 Constitution which allows laws to limit basic rights, and no law should be able to reduce the basic rights entrenched in the new Constitution. Second, we should keep the Constitution based on principal not prescriptive. A Constitution should set out principals and not administrative details. Details belong, as you all know in ordinary legislation which is far easier to amend and modernise. For instance, section 127 of the 2013 Constitution gives Permanent Secretaries and Ministers the power to set civil servants terms and conditions within

their own Ministries. This has created serious, pay disparities between civil servants doing the same grade of work, and clouded the demarcation of duties.

It was inserted in the 2013 Constitution to give Ministers more power. Ministers should have no role in operational or staffing matters as under the 1997 Constitution. This responsibility should be with the Public Service Commission. Third, we must strengthen key institutions in the Constitution itself. In their hunger for power, the framing of the 2013 Constitution politicized these institutions to grab more power. First the Constitutional Offices Commission (COC).

Under the 1997 Constitution, COC. members were all from the private sector. I know, because the COC. appointed me, the Governor. The 2013 Constitution instead made the Prime Minister, its chairman, and the Attorney General a member, politicizing the Commission. With consequences that we have seen in the past few years, we propose that the membership of the COC revert to independent private sector representative. The Judicial Services Commission, JSC. The JSC. is currently dominated by judges and chaired by the Chief Justice. A composition we believe imposes risks to the independence of the JSC as we have recently witnessed that bit first hand. We propose changes to allow the independent appointment of judges and the Chief Justice, with perhaps a chairperson from outside Fiji. Fourth, we must overhaul the electoral system. Democracy should be at the cornerstone of any Constitution.

In our submission to the Electoral Reform Commission last year Unity Fiji set out why the electoral system set out under the 2013 Constitution is undemocratic and discriminatory to individuals and new parties. Unity Fiji has experienced this unfairness in the last two elections. For instance, I got the sixth largest vote, yet I'm not in Parliament. We therefore renew our call for a complete overhaul of the electoral system, in line with the Electoral Review Commission recommendation. This work should proceed alongside yours, Commissioners, though we remain unaware of where the Electoral Review Commission report is. Fifth, we must remove provisions of the 2013 constitution that are contributing to the widening gaps between the rich and the poor. We must leave no one behind. The widening gap between the rich and poor threatens Fiji's future political stability. We must reverse this trend now.

So, on this, we want to look at the resource ownership and taxation. Section 30 of this Constitution should be restated so that minerals under land or water are owned by the landowners, who should then pay a resource tax to government when they do mine their minerals. The details of the resource tax should be set out by an ordinary law, calibrated so as not to unduly penalise the resource owners. Fair returns to landowners. Landowners currently receive returns well below market value for their assets. This is not fair.

We propose the Commission should review Sections 28 to 30 alongside the TLTB and related laws to ensure that landowners receive a fair return on their assets. Sixth, we make the following proposals to the processes on election, Parliament and rules for candidacy. First, we allow dual citizens to stand. Section 56A of the 2013 Constitution disqualifies dual citizens from being election candidates. We propose that candidates with dual citizenship should be electable to stand if they have lived in Fiji, say, for two years before nomination. Fiji stands to gain enormously from the return of overseas Fijians to bring back skills and experience. Second, close the deregistered party loophole.

Let me explain. The Constitution and the Electoral Act should be reconciled to clarify the status of sitting MPs whose party is deregistered. Under the electoral proportional system, Section 63 (1) requires all sitting MPs of the party that is deregistered to automatically loose their seats. But when Fiji First was deregistered, its MPs should have automatically lost their seats. Instead, the Government revoked a section of the Electoral Act for them to stay as independent. Many of them took maximum advantage and joined the Government as Ministers. A clear unfairness that your Commission must know.

Third, widened cabinet beyond Parliament. The 2013 Constitution allow only one Minister and that is the Attorney General to be appointed to Cabinet from outside Parliament. A provision designed to protect one man Aiyaz Khaiyum. The 1997 constitution allowed three. So, restoring that number would let Fiji draw on a wider pool of talents. And the last one in this theme is announce election early. In the elections under the 2013 Constitution, the date of the elections has been announced very late according to the whims, of the Government of the day. That is not fair. We propose that the elections are announced eight months before the election day. Seventh, it is time to confront the elephant in the room, Who's that? Its the Military's role in our national life. Fiji's coups and I've

said this many times have cost this country dearly in money and in lives lost. We propose two changes. No immunity for coup leaders. We welcome with gratitude the news that the Commander of the Fiji Military Forces has suggested the removal of the immunity clause from the 2013 Constitution. We welcome that. This is a genuine game changer for the Country. Unity Fiji has constantly advocated and argued that we have one law for all. Those who break the law must be accountable. Forgiveness is a personal choice. Justice cannot be selective. Justice must run its full course.

The second, a narrower military mandate in the new Constitution. The new Constitution should confine the Military's role to national security and defence. We all know that. Its common sense. The wellbeing of the people is the Government's responsibility. Never the Military. Finally, provisions such as Section 173 in the current Constitution which preserve laws made under the post Constitution should be removed. In closing, Chairman and Commissioners, whatever new Constitution we come up with, the elephant in the room will still be here. What is stopping a future coup maker from throwing away the Constitution that you are going to develop? What's stopping them? That question is a rhetoric one. None. Nothing. Bainimarama promised that his coup was going to be the last one. Who believes him. My view, the answer to political stability is economic wellbeing.

We must use the resources that we have. We must correct this skewed income distribution. We must stop corruption. We must not leave anyone behind. We must embrace the transformation, the innovation and the change. That I believe will help political stability in our country and hopefully over time, get the people to realise that the power is with them not the military. That the real power is with our people.

Firstly, the Constitution must respect the rule of law to give that power to the people and understand that the sensitivities of national building under a diverse culture. People don't speak out against the coup and its cost like I do. I would encourage and I am encouraging our people to recognise that this doesn't build our future. The Constitution alone wont build that future. Its the people that can stand up and say this is enough. I believe with economic well being and fair inclusive Constitution we might get there to that place in our future. That ends my submission Chairman, and I wish the Commissioners every success in this difficult

and important work. May God bless you and your families and may God bless Fiji. Thank you.

Mr. Valenitabua: Vinaka vakalevu Mr. Narube. We have heard your oral submission. I see that you're reading from your laptop. We would really appreciate it if you send us your submission so that we can have the hard copy of it. If we can have that it would assist us a lot. Now for the submission this morning you've raised a number of points, a number of issues which most of which we have heard from other submitters. The concerns of the people in relation to the 2013 Constitution. We are glad that we have had widespread consultations throughout Fiji and the same comments keep coming up that this Constitution was imposed on us. We didn't know anything about it.

This was the first time that people on the ground have been consulted about the Constitution. So, we have done that part all over Fiji. We are now hearing from you here at level 9 Suvavou House and it is just a reinforcement of what we have been hearing around. Just a point I would like to address. You had stated in your submission that its only fair that we remove the 2013 Constitution and not to amend it. You will understand that the current coalition Government had filed a reference to the supreme court last year and the supreme court had given us their opinion in relation to the 2013 Constitution. I believe that Unity Fiji was represented during the hearing and the proceedings of that reference hearing, and I believe you would have been advised that the supreme court had stated that the 2013 Constitution was valid and binding on the people of Fiji and that the 1997 Constitution was no more. We cannot bring that 1997 Constitution back and in addition to that ruling or that opinion by the supreme court, the supreme court had set out a means an avenue of facilitating the amendment to the 2013 Constitution.

They had decreased the percentage or the number of votes in Parliament and also the number of votes in a referendum which can facilitate an amendment through a Bill to Parliament to be produced by the Government. Now we have been following the suggestions that were made by the supreme court. We cannot remove the 2013 Constitution. We don't have the mandate to do it. We can only amend the 2013 Constitution because that is the mandate we were given. However, we understand that amendment can mean amending from page 1 to the last page. We understand that so we get your point. Maybe you put it in a different wording but that's what we understand. An amendment is an

amendment. We can remove laws, which are in the Constitution, we can add new laws, we can change the provisions by altering words or adding words just to change the meaning in the Constitution so we get your point when you say that you only fear to remove the Constitution although we can't remove it, we will be amending it. You will see on our right a lady from New Zealand. That is our legal drafter, and she is sitting here today listening to the Consultations. We also have a constitutional lawyer in Professor Anthony. Regan. He is also on board, so we are looking at the Constitution in that light. That is my comment for this morning. I will now ask the Commissioners if they have any comments or any questions to ask your team here this morning. Dr. Fatiaki.

Dr. Fatiaki: Thank you Chair through you. Mr. Narube thank you very much for your submission. Thank you for the opening comments and reflection. I think it is import in anything that people do they do in a context. And I think your literal take back in history was a good refresher for all of us to understand that every time we had a Constitution it's been in response to a coup. I think that part is important, and I thank you for that. I just want to add and again this is semantics for me personally. We will use the word amend as defined in the current Constitution.

It says in this section the use of the word amend or amendment is intended to be understood broadly so that the section applies to any proposal to repeal, replace, revise or alter any provision of this constitution. That is the definition of the word amend as given here. And you heard the Chair allude to the fact that we can take line one to the last line and amend using repeal, replace, revise or alter. So, I think the issue is more just to reassure you that yes, we can't replace or remove, because this is asked of us often.

But when I tell them that the Supreme Court has indicated that we can't remove, I immediately follow that up by reassuring them that the definition of the word amend is this. And that could, for instance, on legal advice, we've been told that could include the renaming. So presumably this will no longer be called the 2013 Constitution as an amendment bill. I just want to say that to clarify that part of it, reading from you directly the definition of the term amend or amendment as utilized in this Constitution, and that's what we understand it to be. I hope that provides you some comfort in knowing that although we can't remove it, we can certainly do a lot with it. Thank you.

Mr. Kohli: Thank you, Chair. Thank you, Mr. Narube. It was always very interesting reading the articles when you were Governor of the Reserve Bank of Fiji. There are two issues, one adding on where the fellow commissioner, Dr. Fatiaki, has said. You'll be aware of the fact that we are not allowed to touch Chapter 10, immunity. Why? Because of Supreme Court's determination, not opinion determination. Number two, I just want some clarification from you, sir. See, in the present Constitution, there is a provision whereby Attorney General can be appointed from outside the Parliament if there is no qualified person in the Parliament. If I hear you correctly, you are now asking that there should be wider participation in the sense that we should allow three people from outside the Parliament to be in the Cabinet. How do you reconcile that with democratic principles of representative Parliament? That's my question. I would like to know how do we address that?

Mr. Narube: As I mentioned in my submission, the 1997 constitution had three. It had three ministers that the Prime Minister can appoint from outside Parliament. If you look at other jurisdictions, they have the same. The basis of it is, as in this Constitution, that if they do not have the skills and the experience, for key ministers like Attorney General, Finance, for instance and that interpretation is open to the Prime Minister how to use that. But yes, you are right. If there is a person in Parliament elected by the people that has the skill to undertake that work, I think he should be appointed from. But he should leave that flexibility to the Prime Minister in case there is not skills amongst the elected MPs to undertake those key roles. It's just the flexibility to make sure the Cabinet has that strength to be able to do what it does and to lead the country. That's my understanding. And you may like to word it that way. The qualification could be quite the same as this one.

Mr. Kohli: Will they have voting powers?

Mr. Narube: No. They are not elected. So, they cannot vote in Parliament. So that's a distinction. On those words that you mentioned, Dr. Fatiaki, on the replacement versus amendment, I leave that to your good judgment. But the spirit of what I said should be there. Yes. And as you said, you should change the name. I think that will be a unifying turning point, the change in name. But if it's, to me, a totally new constitution, then you put it as an amendment and follow the amendment process of what the Supreme Court has done. We Unity Fiji before the Supreme Court said last year, as the Chairman of the Commission knows, Unity Fiji was ready to

challenge the legality of the 2013 Constitution in the court of law. And then the Supreme Court decision came in and put the spanners in. So, we stopped that. So, I think this is an opportunity to not entirely do the same thing, but something similar, but using the processes laid-down by the Supreme Court. Thank you.

Dr. Gounder: Thank you, Mr. Narube. Members from Unity Party for your submission this morning. As usual, Mr. Narube, I always look forward to your analysis and expertise. I just have a question for you. You are the first political party that is submitting, and we'll have the others following the submissions this week until Friday. So, what did you tell those people who say, who argue about the acceptance of the Constitution from the fact that they voted for Fiji First, which brought the Constitution in 2014 with over 60% of votes to Fiji first, but twice they opted to elect Fiji First, which actually brought this Constitution. And they campaigned under the Constitution as well. Thank you.

Mr. Narube: Well, I think we should separate the Constitution process that was followed from the political process after the Constitution was entrenched. This Constitution was decreed. It was decreed. It was not passed by Parliament that Fiji First had the majority. That came later, much later. This was decreed. That's the biggest difference to me. When you decree something out of what you believe is the best for the country without consulting the people, and that is a crucial crucial error. And then there was an election, the first election held under the Constitution which Fiji First won. Because that is democracy, that is electoral system set up by the Constitution. So, the selection of Fiji First in 2014, the first election under the Constitution, their majority to me should not be linked to the decree of the Constitution. It's wrong.

Dr. Gounder: Just a follow-up, a quick one. So, Fiji First victory in 2014 and 2018 does not give any mandate to the Constitution that we have at the moment. Is that what you're saying?

Mr. Narube: Yes, I believe that. And this issue of acquiesce that we know has been put forward exactly under that reasoning. The people of Fiji acquiesce to the 2013 Constitution by three elections under it. Yes. I disagree with that. I'm not a lawyer. I say acquiesce at the point of a gun is not acquiesce. Acquiesce when you are intimidated, when you speak against the Constitution is not acquiesce. That is imposing the Constitution under those kinds of conditions. That's my view. Thanks

Mr. Valenitabua: Mr. Narube, Mr. Duru, Mr. Tupou, thank you very much for coming here this morning and making these submissions on behalf of the Unity Fiji Party.

----------End of Session [6-7-26] ----------

6 July 2026

SUBMISSION BY UNITY FIJI TO THE 2026 CONSTITUTION REVIEW COMMISSION

Coups and Constitutions

There is a close relation between constitutions and coups in Fiji. Fiji has endured three military coups since 1987 — the first two led by Sitiveni Rabuka, the third by Commander Voreqe Bainimarama in December 2006. Rabuka's coups produced the 1997 Constitution. Bainimarama abrogated that constitution in April 2009, then promulgated the 2013 Constitution without consulting the people and without parliament's approval.

The people of Fiji played no part in writing the 2013 Constitution. It was imposed on them at the barrel of a gun. Fijians had no real choice but to comply. Defiance meant intimidation, threats, harassment, imprisonment — even physical harm or death. For years, the gun ruled this country. This absence of consultations and not listening to the voice of the people plays an important role in the review of the 2013 Constitution.

On behalf of Unity Fiji, I thank the Commission for this invitation. I started with the coups because for twenty years the people of Fiji have lived under a constitution that was never theirs — and we are still living with the consequences.

The 2013 Constitution

After his December 2006 coup, Bainimarama governed under the 1997 Constitution for almost three years. In April 2009, the High Court ruled on a case brought by the late Laisenia Qarase, declaring the coup unconstitutional and ordering Qarase's elected government reinstated. Bainimarama initially appeared to accept the ruling, saying he and his soldiers would return to the barracks. Then, facing the prospect of a long prison sentence for treason, he abrogated the 1997 Constitution the very next day and installed an interim government that ruled Fiji for five years, until the 2014 general elections. Altogether Bainimarama ruled for 14 years.

Facing mounting pressure at home and abroad to restore democracy, Bainimarama commissioned Professor Yash Ghai to draft a new constitution. Professor Ghai carried out wide public consultations and submitted his draft in 2012. Because it did not give the military everything it demanded, Bainimarama publicly burned it — a calculated display of contempt for the people's voice.

The interim Attorney-General and his hand-picked legal team then produced the 2013 Constitution in just two months. The people were never consulted, and no parliament has ever passed it — to this day.

Fijians had no choice but to live under it. The military ruled through fear: public protest was banned, the media was heavily censored, and even meetings required a permit. It was the most fearful period in Fiji's history, and the 2013 Constitution was forced on the people at the barrel of a gun.

Constitutions are supposed to unite the country. But instead, the 2013 Constitution is the most devise constitution in our history because the coup makers imposed it. Government should protect and uphold the constitution. But instead, the government that framed the 2013 Constitution seriously breached the constitution by supressing basic human rights.

Remove the 2013 Constitution — Do Not Amend It

This is our opportunity to right all the wrongs of the 2013 Constitution. We must choose a process that maximises this opportunity. This Government has chosen to amend the 2013 Constitution through this Commission. That is the wrong path.

Commissioners will recall a paper by Professor Anthony Regan (Australian National University) and Coel Kirkby (University of Sydney Law School), *Fiji 2013 Constitution: Review, and Amendment or Replacement*, which set out the legal options available to us. Having weighed those options carefully, Unity Fiji is clear: the only fair and workable path forward is not to amend the imposed 2013 Constitution, but to remove it and replace it with an entirely new one.

Our grounds for replacement are clear:

a) **It does not carry the will of the people.** A constitution must reflect the will of the people who live under it, formed through a thorough and inclusive process. The 2006 coup-makers imposed the 2013 Constitution. The Yash Ghai draft — the product of genuine public consultation — was discarded and burned, a clear signal of contempt for the people's views.

b) **It was never debated or voted on by an elected parliament.** A constitution must be openly debated and voted on by a legally elected parliament. The 2006 coup leader simply decreed the 2013 Constitution. It has never been tabled, debated, or voted on. It is not the will of the people — it is the constitution of the 2006 coup-makers.

c) **The people never freely accepted it.** Fijians complied with the 2013 Constitution at the barrel of a gun, under an interim government that ruled through terror and intimidation. No protest was permitted — not even on social media. There was no genuine coalescing around this constitution; there was only fear.

d) **The doctrine of necessity does not apply.** Coup leaders often argue their actions were necessary to preserve law and order. That argument fails here: there was no rioting and no civil disorder in Fiji in December 2006. The coup was carried out to serve the interests of the coup leader — not to protect public order.

Given the many amendments that people want, it is easier and cleaner to write a new constitution rather than amend it. Can it be legally done? Yes, we prepare the new constitution as an amendment to the 2013 Constitution and go through the legal process of amendment.

Start With the Yash Ghai Draft

This Commission has a rare opportunity to build a constitution that truly serves Fiji's people, now and into the future.

Unity Fiji respectfully proposes that the Commission start with the Yash Ghai draft. It was built thorough public consultation, and I am confident it already addresses many of the concerns you have heard. Where gaps remain, the Commission can fill them using its own recent consultations.

The Changes Fiji Needs

I will now outline the changes that we propose should be in the new Constitution.

1. Construct a Strong Foundation

First and foremost, we must build a foundation that unites the people. The 2013 Constitution is widely seen as having trampled on fundamental issues of the Indigenous people—their name, their religion, and their land. We must correct this to build a united and stable Fiji.

a) **Consult on the common name "Fijian."** The iTaukei were called Fijians from the beginning. In 2013 the name was stolen from the iTaukei without consultation or ceremony — an insulting, insensitive and dictatorial act. Instead of uniting us, this

issue has instead divided us. For Fiji's long-term stability, the iTaukei people must now be properly consulted on the common name. We may still end up with the same common name, but it would be unifying not divisive. The principle of consultation is fair to all the ethnic groups in Fiji.

b) **Recognise Christianity's role.** The 2013 Constitution removed all reference to Christianity, which shaped Fiji's nation-building from the outset. We all know the importance or religion to the people. To remove it from the constitution entirely was insensitive and abusive. We propose a carefully framed preambular statement recognising Christianity as the first religion in Fiji and its role in the country's development. To acknowledge this significant influencer in our history will help unify the country.

e) **Remove the clawback clauses.** Provisions such as s5 of the 2013 Constitution, which allow laws to limit basic rights, should be removed. No law should be able to reduce the basic rights guaranteed in the new Constitution.

2. Keep the Constitution Principle-Based, Not Prescriptive

Second, we should keep the constitution principle based. not prescriptive. A constitution should set out principles, not administrative details — details belong in ordinary legislation, which is far easier to amend and modernise. Section 127 of the 2013 Constitution, for example, gives Permanent Secretaries and Ministers the power to set civil servants' terms and conditions within their ministries. This has created serious pay disparities between civil servants doing the same grade of work and clouded the demarcation of duties. It was inserted into the 2013 Constitution to give Ministers more power. Ministers should have no role in operational or staffing matters; as under the 1997 Constitution, this responsibility should sit with the Public Service Commission.

3. Strengthen the Independence of Key Institutions

Third, we must strengthen key institutions. In their hunger for power, the framers of the 2013 Constitution politicised these institutions to grab more power.

a) **Constitutional Officers Commission (COC).** Under the 1997 Constitution, COC members were all from the private sector — I know this because the COC appointed me, Governor. The 2013 Constitution instead made the Prime Minister its chairman and the Attorney-General a member, politicising the Commission, with consequences we have seen over the past two years. We propose that the membership of the COC revert to independent private-sector representatives.

b) **Judicial Services Commission (JSC).** The JSC is currently dominated by judges and chaired by the Chief Justice — a composition whose risks we have recently witnessed firsthand. We propose changes to allow the independent appointment of judges and the Chief Justice, with a chairperson who could be drawn from overseas.

4. Overhaul the Electoral System

Fourth, we must overhaul the electoral system. Democracy should be the cornerstone of the constitution. In our submission to the Electoral Reform Commission last year, Unity Fiji set out why the electoral system introduced under the 2013 Constitution is undemocratic and discriminatory to individuals and new partes. Unity Fiji has experienced these in the last two elections. We therefore renew our call for a complete overhaul of the electoral system, in line with the Electoral Review Commission's recommendations. This work should proceed alongside this Commission's — though we remain unaware of its status.

5. Promote Equitable Income Distribution

Fifth, we must remove provisions of the 2013 Constitution that are contributing to the widening gaps between the rich and poor. We must leave no one behind. The widening gap between rich and poor threatens Fiji's future political stability. We must reverse this trend now.

a) **Resource ownership and taxation.** Section 30 should be restated so that minerals under land or water are owned by the landowners, who should pay resource tax when they mine the minerals. The details of the resource tax should be set by ordinary law, calibrated so as not to unduly penalise resource owners.

b) **Fair returns for landowners.** Landowners currently receive returns well below market value for their assets. This is unfair. The Commission should review sections 28–30, alongside the TLTB and related laws, to ensure that landowners receive a fair return on their assets.

6. Reform Processes of Elections and Parliament

Sixth, we make the following proposals to the processes on elections, parliament, and rules of candidacy:

a) **Allow dual citizens to stand**. S56(a) of the 2013 Constitution disqualifies dual citizens from being election candidates. We propose that candidates with dual citizenship should be eligible to stand if they have lived in Fiji for two years before nomination. Fiji stands to gain enormously from the return of overseas Fijians bringing back skills and experience.

b) **Close the deregistered-party loophole.** The Constitution and the Electoral Act should be reconciled to clarify the status of sitting MPs whose party is deregistered. Under a proportional system, S63(1) requires all sitting MPs of the party that is deregistered to lose their seats. When Fiji First was deregistered, its MPs should have automatically lost their seats. Instead, the Government evoked a section in the Electoral Act for them to stay as independents. Many of them took maximum advantage and joined the Government as Ministers — a clear unfairness that must be closed.

c) **Widen Cabinet beyond parliament.** The 2013 Constitution allows only the Attorney-General to be appointed to Cabinet from outside parliament — a provision designed to protect one man, Aiyaz Sayed-Khaiyum. The 1997 Constitution allowed three. Restoring that number would let Fiji draw on a wider pool of talent.

d) **Announce elections early.** In the elections under the 2013 Constitution, the date for the elections has been announced very late according to the whims of the government of the day. This is not fair. We propose that the elections are announced at least eight months before the date.

7. Redefine the Role of the Military

Seventh, it is time to confront the elephant in the room: the military's role in our national life. Fiji's coups have cost the country dearly, in money and in lives lost. We propose two changes.

f) **No immunity for coup leaders.** We welcome, with gratitude, the Commander of the Fiji Military Forces' own suggestion to remove the immunity clause from the 2013 Constitution — a genuine gamechanger for the country. Unity Fiji has consistently argued for one law for all: those who break the law must be accountable. Forgiveness is a personal choice; justice cannot be selective. Justice must run its full course.

g) **A narrower military mandate.** The new Constitution should confine the military's role to national security and defence. The wellbeing of the people is the government's responsibility — never the military's.

8. Remove the Preservation-of-Laws Provision

Finally, provisions such as section 173, which preserve laws made under the imposed constitution, should be removed from the new Constitution.

Closing

In closing, whatever new constitution we come up with, the elephant in the room will still be here. What is stopping future coup makers from throwing away this new constitution and

imposing theirs as history has shown? The question is a rhetoric one. Bainimarama promised that his coup was going to be the last one. Coming from a coup leader, no body believed him.

In my view, the answer to political stability is economic wellbeing. We must use the resources that God has given us. We must correct the skewed income distribution. We must stop corruption. We must not leave anyone behind. We must embrace innovation and change.

Finally, although many of us do not realise it, the people have the power to stop coups. The most important first step is a constitution that respects the rule of law and understands the sensitivities of building a united and prosperous nation in a diverse culture. The people must speak out against coups and never allow coup leaders do not benefit from their illegal actions.

I wish the Commissioners every success in this difficult and important work. May God Bless you and your families.

Thank you.

Richard Naidu

Mr. Richard Naidu
Date: 6-7-2026
Time:12pm-1pm

Mr. Valenitabua: Thank you for giving your time to be here this afternoon. I will not take further time for introductions and all that. I'm sure you know all of us sitting up here.

Or is there anyone you don't know? No, for better or worse, I know all of you. Thank you. So we need no introduction.

We are here to listen to you. Maybe exchange conversation. Yeah, not the usual submission mode.

We appreciate you being here because we might have a lot of questions for you. So, without further ado, we will now give you the mic and the floor. If you could just open up, start off our conversation this afternoon.

Good luck.

Mr. Naidu: Thanks, Mr. Chairman. That was really why I asked for a closed session.

There were two reasons. The first of which being that anything I tend to say tends to be immediately attributed to a political party, which is not fair on the political party. So, I thought it was better that I submit it in private.

But the second was that I do hope we have the opportunity to discuss rather than me just giving a peroration. The trouble with lawyers, of course, is that we all charge by the hour, which means that we can only speak for blocks of one hour and not less. So I'm going to try and get through the things that I wanted to talk about.

Mindful that I know that you've heard from the President of the Law Society. I know you've heard from my colleague, John Apted. Those are the real constitutional lawyers.

I'm a pretend constitutional lawyer. Business is really what I do, how I advise. But there is a reason, I think, for me to focus on that, and I'm going to try and focus on things that I think are most practical and most effective, particularly in the hour that I have.

If you have the two-page summary, some of you do, some of you don't. I'm hoping the hard copy will arrive very shortly. I just want to begin by commending the Fiji Law Society submission, which I read.

I thought it was very good. And, of course, I did get something of a lowdown on what my partner John said, and generally I'm very rarely apart from him on his views on constitutional issues. What I wanted to focus on, though, also was to, just by way of a reminder, if only a reminder, about the economy and how important the Constitution is.

The Constitution has an economic dimension, and we should not lose sight of that. I'm a commercial lawyer. One of the things I do is advise investors, particularly foreign investors, who are always interested in the basic fabric of the rule of law.

They want to know that the court system works effectively and is independent and functional. They want to know that the legislative system, the way we pass legislation and the way we enact legislation, is efficient and independent. So, I think while we are caught up a lot in terms of people's rights and in terms of political objectives, let's not forget it was Bill Clinton, when Bill Clinton was campaigning to become President, he had a slogan, 'it's the economy, stupid'.

That's what he kept saying to himself. And I think we need to remember that the economy is at the core of everything. The economy is at the core of social stability.

It's at the core of the way people live. And the Constitution has an economic dimension, and it is important not to lose sight of that. One of the things that I will talk about, really just in passing, and it occurred to me, one aspect of the 2013 Constitution which is troubling and has troubled a lot of people is the infamous section 173, subsection 4, which is the provision which says that there is a whole range of legislation, decisions on which cannot be challenged in court.

This was just a very crude and amateurish way of trying to protect the immunity legislation that existed before. Very poorly thought out, but that's because, as I will come to, the 2013 Constitution was just done in a rush. But what that means is that there's a whole raft of things for which the government, when it legislates or it otherwise enacts executive decisions, cannot be challenged, is not accountable.

It's not accountable for an irrational decision. It's not accountable for a non-consultative decision. It simply cannot be held to account in the law.

And this extends even to decisions of government ministries. So any legislation, in essence, that was enacted after the coup and before the sitting of the first parliament, any law that is in that 2006-2014 period, even a bureaucratic decision today is unable to be challenged. That's really bad for governance.

It's really bad for the accountability of ministers, senior civil servants, when you cannot hold people legally accountable. What does it mean? They don't have to reason their decisions. They're not exposed to the thinking that is behind those decisions.

It's not exposed to any judicial or public scrutiny at all. And that is a recipe for bad governance. It is a recipe for corruption.

And that is just a simple example of how the... Because a lot of these decisions are economic. And when a business cannot challenge an irrational business decision, that becomes a matter of investor confidence, which goes to the economy. That's just a little example, not the only one.

The second thing that I wanted to talk about was your process. And regrettably, I do not think that the process you have been given, the task that you have been allocated, is a fair one. That is not any of your fault.

And in fact, in a way, it's almost heroic that you've accepted the mission impossible that you've been given. But the process that you have been given to follow is an almost impossible one to achieve, for the reasons that I've said out there. You cannot review a constitution in a rush.

2013 was the proof of that. You cannot review a constitution in a rush. I think once you have managed to issue your report, that's something that should just be allowed to permeate and to allow people to respond and feedback to, before we rush into the next stage, which is legislation.

And the timetable that you have been given really doesn't allow for that. Clearly, a significant proportion of the population want the 2013 constitution to go. And I'm sure you've heard a lot of that.

I heard a lot of that in the constitution case in the Supreme Court. It must go. And there's this almost fanatical devotion to that principle, without really thinking about what should replace it.

And I think that's, again, one more reason for us to all slow down and say, well, fine, we understand that it has to go, but what is it that you really want in its place? And that's something that really we should have the time to discuss and think about. Clearly, I think what that means for you as a committee or for the process is that this cannot be an amending process. I just don't think that there is popular support for the idea that this 2013 constitution should be amended.

Remember, 1997 was about amending the 1990 constitution. But there just seems to be such a vociferous dislike of this constitution that even

if it's only for the optics, it really has to go. What does that mean? It means that you've got to construct a completely new one, and that takes time.

You cannot just do this on the fly. So I would certainly encourage the commission, if it has the opportunity, to just say to the government, look, you must slow this process down. Otherwise, it is not a credible process.

And we just cannot continue to have constitutions that lack credibility. And I've gone through the other steps that we have to go through, but we are just doing this in too much of a rush. And somebody has to simply say to the government, we're sorry, you cannot do it in this way.

You cannot have a good and effective and lasting constitution if you rush this process. I think it's important, this goes to my third point, even if that's only a starting point, how we view the 2013 constitution, because we need to learn from that process. And we need to understand why, I think, well, we need to learn the mistakes of that constitution.

It was a rush job. We know this. The Ghai draft went up in flames, and something else had to be provided very quickly.

And so there was this rush job which produced a constitution that nobody knew about and nobody wanted. What were its main features? It was tailor-made for the people who were then in power. And I think it was very, very cynically drafted.

The electoral system, this pure proportional representation system, if I can talk politics for a moment, was driven by, I think, the fact that the previous government saw the Indo-Fijian population as its political base, understood that a constituency system might not deliver the results that it wanted electorally, so decided if we can simply treat all of the communities as racial blocs, that will produce a particular percentage for us. Whatever else we can add to, that is how we're going to win an election. There was no thought given to democracy.

There was no thought given to accountability, democratic accountability. It was just about how will we win. For the first time, we had a unicameral system, a parliamentary system, and that very much reflected a sort of dictatorial way of saying, let's just get things done.

Not interested in accountability, not interested in anything other than that. The control of the key institutional appointments, the constitutional offices and the judiciary, are so clearly in the control of the executive, and in particular the Prime Minister and the Attorney General. That was not a surprise.

I sat, I think, at this level. I used to sit on the constitutional offices commission as an opposition appointee, until I just got fed up. It was a purely rubber-stamping process.

The constitutional offices commission had the Prime Minister and the Attorney General and two flunkies. On one side, the Leader of the Opposition. On one side, one more helpless nominee.

That was me. And we sat there and just listened while everybody just voted four two, four two, four two. That was not a process by which constitutional offices should be appointed.

But again, it was cynical. It was nothing more than that. We're now paying the price for this.

That is, I think, something that we don't really understand. 2006 to 2014 and the 2013 Constitution was basically just dictatorship democratized. And as a result of that, we lost the opportunity over 16 years to build good governance, to build precedence, to build law, to educate our public servants about how they could respond to Ministers in an independent and functional way.

All of that disappeared. And we lost all of the experience of many experienced senior public servants, and everybody became used to just doing what the Minister said. So, the whole function of the independent public service, which is critical to good governance, disappeared.

And we are paying the price for that now. So that's what I want to say about the 2013 constitution. It's really important that we understand what went wrong and why it happened and not repeat those mistakes.

My fourth point is whether we should return to a bicameral legislature. That's been a feature of every constitution since 2013. It's the Norman Commonwealth countries, I think, other than New Zealand.

But I think if, again, we know our history, we will know that that second chamber was a real house of review. It typically had appointed, not elected members. And it was a very important means of protecting indigenous people's rights.

But it was also a way in which legislation could be effectively scrutinized. And once again, this idea of a unicameral legislature, just because you can rush legislation through, has resulted in cynicism around legislation and very poor-quality legislation because there's nobody reviewing it.

I want to move on to the rights and protections for indigenous people because I'm sure that this is a critical issue.

And again, I want for us to look at it through a common sense but also an economic lens. It's a sensitive issue and it needs to be managed. And again, I will summarize.

I'm trying to rush through this. But at a very high level, I think what I would say is that for indigenous people, there is a belief that these elevated constitutional rights, rights to resources, rights to land, everything, it will solve every problem. And it must be evident that it will not.

And I think people are possibly susceptible to politicians who suggest that as long as we have complete control over land and resources and everything, every other problem will solve itself. It will not. And that has been our experience for the last 50 years.

At the same time, for non-indigenous people, this idea of some elevation of indigenous rights is a source of grievance. Non-indigenous people believe that they're being turned into second-class citizens and, I guess, also many of their political leaders are trying to advance that. Also untrue.

So it's clear that an appropriate balance is possible. Many countries around the world have done this. The results are not always there, but the effort and the attempts are there.

And so I think we need to recognize that an unnecessarily elevated set of indigenous rights threaten national unity but also economic confidence. And we have to be alive to that. But I think we can ensure that on critical issues on land and other resources, customs, and traditions.

Indigenous people have, and I was rushing through this summary this morning, and I couldn't find the right buzzwords. I put them all there. Whether it's agency or autonomy or sovereignty, I'm not sure which one it is.

It's one of those words, or maybe none of them. But I think that is where we must ensure that that principle is respected. A really good example, and once again an example of the rush job that was the 2013 Constitution, is in Section 28.

For those of us who remember, Section 28 was an insertion. So, when the draft Constitution came out, every question was asked, where is the protection of indigenous rights to land, custom, culture, etc.? And we were told, it's all there. It's in your protection of your property rights, Section 27.

Well, there was this, you know, correct, complete dismissal of that. Nobody had thought about it. So, what happens instead? We put in a Section 28 that says, the ownership of all iTaukei land shall remain with the customary owners and shall not be permanently alienated, etc., etc.

And this was presented as, look at us, we've protected everybody's rights, it's all great, and these are the strongest rights ever. They are not. All that they succeeded in doing was depriving indigenous people of any right over their own land, their own customs and their own traditions.

And again, we focus, let's go back to the economy for a moment. Denarau Island, on which 40% of all Fiji tourism operates, all of the hotels on Denarau Island sit on iTaukei land, on iTaukei leases. Why? Because in the 1990s, or the late 1990s or 2000s, a series of so-called land swaps occurred.

Denarau was swapped. It had a bit of freehold land, had a bit of iTaukei land, and the rest was swamp, foreshore, which became crown land or state land. But what happened once Denarau was all put together was that there were no marketable parcels of land.

There was a bit of crown here and a bit of iTaukei here and a bit of freehold there. You couldn't build anything on anything. So what happened was they engaged in what were called the land swaps of Denarau.

Land was changed around so that you could create marketable parcels of land. And the result of that was that all of the beachfront ended up as iTaukei leases because the land was swapped. This bit of land, this bit of iTaukei land was swapped for foreshore, foreshore was swapped for freehold, etc.

And the result was that you now have some very prosperous landowning units who are the lessors of Denarau land. That could not have happened under Section 28 because there was no right, absolutely no right, to alienate land. The process that was gone through with the land swaps, it went right up to cabinet.

It was a cabinet process, Fijian affairs, and so on. But it's a very good example of how this sort of rhetorical rush to say, we've got the best land protection rights ever actually just denied indigenous people the opportunity through a carefully considered deliberate process to actually improve their livelihoods. So that's an example of how rushing and rhetoric are not the way in which to create a constitution.

And I think again, if you look at the older system, it did not prevent indigenous people or their representatives in parliament from changing anything. If they chose to turn iTaukei land into freehold land, it was within their power to do so. But that was a right that rested with the representatives of the people.

There was no paternalistic system that says, you may not. It depended on them. And I think, you know, this is something that we've got to go back to and be alive to.

This idea that it's for indigenous people themselves to decide their future, not for a constitution to say this is what you must not have, this is what you cannot have.

So, I think if we revert to the bicameral system and the protection structure, we also need to think carefully about indigenous people's leadership. And of course I'm focused on, it's not just the iTaukei, it's the Rotuman population as well.

We do need to think about it. Is the Great Council of Chiefs, as it was formulated, or the BLV as it's formulated now, is that the correct institution that in the 2020s should represent the iTaukei? Or is there some different structure that we need to give thought to? Given that indigenous people are not the people, they're not where they were in the 1970s, there's a whole diaspora now, there's a whole urban community now whose interests are very different from the 1970s when Fiji became independent. So finally, as part of my rush through this, I want to just talk about the electoral system.

The pure PR system, as I said, was a cynical tactic engaged in by the last by the Bainimarama government. Wasn't accountable, wasn't people-level democracy. People are entitled, at the very least, to a member of parliament.

At the same time, I think it's important to recognize that government is now a more complex process than it has ever been. I was just reflecting on poor old Keir Starmer falling from grace, and it just so happens that I'm reading a biography of Harold Macmillan, who was a Prime Minister in the 50s and 60s, and how much easier it was back in those times for politicians to lead. And I think it's also an acute problem in a small place like Fiji.

I pay a lot of attention to New Zealand and Australian politics, and New Zealand and Australia are still able to attract technocrats into their politics. So you have some very, very skilled, specialized people in policy-making positions in the Cabinet, in the ministries. And in Fiji, we just do not have that depth.

It's not anybody's fault. There's only 900,000 of us, and we cannot attract... We've got to go and hand-pick that depth if we want the skill at that particular level in Cabinet. And I think something like the MMP system, I think it has two attractions.

One is that it could probably allow us to hand-pick skilled people. But it could also be used, I think, to improve female representation in Parliament. Again, the MMP system can be used for that.

And I understand, as I understand it, the Justice Fatiaki chaired electoral system, I think, has proposed something like MMP plus six, I think. Six seats for women. Was it 20 or not? That's... Okay, interesting.

Yeah, yeah, I can't... Yeah. And I think there's a lot of controversy around what they call temporary special measures, and whether or not these are the right thing or the wrong thing. I personally see a place for that.

But that's as much... That's as far as my competence goes on that. I'm not an expert in any manner. But I do feel that an MMP style system could... It would be important to bring skills into Government at the legislative level, but also at the executive level.

We really can't... We don't have the luxury, really, of avoiding that. We've somehow got to get skills into that level of Government. And I think MMP has a lot to recommend it.

And again, not being any sort of expert in electoral systems, that's probably where I should stop before I embarrass myself any further. So that's... Those are the points that I wanted to cover, and I hope I've covered them as swiftly as I can to give everybody the opportunity to ask me any questions.

Mr. Beg: Just on the electoral system, the MPP system, in terms of coalition, like in terms of coalition Government, that may or may not work given the circumstances, given the conditions that we're under. So that needs to be thought out whether... Because we've heard constituency base quite a bit throughout the country. So there's no right and wrong to what I'm saying.

I'm just pointing out some of the facts that I'm listening to. There may be some disadvantages with that proportionality. I may be wrong, but is there... You got any comments on that? I have two comments on that, I think.

One is the point I forgot to make here, which is we can't go back to communal representation, I don't think. It definitely had a place. So when people attack the 1970 Constitution, or even the 1990 Constitution as racist, that's not so.

I think it was actually a means of ensuring in a different time that people were genuinely represented. In the 1970s, people didn't have the functionality in English. They didn't have... The modernity in society just wasn't there to support a pure common role system, in my opinion.

And so it was important, and of course it was a complex system. You had national MPs and you had communal MPs, but you always had somebody to whom you could relate who understood you better, who could communicate with you in your own language, and so on. I think we're beyond that now.

I think it's important from a national unity viewpoint that we do have what's now called common role. But that doesn't address your point, Conway. I think the answer to your question is that there is no system now I think that will guarantee a nice, clean, two-party system of democracy.

I think we are possibly headed into the next election, and we're going to end up with a quite significant fracturing anyway. So whatever system we have, we are going to have to get used to coalitions. They are going to become the norm.

And you're right that MMP around the world tends to foster coalitions and force governments to work in coalitions and in many European countries, I think Germany, I think Belgium went for a year and a half once without a government after an election because they couldn't put a coalition together. Good for the caretaker government, I guess. They were able to hang around for that long.

But I think that's a reality that we have to get used to regardless of the electoral system. I don't think the electoral system any electoral system is a guarantee any democratic electoral system anyway is a guarantee of a nice, clean, efficient, two-party government anymore.

Dr. Fatiaki: Richard, thank you. Thank you very much for that. Excellent purview of I guess a lot of the issues that we will be mulling over the next two months.

My comments are more a philosophical thing. I entered this with the understanding that my mandate in terms of reference indicate that I should go out and address what the Supreme Court alluded to as being

the democratic deficit, which was this lack of consultation. We heard from submitters this morning that that was a significant issue.

And so I entered this job with the understanding that I was going to go out there and extend very extensive wide cross-sectional community, and we've done that. We spent two and a half months traveling around the country and we have that all on record that's been collated now with the legal officers. My philosophical comments relate to the issue of now we come to write a constitution.

How much of that constitution and that consultation should marry with each other. And by that I mean how important is it in me as a commissioner to take into account what I hear out there as the submissions from the mass wide consultation of people versus what I might I guess consider the best for the country. That's my first philosophical thing that I wrestle with it all the time.

Because, you know, somebody suggested this morning, I think that when you say we the people it's meant to mean we the people and I use the analogy that the U.S. Constitution was written mainly by farmers and businessmen and it wasn't written by lawyers and it certainly wasn't written by constitutional experts. It was written by we the people. And that's the philosophical thing I'm wrestling it with now because I have people who give me the impression that they think we the people is the people there and we the people who know should write the constitution or should have more weight in terms of the opinions about how constitution should be made.

I don't have a stand on that right now. I say it because it is something that I wrestle with. This idea of how important is their voice and particularly given that we've given a lot of our time for that versus what we think is good for the country and I can, you know, just if I were to allude to for instance the issue of temporary special measures I might have my own personal thoughts about things like that but I didn't hear one or maybe one submission that suggested anything like that.

Right across the board. And for me if I don't hear it from the people and I would suggest that my brother suggested that we should have 20 women seats reserved, then I'm socially engineering an outcome because if you say it's a temporary special measure, it's obviously a measure in place until you've achieved a certain outcome. I don't know that I'm geared to think like that.

The idea that I should say well we need 50-50 or 60-40 or 30-70, I'm just not geared to think like that. I think things like that happen and they what do you call it, evolve but anything outside of the normal evolution of a society to me becomes something that you engineer and you say well

this is the outcome I want, I'll put that in place and it'll head that direction. Again, this is not a question, this is just something that I wrestle with.

I know you alluded to that. You have your thoughts on it. I can't say how I think about that but that's another issue that I have.

I'll just allude to one more. This issue of the GCC. Like you, I have, I won't say a bad taste in my mouth, but after the events of 87 and the support in 2000 of the GCC for the coups that left a real bad taste in my mouth.

Having said that, I've seen leadership of the GCC essentially before, that's from Rata Mara and their group and then I've seen a new GCC appear here. Educated, well spoken, good lawyers and very adaptive. They've come with the attitude of like, I'm talking about the leadership.

Obviously there's going to be individual ones. The impression I get from going out to a lot of rural consultations is that they're still the voice of the people. For better or for worse, and I'm talking about the iTaukei people.

For better or for worse, I would think that when submissions are coming, they always allude to the tikina, and they're almost uniform, almost to a T. Through the separate districts, we'll have the Lau people make a separate submission, but the impression I've been getting is that every district and village that we've gotten to has followed the GCC submission, the first one. The same general sort of issues. And this GCC that I see that presented to us in the first consultation was a completely different GCC that I saw running outside my office in town as the 2000 upheavals went in the 1987.

I was away for the first part of... safely in Rotuma as the doctor when that happened. But I was here in the 2000 and I can say that my opinion of them was considerably. Having said that, I say that again in the context of your comments about the bicameral part of it.

Thank you for your very honest reflection about the issue of indigenous land and rights. Again, I think you've spoken very well to that in 27 and 28. There are issues there that we need to get into in a lot more detail with a lot of advice.

But all in all, thank you, Richard. I just wanted to reflect about a few things. I mean, that's a philosophical thing.

But I appreciate very much what you've given us and I think they'll give us reason to sit and mull our thoughts over as we go over the next six weeks. The other very small thing, sorry Chair, through you, was the issue of this, you know, everybody says it's too rushed. Let me put a hypothetical.

If the intent of government is to put the next election under a new constitution, because, and I say that not only in the context of that, but we've actually had many submissions who come to us and tell us, please, don't let government prorogue or whatever they say, you know, don't dissolve parliament. Keep them, extend them. We tell them, of course, that we have nothing to do with that.

That's not part of our role. But we hear this and it's always through that. This must come in before that happens.

And given that kind of time frame, the question is, which way does one lean? And I worry because, and we say this a bit in jest, but you see the only other way to change constitution very rapidly is the way that they've been doing it in the past. Which is, you know, we abrogate it today and that's it. We'll write you the new one as we work on that.

All of us disagree that that way works. And it's certainly, you know, extremely detrimental to the economy. I'm sure all of us business people don't like that sort of thing.

So, given that kind of thing, and given that kind of time frame, and given the possibility that maybe I don't know what government's thinking about it, but if the intent were to get it done before the next elections, then is it enough time? Or will it compress? I don't know. I can't answer that. Well, let me have a go at answering each of those.

I think on the first point about representation, the important thing to remember is that if you look at yourselves as a commission, you've been selected for a reason. You don't just represent voting people. You're people of particular skills and experience who bring the ability to think in a more broad way than the general population necessarily do.

Like you, John, I'm actually quite fascinated by the American experiment, and it is still an experiment. Definitely at a low point at the moment, I think, but it's an experiment. And, as you say, the people who framed that Constitution, basically farmers and people of business, but they had clearly read a lot.

You know, they were thought leaders in every sense. And I think what's really important about that is that if we simply say we're going to echo what we hear, the real danger then is that all we're doing is being majoritarian in our thinking. And if you look at every Constitution, it is not reflecting what the majority want.

It must all be built within a framework, basic rule of law principles, fundamental rights and freedoms, things that the majority may not have

turned their mind to and may not even want. But these days, you know, we live in a global world where we are expected to adhere to particular standards. Once again, the economy becomes central to that.

So yes, I think it's important that you listen to and try as far as possible to reflect views, but you've got to also, it seems to me, process those. And having listened, apply your own skills and your own personal experience to the outcome. So that's answering that one.

I've forgotten what was number two. Yeah, well, I think, you know, again, I think the same sort of thought process probably goes into that. If we accept, you know, that 50% of the population is unrepresented in Parliament, and there is really no reason for that, then it seems to me that even if the measures are temporary, we should try and do something about that.

And I think undoubtedly improve the quality of representation. Whether it's 20 or not, again, needs possibly just for us to all apply ourselves with a sense of proportionality to that, and of course, mindful of what people have told us, or not told us. But I think that's my response to that.

On the last bit, I think it's really important, you know, reflecting on the GCC or BLV or whatever it is. And, you know, it's interesting, you sort of come back to the American proposition almost. No institution is set in stone.

No institution graduates from being not very good to always being good. And, you know, as they say, you must always, the price of democracy is eternal vigilance, or whatever that phrase is. It's never perfect.

You are never at the point where you say, it's done, we can tick that box, democracy is achieved. I mean, if you look at what's happening in the United States right now, it's just a horror show, you know, in terms of democratic accountability and rule of law. Then one hopes that the US has got the institutional depth to survive it.

But it's the same, I think. We must never, ever treat these institutions as though they are done, they are perfect, the box is ticked. And so for an organization like the GCC or the BLV, again, I don't, granted, you know, I think clearly from what you say, you regard that institution as being at a high point.

But does that always mean that the leadership will be the same? Underneath the current leadership of the institution, is there enough depth and strength to ensure that that body continues to be of that quality? And so I think a lot of it goes back to we can't be majoritarian about how we think about it. Just because 90% of people have said, we

want X, doesn't mean that we should deliver X. There's a much broader context in which we all live. And let's face it, in which people are not really focused.

Most of us are not, when you talk about a constitution, there's a lot in it. Really, for the last 55 years, when we've talked about the constitution, most of us have talked about the electoral system. We don't care about anything else.

But there's so much more in a constitution that is important, and to which we've got to turn our minds. So I'm not sure that the popular view is always the answer.

Mr. Valenitabua: It's not that we don't want to hear you any longer, but we're just too tied up in time. We have another Zoom meeting with Dr. Wadan Narsey at 2 o'clock. So we have to set up the Zoom electronics.

You don't mind, do you? Not at all.

Mr. Naidu: I will have to yield to my friend Dr. Narsey. He's got much more experience than me.

But make sure you talk to him about the economy. So we have to stop here. Some of my commissioners also have been sitting here from 9 o'clock without break, one hour after another.

Mr. Valenitabua: They might want to go out for lunch. Please. Thank you very much for coming to share your views with us this morning.

You've taken us on another tangent. Whether it's democratic or not, we don't know. We have to deliberate on that.

Thank you very much. Thank you for listening to me. Could we have a photo taken with you, please?

----------End of Session [6-7-2026]----------

Gmail **Constitution Review Commission <commissioners2026@gmail.com>**

RE: Mr Richard Naidu - some final thoughts

Richard Naidu <richard.naidu@munroleyslaw.com.fj> Mon, Jul 6, 2026 at 5:03 PM
To: Constitution Review Commission <commissioners2026@gmail.com>
Cc: Sonja Narsimulu <sonja.narsimulu@munroleyslaw.com.fj>

Commissioners

Two matters [related to one another] and arising from Dr Fatiaki's question (to which I forgot to respond) about the viability of implementing a new Constitution before the next general election (even if it were to be delayed for six months for the purpose, which would itself be unconstitutional unless of course approved in a referendum. That measure itself may be unpopular and fail to pass, thereby upending a new Constitution which would otherwise be acceptable).

1. The consideration of those zig-zagging possibilities is probably pointless given that it just would not be possible to draw electoral boundaries for new constituencies within six months. Even a well-resourced country would struggle to achieve this. Fiji is not well-resourced with funds or skills. It must begin this process from a "standing start" with no established boundaries, no processes and no public servants with the necessary experience. It would be necessary to appoint and create an Electoral Boundaries Commission and its secretariat; and to follow constituency boundary-setting processes which are not just mechanical (ie working out the boundaries and roughly equivalent numbers of electors, etc) but also procedural (in that there must be a timeline for publishing proposed boundaries and considering objections, etc). Refer the Electoral Act 1998. That is impossible to do. It is a 12-month process at least.

2. The rush to amend the Constitution appears to be driven by a concern that it is only the current Government that would be willing to do it and any alternative Government would not. The current Government has only itself to blame for not pursuing a timely agenda for constitutional amendment. But, even that aside, the desire for constitutional change must rest on surer footings. It must ultimately come from the people, whichever Government is in power. If the current Government is forced to go back to elections on the current Constitution because it was not efficient enough to achieve a proper process, it will need to promise as an election issue to finish the job - and to hold its opponents either to a similar promise or, if they are unwilling to make it, to campaign against them on that lack of willingness. It is not acceptable to say "we have been slow to reform the constitution so give us another six months in office to finish the job" (and assuming that constituency boundaries are contemplated in a new constitution, it could not achieve that anyway).

Respectfully

Richard Naidu

Partner

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-----Original Appointment-----
From: Richard Naidu
Sent: Monday, 6 July 2026 10:54 am
To: Constitution Review Commission
Cc: Sonja Narsimulu
Subject: Accepted: Mr Richard Naidu - Confirmed via phone 22.06.26
When: Monday, 6 July 2026 12:00 pm-1:00 pm (UTC+12:00) Fiji.
Where: Suvavou House, 414 Victoria Parade, Suva, Fiji; https://meet.google.com/twp-fqeu-gbq

All

This is what I want to talk about (briefly) – in the hope that we can prompt discussion.

PROPOSED TALKING POINTS WITH CONSTITUTIONAL REVIEW COMMISSION

Richard Naidu
6 July 2026

1	***Introduction*** • ***FLS submission*** • ***Apted submission*** • The economy is a key consideration: - social stability - confidence in effective legislative and executive functions - confidence in effective independent institutions
2	***The process*** • You cannot review a constitution in a rush – bad process = bad outcome = lack of credibility = lack of respect = rule of law issues • Commission Report should "permeate" and allow reflection • clearly, a significant portion of the population want the 2013 "out" [even if they don't know what they want "in"] so this will need to be a new document • new draft Constitution should be carefully drafted and made public before Parliamentary debate – MPs must listen • Special Constitutional Select Committee must listen carefully and make appropriate amendments before passage in the House • Referendum is the final step – Govt needs to be confident that it will pass.
3	***How to view the 2013 Constitution*** • a "rush job" with virtually no consultation • tailor-made for those who were then in power: - electoral system cynically driven - unicameral Parliament – "get things done" - control of key institution appointments – judges, constitutional officers – in the hands of the PM and the A-G • we are now paying the price for this – poor governance
4	***Should we return to a bi-cameral legislature?*** • a feature of every constitution except 2013 • the norm in Commonwealth countries (NZ is the standout) • second chamber = "house of review" – but also in Fiji the point where indigenous people's rights were effectively protected • unicameral Parliament and approach to legislation has contributed to the current poor quality of legislation
5	***Rights and protections for indigenous people*** • sensitive issue, needs to be managed: - for indigenous people – belief that elevated constitutional rights will solve every problem (they won't) - for non-indigenous people – a fertile source of grievance ("we are second-class citizens")

	• an appropriate balance is of course possible. It must: - recognise that unnecessarily elevated indigenous rights threaten national unity and economic confidence - ensure that on critical issues – land and other resources, customs and traditions – indigenous people have agency/autonomy/sovereignty [s.28 – the classic mistake] • if we revert to the bi-cameral system and protection structure, we need to think carefully about what bodies should represent the indigenous people – is it necessarily the BLV as currently constituted? Is that a leadership body that is still fit for purpose?
6	***Electoral system*** • current "pure PR" system was a deliberate tactic [see above] and destroys accountable, people-level democracy. People are entitled to an MP • at the same time, Government now is a more complex process than it has ever been in the past. Politics needs to attract: - individuals with specific skills (which may not necessarily include "pure political" skills) - more diverse representation (more representative, but also more effective) • MMP-style system in my view is best – combination of constituency plus "list" candidates will produce a better quality legislature (and Cabinet[1]) • "communal" constituencies were good in their time (pros v cons) – but they have outlived their usefulness now • query whether temporary special measures ***(TSMs)*** could be used to improve female representation in Parliament [my view yes].
7	***Other matters***

[1]A bi-cameral Parliament also improves the "pool" from which the necessary skills can be picked for Cabinet because there is an upper house.

ITaukei Lands Trust Board (ITLTB)

Itaukei Trust Land Board
Date:6-7-2026

Mr Valenitabua: Gentlemen, ladies, we welcome you this morning. Thank you very much for attending before the Constitution Review Commission. The Commission was initially appointed by His Excellency, the President of the country, Ratu Naiqama Lalabalavu, with seven members had to resign due to work commitment.

And there were six of us left. This morning there are five commissioners sitting as the Commission. One member or one commissioner is not present also due to work commitment.

If I may have to introduce those who are here this morning, I'll start from my right. At the far right is Dr. John Fatiaki, well-known medical practitioner. And next to him is Mr. Conway Beck, a well-known architect in Fiji and the Pacific.

My immediate left is Mr. Ami Kohli, a lawyer based in Labasa. And on the far end is Dr. Neelesh Gounder, a lecturer at USP and an economist. He has been used by government in some of the very important strategic planning in relation. And most of you would know me, Sevuloni Valenitabua. I'm the chairperson. We welcome you all.

If you think that I just need to introduce the work of the Commission, we were tasked by His Excellency to review the 2013 Constitution. And one of the tasks also stated in the term of reference is for us to go around the country and get submissions and recommendations from our people on what they think should be included in the amendment to the 2013 Constitution or what should be removed or which laws need to be changed. So we have gone around the country.

We had to separate into two teams in order to cover the whole of Fiji on time. Our timeline was six months. That started in March, and we are to finish on the 31st of August, 2026.

And on that day, 31st of August, we must submit to His Excellency our report, our recommendation, and a draft amended Constitution. So that is what we have been working on. We have heard a lot of things, a lot of submissions from our people on the ground, the lay people complaining about a lot of things, and telling us what we should do and what we

should add to the Constitution and what should be removed from the Constitution.

So with you being here today, I will tell you we've had a lot of letters raised in relation to the TLTB. But that aside, here we are talking about our Constitution. And with you here today, we are looking forward to hearing from you what you might suggest would improve the work of the TLTB and also the returns to our landowners.

We are here to listen. We might ask questions later on after the submissions. We might give some comments.

But our primary task this morning is to listen and see how you can assist us with your submissions in relation to the amendment of the 2013 Constitution. With those few words of introduction and welcome, I now pass the mic to you, gentlemen and ladies, and you have the floor to present us your submissions this morning.

Mr. Mata: The honourable chairperson and commissioners. We are here not to complain but to make submissions on the 2013 Constitution Review. On behalf of the Itaukei Land Trust Board, I would like to thank the Constitution Review Commission for the opportunity to present our submission on the review of the 2013 constitution.

We have submitted a written submission earlier and we are privileged to be invited to come and present. TLTB welcomed this review as a rare opportunity for Fiji to reflect on its value and strength and the constitutional framework that will guide this country and its future generations.

Our submission focuses on the protecting native land rights, restoring constitutional safeguards, address injustices, unjust land dealings in the past that existed under the previous Constitution even during the colonial time. And implementing measures to ensure the long-term well-being of indigenous landowners are safeguarded all the time.

Part one is the historical context, why it is very important. It is very important to take some few minutes to say something about the background of land in Fiji. At the outset, the Fijian, spelled F-E-E-J-E-E-A-N named by the Tongan, the Fijian people or Itaukei are the first people of this land, now called Fiji Island.

Abel Tasman had report the first sighting of the islands by white men in 1643, followed by then Captain Cook 100 years later. The arrival of the shipwrecks, beach de-mer, cotton traders, left an invalible mark in Fiji in many ways from commerce land alienation , internal warfares, government and local marriages and other things. The arrival of the Western Mission in 1835, transformed Rerevaka na Kalou worship to a new life promising eternal life after of early life being Jesus Christ, The Son of God, Jehovah The Son of Abraham, Issac and Jacob. It was a instilled the God of Fiji.

The event of theChrist in the Chiefly household in the Vanua, Kubuna, Burebasaga, Tovata has profound impacts and shaped social, economic, political landscape throughout the Islands. They first brought education to Fiji and first new schools, they set up the first system of law in Fiji in 1847 the rules for civil government to enforce Christian morales. Emphatically, TLTB wishes to state that we are, all of us here without exception in this room and in this country because our forefathers acknowledged Jesus Christ as their Lord and Savior. The God and the fear of God and honour the King. That God is Jesus Christ which is still the logo of the Government, previous government and the present government.

The establishment of the Tovata confederacy led by Ma'afu in 1867 and the Cakobau government 1871 – 1874 led by Ratu Cakobau as King of Fiji under the Kingdom of Fiji set the first forms of governments in Fiji.

Government excursions, incursions, were umbered and becoming affect. The King of Fiji Ratu Cakobau as a government has its own ramifications, it made accountable the American debt, looting. French and German commercial interests, Tongan influence, endless pressure, protections of our property, law and order and supply of labour.

So, Fiji was ceded to Great Britain in 1874 to preserve indigenous Fijians rights to lands needed for their future support and maintenance. This instrument became the foundation of land protection policies in Fiji. In 1875 Land claims commission was set to investigate land claims, opposition, alienation and ownership it completed its work in 1879.

In 1880, the native lands and fisheries commission was et up for the first time to investigate claims from the interior landowners and to solve

disputes over land ownership, boundaries and fishing rights. The commission maintains the native register of land also known as the 'Vola ni kawabula' which records all indigenous entitled to communal land owners. In 1876, 2 years after Deed of Cession, the Bose Levu Vakaturaga was established primarily to advise the colonial government on native affairs. On May 14, 1879 the Leonidas arrived with the first lot of Girmitiya followed by 42 ships making 87 voyage altogether bringing a total of 60,553 Indians to work in the cane field. It ended in 1916 and 40,000 returned the rest remained. In 1905, 1908 Governor Ian Thurn reopened land sales of which 42,000 acres of rice land was sold. Not including the 2 999 leases in Toko and Mocemoce, Tavua.There were two 999 leases one still exists today.

In 1940, World War I broke out our men served as labor corps, it ended in 1980. Ratu Sukuna crosses the English channel to join the French Foreign Legion and got wounded. Blood was shed and eventually 179 lives were lost. In 1936 after consulting almost all chiefs and natives in their villages by Ratu Sukuna, the Bose Vakaturaga agreed to set up a body to look after their land in their land in their best interest in what was described as an unmatched leap of faith.

In 1940, The Native Land Trust Board was finally set up under The Native Land Trust Ordinance, transferring administrative native lands from the commissioner of lands to TLTB. All the lands were administered by the Commissioner of Lands, by the State until 1940.

In 1970 Fiji received it's..In 1945 World War 2 broke out. Fiji entered the defence at the Japanese expansion in the Solomon, at the Guadalcanal Fijian blood was shed and lives lost. Decoration of valor was awarded to a man with a Victoria cross, firstly awared to Sukanaivalu.

In 1957, Fiji went to Malaya to stop the Malaysian excursion. In 1970, Fiji received its instrument of independence, resources were returned. Only the land, not qoliqoli and minerals.

We have four constitutions now 1970, 1990, 1997 and 2013. After all this we have 223 Itaukei Landing units have no land in this country or registered as natives who lost their land as a conjugate of historical migration, land opposition, alienation, subsequent land transfer and the policies.

Now I go on to the actual areas of amendment. TLTB Constitutional Mandate. The Itaukei Land Trust Act provides that all land is vested and administered by the TLTB for the benefit of the Itaukei owners.The Board has statutory responsibility for administration and amendment of Itaukei land, distribution of invest trust fund for the benefit of land owners.

TLTB submission is therefore, made in discharge of its statutory responsibilities and protect the interest of the itaukei land owners.

Our proposal one, ownership of minerals. Section 30 on the constitution provides all minerals in or under the land or water belong to the state. This is reflected in the Mining Act. TLTB submission, TLTB submits that the concept of absolute proprietorship guarantee under article 4 of the Deed of Cession includes ownership rights to all minerals and subsurface resources.

The current legal framework originates from colonial money policy that its own mineral policies to the state or the crown, rather than to the land owners.Some countries in the commonwealth are freeing up mineral right owners to the owners of the land.

Proposal 2.
Reasons for change. First, Fiji has ordered recognized Lemoniest, interesting mental resources, through the fascia of mineralities. The payment of politics acknowledge that the landowners have legitimate proprietary interest in those resources. Second, returning mirror ownerships, and I, with the internal studies, principles.

Reflected in the United Nations declarations on rights of indigenous people, and proposed rights of indigenous people, 2025. Good, comparable jurisdiction, such as the United States, Canada, and South Africa, have increasingly recognized indigenous ownership of land, sub service, resources. Recommendation, tell TV, recommends, amendment of sexuality, recognitions of mental ownership, rights, for it to kill, owners, consequential amendments, to the manic, state land, and petroleum. legislation.

Proposal 2, the reversion of land acquired for public purpose. Current position, land may lawfully be acquired by the state for public purpose and existing legislation.

Section 8 of the state, Land Act, already knows Land, previously, previously, acquired for public purposes, to be reverted to iTaukei ownership, and is no longer required.

Historical impact

Historical resulted in 206 native crowns. Approximately 42, 440 ha of from itaukei lands, or transferred from Indian's ownership. These historical activists remain a source of criminals among criminals. It has never disappeared.

Progress to date, TLTB has facilitated allocation of schedule A, and schedule B lands to estimate limits that has been completed.

Processing of reversion, claims of state freehold lands, submissions of 17 reversion, cases of common. For government consideration. These 17 vessels of land were, I support, very questionable circumstances, or a few pounds of ceiling, or in exchange of gift.

But this light at the end of the tunnel, you usually have Saru water catchment. being reverted to the landowners, and also the Nadala, in Nadarivatu. Previously, also part of the Nadi airport were reported on the same programs, but 70 remains today. Recommendation till TV submits that Orleans acquired by the State for Public Poopers, and no longer require, those pupils will reboot, to their respectively, billion honors. It must be admitted through TLTB.

Proposal 3, the completion of section 395 of the Constitution. Section 29[5] provides that freehold remains freehold, even when sold or transferred, unless sold to the state. Till TV show me that this provision frustrates, legitimate, land reverse efforts, and prevents some heat okay land from being restored to real regional status.

The Momi Land swab arrangement demonstrates how sex, 1595, can feed the restoration of hand rakes. to completion. of agreed, and exchange

Recommendation, TLTB, therefore recommend that Section 395 be deleted from the Constitution. Proposal full, entrenchment of legislation affecting it, okay, interest. Under the 1970, 1990, and 1997, institution. Legislation affecting Itaukei and Institution. What Constitutionally

protected through intent, provision, is included, either kill and act. It will be itaukei.. Agriculture, analog, tenant, act.

The 2000 Constitution removed these protections along significant amendments to the ordinary parliamentary process. This amendment commonly referred to as. Build something as an example. Recommendation, TLTB recommends... retrenchment of legislating effect, it is, with the exception of Alta.

Every quarter, parliamentary, majority, for amendments, I mean, data consultation, with the Ministry of itaukei Affairs, Great Council of chiefs, and TLTB, before any amendments. German and, uh, business approaching remarks.

But it keeps it is not educating for Christian states. We are not saying that. We feel the Constitution should acknowledge, in each preamble, the historical rule of Christianity and modernizing this country.

TLTB respects, respectfully, submits that the mineral ownership rights should be turned to Itaukei, their ownership, then acquired for public purpose, and no longer required to revert to the original owners. Section 1095 should be removed. Loss affecting Itaukei interest and land should once again, be constitutionally intense, laws, injuring, it took a prosperity, must be removed, or reviewed, such as alter, rivers, and streamed act, surfing act, mineral act, et cetera.

Well, the Itaukei is far more than economic resource. It is the garden given inheritance. It is a foundation of identity, culture, heritage, and intergenerational well-being. The constitution should, therefore, provide. The highest level of protection to itaukei and rights, and the institution establish to save Captain. The itaukei remains marginalized economically. Only with limited finance, with very limited financial access. We can elaborate more than... The new constitution must not be rigid, but be flexible to remove injustices, and just learn laws, and then elimination. Leave your capable tendencies, and hands, set wealth, and prosperity. And most of all, as Christ is the cornerstone of this country. Thank you, Chairman and the Commissioners.

Mr. Valenitabua: Thank you Mr. Nata. Like I said, normally, we ask commissioners whether they have any questions to ask or comments to make. I will now ask the commissioners if they have any comments to make in relation to

the submission which we have heard or the solution. which we end this one.

Well, I guess I will have to start it off. Freehold land. I'm hearing... that, uh, section 29 [5] of the Constitution is to be removed. Yeah, that is a provision. which is... not acceptable to the majority of people. 29, 5, which in relation to the freehold land. We've had complaints. We have heard submissions and our complaints, submissions from around the country. about free home land, they won fame, for their land back lands, which were given the CSR lands, which were purchased, and, you know, circumstances, which were a question about, as you have stated, Mr. Nata, we thank you at GLTB, for suggesting to us this morning. that section 29[5]. Uh, 29, subsection five, is to be removed.

It was surprising. that... that provision was put in the Bill of 2013 Constitution, when we had lands in Nausori, and a lands in Western Nadi, Lautoka, Nadroga, which were given for sugar planting. .As native grants were then changed to freehold land, under the 2013 Constitution, stopping abruptly the cases that were being filed by land owners to try and get this freehold lands back. to their ownership.

So, I thank the TLTB for that.

Mr. Nata: Uh, gentlemen, let me... Thank you. What do you say? Then that we'll purchase properly the Taukei. It's okay. We are not saying that. We have evidence, this land will not purchase properly. That's what we say. See, for the people of us mobile, People of Suvavou that piece of land that was not that piece of land, that was not, uh... a few transactions records issue.

That piece of land from, uh...Nasinu Tax Free Zone to the cemetery. What we are saying that land was not purchased That's the land that we are after. Then were purchased properly. We don't have any issue, is it? Thank you.

Mr. Valenitabua: Thank you for that gratification. Would that include? The lands that were given, uh, taken by the state and given to CSR, for example, like the West, for sugarcane planting. Would that include that?

Mr. Nata: Some of the land were taken by the police in the first company that stopped positioning the police. And that was the first one. And

eventually, they focus on the soap and nature. Then, uh... our position is like this. The government should hold the land and give it back to them. to the native owners. The government should not hold it, only for public purpose. Now, all those letters been useful, economic books. Chief was the one in... In, Naitasiri is even known as club, the name of the village.

It was taken by these companies and given to the government. that the government should hold it and give it back to them. And even the 10 sections of a 400 or 500 pounds is still questionable. The record says it was never received. But it's okay at the time. That's what we say. We will, quite properly, same, we have no issue. Mr. Beg?

Mr.Beg: Follow up question now. Mr. Nata thank you for your presentation. Very important essence of landlords, aren't we? Just a follow up question on chairs, cushion. How do you propose these macros be, you say? These matters it freeze. Have you proposed the result? to allow it in the Constitution, in my concluding Remix, the Constitution, like what we are facing now, the experience we're facing now. Getting people, please look at this, the Constitution does not row it. \

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Can you look at the position? Once you do it, then you can set up, easily set up, a commission. Pervert to the slim to the owners, the security of the tenants or whatever, on the lane, still lane, and people, yeah, or state leases. Remain esthetic. Aren't it expired? Then we refer to Italy. It remained there. We did that for crunch usually. We completed that process. Almost 300 acres of land water. All the tenants are still there. renewed to them, whether residents of Africans are accepted. Thank you very much. Thank you.

In some of this land, the landowners are... And this thing will never go away, we'll never go away. I started work in 1984. It was a main issue. Yeah, point taken. That's one of the reasons why... we have to reflect on the points that you've raised, uh, completely arguments, and there's a commission, I think, we have to sit down, and because it's a lot lousy, then we share about a commission, and look at all those clips, at least close the current generation to contribute into that. Process. Thank you. Talk to them? Yeah, good.

Dr. Gounder: Thank you, Mr. Nata and colleagues from the ITL TV. Thank you for your submission this morning. Thank you also for the very detailed details submission that you sent us, Al. It came as an opportunity to go through.

Just on your point about the section 29[5], such a provision might create the risk to our freehold, I guess, I'll be guided by a lawyer colleague as well. So, it'll be a difficult balancing act, because as you, I'm sure, very well aware, land is the most important collector in any country. And it's the financial sector. Uh, depends on collaterals as is lending mechanism. So, we have to be very careful in terms of not create the expropriation risk from government because expropriation risk can be really serious economic risk and can have the huge impact of all economic development in achieving economic outcomes.

So how do you propose the argument around not purchase properly? Because one argument is that at that time, that was the value of the land. And now, do we want to go back and change the value, reassess the value of that land at the time when it was bought and sold? Is that what you're suggesting?

Mr. Nata: We can work out some form of... But what I'm seeing is all the land that we are trying to is understate. private... Another private owner

Dr. Gounder: Okay. So, you were very clear, those parcels of land that you mentioned here are not used for private purposes, and there hasn't been any significant investment by private individuals into those parcels that you're talking about in the submission.

Mr. Nata: ll this piece of land state? Okay. There's one, uh, 3000 acres a week. It's taken by, there's a policy, policy by the government. If there are too few, we'll take you and join the other. Bigger before we take your land today. But those people still alive. And they're not going to claim their piece of land. This kind of thing, uh, It will never go away. You just say it. You'll never go away. Unless... addressed with some form of, uh, return it, or some form of proper. on veggies.

Dr. Gounder: Thank you, Chairman. I just have one quick question. Mr. Nata, since I think TLTB is a very important institutional arrangement we have in Fiji for protection of engineers, land, et cetera, and it must be strengthened. At the same time, we have received around the country, and the rights of housing and access to land, especially in non-itaukei community, who don't have a place to stay, you know, they don't have security of Tenure. So, what role do you think in the broader sphere of things? TLTB can play a role ensuring that minority communities have access to land as well. And going back to your original vision of TLTB, you know, to play a role in

making sure that land is accessible and available for development of our country, which was the vision of Ratu Sukuna, for example. Thank you.

Mr. Nata: Thank you. Yes, that's very important. See, the vision of Ratu sukuna was that story of the purple, the tally, the pieces of land. While doing that, make sure that you see we have right now 55,000 pieces of land. Land is an important Labour. You can afford it, you come.

See, we have right now 55,000 pieces. $55, this is, yeah, pregnant. And it's our contribution to this country. Landowners' contribution to the economy of this country, or aspect of social economic life. We try our best to provide for everyone, because we are the biggest... We are very mindful of our road. Then it's an important effect of protection, apart from labor and capital. Land is very important. That's how we have demonstrated our commitment to the socio-economic development of... We continue to renew leases. Everybody, I mean, anyone who want to, this land can come to us. We give them the offer. They said they do much, then they run away. You can afford it. You don't come here, and then you said it's too much, this, and then... Yeah, we are always there to... to facilitate anyone.

Dr. Fatiaki: Thank you, Mr. Nata and Colleagues. Uh, appreciate, uh, your comments. I just want to reflect on two things. And this is not very necessarily specific. But in one of our consultations, somebody brought up one of those 999-year leases. I think you alluded to the fact that there were two, and that one is currently current.

I think on reflecting upon that, obviously, the idea that anybody can give a 1,000-year lease, I thought he made a mistake with the 99. And that it is still legal is an issue that, I guess, as commissioners, we will sit and reflect on that. and see whether the supreme law of the land can address that in a way that, will say, brings justice, but maybe addresses that aspect of it, because I think any person in their right mind will consider a 999-year lease, maybe inappropriate. unjustified. unfair, and I think, like I say, we will be discussing that, to see how we might make it in a way that there is some degree of justice, of heareness, that is reached at in respect of that particular one.

I have to say, though, that almost every consultation that we have been to throughout Fiji, uh, is this uh, echoing that keeps coming back in respect of Qele, uh, qoliqoli the mineral resources, it's very blunt,

straight to us, which is, give us back our land. Give us back our land qoliqoli, give us back everything. To us, the customer landowners.

Now, I'm not gonna suggest that we have an answer to understanding it. I guess it's just in the way of a reflection. for you, because you are the custodians of the trust. And if we are hearing this from the people, telling us that they want it back with them, not with TLTB, not with lands department.

What the people of Fiji are telling us that we are hearing, and we ask them questions to try and clarify that they understand, and they're very clear that they want their land back. I guess my reflection is that we all have to think about how this operates at the level of a nation, the role, important role, the TLTB plays.

But maybe, in reflection, we need to ask ourselves whether the role of TLTB, as envisaged, and set up by Ratu Sukuna in 1940. may not be as appropriate. in 2026. Because, obviously, people are a lot more educated, they feel much more confident, they are aware of land, way land is dealt with in countries abroad.

Many of them have traveled abroad, and they bring this to us. We will wrestle with this, because the future, the country, in terms of, as you've heard, land resources, access to land is an important component. Major industries rely on it. You have a role to safeguard the interests of the landowners, but I'm not talking about the unique, small, freehold slots and things. I'm talking about... all the rest of the land.

And I'm not sure what the reason for that is, whether it's something that maybe TLTB needs to reflect on and ask themselves whether they serve the purpose, that it was set up for in 2026, modernized and reviewed, so that the landowners are happy. I think the idea is to have everybody happy. The country happy, TLTB happy, and the landowners happy. Unfortunately, the impression I've gotten, having been to many, many villages throughout Fiji, is this very, very unhappy landowner.

And so, I just say that in the form of reflection, we will need to discuss this in great detail. Obviously, we're talking about our country, and not just particular plots of land. I just wanted to share that because that was something, and we're at the end of our consultations now. This is a sensation, and it's spoken about quite passionately, and people feel very

strongly about him. I just thought I'd share that with you. That isn't the question, per se. That's more just a reflection of some of the things we've heard. Firstly, in respect of that 999-year lease, and how we might need to seek some justification as to how we can keep it going. or how we may find the middle ground that is suitable to everybody, and then secondly, is the issue of the, this request from the landowners.

We don't know how we would do that in our current setting, and we are concerned that, obviously, if it's put into the Constitution, then everything else under its subservient legislation will have to comply. We want to be very careful with that. But I thought I would just share that with you. You know, just in terms of your special role as guardians of the trust. of native land. Thank you.

Mr. Nata: Chairman, can I comment to the... Please, please do. First of all, the 999, Toko, and is, they were two is within Fiji, and it's not an accident, it was deliberate, it was a common policy. It also, the same governor, I think, also introduced it in Africa. I went there, I got a shock, and I saw the 999, everywhere. The large challenge of 100 acres of land. So, it was not deliberate, it was the policy at that time. What we were just saying is, do, just make it fair. The leased itself, it's like, does not allow liquor, does not allow cutting trees. It's like reservation list. That's not about things like that, right?

You know, around 26, uh, sub least, Nadawa. And, uh... What do you see? And the rent is very, very low. Very, very low. I think it's around $200 or something like that, or... So that 700 acres... And under that single triple 9, we have around 25, 964, 66.

The issue here, we just want it to be equitable to the Landowner. The law of this country, say, 99. Yes, 199, the maximum. But this is the modern, modern era. landowner complaining, they're not receiving any fair return.

Out of the 26, 300 other houses other on the land. So, it's not fair. So what we are proposing, to give each one of them double nine places. 99, each for the 300, plus the 26. The government was willing to assist, and we were willing to...

Then they took us to court. We were acting, we demonstrated, we act in good faith, bringing in the stakeholders, the government, landowners, tenants, and talk to them. But eventually, I think, uh, they were

influenced by an elephant, they took us court, to remove that injunction, then now, still in court. because of the breach. What you're saying, that we have an indivisible title, it's okay.

What we are saying ? The indefensibility of title does not protect... Injustice, unfair, elicitable, written to the Landowners. That's what we see. We just want to make it, to break it up, given individual 99, government is willing to pay. But, of course, we will need to pay part of the house, every issue.

And that 300 house, nobody knows. We are not aware, and they have private dealings amongst them, and they are complaining to us and the landowners.

On the second issue, the qoliqoli Uh, depends. You will be managing the qoliqoli.... So, that's the first step, in terms of minerals, and putting the problem with us. We issued surface leases. For the one in Tuvatu what we issue, a surface list... for line one.

On the... on the TLTB road into the future, like you said. Let me state it very clearly here. We are here for our role. as envisioned by the lake. You go to lease a piece of blood, you go to one, because I'm going to, 10, 200 meters. Just look at Solomon, Vanuatu The investment auto security, to families, and to anybody. That's the story.

Even here, internally, some of the reserrve land, they use it for on purpose. You look at the spotters. Just look at the spot, just look at the problems, rising from the squad. And now you... We still have a majority support problem, you know landowners 80%.we are, vocal, we know. But we have to maintain opposition. We are important factor of the economy, land.

And when you deal with land, you have to go to one. People can talk, but you have to look, in a very mature and amazing way for this country. Now, in the country. It's very hard to have a united, only unit. Very, very different. Good. And the other, another issue. I mean, we set up the trustees. We had trustees. We set up the trustees, to empower them, capacity, to manage their fates. It's also very difficult till now. Trust, this can change. In the air, I can change three times. Maybe some of them are talking to you. Because in terms of internal dickering obligations,

In the other important part, in terms of we, this is a area that we normally close. We encourage investments. As opposed to consumption. The rate of... It's quite very high, very, very high. The savings are very, very low, compared to our Indian, and to our brothers, the other ethnic, complete the opposite. I'm not telling you; you know, I'm telling to everybody. Investment is very low. Part of them is mindset, attitude by all of us to help them. And the other one is the financial access.

Of the 600 tree, Itaukei. Maybe 100, Bank Account. The remaining have no idea. It's what we do, you know. Financial access. All these commercial bills are very difficult for them to access. So, once we touch that 500 people, and bankable, people believe there is some hope for raising their living standards. It's one of the main issues.

It's not been seriously considered by the government or anything. anybody else This is what I want of attacking to live with that 500 people. You can drive them or encourage them to commerce without the financial assistance.

Mr. Kohli: Thank you, Mr. Nata, the team. One of our teams of reference requires us to address protecting, guaranteeing, and securing, under the Constitution, laid and fishing rights and resources, of indigenous Fijians and Rotuman's. And assuring that registered owners of native lands and customary fishing rights have an equitable share of the income derived from the exploitation of the resources beneath and above the surface of their land.

The seabed, framers, etc. It's a common complaint, if you receive from people, they are not getting, they also issue a riding, people saying that should revert to them.

If I may just ask you, your assistant, tell me this. If we have in the Constitution a clause, which says, At the moment, you have a provision in the ITLTB Act, section 13. Any dealing with either equivalent, you must concentrate, rather buy a transfer lease, etc., any dealing. So, daily is very wide. There is a simple registration that can be changed anytime. However, I feel in the Constitution, you have a provision which says, If you are dealing with any itaukei land, apart from ITLTB, you must have 30, 75% of consent of the Great Council of Chiefs.

So, they represent all 40 provinces. So, if dealing with any Itaukei Land Qoliqoli, etc., not only ITLTB, but they have a set that level to say, Yes, we agree to this. We don't agree to that. Do you think it might assist or not?

Mr. Nata: Not really clear with your question.

Mr. Kohli: The question is, at the moment, if you want to deal with ITLT Bland, there is a provision in ITLTB Act, Section 18, which says that it must have the consent of ITL TB before you deal. which is equivalent to section 12 or B, state land act.

So, what I'm trying to say is that, if you have a protection in the Constitution, we specifically lay out that when you are dealing with it, okay, land, you must have not only the consent of the ITLTB, but also 75% of the representatives of the Great Council of Chiefs. because they represent all 14 provinces in Fiji.

So, overlapping qoliqoqli issues, et c, can be addressed there before this legislated upon.

Mr. Nata: So, what, in terms of this, I think section 12, right? Section 12, for us, we consent to any deal mortgage transfer or whatever. So, what you're saying is that the qoliqoqli to be consented by the Great Council Of Chiefs.

Mr. Kohli: Everything, resources... Everything, resources, and qoliqoli, they have to discuss amongst helpers that August body, and then say, yes. Whether it's with Macuata, if he is Nadi they will sit down they consult, discuss, they construct with itaukei owners, and say, Look, this is in their interest. Yes, we approve. We don't approve.

Mr. Nata: Well, this, uh, need to be discussed. We also have a close relationship with GCC. Uh, there's only about 400 something, 410 qoliqoqli in Fiji, only 410. So, for us, is very easy to administer It's just like, managing leases. You know, qoliqoli we can subdivide. Okay, you take this one for commercial purpose, whatever.

In terms of consent, we have no issue with the consent. So, if you agree consultations, most of these, qoliqoli are registered under the chiefs but

the owners are much, much more than the customary land. You have about 7,740. Mataqali unit and 410 qoliqoli units. We have no issue.

Mr. Valenitabua: Mr. Nata, just one more question. We heard submissions here from Indo Fijian friend. He told us that the return leases are insufficient for the landowners. Native police status. And he suggested to us, in order for the landowners to get fair returns, under Section 29, [4] of the Constitution. Why don't we assist the lease returns according to the market value of the land? And not UCV. What is the TLTB's position in the relationship?

Mr. Nata: If it's part of our submission, right? Our written submissions, very clear, that's what we're saying is to abolish Alta, or review Alta? Alta, interns, legislation with a native language. In the 1917, 1990, 1997. No longer. under the 2013 Constitution, eh?

What we are saying that... if you repeal, you all come under the market... market, like us taukei trust act Commercial market all the state land usage. But after, if you look at our lease portfolio of 55,000, I think one third are under Alta ... and the Lowest rent, is what they say.

Out of the 55,000, one of that is the agriculture lease with the lowest rent, the highest in arrears. That's why the landowners are not really happy with alta. What we see, it should come under the Alta, TLTB under TLTB Act the state agriculture lease is to go to the State Land, Act.

Mr. Valenitabua: Thank you so much gentlemen's. We have to bring this consultation session to close. We've got another submitter waiting outside. We thank you very much for the submissions. We received your written submissions about three weeks ago. Now, with the oral submissions done, we will deliberate on those submissions. When we sit down to do so.

----------End of Session [6-7-2026] ----------

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ITAUKEI LAND TRUST BOARD

FIJI BUSINESS EXCELLENCE AWARDS

18 June 2026

The Constitutional Review Commission
Level 9 Suvavou House
Victoria Parade
SUVA

SUBMISSIONS OF THE iTAUKEI LAND TRUST BOARD ON THE REVIEW OF THE CONSTITUTION OF THE REPUBLIC OF FIJI 2013

INTRODUCTION

1. The iTaukei Land Trust Board ("**TLTB**") welcomes the decision of the Government of the Republic of Fiji to undertake a comprehensive review of the Constitution of the Republic of Fiji 2013 ("**the 2013 Constitution**").

2. A review of this nature and magnitude is rare, and gives the nation the opportunity to pause, to reflect on what its values are, and to write those values into the foundational document that will govern its people for generations to come. For this reason, TLTB is grateful for the opportunity to participate in the Constitution review process.

EXECUTIVE SUMMARY

3. Set out below is an executive summary of the key Constitutional positions advanced by TLTB:

   (i) The 2013 Constitution must explicitly recognise the iTaukei as the first settlers and original customary landowners of Fiji, grounded in historical accounts, continuous occupation, and the legal affirmation contained in the Deed of Cession 1874. Such recognition is essential not only as a matter of historical accuracy but also as a constitutional acknowledgment of the unique relationship between the iTaukei people and their land, which underpins their identity, culture, and social structure.

   (ii) The 2013 Constitution should further acknowledge the profound and enduring influence of Christian missionaries since their arrival in 1835, particularly their role in shaping Fiji's moral, educational, and governance foundations. This recognition

should be reflected in the 2013 Constitution's Preamble as a statement of historical fact.

(iii) The constitutional review process should serve as a mechanism to address longstanding injustices in land ownership arising from colonial and post-colonial legal frameworks. These include inequitable land alienations, the creation of landless iTaukei units, and the imposition of long-term leases that have deprived landowners of fair economic returns. The 2013 Constitution must provide a pathway for restorative justice and equitable redress to ensure that iTaukei landowners can fully benefit from their land.

(iv) The 2013 Constitution should restore and recognise the full spectrum of iTaukei proprietary rights to their land, extending beyond surface ownership to include natural resources such as minerals, *qoliqoli*, foreshore areas, riverbeds, and other associated resources. This restoration aligns with the original concept of "absolute proprietorship" and is essential for meaningful economic empowerment. At the same time, the principle that iTaukei land should not be permanently alienated must be reaffirmed, ensuring its preservation for future generations.

(v) Finally, the Constitution should enable the reform and reversal of outdated and inequitable laws and policies that have undermined iTaukei land rights, including aspects of the iTaukei Land Trust Act 1940 ("**TLTA**") (in particular section 36(2) to unravels the inequities resulting from the Toko 999-year lease, as will be discussed in detail below) and regulations, Agricultural Landlord and Tenant Act ("**ALTA**"), Rivers and Streams Act 1880, and other laws enacted without landowner consent. It should also provide clear mechanisms for the reversion of lands no longer required for public purposes and remove constitutional barriers to such reversion. In addition, key legislation protecting iTaukei land and institutions should be constitutionally entrenched, requiring a heightened threshold for amendment and meaningful consultation with iTaukei stakeholders.

4. Together, the measures above seek to establish a constitutional framework that not only protects iTaukei land ownership in form, but also restores its substance—ensuring justice, equity, and sustainable prosperity for present and future generations.

FIJI'S PRE-COLONIAL HISTORY, COLONIAL GOVERNANCE, DEVELOPMENT OF NATIVE LAND POLICY AND THE CREATION OF THE NATIVE LAND TRUST BOARD

5. In setting out TLTB's submissions on the areas of review of the 2013 Constitution, it would be instructive to first set out from the perspective of TLTB Fiji's storied history and developments in its land policy.

6. The story of the origin of the iTaukei people has been linked by tradition to Lutunasobasoba who arrived in Fiji aboard the Kaunitoni and landing in Vuda. Lutunasobasoba and his family travelled inland in search of land to settle until reaching the Nakauvadra mountains. It is from there that, as the story goes, the tribes of Fiji trace their descent.

7. Early anthropological studies show native Fijians to be warlike and who were constantly in a state of hostilities. The British colonial administrator A.B. Brewster stated of the Fijian in his book "The Hill Tribes of Fiji" as follows:

> They harried and chased each other, frequently burning villages, which was speedily replaced by others...The impression of my mind after some study of their legends and folklore stories is that life in the hills in the olden times was like a huge game of hide-and-seek.

8. The same instability in inter-tribal affairs was reflected as well in the attitudes to land. Continued occupation and surrender of land were a feature of all yavusa histories throughout Fiji.

9. There were also very diverse land tenue practices throughout Fiji. In the Central and Eastern Viti Levu there were greater instances of collective ownership of land which reflected a more egalitarian social structure. This was in contrast with the Eastern side of Fiji which was more stratified. This entailed individual ownership of land by chiefs, who were able to sell it off (as they did during European contract) as they wished.

10. The first European explorer to sight the islands of Fiji was the Dutch explorer Abel Tasman in 1643 during one of his Pacific voyages. Captain James Cook passed through the islands more than a 100 year later in 1774, and then in 1789 and 1792 Captain William Bligh sailed though and mapped parts of the Fiji Islands.

11. While the European explorers mapped the islands of Fiji; they did not establish settlements. However, shipwrecked sailors and runaway convicts from Australia, who were often called beachcombers, became the first white men to live amongst the Fijians.

12. Beachcombers introduced firearms, which effectively changed the dynamics of power, giving rise to powerful warlords and chiefdoms. Beachcombers positioned themselves in the service of chiefs and largely conformed to the Fijian culture and local customs in order to maintain good relations with the chiefs and locals.

13. On the other hand, the later arrival of the Christian missionaries in 1835 saw the first attempt by the "white men" at deliberately influencing and changing the customs of the Fijians. With the advent of Christianity, heathen practices such as ritual cannibalism, infanticide, widow strangling and live burials of relatives were stamped out. The missionaries also actively sought to replace the gods and deities of old with the Christian God and supplant the pagan practices and customs of the various places to which the missionaries were sent with Christian morals.

14. As more and more Fijian chiefs embraced Christianity, facets of culture began to change – from dress as well as to education. Of note was the translation of the Bible and hymns into the Fijian language i.e. the Bauan dialect. This ensured the preservation of the Fijian language and the introduction of writing.

15. With the Christian influence, the missionaries saw to it that a system of laws to enforce Christian morals were established. In 1847 "rules for civil government" were drawn up in Viwa

by the missionaries which ensured that the code of civil regulation was based on Christian principles.

16. Commercial agriculture (as opposed to solely subsistence agriculture) in Fiji was first introduced by the resident beachcombers, traders as well as missionaries. Land now had an entirely new value as property – an economic value which saw land being sold and bought by the native Fijians and white planters.

17. Land was acquired directly from chiefs in exchange for guns, ammunition, and whiskey. Large parcels of land were thus alienated for meagre consideration, which, in historical hindsight, were unjust and inequitable.

18. The first attempt at the establishment of a native government occurred in 1865 when British Consul Smith invited the chiefs of seven "matanitu" to meet in Levuka with a view to discussing matters which affected the Fijian people, As a result of the meeting, a Confederation of Chiefs was formed which purported to act as a central government for the Fijians. The Confederation was to meet annually to review and pass laws that would apply to the whole of Fiji.

19. For the British, this made it possible for the British government to pass treaties with the Confederation that would be binding on the whole of Fiji. This would further extend the power of the British consuls from just British subjects living in Fiji to the native Fijians themselves. The Bauan chief Ratu Seru Cakobau was the first president of the Confederation.

20. Examples of other native governments that sprung up in various parts of Fiji included the Government of Bua (which had links with Tonga) and the Kingdom of Bau. These governments adopted procedures that resembled informal democracies with laws being passed with the approval of the majority. The chiefs, though, retained the right of veto. Laws that were passed included those in relation to land. In fact, the earliest measures to regulate the sale of land were passed by the Buan Government in 1866. Each government even had their own flags.

21. In the meantime, the Tongan chief Enele Ma'afu established government in the Lau group with the assent of the Tui Nayau, after conquering the Moala group, and being granted rights of levy over Vanuabalavu by the Tui Cakau. Ma'afu took up residence in Sawana, Vanuabalavu and from there extended his influence throughout Vanua Levu through allegiances and important wins in battle.

22. At the time of the first attempt at cession to Great Britain, Ma'afu was the most powerful in the North and Eastern part of Fiji. He continued to consolidate power, and after the first attempt at cession to Great Britain was unsuccessful, Ma'afu successfully united the provinces of Vanua Levu and Lau, thereby creating the Tovata Confederation. The confederation was created in 1867 to further their mutual interests and to break away from the Confederation of Chiefs created by Consul Smith in 1865.

23. The white population, on the other hand, we not content to submit to the authority of the assemblies of Fijian chiefs and they pushed for the creation of a "properly constituted government" in order to protect European interests and effectively supersede native governments already in place.

24. In 1871, Ratu Cakobau set up his government and garnered the support of the white settlers by promising to protect their interests, especially in relation to land and preservation of property rights. Ratu Cakobau pledged to adopt measures for adjustment to titles to land, management of public lands and the protection of European settlers and their property.

25. The royal flag adopted by Ratu Cakobau for his Government had a white field bearing a white dove on a red shield surmounted by a crown. Below the shield was a scroll bearing the country's motto; REREVAKA NA KALOU KA DOKA NA TUI (Fear God and honour the King).

26. Under the Cakobau government, measures were put in place for the demarcation of lands that the chiefs should need and therefore divide among themselves, and the surplus of which would be public lands to be made available for leasing. These policies were, of course, designed for the benefit of European settlers.

27. Being recognised as the chief of Fiji, Ratu Cakobau was made responsible for the affairs, and mishaps of his Fijian subjects. One such mishap was the burning and looting of the estate of the US consul John Williams in Nukulau Island. Ratu Cakobau was made responsible for the debt – to be paid under penalty of retribution by the US Navy. This, of course, was the catalyst of a sequence of events which ultimately led to the second offer of cession of Fiji to Great Britain being accepted.

28. The Deed of Cession on 10th October 1874, made Fiji a Colony of Her Majesty Queen Victoria of the United Kingdom of Great Britain and Ireland. The historic document granted full sovereignty over the Fijian colony. However, Article 4 of the Deed of Cession preserved the rights of the indigenous Fijians to their lands, including those lands in their current occupation and use, as well as those lands required for future support or maintenance.

29. In 1875, the Native Lands Transfer Prohibition Ordinance No. VI was enacted, prohibiting all land sales and transactions. After halting all land sales, the colonial administration, led by Governor Sir Arthur Gordon, enacted the Land Claims Ordinance in 1876. The Ordinance established the Land Sales Commission, whose responsibility was to enquire into and investigate all land sales prior and up to Cession. All validated claims were issued with a Crown Grant. A total of 1,582 Crown Grants covering an area of 152,815 hectares thus became "freehold land". Some of the Crown Grants were later purchased or acquired by the State. These became known as State Freehold Lands.

30. The year 1876 also saw the establishment of the Bose Levu Vakaturaga ("**BLV**") by the colonial administration as an advisory body on native affairs. Sir Arthur Gordon recognised the important role that chiefs played in the administration of the colony. The BLV was chaired by the Governor, and the members advised the Governor on matters affecting the natives.

31. In 1877, in Rewa, the members of the BLV agreed to the adoption of 29 resolutions on the recognition and protection of the traditional system of land tenure.

32. In 1880, the Native Lands Ordinance No. XXI was enacted, which recognised the legal tenure of all native land as customarily owned by native owners, as evidenced by use and tradition.

The Native Lands Commission was also established under the Ordinance to determine the rightful owners of native land.

33. The appointment of Sir Everard Im Thurn as Fiji's Governor in 1904 saw a drastic change in the colonial government's attitudes towards native land policy. The enactment of the Native Lands Ordinance in 1905 departed from the previously protectionist governance of native land. Neither the BLV nor the native Fijians were consulted prior to the enactment of the Native Lands Ordinance. The Ordinance allowed:

i. the "alienation" of native land to non-natives with the consent of the Governor in Council and subject to the restrictions set out in the ordinance.

ii. the sale and lease by the native owners of portions of their native lands. Such a sale and lease were, of course, subject to the consent of the Governor in Council.

iii. the exchange by a "native community" of native land for land the subject of a Crown grant. This saw the granting of "native grants" to the colonial administration.

34. The 1905 Ordinance did not prescribe any maximum term of leases. This loophole in the law allowed leases of any term to be issued. As a result the 999-year lease in Toko, Tavua was issued. Thankfully, the 1905 Native Lands Ordinance was amended again to prohibit alienation of native land, except to the State for public purposes. However, the legacy of this colonial policy continues today. The land subject of the 999-year Toko lease is just iTaukei land on paper but is effectively "quasi-freehold". As a result, the iTaukei landowners have been denied just and equitable returns for their land.

35. Moreover, freehold titles were issued for lands purchased under the provisions of the 1905 Ordinance. The Crown was authorised to acquire iTaukei land for public purposes with or without compensation. As a result, a total of 206 Native Grants covering an area of approximately 42,440 hectares were issued before land sales were finally stopped. Today, the records of the iTaukei Lands Commission show that a total of 223 landowning units (either Mataqali and Tokatoka) are dependent units and do not own any land. They are merely landowners by name, but in reality, they are landless.

36. The introduction of indentured labour was an important chapter of Fiji's development. Previously labour had been brought in from other islands in the Pacific such as the Solomon Islands. Between 1875 and 1916, about 60,000 Girmitiyas from India were brought to Fiji as labourers in local plantations. The abolition of indentured labour in 1919 led to a vast influx of immigrants into Fiji and the need to revisit native land policy.

37. The appointment of Ratu Sir Lala Sukuna in the Native Lands Commission in 1922 saw his first official involvement in native land administration, and then later as the first Native Speaker of the Legislative Council.

38. In 1936, at a meeting of the BLV, the BLV passed a Resolution for the creation of an institution in which to place the administration of native land in trust for the native Fijians. Ratu Sukuna spearheaded the nationwide consultations with the various owners of native land in Fiji. The resolution of the BLV was upheld by the majority of Fiji's provincial councils and chiefs.

39. In 1940, the Native Land Trust Board was established under the Native Land Trust Ordinance (now the iTaukei Land Trust Act 1940). The Board of Trustees of the NLTB consisted of the Governor (later the Governor-General, then President) as President of the Board, and by a later amendment, included the Minister responsible for native/indigenous affairs as Chairperson. The Head of State, sitting as head of the organisation, ensured that native land would not be subject to party politics. The Act set out the framework for the management, control and administration of iTaukei land in Fiji.

40. In 1966 the Agricultural Landlord and Tenant Ordinance (and later known as the Agricultural Landlord and Tenant Act - ALTA) was enacted by the Legislative Council to provide a basic set of guidelines implied in leases of agricultural land. ALTA effectively curtailed the Board's powers to administer agricultural land. TLTB has made submissions to Cabinet for the review of ALTA, recommending that the said Act be amended to apply to non-iTaukei land, i.e. freehold and State lands.

41. In 1970, under the Fiji Independence Order 1970, Fiji gained independence from Great Britain. The Fiji Independence Act solidified the protection of iTaukei land, continuing colonial policies established under the 1874 Deed of Cession.

42. Under the 1970 Constitution, legislation affecting land, including TLTA and ALTA were constitutionally entrenched for the first time. Entrenchment of laws affecting iTaukei and iTaukei land meant that no amendments could be made to legislation, such as TLTA, ALTA, and the Native Lands Act, without meeting special majority votes in both the House of Representatives and Senate.

43. Since independence, Fiji has had a tumultuous political history, with there being no less than three Constitutions and three coups.

44. Thankfully, under the 1990 Constitution and then later under the 1997 Constitution, laws affecting the iTaukei and iTaukei land were entrenched, and iTaukei land rights were protected by the highest law in the land.

45. The 6 December 2006 coup would see a chain of events play out, which resulted in the abrogation of the 1997 Constitution on 10 April 2009 and the promulgation of decrees and laws, which aimed to water down the powers of the iTaukei institutions that played a pivotal role in protecting the interests of the iTaukei.

46. Such decrees and promulgations included an amendment to the iTaukei Affairs (Amendment) Decree 2012 which saw the removal of the BLV as an institution. An amendment to the iTaukei Land Trust Act was also made by decree in 2011 which saw the implementation of "equal rent distribution" - a move that was calculated to further weaken the traditional vanua positions by removing their emoluments to which they were previously entitled.

47. Also in 2011 the Land Use Decree was promulgated. The Decree allowed for the "designation" of iTaukei land into a Land Bank to be administered by the Land Use Unit. The Land Use Unit effectively sought to bypass the authority of TLTB by acting as a competing State-run entity that leased iTaukei land.

48. Other such controversial legislation was introduced by the Bainimarama government included the infamous "Bill 17" which saw an amendment to section 12 of the iTaukei Land Trust Act. Such amendment removed the need for TLTB's consent to dealings such as mortgage applications. However, in restricting the previously unfettered discretion of the Board in considering consent applications, the amendments effectively watered down the powers of the Board in administering iTaukei land.

TLTB'S MANDATE

49. The Board's mandate is captured in section 4 of the iTaukei Land Trust Act 1940 as follows:

> The Control of all iTaukei land shall be vested in the Board and all such land s**hall be administered by the Board for the benefit of the iTaukei owners**.

50. TLTA also sets out other provisions on the mandate of TLTB as follows:

> *Section 6 – Constitution of the Board*
>
> 6.(6) The Board shall be a body corporate with perpetual succession and a common seal and may, in such name, sue and be sued, **borrow money and enter into contracts, and may acquire, purchase, take,**
> **hold and enjoy real and personal property** of every description and may convey, assign, surrender and yield up, charge, mortgage, transfer or otherwise dispose of or deal with or in real or personal property vested in the Board on such terms as the Board thinks fit.
>
> *Section 14 Distribution of rents and purchase money*
>
> 14 (1) Subject to the other provisions of this section, rents and premiums received in respect of leases or licences in respect of iTaukei land shall be **subject to a deduction of such amount as the Board may from time to time determine not exceeding 25% of such rent** or premium, which shall be payable to the Board **as and for the expenses of collection and administration**, and the balance thereof shall be distributed in the manner prescribed.

51. In addition, under the iTaukei Land (Trust Funds Investment) Regulations 2004 provides as follows:

Regulation 2 Power to invest and lend

> Subject to section 14 of the act, the Board, **may lend or invest any trust funds including rents, royalties or premiums** in respect of leases, licences, concessions or any other binding agreements on iTaukei land, provided that there is always a legal security by way of a mortgage, charge or any other collateral arrangement that normally qualify under any normal bona fide commercial investment or lending transactions.

52. Over the years, TLTB has progressively transformed to meet the expanding expectations of landowners, government, and national development stakeholders. While our core mandate remains the effective administration and protection of iTaukei land, our role has broadened significantly.

THE DEED OF CESSION AND ITS IMPACT ON INDIGENOUS LAND OWNERSHIP

53. The starting point in the discussion on indigenous land ownership is the Deed of Cession of 1874. Article 4 of the Deed of Cession 1874 stated as follows:

> 4. THAT the absolute proprietorship of all lands not shown to be now alienated so as to have become bona fide the property of Europeans or other foreigners or **not now in the actual use or occupation of some chief or tribe or not actually required for the probable future support and maintenance of some chief or tribe** shall be and is hereby declared to be vested in Her Majesty her heirs and successors.

54. Article 4 of the Deed of Cession guaranteed the retention of full ownership rights of land of which indigenous Fijians were in actual use or occupation, as well as those lands which were required for the probable future support and maintenance of the indigenous Fijians.

55. The landmark case of HBC 116/1999 *Epeli Kanakana & Ors* v *Attorney-General & iTaukei Lands and Fisheries Commission* discusses the effect of the provisions of Article 4 of the Deed of Cession on the rights of iTaukei landowners. Paragraph 113 of the judgment stated:

> Article 4 of the Deed of Cession provides for two situations in which absolute proprietorship of Native land became vested in the British Crown, and Native title is extinguished, namely, where:
>
> (c) Land "not shown to be now alienated, so as to have become bona fide the property of Europeans or other Foreigners ("Non bona fide alienated Native land"), and
>
> (d) Land "not now in the actual use or occupation of some Chief or tribe or not actually required for the probable future

support and maintenance of some Chief or tribe" ("Unused or Unoccupied Native land").

56. This meant that the absolute proprietorship of all lands in Fiji remained with the indigenous Fijians except for those lands which fell into the two categories above.

57. "Absolute proprietorship" as stated in the Deed of Cession meant that there was no limitation to the rights that the iTaukei had to their land – it denoted full and complete ownership of land, including in relation to resources on the surface of and underneath the land.

TLTB POSITION ON MATTERS AFFECTING iTAUKEI LAND RIGHTS AND PROPOSED AMENDMENTS TO THE 2013 CONSTITUTION

58. The current constitutional review presents a critical and historic opportunity to address enduring structural inequities affecting iTaukei landownership. These inequities are not incidental. Rather, they are the product of successive legal and policy frameworks - originating in the colonial period and perpetuated in the post-independence era.

59. These frameworks have operated to restrict the full enjoyment of proprietary rights by iTaukei landowners over their lands and resources.

60. The Constitution, as the supreme law of Fiji, must serve as a corrective instrument capable of restoring balance, equity, and justice in relation to iTaukei land tenure.

61. In particular, past legal regimes facilitated arrangements that were fundamentally inconsistent with the principles of intergenerational stewardship inherent in iTaukei customary landholding. The most prominent example is, of course, the granting of the 999-year Toko lease by the Colonial government under the iTaukei Lands Ordinance 1905. Such a lease being, in effect, quasi-freehold, has alienated land from the control and benefit of its customary owners of Mataqali Tilivasewa and Mataqali Navusabalavu for multiple generations, undermining both their economic interests and their cultural connection to the land. The returns derived from these leases are disproportionate to the value of the land, thereby perpetuating economic disadvantage and limiting the ability of landowners to benefit meaningfully from their land.

62. TLTB further submits that these historical injustices must be understood within the broader context of disparities in wealth distribution in Fiji. A significant contributing factor to these disparities has been the systematic limitation on the ability of iTaukei landowners to fully utilise and derive benefit from their land and natural resources.

63. While iTaukei land constitutes the majority of land in Fiji, the legal framework governing its use has often constrained landowners to passive roles, with limited participation in decision-making and limited access to equitable returns. This has contributed to a disconnect between land ownership and economic empowerment.

64. Moreover, legislative and policies have, over time, effected a form of partial dispossession by removing or vesting in the State certain proprietary rights that would ordinarily be incidental to landownership. This includes rights to sub-surface minerals, as well as rights over the

foreshore, mangrove areas, and the soil beneath rivers and the sea. The vesting of such rights in the State, without corresponding recognition of the customary ownership interests of iTaukei landowners, has significantly curtailed their ability to benefit from the full spectrum of resources associated with their land.

65. We therefore challenge the Constitution Review Commission to move beyond the preservation of formal ownership and instead work to ensure the restoration of substantive proprietary rights. In doing so, the Constitution can provide a framework for the equitable sharing of benefits derived from land and natural resources, the strengthening of customary tenure, and the promotion of sustainable development that aligns with the aspirations and rights of iTaukei landowners.

66. Against this background, TLTB makes the following specific proposals for constitutional amendment as essential measures to address historical injustices and to secure a more equitable and just framework for the future.

Section 30 – Rights of landowners to minerals as an incident of land ownership

67. Section 30 of the Constitution states that all minerals in or under any land or water are owned by the State.

66. The above Constitutional provision trickles down in its operation to the Mining Act 1965 and the State Lands Act 1945.

67. Section 3 of the Mining Act states that all minerals of every description in or under all lands of whatever ownership or tenure shall be deemed always to have been the property of the State and shall be deemed not to have been parted with under any alienation, lease, licence or permit.

68. Section 7 of the State Lands Act 1945 states that any grant under the State Lands Act does not confer any right to precious metals, coal, or minerals of any description.

69. TLTB submits that the "absolute proprietorship" of iTaukei to their lands as enshrined in Article 4 of the Deed of Cession includes subsurface rights to all minerals of every description, including precious metals, coal, or minerals.

70. It would be helpful to understand the policy reasons for the current position of the law deeming ownership of minerals in the State. We discuss this below.

Colonial policy

71. Fiji is a former colony of Great Britain, and as such, it adopted its common law system. This meant that laws were received into Fiji from Britain with or without modification. Moreover, laws of general application in force in England also applied in Fiji.

72. One such common law position was the prerogative of the Crown to ownership of precious metals. The seminal English common law case of *In re the Case of Mines* (*R* v *Earl of*

Northumberland) in 1568 established the legal principle that all mines or gold and silver within the realm were reserved for the Crown. The rights of Queen Elizabeth I (and successive monarchs since then) to precious metals were founded in the following passage in the case:

> "[In] respect of the excellency of the thing, for of all things which the soil within this realm produces or yields, gold and silver is the most excellent; and of all persons in the realm, the King is in the eye of the law most excellent. And the common law, which is founded upon reason, appropriates every thing to the persons whom it best suits, as common and trivial things to the common people, things of more worth to persons in a higher and superior class, and things most excellent to those persons who excel all other; and **because gold and silver are the most excellent things which the soil contains, the law has appointed them** (as in reason it ought) **to the person who is most excellent, and this is the King**."

73. The above passage stated, in effect, that ordinary things go to ordinary people, more valuable things go to higher-ranking people, and the "most valuable" or excellent" things should go to the "most excellent person" i.e. the monarch. Gold and silver, being rare and valuable, and needed for currency, were therefore reserved for the monarch. Private landowners did not own gold or silver found in their land.

74. There were also prevailing politico-economic reasons in England in 1568 which resulted in the landmark decision, chief of which was the grave concern of the Crown that England had little access to gold. This compared to its enemy, Spain (against whom there was a risk of renewed war), which had recently plundered ample quantities of gold from the New World (the Americas).

75. The underlying legal logic behind the ***Case of Mines***, i.e. that mineral ownership and rights to minerals are matters of the sovereign state rather than private ownership, underpinned British colonial mining policy, including in its colonies.

76. This policy would ultimately be incorporated into the Mining Ordinance 1908 and ultimately in the Mining Ordinance 1965, while Fiji was still a British colony.

77. Fiji has since, transitioned away from the regalian, status-based laws. However, while the State now supplants the Crown, the remnants of colonial concepts of mineral ownership remain in the Mining Act.

78. When the Mining Bill was tabled for a second reading before the Legislative Council on 22 June 1965, the Director of Lands, Mines and Surveys set out the policy underpinnings for the bill as follows:

> "In every territory in which the mineral resources, but not all lands, are the property of the state and in all territories

> where the state seeks to encourage the private investor in the exploitation of mineral wealth, it is necessary to devise legislation to cover three principal matters. Firstly, the law must safeguard the state's interest in mineral resources and must **facilitate the smooth exploitation of those minerals for the benefit of the public at large**. Secondly, the law must provide **adequate safeguards for landowners in and under whose land minerals occur** but at the same time it must ensure that statutory power exists to prevent any landowner from unreasonably obstructing the proper development and extraction of the state-owned wealth. Thirdly, the law must provide **satisfactory machinery to enable mining rights to be issued so that private concerns can be encouraged to participate** in the exploitation of the mineral resources."

79. The three principal matters which the Mining Act proposed to safeguard were:

a. facilitation of smooth exploitation of minerals

b. adequate safeguards for landowners together with checks and balances to safeguard against arbitrary obstruction by landowners; and

c. satisfactory machinery for the issuance of mining rights to encourage participation by the public.

80. The TLTB submits that the vesting of ownership rights over minerals in the respective iTaukei landowners is not inconsistent with the policy intention of the legislation.

81. Ownership of minerals can vest in the iTaukei landowners while facilitating smooth exploitation of minerals, providing adequate safeguards and providing satisfactory machinery for the issuance of mining rights.

Arguments for vesting ownership of minerals in the iTaukei

82. A number of justifications can be made for the case of amendments to section 30 of the Constitution so that mineral ownership rights are vested in the name of the iTaukei landowners.

83. These include historical rectification of a colonial wrong (since the vesting of minerals in the Crown/State was done without their free and prior informed consent). We anticipate that such an argument would have been submitted already by others, and we do not wish to reiterate it.

84. Instead, TLTB offers two other justifications for vesting ownership of minerals in the iTaukei owners, which we discuss below.

iTaukei ownership rights to minerals already recognised

85. Section 30 of the 2013 Constitution recognises landowners' right to a fair share of mineral royalties. The Fijian government recently recognised landowners' rights to a fair share of royalties from mineral extraction.

86. In 2018, the Fair Share of Mineral Royalties Act was passed with a view to establishing a process for the fair sharing of royalties for the extraction of minerals.

87. No State would pass laws to allow landowners to receive a share of royalties unless they recognise the rights of the landowners to ownership of minerals in the soil.

88. While the State has come a long way in recognising the rights of iTaukei landowners to minerals in their land, the TLTB submits that full ownership rights to the said minerals must be granted to the respective iTaukei landowners.

89. The law must change to allow iTaukei landowners full rights to minerals, and the State's continued exercise of its prerogative over minerals constitutes unjust deprivation of property without fair compensation. After all, the 2013 Constitution requires the Parliament and Cabinet to ensure that all leases and land tenancies provide a fair and equitable return to the landowners (section 29(4)).

Alignment with indigenous rights under international law

90. Fiji is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples ("**UNDRIP**").

91. In addition to this, the Rights of Indigenous Peoples Bill 2025 ("**the Bill**") is currently being tabled before Parliament for consideration. The Bill provides for the recognition, protection and promotion of the rights of indigenous people, and to also give effect to UNDRIP.

92. Under UNDRIP, Fiji has the obligation to recognise the rights of the iTaukei to their natural resources. Once the Bill is passed by Parliament, it provides even stronger impetus for the State to commit not only to recognising but also granting full ownership rights over iTaukei land, including proprietary rights over minerals in or under all lands in Fiji.

93. In the United States of America, natural resources, including minerals, are owned by the respective Native American tribes who own land in fee simple. Similarly, in Canada, indigenous tribes have been able to negotiate and settle land claims, conferring full ownership rights, including subsurface rights to minerals. In South Africa, indigenous tribes who were dispossessed of their lands during the period of apartheid have been restored full ownership of their lands, including subsurface mineral rights, where there is evidence of pre-colonial customary use.

94. History bears witness to the fact that the indigenous populations in the USA and South Africa were severely mistreated and marginalised by the State. Fijian iTaukei on their part were the beneficiaries of a very paternalistic British colonial policy.

95. TLTB submits that the move in the jurisdictions above towards recognising full ownership rights to previously disempowered tribes and indigenous groups, including to subsurface mineral rights, should provide Fiji with more than enough reason to return ownership of minerals to the iTaukei landowners since we do not have the same historical, structural and socio-cultural hindrances.

Mechanism for change – how done?

96. Section 30 of the 2013 Constitution must be amended to confer full proprietary rights over minerals to the "iTaukei landowners" (as defined in section 2 of the iTaukei Land Trust Act 1940 an iTaukei Lands Act 1905).

97. There would also need to be consequential amendments to:

a. section 3 of the Mining Act 1945 by replacing State ownership of minerals with ownership by the "iTaukei owners";

b. section 7 of the State Lands Act 1945 (for reservation of rights over minerals to the iTaukei owners),

c. section 3 of the Petroleum (Exploration and Exploitation) Act 1978 (for reservation of rights to petroleum to the iTaukei owners), and

d. the Fair Share of Mineral Royalties Act 2018 (this would be repealed as full ownership and therefore full royalties would flow to the iTaukei owners).

Section 27 and section 29(5) of the 2013 Constitution – Land Acquired for Public Purposes to be Reverted to iTaukei Land

98. Section 27 of the 2013 Constitution states that every person has the right not to be deprived of property by the State other than in accordance with a written law. One such written law which allows the State to deprive private owners of their land is the State Acquisition of Lands Act 1940. This legislation allows the State to compulsorily acquire land for public purposes, subject to payment of compensation.

99. In the State Lands Act 1945, section 8 requires that any iTaukei land which was acquired by the State for public purposes under the State Acquisition of Lands Act 1940 or other written law, and which is no longer required for public purposes, may be declared to be iTaukei land, and the proper recordings in the Register of iTaukei Land be made.

100. However, even prior to the enactment of the State Acquisition of Lands Act and the State Lands Act, the Crown had been acquiring native land. The Native Lands Acquisitions Ordinance 1905 was passed by the colonial government headed by Governor Im Thurn in response to pressure from European settlers and the government for agricultural and settlement purposes.

101. Under the 1905 Ordinance, freehold titles were obtained from the native Fijians. The Crown was also given the power to acquire native land for public purposes with or without compensation. As a result of these acquisitions by the Crown, there were a total of **206 Native Grants** issued covering an area of **approximately 42,440 hectares**.

Landowner Grievances

102. Since even before Fiji's cession to Great Britain, grievances over the sale of iTaukei lands began to surface from various iTaukei landowning units. These grievances went unresolved or fell on deaf ears. This has resulted in widespread disillusionment and ongoing disputes among landowners, tenants, the Government, and TLTB.

103. As alluded to earlier, the records of the iTaukei Lands Commission show that 223 landowning units (either Mataqali and Tokatoka) are *dependent units* and do not own any land. They are merely landowners by name, but in reality, they are landless.

104. Since the establishment of the Board in 1940, investigations have been made on claims for reservation and reversion of State land. Some claims were finally proclaimed in 1986 by the then Governor-General.

105. In 2002, the iTaukei Land Trust (Amendment) Act 2002 transferred Schedule A and B lands from the State to TLTB. TLTB became the ultimate heir for all Schedule A and Schedule B lands.

106. **Schedule A** lands are extinct mataqali lands which used to be owned by a mataqali but whose members have all since passed away. **Schedule B** lands are lands that were not claimed by any landowning unit at the time of the various sittings of the iTaukei Lands Commission.

107. Since 2022, under the administration of TLTB, Schedule A and B lands have been allocated:

a) A list of 844 Schedule A parcels with an area of over 223,581 acres was published by the Fiji Government in the Gazette.

b) A list of 260 Schedule B parcels with an area of over 85,812 acres was also published by the Fiji Government in the Gazette.

These lands have been allocated to legitimate claimants by TLTB.

108. TLTB has also processed claims by iTaukei landowning units over **State Freehold Lands** (Crown Grants and Native Grants purchased by the State).

109. 17 such cases were approved by TLTB and submitted to Cabinet. On 26 March 2024, a Cabinet decision (being CP (24)81) was made in relation to the 17 cases as follows:

i. Cabinet noted the numerous concerns and claims submitted by the landowning units on the Reversion of Crown Grants and Native Grants.

ii. Endorse the establishment of a Steering Committee to examine Crown Grants and Native Grant claims.

110. The 17 pending claims have been presented to a Steering Committee for consideration and processing. These are tabulated below:

	NAME OF LAND	TITLE	AREA (Hectares)	CLAIMANT	VILLAGE	TIKINA	PROVINCE
1.	Naitasiri	CG 341	91.0563	Yavusa Baulevuirara	Nakini	Naitasiri	Naitasiri
2.	Kalabo	NG 6	1048.9680	Yavusa Matanikorovatu & Yavusa Nawaidina	Kalabu Drekeiwaila	Naitasiri	Naitasiri
3.	Natova	CG 1487	165.5200	Yavusa Leweiwavuwavu of Sabeto and Yavusa Ua of Saunaka, Nadi	Koroiyaca Saunaka	Sabeto Nadi	Ba
4.	Luvuci	NG 137	161.8742	Yavusa Waruta	Natalau	Sabeto	Ba
5.	Rara	CG 1259	522.4494	Mataqali Rara Yavusa Wailevu	Wailevu	Wailevu	Macuata
6.	Navakai and Solowaru	CG 951	331.8424	Yavusa Tukani Botiliwula, Noi Neiqoro	Navoci and Namotomoto	Nadi	Ba
7.	Kubunasarava	CG 1076	193.0353	Yavusa Tububere and Yavusa Lomolomo	Lomolomo	Vuda	Ba
8.	Vulani	CG 1077	50.5857	Yavusa Leweiwavuwavu	Sabeto	Sabeto	Ba
9.	Naqara	CG 1062A	282.2803	Yavusa Lomolilevu	Drauniivi	Raviravi	Ra
10.	Qeledradra	CG 1084	602.9825	Yavusa Nakubuti	Drauniivi	Raviravi	Ra
11.	Nakauvuli Nabuta	CG 1070	1613.8888	Yavusa Nadokana Yavusa Navauvau	Rabulu Korovou	Tavua Tavua	Ba Ba
12.	Nasaro	NG 113	3196.2121	Yavusa Wakalou	Drauniivi	Raviravi	Ra
13.	Iosuna	CG 1055	38.2428	Yavusa Leweinataqalulu	Sanasana	Malomalo	Nadroga
14.	Korolevu	CG 1152	246.0492	Yavusa Nakorolevu	Lawaki	Nakasaleka	Kadavu
15.	Kuku	NG 162	61.7146	Yavusa Nailagolaba	Kuku	Nausori	Tailevu
16.	Namau	NG 160	413.9940	Mat. Koro Yavusa Koro	Koroboya	Qalivalatina	Ba
17.	Koro No. 1	NG 158	3403.411	Mat. Natolevu Yavusa Koro	Koroboya	Qalivalatina	Ba

Example of Land Reversion under Section 8 of the State Lands Act 1945

111. To illustrate, we set out below 2 examples of a reversion of land under section 8 of the State Lands Act that was recently carried out.

NG 187 Saru Water Catchment (Lautoka)

112. The Colonial Government bought land with an area of 3177 acres on 28 June 1924 for £637.8. NG 187 was issued on 25 September 1926. The land was purchased to build a water catchment to supply Lautoka Town.

113. In 1955, the government proclaimed it as a Forest Reserve and later leases were issued to Fiji Pine and Fiji Sugar Corporation. iTaukei landowners petitioned for reversion because the land was no longer used for the purpose for which it was purchased.

114. This reversion case was approved by Cabinet on 19 January 1999, with the condition for exclusion of the following areas: Tavakubu Cemetery, Forestry Station, PWD water pipeline, and 24 acres for the cemetery extension. Also, the administration of all existing State leases to Fiji Sugar Corporation and Fiji Pine was transferred to TLTB.

Nadi Airport

115. Tokatoka Nadrau of Saunaka petitioned for the return of 434 acres of land after the Government began to lease land to CAAF. The 434 acres is approximately 36% of Crown Lease No. 3469 (which has a total of 1190 acres).

116. The Cabinet, under the provisions of Section 8 of the State Lands Act, endorsed the return of only 10 acres 3 roods and 24 perches, which comprises 19 surveyed lots. The area approved by Cabinet was reverted to iTaukei land by FRG 22/12/2000.

117. TLTB submits that all lands that were acquired by the State under the Act and the State Acquisition of Lands Act 1940, which no longer serve the public purpose for which they were initially acquired, be reverted to the respective iTaukei landowners. These lands can, of course, be administered by TLTB, with leases and licences issued to the current occupants or other applicants pursuant to the iTaukei Lands Trust Act 1940.

Section 29(5) of the 2013 Constitution Defeats the Operation of Land Reversion

118. Section 29(5) of the 2013 Constitution states that all land that existed as freehold land immediately before the commencement of the Constitution shall remain as freehold even if it is sold or purchased, unless it is sold to the State.

119. As pointed out above, there were **206 Native Grants issued** by the Crown over iTaukei land covering an area of **approximately 42,440 hectares**. Native Grants purchased by the State (together with Crown Grants) became State Freehold lands.

120. These lands must be reverted to the respective iTaukei owners. However, the operation of section 29(5) of the Constitution effectively stops such land from being reverted to "iTaukei land" status.

121. One such example of the operation of section 29(5) in inhibiting the protection of iTaukei land rights is the Momi Bay Development Act 2010. This legislation was designed to protect the

investment of the Fiji National Provident Fund in facilitating the completion of the Momi Bay Integrated Resort Development. The Act also validated the land swap agreements, which involved iTaukei land. However, to date, while native land has been converted into freehold land, the accompanying swap from freehold land to native land status has never been completed.

122. The enactment of the 2013 Constitution and operation of section 29(5) effectively preclude parties from completing the land swap. Moreover, the Act itself prohibits the filing of legal proceedings to challenge aspects of the Act. Judicial bodies are barred from hearing claims arising out of the Act.

123. For the above reasons, the TLTB submits that section 29(5) of the 2013 Constitution should be deleted.

AMENDMENT TO PREAMBLE OF CONSTITUTION

124. Fiji's history bears witness to the civilizing and enduring influence of Christianity. TLTB submits that the Preamble to the 2013 Constitution should be amended to recognise the historical contribution of Christianity to the social, educational, legal and moral development of Fiji.

125. The work of the Christian missionaries played a significant role in Fiji in eradicating practices such as cannibalism, ritual killings and widow strangling. The missionaries also contributed to the education of the Fijians and the preservation of the Fijian language. The missionaries set up schools and institutions that continue to serve the Fijian communities.

126. The influence of Christianity also shaped concepts of public morality (such as bans on intoxication, dress and code of conduct), family life and the welfare of the community.

127. TLTB submits that the reference in the Preamble to the enduring influence of Christianity in Fiji's national heritage in recognition of a historical fact. This should be made distinct from any proposals to removal of the current provisions in the Constitution which recognises Fiji as a secular State. It should also not be interpreted as conferring preferential treatment to Christianity or an attempt at undermining other religions or minority faiths.

128. TLTB proposes that the wording below be incorporated in the Preamble of the 2013 Constitution:

> "Recognising the profound and enduring influence of Christianity in shaping the history, moral foundations, institutions, customs and national development of Fiji, and honoring its contribution to the advancement of education, justice, peace, , compassion and well-being of the people."

ENTRENCHMENT OF LEGISLATION AFFECTING THE INTERESTS OF THE iTAUKEI AND iTAUKEI LAND

129. As we referred to earlier, under the previous three constitutions (the 1970, 1990 and 1997 Constitutions), laws affecting the iTaukei and their land were the cornerstone of the Fijian legislative and legal framework. The entrenchment of laws enabled the protection of indigenous land rights and indigenous institutions. These laws included the following:

a) iTaukei Affairs Act

b) iTaukei Lands Act

c) iTaukei Land Trust Act

d) Rotuma Act

e) Rotuma Lands Act

f) Banaban Lands Act

g) Banaban Settlement Act

h) Agricultural Landlord and Tenant Act

130. History shows that, under the 2013 Constitution, by the swipe of a pen or by simple majority in Parliament, the powers of fundamental iTaukei institutions and their functions were watered down. The controversial "Bill 17" is a prime example of this.

131. "Bill 17", also known as the iTaukei Land Trust (Amendment) Act 2021, amended section 12 of the iTaukei Land Trust Act. While the powers of the Board in granting consent to mortgages were the subject of much debate, the effect of other amendments meant that TLTB no longer had "absolute discretion" in its administration of dealings relating to leases of iTaukei land.

132. TLTB submits that the legislation previously entrenched under the 1997 Constitution should be entrenched under the 2013 Constitution. Any amendments to the entrenched legislation should require ¾ special majority of the Parliament after such amendments have been considered by the Ministry of iTaukei Affairs in consultation with the Great Council of Chiefs and the iTaukei Land Trust Board.

CONCLUSION

133. TLTB reiterates its appreciation to the Constitutional Review Commission for the opportunity to make submissions on the review of the 2013 Constitution. For iTaukei, land is not merely an economic asset but the foundation of identity, culture and inter-generational wellbeing. Accordingly, the Constitution must continue to provide the highest level of protection to iTaukei land tenure and the institutions established to administer and safeguard those interests.

134. TLTB respectfully urges that the Constitution be amended to better align with the original intent of Article 4 of the Deed of Cession and the established understanding of "absolute proprietorship", including recognition of proprietary rights of iTaukei landowners to minerals and other natural resources in or under their land, subject to appropriate public-interest regulation. Further, land acquired for public purposes and no longer required should, as a matter of fairness and restorative justice, be reverted to the respective iTaukei landowners and administered in accordance with the iTaukei Land Trust Act.

135. TLTB also respectfully submits that legislation central to iTaukei interests and iTaukei land should be constitutionally entrenched with an enhanced special-majority amendment threshold, and with structured consultation involving the Ministry responsible for iTaukei Affairs, the BLV, and TLTB, so that fundamental protections cannot be diminished by ordinary legislative processes.

136. TLTB stands ready to assist the Commission with any further information required and looks forward to the Commission's recommendations reflecting these long-standing principles of protection, equity and good governance.

Yours faithfully,

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SOLOMONI NATA
CHIEF EXECUTIVE OFFICER

CC: The Hon. Prime Minister
Cabinet Ministers

Fiji Teachers Union (FTU)

Fiji Teachers Union
Date:6-7-2026

Mr. Valenitabua: We welcome you to the Constitution Review Commission, sitting today with four members, or four commissioners. It's a pleasure having you here. We have been looking forward to the submitters who are coming in this week.

Because we've got the trade union, as you are, and other associations and groups who we believe will be giving us a lot of submissions that need to be considered carefully in relation to our amendment to the 2013 Constitution. So, we welcome you this morning. Just a matter of introduction, you might know some of us, if not all of us.

On my right is Mr. Conway Beg, an architect, I'm sure you know him. And he's one of our commissioners. I am Sevuloni, the chairperson.

On my left is Mr. Ami Kohli a lawyer from Labasa. And on the far left is Dr. Nilesh Goundar, and I'm sure you two know each other. So, it's a matter, for this morning, it's a matter of us listening to you on the FTU's views and recommendations in relation to amendments and laws which should be in the amended 2013 Constitution.

Our task, do you need something from the girls? Put it onto the screen. We haven't got that arranged. It's okay, we'll just follow together.

So, we're here to listen. You will understand that our job is to, or our task which has been given to us by His Excellency the President, is to review the Constitution. And review may mean amend and change and whatever else we can do to put new laws into the 2013 Constitution.

So, we have three options. Add new laws, remove those which are already in the Constitution, or just amend the wording so that we have different meanings. We've had a lot of consultations and we've heard a lot from our people, both here and around the country.

We've been around Fiji. So, without further ado, I will now invite you to have the mic and start with your submission to us. Thank you.

Dr. Gounder: Well, thank you, Chair. Thank you for the invite. I must, at this point in time, congratulate the Commission for coming, for your election to this prestigious position, I would say, in order to get a new Constitution for Fiji.

Basically, I represent, as the General Secretary, the Fiji Teachers Union, which comprises of around 5000 teachers who are our members, the biggest trade union in the country currently. I was a teacher. I had been a teacher for 25 years and a classroom teacher for 9 years.

And I resigned in June 2023, immediately after the national elections, to take over from my colleague, the current Labour Minister. I have fought the election, won. Before that, I was, from 2012, I was the National President of Fiji Teachers Union.

So, there you are, Commissioners, and once again, thank you so much for the invite. Basically, my presentation, I think it's about 40 pages. And it consists of addendum, this addition to the current 2013 Constitution, some of the things that we may not like, which I have, you know, FTU recommends that it be taken out.
And we would also like to add two chapters in there. And this comprehensive presentation is self-explanatory. It has got everything in there.

I believe I am given, you know, much time so that I am able to take us through this, you know, properly. With your permission, Chair, I now take all of us through the submission by the Fiji Teachers Union to the Constitutional Review Commission of 2026.

Mr. Valenitabua: By your information, Mr. Gounder, you have one hour.

Dr. Gounder: One hour, okay. Until 10am, please. 10, it's quarter past nine.

Can it be quarter past 10? Right. Thank you. This prepared by Fiji Teachers Union after consultation with our national executives, and also our rank and file, but submitted through the General Secretary to the Commissioners here.

The theme is a democratic, inclusive, and future-focused constitution for every Fijian. Why? Why are we saying that? A democratic, right, democracy must prevail at all levels. Two, inclusive, should be an inclusive one, and also a future-focused.

We must look at the future, the next 30 years. Letter of submission, there is a letter that I have written to the Chairperson of the Commission. In brief, what is our presentation on? Table of contents, on page 4, Commissioners, from 1 to 13.

13 is conclusion, 1 is the cover page, 14 is the appendices, and 50 references and bibliography. Over to page 5, Executive Summary. There, just in a nutshell, what I have written is that this is the supreme law of a nation.

It establishes the institutions of government, this one, protects the rights and freedom of its citizens, defines the relationship between the state and the people, and provides a framework within which democratic governance is exercised. Constitutional reform is therefore one of the most significant responsibilities undertaken by any nation. And in this, I'd also like to contribute by saying that it's important, as a nation, we look at how this exercise is going to bear fruits in future.

As one of Fiji's longest established professional organizations, the Fiji teachers believe that constitutional reform should promote democratic governance, social justice, equality, accountability, respect for diversity, and the rule of law. Our constitution should not only respond to present challenges, but in fact, it should also provide a stable foundation for future generations. That is very important in our belief.

Therefore, this submission is guided by the principle that Fiji's constitutional future should draw upon the strength of previous constitution. And as I go to discuss, I brought in the 1970, some good points from 1970 constitution, as well as from the 1997 constitution, and not forgetting the 2013 constitution. I have, in a nutshell, given the strengths and weaknesses of these three constitutions, which is in the presentation later.

Over the page, page six says, at the bottom, building Fiji's constitutional future, part one, about the Fiji teachers union. As I have said, it's a union, the largest teacher union in the country, with around 5,000 teachers. And then I've gone on to say the role of teachers in nation building, Fiji's interest.

Why? Why are we interested in this constitutional reform? Where are we stand as a teacher union? And then, over the page to page eight, because of one hour, that's why I'm rushing. Historical background of constitutional development in Fiji from 1970 to 2026, including this one here. Introduction, the constitutional history of Fiji reflects the country's political evolution, cultural diversity, and continuing efforts to balance democratic governance with aspirations of its people.

Since independence in 1970, Fiji has experienced several constitutional transitions, each influenced by changing political, social, and historical circumstances. Understanding this constitutional journey provides valuable context for the current review process. The Fiji teacher's union believes that future constitutional reform should build upon the strengths of previous constitutional arrangements while addressing lessons learned from the past.

Then I'm looking at 6.2, the 1970 independence constitution, which was a Westminster-style parliamentary democracy under constitutional monarchy and sought to balance representative government with protections for Fiji's diverse ethnic communities. Then further I go on to explaining the independence constitution that provided political stability during the early years. Then I'm looking at 6.3, over the page to page nine, the 1990 constitution.

Following the political events of 1987, a new constitution came into effect in 1990. The 1990 constitution reduced significant changes to the structure of government and electoral representation while it sought to address particular political concerns of the period. It also generated debate regarding equality, representation, and constitutional legitimacy.

Many organizations including civil society groups, religious bodies, trade unions, and Fiji teachers' union, international observers encouraged further constitutional dialogue aimed at strengthening national unity and promoting broader public confidence. Then came the 1997 constitution. The 1997 constitution represented an important milestone in Fiji's constitutional development.

It emerged from an extensive process of public consultation and political negotiations and sought to encourage consensus among Fiji's diverse communities. The constitution strengthened the protection of fundamental rights, reinforced the independence of key constitutional institutions, recognized principles of good governance, and promoted greater inclusiveness in public administration. Many aspects of the 1997 constitution continue to be regarded as significant contributions to Fiji's constitutional development, particularly its emphasis on consultation, reconciliation, and democratic participation.

Then 6.5, the 2013 constitution. The constitution adopted in 2013 introduced substantial reforms to Fiji's constitutional framework. Among its notable features were the establishment of equal citizenry, an expanded Bill of Rights,

constitutional recognition of socio-economic rights, and stronger anti-discrimination protections.

It also introduced significant changes to the structure of parliament, the executive, and constitutional institutions. While many of these reforms have been welcomed, questions have also been raised regarding the concentration of executive authority, the constitutional amendment procedures, parliamentary oversight, and the appointment processes for certain public offices. Therefore, the Fiji Teachers Union considers that the current constitutional reform, review rather, presents an opportunity to retain the strengths of the 2013 constitution while addressing areas that may benefit from refinement or changes.

6.6, the constitutional review process. I have gone on to talk on the constitutional review process that has been undertaken now. And with this widespread public participation, I believe we will be able to get one of the best constitutions for Fiji in the future.

Why constitutional reform matters? That's 7 on page 10. Why it is important? We all know that a constitution is more than a legal document. It expresses the shared values of a nation and establishes the principles upon which government exercises public authority.

For educators, for teachers, constitutional reform carries particular significance. I may repeat, constitutional reforms carry particular significance. For school operates within the constitutional framework established by the state.

Educational policy, children's rights, equality of opportunity, freedom of thought, cultural diversity, labor protections, and public administration are all influenced by constitutional principles. Therefore, the Fiji Teachers Union considers constitutional reform to be inseparable from the broader goals of educational excellence, democratic citizenship, social cohesion, and national development. Accordingly, the union supports constitutional arrangements that promote the rule of law, safeguard independent institutions, protect fundamental rights, encourage participation, and strengthen public confidence in democratic governance.

Then part two of the presentation, F.T.U. Vision and Guiding Principles for Constitutional Reform, Constitution for All Fijians. The introduction is there

why F.T.U. believes that a constitution should reflect the collective aspirations of all its people. Then the guiding constitutional principles there.

The constitutional proceeds, that's the end of page 11. And then over to page 12, democracy. I've also written a rule of law, human dignity, equality and equal citizenship, respect for diversity, accountability and transparency, participation and consultation, social justice, over to page 13, on intergenerational responsibility, which is very important.

And then I move on to nine. That is where I compare the comparative analysis of the 1997 and 2013 constitutions. Why Fiji Teachers Union would rather have a comparative analysis? Because that would allow this constitutional reform to be able to draw lessons from Fiji's constitutional experience rather than regard previous constitutions as mutually exclusive alternatives.

What we want is the good part of those constitutions to be embedded in the future constitution. Both the 1997 constitution and the 2013 constitution contain provisions that have contributed positively to Fiji's constitutional development. The objective of this comparison is to identify those features that should be retained, strengthened or reconsidered in any future constitutional framework.

I may now take you over the comparative overview, the constitutional area, 1997 constitution, 2013 constitution and Fiji's assessment on those. Foundational principles, 1997 constitution, when you look at that, emphasize consensus building, power sharing and consultation. 2013 constitution emphasizes equal citizenry, national unity and constitutional rights.

What is our assessment? Future reform should combine inclusive governance with equal citizenship and strong rights protections. That's what we are looking forward to. Then the Bill of Rights, 97 comprehensive civil and political rights.

2013 expanded to include socio-economic rights and broader anti-discrimination protections. And our assessment, union's assessment, retain the expanded Bill of Rights while considering additional protections for academic freedom. That is very important.

Digital rights and workplace rights. These things are missing in the constitution that we have talked about, 97 and 2013. So that is our assessment that these things should be included, protections for academic freedom, which is very important.

Digital rights and workplace rights. Executive, as far as 1997, provides a strong, sorry, 2013 constitution on executive. Let's move on to the next one, parliament.

Oh no. Provides a strong executive with significant constitutional authority, that is 2013 constitution. And McGregor intended to encourage broader political participation, that's 1997.

Unions review, review opportunities to strengthen parliamentary oversight and accountability while maintaining effective government. Then the next is the constitutional area on parliament. Unicameral legislature with oversight functions.

Unicameral parliament with revised electoral arrangements and committee structure in 2013. And what we are saying is strengthen committee scrutiny, public participation and legislative oversight. I understand we had these senators in the 1997 constitution.

For 2013 it doesn't. Then judiciary under 1997 protected judicial independence through constitutional safeguards. 2013 continues constitutional protection of judicial independence.

What we are saying is retain and enhance transparent judicial appointments and security of TENWA, their terms and conditions. Then on public service, 1997 constitution recognized an independent public service. 2013 establishes the constitutional framework for public administration.

What we as a union, we are saying strengthen guarantees of merit-based appointments and professionalism and also protection from improper political influence. That is very important. The constitutional amendment, 1997 amendment procedure reflected the constitutional framework of that time.

2013 establishes procedures for constitutional amendment. And as a union, what we are saying review where the amendment procedure should encourage broad parliamentary support, public consultation and where appropriate, referendum for major constitutional changes. Then over the page to page 15, 9.2 lessons from Fiji's constitutional experience.

9.3 the FTU constitutional vision. What we are saying, what's our vision on the constitution that is going to be given to us all. Uphold constitutional supremacy and the rule of law.

It must protect the equal citizenship and dignity of every person. It must strengthen democratic institutions through accountability and transparency. It must safeguard judicial independence and the separation of powers.

Promote meaningful public participation in governance. Recognize education as a national priority and constitutional responsibility. Over to page 16, protect workers' rights and freedom of association.

That's really important for us as a union. Advance gender equality and rights of women and children. Support environmental stewardship and climate resilience.

Encourage constitutional stability through inclusive and consultative amendment processes. The union believes that these principles provide a sound foundation for a constitution that is democratic, inclusive, resilient and responsive to the needs of present as well as future generations. Then part 3, FTU constitutional reform recommendations.

10, democratic governance and institutional balance. 10.1, strengthening democratic governance. 10.2, parliamentary oversight.

Then page 17, executive accountability. 10.3, self-explanatory. Says, the constitution should provide clearer mechanisms for holding the executive accountable to parliament, including structured questioning of ministers, regular reporting requirements and transparent decision-making processes in matters of national importance.

11, Bill of Rights and Human Dignity. That's an important aspect. 11.1, strengthening the Bill of Rights.

The Fiji Teachers Union supports the retention and strengthening of a comprehensive Bill of Rights that protects civil, political, economic, social and cultural rights. These rights should be interpreted in a manner consistent with international human rights standards.

11.2, academic freedom.

The constitution should expressively guarantee academic freedom for teachers, lecturers, researchers and educational institutions. This includes freedom to teach, research and disseminate knowledge, protection from undue interference in academic content, institutional autonomy for educational institutions within lawful frameworks. Academic freedom is essential for innovation, critical thinking and the development of informed citizens.

11.3, digital rights. The union recommends constitutional recognition of digital rights, including, over to page 18, protection from cyberbullying and online harassment, safeguards for personal data and privacy, protection against misuse of digital communication platforms. These rights are increasingly essential in modern society.

Then, two, that education is a constitutional right. 2.1, recognition of education. The Fiji Teachers Union strongly recommends that education be expressly recognized in the constitution as a fundamental right and a core responsibility of the state.

12.2, state obligations. The constitution should impose progressive obligations on the state to ensure free and accessible primary and secondary education, inclusive education for learners with disabilities, equitable access to education in rural and maritime areas, adequate funding for public education systems, recruitment and retention of qualified teachers. As we are facing acute teacher shortage in our country, as it is, we are training teachers for export.

This I have been saying and I will keep saying. It is such time that we are able to retain teachers in our country.

12.3, Teacher professionalism.
The constitution should recognize professional status of teachers by guaranteeing merit-based appointment and promotion and experience, protection from political interference, safe and respectful working environments, opportunities for continuous professional development. Teachers are central to national development and their professional integrity should be constitutionally safeguarded.

13, trade union rights and workers' protection.

13.1, freedom of association.

The constitution should explicitly guarantee the right of workers to form in joint trade unions without interference.

13.2, collective bargaining.

The union recommends constitutional protection for collective bargaining as a fundamental labor right. This includes the right of unions and employers to negotiate terms and conditions of employment in good faith.

13.3, protection from victimization.
Workers should be protected from retaliation or victimization for exercising lawful labor rights, including union participation and industrial advocacy. 13.4, social dialogue. The constitution should promote structured dialogue between government, employees and workers, organizations on matters affecting employment, economic policy and labor relations.

Then 14, we are looking at women and children.

14.1, protection of women.
The constitution should strengthen protections for women by prohibiting gender-based violence, domestic violence, workplace discrimination, sexual harassment in all settings.

Then 14.2 over the page, that's page 20, protection of children. The union recommends enhanced constitutional protection for children, including safeguards against abuse and neglect, exploitation and harmful labor practices, violence in all forms.

14.3, corporal punishment, important, really important for our children.

The constitution should prohibit corporal punishment. And any form of cruel, degrading or humiliating treatment of children. Fiji Teachers Union does not condone corporal punishment.

We are not for it. This reflects modern child protection standards, international best practice. What are the days of weeps and cheeks and all those things? Corporal punishment is not in our agenda.

As simple as that.
15, environment and future generations.

15.1, environmental responsibility.

The constitution should recognize environmental protection as a national responsibility. The state should be required to promote sustainable development and safeguard natural resources for present as well as for future generations.

15.2, climate change.

Given Fiji's vulnerability to climate change, the constitution should recognize the state's obligation to adopt policies that support climate resilience, disaster preparedness and environmental sustainability.

15.3, intergenerational equity.

The union recommends constitutional recognition of intergenerational responsibility, ensuring that present development does not compromise the rights and opportunities of our future generations.

Over the page, page 21, 16, approach to the article-by-article review. Purpose of the review method, Fiji's union has adopted a structured and consistent methodology for reviewing the constitution of the Republic of Fiji 2013. This approach ensures that each constitutional provision is assessed in a transparent, systematic, policy-relevant manner.

The purpose of this method is to assist the Constitutional Review Commission by providing one, clear assembly of current constitutional provisions. Two, an assessment of their strengths and limitations or weaknesses. Constructive recommendations for reform or retention are rationale grounded in constitutional principles and public interest.

16.4, review framework.

Each constitutional provision is assessed using the following framework. Current position, a neutral description of the constitutional provision, which is therein.

B, FTU's position, the union's overall assessment, whether to retain, strengthen or to review. And the recommendation, specific proposed reforms or improvements.

D, the rationale, justification based on constitutional principles, governance needs, and international standards where it's applicable.

This structured approach over the page 22, this structured approach ensures consistency across all chapters and enhances the usability of the submission for constitutional drafters. 17. Review of Chapter 1, the state.

I am now into 2013 constitution. 17.1, current position.
Chapter 1 of the constitution establishes Fiji as a sovereign democratic state and affirms the principles of constitutional supremacy and equal citizenship.

FTU's position. The Fiji Teachers' Union supports the retention of the core provisions of Chapter 1. Recommendation, the union recommends strengthening the language of Chapter 1 to explicitly affirm 1. Democratic governance as a foundational constitutional principle. 2. Respect for diversity in Fiji's multicultural society.

3. Commitment to social justice and equality. And 4. Reinforcement of constitutional supremacy. Why? The rationale, these enhancements would reinforce the foundational values of the constitution and thereby provide clearer guidance for interpretation by courts in public institutions.

That's the rationale why we would now put up that recommendation. Review of Chapter 2, the Republic of Fiji, current position. Chapter 2 defines Fiji as a secular state and provides for national symbols and identity.

Our position, FTU's position, the union supports retention of the secular character of the state with clarification. With clarification that is.

18.3 recommendation, the constitution should 1. Maintain the principle of secularism.

2. Explicitly guarantee freedom of religion and belief. 3. Protect cultural expression and linguistic diversity.
18.4 rationale, a secular state framework ensures neutrality in matters of religion while protecting the rights of all citizens to freely practice and express their beliefs.

This is essential in a multicultural society such as Fiji. Review of Chapter 3, citizenship, current position, 19.1 Chapter 3 provides for equal citizenship for all Fijians regardless of origin, ethnicity or background. FDU's position, the Fiji

Teachers' Union strongly supports the retention of the principle of equal citizenship.

19.3 recommendation, no major constitutional amendment is recommended. However, the union encourages continued reinforcement of 1. Non-discrimination in the exercise of citizenship rights and 2. Equal access to public services and opportunities. Over the page to page 24, the rationale, equal citizenship is a cornerstone of national unity and democratic governance.

It is strengthened social cohesion ensures that all citizens are treated with dignity and fairness under the law. Review of Chapter 4, Bill of Rights, the current position, Chapter 4 contains an extensive Bill of Rights including civil, political and socio-economic rights along with protections against discrimination. What is FDU's position? The union supports retention and strengthening the Bill of Rights.

In our recommendation, the Bill of Rights should be expanded to include 1. Academic freedom, which I have talked over at the beginning. 2. Digital and information rights, that's also important. 3. Stronger protections for workers and trade unions.

And in that, we are looking at trade unions having their own elections as per their own constitution, not to be conducted by the regional elections office. 4. Enhanced protections for children and women. 5. Explicit recognition of environmental rights.

The rationale, the expansion of rights protection reflects global constitutional trends and ensures that the constitution remains responsive to contemporary social, technological, environmental realities. Review of Chapter 5, the social justice section. Current position, Chapter 5 establishes socio-economic rights and principles of social justice including state responsibilities in areas such as education, health and housing.

What is the union's position? The FTU strongly supports strengthening the social justice framework. How? The recommendation, the constitution should, 1. Strengthen state obligations for progressive realization of socio-economic rights. 2. Ensure equitable access to essential services including education and health care.

3. Prioritize vulnerable and disadvantaged communities. The rationale, socio-economic rights are essential for ensuring that constitutional freedoms are

meaningful in practice. Without access to basic services, formal rights cannot be fully realized.

Then 22. Transition to detailed chapter review.
The following section of this submission will provide a full article-by-article review of the remaining constitutional chapters including executive government, parliament, judiciary, accountability institutions, public service, military provisions, constitutional amendment procedures.

Each chapter will be assessed using the structured framework outlined in Section 16. The detailed review is presented in Appendix A to ensure clarity, accessibility and ease of reference for the Constitutional Review Commission. 23.

Review of Chapter 7, the executive. Current position, Chapter 7 of the constitution establishes the executive authority of the state including the Prime Minister, Cabinet and supporting structures of executive governance. It vests significant authority in the executive to implement laws, formulate policy and administer government functions.

What is our position? The juduciary union recognizes the necessity of an effective executive for stable governance. However, the union considers that constitutional safeguards for accountability and parliamentary oversight should be strengthened. Recommendation.

The constitution should be amended to 1. Strengthen parliamentary scrutiny of executive decision-making. 2. Require greater transparency in cabinet decisions affecting public policy. 3. Introduce clearer reporting obligations from ministers to parliament.

4. Reinforce checks and balances between the executive, legislature and the judiciary. The rationale in 23.4 over to page 27. While strong executive leadership is necessary for effective governance, constitutional democracy requires that such authority is exercised within a frame of accountability.

The strengthening oversight mechanism enhances transparency, reduces the risk of abuse of power and improves public trust in government institutions. Chapter 8. Review the legislature. Current position.

Chapter 8. Establishes a unicameral parliament responsible for lawmaking, representation and oversight of the executive. What is FTO's

position? The fiduciary union supports strengthening parliament's legislative and oversight functions, including improved public participation in the legislative process. In our recommendation, the union recommends strengthening parliamentary committee systems, including investigatory powers, 2. Enhancing objectives for public submissions of proposed legislation, improving transparency of parliamentary proceedings and decision-making, considering reforms to increase representational inclusiveness.

The union further recommends that national dialogue considers whether Fijji would benefit from additional consultative chambers representing civil society, provincial interests or professional sectors. A strong parliament is essential for democratic governance. Enhance scrutiny, transparency in public engagement ensures that laws reflect the needs and aspirations of the people and improve institutional legitimacy.

Over the page to page 28, chapter 9. The judiciary. The current position in regards to the judiciary is, I mean, chapter 9. Establishes the independence of the judiciary and provides for the administration of justice through the courts of Fiji. What is FTU's position? The Fiji teacher's union strongly supports independence of the judiciary.

I repeat, the independence of the judiciary is important as a cornerstone of constitutional democracy. Our recommendation, the constitution should be strengthened to ensure, 1. Greater transparency in judicial appointment processes, 2. Enhance security of tenure for judicial offices, 3. Clear safeguards against external interference in judicial decision-making, and lastly, continue the strengthening of judicial integrity and accountability mechanisms. The rationale that we are giving is an independent judiciary is essential for the protection of constitutional rights and the maintenance of the rule of law.

Public confidence in the justice system depends on fairness, transparency and institutional independence. Then we are looking at chapter 10. Accountability institutions.

And under 26.1, the current position is chapter 10. Provides for independent constitutional offices and accountability institutions designed to ensure integrity in public administration. What is FTU's position? The Fiji teacher's union supports the strengthening of independent accountability institutions and considers them essential for good governance.

In our recommendation, appointments to constitutional offices should be guided by, 1. Transparent selection processes, 2. Merit-based criteria, 3. Parliamentary oversight and scrutiny, and 4. Clear protection of institutional independence once appointments are made.

26.4. Rationale. Why are we saying that? Independent oversight institutions are critical for preventing corruption, ensuring accountability and maintaining public trust in government systems.

Their independence must be constitutionally protected both in appointment and in operation. Then chapter 11. Public service.

The current position, chapter 11, establishes the framework for public service administration, including principles of public sector governance. FTU's position, the Fiji teacher's union supports a professional, we support a professional, merit-based and politically neutral public service. And in saying so, we recommend the constitution should explicitly guarantee, 1. Merit-based recruitment and promotion, including experience, 2. Protection from political interference or victimization, 3. Equal opportunity in public employment.

Equal opportunity, advertisements and other things must be there. Out should go the regulation and all other processes. Professional independence of public officers.

Special recognition should be given to education sector professionals to ensure that teacher appointments and promotions are based on qualifications, experience and, of course, professional standards. The rationale. A professional public service is essential for efficient governance and equitable service delivery.

Protecting public servants from political influence strengthens institutional integrity and improves public confidence. That is very important in our, in as far as FTU's stand is. Chapter 12.

The Fiji Republic Military Forces current position. Chapter 12 recognizes the existence and role of the Republic of the Fiji Military Forces within the constitutional framework. FTU's position, the Fiji teacher's union considers that the constitutional role of the military should be clearly defined within a democratic framework that affirms civilian supremacy.

Recommendation, the constitution should explicitly provide the civilian authority supreme over the military. The military remains politically neutral at all times. Parliamentary oversight applies to defense and security matters.

The military's role is limited to national defense and lawful functions. The rationale, clear constitutional separation between civilian governance and military authority is essential for democratic stability and the prevention of political interference in governance in future. Review of Chapter 13.

Amendment of the constitution. Current position, Chapter 13 establishes the procedures for constitutional amendment including parliamentary thresholds and legal requirements. FTU's position, the Fiji teacher's union considers that constitutional amendment procedures should ensure stability while allowing democratic flexibility.

Recommendation, the constitution should require that major constitutional amendments include broad cross-party parliamentary support, structured public consultation processes, referendum approval for fundamental constitutional changes where appropriate. Rationale, constitution should not be subject to change by narrow or temporary political majorities. A balanced amendment process protects constitutional stability while ensuring democratic legitimacy.

30, Transmission to Appendix Review, the detailed close-by-close review of the constitution including additional technical commentary and proposed drafting language provided in appendix A of the submission. The following final sections of this report will set out. Consolidated constitutional amendment proposals.

Implementation, consideration, concluding observations and supporting references and appendices. Education is a fundamental constitutional right. Introduction, the Fiji teacher's union proposes inclusion of a dedicated constitutional chapter on education.

Education is fundamental to democratic citizenship, national development and social equality. It is a primary means through which individuals acquire knowledge, skills and civic awareness necessary for participation in society. Proposed constitutional principle, the constitution should recognize that every person has the right to quality, inclusive and equitable education.

State obligations, the state shall be responsible for ensuring free and compulsory primary and secondary education, providing equitable access to education in rural, urban and maritime regions, ensuring inclusive education for patients with disabilities, maintaining adequate funding for public education institutions, ensuring availability of qualified and professionally trained teachers. Teacher professionalism, the constitution should guarantee that. Teachers are appointed and promoted on the basis of merit, qualifications, professional standards and experience.

Teachers shall enjoy protection from arbitrary dismissal of political interference. Teachers shall have the right to safe, respectful and professionally supportive working environments. And fourthly, continuous professional development shall be supported by the state.

Rationale, why are we saying that? A constitutionally protected education system ensures that education is not treated as a discretionary policy area, but as a national priority essential to democracy, equality and development. Then women and children, women's rights, the constitution should expressly guarantee equality between men and women and prohibit all forms of discrimination based on gender. The constitution should prohibit domestic violence, sexual harassment in all environments, workplace discrimination, gender-based violence in any form.

32.2, children's rights. The constitution should recognize that children require special protection due to their vulnerability and independence. The state shall ensure protection from, over the page 34, abuse, neglect and exploitation, harmful labor practices, violence in all settings, including educational institutions.

Corporal punishment. The constitution should explicitly state, no child shall be subjected to corporal punishment or any form of cruel, degrading or humiliating treatment or discipline. Rationale, these protections align with international child rights standards and reflect modern constitutional principles recognizing dignity, safety and equality.

Workers' rights and social dialogue, 33.1, freedom of association. Every worker shall have the right to freely form, join and participate in trade unions without interference.

33.2, collective bargaining.

The constitution should guarantee the right to collective bargaining, including negotiation of wages and working conditions, representation in employment disputes, protection of union autonomy. 33.3, protection from victimization. And we go on to say that no worker shall be subjected to dismissal, discrimination or retaliation for, one, exercising trade union rights, two, participating in lawful industrial action, in other words lawful industrial action, engaging in workplace representation.

33.4, social dialogue.
The constitution should promote a structured consultation between government, employees' organizations and workers' organizations. This constitution should apply to matters of labor policy, economic planning and industrial relations.

Rationale, strong labor rights contribute to fairer places, social stability and inclusive economic development.

34, environment and climate responsibility.
Environmental rights, the constitution should recognize the right of every person to a clean, healthy and sustainable environment.

Responsibility of the state, the state shall be obligated to, one, protect and preserve natural resources, promote sustainable development, prevent environmental degradation and, fourthly, respond effectively to climate-related risks and disasters.

34.3, climate change.
Given Fiji's vulnerability to climate change impacts, the constitution should recognize climate action as a national responsibility.

34.4, intergenerational equity.
The constitution should affirm, over to page 36, the state shall safeguard the environment for the benefit of present as well as future generations. Rationale, environmental protection is essential for national survival, economic stability and the well-being of future generations.

35, right to information and transparency.
Access to information, that's 35.1. The constitution should guarantee the right of every person to access information held by public authorities, subject only

to reasonable limitations in the public interest. Government transparency, that's

35.2. Public institutions shall be required to, one, operate in an open and transparent manner, two, publish information relating to public decision-making, and three, ensure accountability in the use of public resources.

35.3, the rationale that we are putting across, access to information strengthens democracy by enabling citizens to participate meaningfully in governance and hold public institutions accountable.

36, local government and community participation, constitutional recognition. The constitution should recognize the role of local government in delivering services and promoting community participation in governance.

36.2, decentralization. The state should promote decentralized governance to ensure efficient service delivery, community involvement in decision-making, and equitable development across regions. The rationale, local government strengthens democracy by bringing decision-making closer to communities, which is very important in our belief.

And improving responsiveness to local needs. Then our final recommendations, implementation, and conclusion.

37, consolidated constitutional amendment proposals.

37.1, overview of this section consolidates the key constitutional reform proposal advanced by the Fiji Teachers Union throughout this submission. These recommendations are intended to strengthen democratic governance, protect fundamental rights, and ensure that the constitution reflects the aspirations of all citizens in Fiji.

37.2, core constitutional amendments proposed.

The Fiji Teachers Union recommends that the following areas be considered for constitutional amendment or inclusion.

A. democratic governance. Strengthening parliamentary oversight of the executive, enhancing transparency and accountability in government.t decision-making, expanding public participation in legislative processes.

B, Bill of Rights expansion. Recognition of academic freedom, protection of digital rights and personal data, extending workers' rights including collective bargaining, enhanced protections for women and children, explicit environmental and climate rights.

C. education chapter, constitutional recognition of education as a fundamental right, state obligation to provide free, inclusive, and equitable education, protection of teacher professionalism and institutional independence.

D. workers' rights and social dialogue, constitutional guarantee of freedom of association, protection of trade union autonomy, recognition of collective bargaining as a fundamental right.

E. accountability institutions, transparent and merit-based appointment processes, strengthen independence of constitutional offices, parliamentary oversight of key appointments.

F. constitutional amendment process, requirement for broad parliamentary consensus, mandatory public consultation for major reforms, referendum for fundamental constitutional changes.

38, implementation and transitional considerations, legal and institutional transition.

The implementation of constitutional reforms will require a carefully managed transition process to ensure stability and continuity of governance. The Fiji Teachers' Union recommends that existing laws be reviewed for consistency with constitutional amendments, transitional provisions be established to guide institutional adjustments, adequate timelines be provided for implementation of new constitutional obligations.

38.2, institutional strengthening.

Successful constitutional reform will depend on the capacity of public institutions to implement and uphold new constitutional standards. The union recommends strengthening parliamentary committees and research capacity, judicial training and resourcing, public service professionalism and independence, education sector governance structures.

38.3, public awareness and civic education.

The union emphasizes the importance of civic education to ensure the citizens understand their constitutional rights and responsibilities. This should include

public education campaigns and constitutional rights, integration of civic education in school curricula, engagement with civil society and community organizations.

39, awaking conclusion.
The Fiji Teachers' Union submits this document in the spirit of constructive national engagement and constitutional development. Constitutional reform is not merely a legal or technical exercise.

It is a nation-building process that defines the values, aspirations and institutional foundations of the state. Our constitution must therefore reflect both the historical experiences of the nation and the shared vision for its future. The union believes that Fiji's constitutional future should be guided by the principles of democracy, equality, accountability, transparency and the respect for human dignity.

It should protect fundamental rights, strengthen institutions and ensure that governance serves the interests of all citizens. Education remains central to this vision. An educated population is essential for democratic participation, economic development and social cohesion.

For this reason, the union places particular emphasis on constitutional recognition of education and the professional status of teachers. The union also emphasizes that workers' rights, women's rights, children's rights, environmental protection and access to information are not peripheral issues, but essential components of modern constitutional democracy. The Fiji Teachers' Union respectfully submits that the recommendations contained in this paper will contribute to the development of a constitution that is inclusive, balanced and forward-looking, one that protects every Fijian and strengthens national unity.

And Fiji's final statement, the Fiji Teachers' Union reaffirms its commitment to supporting a democratic, peaceful and prosperous Fiji. As educators, we recognize our responsibility not only to teach, but also to contribute to the civic and constitutional development of our beloved nation. We therefore present this submission as a constructive contribution to Fiji's constitutional future and as an expression of our enduring commitment to education, justice and national development.

Sir, it is respectfully submitted to the Commission. Thank you.

Mr. Valenitabua: Thank you very much, Mr. Goundar.

Your oral submission is accepted together with the written submission which you have tendered. And your oral submission has been recorded. It will be deliberated upon together with your written submission.

We thank you very much indeed for your submission. This morning, we accepted the oral submission and the written submission. We will remember what the Union has submitted today, the belief of the Union that Fiji's constitutional future should be guided by the principles of democracy, equality, accountability, transparency and respect for human dignity.

It should protect fundamental rights, strengthen institutions and ensure that governance serves the interest of all citizens. We will remember that during our deliberations. We have been considering all those during the submissions which we have heard.

Does any other Commissioner wish to make a statement?

Mr. Kohli: Thank you, Mr. Goundar. Just a few clarifications. On page 118 of your submission, you are comparing 1970 constitution, 1990, 1997 and 2013.

You make particular reference to the 1970 constitution negotiated between representatives of the UK, indigenous Fijian leaders, Indo-Fijians and other communities. 1990, many organizations including civil society groups, religious bodies, trade unions, international observers encouraged further. 1997 constitution represents an important milestone in Fiji.

It emerged from an extensive process of public consultation, political negotiation and sought to encourage consensus among Fijian communities. However, you mention nothing about 2013 constitution and one of the reasons why you are disappointed is because of democratic deficit in the constitution and you have been asked to do Fiji-wide consultation. So, what is your comments about 2013 constitution?

Dr. Gounder: Well, thank you, Commissioner.
I missed out but let me put it up here. Well, the 2013, the others, you know, the 1970 constitution, the 1990, 1997, all were sort of a democratic way it was formed or done or written. But when you look at the 2013 constitution, we know what all happened there.

And I may not shy away from saying that it was a one-man constitution. Please take note of it. It was a one-man constitution.

Somebody just, you know, put that constitution to us through 2013 constitution. And that is the very reason that we need to take the good parts of the constitution and those parts that are not applicable to democracy must be removed and added with what the union has put across. Thank you.

Mr. Kohli: Next question I have is maybe a typo error. Forgive me if I am wrong. Just that you got chapters there, you got chapter 13, which I couldn't find in constitution, 2013 constitution.

And chapter 12, you said deals with Fiji public military forces. It doesn't. So, is it a typo error? In which case, you can take this back and just correct it.

Dr. Gounder: Okay. Thank you. Thank you.

I gave it to my PA and I think it's a typo error. I'll go back, I'll correct, and then I'll give a corrected version. Wherever I've said, you know, chapter, please ignore that.

Mr. Valenitabua: Thank you. There's another, another point. Another point, Dr. Gounder. You stated that the 1997 constitution, yeah, that the 1997 constitution was a unicameral or had a unicameral legislature. This is page 14. And then the 2013 constitution had a unicameral parliament.

Dealing with parliament on page 14. Page 14. Parliament.

Page 14. Unicameral parliament is devisal to all mentioned committee structures. Unicameral legislature with oversight functions.

Right. Was it a unicameral parliament or legislature in 1997? There was a senate in 1997.

Dr. Gounder: Yeah. That's what I meant. You know, unicameral is, you know, with the parliament as well as the senate. But 2013, it only has the parliament.

Mr. Valenitabua: No senate. So that is a typo.

Dr. Gounder: Yeah, yeah.

Bye. Yeah. Thank you.

Mr. valenitabua: Thank you. Since you're going back to correct it, just please also correct that.

Dr. Gounder: Yeah, I've marked it too.

Mr. Valenitabua: Thank you very much, Mr. Gounder. Thank you very much for your submissions. We're very thankful for your submissions today.

Please pardon us for rushing you through because we've just got one-hour slots. It's the last week of the consultations and suddenly we have overdrive when a lot of associations and submitters wanted to come in. So, thank you very much.

We will end this consultation here. We have the unity party. Thank you, sir.

Dr. Gounder: Thank you, Commissioner. I know you're pressed for time and that one hour is enough for me to put across what you wanted. Thank you so much.

Mr. Valenitabua: Excuse me, Mr. Gounder. Excuse me. Let's take a photo.

----------End Of Session [6-7-2026]----------

Fiji Teachers Union

Constitutional Review Commission

Presentation

2026

A Submission by the Fiji Teachers Union to the Constitutional Review Commission 2026

BUILDING FIJI'S CONSTITUTIONAL FUTURE

A Submission by the Fiji Teachers Union (FTU)

To the Constitutional Review Commission

6th July 2026

Prepared by

Fiji Teachers Union

Office of the General Secretary

Suva, Fiji

Submitted by

Muniappa Goundar

General Secretary

Fiji Teachers Union

Theme

"A Democratic, Inclusive and Future-Focused Constitution for Every Fijian."

Letter of Submission

The Chairperson
Constitutional Review Commission
Suva, Fiji

Dear Chairperson,

On behalf of the Fiji Teachers Union (FTU), I am honored to submit this paper entitled ***Building Fiji's Constitutional Future: A Submission by the Fiji Teachers Union to the Constitutional Review Commission***.

The Fiji Teachers Union welcomes the opportunity to participate in this important national process. Constitutional reform is not simply a legal exercise; it is an opportunity for the people of Fiji to renew their shared commitment to democracy, justice, equality, accountability, and national unity.

For more than ninety years, the Fiji Teachers Union has contributed to the educational, social, and democratic development of Fiji. As representatives of teachers and education professionals across the country, we believe that education plays a central role in building informed citizens and strengthening democratic institutions. The Constitution should therefore provide a framework that protects the rights of all people, supports effective governance, and promotes social progress for present and future generations.

This submission reflects extensive consideration of constitutional principles, Fiji's constitutional history, comparative constitutional experience, and internationally recognized standards relating to human rights, education, labour rights, and democratic governance. It identifies areas of the current Constitution that should be retained, provisions that would benefit from amendment, and new constitutional protections that the Union believes would strengthen Fiji's constitutional framework.

The Fiji Teachers Union respectfully submits that any future Constitution should be founded on broad public participation, constitutional supremacy, respect for the rule of law, protection of fundamental rights, equality before the law, judicial independence, accountable government, and meaningful consultation with the people.

We commend the Constitutional Review Commission for undertaking this important work and express our appreciation for the opportunity to contribute constructively to Fiji's constitutional future.

We trust that the recommendations contained in this submission will assist the Commission in developing constitutional arrangements that promote democratic governance, protect human dignity, and strengthen national unity.

Yours faithfully,

Muniappa Goundar
General Secretary
Fiji Teachers Union

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Executive Summary

EXECUTIVE SUMMARY

The Constitution is the supreme law of a nation. It establishes the institutions of government, protects the rights and freedoms of citizens, defines the relationship between the State and the people, and provides the framework within which democratic governance is exercised. Constitutional reform is therefore one of the most significant responsibilities undertaken by any nation.

The Fiji Teachers Union welcomes the opportunity to contribute to the Constitutional Review Commission's work and views this process as an important nation-building exercise. As one of Fiji's longest-established professional organizations, the Union believes that constitutional reform should promote democratic governance, social justice, equality, accountability, respect for diversity, and the rule of law. A Constitution should not only respond to present challenges but also provide a stable foundation for future generations.

This submission is guided by the principle that Fiji's constitutional future should draw upon the strengths of previous constitutional arrangements while responding to contemporary national priorities. The Union recognizes that both the 1997 Constitution and the 2013 Constitution contain valuable features. Rather than advocating a wholesale return to one constitutional model, the Union recommends a balanced approach that retains effective provisions, strengthens areas requiring improvement, and introduces new protections that reflect modern constitutional practice.

The Union recommends retaining the principles of equal citizenry, comprehensive protection against discrimination, and socio-economic rights while strengthening democratic institutions through enhanced parliamentary oversight, judicial independence, transparent appointments, and robust accountability mechanisms. The submission also proposes clearer constitutional recognition of academic

freedom, workers' rights, trade union autonomy, children's rights, gender equality, environmental stewardship, and access to information.

A central recommendation is the inclusion of a dedicated chapter on education. Education is fundamental to democratic participation, economic development, and social cohesion. The Constitution should recognize every child's right to quality education, affirm the importance of qualified and respected teachers, and place progressive obligations on the State to provide adequate educational resources across urban, rural, and maritime communities.

The Union further recommends constitutional protection for meaningful social dialogue between government, employers, workers, and civil society. Strong democratic societies are built through consultation and participation rather than exclusion. Constitutional processes should encourage consensus, transparency, and public confidence in national institutions.

This submission concludes that Fiji's future Constitution should be democratic, participatory, inclusive, accountable, rights-based, and forward-looking. It should strengthen national unity while respecting Fiji's cultural diversity and constitutional traditions. Above all, it should belong to the people of Fiji and reflect their shared aspirations for a peaceful, just, and prosperous nation.

The Fiji Teachers Union respectfully offers this submission in the spirit of constructive engagement and in the hope that it will assist the Constitutional Review Commission in developing constitutional arrangements that serve the interests of all present and future generations of Fiji.

BUILDING FIJI'S CONSTITUTIONAL FUTURE

Submission by the Fiji Teachers Union to the Constitutional Review Commission

PART I

THE FIJI TEACHERS UNION AND FIJI'S CONSTITUTIONAL DEVELOPMENT

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5. ABOUT THE FIJI TEACHERS UNION

5.1 Introduction

The Fiji Teachers Union (FTU) is one of Fiji's oldest and most respected professional organizations. Since its establishment in 1931, the Union has served as the principal representative body for teachers, advocating for quality education, professional excellence, fair employment practices, and the advancement of educational opportunities for all children in Fiji.

For more than nine decades, the FTU has worked collaboratively with governments, communities, educational institutions, and international partners to strengthen Fiji's education system. While the Union's primary role is the representation of teachers and education professionals, its broader mission has always included promoting social justice, democratic participation, equality of opportunity, and national development through education.

The Union recognizes that education is fundamental to the development of responsible citizens, strong democratic institutions, and sustainable economic growth. Consequently, constitutional reform is of direct importance to the education sector and to the wider public interest.

5.2 The Role of Teachers in Nation Building

Teachers occupy a unique position within society. Every generation of Fiji's citizens passes through the nation's classrooms. Teachers therefore contribute not only to academic achievement but also to the development of civic responsibility, respect for diversity, critical thinking, and democratic values.

A Constitution establishes the legal framework within which education is delivered. Constitutional guarantees relating to equality, non-discrimination, children's rights, language, culture, freedom of expression, labour rights, and public administration all have significant implications for schools, teachers, students, and families.

For this reason, the Fiji Teachers Union believes that educators have both a professional responsibility and a civic obligation to contribute thoughtfully to constitutional reform.

5.3 FTU's Interest in Constitutional Reform

The Union approaches constitutional reform from a non-partisan perspective. Its interest is not aligned with any political party or ideology. Rather, the FTU seeks

constitutional arrangements that strengthen democratic governance, protect human rights, enhance educational opportunities, safeguard professional independence, and promote national unity.

The recommendations contained in this submission are intended to contribute constructively to the Constitutional Review Commission's work and are offered in the spirit of dialogue, consultation, and nation building.

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6. HISTORICAL BACKGROUND OF CONSTITUTIONAL DEVELOPMENT IN FIJI (1970–2026)

6.1 Introduction

The constitutional history of Fiji reflects the country's political evolution, cultural diversity, and continuing efforts to balance democratic governance with the aspirations of its people. Since Independence in 1970, Fiji has experienced several constitutional transitions, each influenced by changing political, social, and historical circumstances.

Understanding this constitutional journey provides valuable context for the current review process. The Fiji Teachers Union believes that future constitutional reform should build upon the strengths of previous constitutional arrangements while addressing lessons learned from the past.

6.2 The 1970 Independence Constitution

Fiji attained independence on 10 October 1970 under a Constitution negotiated between representatives of the United Kingdom, indigenous Fijian leaders, Indo-Fijian representatives, and other community leaders.

The Constitution established a Westminster-style parliamentary democracy under a constitutional monarchy and sought to balance representative government with protections for Fiji's diverse ethnic communities.

The Independence Constitution provided political stability during the early years of nationhood. However, over time, concerns emerged regarding the extent to which constitutional arrangements adequately reflected evolving democratic expectations and changing social realities.

6.3 The 1990 Constitution

Following the political events of 1987, a new Constitution came into effect in 1990.

The 1990 Constitution introduced significant changes to the structure of government and electoral representation. While it sought to address particular political concerns of the period, it also generated debate regarding equality, representation, and constitutional legitimacy.

Many organizations, including civil society groups, religious bodies, trade unions, and international observers, encouraged further constitutional dialogue aimed at strengthening national unity and promoting broader public confidence.

6.4 The 1997 Constitution

The 1997 Constitution represented an important milestone in Fiji's constitutional development. It emerged from an extensive process of public consultation and political negotiation and sought to encourage consensus among Fiji's diverse communities.

The Constitution strengthened the protection of fundamental rights, reinforced the independence of key constitutional institutions, recognized principles of good governance, and promoted greater inclusiveness in public administration.

Many aspects of the 1997 Constitution continue to be regarded as significant contributions to Fiji's constitutional development, particularly its emphasis on consultation, reconciliation, and democratic participation.

6.5 The 2013 Constitution

The Constitution adopted in 2013 introduced substantial reforms to Fiji's constitutional framework. Among its notable features were the establishment of equal citizenry, an expanded Bill of Rights, constitutional recognition of socio-economic rights, and strengthened anti-discrimination protections. It also brought significant changes to the structure of Parliament, the Executive, and key constitutional institutions.

While many of these reforms have been welcomed, concerns have been raised by some stakeholders regarding the extent of executive authority, parliamentary oversight mechanisms, constitutional amendment procedures, and the processes for appointing certain public offices. In particular, critics have argued that the drafting process was highly centralized, with a significant role attributed to then Attorney-

General Aiyaz Sayed-Khaiyum, and that it did not reflect broad-based national consensus or extensive public consultation.

The Fiji Teachers Union considers that the current constitutional review presents an opportunity to retain the strengths of the 2013 Constitution while addressing areas that may benefit from refinement, including those relating to participation, accountability, and institutional balance.

6.6 The Constitutional Review Process

Constitutions derive their enduring legitimacy from public confidence and broad participation. Periodic constitutional review enables nations to respond to social change, strengthen democratic institutions, and ensure that constitutional arrangements remain relevant to contemporary circumstances.

The current review provides an opportunity to consider how Fiji's Constitution can continue to protect rights, encourage accountable government, foster national unity, and support sustainable development.

The Fiji Teachers Union welcomes this process as an opportunity for constructive national dialogue and encourages widespread public participation so that the Constitution reflects the aspirations of all people of Fiji.

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7. WHY CONSTITUTIONAL REFORM MATTERS

A Constitution is more than a legal document. It expresses the shared values of a nation and establishes the principles upon which government exercises public authority.

Effective constitutions create institutions that are transparent, accountable, and responsive to the people. They protect individual rights while recognising the responsibilities of citizens toward one another and toward future generations.

For educators, constitutional reform carries particular significance. Every school operates within the constitutional framework established by the State. Educational policy, children's rights, equality of opportunity, freedom of thought, cultural diversity, labour protections, and public administration are all influenced by constitutional principles.

The Fiji Teachers Union therefore considers constitutional reform to be inseparable from the broader goals of educational excellence, democratic citizenship, social cohesion, and national development.

Accordingly, the Union supports constitutional arrangements that promote the rule of law, safeguard independent institutions, protect fundamental rights, encourage participation, and strengthen public confidence in democratic governance.

PART II

FTU VISION AND GUIDING PRINCIPLES FOR CONSTITUTIONAL REFORM

8. A CONSTITUTION FOR ALL FIJIANS

8.1 Introduction

The Fiji Teachers Union believes that a constitution should reflect the collective aspirations of the people while providing a stable framework for democratic governance, the protection of rights, and the peaceful resolution of differences. It should command public confidence because it is grounded in the rule of law, broad participation, and respect for the dignity and equality of every person.

Constitutional reform should therefore seek to preserve those aspects of Fiji's constitutional development that have strengthened democracy and national unity, while improving provisions that experience has shown may benefit from amendment.

The Union does not advocate constitutional change for its own sake. Rather, it supports reform that is carefully considered, evidence-based, and directed toward the long-term interests of the people of Fiji.

8.2 Guiding Constitutional Principles

The Fiji Teachers Union recommends that the following principles guide constitutional reform:

Constitutional Supremacy

The Constitution should remain the supreme law of Fiji. Every person and every institution, including Parliament, the Executive, the Judiciary, and all public authorities, should exercise their powers in accordance with the Constitution.

Democracy

Government derives its authority from the people. Democratic institutions should be representative, accountable, transparent, and responsive to the public.

Rule of Law

All persons are equal before the law. Public power should be exercised only in accordance with legal authority, and independent courts should remain the final arbiters of constitutional disputes.

Human Dignity

Every individual possesses inherent dignity and should enjoy equal protection of the law without discrimination.

Equality and Equal Citizenship

The Constitution should continue to recognize the equal citizenship of every Fijian and prohibit discrimination on recognized grounds. Equality before the law is essential to national unity and social cohesion.

Respect for Diversity

Fiji's constitutional framework should acknowledge and respect the country's rich cultural, linguistic, and religious diversity. Constitutional recognition of diversity strengthens national unity by fostering mutual respect and inclusion.

Accountability and Transparency

Public office is a public trust. Constitutional institutions should promote openness, integrity, accountability, and responsible stewardship of public resources.

Participation and Consultation

The Constitution should encourage meaningful public participation in national decision-making. Consultation with citizens, civil society, employers, workers, professional bodies, and community organizations contributes to better governance and stronger public confidence.

Social Justice

The Constitution should promote fair opportunities for all people and support the progressive realization of economic, social, and cultural rights, particularly for vulnerable and disadvantaged groups.

Intergenerational Responsibility

Constitutional governance should recognize responsibilities to future generations by supporting sustainable development, environmental protection, quality education, and responsible public administration.

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9. COMPARATIVE ANALYSIS OF THE 1997 AND 2013 CONSTITUTIONS

9.1 Purpose of the Comparison

The Fiji Teachers Union considers that constitutional reform should draw lessons from Fiji's constitutional experience rather than regard previous constitutions as mutually exclusive alternatives. Both the 1997 Constitution and the 2013 Constitution contain provisions that have contributed positively to Fiji's constitutional development.

The objective of this comparison is to identify those features that should be retained, strengthened, or reconsidered in any future constitutional framework.

Comparative Overview

Constitutional Area	1997 Constitution	2013 Constitution	FTU Assessment
Foundational Principles	Emphasized consensus-building, power-sharing, and consultation.	Emphasized equal citizenry, national unity, and constitutional rights.	Future reform should combine inclusive governance with equal citizenship and strong rights protections.
Bill of Rights	Comprehensive civil and political rights.	Expanded to include socio-economic rights and broader	Retain the expanded Bill of Rights while considering additional protections for academic freedom, digital

		anti-discrimination protections.	rights, and workplace rights.
Executive	Included mechanisms intended to encourage broader political participation.	Provides a strong Executive with significant constitutional authority.	Review opportunities to strengthen parliamentary oversight and accountability while maintaining effective government.
Parliament	Bicameral legislature with oversight functions.	Unicameral Parliament with revised electoral arrangements and committee structures.	Strengthen Bicameral legislature with oversight functions.
Judiciary	Protected judicial independence through constitutional safeguards.	Continues constitutional protection of judicial independence.	Retain and enhance transparent judicial appointments and security of tenure.
Public Service	Recognised an independent public service.	Establishes the constitutional framework for public administration.	Strengthen guarantees of merit-based appointments, professionalism, and protection from improper political influence.
Constitutional Amendment	Amendment procedures reflected the constitutional framework of the time.	Establishes procedures for constitutional amendment.	Review whether amendment processes should encourage broad parliamentary support, public consultation, and, where appropriate, referenda for major constitutional changes.

9.2 Lessons from Fiji's Constitutional Experience

The constitutional history of Fiji demonstrates several enduring lessons.

First, constitutions are most durable when they enjoy broad public confidence and are supported by meaningful civic participation.

Second, effective democratic governance requires an appropriate balance between decisive government and institutional accountability. Strong executive leadership should be accompanied by effective parliamentary scrutiny, independent courts, and robust accountability institutions.

Third, constitutional protection of fundamental rights contributes to social stability, national cohesion, and public confidence in government.

Fourth, constitutional recognition of socio-economic rights, including education and health, reflects the understanding that democratic societies flourish when individuals have genuine opportunities to develop their potential.

Finally, constitutional reform should be regarded as an ongoing process of democratic improvement rather than a contest between competing constitutional models. The objective should be to develop a constitutional framework that reflects Fiji's history, diversity, and aspirations while remaining capable of responding to future challenges.

9.3 The FTU Constitutional Vision

Drawing upon these lessons, the Fiji Teachers Union recommends that Fiji's future constitutional framework should:

- Uphold constitutional supremacy and the rule of law.
- Protect the equal citizenship and dignity of every person.
- Strengthen democratic institutions through accountability and transparency.
- Safeguard judicial independence and the separation of powers.
- Promote meaningful public participation in governance.
- Recognize education as a national priority and constitutional responsibility.

- Protect workers' rights and freedom of association.
- Advance gender equality and the rights of women and children.
- Support environmental stewardship and climate resilience.
- Encourage constitutional stability through inclusive and consultative amendment processes.

The Union believes that these principles provide a sound foundation for a Constitution that is democratic, inclusive, resilient, and responsive to the needs of present and future generations.

PART III

FTU CONSTITUTIONAL REFORM RECOMMENDATIONS

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10. DEMOCRATIC GOVERNANCE AND INSTITUTIONAL BALANCE

10.1 Strengthening Democratic Governance

The Fiji Teachers Union recommends that Fiji's future constitutional framework should strengthen democratic governance by ensuring a balanced relationship between the Executive, Parliament, and the Judiciary. While effective government requires a capable Executive, constitutional arrangements must also ensure that authority is exercised within a system of accountability and oversight.

10.2 Parliamentary Oversight

The Union recommends that Parliament's oversight functions be strengthened through:

- Enhanced committee systems with investigatory powers.
- Mandatory reporting obligations by Ministers to Parliament on key policy areas.
- Strengthened parliamentary scrutiny of public expenditure and government programs.
- Greater opportunities for public submissions to parliamentary committees.

These measures would improve transparency, accountability, and public trust in democratic institutions.

10.3 Executive Accountability

The Constitution should provide clearer mechanisms for holding the Executive accountable to Parliament, including structured questioning of Ministers, regular reporting requirements, and transparent decision-making processes in matters of national importance.

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11. BILL OF RIGHTS AND HUMAN DIGNITY

11.1 Strengthening the Bill of Rights

The Fiji Teachers Union supports the retention and strengthening of a comprehensive Bill of Rights that protects civil, political, economic, social, and cultural rights. These rights should be interpreted in a manner consistent with international human rights standards.

11.2 Academic Freedom

The Constitution should expressly guarantee academic freedom for teachers, lecturers, researchers, and educational institutions.

This includes:

- Freedom to teach, research, and disseminate knowledge.
- Protection from undue interference in academic content.
- Institutional autonomy for educational institutions within lawful frameworks.

Academic freedom is essential for innovation, critical thinking, and the development of informed citizens.

11.3 Digital Rights

The Union recommends constitutional recognition of digital rights, including:

- Protection from cyberbullying and online harassment.
- Safeguards for personal data and privacy.
- Protection against misuse of digital communication platforms.

These rights are increasingly essential in modern society.

2. EDUCATION AS A CONSTITUTIONAL RIGHT

2.1 Recognition of Education

The Fiji Teachers Union strongly recommends that education be expressly recognized in the Constitution as a fundamental right and a core responsibility of the State.

12.2 State Obligations

The Constitution should impose progressive obligations on the State to ensure:

- Free and accessible primary and secondary education.
- Inclusive education for learners with disabilities.
- Equitable access to education in rural and maritime areas.
- Adequate funding for public education systems.
- Recruitment and retention of qualified teachers.

12.3 Teacher Professionalism

The Constitution should recognize professional status of teachers by guaranteeing:

- Merit-based appointment and promotion.
- Protection from political interference.
- Safe and respectful working environments.
- Opportunities for continuous professional development.

Teachers are central to national development, and their professional integrity should be constitutionally safeguarded.

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13. TRADE UNION RIGHTS AND WORKERS' 'ROTECTION

13.1 Freedom of Association

The Constitution should explicitly guarantee the right of workers to form and join trade unions without interference.

13.2 Collective Bargaining

The Union recommends constitutional protection for collective bargaining as a fundamental labour right. This includes the right of unions and employers to negotiate terms and conditions of employment in good faith.

13.3 Protection from Victimization

Workers should be protected from retaliation or victimization for exercising lawful labour rights, including union participation and industrial advocacy.

13.4 Social Dialogue

The Constitution should promote structured dialogue between government, employers, and workers' 'rganizations on matters affecting employment, economic policy, and labour relations.

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14. WOMEN AND CHILDREN

14.1 Protection of Women

The Constitution should strengthen protections for women by explicitly prohibiting:

- Gender-based violence.
- Domestic violence.
- Workplace discrimination.
- Sexual harassment in all settings.

14.2 Protection of Children

The Union recommends enhanced constitutional protection for children, including safeguards against:

- Abuse and neglect.
- Exploitation and harmful labour practices.
- Violence in all forms.

14.3 Corporal Punishment

The Constitution should expressly prohibit corporal punishment and any form of cruel, degrading, or humiliating treatment of children.

This reflects modern child protection standards and international best practice.

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15. ENVIRONMENT AND FUTURE GENERATIONS

15.1 Environmental Responsibility

The Constitution should recognize environmental protection as a national responsibility. The State should be required to promote sustainable development and safeguard natural resources for present and future generations.

15.2 Climate Change

Given Fiji's 'vulnerability to climate change, the Constitution should recognize the State's 'obligation to adopt policies that support climate resilience, disaster preparedness, and environmental sustainability.

15.3 Intergenerational Equity

The Union recommends constitutional recognition of intergenerational responsibility, ensuring that present development does not compromise the rights and opportunities of future generations.

PART IV

METHODOLOGY AND CONSTITUTIONAL REVIEW OF KEY CHAPTERS

16. APPROACH TO THE ARTICLE-BY-ARTICLE REVIEW

16.1 Purpose of the Review Method

The Fiji Teachers Union has adopted a structured and consistent methodology for reviewing the Constitution of the Republic of Fiji (2013). This approach ensures that each constitutional provision is assessed in a transparent, systematic, and policy-relevant manner.

The purpose of this method is to assist the Constitutional Review Commission by providing:

- A clear summary of current constitutional provisions.
- An assessment of their strengths and limitations.
- Constructive recommendations for reform or retention.
- A rationale grounded in constitutional principles and public interest.

16.2 Review Framework

Each constitutional provision is assessed using the following framework:

(a) Current Position
A neutral description of the constitutional provision.

(b) FTU Position
The Union's overall assessment (retain, strengthen, or review).

(c) Recommendation
Specific proposed reforms or improvements.

(d) Rationale
Justification based on constitutional principles, governance needs, and international standards where applicable.

This structured approach ensures consistency across all chapters and enhances the usability of the submission for constitutional drafters.

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17. REVIEW OF CHAPTER 1 – THE STATE

17.1 Current Position

Chapter 1 of the Constitution establishes Fiji as a sovereign democratic state and affirms the principles of constitutional supremacy and equal citizenship.

17.2 FTU Position

The Fiji Teachers Union supports the retention of the core provisions of Chapter 1.

17.3 Recommendation

The Union recommends strengthening the language of Chapter 1 to explicitly affirm:

- Democratic governance as a foundational constitutional principle.
- Respect for diversity in Fiji's multicultural society.
- Commitment to social justice and equality.
- Reinforcement of constitutional supremacy.

17.4 Rationale

These enhancements would reinforce the foundational values of the Constitution and provide clearer guidance for interpretation by courts and public institutions.

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18. REVIEW OF CHAPTER 2 – THE REPUBLIC OF FIJI

18.1 Current Position

Chapter 2 defines Fiji as a secular state and provides for national symbols and identity.

18.2 FTU Position

The Union supports retention of the secular character of the State with clarification.

18.3 Recommendation

The Constitution should:

- Maintain the principle of secularism.
- Explicitly guarantee freedom of religion and belief.
- Protect cultural expression and linguistic diversity.

18.4 Rationale

A secular state framework ensures neutrality in matters of religion while protecting the rights of all citizens to freely practice and express their beliefs. This is essential in a multicultural society such as Fiji.

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19. REVIEW OF CHAPTER 3 – CITIZENSHIP

19.1 Current Position

Chapter 3 provides for equal citizenship for all Fijians, regardless of origin, ethnicity, or background.

19.2 FTU Position

The Fiji Teachers Union strongly supports the retention of the principle of equal citizenship.

19.3 Recommendation

No major constitutional amendment is recommended. However, the Union encourages continued reinforcement of:

- Non-discrimination in the exercise of citizenship rights.
- Equal access to public services and opportunities.

19.4 Rationale

Equal citizenship is a cornerstone of national unity and democratic governance. It strengthens social cohesion and ensures that all citizens are treated with dignity and fairness under the law.

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20. REVIEW OF CHAPTER 4 – BILL OF RIGHTS (STRUCTURAL OVERVIEW)

20.1 Current Position

Chapter 4 contains an extensive Bill of Rights, including civil, political, and socio-economic rights, along with protections against discrimination.

20.2 FTU Position

The Union supports retention and strengthening of the Bill of Rights.

20.3 Recommendation

The Bill of Rights should be expanded to explicitly include:

- Academic freedom.
- Digital and information rights.
- Stronger protections for workers and trade unions.
- Enhanced protections for children and women.
- Explicit recognition of environmental rights.

20.4 Rationale

The expansion of rights protection reflects global constitutional trends and ensures that the Constitution remains responsive to contemporary social, technological, and environmental realities.

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21. REVIEW OF CHAPTER 5 – SOCIAL JUSTICE

21.1 Current Position

Chapter 5 establishes socio-economic rights and principles of social justice, including State responsibilities in areas such as education, health, and housing.

21.2 FTU Position

The Fiji Teachers Union strongly supports strengthening the social justice framework.

21.3 Recommendation

The Constitution should:

- Strengthen State obligations for progressive realization of socio-economic rights.
- Ensure equitable access to essential services, including education and healthcare.
- Prioritize vulnerable and disadvantaged communities.

21.4 Rationale

Socio-economic rights are essential for ensuring that constitutional freedoms are meaningful in practice. Without access to basic services, formal rights cannot be fully realized.

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22. TRANSITION TO DETAILED CHAPTER REVIEW

The following section of this submission will provide a **full article-by-article review of the remaining constitutional chapters**, including:

- Executive Government
- Parliament
- Judiciary
- Accountability institutions
- Public service
- Military provisions

- Constitutional amendment procedures

Each chapter will be assessed using the structured framework outlined in Section 16.

This detailed review is presented in Appendix A to ensure clarity, accessibility, and ease of reference for the Constitutional Review Commission.

PART V

INSTITUTIONAL FRAMEWORK OF GOVERNMENT

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23. REVIEW OF CHAPTER 7 – THE EXECUTIVE

23.1 Current Position

Chapter 7 of the Constitution establishes the Executive authority of the State, including the Prime Minister, Cabinet, and supporting structures of executive governance. It vests significant authority in the Executive to implement laws, formulate policy, and administer government functions.

23.2 FTU Position

The Fiji Teachers Union recognizes the necessity of an effective Executive for stable governance. However, the Union considers that constitutional safeguards for accountability and parliamentary oversight should be strengthened.

23.3 Recommendation

The Constitution should be amended to:

- Strengthen parliamentary scrutiny of executive decision-making.
- Require greater transparency in Cabinet decisions affecting public policy.
- Introduce clearer reporting obligations from Ministers to Parliament.
- Reinforce checks and balances between the Executive, Legislature, and Judiciary.

23.4 Rationale

While strong executive leadership is necessary for effective governance, constitutional democracy requires that such authority is exercised within a framework of accountability. Strengthening oversight mechanisms enhances transparency, reduces the risk of abuse of power, and improves public trust in government institutions.

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24. REVIEW OF CHAPTER 8 – THE LEGISLATURE

24.1 Current Position

Chapter 8 establishes a unicameral Parliament responsible for law-making, representation, and oversight of the Executive.

24.2 FTU Position

The Fiji Teachers Union supports strengthening Parliament's legislative and oversight functions, including improved public participation in the legislative process.

24.3 Recommendation

The Union recommends:

- Strengthening parliamentary committee systems, including investigatory powers.
- Enhancing opportunities for public submissions on proposed legislation.
- Improving transparency of parliamentary proceedings and decision-making.
- Considering reforms to increase representational inclusiveness.

The Union further recommends that national dialogue consider whether Fiji would benefit from an additional consultative chamber representing civil society, provincial interests, or professional sectors.

24.4 Rationale

A strong Parliament is essential for democratic governance. Enhanced scrutiny, transparency, and public engagement ensure that laws reflect the needs and aspirations of the people and improve institutional legitimacy.

25. REVIEW OF CHAPTER 9 – THE JUDICIARY

25.1 Current Position

Chapter 9 establishes the independence of the judiciary and provides for the administration of justice through the courts of Fiji.

25.2 FTU Position

The Fiji Teachers Union strongly supports the independence of the judiciary as a cornerstone of constitutional democracy.

25.3 Recommendation

The Constitution should be strengthened to ensure:

- Greater transparency in judicial appointment processes.
- Enhanced security of tenure for judicial officers.
- Clear safeguards against external interference in judicial decision-making.
- Continued strengthening of judicial integrity and accountability mechanisms.

25.4 Rationale

An independent judiciary is essential for the protection of constitutional rights and the maintenance of the rule of law. Public confidence in the justice system depends on fairness, transparency, and institutional independence.

26. REVIEW OF CHAPTER 10 – ACCOUNTABILITY INSTITUTIONS

26.1 Current Position

Chapter 10 provides for independent constitutional offices and accountability institutions designed to ensure integrity in public administration.

26.2 FTU Position

The Fiji Teachers Union supports the strengthening of independent accountability institutions and considers them essential for good governance.

26.3 Recommendation

Appointments to constitutional offices should be guided by:

- Transparent selection processes.
- Merit-based criteria.
- Parliamentary oversight and scrutiny.
- Clear protection of institutional independence once appointments are made.

26.4 Rationale

Independent oversight institutions are critical for preventing corruption, ensuring accountability, and maintaining public trust in government systems. Their independence must be constitutionally protected both in appointment and in operation.

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27. REVIEW OF CHAPTER 11 – PUBLIC SERVICE

27.1 Current Position

Chapter 11 establishes the framework for public service administration, including principles of public sector governance.

27.2 FTU Position

The Fiji Teachers Union supports a professional, merit-based, and politically neutral public service.

27.3 Recommendation

The Constitution should explicitly guarantee:

- Merit-based recruitment and promotion with experience also.
- Protection from political interference or victimization.

- Equal opportunity in public employment.
- Professional independence of public officers.

Special recognition should be given to education sector professionals to ensure that teacher appointments and promotions are based on qualifications, experience, and professional standards.

27.4 Rationale

A professional public service is essential for efficient governance and equitable service delivery. Protecting public servants from political influence strengthens institutional integrity and improves public confidence.

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28. REVIEW OF CHAPTER 12 – THE FIJI REPUBLIC MILITARY FORCES

28.1 Current Position

Chapter 12 recognizes the existence and role of the Republic of Fiji Military Forces within the constitutional framework.

28.2 FTU Position

The Fiji Teachers Union considers that the constitutional role of the military should be clearly defined within a democratic framework that affirms civilian supremacy.

28.3 Recommendation

The Constitution should explicitly provide that:

- Civilian authority is supreme over the military.
- The military remains politically neutral at all times.
- Parliamentary oversight applies to defence and security matters.
- The military's role is limited to national defence and lawful functions.

28.4 Rationale

Clear constitutional separation between civilian governance and military authority is essential for democratic stability and the prevention of political interference in governance.

29. REVIEW OF CHAPTER 13 – AMENDMENT OF THE CONSTITUTION

29.1 Current Position

Chapter 13 establishes the procedures for constitutional amendment, including parliamentary thresholds and legal requirements.

29.2 FTU Position

The Fiji Teachers Union considers that constitutional amendment procedures should ensure stability while allowing democratic flexibility.

29.3 Recommendation

The Constitution should require that major constitutional amendments include:

- Broad cross-party parliamentary support.
- Structured public consultation processes.
- Referendum approval for fundamental constitutional changes where appropriate.

29.4 Rationale

Constitutions should not be subject to change by narrow or temporary political majorities. A balanced amendment process protects constitutional stability while ensuring democratic legitimacy.

30. TRANSITION TO APPENDIX REVIEW

The detailed clause-by-clause review of the Constitution, including additional technical commentary and proposed drafting language, is provided in **Appendix A** of this submission.

The following final sections of this report will set out:

- Consolidated constitutional amendment proposals
- Implementation considerations
- Concluding observations
- Supporting references and appendices

PART VI

PROPOSED NEW CONSTITUTIONAL CHAPTERS

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31. EDUCATION AS A FUNDAMENTAL CONSTITUTIONAL RIGHT

31.1 Introduction

The Fiji Teachers Union proposes the inclusion of a dedicated constitutional chapter on Education. Education is fundamental to democratic citizenship, national development, and social equality. It is the primary means through which individuals acquire knowledge, skills, and civic awareness necessary for participation in society.

31.2 Proposed Constitutional Principle

The Constitution should recognize that:

Every person has the right to quality, inclusive, and equitable education.

31.3 State Obligations

The State shall be responsible for:

- Ensuring free and compulsory primary and secondary education.
- Providing equitable access to education in rural, urban, and maritime regions.
- Ensuring inclusive education for persons with disabilities.
- Maintaining adequate funding for public education institutions.
- Ensuring availability of qualified and professionally trained teachers.

31.4 Teacher Professionalism

The Constitution should guarantee that:

- Teachers are appointed and promoted on the basis of merit, qualifications, and professional standards as well as experience.
- Teachers shall enjoy protection from arbitrary dismissal or political interference.
- Teachers shall have the right to safe, respectful, and professionally supportive working environments.
- Continuous professional development shall be supported by the State.

31.5 Rationale

A constitutionally protected education system ensures that education is not treated as a discretionary policy area but as a national priority essential to democracy, equality, and development.

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32. WOMEN AND CHILDREN

32.1 Women's Rights

The Constitution should expressly guarantee equality between men and women and prohibit all forms of discrimination based on gender.

The Constitution should prohibit:

- Domestic violence.
- Sexual harassment in all environments.
- Workplace discrimination.
- Gender-based violence in any form.

32.2 Children's Rights

The Constitution should recognize that children require special protection due to their vulnerability and dependence.

The State shall ensure protection from:

- Abuse, neglect, and exploitation.
- Harmful labour practices.
- Violence in all settings, including educational institutions.

32.3 Corporal Punishment

The Constitution should explicitly state:

No child shall be subjected to corporal punishment or any form of cruel, degrading, or humiliating treatment or discipline.

32.4 Rationale

These protections align with international child rights standards and reflect modern constitutional principles recognizing dignity, safety, and equality.

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33. WORKERS' RIGHTS AND SOCIAL DIALOGUE

33.1 Freedom of Association

Every worker shall have the right to freely form, join, and participate in trade unions without interference.

33.2 Collective Bargaining

The Constitution should guarantee the right to collective bargaining, including:

- Negotiation of wages and working conditions.
- Representation in employment disputes.
- Protection of union autonomy.

33.3 Protection from Victimization

No worker shall be subjected to dismissal, discrimination, or retaliation for:

- Exercising trade union rights.
- Participating in lawful industrial action.
- Engaging in workplace representation.

33.4 Social Dialogue

The Constitution should promote structured consultation between:

- Government.
- Employers' organizations.
- Workers' organizations.

This consultation should apply to matters of labour policy, economic planning, and industrial relations.

33.5 Rationale

Strong labour rights contribute to fair workplaces, social stability, and inclusive economic development.

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34. ENVIRONMENT AND CLIMATE RESPONSIBILITY

34.1 Environmental Rights

The Constitution should recognize the right of every person to a clean, healthy, and sustainable environment.

34.2 State Responsibility

The State shall be obligated to:

- Protect and preserve natural resources.
- Promote sustainable development.
- Prevent environmental degradation.
- Respond effectively to climate-related risks and disasters.

34.3 Climate Change

Given Fiji's vulnerability to climate change impacts, the Constitution should recognize climate action as a national responsibility.

34.4 Intergenerational Equity

The Constitution should affirm that:

The State shall safeguard the environment for the benefit of present and future generations.

34.5 Rationale

Environmental protection is essential for national survival, economic stability, and the wellbeing of future generations.

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35. RIGHT TO INFORMATION AND TRANSPARENCY

35.1 Access to Information

The Constitution should guarantee the right of every person to access information held by public authorities, subject only to reasonable limitations in the public interest.

35.2 Government Transparency

Public institutions shall be required to:

- Operate in an open and transparent manner.
- Publish information relating to public decision-making.
- Ensure accountability in the use of public resources.

35.3 Rationale

Access to information strengthens democracy by enabling citizens to participate meaningfully in governance and hold public institutions accountable.

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36. LOCAL GOVERNMENT AND COMMUNITY PARTICIPATION

36.1 Constitutional Recognition

The Constitution should recognize the role of local government in delivering services and promoting community participation in governance.

36.2 Decentralization

The State should promote decentralized governance to ensure:

- Efficient service delivery.
- Community involvement in decision-making.
- Equitable development across regions.

36.3 Rationale

Local governance strengthens democracy by bringing decision-making closer to communities and improving responsiveness to local needs.

PART VII

FINAL RECOMMENDATIONS, IMPLEMENTATION, AND CONCLUSION

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37. CONSOLIDATED CONSTITUTIONAL AMENDMENT PROPOSALS

37.1 Overview

This section consolidates the key constitutional reform proposals advanced by the Fiji Teachers Union throughout this submission. These recommendations are intended to strengthen democratic governance, protect fundamental rights, and ensure that the Constitution reflects the aspirations of all citizens of Fiji.

37.2 Core Constitutional Amendments Proposed

The Fiji Teachers Union recommends that the following areas be considered for constitutional amendment or inclusion:

(a) Democratic Governance

- Strengthening parliamentary oversight of the Executive.
- Enhancing transparency and accountability in government decision-making.
- Expanding public participation in legislative processes.

(b) Bill of Rights Expansion

- Recognition of academic freedom.
- Protection of digital rights and personal data.
- Strengthening workers' rights, including collective bargaining.

- Enhanced protections for women and children.
- Explicit environmental and climate rights.

(c) Education Chapter

- Constitutional recognition of education as a fundamental right.
- State obligation to provide free, inclusive, and equitable education.
- Protection of teacher professionalism and institutional independence.

(d) Workers' Rights and Social Dialogue

- Constitutional guarantee of freedom of association.
- Protection of trade union autonomy. E.g.: Elect its own leaders through democratic processes.
- Recognition of collective bargaining as a fundamental right.

(e) Accountability Institutions

- Transparent and merit-based appointment processes.
- Strengthened independence of constitutional offices.
- Parliamentary oversight of key appointments.

(f) Constitutional Amendment Process

- Requirement for broad parliamentary consensus.
- Mandatory public consultation for major reforms.
- Referendum for fundamental constitutional changes.

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38. IMPLEMENTATION AND TRANSITIONAL CONSIDERATIONS

38.1 Legal and Institutional Transition

The implementation of constitutional reforms will require a carefully managed transition process to ensure stability and continuity of governance. The Fiji Teachers Union recommends that:

- Existing laws be reviewed for consistency with constitutional amendments.
- Transitional provisions be established to guide institutional adjustments.
- Adequate timelines be provided for implementation of new constitutional obligations.

38.2 Institutional Strengthening

Successful constitutional reform will depend on the capacity of public institutions to implement and uphold new constitutional standards. The Union recommends strengthening:

- Parliamentary committees and research capacity.
- Judicial training and resourcing.
- Public service professionalism and independence.
- Education sector governance structures.

38.3 Public Awareness and Civic Education

The Union emphasizes the importance of civic education to ensure that citizens understand their constitutional rights and responsibilities. This should include:

- Public education campaigns on constitutional rights.
- Integration of civic education in school curricula.
- Engagement with civil society and community organizations.

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39. OVERARCHING CONCLUSION

The Fiji Teachers Union submits this document in the spirit of constructive national engagement and constitutional development.

Constitutional reform is not merely a legal or technical exercise. It is a nation-building process that defines the values, aspirations, and institutional foundations of the State. A Constitution must therefore reflect both the historical experiences of the nation and the shared vision for its future.

The Union believes that Fiji's constitutional future should be guided by the principles of democracy, equality, accountability, transparency, and respect for human dignity. It should protect fundamental rights, strengthen institutions, and ensure that governance serves the interests of all citizens.

Education remains central to this vision. An educated population is essential for democratic participation, economic development, and social cohesion. For this reason, the Union places particular emphasis on constitutional recognition of education and the professional status of teachers.

The Union also emphasizes that workers' rights, women's rights, children's rights, environmental protection, and access to information are not peripheral issues but essential components of a modern constitutional democracy.

The Fiji Teachers Union respectfully submits that the recommendations contained in this paper will contribute to the development of a Constitution that is inclusive, balanced, and forward-looking—one that protects every Fijian and strengthens national unity.

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40. FINAL STATEMENT

The Fiji Teachers Union reaffirms its commitment to supporting a democratic, peaceful, and prosperous Fiji. As educators, we recognize our responsibility not only to teach but also to contribute to the civic and constitutional development of the nation.

We therefore present this submission as a constructive contribution to Fiji's constitutional future and as an expression of our enduring commitment to education, justice, and national development.

Respectfully submitted,

Muniappa Goundar
General Secretary
Fiji Teachers Union

Suva, Fiji
6th July 2026

Fiji Labour Party

Fiji Labor Party
Date: [7-7-2026]

Mr. Valenitabua: Mr. Chaudhary, ladies and gentlemen of the Fiji Labour Party, it is with great pleasure that I welcome you to the Constitution Review Commission this morning. Thank you very much for accepting the invitation.

You have come in as a political party, and we greatly appreciate that. We need to hear from the political parties of our country in relation to our 2013 Constitution and the review which your Commission is undertaking. First and foremost, I request our Commissioners to introduce themselves to you this morning, and we shall start from my right for the introductions.

Dr. Fatiaki: Thank you, Chair, through you. Mr. Chaudhary and members of the Labour Party, my name is John Charles Fatiaki. I'm a medical practitioner in Suva. I'm a Rotuman and a former Senator in the last Parliament. Thank you.

Ms. Nailatikau: Good morning, Mr. Chaudhary and fellow Labour Party members. I'm Merawalesi Nailatikau. My background is in public diplomacy and public policy.

Mr. Beg: Good morning, Mr. Chaudhary and members of the Labour Party. Welcome, and thank you for coming. My name is Conway Beg. I'm an architect by profession and a practitioner.

Mr. Valenitabua: Thank you. Yeah, I am Sevuloni Ratumaiyale Valenitabua, Chairperson, and you know me as a private practitioner. Thank you.

Mr. Kohli: Good morning, Mr. Chaudhary and members of the team. My name is Ami Kohli, and I'm proud to be from Labasa.

Dr. Gounder: Good morning, Mr. Chaudhary and members of the Fiji Labour Party. My name is Neelesh Gounder, and I'm an academic at USP. Dr. Sunil used to be my colleague at USP for many years. He's been my lecturer as well, and today I'm sitting here as the Commissioner of the CRC. And I look forward to listening to your submission. Thank you.

Mr. Valenitabua: Mr. Chaudhary and ladies and gentlemen of the Fiji Labour Party.

The Constitution Review Committee, or Commission, was appointed by His Excellency, the President of the country, Ratu Naiqama Lalabalavu. We were appointed under the Commission of Inquiry Act. And we have been undertaking consultations here at Level 9 Super Bowl House from the 1st of April, 2026, and also around the country, visiting islands in Vitilevu and Vanualevu.

We have covered a lot around our islands. The main islands, and also the adjacent smaller islands, including the Lau Group and the Lomaiviti Group. This morning, we are fortunate to have you here.

And that is to listen to your submissions, which you might like to make. And we're looking forward to that. The Constitution Review Commission is tasked with reviewing the 2013 Constitution, as has been tasked to us by His Excellency.

And one of the main requirements that are in our Term of Reference is to go around the country and get the people's views in relation to what they recommend or they think should be included in our Supreme Law. That was the reason why we have been around the country. This week is the final week for consultations.

We have set our deadline. We started off in March when we were appointed. We were given a timeline of six months by His Excellency.

And the due date for us to present to His Excellency our recommendation and report, which may include an amended 2013 Constitution. That deadline is the 31st of August, 2026. We are working hard towards achieving that timeline and our target.

The Commission has an onerous task ahead of it. However, we have been assisted by the submissions that have been submitted to us or presented to us. And I'm sure that the submissions by the Fijian Labour Party this morning will add to that assistance so that our work could be made more easy and that we have a political party's view or recommendations to be considered and considered in a very well and good manner in relation to what we should include in the 2013 amended Constitution.

Like I said, we will hear you and we are here to hear you and listen to you, sir, and your team. Without further ado, I will now invite you to please make your submissions to the Commission. The mic is in front of you.

If you press on the silver button, a light should come in. A red light should come in and you may use the mic. The floor is now open to the Fijian Labour Party and you, sir. Thank you.

Mr Chaudhary: Thank you, Mr. Chairman and members of the Commission. It's a pleasure to be here this morning with you.On my extreme right is Mr. Dr. Sushil Kumar, who is a member of the Management Board of the Fijian Labour Party. Sitting next to me on my right is Ms. Monika Raghavan, who is the President of the party. To my left, immediately next to me, is Taina Lagiwalu. She is the Assistant Secretary General of the party. Next to her is Mr. Sajeeda Sharma, who is the Vice President. And next to him is Aman Prashneel Chand, who is the President of the Suva branch of the party.

Our submission is rather lengthy and I hope you will give me some time on this. I'll try to be as short as possible. The submission is titled Constitutional Reform, Democratic Legitimacy, Equality and National Unity.

It has got nine sections and I will go into section one straight away, which is Parliamentary Mandate and Democratic Legitimacy. We acknowledge the importance of public consultation in any review of Fiji's supreme rule and welcome the opportunity for citizens to contribute their views. However, the party submits with utmost respect that the Constitutional Review Commission, as currently established and operating, lacks the necessary democratic legitimacy and parliamentary mandate required under the 2013 Constitution of the Republic of Fiji.

This deficiency is not merely technical. It touches the foundational principle that the Constitution, as the supreme law, derives its authority from the people through their elected representatives and pilots. An executive-initiated review process without prior parliamentary endorsement risks undermining public confidence in the integrity and ownership of any eventual reforms.

The constitutional framework requires parliamentary authority for fundamental change. The 2013 Constitution establishes clear

parameters for lawmaking and constitutional amendment. Section 2 subsection 5 provides that the Constitution cannot be abrogated or suspended by any person and may only be amended in accordance with the procedures prescribed in Chapter 11.

Section 46 subsection 1 vests the authority and power to make laws exclusively in Parliament, stating that, and I quote, no person or body other than Parliament has authority to make any law in Fiji except under authority conferred by this Constitution or by a written law, unquote. Chapter 11, sections 159 and 160, as interpreted by the Supreme Court in its advisory opinion of 29 August 2025, requires any amendment to proceed by way of a bill passed by Parliament by a two-thirds majority of all members, followed by a referendum in which a majority of both castes are in favor before presidential assent. No provision in the 2013 Constitution authorizes the President or Cabinet to establish an ad hoc review commission to examine or propose alterations to the Constitution outside the amendment procedure in Chapter 11.

While the President holds certain appointment powers, the initiation of a comprehensive review of the supreme law demands the direct involvement and sanction of Parliament as the representative body of the people. The commission was established by presidential warrant without prior parliamentary debate, legislation, or endorsement. This creates several fundamental problems.

There was no prior parliamentary debate or endorsement. The elected representatives of the people had no opportunity to define the terms of reference, scope, or methodology of the review. The terms of reference were not set by Parliament.

This creates the risk that the review may address issues or propose changes that have not been subjected to the scrutiny and democratic input of the legislature. The process bypasses the constitutional amendment pathway. Any recommendation emerging from the commission must ultimately return to Parliament for legislative action and then to the people via referendum.

An executive-led review process that bypasses Parliament at the formative stage sits uneasily with the democratic principles the Supreme Court sought to reinforce. Democratic legitimacy requires parliamentary ownership from the outset. The Fiji Labour Party submits

that any comprehensive review of the Constitution should, at minimum, be expressly sanctioned by the elected Parliament.

The commission's work, while valuable as a consultative exercise, cannot substitute for parliamentary ownership of the reform process. Parliament is the constitutional embodiment of the people's voice. Allowing the review to proceed without its formal involvement from the beginning risks perceptions that the process is executive-driven and that outcomes may be selectively advanced or filtered before reaching the legislature.

Submissions then go on to make five recommendations for the consideration of the commission and I would not read the recommendations except to say that we submit these recommendations in a constructive spirit with the firm belief that constitutional reform undertaken through proper parliamentary and democratic channels will produce outcomes that are more stable, legitimate and reflective of the collective will of the Fijian people. I now go to Section 2 of the submission which deals with common national identity. The Fiji Labour Party firmly believes that the name Fijian must be the common and unifying identity for all citizens of the country without exception.

This principle is already enshrined in the 2013 Constitution which states that all citizens of Fiji shall be known as Fijians and that all Fijians have equal status and identity. The party submits that this constitutional promise must be defended and strengthened, not undermined by any attempt to reintroduce ethnic categorization or to create different classes of citizens. Section 5 of the 2013 Constitution is clear and unambiguous.

All citizens of Fiji shall be known as Fijians. Subject to the provisions of this Constitution, all Fijians have equal status and identity which means that they are equally entitled to all the rights, privileges and benefits of citizenship and subject to the duties and responsibilities of citizenship. This provision moved Fiji away from the communal and ethnically divided framework of previous constitutions towards a civic inclusive national identity.

The Fiji Labour Party strongly supports this principle and warns against any regression that would once again divide citizens along ethnic lines.

Indo-Fijians constitute approximately 33% of Fiji's population with other communities, Rotuman's, Chinese Fijians, part Europeans and others making up a further 4-5%. Together these groups represent a significant and integral part of the Fijian nation.

Indians have lived in Fiji for over 140 years. They arrived as indentured laborers and stayed to build this country alongside Itaukei Fijians. They have contributed to every sector of the economy, sugar, commerce, professions, education, health and public service.

Their sweat and tears are woven in the fabric of modern Fiji. To suggest that Indo-Fijians or other non-Itaukei citizens should be given a different category or class of citizenship whether in name, identity, documents or constitutional status is both historically inaccurate and morally wrong. It would create second class citizens in a country they have helped build for generations.

The Fiji Labour Party submits that identity and nationality must be kept out of divisive ethnic politics. The 2013 constitution's framework of common and equal citizenry must be reflected not only in law but also in the democratic process and in the everyday practice of governance. Any attempt to reintroduce ethnic categories whether in passports, birth certificates, electoral rolls or public discourse would be a regressive step that undermines national unity and contradicts the spirit of the constitution.

The party further submits that the name Fijian belongs to every citizen by right of birth, upbringing, contribution and loyalty to this country. To suggest otherwise is to deny the lived reality of thousands of families who have called Fiji home for generations and who have no other homeland. We go on to make five recommendations with regard to this particular section of the submission.

We believe that a united Fiji is possible only when every citizen, regardless of ethnicity, feels equally valued, equally protected and equally Fijian. The name Fijian is not a prize to be granted or withheld. It is the birthright of every person born in this country or who has made it their home through citizenship.

Let us defend and strengthen the principle for the sake of our children and grandchildren. Go on to section three. Before I do that, I would like

to ask whether if you have any questions, whether you want to address those questions before I proceed to the next section or shall we do it at the end?

Mr. Valenitabua: We will ask questions at the end, sir.

Mr. Chaudhary: As I said, I have not read the recommendations because they align with what the submission is and that is for the consideration of the Commission. And that is to save time. Section three, which deals with land policy and TLTB administration and agricultural leases.

Addressing the fundamental crisis in land use, lease security and equitable development. Land is the foundation of Fiji's economy, culture and national security. The current framework governing native or Itaukei land leases administered by the Itaukei Land Trust Board presents one of the most pressing and unresolved challenges facing the nation.

The system has not delivered consistent, fair or productive outcomes for either the landowners or the long-term tenants. The absence of a coherent, effective national land use policy has resulted in ad hoc decision making, uncertainty for farmers, underutilization of productive land and hardship for families who have invested generations of labor in the land. This situation requires urgent, principled reform.

Recent data from the TLTB and government sources confirm the following breakdown of land tenure in Fiji. Itaukei or native land, approximately 90% of Fiji's total landmass. This land is owned by Itaukei Land Owning Units, Mataqali and Yavusa and administered in trust by the TLTB under the Itaukei Land Trust Act.

Freehold land approximately 6% and state land approximately 4%. Given that nearly nine-tenths of the country is Itaukei land, the policies and practices of the TLTB have a decisive impact on national agricultural output, rural livelihoods, food security and social stability. Fiji has long lacked a comprehensive, integrated national land use policy and plan.

Successive reviews and policy documents over decades have identified this gap as a major constraint on sustainable development. Decisions on whether land is leased to agriculture, reserved for landowners or converted to higher value residential or commercial uses are often made

on a case-by-case basis without a clear strategic framework. This vacuum has contributed to conflicting priorities.

The need to maintain productive agricultural land presses pressure for subdivision and commercial development, particularly near growing urban centers. The result is uncertainty underutilization of land and a failure to optimize land for the long-term national interest. Agricultural leases on Itaukei land are typically granted for periods of 30 years.

While the TLTB reports relatively high renewal rates in aggregate, historically 77 to 85% for agricultural leases since 1997 and around 75% for recent expired cane leases. This figure is disputed by cane farmers associations. Individual cases meanwhile continue to pose significant stress.

Many tenant families, particularly in the Fijian families with a multi-generational tie to the land, have invested heavily in homes, infrastructure and improvements over decades. When leases are not renewed, these families face not only loss of livelihood but also the emotional and financial trauma of displacement after years of building their lives on the land. Although the TLTB states that residential alternatives are offered and compensation under the Agricultural Landlord and Tenant Act may be available, the process often leaves families in precarious situations.

A 30-year term is insufficient for meaningful agricultural investment, especially in sugarcane and other perennial or capital incentive crops. Secure long-term tenure is essential for farmers to plan, invest and pass on feasible operations to the next generation. Concerns have been raised regarding the rental and premium structures applied by the TLTB, including charges linked to the capital value of developments or improvements and the overall level of returns flowing to individual landowners.

When land is reserved and not leased, productive output often declines, and landowners receive minimal or no direct income. The TLTB as trustee manages funds and distributions, but many landowners report that the amounts they ultimately receive are very small after administrative costs and sharing among large Mataqali families. This situation can create friction between tenants and landowners and fuels

perceptions that the current system does not optimally serve either party.

An independent, transparent review of lease terms, rental and methodologies, and distribution mechanisms could help build confidence and fairness. The Fiji Labour Party submits that prime agricultural land should be prioritized for food production and agricultural use. Substantial subsistence farming forms a critical component of Fiji's national security, ensuring food self-sufficiency, rural employment and resilience against external shocks.

Converting productive agricultural leases into commercial, residential or subdivided development on a large-scale risks undermining this foundation. While urban development is necessary, it should not come at the expense of the nation's long-term food security. A clear policy distinction between agricultural land to be protected for farming and land suitable for other users would serve the national interest.

We want to make some recommendations in this regard for the consideration of the Committee. We believe that land reforms conducted through inclusive dialogue and with the long-term interests of all Fijians at heart can resolve long-standing tensions and unlock the productive potential of Fiji's most important resource for the benefit of current and future generations. I go to the electoral system reform, and this is on constituency-based accountability, restoring local accountability representation and parliamentary scrutiny.

Fiji Labour Party has long advocated for an electoral system that delivers genuine accountability between elected representatives and the communities they serve. The current open-list proportional representation system, while providing a form of national proportionality, has significant shortcomings in terms of local representation, constituency accountability and the ability of Parliament to effectively scrutinize the executive. This section sets out the party's proposals for reform, drawing on the strengths of the 1997 constitution's electoral arrangements while adapting them to contemporary needs.

The shortcomings of the current electoral system. Under the 2013 constitution, Fiji uses a single national constituency with open-list proportional representation using the Dionne method and a 5%

threshold. While this system has certain merits, including simplicity and a degree of proportionality, it has produced several problems.

Lack of local constituency accountability. Members of Parliament are elected from a national list. There is no direct link between an MP and a specific geographic constituency or community.

Voters do not have a local representative they can approach with constituency issues, and MPs have no defined area for which they are responsible. Low barriers to entry and weak mandates. Candidates can be elected with very small numbers of personal votes, in some cases fewer than 500.

This undermines the legitimacy and authority of Parliament and allows individuals with limited community support to enter the legislature and even become ministers. Weak parliamentary scrutiny. The current Standing Orders, particularly provisions such as Standing Order 51, allows bills to be fast-tracked with limited debate and committee scrutiny.

Select committees have limited powers and resources, and the executive dominates the legislative agenda. There is no meaningful constituency development link. Without defined constituencies, there is no clear mechanism for MPs to advocate for and be held accountable for development in specific areas.

The 1997 Constitution provided for a mixed system, with communal seats reserved for Itaukei, Indo-Fijian, and other communities, and open seats. While the communal element was contentious, the open seats and the alternative vote, AV system, had strengths. Candidates had defined constituencies and were directly accountable to voters in those areas.

The AV system encouraged moderation and cross-community appeals, as candidates needed references from voters outside their own ethnic group to win. There was a clearer link between representation and local development priorities. The Fiji Labour Party does not advocate a return to the full communal system of the 1997 Constitution.

However, we believe that elements of constituency-based representation adapted to a non-communal, inclusive framework would

significantly improve accountability and the quality of parliamentary democracy in Fiji. Proposed Reforms – Constituency-Based Voting with a Strengthened Parliamentary Scrutiny. Fiji Labour Party proposes the following reforms to the electoral system. Introduce a mixed member proportional MMP electoral system or a similar mixed hybrid motor that combines constituency based representation with overall proportionality. A substantial portion of parliamentary seats example, 50 – 70% should be elected from defined and geographic constituencies using a preferential voting method such as the alternate vote or single transferal vote in single-member constituencies where voters rank candidates by preference.

The remaining seats should be allocated through national or regional party lists to ensure the overall composition of Parliament is proportional to the total votes received by each party or group of independents, compensating for any disproportionality arising from constituency results. Select committees should have enhanced powers to summon witnesses, require the production of documents, and scrutinize government policy and expenditure. Standing orders should be refined to prevent the abuse of fast-track procedures and to guarantee adequate time for debate and committee consideration of all significant legislation.

This is to strengthen parliamentary committees and scrutiny powers. Improve the quality of representation. Higher thresholds for election in terms of personal votes of support and stronger disqualification provisions for candidates with serious criminal convictions or findings of corrupt conduct would raise the standards of those entering Parliament.

Enhance public participation and petition mechanisms. Parliament should have formal mechanisms to receive and consider public petitions on matters of national importance and committees should be empowered to conduct inquiries on issues of public concern. We raise here also disqualification provisions in respect of the nomination of candidates in the 2013 Constitution.

We propose that the disqualification of persons from being nominated as candidates for general election as provided for in sections 56 of sections 2 and 5 of the Constitution be removed. We submit that a person who has served his or her sentence or who is not serving a term of imprisonment when nominated should not be prevented from

exercising his or her democratic right to contest parliamentary elections. The restrictions placed on officials and employees of trade unions and trade union federations under section 57 of sections 3F and G from participating in political activity by being classified as holders of public office should be revoked.

Trade unions or trade union federations are not public bodies or institutions. There is therefore no basis for their exclusion from participation. This provision was inserted by the writers of the 2013 Constitution and the Bainimarama administration who saw trade unions as political competitors.

Similar restrictions placed on the federation of employees under section 57 of sections 3 and 8 must also be revoked. We made six recommendations with regard to this particular section of the submission. We believe that the current electoral system has delivered a form of proportionality but at the cost of local accountability and effective parliamentary scrutiny.

The Fiji Labour Party believes that a reformed system combining constituency representation with national proportionality, stronger committees and better safeguards will produce a parliament that is more responsive to the people, more effective in holding the executive to account and better able to deliver genuine development and good governance to all Fijians. We move to section 5 of the submission which is strengthening democratic oversight of independent institutions and on public borrowing. Enhancing accountability in appointments and fiscal responsibility.

A robust democracy requires strong independent institutions that are insulated from undue political influence alongside effective parliamentary oversight of the government's fiscal decisions. The Fiji Labour Party submits that the current constitutional arrangements concentrate excessive power in the executive, particularly the Prime Minister, in both appointments of key office holders and in the management of public debt. Reforms are needed to restore greater parliamentary involvement and transparency.

Under the 2013 Constitution, the Prime Minister exercises significant influence over appointments to critical independent bodies through the Constitutional Officers Commission and direct recommendations to the

President. The COC, which advises on appointments to institutions such as the Police Correction Service, RFMF, Electoral Commission, Auditor General and others, has a competition that gives the executive substantial control. This structure risks criticizing institutions that are meant to operate independently and impartially.

International democratic practice in parliamentary systems emphasizes mechanisms that balance expertise with accountability. While the executive often plays a role in nominations, independent commissions or parliamentary committees provide scrutiny to ensure merit, integrity and freedom from active political affiliation. No person holding current political office or recent partisan affiliation should serve on bodies responsible for overseeing independent institutions.

We propose that appointments to independent commissions and key constitutional officers should be subject to scrutiny by a parliamentary select committee. Even with a government majority on such a committee, the process introduces transparency, cross-party input and public confidence. Following committee considerations, the President should exercise the appointment authority directly, rather than acting solely on the recommendation of the Prime Minister.

We draw attention to the fact that Fiji's public debt has risen significantly in recent years, reaching levels that place considerable pressure on public finances and future generations. Under current arrangements, the government can enter into borrowing arrangements with domestic and international institutions and subsequently report to Parliament. While the overall financial requirement is reflected in the budget, individual major borrowing decisions often lack proper detailed parliamentary scrutiny.

International best practice in democratic governance is reflected in guidelines from organizations such as the World Bank, IMF, Westminster Foundation for Democracy and the Commonwealth strongly support meaningful parliamentary involvement in debt management. Key principles include annual parliamentary approval of the government's overall borrowing strategy and debt ceiling as part of the budget process, specific parliamentary approval or ratification for major individual loans or loan guarantees or contingent liabilities above a defined threshold, regular detailed reporting to Parliament on debt stock, new borrowings, debt servicing and risks, clear legal frameworks

that define borrowing authority and require legislative oversight for significant fiscal commitments. Many democracies set benchmarks, for example, requiring parliamentary approval for external borrowing, loans above a certain monetary threshold or new guarantees.

This ensures that elected representatives who are accountable to the people scrutinize decisions that have long-term implications for the nation's finances and the well-being of citizens. In Fiji, establishing a constitutional or legislative requirement for prior parliamentary approval of borrowing above a specific threshold or for major external loans would strengthen fiscal discipline, transparency and accountability. It would prevent the accumulation of debt without adequate democratic oversight and help protect citizens from the consequences of unsustainable borrowing.

We then make recommendations with regard to this particular aspect of the submission. I move to section six, which is confronting race-based politics and securing indigenous rights within a united nation. For too long, politicians in Fiji have exploited race and ethnicity to divide the nation in advanced narrow political agendas.

The coups of 1987 and 2000 were direct manifestations of this destructive approach. Race-based politics has set Fiji back by decades, diminished investor confidence, accelerated brain drain and caused immense suffering to ordinary citizens of all communities. The Fiji Labour Party has been a direct victim of this politics of division.

It is time for an honest national conversation. The facts are clear. Indigenous Itaukei Fijians through their chiefs and landowning units own 90% of all land in this country.

Their land has never been taken by Indians or any other group. Their land remains safe. Their indigenous rights are protected.

Future generations must accept this reality rather than allow politicians to manufacture fear and division. Race has been weaponized by politicians for electoral gain and to justify unconstitutional elections. The coups of 1987 and 2000 were disguised as protecting indigenous rights, yet delivered neither prosperity nor security to ordinary Itaukei.

Fijians instead entrenched poverty, weakened institutions and created an environment of fear and uncertainty that continues to affect the country even today. The military has been drawn into politics on multiple occasions, often at the behest of politicians and state actors pursuing sectional interests. This has damaged the professionalism of the country's security forces and undermined democratic norms.

The Fiji Labour Party has consistently opposed the use of race as a political tool because it harms all Fijians and prevents the country from moving forward as one nation. Itaukei Fijians are traditional owners of the land. This right of ownership has been recognized and protected under all four constitutions.

The Bill of Rights in the 2013 Constitution provides strong protection for all citizens, including specific recognition of indigenous rights. Fiji is also a signatory to relevant international instruments concerning indigenous peoples and human rights. The land is not under threat from Indians or other communities.

The land is managed by Taukei Land Trust Board. Many of the problems faced by indigenous landowners, low returns, lack of development and politicization stem from how the TLTB has operated and how politicians have used land issues to create divisions between communities rather than focusing on genuine economic empowerment of landowners. It must be stated clearly and without equivocation.

Indigenous land is safe, indigenous rights are safe. There is no factual basis for claims that Indians or other races have taken Itaukei land. Such narratives are politically manufactured and must be rejected.

Equal citizenship and equal opportunity. Fiji is a multiracial nation. All citizens, Itaukei, Indo-Fijian and others, have contributed to building this country.

Indians and other communities have dwelled in the sugar industry, in commerce, in professions, in every sector of the economy. They deserve equal citizenship and equal opportunity and equal dignity. Politicians must be prohibited from creating artificial divisions based on nationality, land, ethnicity or political gain.

The 2013 Constitution already establishes the principle of common and equal citizenship. This principle must be defended and strengthened, not undermined by those who seek to return to the politics of fear and exclusion. Continued race-based politicking is directly responsible for Fiji's ongoing challenges, accelerating brain drain, declining investment and weak institutions, and persistent poverty affecting all communities.

The country cannot afford another generation lost to division. The Fiji Labour Party calls for a definitive break from the politics of race. Indigenous Fijians must be assured, with facts not rhetoric, that their land and rights are secure.

At the same time, all other citizens must be assured of equal treatment and opportunity. True leadership requires telling the truth. Division benefits only those who exploit it.

National progress requires unity, equal citizenship and a shared commitment to building a prosperous Fiji for all. These are the recommendations with regard to this particular section of the submission. We go to protecting minority rights, advancing women representation.

The 2013 Constitution establishes a strong foundation for equality through its preamble on common and equal citizenry and the Comprehensive Bill of Rights, particularly Section 26, which guarantees equality before the law and prohibits unfair discrimination on grounds of race, ethnicity, gender and other characteristics. These provisions are commendable. However, the Fiji Labour Party submits that the constitutional promise of equality requires stronger implementation mechanisms to ensure that minorities and women enjoy genuine equal opportunity in practice, not merely in law.

Fiji's demographic reality is evolving. While Itaukei Fijians constitute the majority, approximately 62%, Indo-Fijians represent a significant minority, approximately 33%, with their share of the school-age population now around 20% due to emigration and demographic trends. Other communities, including Rotumans, Chinese, Fijians and Pacific Islanders, part Europeans form smaller but important minorities.

The Constitution rightly protects all citizens equally, but the actual institutional framework has not always delivered balanced

representation. Concerns persist regarding under-representation of Indo-Fijians and other communities in key institutions, such as the Republic of Fiji Military Forces, the Fiji Police Force and the Civil Service. Historical threatens and recruitment practices have led to imbalances that do not reflect Fiji's national demographic competition.

This undermines public confidence in these institutions as truly national bodies serving all citizens equally. Furthermore, many minority communities and specific population groups in the outer islands, maritime provinces and rural areas face persistent disparities in access to services, infrastructure, economic opportunities and development investment. Isolation, high transport costs and limited government presence exacerbate these challenges, leading to marginalization that affects national cohesion.

Fiji Labour Party advocates for proactive merit-based measures to achieve equitable representation. This includes targeted outreach, transparent recruitment processes, diversity monitoring with public reporting and capacity building programs. Such measures should aim for institutions that reflect the face of the nation without compromising merit or introducing discrimination against any group.

Women representation Women constitute half of Fiji's population, yet remain significantly under-represented in political decision-making. Following the 22 general elections, women held only approximately 9-11% of seats in Parliament. A decline from previous high of around 19-20%.

This falls far short of global and regional aspirations for gender parity in leadership. We believe in equal opportunity for women and men. We support increasing women representation in Parliament and at constituency level through measures that remove structural, cultural and financial barriers, rather than through mechanisms that could be perceived as discriminatory.

This includes encouraging political parties to adopt internal targets and monitoring programs for women candidates, providing capacity building, leadership training and campaign support for aspiring women leaders, addressing cultural and societal norms that discourage women's political participation through public education and awareness, ensuring safe and respectful political environment free from harassment and

violence against women in politics. We emphasize equal opportunity without discrimination. Special measures reserve seats, if considered, must be carefully designed, time-bound and implanted, implemented rather, in a manner that builds genuine capability, rather than creating perceptions of tokenism or reverse discrimination.

We want to make recommendations as is required. We believe that the Constitution, which truly delivers on its promise of equality, must ensure that every community, majority and minority alike, and every woman and man, see themselves reflected in the institutions that govern and protect them. This is not about division.

It is about building a stronger, more cohesive and more legitimate nation for all Fijians. Just two more sections. I won't be very long.

I hope I'm not boring you. Equal citizenship rights, inclusive electoral participation. Fiji Labour Party has consistently championed the principle of common and equal citizenry enshrined in the 2013 Constitution.

All Fijians, regardless of ethnicity, ancestry or place of birth, must enjoy equal rights, equal opportunities and equal protection under the law. This section addresses two critical areas where current laws and current legislative changes create unequal treatment. Citizenship rights for children born overseas and the ability of dual citizens to participate fully in public life by contesting elections.

Under the Citizenship Act of Fiji and its amendments, children born in Fiji generally acquire citizenship by birth. For children born overseas, citizenship is acquired by registration if at least one parent is a Fijian citizen. Recent legislative changes, including the Citizenship of Fiji Amendment Bill 2026, have introduced facilitative provisions that recognize links to landowning units, mataqali, for Itaukei children born overseas, making it easier for them to regularize or acquire Fijian citizenship through ancestral connections.

The Fiji Labour Party supports measures that strengthen the ties between the diaspora and Fiji. However, we submit that this facilitative provision must be extended equally to all communities Children of Indo-Fijian parents born in Fiji but living overseas, as well as children of other minority groups, Rotuman's, Chinese, Fijians and others, should have

access to the same streamlined registration processes and recognition of family ancestral links. Citizenship rights must not be differentiated on ethnic grounds.

Equal citizen rights demand that the law treats all Fijian families the same, whether their children were born in Fiji or overseas. Any provision that makes it easier for one ethnic group of diaspora children to claim or regularize citizenship while imposing higher barriers on others violates the constitutional guarantee of common and equal citizenship. The Fiji Labour Party calls for immediate legislative amendments to ensure uniformity across all communities in this regard, allowing dual citizens to contest elections and reducing the residency requirements.

Section 56 of the 2013 Constitution currently provides that a person may be a candidate for election to Parliament only if they are a citizen of Fiji and do not hold citizenship of any other country. Additionally, candidates must be ordinarily resident in Fiji for at least two years immediately before nomination. Fiji Labour Party believes these restrictions are outdated and counterproductive in a globalized world.

Fiji has a large skilled diaspora. Many Fijians who migrated retain strong ties to the country, hold Fijian citizenship often alongside another nationality, and possess valuable expertise in fields such as medicine, engineering, finance, technology, education, and governance. Prohibiting dual citizens from contesting elections prevents these experienced professionals from returning to serve the nation in elected office.

Furthermore, the current two-year residency requirement creates an unnecessary barrier. Reducing this to one year would still ensure candidates have a meaningful connection to Fiji while allowing skilled returnees to contribute sooner. Many countries with large diasporas have successfully balanced residency requirements with the need to attract talent back into public life.

The Fiji Labour Party therefore calls for two specific reforms to the electoral law. One, remove the prohibition on dual citizens contending elections, allowing Fijian citizens who hold another nationality to stand for Parliament provided they meet all other eligibility criteria. And two, reduce the ordinary residency requirement from two years to one year, immediately preceding nomination to facilitate the return and

participation of skilled diaspora members while maintaining a genuine connection to the country.

We then go on to make recommendations in respect to this matter. Section 9, which is Judicial Reforms and Oversight of Political Party Funding. Fiji Labour Party submits this section to highlight two critical areas requiring urgent constitutional and legislative attention.

One, the need for comprehensive judicial reforms to address chronic delays and ensure timely justice. And two, the imperative to place the regulation of political party funding under the independent oversight of the Electoral Commission with clear rules approved by Parliament. These issues directly affect public confidence in the rule of law and the integrity of Fiji's democratic institutions.

Judicial reforms. Fiji's judicial system faces a serious and well-documented crisis of delay. The Chief Justice Honorable Salesi Temo has publicly expressed concern over the significant backlog with cases dating back 10 to 20 years still pending.

Civil cases in particular have dragged on for many years, posing immense hardship to litigants, especially ordinary citizens who cannot afford prolonged legal battles. Criminal cases, including serious matters such as rape and sexual violence against children, have also suffered unacceptable delays. A stark and troubling example is the case highlighted by the Fiji Women's Rights Movement in May 2026 involving a young girl who waited six years for justice in a sexual violence matter only for the case to be withdrawn.

Children constitute the majority of rape victims in Fiji. Such prolonged delays not only deny justice to victims and survivors, but also erode public trust in the entire justice system. Justice delayed is justice denied.

It is not only a slogan, it is true. It is the lived reality for too many Fijians. Additionally, the high cost of litigation places justice beyond the reach of many ordinary citizens.

Legal fees can be prohibitive, and the perception that the system primarily benefits those who can afford expensive lawyers undermines the constitutional guarantee of equal protections under the law. New Zealand and Australia have implemented robust judicial case

management systems that significantly reduce delays while maintaining fairness. Key features include active judicial case management, clear time standards, strict control of adjournments, electronic case management and e-filing, performance measurement and accountability, expanded use of mediation, and alternative dispute resolution.

These jurisdictions demonstrate that with strong judicial leadership, clear rules, technology, and accountability mechanisms, significant reductions in delays are achievable without compromising fairness or the rights of all. The Fiji Labour Party recommends a comprehensive judicial reform package including introduction of active judicial case management with binding time standards for different categories of cases, civil, criminal, family, etc. Mandatory publication of judgments within a defined time frame, within three months of final submission in most cases.

Strict limits on adjournments with judicial discretion to refuse unnecessary delays. Full rollout of electronic case management, e-filing, and digital court records. Extension of legal aid and pro-bono schemes to improve access for low-income litigants.

Enhanced judicial training in case management and the use of technology. A move to oversight of party funding by electoral commission. Transparent and accountable political party funding is essential for the integrity of democracy.

Under the current framework, there have been concerns about the allocation of public funds to political parties, reportedly around Fiji dollars 325,000 per year, without sufficient transparency, clear criteria, or robust parliamentary oversight. The Fijian Labour Party submits that the regulation of political party funding, including any state support for disclosure requirements, must be placed under the independent authority of the Electoral Commission with the overarching framework approved by Parliament. The Electoral Commission is the appropriate independent body to oversee party registration, funding, disclosure, campaign financing rules, and compliance, placing this responsibility clearly with the Commission, backed by legislation passed by Parliament which will enhance transparency, reduce the risk of political manipulation, and strengthen public confidence in the electoral process.

The Office of the Director of Public Prosecutions and the Fijian Independent Commission Against Corruption are critical institutions for upholding the rule of law and combating corruption. However, recent administrative issues, perceived politicization, and public statement by FICAC have raised serious concerns about institutional independence and public trust. The Fiji Love Society has called for a radical overhaul of the anti-corruption framework, including consideration of whether FICAC should retain its current prosecutorial role.

The Fiji Labour Party supports a review of these institutions to ensure they operate with genuine independence, professionalism, and accountability. Structural reforms may include clearer constitutional safeguards for the DPP's independence, review of FICAC's mandate and governance, and improved coordination between investigative and prosecutorial bodies. And we want to make a recommendation on this.

Finally, we urge the Commission to recommend bold practical reforms in these areas so that every Fijian, rich or poor, can have confidence that justice will be delivered fairly and without undue delay, and that political competition is conducted on a level playing field. Lastly, international instruments on human rights. Fiji has acceded to the following international conventions or covenants.

International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination, International Convention on the Elimination of Discrimination Against Women, UN Declaration on the Rights of Indigenous Peoples, International Covenant on Economic, Social and Cultural Rights, International Convention Against Torture and Other Inhuman or Degrading Treatment and Punishment, International Convention on the Rights of Persons with Disabilities. The nation's constitution and its laws must be aligned in conformity to the provisions of these international instruments. That's our final submission.

We thank you for listening to us patiently. We are now ready for any questions that you may have. Thank you very much.

Mr. Valenitabua: Thank you very much, Mr. Chaudhry. Very comprehensive. We have listened, we have picked out the points that you were raising in your submissions.

One request. I note that you were reading from a written submission. May we request that it be provided with a copy of your written submission, if you don't mind.

Mr Chaudhary: Certainly, I have brought a hard copy which I will deliver to you. Before I leave, and then we will email the submission.

Mr. Valenitabua: Thank you very much. Thank you. Just a comment in relation to your first section, which relates to the establishment of the Constitutional Review Commission. We have heard you.

Apart from what we have heard, I would like to state that we have no comments in relation to that. We will leave it as it is. So, for the other matters that have been raised, I can ask the Commissioners, if they want to, to comment on the same or ask questions on the same, except for Section 1. Commissioners? Dr. Fatiaki?

Dr Fatiaki: Chair, through you. Mr. Chaudhary, I would like first to recognize and thank you, sir, for your service to this country and for your comprehensive, reasoned and compelling submission this morning. I can assure you that it will be considered carefully by myself and the other Commissioners in our deliberations that begin next week as we prepare our final report and amended or new Constitution for the country.

I only wish, and this is not necessarily a question. It's more a reflection. If you wish to answer it, then I'd be happy for you to.

It is one of those, what we call amongst the Commissioners, contentious issues. That is the second topic that you brought up. The common national identity.

Let me say from the outset that I think the idea of a common national identity is a laudable and commendable aspiration that I don't think anyone in Fiji would or should be opposed to. Having had now the benefit of four months of consultations and listening to people, there are three areas that I would like to, like I say, reflect upon. And if you want to see it as a question or you wish to contribute to it, by all means.

If not, it's just a reflection in respect to this issue, which I emphasize. I think nobody should be with an issue of our common national identity. And that is first, the term Fijian.

I think from 1970 onwards, for the past 43 years, the term Fijian has been used solely for the indigenous Fijian people of this country and is so stated in the 1970, 1990, and 1997 constitutions. I guess 2013 dispossessed them of that name and essentially extended its usage to all of us, the others, without their consent or their input. That is my first reflection that has been raised to us by people throughout this country.

The second issue related to this is the use of the word Itaukei. The question is, how did the 2013 constitution, or we, come to give the name Itaukei to the indigenous Fijian people of this country without again their consent or to seek input from them as to whether they would be happy to be called Itaukei. We've had people give us examples, and I don't speak that fluent Fijian, Itaukei Fijian, who say to us Itaukei means the owner, owner of.

So you could be Itaukei ni koli, Itaukei ni bulumakau. It could be just used in that generic sense and to them, to be actually just given that name without prior consultation as to would you like to be called that, is for me an issue that I reflect upon regularly when we discuss this issue of common identity. The third one is a smaller one.

You quoted section 5.1, which says, quote, all citizens of Fiji shall be known as Fijians, end quote. My legal friends tell me that implies a mandatory obligation or duty to utilize that name. We even had one of the submitters suggest to us that we impose a mandatory requirement with punitive measures if people did not use the name to call other people that.

It was brought to us in one of the consultations here before we went out. My concern or reflection or question is, as a proud Fiji citizen who would like to continue to be known as a Rotuman, how could an individual such as I be accommodated in this setting? And then my last comment would be, if all citizens of Fiji were known as Fiji citizens, is there a problem with that? Thank you.

Mr Chaudhary: I have seen this as a common national identity removed from ethnicity.

You live in Fiji, we live in Fiji, we need a national identity. And I see Fijian as the most appropriate national identity that really ties you to the country that you live in, that you love. If we look at the United States, they call their people, of course, if you are Chinese, you are a Chinese-American, or you are an Indian-American, or whatever.

So they deal with it in that fashion, if you are Chinese, if you are an Indian, some other race, and it's connected with your national identity. But, it's okay, of course, I do not know where it came from, but this was used. And I also know that, as children, we were always told that, in respect of the Fijian community, that they are the Taukei's, we used to call them Taukei's.

And I don't know where it came from, but Taukei's means owners. So they were regarded as owners of the land. They were the citizens who came here first.

They are the owners of the land. And this is how I've seen it. I don't see anything derogatory in that.

I think it honors you as the owners of the land. When we say toke, we mean the owners of the land. We don't mean you own a dog, or you own a cow, or you own something else.

So, yes. But, certainly I appreciate what you're saying, that our ethnicity is there. I'm known as an Indian, you're known as a Tuman, somebody is known as a part European.

I don't see a problem there. But this is seen as national identity. Where do you come from? You come from Fiji, so you're a Fijian.

It's a matter of national identity rather than, you know, ethnicity.

Mr. Valenitabua: Dr. Gounder.

Dr Gounder: Thank you, Mr. Chaudhary and members of the Fiji Labour Party.
I, in line with the other commissioners, I'd like to recognize your contribution to politics in the society of Fiji. I think you are one of the very few who has contested elections under all the four constitutions. I am not, I don't know anyone else who has contested elections under the four constitutions.

Under that many constitutions. So that provides the enduring legacy you have left on the political landscape. But also, the massive wisdom and experience you have in terms of the politics and the society of Fiji.

And with due respect, I want to ask you this question which I asked Mr. Narube as well, the leader of Unity Party. You know, Fiji first brought this constitution in 2014 election they received 60% of all the votes cast. And then they won it again in 2018 with 50% of the votes.

Does the election mandate provide any legitimacy to the constitution that they brought?

Mr. Chaudhary: This was dealt with by the Supreme Court in its opinion which was delivered last year in September and they said that this is the, the court accepted the fact that it is the legal constitution. It is the effective constitution of Fiji. And it gave reasons why it considered this to be the effective and legal constitution.

I think it was mainly because three elections were held under it that people have accepted this. And so that is the answer to your question, I think. That gives it legitimacy that people have accepted it.

They have had three elections under it. And therefore, it is the effective constitution. Now, of course, it made it easier for for this constitution to be amended in its opinion.

And this is what we are here about, I think, in terms of how to deal with this constitution, particularly those aspects which are not popular with the people.

Dr. Gounder: Thank you, Mr. Chaudhary. Ms. Nella Tikau.

Ms. Nailatikau: Thank you, Dr. Fatiaki, through you, Chair. Thank you, Mr. Chaudhary and members of the Labour Party. I echo my colleagues' gratitude, but also recognition of your demonstrated desire to be constructive in the recommendations that you have made.

Further to Dr. Fatiaki's question, we've also received submissions about having a forward-looking constitution. And I see this perhaps reflected in your submission relating to addressing race-based politics and the

recognition of how this has set Fiji back by decades. I also recognize how you call for or acknowledge that there's, you know, this is a time for an honest national conversation and that the country cannot afford another generation lost to division.

We've heard recommendations or submissions, for example, about the need for perhaps a commission on national unity that might address the collective establishment of a shared identity, for instance, amongst many other things. I would just like to hear you expand on your recommendations relating to this, about learning the value of our ways, but also the error of our ways in terms of going forward and addressing what we've learned about race-based politics. Just welcoming your further elaboration on that. Thank you. I believe it was recommendation six.

Mr. Chaudhary: Recommendation we made, I would like to, what we're saying here is affirm unequivocally that it's okay, land ownership and indigenous rights are fully protected under the 2013 constitution and must so remain.

Strongly condemn the use of race-based politics by any political actor and recommend constitutional or legislative measures to discourage the exploitation of ethnicity for political gain. Reaffirm the principle of common and equal citizenry for all Fijians regardless of ethnicity and ensure that the Bill of Rights and equality provisions are not weakened. Recommend reforms to the DLTB to improve transparency, give more transparency to landowners and depoliticize land administrations so that if okay landowners receive genuine economic benefits from their land.

Call for national leadership across the communities to publicly reject divisive race-based narratives and commit to building a united prosperous Fiji based on equal opportunity for all citizens. Support civic education programs that clearly explain the protections for indigenous rights and land ownership alongside the principles of equal citizenship to reduce the space for political manipulation. Fiji's future depends on honesty about the past and courage to reject the politics of division.

The land is safe, the rights are protected. It is time to move forward together as one nation. Those are the recommendations.

Thank you. Does this answer your question?

Ms. Nailatikau: Thank you Mr. Chaudhary.

Mr. Chaudhary: Yes. In fact as you said I fought elections under all the constitutions. You know in all these years what hurts me most is how much we have suffered as a result of politics of race. The two or three coups that have been executed in the name of protecting indigenous rights and all that.

You know we have lost two generations. People who have been affected. What we see today the drug crisis, HIV, NCDs, all this, this is all coming from that.

We go back to 1987 we see what Fiji was and then you come forward and see how we have regressed and where we are today. We are a nation submerged in debt that we can't manage to pay. We are, we have lost self-reliance.

We now depend on aid, loans, remittances and grants to run this country. That's not the Fiji we want. We can be, we are a very rich country in terms of resources and all that.

What we need is good governance. We need to come together. We need to work together to build this country.

And it's possible, it is very possible if we have the, we can set it right, we can get the trust of all the people that we all belong to Fiji which is our home and we must all work together. Only then we'll have prosperity instead of poverty and the future can be very bright if we get our own equation right in terms of governance. We can do it.

Mr. Valenitabua: Mr. Chaudhary, ladies and gentlemen of the Fiji Labour Party, I'd just like to summarize and give you some comments in relation to what has been submitted to us today. I will start with the land policy, the TLTB and the other submissions that were made under that topic. We heard from the TLTB yesterday they are carrying out reforms in relation to what we now call the Itaukei Land.

So we will be addressing or we will be looking at your submissions in relation to the reforms which the TLTB stated to us in their submissions yesterday. As for the electoral reform, there's been call for simplifying our electoral system all over the country. The grassroots people find the current electoral system as very complicated and they have asked or

recommended that we simplify the electoral system or the electoral system and change the system that we are using.

That will be considered by your commission. In relation to the return to communal voting, we take note of that. That is a suggestion which I believe you made to the commission this morning.

No? Oh, we refrain. Yeah, we refrain from returning to communal elections.

Mr. Chaudhary: Yes, we refrain.

Mr. Valenitabua: We refrain. Is that correct now? Thank you.

Thank you very much. So we have that, we will consider that. The race-based politics is well stated, Mr. Chaudhary, and exercise the powers of the executive.

We've heard submissions from the ministries themselves. They came here and said that we need to have a change in relation to the executive power, controlling the ministries. And also the ministers overriding the permanent secretaries.

That is another point that has been raised. And equal rights, yes, there have been submissions in relation to the equal rights for all Fijians, and judicial reform. We've heard from the judiciary in relation to reform that would be required there.

Those are the main points that I have picked up, and I just wanted to summarize to us this morning. We've had a lot of submissions going around the country. You would understand.

We are flooded with submissions, so we will be working on all of this. To bring our presentation this morning to a close, I thank you very much indeed, again, on behalf of the commissioners that are present here today. Thank you very much for the submissions, comprehensive, eye-opening in relation to some of the points that they were raised.

We will indeed consider all of them during our deliberations, which will start next week. Thank you very much, and I wish Fijian Labour Party well. Thank you.

Mr Chaudhary: Thank you very much, sir.

----------End of Session [7-7-2026] ----------

Fiji Labour Party

Constitutional Reform, Democratic Legitimacy, Equality, and National Unity

Submission
Constitution Review Commission
7 July 2026

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Section 1

1.0 Parliamentary Mandate and Democratic Legitimacy

A Fundamental Deficiency in the Establishment and Operation of the Constitutional Review Commission

Fiji Labour Party acknowledges the importance of public consultation in any review of Fiji's supreme law and welcomes the opportunity for citizens to contribute their views. However, the Party submits with the utmost respect that the Constitutional Review Commission (CRC), as currently established and operating, lacks the necessary democratic legitimacy and parliamentary mandate required under the 2013 Constitution of the Republic of Fiji.

This deficiency is not merely technical. It touches the foundational principle that the Constitution, as the supreme law, derives its authority from the people through their elected representatives in Parliament. An executive-initiated review process, without prior parliamentary endorsement, risks undermining public confidence in the integrity and ownership of any eventual reforms.

1.1 The Constitutional Framework Requires Parliamentary Authority for Fundamental Change'

The 2013 Constitution establishes clear parameters for law-making and constitutional amendment:

Section 2(5) provides that the Constitution "*cannot be abrogated or suspended by any person and may only be amended in accordance with the procedures prescribed in Chapter 11.*"

Section 46(1) vests the authority and power to make laws exclusively in Parliament, stating that "*no person or body other than Parliament has authority to make any law in Fiji, except under authority conferred by this Constitution or by a written law.*"

Chapter 11 (Sections 159 and 160), as interpreted by the Supreme Court in its advisory opinion of 29 August 2025, requires any amendment to proceed by way of a Bill passed by Parliament (by a two-thirds majority of all members) followed by a referendum in which a majority of votes cast are in favour, before Presidential assent.

No provision in the 2013 Constitution authorises the President or Cabinet to establish an ad hoc review commission to examine or propose alterations to the Constitution outside the amendment procedures in Chapter 11.

While the President holds certain appointment powers, the initiation of a comprehensive review of the supreme law demands the direct involvement and sanction of Parliament as the representative body of the people.

1.2 **The Current Process Lacks Parliamentary Mandate.** The Commission was established by Presidential Warrant without prior parliamentary debate, legislation, or endorsement. This creates several fundamental problems:

There was no prior parliamentary debate or endorsement. The elected representatives of the people had no opportunity to define the terms of reference, scope, or methodology of the review.

The terms of reference were not set by Parliament. This creates a risk that the review may address issues or propose changes that have not been subjected to the scrutiny and democratic input of the legislature.

The process bypasses the constitutional amendment pathway. Any recommendations emerging from the Commission must ultimately return to Parliament for legislative action and then to the people via referendum. An executive-led review process that bypasses Parliament at the formative stage sits uneasily with the democratic principles the Supreme Court sought to reinforce.

1.3 **Democratic Legitimacy Requires Parliamentary Ownership from the Outset**
The Fiji Labour Party submits that any comprehensive review of the Constitution should, at minimum, be expressly sanctioned by the elected Parliament. The Commission's work, while valuable as a consultative exercise, cannot substitute for parliamentary ownership of the reform process. Parliament is the constitutional embodiment of the people's voice. Allowing the review to proceed without its formal involvement from the beginning risks perceptions that the process is executive-driven and that outcomes may be selectively advanced or filtered before reaching the legislature.

Recommendations

In light of the foregoing, the Fiji Labour Party respectfully recommends that the Constitutional Review Commission:

1. **Explicitly record in its Final Report** that its work constitutes a consultative and advisory exercise only. Because the Commission lacked prior parliamentary endorsement, its Final Report must be tabled in Parliament for debate and democratic scrutiny. Only upon parliamentary acceptance should any proposals proceed to the formal amendment process under Chapter 11 (Bill passed by Parliament followed by referendum, as interpreted by the Supreme Court on 29 August 2025).

2. **Recommend to the President and the Government** that, because the Commission was established without prior parliamentary endorsement or legislative framework, its Final Report be formally tabled in Parliament for comprehensive debate and consideration by the elected representatives of the people.

   Parliament should have the opportunity to scrutinise the findings and recommendations. Only if Parliament accepts or endorses the Report (or its key recommendations) should the Government then proceed to introduce formal Bills for constitutional amendments in accordance with the procedures in Chapter 11 of the 2013 Constitution (as interpreted by the Supreme Court), followed by a referendum.

3. **Advice that any draft constitutional amendments** emerging from the Commission's work (following parliamentary consideration and acceptance of the Report) be introduced into Parliament as formal Bills, allowing for full parliamentary debate, committee scrutiny, public submissions where appropriate, and compliance with the procedural requirements of Chapter 11, culminating in a national referendum.

4. **Emphasise the importance of broad parliamentary consensus** on the terms of reference and scope of constitutional reform, to ensure that the process enjoys cross-party ownership and commands the widest possible public legitimacy.

5. **Support measures for comprehensive public civic education** on the 2013 Constitution, the Supreme Court's advisory opinion, and the formal amendment process under Chapter 11, so that citizens can participate meaningfully in both the current consultations and any subsequent referendum.

The Fiji Labour Party submits these recommendations in a constructive spirit, with the firm belief that constitutional reform undertaken through proper parliamentary and democratic channels will produce outcomes that are more stable, legitimate, and reflective of the collective will of the Fijian people.

Section 2:

2.0 Common National Identity

A Call for Unity, Equality, and the Rejection of Ethnic Categorisation in National Identity

Fiji Labour Party firmly believes that the name "Fijian" must be the common and unifying identity for all citizens of this country, without exception. This principle is already enshrined in the 2013 Constitution, which states that all citizens of Fiji shall be known as Fijians and that all Fijians have equal status and identity. The Party submits that this constitutional promise must be defended and strengthened, not undermined by any attempt to reintroduce ethnic categorisation or to create different classes of citizens.

2.1 The Constitutional Foundation of Common and Equal Citizenry

Section 5 of the 2013 Constitution is clear and unambiguous:
All citizens of Fiji shall be known as Fijians.

Subject to the provisions of this Constitution, all Fijians have equal status and identity, which means that they are equally entitled to all the rights, privileges and benefits of citizenship; and subject to the duties and responsibilities of citizenship.

This provision moved Fiji away from the communal and ethnically divided framework of previous constitutions toward a civic, inclusive national identity. The Fiji Labour Party strongly supports this principle and warns against any regression that would once again divide citizens along ethnic lines.

2.2 The Demographic and Historical Reality

Indo-Fijians constitute approximately 33% of Fiji's population, with other communities (Rotumans, Chinese-Fijians, Part Europeans, and others) making up a further 4–5%. Together, these groups represent a significant and integral part of the Fijian nation. Indians have lived in Fiji for over 140 years. They arrived as indentured labourers and stayed to build this country alongside iTaukei Fijians. They have contributed to every sector of the economy — sugar, commerce, professions, education, health, and public service. Their blood, sweat, and tears are woven into the fabric of modern Fiji.

To suggest that Indo-Fijians or other non-iTaukei citizens should be given a different category or class of citizenship — whether in name, identity documents, or constitutional status — is both historically inaccurate and morally wrong. It would create second-class citizens in a country they have helped build for generations.

2.3 Rejecting Ethnic Categorisation in Identity and Politics

The Fiji Labour Party submits that identity and nationality must be kept out of divisive ethnic politics. The 2013 Constitution's framework of common and equal citizenry must be reflected not only in law but also in the democratic process and in the everyday practice of governance. Any attempt to reintroduce ethnic categories — whether in passports, birth certificates, electoral rolls, or public discourse — would be a regressive step that undermines national unity and contradicts the spirit of the Constitution.

The Party further submits that the name "Fijian" belongs to every citizen by right of birth, upbringing, contribution, and loyalty to this country. To suggest otherwise is to deny the lived reality of thousands of families who have called Fiji home for generations and who have no other homeland.

RECOMMENDATIONS

The Fiji Labour Party respectfully recommends that the Constitutional Review Commission:

6. **Affirm and strengthen Section 5 of the 2013 Constitution** by explicitly stating that the name "Fijian" is the common, equal, and indivisible identity of all citizens, and that no law, policy, or administrative practice may create different classes or categories of citizens based on ethnicity or ancestry.
7. **Recommend the removal of any ethnic categorisation** from official documents, forms, or processes that distinguish between citizens on the basis of race or ethnicity, ensuring that all Fijians are treated as equal citizens in every respect.
8. **Call for civic education and public messaging** that reinforces the principle of common and equal citizenry, so that all communities — especially younger generations — understand that being Fijian is a shared identity that transcends ethnic origin.
9. **Reject any proposal** that would create separate categories of citizenship or identity for different ethnic groups, whether in the Constitution, legislation, or administrative practice.
10. **Emphasise that the contributions of all communities** — iTaukei, Indo- Fijian, and others — to the building of modern Fiji must be recognised and respected, and that no community should be made to feel like a guest or outsider in their own country.

The Fiji Labour Party believes that a united Fiji is possible only when every citizen - regardless of ethnicity - feels equally valued, equally protected, and equally Fijian. The name "Fijian" is not a prize to be granted or withheld; it is the birthright of every person born in this country or who has made it their home through citizenship. Let us defend and strengthen this principle for the sake of our children and grandchildren.

Section 3:

3.0 Land Policy, iTLTB Administration, and Agricultural Leases

Addressing the Fundamental Crisis in Land Use, Lease Security, and Equitable Development

3.0 Stability

Land is the foundation of Fiji's economy, culture, and national security. The current framework governing native (iTaukei) land leases, administered by the iTaukei Land Trust Board (TLTB), presents one of the most pressing and unresolved challenges facing the nation. The system has not delivered consistent, fair, or productive outcomes for either the landowners or the long-term tenants.

The absence of a coherent, effective national land use policy has resulted in ad-hoc decision-making, uncertainty for farmers, underutilisation of productive land, and hardship for families who have invested generations of labour in the land. This situation requires urgent, principled reform.

3.1 **Land Ownership in Fiji** – The Scale of iTaukei Land

Recent data from the TLTB and government sources confirm the following breakdown of land tenure in Fiji:

iTaukei (Native) Land: Approximately 90% of Fiji's total landmass. This land is owned by iTaukei landowning units (mataqali and yavusa) and administered in trust by the TLTB under the iTaukei Land Trust Act.
Freehold Land: Approximately 6%.
State Land: Approximately 4%.

Given that nearly nine-tenths of the country is iTaukei land, the policies and practices of the TLTB have a decisive impact on national agricultural output, rural livelihoods, food security, and social stability.

3.2 The Absence of an Effective National Land Use Policy

Fiji has long lacked a comprehensive, integrated national land use policy and plan. Successive reviews and policy documents over decades have identified this gap as a major constraint on sustainable development. Decisions on whether land is leased for agriculture, reserved for landowners, or converted to higher-value residential or commercial uses are often made on a case-by-case basis without a clear strategic framework. This vacuum has contributed to conflicting priorities: the need to maintain productive agricultural land versus pressure for subdivision and commercial development, particularly near growing urban centres. The result is uncertainty, under-utilisation of land, and a failure to optimise land for the long-term national interest.

3.3 Lease Terms, Renewals, and the Hardship Faced by Tenants

Agricultural leases on iTaukei land are typically granted for periods of 30 years. While the TLTB reports relatively high renewal rates in aggregate (historically 77–85% for agricultural leases since 1997, and around 75% for recent expired cane leases) but this figure is disputed by cane farmers organisations. Individual cases continue to cause significant distress.

Many tenant families - particularly Indo-Fijian families with multi-generational ties to the land - have invested heavily in homes, infrastructure, and improvements over decades. When leases are not renewed, these families face not only loss of livelihood but also the emotional and financial trauma of displacement after years of building their lives on the land. Although the TLTB states that residential alternatives are offered and compensation under the Agricultural Landlord and Tenant Act (ALTA) may be available, the process often leaves families in precarious situations.

A 30-year term is insufficient for meaningful agricultural investment, especially in sugar cane and other perennial or capital-intensive crops. Secure, longer-term tenure is essential for farmers to plan, invest, and pass on viable operations to the next generation.

3.4 Rental Structures, Premiums, and Distribution to Landowners

Concerns have been raised regarding the rental and premium structures applied by the TLTB, including charges linked to the capital value of developments or improvements, and the overall level of returns flowing to individual landowners. When land is reserved and not leased, productive output often declines, and landowners receive minimal or no direct income. The TLTB, as trustee, manages funds and distributions, but many landowners report that the amounts they ultimately receive are very small after administrative costs and sharing among large mataqali members.

This situation can create friction between tenants and landowners and fuels perceptions that the current system does not optimally serve either party. An independent, transparent review of lease terms, rental methodologies, and distribution mechanisms would help build confidence and fairness.

3.5 Agricultural Land as a Pillar of National Security

The Fiji Labour Party submits that prime agricultural land should be prioritized for food production and agricultural use. Substantial and subsistence farming forms a critical component of Fiji's national security — ensuring food self-sufficiency, rural employment, and resilience against external shocks.

Converting productive agricultural leases into commercial, residential, or subdivided developments on a large scale risks undermining this foundation. While urban development is necessary, it should not come at the expense of the nation's long-term food security. A clear policy distinction between agricultural land (to be protected for farming) and land suitable for other uses would serve the national interest.

RECOMMENDATIONS

Fiji Labour Party respectfully recommends that the Constitutional Review Commission:

11. **Recognize the critical importance of secure, long-term agricultural leases** and recommend a minimum lease term of 50 years for bona fide agricultural purposes to encourage investment, productivity, and intergenerational farming.
12 **Recommend the establishment of an independent Land Lease Review Committee** or similar body, with representation from landowners, tenants, agricultural experts, and government, to conduct a comprehensive, transparent review of lease terms, rental structures, premiums, improvement charges, and distribution mechanisms to landowners.
13. **Advocate for the development and adoption of a National Land Use Policy and Plan** that clearly designates and protects prime agricultural land for food production while providing transparent criteria for other land uses, ensuring decisions serve the long-term national interest rather than short-term highest-and-best-use considerations alone.
14. **Recommend measures to improve transparency and timeliness** in TLTB lease renewal processes, including clearer guidelines, earlier notifications, and support mechanisms for both landowners and tenants to facilitate mutually beneficial outcomes.
15. **Emphasize the national security dimension of agricultural land** and recommend that productive agricultural leases be prioritized and protected from widespread conversion to non-agricultural commercial or residential subdivision, except where compelling national interest is demonstrated through a structured planning process.
16. **Support initiatives that ensure fair returns to iTaukei landowners** while providing security of tenure to productive tenants, recognizing that a well-functioning lease system benefits both parties and strengthens national cohesion and economic resilience.

Fiji Labour Party believes that land reform, conducted through inclusive dialogue and with the long-term interests of all Fijians at heart, can resolve longstanding tensions and unlock the productive potential of Fiji's most important resource for the benefit of current and future generations.

Section 4:

4.0 Electoral System Reform – constituency-based accountability

Restoring Local Accountability, Representation, and Parliamentary Scrutiny

Fiji Labour Party has long advocated for an electoral system that delivers genuine accountability between elected representatives and the communities they serve. The current open-list proportional representation system, while providing a form of national proportionality, has significant shortcomings in terms of local representation, constituency accountability, and the ability of Parliament to effectively scrutinise the executive. This section sets out the Party's proposals for reform, drawing on the strengths of the 1997 Constitution's electoral arrangements while adapting them to contemporary needs.

4.1 The Shortcomings of the Current Electoral System

Under the 2013 Constitution, Fiji uses a single national constituency with open-list proportional representation (using the D'Hondt method and a 5% threshold). While this system has certain merits - including simplicity and a degree of proportionality - it has produced several problems:

- **Lack of local constituency accountability** — Members of Parliament are elected from a national list. There is no direct link between an MP and a specific geographic constituency or community. Voters do not have a local representative they can approach with constituency issues, and MPs have no defined area for which they are responsible.
- **Low barriers to entry and weak mandates** — Candidates can be elected with very small numbers of personal votes (in some cases fewer than 500–1,000 votes). This undermines the legitimacy and authority of Parliament and allows individuals with limited community support to enter the legislature and even become ministers.
- **Weak parliamentary scrutiny** — The current Standing Orders, particularly provisions such as Order 51, allow bills to be fast-tracked with limited debate and committee scrutiny. Select committees have limited powers and resources, and the executive dominates the legislative agenda.
- **No meaningful constituency development link** - Without defined constituencies, there is no clear mechanism for MPs to advocate for and be held accountable for development in specific areas.

4.2 Lessons from the 1997 Electoral System

The 1997 Constitution provided for a mixed system with communal seats (reserved for iTaukei, Indo-Fijian, and other communities) and open seats.

While the communal element was contentious, the open seats and the Alternative Vote (AV) system had strengths:

- Candidates had defined constituencies and were directly accountable to voters in those areas.
- The AV system encouraged moderation and cross-community appeals, as candidates needed preferences from voters outside their own ethnic group to win.
- There was a clearer link between representation and local development priorities.

The Fiji Labour Party does not advocate a return to the full communal system of the 1997 Constitution. However, we believe that elements of constituency-based representation — adapted to a non-communal, inclusive framework — would significantly improve accountability and the quality of parliamentary democracy in Fiji.

4.3 Proposed Reforms: Constituency-Based Voting with Strengthened Parliamentary Scrutiny

The Fiji Labour Party proposes the following reforms to the electoral system:

- **Introduce a mixed member proportional (MMP) electoral system (or a similar mixed/hybrid model) that combines constituency based representation with overall proportionality.** A substantial proportion of parliamentary seats (eg 50-70% should be elected from defined geographic constituencies using a preferential voting method such as the Alternative Vote (AV) or Single Transferable Vote (STV) in single-member constituencies, where voters rank candidates by preference.
- The remaining seats should be allocated through national or regional party lists to ensure the overall composition of Parliament is proportional to the total votes received by each party or group of independents, compensating for any disproportionality arising from constituency results.
- **Strengthen parliamentary committees and scrutiny powers** — Select committees should have enhanced powers to summon witnesses, require the production of documents, and scrutinise government policy and expenditure. Standing Orders should be reformed to prevent the abuse of fast-track procedures and to guarantee adequate time for debate and committee consideration of all significant legislation.
- **Improve the quality of representation** — Higher thresholds for election (in terms of personal votes or support) and stronger disqualification provisions for candidates with serious criminal convictions or findings of corrupt conduct would raise the standard of those entering Parliament.

- **Enhance public participation and petition mechanisms** - Parliament should have formal mechanisms to receive and consider public petitions on matters of national importance, and committees should be empowered to conduct inquiries on issues of public concern.

- We raise here **disqualification provisions** in respect of the nomination of candidates in the 2013 Constitution. We propose that the disqualification of persons from being nominated as candidates for general election as provided for in s56-(2) (5) of the constitution be removed.

  We submit that a person who has served his/her sentence or who is not serving a term of imprisonment when nominated should not be prevented from exercising his/her democratic right.

  The restrictions placed on officials and employees of trade unions and trade union federations under s57-3(f)(g). from participating in political activity by being classified as holders of public office should be revoked. Trade unions or trade union federations are not public bodies or institutions. There is, therefore, no basis for their exclusion from participation.

  This provision was inserted by the writers of the 2013 Constitution (by the Bainimarama administration) who saw trade unions as political competitors. Similar restrictions placed on the Federation of Employers under s57-(3) (h) must also be revoked.

RECOMMENDATIONS

Fiji Labour Party respectfully recommends that the Constitutional Review Commission:

17. **Introduce a mixed or constituency-based electoral system** in which a substantial proportion of parliamentary seats are elected from defined geographic constituencies, while maintaining overall proportionality through national or regional list seats.

18. **Reform Standing Orders** to strengthen the powers of select committees, guarantee adequate time for debate and scrutiny of legislation, and prevent the abuse of fast-track procedures that bypass proper parliamentary process.

19. **Raise the threshold for election and strengthen candidate disqualification provisions** to ensure that only candidates with genuine community support and clean records can enter Parliament.

20. **Establish formal public petition and inquiry mechanisms** so that citizens can bring matters of national importance directly to Parliament for consideration.

21. **Ensure that any new electoral system** is designed to promote moderation, cross-community cooperation, and the election of candidates who command broad support rather than narrow sectional interests.

22. **Provide for comprehensive public education** on any proposed electoral reforms so that voters understand how the new system works and why it will improve accountability and representation.

The current electoral system has delivered a form of proportionality but at the cost of local accountability and effective parliamentary scrutiny. The Fiji Labour Party believes that a reformed system — combining constituency representation with national proportionality, stronger committees, and better safeguards — will produce a Parliament that is more responsive to the people, more effective in holding the executive to account, and better able to deliver genuine development and good governance for all Fijians.

Section 5:

5.0 Strengthening democratic oversight of independent institutions and public borrowing

Enhancing Accountability in Appointments and Fiscal Responsibility

A robust democracy requires strong, independent institutions that are insulated from undue political influence, alongside effective parliamentary oversight of the government's fiscal decisions. The Fiji Labour Party submits that the current constitutional arrangements concentrate excessive power in the executive, particularly the Prime Minister, in both the appointment of key office-holders and in the management of public debt. Reforms are needed to restore greater parliamentary involvement and transparency.

5.1 Democratic Appointment Processes for Independent Institutions

Under the 2013 Constitution, the Prime Minister exercises significant influence over appointments to critical independent bodies through the Constitutional Offices Commission (COC) and direct recommendations to the President. The COC, which advises on appointments to institutions such as the Police, Corrections Service, RFMF, Electoral Commission, Auditor-General, and others, has a composition that gives the executive substantial control. This structure risks politicising institutions that are meant to operate independently and impartially.

International democratic practice in parliamentary systems emphasises mechanisms that balance expertise with accountability. While the executive often plays a role in nominations, independent commissions or parliamentary committees provide scrutiny to ensure merit, integrity, and freedom from active political affiliation. No person holding current political office or recent partisan affiliation should serve on bodies responsible for overseeing independent institutions.

The Fiji Labour Party proposes that appointments to independent commissions and key constitutional offices should be subject to scrutiny by a Parliamentary Select Committee. Even with a government majority on such a committee, the process introduces transparency, cross-party input, and public confidence. Following committee consideration, the President should exercise the appointment authority directly, rather than acting solely on the recommendation of the Prime Minister.

5.2 Parliamentary Oversight of Public Borrowing

Fiji's public debt has risen significantly in recent years, reaching levels that place considerable pressure on public finances and future generations. Under current arrangements, the government can enter into borrowing arrangements with domestic and international institutions and subsequently report to Parliament.

While the overall financing requirement is reflected in the budget, individual major borrowing decisions often lack prior detailed parliamentary scrutiny.

International best practice in democratic governance, as reflected in guidelines from organisations such as the World Bank, IMF, Westminster Foundation for Democracy, and the Commonwealth, strongly supports meaningful parliamentary involvement in debt management. Key principles include:

- Annual parliamentary approval of the government's overall borrowing strategy and debt ceiling as part of the budget process.
- Specific parliamentary approval (or ratification) for major individual loans, guarantees, or contingent liabilities above a defined threshold.
- Regular, detailed reporting to Parliament on debt stock, new borrowings, debt servicing, and risks.
- Clear legal frameworks that define borrowing authority and require legislative oversight for significant fiscal commitments.

Many democracies set benchmarks — for example, requiring parliamentary approval for external borrowing, loans above a certain monetary threshold, or new guarantees. This ensures that elected representatives, who are accountable to the people, scrutinise decisions that have long-term implications for the nation's finances and the well-being of citizens.

In Fiji, establishing a constitutional or legislative requirement for prior parliamentary approval of borrowing above a specified threshold (or for major external loans) would strengthen fiscal discipline, transparency, and accountability. It would prevent the accumulation of debt without adequate democratic oversight and help protect citizens from the consequences of unsustainable borrowing.

RECOMMENDATIONS

The Fiji Labour Party respectfully recommends that the Constitutional Review Commission:

23. **Reform appointment processes for independent institutions** by requiring scrutiny and clearance by a Parliamentary Select Committee before appointments to bodies such as the Constitutional Offices Commission and key offices (judiciary, police, military, audit, elections, etc.). No individual holding current or recent political affiliation should be eligible for such positions.
24. **Strengthen the role of the President** as the direct appointing authority for independent offices and commissions, following parliamentary committee processes, rather than appointments being made primarily on the recommendation of the Prime Minister.

25. **Introduce constitutional or legislative requirements for prior parliamentary approval** of government borrowing above a defined threshold, major external loans, and significant guarantees or contingent liabilities.

26. **Require the government to present an annual Debt Management Strategy** to Parliament for approval or endorsement as part of the budget process, including clear limits and risk assessments.

27. **Mandate regular, detailed reporting to Parliament** on public debt, new borrowings, debt servicing costs, and associated risks, with opportunities for parliamentary debate and scrutiny.

28. **Support the development of a modern Public Debt Management legal framework** aligned with international best practices, ensuring transparency, accountability, and parliamentary oversight throughout the borrowing cycle.

These reforms would strengthen the independence of key institutions and ensure that decisions with profound long-term consequences for Fiji's finances are subject to proper democratic scrutiny by the people's elected representatives.

Section 6:

6.0 Confronting Race-based Politics and Securing Indigenous Rights within a United Nation

An Honest Assessment of Fiji's Political Failures and the Path to Genuine National Unity

For too long, politicians in Fiji have exploited race and ethnicity to divide the nation and advance narrow political agendas. The coups of 1987 and 2000 were direct manifestations of this destructive approach. Race-based politics has set Fiji back by decades, diminished investor confidence, accelerated brain drain, and caused immense suffering to ordinary citizens of all communities. The Fiji Labour Party has been a direct victim of this politics of division.

It is time for an honest national conversation. The facts are clear. Indigenous iTaukei Fijians, through their chiefs and landowning units, own 90% of all land in this country. Their land has never been taken by Indians or any other group. Their land remains safe. Their indigenous rights are protected. Future generations must accept this reality rather than allow politicians to manufacture fear and division.

6.1 The Legacy of Race-Based Politics

Race has been weaponised by politicians for electoral gain and to justify unconstitutional actions. The coups of 1987 and 2000 were disguised as protecting indigenous rights, yet delivered neither prosperity nor security to ordinary iTaukei Fijians. Instead, they entrenched poverty, weakened institutions, and created an environment of fear and uncertainty that continues to affect the country even today.

The military has been drawn into politics on multiple occasions, often at the behest of politicians and state actors pursuing sectional interests. This has damaged the professionalism of the security forces and undermined democratic norms. The Fiji Labour Party has consistently opposed the use of race as a political tool because it harms all Fijians and prevents the country from moving forward as one nation.

6.2 Indigenous Rights and Land Ownership – The Facts

iTaukei Fijians are the traditional owners of the land. This right of ownership has been recognised and protected under all four Constitutions.

The Bill of Rights in the 2013 Constitution provides strong protections for all citizens, including specific recognition of indigenous rights. Fiji is also a signatory to relevant international instruments concerning indigenous peoples and human rights.

The land is not under threat from Indians or other communities. The land is managed by the iTaukei Land Trust Board (TLTB). Many of the problems faced by indigenous landowners — low returns, lack of development, and politicisation — stem from how the TLTB has operated and how politicians have used land issues to create division between communities rather than focusing on genuine economic empowerment of landowners.

It must be stated clearly and without equivocation: Indigenous land is safe. Indigenous rights are safe. There is no factual basis for claims that Indians or other races have taken iTaukei land. Such narratives are politically manufactured and must be rejected.

6.3 Equal Citizenship and Equal Opportunity

Fiji is a multicultural nation. All citizens — iTaukei, Indo-Fijian, and others — have contributed to building this country. Indians and other communities have toiled in the sugar industry, commerce, professions, and every sector of the economy. They deserve equal citizenship, equal opportunity, and equal dignity.

Politicians must be prohibited from creating artificial divisions based on nationality, land, or ethnicity for political gain. The 2013 Constitution already establishes the principle of common and equal citizenry. This principle must be defended and strengthened, not undermined by those who seek to return to the politics of fear and exclusion.

Continued race-based politicking is directly responsible for Fiji's ongoing challenges: accelerating brain drain, declining investment, weak institutions, and persistent poverty affecting all communities. The country cannot afford another generation lost to division.

6.4 The Path Forward – Honesty and National Unity

The Fiji Labour Party calls for a definitive break from the politics of race. Indigenous Fijians must be assured — with facts, not rhetoric — that their land and rights are secure. At the same time, all other citizens must be assured of equal treatment and opportunity. True leadership requires telling the truth: division benefits only those who exploit it. National progress requires unity, equal citizenship, and a shared commitment to building a prosperous Fiji for all.

RECOMMENDATIONS

The Fiji Labour Party respectfully recommends that the Constitutional Review Commission:

29. **Affirm unequivocally** that iTaukei land ownership and indigenous rights are fully protected under the 2013 Constitution and must remain so.

30. **Strongly condemn the use of race-based politics** by any political actor and recommend constitutional or legislative measures to discourage the exploitation of ethnicity for political gain.

31. **Reaffirm the principle of common and equal citizenry** for all Fijians regardless of ethnicity, and ensure that the Bill of Rights and equality provisions are not weakened.

32. **Recommend reforms to the TLTB** to improve transparency, returns to landowners, and depoliticise land administration so that iTaukei landowners receive genuine economic benefit from their land.

33. **Call for national leadership** across all communities to publicly reject divisive race-based narratives and commit to building a united, prosperous Fiji based on equal opportunity for all citizens.

34. **Support civic education programmes** that clearly explain the protections for indigenous rights and land ownership alongside the principles of equal citizenship, to reduce the space for political manipulation.

Fiji's future depends on honesty about the past and courage to reject the politics of division. The land is safe. The rights are protected. It is time to move forward together as one nation.

Section 7:

7.0 Protecting Minority Rights
Advancing Women's Representation

Strengthening the Framework for Inclusive Equality and Equitable Development

The 2013 Constitution establishes a strong foundation for equality through its Preamble on common and equal citizenry and the comprehensive Bill of Rights, particularly Section 26, which guarantees equality before the law and prohibits unfair discrimination on grounds of race, ethnicity, gender, and other characteristics. These provisions are commendable. However, the Fiji Labour Party submits that the constitutional promise of equality requires stronger implementation mechanisms to ensure that minorities and women enjoy genuine equal opportunity in practice, not merely in law.

7.1 Minority Rights: Beyond Formal Equality to Substantive Inclusion

Fiji's demographic reality is evolving. While iTaukei Fijians constitute the majority (approximately 62%), Indo-Fijians represent a significant minority (approximately 33%), with their share of the school-age population now around 20% due to emigration and demographic trends. Other communities, including Rotumans, Chinese-Fijians, and Pacific Islanders, Part Europeans form smaller but important minorities. The Constitution rightly protects all citizens equally, but the actual institutional framework has not always delivered balanced representation.

Concerns persist regarding under-representation of Indo-Fijians and other minorities in key institutions such as the Republic of Fiji Military Forces (RFMF), the Fiji Police Force, and the civil service. Historical patterns and recruitment practices have led to imbalances that do not reflect Fiji's national demographic composition. This undermines public confidence in these institutions as truly national bodies serving all citizens equally.

Furthermore, many minority communities and specific population groups in the outer islands (maritime provinces) and rural areas face persistent disparities in access to services, infrastructure, economic opportunities, and development investment. Isolation, high transport costs, and limited government presence exacerbate these challenges, leading to marginalization that affects national cohesion.

Fiji Labour Party advocates for proactive, merit-based measures to achieve equitable representation. This includes targeted outreach, transparent recruitment processes, diversity monitoring with public reporting, and capacity-building programmes. Such measures should aim for institutions that reflect the face of the nation without compromising merit or introducing discrimination against any group.

7.2 Women's Representation: Equal Opportunity Without Discrimination

Women constitute half of Fiji's population yet remain significantly under-represented in political decision-making. Following the 2022 general election, women held only approximately 9–11% of seats in Parliament, a decline from previous highs of around 19–20%. This falls far short of global and regional aspirations for gender parity in leadership.

Fiji Labour Party firmly believes in equal opportunity for women and men. We support increasing women's representation in Parliament and at constituency level through measures that remove structural, cultural, and financial barriers rather than through mechanisms that could be perceived as discriminatory. This includes:

- Encouraging political parties to adopt internal targets and mentoring programmes for women candidates.
- Providing capacity-building, leadership training, and campaign support for aspiring women leaders.
- Addressing cultural and societal norms that discourage women's political participation through public education and awareness.
- Ensuring safe and respectful political environments free from harassment and violence against women in politics.

We emphasise equal opportunity without discrimination. Special measures (Reserved Seats), if considered, must be carefully designed, time-bound, and implemented in a manner that builds genuine capability rather than creating perceptions of tokenism or reverse discrimination.

RECOMMENDATIONS

Fiji Labour Party respectfully recommends that the Constitutional Review Commission:

35. **Strengthen implementation mechanisms** for Section 26 equality provisions through mandatory diversity monitoring and public reporting on ethnic and gender representation in the RFMF, Fiji Police Force, civil service, and other public institutions, with targets aligned to national demographics.
36. **Recommend proactive, merit-based diversity measures** including targeted recruitment outreach, cadetship programmes, and leadership development for under-represented minorities in security forces and senior civil service roles.
37. **Constitutional or legislative emphasis on equitable development** for outer islands and rural communities, including dedicated funding mechanisms, infrastructure priorities, and service delivery standards to address geographic marginalization affecting all communities in those areas.

38. **Support measures to increase women's political participation** through party-level commitments, capacity building, mentorship, and removal of structural barriers, while upholding the principle of equal opportunity without discrimination or tokenism.

39. **Establish independent monitoring and reporting** on progress toward equitable representation in public institutions and Parliament, with annual public reports to Parliament and the Human Rights and Anti-Discrimination Commission.

40. **Promote national dialogue and civic education** on the importance of inclusive institutions that reflect Fiji's diversity, fostering public understanding that equitable representation strengthens national unity and institutional legitimacy for all citizens.

Fiji Labour Party believes that a Constitution which truly delivers on its promise of equality must ensure that every community — majority and minority alike — and every woman and man sees themselves reflected in the institutions that govern and protect them. This is not about division; it is about building a stronger, more cohesive, and more legitimate nation for all Fijians.

Section 8:

8.0 Equal Citizenship Rights and Inclusive Electoral Participation

Ensuring Equal Treatment for All Fijians in Citizenship and the Right to Serve

Fiji Labour Party has consistently championed the principle of common and equal citizenry as enshrined in the 2013 Constitution. All Fijians — regardless of ethnicity, ancestry, or place of birth — must enjoy equal rights, equal opportunities, and equal protection under the law. This section addresses two critical areas where current laws and recent legislative changes create unequal treatment: citizenship rights for children born overseas and the ability of dual citizens to participate fully in public life by contesting elections.

8.1 Citizenship for Children Born Overseas – Equal Rights for All Communities

Under the Citizenship of Fiji Act and its amendments, children born in Fiji generally acquire citizenship by birth. For children born overseas, citizenship is acquired by registration if at least one parent is a Fijian citizen. Recent legislative changes, including the Citizenship of Fiji (Amendment) Bill 2026, have introduced facilitative provisions that recognise links to land-owning units (mataqali) for iTaukei children born overseas, making it easier for them to regularise or acquire Fijian citizenship through ancestral connections.

The Fiji Labour Party supports measures that strengthen ties between the diaspora and Fiji. However, we submit that these facilitative provisions must be extended equally to all communities. Children of Indo-Fijian parents born in Fiji but living overseas, as well as children of other minority groups (Rotumans, Chinese-Fijians, and others), should have access to the same streamlined registration processes and recognition of family/ancestral links. Citizenship rights must not be differentiated on ethnic grounds.

Equal citizen rights demand that the law treats all Fijian families the same, whether their children were born in Fiji or overseas. Any provision that makes it easier for one ethnic group's diaspora children to claim or regularise citizenship while imposing higher barriers on others violates the constitutional guarantee of common and equal citizenry. The Fiji Labour Party calls for immediate legislative amendment to ensure uniformity across all communities.

8.2 Allowing Dual Citizens to Contest Elections and Reducing the Residency Requirement

Section 56 of the 2013 Constitution currently provides that a person may be a candidate for election to Parliament only if they are a citizen of Fiji and do not hold citizenship of any other country. Additionally, candidates must be ordinarily resident in Fiji for at least two years immediately before nomination.

Fiji Labour Party believes these restrictions are outdated and counterproductive in a globalised world. Fiji has a large, skilled diaspora. Many Fijians who migrated retain strong ties to the country, hold Fijian citizenship (often alongside another nationality), and possess valuable expertise in fields such as medicine, engineering, finance, technology, education, and governance.

Prohibiting dual citizens from contesting elections prevents these experienced professionals from returning to serve the nation in elected office.

Furthermore, the current two-year residency requirement creates an unnecessary barrier. Reducing this to one year would still ensure candidates have a meaningful connection to Fiji while allowing skilled returnees to contribute sooner. Many countries with large diasporas have successfully balanced residency requirements with the need to attract talent back into public life.

Fiji Labour Party therefore calls for two specific reforms to the electoral law:

- **Remove the prohibition on dual citizens contesting elections**, allowing Fijian citizens who hold another nationality to stand for Parliament, provided they meet all other eligibility criteria.
- **Reduce the ordinary residency requirement from two years to one year** immediately preceding nomination, to facilitate the return and participation of skilled diaspora members while maintaining a genuine connection to the country.

RECOMMENDATIONS

Fiji Labour Party respectfully requests the Constitutional Review Commission to recommend that:

41. **The Citizenship of Fiji Act** be amended to ensure that facilitative provisions for registration and recognition of ancestral/family links for children born overseas apply equally to all communities — iTaukei, Indo-Fijian, Rotuman, Chinese, Part Europeans and other minority groups — without ethnic differentiation.
42. **Constitutional and legislative prohibition on dual citizens contesting elections be removed**, enabling Fijian citizens who hold another nationality to stand for Parliament and contribute their expertise to national development.
43. **The ordinary residency requirement for parliamentary candidates be reduced from two years to one year** immediately preceding nomination, to facilitate the electoral participation of skilled members of the Fijian diaspora.

44. **All reforms uphold the principle of common and equal citizenry** and do not create or perpetuate any form of ethnic or other discrimination in the acquisition or exercise of citizenship rights and political participation.

45. **Public consultation and clear communication** on these reforms be undertaken so that all Fijians — at home and in the diaspora — understand that citizenship rights and the opportunity to serve are equal for every community.

Fiji Labour Party believes that true equality means treating every Fijian family the same, whether their children were born in Fiji or overseas, and whether they hold one citizenship or two. It also means opening the door for talented Fijians who have gained experience abroad to return and serve their country in elected office. These reforms will strengthen our democracy, enrich our institutions, and reaffirm that all citizens are equal.

Section 9

9.0 Judicial Reforms and Oversight of Political Party Funding

Strengthening Timely Justice, Institutional Integrity, and Democratic Accountability

Fiji Labour Party submits this section to highlight two critical areas requiring urgent constitutional and legislative attention:

- the need for comprehensive judicial reforms to address chronic delays and ensure timely justice, and
- the imperative to place the regulation of political party funding under the independent oversight of the Electoral Commission with clear rules approved by Parliament.

These issues directly affect public confidence in the rule of law and the integrity of Fiji's democratic institutions.

9.1 Judicial Reforms: Ending Delays, Ensuring Timely Justice, and Improving Access for Ordinary Citizens

The Current Crisis of Delay

Fiji's judicial system faces a serious and well-documented crisis of delay. The Chief Justice, Hon. Salesi Temo, has publicly expressed concern over the significant backlog, with cases dating back 10 to 20 years still pending.

Civil cases, in particular, drag on for many years, causing immense hardship to litigants, especially ordinary citizens who cannot afford prolonged legal battles. Criminal cases, including serious matters such as rape and sexual violence against children, have also suffered unacceptable delays.

A stark and troubling example is the case highlighted by the Fiji Women's Rights Movement in May 2026 involving a young girl who waited six years for justice in a sexual violence matter, only for the case to be withdrawn.

Children constitute the majority of rape victims in Fiji. Such prolonged delays not only deny justice to victims and survivors but also erode public trust in the entire justice system. "Justice delayed is justice denied" is not merely a slogan — it is the lived reality for too many Fijians.

Additionally, the high cost of litigation places justice beyond the reach of many ordinary citizens. Legal fees can be prohibitive, and the perception that the system primarily benefits those who can afford expensive lawyers undermines the constitutional guarantee of equal protection under the law.

Lessons from New Zealand, Australia, and Other Commonwealth Jurisdictions

New Zealand and Australia have implemented robust judicial case management systems that significantly reduce delays while maintaining fairness. Key features include:

Active judicial case management - Judges take early and ongoing control of proceedings through docket systems and regular case management conferences, rather than allowing parties to drive the pace.

- **Clear time standards** - Courts set and publish time standards for different categories of cases (e.g., ordinary civil matters to be resolved within 12 months; judgments delivered within three months of final submissions in the Federal Court of Australia).
- **Strict control of adjournments** - Unnecessary adjournments are discouraged or disallowed except for compelling reasons.
- **Electronic case management and e-filing** - Modern technology streamlines processes, reduces paperwork, and improves transparency and monitoring.
- **Performance measurement and accountability** - Courts regularly publish statistics on case disposal times, backlog, and clearance rates.
- **Expanded use of mediation and alternative dispute resolution** - Many civil matters are resolved without full trial, freeing court resources for complex cases.

These jurisdictions demonstrate that with strong judicial leadership, clear rules, technology, and accountability mechanisms, significant reductions in delay are achievable without compromising fairness or the rights of parties.

Proposed Reforms for Fiji

The Fiji Labour Party recommends a comprehensive judicial reform package, including:

- Introduction of active judicial case management with binding time standards for different categories of cases (civil, criminal, family, etc.).
- Mandatory publication of judgments within defined timeframes (e.g., within three months of final submissions in most cases).
- Strict limits on adjournments, with judicial discretion to refuse unnecessary delays.
- Full rollout of electronic case management, e-filing, and digital court records.

  Strengthened legal aid and pro bono schemes to improve access for low-income litigants.
- Enhanced judicial training in case management and the use of technology.

9.2 Oversight of Political Party Funding by the Electoral Commission

Transparent and accountable political party funding is essential for the integrity of democracy. Under the current framework, there have been concerns about the allocation of public funds to political parties — reportedly around FJD 325,000 per year — without sufficient transparency, clear criteria, or robust parliamentary oversight. The Fiji Labour Party submits that the regulation of political party funding, including any state support or disclosure requirements, must be placed under the independent authority of the Electoral Commission, with the overarching framework approved by Parliament.

The Electoral Commission is the appropriate independent body to oversee party registration, funding disclosure, campaign finance rules, and compliance. Placing this responsibility clearly with the Commission, backed by legislation passed by Parliament, will enhance transparency, reduce the risk of political manipulation, and strengthen public confidence in the electoral process.

9.3 Strengthening the DPP and FICAC for Public Confidence

The Office of the Director of Public Prosecutions (DPP) and the Fiji Independent Commission Against Corruption (FICAC) are critical institutions for upholding the rule of law and combating corruption. However, recent administrative issues, perceived politicisation, and public statements by FICAC have raised serious concerns about institutional independence and public trust. The Fiji Law Society has called for a radical overhaul of the anti-corruption framework, including consideration of whether FICAC should retain its current prosecutorial powers.

Fiji Labour Party supports a review of these institutions to ensure they operate with genuine independence, professionalism, and accountability. Structural reforms may include clearer constitutional safeguards for the DPP's independence, review of FICAC's mandate and governance, and improved coordination between investigative and prosecutorial bodies.

RECOMMENDATIONS

The Fiji Labour Party respectfully recommends that the Constitutional Review Commission:

1. **Introduce constitutional or legislative provisions for active judicial case management** with binding time standards for the disposal of civil and criminal cases and for the delivery of judgments.
2. **Mandate the adoption of modern case management tools** including electronic filing, digital case tracking, limits on adjournments, and regular publication of court performance statistics.
3. **Place the regulation of political party funding and disclosure** under the independent oversight of the Electoral Commission, with the detailed framework to be set out in legislation approved by Parliament.

4. **Ensure transparency in any state funding to political parties** through clear, published criteria and independent oversight by the Electoral Commission.
5. **Review the structure, independence, and mandate of the DPP and FICAC** to strengthen public confidence, ensure genuine institutional independence, and improve coordination in the fight against corruption.
6. **Support increased resources and training for the Judiciary** including additional judges, improved court infrastructure, legal aid expansion, and judicial education in modern case management techniques.

Timely justice is not a luxury — it is a fundamental right.
An independent, efficient judiciary and transparent political financing rules are cornerstones of democratic governance.

Fiji Labour Party urges the Commission to recommend bold, practical reforms in these areas so that every Fijian - rich or poor - can have confidence that justice will be delivered fairly and without undue delay, and that political competition is conducted on a level playing field.

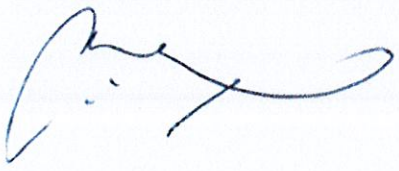
International Instruments on Human Rights

Fiji has acceded to the following international Conventions or Covenants:

- International Covenant on Civil and Political Rights (ICCPR)
- International Convention on the Elimination of all forms of Racial Discrimination (CERD)
- International Convention on Elimination of Discrimination Against Women (CEDAW)
- UN Declaration on the Rights of Indigenous Peoples
- International Covenant on Economic, Social and Cultural Rights of
- International Convention Against torture and other Inhuman or Degrading Treatment and Punishment (CAT)
- International Convention on the Rights of Persons with Disability (CRPD)

The nation's Constitution and its laws must be aligned in conformity to the provisions of these international instruments.

Submitted respectfully on behalf of the Fiji Labour Party,



Mahendra P. Chaudhry,
Leader/ Secretary-General

Professor Katerina Teaiwa and Others

Romitesh Kant

Virtual Consultation
Mr Romitesh Kant and Professor Katerina Teaiwa
Tuesday 7 July 2026
3-pm

Chair Mr Sevuloni: Are you able to hear me?

Thank you. Now, I think I'll call this consultation session to order. I understand you are the only one doing the submission now.
My last question was, at four p.m., you would be appearing with, or submitting with Professor Teaiwa, is that correct? That's correct.

Mr Kant: Professor Teaiwa will lead the submission for the Banaban community.

Mr. Valenitabua: Okay, so we shall proceed with you now. Did you send us a written submission?

Mr Kant: I'm going to do this after this consultation and email the written submission.

Mr. Valenitabua: Now, we will not, or I will not take any further time. I now hand over to you the session this afternoon, and you can address us now in respect of your submission.

Vinaka, we are listening.

Mr Kant: Hello, Dr. Commissions, Chair, and the Commissioners. Thank you for inviting me to this consultation.

Actually, I thought it was just a conversation, but then I realized after reading the email that I need to make a submission, so I had to spend the weekend preparing something. But I speak from several overlapping positions. Firstly, I am a Fiji-based, and a Fijian scholar who has researched constitution-making in Fiji.

Also, during the 2012 constitution-making process, me and my colleague from USP, Mr. Eroni, we followed the Constitution Commission, talked to the people in communities in rural and urban settings about their experiences of participating in constitution-making processes, and I did my master's thesis at the University of the South on

Constitutional Design, where I did a comprehensive study comparing the politics of constitution-making in our four constitution-making processes. Secondly, I speak also as someone who has worked and engaged in civil society in the recent movements in Fiji, in the pro-democracy movement, in the human rights spaces as well. These reflections also, the reflections I've shared here today are also informed by my engagement with the activists and civil society spaces in Fiji.

It comes from watching people try to engage in the political processes, usually under very difficult conditions, and these are experiences that I've also lived in, and I've also engaged in observing how activists, women leaders, young people, community members, human rights defenders, and ordinary citizens often want to participate but do not always trust that the participation will matter in these processes. Thirdly, I also researched and finished my PhD at the Sri Lankan University that examined political parties' leadership and masculinities, how masculinities form this infrastructure behind that we cannot call resources, and how these political systems continue to grow, to provide undue advantage to men in politics, that despite all this rhetoric and progress we've made around women's political participation, there is something that is still invisible and hidden, so my PhD tried to examine how this idea of masculinity or how masculine masculinity works behind the scenes to reproduce male dominance.

So in this opening article, I will not be talking about the technical or legal aspects of drafting the constitution, but rather focus my presentation and my submission around legitimacy, ownership, power, and inclusion, things that I have engaged in studying but also engaged in through my activism, and I'll also try to shed some light on what the lessons Fiji's constitution history teaches us and what the commission might want to do to guide and test some of these lessons that we have learnt through our four constitutions and about five constitutional processes.

So, I'll begin with the first point. This point I'd like to use around elite settlements and imposed constitutions, but this process I see that is taking place now is largely from Fiji's constitutional past. It belongs to a long epitome of constitution-making in Fiji, and since independence, constitution-making in Fiji has oscillated between two broad tendencies, elite political settlements and imposed constitutions.

So, both our 1970 and 1997 constitutions were elite compromises between politicians, and the 1990 and 2013 constitutions were imposed constitutions. And I think public participation sits in between there where public participation was used as a tool to legitimize the process, but genuine public consultation was never intended to inform our constitution-making. It has been a history where political elites have co-opted the process, and they have taken over the process to draft constitutions that serve political interests.

So when we talk about legitimacy, when we talk about constitutional text, I think we need to go beyond the constitutional text in itself, that while the text is important and it's legally enforced, who does the constitution really belong to? And I think a lot of our constitutional legitimacy question points down to the issue of ownership. I think what we have in Fiji emphasizes a lot of importance on respecting constitutionalism and the rule of law, what is written in the constitution. We sometimes forget that the process of getting to the text isn't as important as the text itself.

And the recurring wound in Fiji's constitutional history has been that people are invited into the process, but political elites control the final settlement. And many times, those final settlements have been compromises between political elites to gain more political advantage from the process itself, which then impacts on legitimacy, or which then impacts on popular ownership of the constitutional text in itself. And this is how coups happen, and abrogation of constitutions happen, and new constitutional making processes happen all the time.

And this is where we are stuck in a cycle. So the question I have been obsessed for becoming another moment, where public participation is filtered, narrowed, or captured by political forces and political elites. The second interlinking point to this is that constitutional recommendations in participatory processes like the 1995 process and the 20th World People's Process, the Category Commission process, both point to the issue of constitutional coherence.

Both the Reeves Commission and the Ghai Commission produced very holistic proposals for Fiji, and the diagnosis and the prognosis that they presented was quite holistic. Their recommendations were not isolated, either distinct apart from each other. And they presented, and both the Reeves Commission and Ghai Commission alluded to this in their

explanatory reports, that the proposals they are making for the constitution settlement are interlinked packages.

So electoral design in the Ghai process and in the Reeves Commission reports were connected to power sharing. Issues around culture, citizenship, ethnic relations, and reconciliations were part of one constitutional design. However, what happens with the Pakistan...Iraqi recommendations that work for them and discard recommendations that do not work for the authorities that no longer holds together, because these settlements or these recommendations were always presented as a holistic, one leads to another interlinked package.

So, this has happened in a minor form with the Reeves process, where elements of the Commission's recommendations were altered through political negotiation. It has happened more directly after the Ghai process where the whole process was ditched and the recommendations were ditched in favor of a constitution drafted to serve Bainimarama and Khaiyum, and reinforce their power that they have created since 2006. So, this is another major lesson for the Commission in itself, that it should make clear which of its recommendations are interlinked and explain very clearly when a recommendation works because it is tied to another.

That way, if the cabinet or parliamentary committee later decides to remove one part, the public can see what that does to the overall department. And this also leads to this idea of the referendum where people will be asked to vote. And I think people should be given the opportunity to know what the Commission's internal thinking was on choosing a particular institutional design or choosing a particular provision and why it works with other commissions the Commission has recommended...and other commissions as well.

So they are able to make an informed decision. It also leads to the issue of transparency in the whole process as well. I think there is essentially a level of it in processes, but they are not able to trace their participation to the outcomes that emanate from a particular process.

And I think it actually adds to the legitimacy of the Constitution Commission itself, that they have taken seriously people's interests in this process, and that people have taken time, again, to really think through what do they want in a constitutional settlement. The third thing

I would like to say is from my master's thesis, that constitution-making, especially in a divided society like Fiji, poses some very theoretical and philosophical questions, because it tries to grapple with some very contentious issues. And one thing that came out of my master's thesis is also that constitution design in divided societies like Fiji does not need to resolve or answer all the questions that the country is facing.

Sometimes it is important to leave some democratic spaces open for democratic deliberation to take place so that over time people are able to solve. And this brings to the point that constitutions are leading documents. So it should not be easily amendable, but it should not be also too difficult to handle.

And thinking that it will come, there should be some... deliberate spaces that the Constitution allows people to come and deliberate on contentious issues. It does have the other intention also to stop coups from happening, because as we know from Fiji's history, a small, disenchanted group can appropriate a particular process to carry out a coup, just like it happened in 2000, or 2006, or 1987. So these deliberative spaces allow for disagreements to happen in democratic ways.

I would frame the Constitution itself for this current constitution-making process should not be seen as a final settlement, but framed as a framework for ongoing democratic conversation to take place. This means creating institutions that allow for difficult questions to be revisited without resorting to coups or abrogations of constitutions. It means accepting that some questions around identity, around reconciliation, around power sharing, around representation, may need very structured deliberation over time, rather than a single final answer that the Constitution is expecting to solve.

The Constitution, and this is where I would guide the commission to look at the Ghal draft that is here to report, because the Ghai commission did recommend the National Legal Assembly as an assembly that brings together elected local and national elected representatives with civil society, with provincial and advisory bodies, with youth groups, people in maritime, at regular intervals to deliberate on where Fiji is, where the constitutional framework is. This is where elected representatives directly talk to people as well. And these spaces should be harnessed.

I think we need to look beyond the liberal constitutional model that institutions always answer the questions, very different questions. I think we should create these deliberative spaces that divert attention away from coups and abrogation's to more productive spaces where people can come, disagree, deliberate, and come to consensus. And I think this is where indigenous practices like Talanoa can be harnessed, processes like Talanoa can be harnessed in its potential to actually come to agreements and disagreements and foster consensus decision-making.

The other issue is the issue of national identity. And I know for me, the deliberations that have been happening in the constitution process that it is one of the most sensitive issues brought before the commission. And I've been thinking about this and just correct a factual thing here.

The 2013 constitution is the first constitution in Fiji to establish a common national identity. The Reeves report recommended Fiji Islander to be Fiji's national identity, but the 1997 constitution did not include a national, common national identity. It included all common citizenship, but did not include a common name for people of Fiji.

It recommended that should the parliamentarians and politicians be open to the idea of a common national identity, they could include Fiji Islander as a member of it. This is one of the more controversial points, and I think some very passionate submissions have been made towards this. I don't think, I do not think a common national identity should be amended, but Fiji should not return to a constitutional order that harbors ethnic segregation.

And I think that when the 2013 constitutional provisions tried to harden, and what we have seen is it was enforced in a militaristic authoritarian way without any deliberation, and it hardened a lot of passion and deep-seated ethnic insecurity, which is, as Fijians, we cannot talk about this, we cannot deliberate about this. But I also believe that we should not return to communal categories, because communal categories from pre-independence to independence until 2013 has also hardened and made us looking, made us into thinking always about our ethnic interests as opposed to national interests. One thing I would say is also that the 2013 Constitution in addressing the issue of common national identity also became blind to inequality.

It enforced ethnic blindness in a way that did not take into account inequality. Equal citizenship and a common national identity should not mean pretending that everyone is equal and has equal access to state services, to resources, and to power. In Fiji, people do not have equal access all the time.

So just by merely wishing a way to a common national identity that we are all equal does not make us all equal substantively. Different communities experience citizenship in very different ways. A poor rural woman might be formally an equal citizen, but still face unequal access to transportation, health services, land, income, education, decision-making.

The same can be applied to ... in parliaments. Whilst they were seen as equal citizens, the 5% threshold effectively disadvantaged them in political representation. The same for our Melanesian brothers and sisters, for queer communities, for persons with disabilities.

Formal equality does not imply substantive equality. Some people in Fiji also carry histories of being indigenous, connections to land and the vanua. Some carry histories of displacement, of relocation, of minority ethnic status.

Some carry burdens of indenture, labor, migration, and condition of belonging. And some face exclusion through gender, sexuality, class, geography, and region. So I think what the constitution needs to do is bring to life this idea of equal citizenship, that it means more than giving everyone the same constitutional label.

It has to recognize that people have different histories, they have different vulnerabilities, and their relationships through which people actually live the citizenship. How do we bring this to life? So a purely Fiji-blind approach to build unity by wishing away our social differences is not the solution to Fiji's building a cohesive national consciousness. Fiji's differences do not disappear because the constitution stops naming them.

A more durable approach to the constitution would be that protects common citizenship, but also recognizes real histories and equalities that shape people's daily lives. So this is where I think questions around affirmative action, that we special measures, and constitutionalizing

that becomes important, because it is recognizing that just we are one, we are all equal, we all do not have the same opportunities to progress, that some might be left behind, and that the constitution does then bring into this ideas around affirmative action. And leaning from the affirmative action and equal citizenship is the idea around reconciliation, belonging, and I want to, as an observer of Fiji politics, and someone who's very interested in Fiji politics, despite not being there, I'm waiting to see how this commission's work connects with the Truth and Reconciliation Commission.

How this constitutional commission will address the issue of reconciliation in this country. So, like I mentioned earlier, constitution can declare common citizenship, but belonging has to be built socially, culturally, here still, historically, and relationally. I'd like to give an example that I think is worth raising the Rewa-Noco process, that involved the descendants of Girmitiya, that involved the vanua of Noco, that involved the confederacy of Burebasaga, and the..., who, that he based processes where people who were genuinely interested in resolving ethnic differences worked at that community level over years.

So, I think the process actually highlights the fact that reconciliation is extensive, and that constitutions, whilst it gives a framework for governing, for rights, cannot purely on its own build these processes that bring people together. And I don't think that the Reconciliation process is one-size-fits-all process, but it is one local process shaped by one Vanua, shaped by one history, and one set of relationships. But it raises very important constitutional questions around how does the constitution make space for people to talk about belonging in productive ways that respects indigenous customs, indigenous processes.

And it is not only a legal thing, but it is also very relational, where people are able to relate to each other in ways that a constitution sometimes cannot address because it becomes too legalistic. So I don't think the constitution should try to standardize the reconciliation process, but it should recognize that healing and teaching will not only happen through courts, commissions, or parliamentary reform, or constitutional reform, that it also involves communities, it involves Vanua, it involves faith groups, women's groups, youth spaces, civil society, and local practices of acknowledgement and preparing, that the constitution should open these spaces up as well, give it some constitutional backing. There are

certain issues that require going beyond these formal spaces of courts and commissions and parliament.

One of the important recent work that I've done is around electoral design, gender blindness, and race blindness. The 2013 constitution was both race-blind, where it tried to wish away differences, but it was also trying to be gender-blind, assuming everyone, merely by being formal citizens, are equal, a single national constituency open list proportionate system, 5% threshold. They all look very neutral on paper, but I think they do not operate in a neutral society.

It gave unfair advantage to those with name recognition. So in the last elections, about 50% of the votes went to party leaders with name recognition. It gives recognition and rewards party machinery.

It gives recognition to people with money, access to money and financial resources. It gives people who have natural disability, who are also trying to ethnically modernize people, to establish people with established leadership networks. So the system, whilst looking at it from outside, seems equal only, it did produce very unequal outcomes.

So, I think the commission needs to think about what this means for future, around electoral fairness beyond the polling day, whether people can cast a vote, that the idea that fair action depends on the conditions before they actually do, whether parties can organize freely, whether media access is fair, whether public resources are misused, whether civil servants are protected from political pressure, whether government of the day operates on the same terms as everybody. The Ghai commission again, recommended transitional provisions, caretaker rules, which the government, the regime at that time did not like because it had forced them to become politically neutral as the election campaigning period started. The regime has started its election campaigning period, yet there are no caretaker rules that apply, that the government should not be able to use the powers of incumbency to get unfair advantage in the electoral process.

In my article with Dr. Karen Bacon on the 2022 elections, we tried to look at gender blindness and what do the electoral provisions mean in the context of gender blindness? And we found that despite some very progressive elements in the 2013 century constitution, the 2013 century constitution ultimately entrenched a status quo that remains militarized,

that is still dominated by men and ethnic interests. So while the 2022 elections did produce a transition of power from. Fiji first to a coalition government, and it's first in our history, it also produced this transition in an environment where the number of women who were successful drastically dropped from 10 to five women. So, it is saying something about the gender nature of this transition, that women still do not have an equal playing field when it comes to accessing political power.

And this tells us that our system is deeply problematic, that women are told to compete equally in a system where conditions of competition are unequal... This is why gender equality show...in 2023, the parliament or Ministry of Finance started giving grants to political parties without even attaching gender outcomes to these grants. These grants are just given merely to political parties for being represented in parliament without enforcing.

And what we see is that it's still very hard for women to crack the high echelons of party leadership. And I think temporary special measures and enforced parties cannot be trusted to enforce equality when it comes to gender representation. The constitution should explicitly allow for temporary special measures.

Gender quotas, candidate nomination rules, party funding, incentives, campaign finance transparency should require parties to be integrity, democratic in gender terms as well. And I think throughout Fiji's history, political parties have said they want 80% women in party leadership, they want 80%, but the political will to do this has always lagged behind because political parties buy from political power and they will not do things that jeopardizes their access to power. So once formal equality will ask, does everyone has the same right? I think substantive equality will ask, can everyone actually use their rights equally? And the answer has been, in Fiji, No.

While the constitution does give formal equality to everyone, substantively there are some people who are on this left behind. And these are ethnic minorities, these are queer people, these are women, these are young people. So I think the constitution in itself needs to grapple with the idea of how do we substantively give equality to everyone whilst also talking about formal equality.

And I'm so glad that I'm making this submission as the Commander of the Republic of Fiji Forces has made their submission, which I welcome wholeheartedly that the immunity provisions need to go. But I think also, apart from the immunity provisions going, I think we need to grapple with the role of the military in itself in Fiji and Fijian politics and governance. And the coups in Fiji have produced a population and a culture where there's a weak public trust in institutions, there's weak democratic institutions.

There's been a manipulation of our politics and our constitutional frameworks that produces ethnic anxieties. Ethnicity and ethnic insecurities are always politically manipulated to serve political interests. And a failure, it has produced a failure of citizens to feel ownership over the constitutional democracy that all constitutions have tried to give us.

This is why the Ghai process tried to strengthen both sides of the equation. On one hand, it proposed institutions for wider public participation. On the other hand, it placed security forces clearly under civilian constitutional control.

And I think this commission needs to grapple with this idea of who is the military accountable to. So the Ghai commission, proposed Fijian National Assembly. It was a very interesting proposal.

It was designed to be an edible space for bringing together representatives of government, parliament, local governments, independent commissions, civil society, which civil society constitutionally mandated to be in the majority in this national assembly. Its purpose was not to replace parliament, but to create a common public space where state officials will report on their work, national policies could be discussed, and citizens and civil society could help hold government to account. So I'm not saying that Fijian needs to revive the national security, national security of the assembly, exactly as proposed in the 2012 process.

But there were some legitimate concerns around its size, about cost, about representation, about reputation, and about questions around whether this could also be a site where politicians and elites will capture the process. But I think we need to focus on the principle behind it and

how important it remains. That Fijian needs to have a constitutional mechanism for structured public deliberation between elections.

That we should not just really go to people during elections to seek their input. Elections are not enough to induce any form of trust in or build trust in institutions, build trust in processes. And if we only expect citizens to participate every four years, democracy becomes very thin.

People's understanding of democracy then just becomes really coming, appearing, four years, every four years, to make a decision. I think in a divide of constitution, multiple constitutions, people need regular..., and to build democratic trust. My recommendation on a broad level, I do not have any answers to this, but on a broad level, I think my recommendation to the commission is to consider some form of permanent civic participation mechanism.

Going from, but not simply replicating the 2012 Yash Ghai's People's National Assembly, it could be a national civic assembly, it could be a people's constitutional forum, it could be a citizens accountability forum that takes place every three or two years. Its role should be deliberative, and accountability-focused, not legislative, because legislative would be the role of the parliament. It should include broad-based representation from civil society, from women's groups, persons with disabilities, faith communities, trade unions, private sector, rural and maritime communities, ethnic minorities like Banabans, Rotumans, our Melanesian brothers and sisters, and other minority communities.

I think it is, the larger point here is that we should move away from military guardianship to democratic guardianship, and this is our ongoing challenge. How do we transition from military to our guardian, to people being guardians of a constitutional democratic order, and I think a coup-resistant constitution will not only be built by human prohibition alone, it will be built by building democratic culture. Where citizens have real spaces to participate.

Security institutions are subordinated to civilian authority, and constitutional disagreements can be managed without resorting to coups and abrogation's. And I think the last point I would make is around section 131 (2) of the constitution, which gives RFMF external security and over-extended role in national building of Fijians. I think this guardianship role needs to be removed from the constitution.

I think multiple times the military has, in its own public description, alluded to the fact that the military has extended role, and has made references to section 131 (2) of the constitution. So whatever the strict legal scope of this section is, it has been used by the military and by politicians to try to... the military, because it opens up the states. And I think the Fijian government kind of hoped that the military, in December 2022, would exercise its role under this.

The military has also alluded to this a few times in the legal connections in 2022 and after elections as well. And I think we need to be very certain in our language when we come to the military, and it's true. I believe, I think the military needs to go.

In my personal opinion, as an institution, because a small state like Fiji does not need a military. Those resources, those money could be used elsewhere for public services, for education, for social security. The young people, the argument, the short straw argument that always gets made that this is a corruptive way in which young people get employed, I think we can do better than making these the short-sighted arguments, because our culture of militarism has been one of our greatest challenges to building a democratic society, to building trusted institutions.

But I think, again, the Yash Ghai process did allude to some, they did some thinking, and they did come up with some recommendations for removing the guardianship role, and giving stronger parliamentary oversight, not just executive oversight, but parliamentary oversight, that they created a National Security Council for their execution, which included not just the Minister for Defense, it also involved representations from the opposition. And this is the Ghai Commission in its own deliberations, in listening to people, in listening to experts, coming up with, trying to come up with a solution. I think this position is also tasked with a similar predicament, where after listening to people, after listening to experts, you will have to come up with some creative solutions.

I think sometimes it's good to look beyond the suite of options that we are offered in a typical liberal democracy, because I think Fiji's problems are problems that are unique, sometimes, to our old youth context. And I think the military submission, maybe in itself, by the Commander,

actually does give some confidence for the commission to look creatively at how to, how could the commission come up with provisions that re-establishes constitutionally grounded approaches to national security, as an civilian oversight body, rather than a military-dominated institution. It should include, in my view, in broad principles, it should include government, opposition, parliamentary committees, sub-unit representation as well, with heads of security forces accountable to that significance.

Just one aspect I'd just like to also raise before I finish is the constitution of the federated state in, sorry, Micronesia, a basic state constitution that actually mandates every 10 years, people are asked, should there be a constitutional convention and if people vote in favor, then a constitution is reviewed. It's, what I'm saying is we do not need to copy the federated state of Micronesia, for example, but I think what we should do is keep the space open where people can petition the parliament and I think this is where the creativity for the coalition comes in and how do we open deliberative spaces that people can actually tell the elected representatives that this constitutional framework is not working for us and it could recommend to elected representatives that constitutional review mechanisms should be keeping.

So a constitution should not be made easy to change. I think it should not be made too rigid and it should not, cannot be changed and I think this deliberation idea is sort of in a way of co-proofing our politics and our constitutional work and it's bringing in an element where people actually will have trust. We will reveal trust that people have in institutions.

We will reveal trust that people will have in the constitution and it will build a culture of democracy and I think we need to look beyond the tools offered in a typical liberal constitutional order and be a bit creative in solving or how do we see resolving some of the intractable problems that has been in Fiji in our past few decades.

Mr. Valenitabua: Thank you very much, Mr Kant.

I will now ask the commissioners if they have any comments or any discussion they wanna reach with you in relation to your submissions this afternoon.

Ms. Nailatikau: Appreciate the submission and the thought that you put behind it. I'm sure you will find quite a lot of submissions that echo your perspective on ensuring that whatever solutions are found, they meet Fiji's very specific and unique context while at the same time, knowing that you can consider other contexts as well in informing that decision. I think in terms of, I think going from the very first submission that we heard, there were suggestions, for instance, on having potentially a standing commission where a constitution is able to continue to be reviewed.

And I think the added dimension that your submission makes today is also not necessarily strictly institutionalizing such a regular review process, but also opening up that institutionalization to civic participation as directly as possible. I think it's also beneficial to us to look at the work of earlier commissions while at the same time, acknowledging that time has moved on. I think the thought that I'm left with today is about the holisticness of recommendations and how recommendations for complex situations like the managing of a country's governance infrastructure and leaving room for growth should be considered holistically and not necessarily, I'm using an extreme word here, but not necessarily cherry-picked, for example, in the political settlement process.

Could you talk more, especially about how the commission might reflect that better in the report? You spoke about ensuring that maybe potential recommendations can be presented as a package, for instance, or in bringing recommendations to light for consideration, you can also mention the implications of that recommendation alongside others. And maybe you can draw from the political process that followed the Reeve and the Ghai Commission experiences. Thank you.

Mr. Kant: I think one of the most interesting aspects of this current constitution-making process is the idea of the report. And this is the first time Fiji or Fijians will be asked to comment or to vote on a constitutional package. And I think one thing that is also very confusing is how this referendum will happen.

Will people be presented section by section recommendations that this commission has made and then be asked to vote section by section, or will it be a part of a holistic referendum where only one question will be asked? And this is where I've been thinking what the commission could do, and this could be beyond the scope of the terms of reference of the

constitution, is respecting that people took time to come before you and took time and courage to present to you what their fears and their hopes of Fiji is. And this is where I think the commission could actually build some transparency mechanism in your own declarations, where you could present something like a public response matrix. This is what people said, this is what we are recommending, and then allow civil society then to feel what the politicians are trying to pick up.

So while the Yash Ghai Constitution Commission presented an explanatory report, it was not as comprehensive as the recent one, which was quite thick. It was very comprehensive. It talked about some people said this, other people said this.

In our deliberation, in our international comparison, this is what the commission found, and this is what we are recommending. I think for the referendum to be effective and meaningful, people need that kind of civic education, a document they could refer to, where they could see what people were saying, what you as a commission is basically, and what have the politicians done in the constitution. So I think something like a public response matrix where the commission starts working on completing something about what they've learned from people, their hopes, their fears, their proposals, what they are recommending, how they are interlinked with each other, protects the commission as well from your reputation as well, because there are reputational risks always attached to these kind of processes.

What the commission accepted, what it rejected, how it modified certain parts of the submission that were good, other parts were problematic, what questions did the commission differ, that the commission felt it was not the right time to come to a solution. These are questions we want to be dealt with in the truth and reconciliation commission. So I think it's important, because one thing I've seen with this current government is that there's been a lot of public participation, a lot of consultation, from 16 years of no consultation to four years of over consultation.

Yet people are still not told how their input actually makes it into law or policy. I mean, one example I've used is, so much money was used with Justice Daniel Fatiaki, the Electoral Reform Commission. Yet the people still don't know what the electoral reform commission are, because it's not public.

Yet another commission like yours has been appointed now to deliberate the same questions that people had done one year earlier. And it creates money, because people just see this as rubber stamping. So I think the commission needs to bring back this respect, that we need to respect people, we need to respect their time.

And we need to actually say that we sometimes become complicit in these consultation processes, because consultation is the lowest form of participation. I mean, let's be honest about this, because consultation requires an acknowledging power, an acknowledging privilege. And in this process, the power resides with our politicians in parliament.

The power resides with the government executive, because they will decide what eventually goes in the constitution. So consultation can be used as a mechanism just to legislate a process without giving due consideration. And this is where democratic deficits, this is where trust in party institutions are low, is because it becomes a rubber-stamping exercise all the time.

So I think the commission needs to think beyond this draft recommendations you made. How do you instil the trust then in the people? How do you bring people along with you after your work has ended? To make sure that they continue working on these recommendations and it can be stabilised. The spirit in which all five of you have given your time and your energy, the spirit in which you have committed to this call of the nation is carried on by the people as well, by civil society, by individuals, by academics.

And I think this is where the protection of you, the commission, but also respecting the people. The commission needs to go beyond the scope of its own reference. I think it is brought against us around the referendum that we're taking place.

There's a lot of confusion in itself. I was talking to you earlier about this as well. It should be amended before the elections.

If it happens, then the Prime Minister keeps giving weak signals as well. And it does not induce any confidence in this process because what it does is it delegitimize people's participation in this process as well. And

I think we need to be doing things that induces people's public trust, in you, but also in the recommendations you're making.

And how do we ensure that these recommendations fill that out with the referendum and your response?

Mr. Valenitabua: Thank you. Mr. Kant, this is Sevuloni, the Chairperson. Thank you very much for your submissions this afternoon.

And thank you for the suggestions that you have just given to us in relation to the way forward, if I have to put it that way, in relation to the recommendations and the reports. Now, I'd just like to give you a rundown on the constitution review process which the commission had carried out. The commission, before we visited the people of Fiji, around Fiji, a team was going ahead in advance.

A team of volunteers, a number of lawyers, and they were explaining to the people what the commission was going to do when the commission came around. They called themselves the PACE team, which was a civic education group. Now, they were there as, you might say, an advance party, advising people of what the commission was going to do.

Now, following them was the commission. We visited the whole of Fiji, and then we took submissions from the people, as you know, and we are still taking submissions now, as of this afternoon with you. Now, our term of reference, if you have read it, states that we have our timeline to end on the 31st of August, 2026.

That is when we are to hand over to the President a report, our recommendations, and a draft constitution. Now, that is what we are working towards right now. I understand where you are coming from in relation to telling the people what has been included in our recommendations and in our report to His Excellency.

First thing first, our report and our recommendations and the draft constitution will be confidential. We will not be allowed to release it. And that is according to our term of reference.

It only goes to His Excellency. Then whatever he does with it, that's his. Now, what I can tell you now is this, that there is plan to take the draft

constitution around the country and explain to the people what it contains before the referendum.

If there is any comfort to you in relation to the process after the 31st of August, I can tell you that that is the plan which is now on the line. To satisfy what your suggestion is, there will be another team which will take around the country the draft constitution and explain to the people what it contains and so forth before the referendum. So since you have raised it, we have not given this information to anyone, but since you have raised it, that is what is on line now, right now.

So we have always told submitters who have asked us what will happen after. That's all political. Well, all we are aiming for is satisfying our task, our obligation to complete the constitution, give it or hand it in to His Excellency.

And from there, His Excellency will deal with it. Give them to the government, that is all political. They will go through parliament and so forth and so forth, including that team that would have to go around before the referendum.

So we are not looking beyond the 31st of August. We answered Professor Wadan Narsey yesterday. He asked the same question, but I just told him, whatever happens after the 31st of August is not for us to say.

It's not included in our term of reference. But thank you for your suggestion. I have given you a hint on what might happen by the politicians, not us.

Ms. Nailatikau: Thank you and warm greetings. Professor Teiwa and Dr. Dziedzic, forgive me. I hope I'm pronouncing your name correctly.

Thank you. Thank you for your time this afternoon. I'm Mere Nailatikau, a fellow commissioner alongside my colleagues here this afternoon.

We have the great pleasure of listening to Romitesh Kant give us his advice and his recommendations in the hour prior. And I'll just quickly introduce my colleagues who are seated here with me this afternoon. To

the far right, where you see my arm pointed, we have Dr. Neelesh Gounder.

I'm sure no stranger to a few of you. We also have next to him, Mr. Ami Kohli, who's just had to excuse himself very briefly. To my direct right, sitting next to me is Mr. Sevuloni Valenitabua, who is the Chair for our Commission.

And to my left here is Mr. Conway Beg. We are four of the six sitting commissioners here with you this afternoon. Very grateful for your time.

And I believe we have printouts sent to us. Oh, forgive me. Has audio returned? Is that better? Okay, all right.

I believe we might have accidentally muted the mic here. But without delaying things any further, we understand that you would be familiar with the general outline of this process, of this constitutional review. You did us the honor of sending through a written submission and we'd like to give you this hour to deliver your submission.

We'll be listening and we hope that there'll be time later for any comments or questions to make this more of a conversation after your submission. Thank you. Please proceed.

Go ahead.

Professor Teiwa : Can you hear me okay? Okay, wonderful.

Thank you so much for your time. We know it's very valuable. We know you've been really busy doing all kinds of really critical work throughout this process.

So we appreciate this time to be able to share with you a bit of the lens of the global and national peoples in Canberra, the capital of Australia. We may still have Professor Rebecca Monson join us if that's all right. She may be slightly late as there is a contingent from Fiji right now at the ANU.

So I understand Romitesh and Rebecca have been hosting them. So this is the team that worked very collaboratively to write our submission on

rights and recognition of the Banaban people and indigenous minority. So I'm going to give you some background on myself, on my work and my connections to Rabi and the Banaban people, and then a brief summary of our submission.

And then as you say, looking forward to having a discussion, answering any questions you might have, which hopefully any of the four of us should be able to answer. Let's see how it goes. So please also just let me know, wave your hands or whatever you need to do if my audio isn't going very well.

So I was born in Savusavu and raised there in Levuka as well as in Lautoka and Suva. I'm a graduate of Yat Sen and St. Joseph School. I did my later degrees in the US and Australia and I'm now a professor of Pacific Studies at the Australian National University.

I've been at ANU as an academic since 2007 and before that was an international PhD student here in Anthropology and History from 1999. And in 2002, my background is that as a PhD major and minor, and I'm just recognizing that Professor Rebecca Monson has also just trained our pool. So Rebecca is in the School of Law, Romitesh and I are in the College of Asia.

And so on behalf of the College of Asia, I'm a Professor of Pacific with ANU and also the University of Melbourne and there's a lot of really amazing work in this space. So our submission is very much based on work that I've been doing for many years. And so I wanted to outline that briefly so that that gives some context and then highlight the three major recommendations for our submission and then hopefully we can have a talanoa, which is when I began a master's in Pacific Island Studies at the University of Hawaii, focused on Banaban history at the intersection of British colonial and my.....and Tuvalu.

My research was still what was published officially in the archives of the British phosphate commissioners of the National Archives of Australia.

At the time of my, to the time I was doing this research, my father, John Tabakitua Tewa, had just been elected chairman of the Rabi Council for three years. And this was right after a period of turmoil in the Rabi Council. And on Rabi, more generally, where there had been a lot of

unrest and riots and a hand around the administrator who was a staff to oversee the island and the people.

So my father was elected from our village, which is Tabiang from Rabi. We are also connected to Tabwewa village. But he was elected, elected councillor from Tabiang and then elected from that council to become chairman.

My father had a long history of civil service in Fiji, being a Permanent Secretary for agriculture, fisheries, and farm, forestry, rural development, urban development, coconut industry authority. So many decades of civil service. He was quite politically neutral and a trusted member of both of the Rabi and Board of Fiji on Fiji government scholarship and the first to graduate.

His time as chairman was a stable period on Rabi...(*connectivity issues)

Forgive me, Professor Tawewa, I hope you can hear me. Perhaps due to some of the connectivity challenges that we're having, is it all right if I could ask you to turn off your camera, Professor? Would it be all right if we could ask you to turn off your camera, Professor? We're just having a bit of, some challenges with the network and you're breaking up. Just wanting to hear you more clearly, please.

Thank you. Please proceed.

Professor Teiwa: Is that, is that much? Yes, thank you. It's no problem at all. So I was just wondering, because of Father's role, as the chairman of the Rabi Council of Leaders, and how his background, as chairman of the Rabi Council, have also deeply informed the kinds of issues that we raised in this summit.

So I had a very unique perspective because my father was in that role of chairman, and particularly after a very unstable, unstable peak. The things both Eric, Lucia, and I studied and wrote about this team's submission, and I just want to also mention that we have ongoing work on Rabi through the Fiery Canoe Foundation, which supports the safeguarding of Banaban cultural heritage and many other aspects. And in a way, that work fills in some of the gaps that haven't been addressed on Rabi for, for link to Rabi.

And as many of you may have known, the Banabans on Rabi recently celebrated 80 years of displacement from their home island to Fiji. So December 2025 was a big anniversary for them, and we were present there for that celebration. Just the final personal context that I think is relevant is, my father came to Rabi in 1947 as a six-year-old because his family was already here.

So his great-grandfather is one of the original Banabans, which is one of the 703 Banabans brought to Rabi in 1945, along with my grandfather, and this was the group that established the first settlements on Rabi. And so my father, John Tebakito Atewa, was always very clear about the various challenges and difficulties constantly faced by Rabi islanders since he landed in 1947 all the way to the current period. My observations traveling back and forth to Rabi have also been similar.

So I have been going back and forth to our home in Tabiang for decades now and kind of observing the different dimensions of social, economic, political, and cultural life, but particularly the challenges that people on Rabi face. So, for example, there is no central electricity or energy supply on the island. Every village or household has to figure out their own energy.

There is a central water supply, but it's very intermittent. Many young people do not complete high school. There's a lot of physical, mental, social challenges, a lot of domestic violence, and other intergenerational traumas faced by people on the island.

And a lot of the instability at the family level and village level is also reflected at the various levels of governance, particularly the Rabi island level. So one of the important contexts for this submission is that all of these issues are structurally connected. What happens at the family level on Rabi all the way to the challenges with the governance at the island level and the problem of representation or the lack of representation for Banabans at a national level, but in our very, very unique case, two national levels, not just Fiji, but Kiribati as well.

So recognizing these various levels of challenges and the research that I have been doing for many, many years, I started working closely with Professor Rebecca Monson. We travelled to Rabi and we had many talks with people on the island in 2025. And we also began working with Ana

and Romitesh last year to, or maybe it was actually the year before, to start to think through some of these issues and how they can be addressed at the level of governance and regulation and law and those other important contexts.

So we had three proposals or three recommendations in our submission.

And the first one was really straightforward. There really desperately needs to be an elected Rabi Council of Leaders.

And this Rabi Council needs to be properly representative of the people. This means in terms of leadership and merit, age, elder status, so elders are always very, very important in the Rabi community, but the big missing piece is gender. So, my work recognized and clearly revealed that women had political authority, agency, and participation prior to the mining, during the mining, and this was very consistently whittled away by the Phosphate Mining Enterprise and the British Colonial Administration.

And sometimes our own men as well, who saw this opportunity to interact with the colonial government and saw that women was cast aside by that. So women have lost political participation and authority over time because of mining, because of displacement, because of many, many, many factors, but it is not our culture. In our culture, women have rights.

Even children have rights. They all have land rights. So that is very clear in the archives, but also in our oral traditions, where women had a very special place.

So participation on the Rabi Council is very important, but first of all, you have to have a council in the first place, and that council has to be stable. We have not had any Council now for many years.

This has caused a lot of confusion and uncertainty for Banabans especially in terms of understanding who has the authority, how does this authority work, and how can this authority be exercised? A lot of things have been done without proper consultation with the Banaban people. More often, if there's consultation, it's one-sided or very shallow

consultation. So it's not enacting proper Banaban governance, not in a cultural fashion, and not in a democratic fashion.

The Fiji government promised support for the reestablishment of the Rabi Council, one that would meet national standards and expectations, and this has still not happened. In the meantime, all kinds of big decisions about Banabans' economic issues particularly have been made, and there's been no accountability. So really, really important that there is support for the reestablishment of the Rabi Council, and that that is a democratically elected body.

Interestingly, Banabans are culturally and historically quite a democratic people by today's standards. So Banaban culture is not a highly...(*cutoff) So there is an inherent democracy in the way culturally things ought to be conducted for Banaban benefits. So that's our first recommendation, the first one.

So that's our first recommendation, the Rabi Council. The second one involves ensuring protection of Banaban land and its self-government, that's so important, by ensuring that the Banaban Lands Act and the Banaban Settlement Act, which are two very important acts that help establish and support Banabans in Fiji, it's important that these are protected from any easy amendment in the Fiji Parliament. So, our recommendation today, they change today politics so that they can't just be flipped here and there, depending on the government of the day.

Further to that, Banabans should also have a say in their own self-governance and these lands' issues, and things should be discussed by them first, before anyone decides to amend or change any of these lands or settlement acts. So we recommend that these two acts should be entrenched as they were before, and any changes must be submitted to a dialogue and referendum of those eligible to elect the Rabi Council, and then passed by a majority of Parliament. So two steps to this, and Banabans are always consulted and involved in a dialogue around their own self-governance, their own land issues, and their own needs.

So that's what that second recommendation is about.
Can I just ask Anna or Romitesh or Rebecca anything to add to that second one? Okay. I'll go on.

All right. So the final issue involves minority rights in Fiji. So that's our third recommendation.

So we gave some background in our submission on how Banabans are a very unique displaced community. They're an indigenously displaced community. They're a little bit different from other forms of displacement that have historically happened in the Pacific, and that's because they were a culture and a community moved wholesale, wholesale, a whole entire group lifted up from one country and moved to another, and they did so without their own choice, without their own self-determination in that process.

So that makes them a little bit different from example from the Kioans on Kioa who had a lot of agency and choice in their decision to move from Tuvalu to Kioa. So Banabans are a forced displacement, and they were forced by geopolitical and economic forces involving many big countries, Australia, New Zealand, Great Britain, Japan. All of these countries had something to do with why they were forced to move from their home island.

So in many ways, the discussion around World War II is a big discussion that one might want to have with Japan one day because of how Banaban was turned into a war camp. But anyway, that's a different discussion. So once they were moved in 1945, they started to set up this different mechanisms and systems for their own survival and self-governance and opportunity in Fiji, but, and they tried to advocate, they put their rights back on their home island, they made petitions to the United Nations, they took Great Britain to the high court, and they also suffered waves of corruption, financial mismanagement, and whittling away of community trust funds that they had had to support development for the people as a whole.

So they've been through a lot of financial, economic, social, political upheavals. So today in Fiji, Banabans are quite a socially and economically disadvantaged community. They have much less school and scholarship opportunity because there are no real employment opportunities around the really basic infrastructure, social and health services, and a whole range of other, you know, support structure.

What could happen to other displaced communities in the Pacific if governments do not think through the needs and issues required for good

health, well-being, opportunity, support, peace, all of those things that communities across Fiji need? So, Dante, about how a voice for Banabans in government would be a good way of addressing this gap, because their status is quite unique, they deserve a voice in government like other citizens of Fiji. So we recommended reserving a seat for a representative of the Banaban people, and this would ensure Banabans select their own representative, and that their voices could be an independent... (*cutoff) which exists across Fiji and beyond in places like Australia, New Zealand, and elsewhere. So, that was our third recommendation, about reserving a seat for Banabans in the Fiji Parliament.

So, in summary, our submission recommended focus into constitutional reforms to support the rights and well-being of the Banaban people, in recognition of their unique position as a cross-border, displaced, (*cutoff)... So, we should put this down in that section.

It's been, no, recommendation. Sorry, hopefully you could hear me, down in the background. Is anyone speaking? No.

Ms. Nailatikau: Oh, okay. Hopefully that's better, I've unmuted our system. Thank you.

Thank you. I am accompanied here this afternoon by three commission members who have the privilege of visiting Rabi themselves. And so, with deep and sincere gratitude for your submission, Professor Teaiwa and colleagues, I'll give this moment to my fellow commissioners for any comments or queries they'd like to make.

And please feel free to switch on your videos if you would like. Thank you. Thank you, Professor Teaiwa and Dr. Ana, Dr. Rebecca and Dr. Romitesh.

Dr. Gounder: It's good to see you again, Professor Teaiwa and Romitesh. The last time we met, we had come at ANU with a good big group of Fiji scholars. Thank you.

I, as Mere has mentioned, I had the privilege of visiting Rabi Island as part of the consultations for the Constitution Review Commission. And before that, my engagement with the Rabi Island was through the National Development Plan. I was with Fiji government for two years and

one of my teams visited Rabi Island to collect issues related to national planning and development.

And that's when I first realized the challenges faced by the people of Banabans to the people on the island, Rabi. And after, when we were on the island, some of our photos were put on Facebook. And I was contacted by two of my students who are Banabans, in my class at the moment.

One of them is a lawyer and the other is an economist. And when I visited Rabi, after that, I told some of my friends that, you know, my own problems went away after I saw the plight of the request and the level of development on Rabi Island. So in the National Development Plan, the government is making an effort to ensure that, that the planning and support for planning is inclusive, and that includes Banabans as well.

And since then, I've been having a talk with some of my students who are from Rabi, but they live in Suva now. And there's a very strong Banaban community in Suva as well. Actually, one of my plumbers is a Banaban as well.

He's one of the top plumbers as well in Suva. So after that, I went to read the Reeves Commission report, because when the Reeves Commission visited Rabi, they received the same submissions that we received from the island. And I'm sure you've read the report of the Reeves Commission.

They made some strong submissions. And I'm speaking genuinely, someone who's genuinely interested in helping in the shortfall economic development of the Banaban people on Rabi Island. You know, one of the things that, since then I've been thinking about it and the submissions we received, and also the submission that you presented this afternoon, you talk about the, you know, some of the issues that may, in my belief, can be a hindrance to the socio economic development in the way Fiji government sees Rabi Island in the inclusive agenda, is issues such as two jurisdictions, self-governance.

These are some issues, I think, which will play a role. For example, when we got off the boat, the first thing I noticed is a police station, but there's no Fiji police force board there. It says local police.

And when I, so I went straight into the police station to ask, what happened to your board? And they said, oh, this is local police, and not Fiji police. And that hit me really hard as to what's going on here. And I think, you know, these are some of the issues that may contribute to the overall drags.

Because after spending two years in Ministry of Finance and the way budget and resource allocation is done, I, you know, someone who generally wants to help the socio-economic development, I think these are some of the issues that might itself be contributing to the challenges. So apart from the Constitutional Review Commission, and we are going to seriously consider submissions you have made today, and to see what options are available.

But in the broader sphere of things, and as academics, I think we'll have to really look at issues much more broadly in the way things are perceived from the government side, in terms of resource allocation and in budgetary reallocations, for example.

So that's a comment I have, and I'm happy to hear. I may be totally wrong on this issue, but as an economist, and the way things work, and that's, I'm speaking from the reality on the ground in terms of how things happen. And if you look at the integration of other communities in Fiji, for example, poverty does not have an ethnic face.

Some of these challenges does not have an ethnic face, or communal face. For example, if you build a seal around in the interior of Nadroga, all the communities will benefit, not one community. So the way we look at development now is from a more broader lens, rather than in a specific set of lens.

So those are my few comments, but I'm happy to hear your take. And I believe that, I don't know how to put it, but let me say something that I've been thinking. Perhaps the settlement debt itself may be a drag in terms of why Fiji sees the Banaban people when it comes to inclusive planning, inclusive development, and so on.

Because what the challenges I saw on Rabi Island is really, really concerning. We heard from the elders, we heard from the youth, we heard from the, there was a human rights council, or human rights body on the island. There is a guy by the name of Ray.

He also made a connection to ANU as well. And yeah, so something I just wanted to lay it out to you, some of my thoughts. Thank you.

I'll give it back to the Chair.

Mr. Valenitabua: Professor Teaiwa, I was, or I went to Rabi with Dr. Gounder. We had a consultation there together with Mr. Conway, sitting on my left. Now, we heard submissions from Rabi.

And some were very concerning. Now, I was wondering there and then, and pardon me that we have not read into the Banaban Settlement Act, and the two acts which you have, the Banaban Lands Act and the Banaban Settlement Act, in order to see the legal implications of those two acts, because we've just been going around on consultations. But just reading through your submissions, this afternoon, I then realized the difficulty or the causes of the difficulties which your people in Rabi are facing.

The causes I talk about. Pointed out to me was that Rabi has or is living under two jurisdictions, Kiribati and Fiji. Now, we heard there on the island that there are some Rabian children who don't have birth certificates, Fijian birth certificates, that is, because they were born in Kiribati.

When they came over here, they were not given any birth certificates because they're not Fiji citizens. So another thing which we heard that these children could not go to school because they didn't have the birth certificates. And another thing we heard was that when the government of Fiji gave education grants to schools, these children were not given grants.

They were excluded. I'm telling you what we were told on Rabi Island. So I was thinking, what is the problem here? Now, thanks for your submission this afternoon.

Now I realize where the problem is because Rabi seems to be governed under two jurisdictions, which is Kiribati and Fiji. There is a matter which we will have to consider now. You are correct, 1987, Rabians were Fijians.

And then 1990 and 1997, they were 'others'. And then 2013, no mention of Banabans except in section 29, I believe, or section 28 of the constitution where the Banabans are mentioned. I have to confirm that.

So, right, section 25. In your position, in your position, how can we resolve this so that we can include Banabans, let's say in the preamble of the constitution in a way where this dual governance, if I may call it that, is not a hindrance to it. Because if you have two seats, reserve seats in Kiribati, that is a hindrance to being included as Fiji citizens.

And if you want seats in parliament here in Fiji, no, you won't be able to have that, speaking directly and honestly with you. What is your view in relation to that? Would it not be better if you surrendered Kiribati and then just joined Fiji, come under the Fiji jurisdiction? Remember, Fiji is a sovereign state. And I believe Kiribati is also a sovereign state.

So if you are opting for two sovereign states, you've got to give one up. Well, what do you think? What is your thoughts on that?

Prof. Teaiwa: I have many thoughts. Would you like me to address both comments now? Yes, please.

Thank you so much. Thank you.Vinaka, thank you so much.

I really appreciate you addressing this problem directly. And I also appreciate the concerns around social and particularly economic issues, especially with respect to national planning and being included in these budgets. And the perpetual question for Rabi, how come there's no development on this island.

Like, honestly, you can't switch on electricity and ever have electricity on Rabi. It's just not happening since 1945. So you have hit the nail on the head in terms of a conundrum.

Yes. And this conundrum is created by the British who, blessedly on their part, are no longer the boss. So this is like a colonial hangover.

This is a colonial hangover involving Britain, Australia, and New Zealand displacing, displacing its responsibility to Fiji and Kiribus. They are the ones responsible for what happened to the land of Banaban. So if we think as indigenous people, nobody's going to give up their island.

Nobody's gonna give up their ancestral lands. This is a conundrum for Tuvalu at the moment. They know that the ocean might rise and they're going to be moved, but no way are they giving up that land even when it's sunk under the ocean.

So what's happened to Banabans is they are forced out of their land because it's a huge, valuable, global resource. And they are moved to Fiji, to be the problem with Fiji. So then there's this problem of how Banabans fit.

In the imagination of Fiji, how they fit in the imagination of Fiji with social, economic, legal, and all the other supports. And there is an unwillingness on the level of Banabans to give up their rights to their ancestral island in Kiribus because of that great value for your ancestral lands. Body of the land, body of the people.

Like Vanua in Fiji, for Banabans it's Teapa. And Teapa is the people. Teapa is the people.

And even though they have this island of Rabi was purchased for them and they have all these rights on Rabi and they belong to Rabi, especially the young people, especially generations who have been born on Rabi, they pretty much feel like from Fiji. They feel like they are Fiji Islanders, they are from Fiji, they are from Rabi. But we live in an indigenous world in the Pacific and these values of not just our ancestors but ourselves are still very, very strong.

So Banabans are caught between the two jurisdictions. Jurisdictions that did not exist before. They are relatively young compared to Banabans existing for thousands of years, living off their ancestral land.

So they don't get forgotten even in 80 years. 80 years since they've been in Fiji for Banabans that's like a short time compared to the years where they lived on as sovereign people, self-determined people on their own island. So I think it's because they were forced rather than making their own decisions like the Tuvaluans, the Tuvaluans of Kioa, that's a considered ... for themselves.

For Banabans it's a force, force like kind of situation. That's why they live between these two worlds and my colleague, Neelesh Gounder, you

have hit the nail on the head around how this manifests at the level of national development planning. Nothing changes and nothing gets better for Banabans on Rabi because it's like living in limbo.

It's like existing in limbo. You know, when you talk about which police force, there's actually two police forces on Rabi. There's a local police force and there is a Fiji police force but I think there might be like one Fiji police officer, maybe two and then there's the local police.

So it gets kind of confusing. It gets confusing because how Banabans fit in the national imagination of Fiji is limbo and that is why we made these recommendations but particularly the third recommendation and you referred to the preamble, the preamble which would be good and necessary to signal that there is this community and they are not quite like the other communities and it's not Fiji's fault. It's not Banabans' fault.

Fiji is not responsible for what happened before 1945 and 1945 because everyone lived under a British colonial administration that just took whatever it liked and forced people around. They moved Gilbertese to the Solomon Islands. They moved people all over the place and they thought, you know, they had superpowers or something but we're living with a legacy.

We're living with the legacy of those decisions that were not made by our people or by people in Fiji. The Gilbertese did have something to do with it so there are economic and political issues back in Kiribus that would prevent Banabans from wanting to leave Kiribati. Banabans are a minority in Kiribati which don't always agree with the Gilbertese government.

Fiji is the safest, best, loving, inclusive place for Banabans even though there's no development. So when you visited Rabi, I kept thinking about if you went through Karoko, right, if you went through Karoko to get to Rami, that's a lovely landing.

Why is there no port? Why is there no, there's no like jetty? Why is there nothing there to like officially recognize the beautiful people of Karoko who have been hosting Banabans traveling between Rabi and Vanualevu since 1945 and nobody built a jetty. You still get there and you're lost in emotion when you get to Karoko and everyone has to be really nice and

helpful and one speedboat might come. I mean, there's nothing organized properly since 1945.

Banabans are still living in limbo. So this constitutional consultation and our submission, we hope is a real opportunity to kind of fix these existential problems like children are suffering, families are suffering, kids don't go to school, kids don't finish school because of the limbo. It's a real limbo.

And it's to Banabans and the response of children. Happens to them and it's still happening to them. That's what we need to work on.

That's the thing that requires good considered solutions. I don't know quite how to fix the link between governance and national planning except to say, I'm gonna put it back on Banabans leaders and say, they should have been better activists. All their people will fix some of these issues.

And over time, that just consistently doesn't happen. So we're trying to find mechanisms to deal with some of these issues that are quite unfair for families on the ground of humanity especially. I come from a family about 50 first cousins.

My father's the eldest of 10. I have lots of cousins who don't go to school. Each family selects one, two, three, you will not go into school and the other ones, we're gonna find you to go to school.

So families are forced to make those choices. They can't support all the kids to go to school. I have over 100 close relatives on Rabi and it's very, very uneven in terms of just basic.

There's no toilets, that's the other big issue that many women on Rabi are constantly discussing. Toilets, just a basic toilet for families. It doesn't exist.

It's a privilege to have a toilet. Flushing toilet with toilet paper is a massive, massive, massive privilege on Rambi. So we're really stuck with these Mult stellar problems, some of which can be fixed through governance, legal regulation and some that can't because they really involve the need for creative imagination on how we can have others properly embraced in Fiji as a genuine member.

And they're both acts that need to come to the table on this. Even the relationship between Banaban and ITaukei in the northern part of Fiji and what that means. You know, Rabi was incumbent ...

There are people on Taveuni and other places that still remember their ancestors from Rabi. So it's quite a critical issue this lingo we address. But I really appreciate that feedback and those experiences that you had visiting Rabi and, you know, your concern and compassion and fear for the Rabi population.

The ones in Suva and elsewhere are slightly better off, but there are many Banaban communities living in overcrowded housing and settlements, informal settlements around Suva. Many, many, I have been to many homes where there are Banabans living in tents outside their one bedroom with their relatives.

Professor, professor, professor.

Mr. Valenitabua: May we hear from Dr. Gounder? We are running out of time, but this is something important. Could we hear from Dr. Gounder?

Thank you. Thank you, Chair.

Dr. Gounder: Thank you, Professor Katrina for the passionate response. And I understand where you're coming from. You know, after visiting Rabi, I now am liaising with a few of my students who are from Rabi Island to see how we can support.

I'll give you a few more examples. You also mentioned access to land and sea. The issue is that Rabi Island is a freehold and they don't have access to the Qoliqoli.

It belongs to the Tui Cakau. So these are some things that they will have to come to terms with. And they will have to be very clear about where they stand in terms of access to Fijian citizenship, etc

That's something I think for the people of Rabi to decide. But we as, you know, the outsiders can help in debate and discussion. But I think it's very important for them to understand the integration and participation

in economic development would also be an integration to the broader citizenship as well.

And to look at themselves from the lens of being part of Fiji rather than a dual governance system. Because when I look at technically from the, you know, the way government operates, we may not like the idea that this is, that's how things happen. But that's how things are working at the moment.

And as I, you know, you highlighted some of the housing issues and challenges. There are many other ethnic communities who face the same kind of challenges. But that does not mean that we should not have specific programs for Rabi Island.

But it's to think about how we can bring the Rabi Islands of the Banaban people into the broader citizenry, so to say, which will treat them as Fijians. And they're not being looked at as within the lens of Banaban Settlements Act. You know, I think that's where, I think the very moment you put them under Banaban Settlement Acts, it gives a different perspective.

And that's probably my argument that, you know, creates this kind of a drag for, and I'll be very honest, because, you know, as academics, I know you understand. For example, now I think back and what if I was living under some kind of an Indian Settlements Act? It should have been a very different story perhaps. So just when I look back at some of these things and how we can fix those injustices, how we can fix those wrongs that has happened.

Now we, this is 2026. Something that happened in 1940 by the British, by the Japanese, by the Australians, as you mentioned. And now we are, you know, how the Fiji government can take care of this beyond the constitutional provisions, whatever it may be.

Thank you. I'll just give it back to the Chair now, but I'll send an email to you and Romitesh and we can keep the discussion going. Thank you.

Mr. Valenitabua: Professor Teaiwa, it's Shabloni again. Thank you so much. Thank you, really appreciate it.

This is Sevuloni, again. Living under the two jurisdictions, I think there is a problem here. The main problem, the primary problem that has to be resolved.

Now, when on Rabi Island, I told them about dual citizenship, particularly for those who were born in Kiribati. We were told that some were born on Rabi Island and then they went to Kiribati. They got passport there.

And then when they came back, they tried to get a Fiji citizenship, they couldn't. So I told them there's one way of getting around that, that is to apply for dual citizenship. However, some might have tried, and they said, that costs $3,000.

I said, I know, because I've done application for dual citizenship. So there are two things here, the individual Rabian Islander and Rabi as an island. Rambi is freehold.

It is within the waters of the Tui Cakau. It is within the waters of Fiji, which is a sovereign state. So we have to get Rabi somehow be included as a Fijian Island.

And I don't know whether Rabi is a Fijian Island right now or not. I feel for what you are saying. Now I get things clearly when we were being told in submissions in Rabi about their problem.

Now, it's either, I'm going to say this directly to you, it's either you be a citizen of Fiji or you be a citizen of Kiribati. These, like I said, are two sovereign states. You've got to decide which sovereign state you want to be counted on.

You've got two seats in Kiribati. I don't think the Fiji government will give you two seats in Fiji. And since we are talking about the constitution, in order to put law about Kiribati or Banabans in the constitution, you have to be Fiji citizens.

I mean, that is generally speaking, there might be other things that can be done. Thank you very much for bringing this up. It's something that we will be thinking about.

We also know that Rabi is now sort of governed from the Prime Minister's office here in Fiji. The files about Rabi are at the Prime Minister's office. We were told that, and we might have to follow that up also, what is happening.

And read the Banabans Settlement Act and the Banabans Lands Act to see what it says about that island from which you dearly love, I'm sure. So that is my comment this afternoon. It was good visiting Rambi.

First time I was there. And now hearing from you and hearing from those who are on the island, I now fully understand what the real problem is. Thank you very much.

Now, do we have anything else to say? The commissioners have nothing else to say. We've... Mr. Conway wants to say something.

Prof. Teaiwa: Oh, Conway! I didn't realize it was Conway Beg.

This is my friend and Blanche's brother. How are you? Oh, Blanche's brother, it's so nice to see you.

Mr .Conway: Thank you, Professor, for those kind words.

Look, I had also the honor and privilege of visiting Rabi with our Chairman and Professor Gounder. One thing that stuck out in your submission, which, I mean, I guess it's a follow-on to what the Chairman said about the difficulty in Rabi itself, in its governance. And I suspect when the Rabi Council was dissolved in 2013, right, for obvious reasons, you had a 13-year lapse of being controlled by the Prime Minister's office or state.

So basically, it was just left untouched for a while or in disarray, I guess. I just, yeah, I picked that up in your, and then I thank you for the two recommendations that you're making under your submission. So yeah, I fully understand the issues, as the Chair has quite rightly said, there's the two jurisdictions is becoming prominent, but I feel that there's a lot of discussion that we would have to have, and obviously a constitutional discussion and looking at the various, the two acts that come into play.

But yes, I hear you, and obviously, we will give a bit more thought to that. And thank you for your presentation. I much appreciate it.

Mr. Valenitabua: Thank you. Professor, I have to- Thank you so much. This is Chairman here.

We have to bring this session to a close. I thank all the other participants this afternoon who are with you in Australia. We just need to attend to another meeting.

So thank you very much. Please come to the other side. Thank you.

Prof Teaiwa: Thank you so much for your time. Thank you so much for your time. We really, really appreciate it.

And we really appreciate all your feedback. So lovely to see you all. I know you have a very hard job ahead of you, and we just really appreciate the kind of incredible work that you're doing.

And thank you so much to our team as well, who are here. We have so much to talk about afterwards.

Ms. Nailatikau: Vinaka Professor, much appreciation to you and your colleagues.

Thank you.

----------End of Session [7-7-2026]----------

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WRITTEN SUBMISSION TO THE FIJI CONSTITUTION REVIEW COMMISSION

SUBMITTED BY:

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THE CHAIR AND COMMISSIONERS

FIJI CONSTITUTION REVIEW COMMISSION

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Vinaka vakalevu, Chair and Commissioners.

Thank you for the opportunity to appear before the Fiji Constitution Review Commission and to make an oral submission on 7 July 2026. I now submit these written notes to accompany and expand on the points I raised during that consultation.

I understand this review not simply as a technical exercise in constitutional amendment, but as a wider national conversation about legitimacy, ownership, power and inclusion. It is also an opportunity to reflect on what Fiji can learn from its earlier constitution-making processes, especially the 2012 process, and from the political and democratic context in which this review is taking place.

I make this submission from several overlapping positions.

First, I write as a Fiji scholar who has researched constitution-making[1], public participation[2], electoral systems[3] and constitutional design[4] in divided societies. My earlier work examined the 2012 constitution-making process and asked whether public participation was meaningful or whether people were invited into a process that was later taken away from them.

Second, I write as someone who has worked for more than a decade in Fiji's democracy, youth, human rights, constitutional and civil society spaces. These reflections come from more than research. They come from watching people try to engage political processes under difficult conditions: activists, women leaders, young people, community members, party workers, human rights defenders and ordinary citizens who often want to participate but do not always trust that their participation will matter.

Third, my recent PhD research examined political parties, leadership and masculinities in Fiji[5]. That research explored how authority is produced within parties, how leadership is recognised, and why women and other marginalised voices are so often included symbolically while kept structurally peripheral.

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[1]; Kant, Romitesh. *The Road Map to Democracy and Fiji's 2012 Constitution-Making Process.* Working/Technical Paper, 2014; Romitesh Kant, "Fiji Constitution Monitoring Report: September 2013–2014," in *Fiji in Transition: Towards a Sustainable Constitutional Democracy*, ed. Citizens' Constitutional Forum (Suva: Citizens' Constitutional Forum, 2014), 105–146,

[2] Kant, Romitesh, and Eroni Rakuita. *Public Participation & Constitution-Making in Fiji: A Critique of the 2012 Constitution-Making Process.* Working/Technical Paper, 2014

[3] Kant, R., & Baker, K. (2025). A Fiji (parliament) for all Fijians? The impact of gender-blind and race-blind electoral provisions in a divided society. *Democratization*, 1-22.

[4] Romitesh Kant. "Casting a Blind-Eye: Is Fiji's 2013 'Ethnically-Blind' Constitution a Path to Democratic Stability?" *Journal of South Pacific Law* [Suva, Fiji], vol. 19, June 2017, pp. 3–36; Kant, R. (2019). Ethnic blindness in ethnically divided society: Implications for ethnic relations in Fiji. *The Palgrave Handbook of Ethnicity*, 109-129; Kant, Romitesh. "Constitutional Re-Design for Democratic Stability in a Divided Society: A Fiji Case Study." MA thesis, University of the South Pacific, 2018, https://librarycat.usp.ac.fj/client/en_GB/search/asset/5251/0; Regan, A. J., Kirkby, C., & Kant, R. (2024). 'Between Two Worlds': The Origins, Operation, and Future of the 2013 Fiji Constitution. *The Journal of Pacific History*, *59*(2), 165-185.

[5] Kant, R. (2026). *POLITICS AND IT's MAL [E] CONTENTS: Masculine Architectures of Power in Fiji's Political Parties*(Doctoral dissertation, The Australian National University (Australia)); Kant, R. (2025). The contours of masculinity: leadership, ethnicity, and gendered power in Fiji's 2022 elections. *The Round Table*, *114*(5), 608-630.

My submission is therefore less concerned with technical legal drafting than with legitimacy, ownership, power and inclusion: what Fiji's constitutional history teaches us, and what this Commission may need to guard against.

> *Fiji's constitutional problem is not only what is written in the Constitution. It is how constitutions are made, who owns them, who is allowed to shape them, and whether people can see themselves in the final settlement.*

LESSON 1:

FIJI'S CONSTITUTIONAL HISTORY: ELITE SETTLEMENTS AND IMPOSED CONSTITUTIONS

The first point I want to make is that this process should not be read as a clean break from Fiji's constitutional past. It belongs to a longer pattern.

Since independence, Fiji's constitution-making history has moved between two broad tendencies: elite political settlements and imposed constitutions.

The 1970 Constitution was an elite political settlement. It was negotiated at independence by political elites, colonial officials and representatives of the main communities, seeking to reconcile Indigenous Fijian concerns about political security with Indo-Fijian demands for equality and representation. It was not a deeply participatory people's constitution.

The 1990 Constitution was imposed after the 1987 coups. It entrenched Indigenous Fijian political dominance and tried to settle the political crisis through exclusion and ethnic hierarchy. It also required its own review within seven years, under section 77, which is the only reason the Reeves process happened at all.

The 1997 Constitution was more consultative and more inclusive than the 1990 Constitution. The Reeves Commission process mattered, and it involved serious reflection on Fiji's future. But the final Constitution was still shaped through elite political bargaining. It was an elite political settlement, even a more progressive and negotiated one.

The 2013 Constitution was imposed after a participatory process had first been promised, and this is the most important lesson for the present review. The 2012 Ghai Commission ran a process with widespread participation. But the draft that came out of that process was never adopted. The regime released and promulgated its own Constitution instead.

So when we talk about legitimacy, we cannot only ask whether a constitutional text is legally in force. We have to ask whether people feel the Constitution belongs to them.

For me, this is the recurring wound in Fiji's constitutional history: people are invited into the process, but political elites retain control over the final settlement.

> *How does this Commission protect the review process from becoming another moment where public participation is filtered, narrowed or captured by political elites?*

LESSON 2:

THE DANGER OF CHERRY-PICKING CONSTITUTIONAL RECOMMENDATIONS

The second point is about constitutional coherence.

Both the Reeves Commission and the Ghai Commission produced holistic proposals. Their recommendations were not isolated items sitting apart from each other. They were interlinked packages.

Electoral design was connected to power-sharing. National identity was connected to representation. Rights were connected to institutions. Military accountability was connected to democratic transition. Land, culture, citizenship, ethnic relations and reconciliation were all part of one constitutional design.

The danger comes when political actors treat these recommendations like a buffet: taking what is politically useful, leaving what is inconvenient, and ending up with a settlement that no longer holds together.

That happened, in a milder form, after the Reeves process, where elements of the Commission's recommendations were altered through political negotiation. It happened far more dramatically after the Ghai process, in which the Commission's draft was entirely displaced.

This is a major lesson for the present Commission. It should make clear which of its recommendations are interlinked and explain when a recommendation only works because it is tied to another one. That way, if Cabinet or Parliament later removes one part, the public can see what that does to the overall design.

I would urge the Commission to consider a public response matrix or an explanatory document that shows what people submitted, what themes emerged, what the Commission accepted, what it rejected, what it modified, what it deferred, and why.

This may sound procedural, but it is really about trust. The public should be able to distinguish between what the Commission recommends and what political actors later decide to do with those recommendations. Without that distinction, participation can once again become symbolic.

> *Consultation is not enough. Fiji needs traceability. People need to see and understand how their voices travel through the process.*

LESSON 3:

CONSTITUTION-MAKING IN A DIVIDED SOCIETY: DO NOT TRY TO SETTLE EVERYTHING FOREVER

My third point concerns Fiji as a divided society.

Fiji's constitutional history has always been shaped by the difficulty of living with deep difference: race, ethnicity, land, chiefly authority, religion, gender, class, rural location, military power and political history all matter.

In my earlier work on constitutional redesign in divided societies, I looked at Fiji alongside other divided societies and asked how constitutional design might support democratic stability. The key finding was that constitutions in divided societies should not try to permanently settle every foundational disagreement. They should create legitimate, peaceful ways to continue deliberating.

This matters because Fiji has often tried to use its constitution to close debate. The 1990 Constitution sought to close debate by establishing Indigenous political dominance. The 2013 Constitution sought to close debate through formal equality, centralised authority, and a very difficult amendment process.

Both approaches are problematic.

A constitution in a divided society should protect stability, but not by silencing disagreement. It should protect stability by providing people with trusted institutions through which disagreement can be expressed, negotiated, and revisited.

I would frame the Constitution not as a final settlement, but as a framework for an ongoing democratic conversation. This means creating institutions that allow difficult questions to be revisited without requiring coups, crises or abrogations. It means accepting that some questions around identity, land, reconciliation, representation and power-sharing may need structured deliberation over time, rather than a single final answer.

The Constitution should include mechanisms for future review, civic education, inclusive participation and public accountability. It should not be made so rigid that people feel trapped by it. But it also should not be so flexible that political elites can rewrite it for short-term advantage.

Fiji does not need to look only abroad for a model. As I noted earlier, the 1990 Constitution already required a review within seven years, and that requirement is the reason the 1997 Constitution exists at all. The 2013 Constitution dropped it, and the omission has since done real work: in 2017, when Bainimarama was asked in Parliament whether the Constitution could be reviewed, he said it could not, since unlike its predecessor this Constitution contained no review provision, only amendment provisions requiring a three-quarters majority that has never been realistically reachable. That answer only worked because the mechanism had been removed.

A useful comparative model for what a restored version could look like is the Federated States of Micronesia. Its Constitution does not require automatic constitutional change, but it does require that, at least every ten years, voters are asked whether there should be a Constitutional Convention to revise or amend the Constitution. Fiji could consider a similar mechanism. The point is not constant constitutional change. The point is that constitutional review should become a peaceful, scheduled and democratic practice, rather than something that only happens after coups, crises or political rupture.

LESSON 4:

NATIONAL IDENTITY AND INCLUSION

The fourth issue is national identity. It is one of the most sensitive questions before this Commission, and it needs to be handled carefully and accurately.

The 2013 Constitution was the first Constitution to formally establish "Fijian" as the common constitutional identity for all citizens. It is incorrect to say that the 1997 Constitution did this. It did not. The Reeves Commission recognised the need for a common name and recommended that citizens should have the right to use "Fiji Islander" if they wished, while preserving "Fijian" as the English term commonly used for the indigenous people of Viti. The 1997 Constitution adopted the language of common citizenship and multicultural belonging, but it did not constitutionally establish a common name for all citizens. It also retained communal electoral rolls.

The formal constitutional step of naming all citizens "Fijians" was taken for the first time in 2013.

I do not think common national identity should be abandoned. Fiji should not return to a constitutional order that hardens ethnic separation or makes political belonging depend on communal categories. That would be dangerous and backwards-looking.

But common identity must not become blindness to inequality. Equal citizenship should not mean pretending that everyone enters public life with equal power. In Fiji, people do not enter politics with equal access to party structures, land, chiefly networks, religious authority, campaign finance, media visibility, education, security institutions or public legitimacy.

Different communities experience citizenship in different ways. A poor rural woman may be formally equal as a citizen, but still face unequal access to transport, health services, land, income, safety, education and decision-making. Indigenous Fijians, Rotumans, Banabans and Rabi Islanders, descendants of blackbirded peoples, including Kai Melanesian communities, Indo-Fijians, queer communities, persons with disabilities, and rural and maritime communities, all belong to Fiji, but their histories and experiences of belonging are not the same.

Some carry histories of first peoples' authority, land and vanua; some carry histories of displacement, relocation and minority status; some carry histories of indenture, blackbirding, labour, migration and conditional belonging; and some face exclusion through gender, sexuality, disability, class, geography or religion.

Equal citizenship has to mean more than giving everyone the same constitutional label. It has to recognise the different histories, vulnerabilities and relationships through which people actually live citizenship.

The constitutional question is not only whether all citizens are called Fijian. It is whether all citizens can actually exercise belonging, voice and power. That is the difference between formal equality and substantive inclusion.

A purely ethnically blind approach can try to build unity by wishing away social difference. But Fiji's differences do not disappear because the Constitution stops naming them. A more durable approach protects common citizenship while recognising the real histories and inequalities that shape people's lives.

***Keep a common** national identity and the idea that all citizens are Fijians. But don't let it become a way of hiding inequality*

LESSON 5:

RECONCILIATION, BELONGING AND THE REWA/NOCO PROCESS

This leads to the question of reconciliation.

National identity cannot be produced by law alone. A constitution can declare common citizenship, but belonging also has to be built socially, culturally, historically and relationally. That is why community-based reconciliation processes matter.

One example worth raising is the Rewa/Noco process involving descendants of Girmitiyas. On 5 May 2017, Ro Teimumu Kepa, paramount chief of the Burebasaga confederacy, together with Tui Noco Ratu Isoa Damudamu and other chiefs of Rewa, declared that descendants of indentured labourers belonged to the Vanua of Noco and Rewa, and would be known through the iTaukei identity, or i cavuti, of Luvedra na Ratu, meaning the children of the Ratu.

I would not present this as a national solution. It is one local process, shaped by one vanua, one history and one set of relationships. But it raises an important constitutional question: how does the Constitution make space for belonging that is not only legal, but relational?

The Constitution should not try to standardise reconciliation processes. But it can recognise that healing in Fiji will not happen only through courts, commissions or parliamentary reform. It will also happen through communities, vanua, faith groups, women's groups, youth spaces, civil society and local practices of acknowledgement and repair.

This is especially important now that Fiji has a formal Truth and Reconciliation Commission process. The constitutional review and the truth and reconciliation process should not be conducted as if they were unrelated. Both are dealing with the same underlying question: how does Fiji live with the legacies of coups, exclusion, violence, displacement, mistrust and unequal belonging?

This is particularly important for Indo-Fijians. Many are formally citizens, but their belonging has often been politically conditional. They have been told, in different ways across Fiji's history, that they are here but not fully of here. A serious constitutional review has to grapple with that, not by returning to ethnic compartmentalisation, but by building a stronger, more honest account of shared belonging.

> ***National belonging has to** be built, not only declared.*

LESSON 6: ELECTORAL DESIGN, GENDER-BLINDNESS AND RACE-BLINDNESS

The next issue is electoral design.

I want to be clear that I am not arguing for a return to communal voting. Fiji has good reason to preserve common citizenship and a common electoral roll. But the current electoral system also has serious problems.

A single national constituency, open-list proportional representation and a five percent threshold may look neutral on paper. They do not operate in a neutral society. They reward name recognition, party machinery, money, national visibility, ethnic bloc mobilisation and established leadership networks. The system can be formally equal while producing unequal outcomes.

This also means that Fiji needs to think about electoral fairness beyond polling day. Whether people can cast a vote is only part of it. Fair elections depend on the conditions before the election too: whether parties can organise freely, whether media access is fair, whether public resources are misused, whether civil servants are protected from political pressure, and whether the government of the day competes on the same terms as everyone else.

The Constitution should therefore provide clear rules for caretaker government during election periods. Incumbent governments should not be able to use state resources, public appointments, public funds, state media, public events or last-minute legal changes to tilt the electoral field in their favour. Fiji needs safeguards for fair transitions of power as well as fair voting.

In my article with Kerryn Baker on the 2022 elections, we asked what gender-blind and race-blind electoral provisions actually mean in a gendered and racialised society. We found that despite some progressive elements, the 2013 Constitution ultimately entrenched a status quo that remains militarised and dominated by male and ethnic Fijian interests. The 2022 election produced a peaceful transition of power, but the number of women in Parliament fell from ten out of 51 seats (19.6 per cent) to six out of 55 (10.9 per cent), later reduced to five (9.1 per cent) after a resignation.

That is not a small detail. It tells us something about the system.

Women are told to compete equally in a system where the conditions of competition are already unequal. This is why gender equality cannot be left to party goodwill. Parties will say they support women, but their internal structures, candidate selection processes, campaign financing, leadership cultures and informal networks often reproduce male dominance.

The Constitution should therefore explicitly allow temporary special measures: gender quotas, candidate nomination rules, party funding incentives, campaign finance transparency, and requirements for internal party democracy. These are not exceptions to equality. They are what makes equality real rather than only formal.

The same applies more broadly to other underrepresented groups: persons with disabilities, young people, LGBTQI+ communities, rural communities, minority groups, Banabans, Rotumans and others whose political voice can be formally recognised but practically marginalised.

Formal equality asks, "Does everyone have the same right?"

Substantive equality asks, "Can everyone actually use that right?"

Fiji needs the second question.

LESSON 7:

POLITICAL PARTIES, MASCULINITIES AND THE GENDERED ARCHITECTURE OF POWER

This is where my more recent research may be useful to the Commission.

Most constitutional conversations focus on institutions like Parliament, Cabinet, the courts, the military and independent commissions. Those institutions matter. But political parties are just as important. Parties are the gatekeepers of representation. They decide who gets selected, who gets resourced, who is visible, who speaks, who is protected and who is pushed aside.

My PhD research examined FijiFirst, SODELPA, PAP, and NFP. These parties differ in ideology, ethnicity, history and style, but they all reproduce masculinised ideas of leadership.

Masculinity here is not a personal trait. It operates as political infrastructure, embedded in institutions, rituals, hierarchies and everyday practice. It shapes who is recognised as a leader and whose authority is assumed rather than earned. That has constitutional relevance.

If political authority continues to be imagined through masculine scripts of command, discipline, seniority, protection, chiefly authority, military authority, technocratic control or moral respectability, then women and non-conforming leaders are always entering politics on unequal terms. They may be included, but not centred. They may be praised, but not empowered. They may be placed on campaign posters, but not in decision-making rooms.

This is why I would urge the Commission not to treat gender as a women's issue. It is part of how power works in Fiji. A constitution serious about democracy has to ask how leadership is produced, not only how votes are counted. That means looking at political party regulation, internal democracy, leadership selection, campaign finance, political violence, online abuse, and the everyday barriers that keep women and marginalised groups from becoming serious political actors.

The Constitution should not assume parties will democratise themselves. Experience tells us they often will not.

> *Gender is not a side issue. It is part of how power works in Fiji.*

LESSON 8:

PUBLIC PARTICIPATION, NATIONAL SECURITY AND DEMOCRATIC GUARDIANSHIP

One area where I think the Commission should return to the 2012 Explanatory Report is the connection it made between public participation and national security.

The 2012 draft did not treat coups as only a military problem. It recognised that coups are enabled by wider political conditions: weak public trust, weak democratic institutions, elite manipulation, ethnic anxiety, and the failure of citizens to feel ownership over constitutional democracy. That is why the 2012 draft tried to strengthen both sides of the equation. On one hand, it proposed institutions for wider public participation. On the other, it placed the security forces under clearer civilian constitutional control.

The National People's Assembly was one of the most interesting proposals in the 2012 draft. It was designed as an annual space bringing together representatives of government, Parliament, local government, independent commissions and civil society, with civil society in the majority. Its purpose was not to replace Parliament, but to create a common public space where state officials would report on their work, national policies could be discussed, and citizens and civil society could help hold government accountable.

I am not saying Fiji needs to revive the National People's Assembly exactly as proposed in 2012. There may be concerns about size, cost, representation, duplication, or whether such a body could itself be captured by elites. But the principle behind it remains important.

Fiji needs a constitutional mechanism for structured public deliberation between elections. Elections alone are not enough. If citizens only participate every four years, democracy becomes thin. In a divided society with a history of coups and constitutional rupture, people need regular, peaceful and legitimate spaces to deliberate on national issues, hold institutions accountable and build democratic trust.

My recommendation is that the Commission consider a permanent civic participation mechanism, drawing from but not simply replicating the 2012 National People's Assembly. It could be called a National Civic Assembly, a People's Constitutional Forum, or a Citizens' Accountability Forum. Its role should be deliberative and accountability-focused, not legislative. It should include civil society, women's groups, youth, persons with disabilities, faith communities, trade unions, the private sector, rural and maritime communities, Rotumans, Banabans and other minority communities.

The larger point is this: Fiji should move from military guardianship to democratic guardianship. A coup-resistant Constitution will not be built by legal prohibition alone. It will be built on a democratic culture in which citizens have real spaces to participate, security institutions are clearly subordinated to civilian authority, and constitutional disagreement can be managed without rupture.

LESSON 9:

THE MILITARY AND CONSTITUTIONAL GUARDIANSHIP

The next issue is the military.

Section 131(2) of the 2013 Constitution gives the Republic of Fiji Military Forces responsibility for the security, defence and well-being of Fiji and all Fijians. The phrase "well-being of Fiji and all Fijians" is the problem. It is too broad, and it gives the military a constitutional guardianship role over the nation.

This is not just an academic reading of ambiguous words. The RFMF's own public description of its role states plainly that it "shall remain as the custodian of Fiji's constitution." Whatever the strict legal scope of section 131(2) may be, that is how the institution itself currently understands its place in the constitutional order.

In Fiji's history, claims to protect national security, national interest, Indigenous rights, stability, democracy or good governance have repeatedly been used to justify military intervention in civilian politics. A democratic constitution should not position the military as the interpreter of national well-being. That role belongs to the people, through elected civilian institutions. The military should defend the constitutional order. It should not sit above it.

One of the important features of the 2012 Ghai draft was its attempt to remove the military's guardian role and subject it to stronger parliamentary oversight. Those proposals went beyond technical drafting. They were part of a broader effort to break the constitutional cycle of coups and military rule.

The 2012 draft also pointed toward a different model of national security. It treated national security not as military guardianship over society, but as security under civilian constitutional authority. The security forces were to be subject to law, ministerial direction, parliamentary oversight and constitutional legality. This is the direction Fiji should return to.

The Commission should consider re-establishing a constitutionally grounded National Security Council, but as a civilian oversight body rather than a military-dominated institution. It should include representation from the government, the opposition, and parliamentary committees, with the heads of the security forces accountable to that civilian framework. Any domestic deployment of the military should require clear legal thresholds, written authorisation, parliamentary oversight and judicial review.

I would recommend that section 131(2) be amended to remove the broad "well-being" language and to state clearly that the RFMF is subject to elected civilian authority, parliamentary oversight and constitutional legality. This is not about weakening national security. It is about strengthening constitutional democracy.

LESSON 10: IMMUNITY, STABILITY AND TRUTH

The question of immunity is difficult, but it cannot be avoided.

Fiji has often treated immunity as the price of stability. We need to ask what kind of stability it produces. Stability built on silence is fragile. Stability built on impunity is fragile. Stability built on fear is fragile.

The Constitution should not permanently constitutionalise impunity. At the same time, I recognise that Fiji's political history is complicated and that legal accountability, political stability and social reconciliation do not always move in tandem.

That is why the Commission should think carefully about the relationship between immunity, truth-telling, reconciliation and institutional reform. The constitutional review should not duplicate the work of the Truth and Reconciliation Commission, but it should ask what constitutional changes are needed so Fiji does not keep returning to the same cycle: coup, immunity, transition, Constitution, crisis, review.

The goal should not be revenge, but rather democratic repair.

> *Stability built on silence is fragile. Stability built on trust is stronger.*

WHAT SHOULD BE MAINTAINED, AMENDED, REMOVED AND ADDED

Since the Commission has asked what should be maintained, amended, removed or added, I will frame my answer this way: Fiji should keep the parts of the 2013 Constitution that protect common identity, rights and democratic aspiration, but reform the parts that centralise power, protect military or executive authority, and treat formal equality as though it has already solved real inequality.

This should not be approached as a simple list of clauses. Constitutional provisions work together, and if one part changes without regard to the overall architecture, the whole settlement weakens. My recommendations are about the text and about the design.

MAINTAIN

- Common and equal citizenship should stay. The idea that all citizens are Fijian should not be abandoned, and Fiji should not return to a constitutional order that hardens ethnic separation or makes belonging depend on communal categories. But common citizenship needs strengthening, so it does not become a way of hiding real inequality.

- The Bill of Rights deserves the same treatment: kept and strengthened. This includes protection from discrimination; freedom of expression, association, assembly and political participation; access to justice; the rights of children; the rights of persons with disabilities; socio-economic rights; environmental rights; and protection of language, culture and identity. These rights provide an important foundation for democratic life.

- iTaukei, Rotuman and Banaban land, resources, culture and institutions need strong, continued protection. But protection of land and culture is not a political voice, and it should not be treated as a substitute for one. The Fiji Rotuman Association has already put a specific proposal to this Commission: reserved parliamentary seats, a treaty of self-governance between the Rotuma Island Council and the State, and provisions on birthright, diaspora inclusion and citizenship restoration. I would support taking that proposal seriously. Banaba raises a related but distinct question: a community relocated to Rabi in 1942 from an island now within Kiribati's borders has a different relationship to land and displacement than an indigenous population on its own island, and that difference deserves its own answer rather than a single shared clause for both communities.

- A secular state should also remain part of the settlement: not as hostility to religion, but as equal protection for all faith communities and for those who belong to none. This matters in a society where religion carries real political weight.

- The national security framework should also be amended. Fiji should consider a civilian-led National Security Council with parliamentary and opposition representation. The military, police and corrections services should be clearly subject to law, ministerial direction,

parliamentary oversight and judicial review, especially where domestic deployment or emergency powers are involved.

- Constitutional change should continue to require public consent. A constitution should not be easy for a government of the day to change for political convenience. But that consent has to be meaningful and workable: entrenchment should protect the people, not trap them. A permanent civic participation mechanism should also be considered, drawing from but not simply replicating the 2012 National People's Assembly. Its role should be to facilitate structured public deliberation between elections, receive reports from key institutions, and enable civil society and communities to hold the state accountable without supplanting Parliament.

- Fiji could also consider a regular constitutional review question, modelled on the Federated States of Micronesia, in which voters are periodically asked whether there should be a Constitutional Convention. This would not require automatic constitutional change. It would simply create a peaceful, scheduled and democratic opportunity to ask whether reform is needed.

- Independent institutions, including independent electoral, accountability, human rights, judicial and integrity bodies, should remain part of the architecture. Their current appointment and accountability arrangements need serious review, though, so independence is protected in practice and not only declared on paper. Section 45 already gives the Human Rights and Anti-Discrimination Commission a mandate to monitor and report on human rights, for instance, but a mandate nobody is required to act on is easy to leave unused. A mandate needs a consequence attached to it, or it stays theoretical.

AMEND

- Section 131(2) on the military should be amended first. The phrase "security, defence and well-being of Fiji and all Fijians" is too broad, and it gives the military a constitutional guardianship role over the nation. The RFMF's role should be limited to defence and national security under elected civilian authority, parliamentary oversight and the rule of law: it should defend the constitutional order, not interpret the nation's political well-being.

- Parliament's own oversight tools need to bind whoever is in government, not just whoever is in opposition. Committees, the power to call for evidence, and the office of Leader of the Opposition already exist on paper, but the Business Committee process has let successive governments screen out opposition questions and motions before they reach the floor, and the current coalition suspended its own Leader of the Opposition from Parliament for three years in 2023. Whichever party benefits from that control today, the next one will use it against whoever is in opposition tomorrow. Opposition representation on key committees, a guaranteed share of parliamentary time, and a right to call evidence that the Business Committee cannot simply decline to schedule would fix this.

- Electoral design needs review. Again, I am not arguing for a return to communal voting; Fiji should keep common citizenship and a common electoral roll. But the current single national constituency, open-list system and five percent threshold reward name recognition, party machinery, campaign money, national visibility and established leadership networks, in ways that make it hard for women, younger candidates, persons with disabilities, rural leaders, minority voices and locally grounded community leaders to compete on equal terms. The Commission should consider whether Fiji needs a more balanced design: some form of mixed system, clearer geographic accountability, a lower threshold, or other mechanisms that preserve proportionality while making representatives more accountable to communities.

- Political parties need a proper legal framework. They are not simply private organisations; they are constitutional gatekeepers, deciding who gets selected, who gets funded, who is visible and who is treated as a serious leader. The Constitution or supporting law should require genuine internal party democracy, transparent candidate selection, gender and diversity commitments, and fairer rules around financing.

- Campaign finance is one of the weakest links in the current system. It needs clearer rules on donations, spending, disclosure, third-party campaigning, use of state resources, media access and online political advertising. Without transparency here, formal electoral equality means very little.

- Media freedom needs a harder look too. Section 17's free expression guarantee is still subject to an unusually wide set of limitation grounds, and section 150's requirement that Parliament eventually legislate for access to information dropped the 1997 Constitution's requirement that it do so within a reasonable time. Neither has an equivalent for the online environment, where most political information now travels.

- **Caretaker government rules should be added or strengthened.** The Constitution should include safeguards for fair transitions of power, not just fair voting. Incumbent governments should not be able to use state resources, public appointments, public funds, state media, public events or last-minute legal or administrative decisions to advantage themselves during election periods. Fair elections depend on the whole pre-election environment, not only on polling day.

- Appointment processes for independent institutions need to change too, including the Constitutional Offices Commission and the bodies responsible for elections, accountability, human rights, anti-corruption, the public service and the judiciary. These should be more transparent, less executive-dominated, and subject to clear criteria, public scrutiny and parliamentary oversight.

- The amendment procedure itself needs revisiting, so the Constitution stays protected without becoming practically impossible to change. Fiji needs a serious, deliberative, people-centred process for amendment, not one so rigid that reform becomes almost unreachable.

- Provisions on emergency powers, rights limitations and public order should be tightened, so rights cannot be restricted too easily in the name of stability, security or national interest. Any limitation on rights should be necessary, proportionate, reviewable and subject to judicial oversight.

- Local government, decentralisation and community participation deserve more attention than the current text gives them. Fiji is not only Suva. Rural communities, maritime communities, informal settlements, provincial spaces, municipalities and outer islands need real pathways into national decision-making.

- Finally, the treatment of reconciliation should be expanded. The constitutional review should not sit apart from Fiji's wider truth and reconciliation process; the Constitution should make space for national and community-based reconciliation without turning local practices into state-managed symbolism.

REMOVE OR FUNDAMENTALLY REVISE

- Any provision giving the military a broad guardianship role over Fiji's political life should go. Military authority should not sit above civilian democracy.

- Provisions that constitutionalise impunity without any pathway to truth, accountability, reconciliation and democratic repair should be removed or substantially revised. Stability cannot depend forever on silence. Where immunity provisions cannot be fully removed immediately, they should at least be tied to a robust truth-and-reconciliation framework.

- So should any provision that places particular decisions, decrees or past actions beyond meaningful democratic or judicial review. A democratic constitution should not permanently shield executive or military power from accountability.

- Institutional arrangements that let the executive dominate supposedly independent offices need revising as well. Independence cannot depend on the goodwill of the government of the day; it has to be built into appointment, removal, funding and reporting processes.

- And more broadly, Fiji should move away from any design that treats formal sameness as sufficient. Race-blind and gender-blind provisions can look neutral while reproducing inequality if they ignore the social and political conditions in which people actually participate. What needs removing is not common citizenship, but the assumption that common citizenship alone creates equal power.

ADD

- A stronger substantive equality clause belongs in the Constitution: one where equality means not only equal treatment before the law, but the state's ability to take active steps against historical, structural and institutional disadvantage.

- Temporary special measures deserve explicit protection: gender quotas, candidate nomination requirements, party funding incentives, disability inclusion measures and similar mechanisms. As I said earlier, these are not exceptions to equality; they are how equality becomes real rather than only formal.

- **Access to constitutional justice should be strengthened.** Rights are only meaningful if people can enforce them. Individuals, communities, civil society organisations and public interest groups should have standing to bring constitutional claims where rights are violated, or where affected communities cannot easily litigate on their own behalf. This is especially important for people and communities who may not have the resources, safety or political power to take cases to court by themselves. Constitutional rights should not exist only for those who can afford lawyers.

- Violence against women in politics, online abuse, intimidation, harassment, hate speech and gendered disinformation all need explicit constitutional protection. Political participation means little if people are bullied, threatened or shamed out of public life.

- Civic education needs clearer constitutional backing. Consultation during constitutional moments is not enough; people need ongoing access to civic education in English, iTaukei, Fiji Hindi, and Rotuman, and in accessible formats for persons with disabilities. Constitutional literacy is part of democracy, not an afterthought.

- Future constitutional and electoral reform needs binding requirements for public participation: publication of draft texts, accessible summaries, public hearings, targeted consultation with marginalised groups, and enough time for people to respond meaningfully.

- For this review specifically, strong transparency protections should be built into the process: publication of the Commission's full report, publication of the draft Bill, a summary of submissions received, an explanation of how submissions shaped recommendations, and a public record of any later changes made by Cabinet or Parliament.

- A formal mechanism for future constitutional review would help Fiji avoid waiting for the next crisis before revisiting unresolved questions. A scheduled review, every ten or fifteen years, could allow peaceful constitutional reflection without coups, abrogations or political rupture.

- Reconciliation and belonging deserve clearer recognition too: space for truth-telling, community-based reconciliation, cultural recognition and local processes of repair, including processes such as the Rewa/Noco recognition of Girmitiya descendants as Luvedra na Ratu. This should not become a national template. It shows that belonging is relational as well as legal.

- Fiji's diversity within common citizenship needs the same explicit recognition: iTaukei, Indo-Fijian, Rotuman, Banaban and other communities, alongside women, youth, persons with

disabilities, LGBTQI+ communities, rural and maritime communities, and others historically pushed to the margins of political life.

- Climate justice, ocean protection and intergenerational responsibility deserve a firmer constitutional footing. For Fiji, climate is a constitutional issue as much as an environmental one: it touches land, displacement, food security, water, housing, culture, sovereignty and the rights of future generations.
- And finally, ethical public leadership needs firmer safeguards: integrity rules, conflict-of-interest obligations, anti-corruption protections, transparency in public appointments, and real consequences for abuse of office.

So, in short, my position is this:

- maintain the rights-protecting and inclusionary promises of the 2013 Constitution;
- amend the structures that centralise power and reproduce exclusion;
- remove or fundamentally revise the protections built around military, executive or authoritarian power; and
- add the safeguards that make common citizenship, substantive equality and democratic accountability real rather than declared.

CLOSING REMARKS

A constitution should not simply organise government. It should organise trust. It should tell citizens who holds power, how that power will be limited, how it will be shared, and how it can be questioned and made accountable.

The 2013 Constitution contains important rights language, and that should not be dismissed. But rights language is not enough if the institutions around it continue to reproduce militarised authority, executive dominance, gendered exclusion and unequal access to representation.

The task before this Commission, as I see it, is to help move Fiji from formal equality to substantive democratic inclusion. That means maintaining common citizenship while recognising real inequality. It means protecting rights while reforming the institutions that make those rights hard to exercise. It means replacing military guardianship with civilian constitutionalism. It means treating gender, race, class, disability, sexuality, age and geography not as side issues, but as constitutional questions. And it means showing the people of Fiji, concretely, how their views shaped the constitutional future they ended up with.

Fiji does not need a Constitution that merely declares unity. It needs a constitutional order that builds trust, shares power, protects civilian democracy and makes equal citizenship real.

Vinaka vakalevu.

Fiji Institute of Chartered Accountants (FICA)

1984

Fiji Institute of Chartered Accountants
Date: 7/7/26

Mr. Valenitabua: The Constitution review commission this morning. The commission this morning is, uh, represented by the commissioners. Miss Nailatikau, right on my far right, next to her is Mr. Conway Beg. I am Sevuloni, the chairperson. On my immediate left, is Mr. Kohli, I'm a colleague, lawyer of Labasa, and on the far left is Dr. Gounder. I'm sure you do know, Mr. Conway very well. We have a commissioner sitting this morning. Uh, we have a short hour to deal with, uh, your consultation, so I will not.talk too much in relation to introductions. Except to say that we are here to listen to you. Give us your submissions. If you could be brief or summarize, and we will listen to you. That is what we are here for today.to listen.to your submissions. Now, without further ado, I now head you over the mic on the floor to start with your submission this morning. Thank you.

Rajit. Maharaj: Thank you, uh, chair, and, the CRC members. Uh, on behalf of the FICA Council and the President, uh, my name is Rajit Maharaj. And with me, I have the President, Mr. Ravinesh Singh. The submission that we have documented, it is by the members' contribution, and we had a consultation by Mr. John Apted, who has taken us through the 2013 Constitution. We have a request process through which we have prepared this submission. Just on the background of what the institution is, we are just after the independence 1972, these Fiji Institute accountants. Institute of Tadal Contents under the act of 2021. Our role includes good governance, accountability, transparency, ethical leadership, and sound public financial management. And this is where we are here today to present to the CRC commission our submission. I'll not take much, but I'll go through the executive summary.

The Constitution is the supreme law of Fiji, and provides foundation upon which democratic governance, the rule of law, public administration, economic development, and the protection of fundamental rights, and freedom are built. As Fiji continue to revolve, evolve socially, economically, and institutionally, the current prostitution review presents an important opportunity to ensure that the Constitution not only responds to present their challenges, but also provide the strong and enduring framework for

future generation. The FICA, as the statutory body, representing the accountancy profession in Fiji, has a low-standing commitment to promoting good governance, accountability, transparencies, sound public financial management, and sustainable economic development. These principles are fundamental, not only to the accounting profession, but also to the effective governance of a modern democratic nation. It is, therefore, appropriate that FICA contributes constructively to the Constitutional Review Commission's consultation process by identifying areas where the constitutional framework may be further strengthened in the public interest.

The submission presents a balanced package of constitutional reforms intended to strengthen Fiji's governance framework, enhance his additional effectiveness, reinforce public confidence in national institutions, support sustainable economic growth, and promote long term national resilience. Their recommendations have been developed following a comprehensive review of the Constitution of 2013, consideration of the CRC's terms of reference, and the consultation objective, comparative constitutional practices from a range of democratic jurisdictions, and internationally recognized principle of good governance, accountability, and the rule of law. You may see there are 2 broad categories. We have marked in section A in section B, and I think section B is where we are proposing for additional provisions that the Constitutional review Commission should consider, and we have mentioned in the respective jurisdictions. So the 1st category proposes, targeted amendments to existing constitutional provisions, we have considers the current framework could be strengthened to improve governance, accountability, and institutional effectiveness. These include recommendation relating to citizenship, electoral arrangements.

Mr Valenitabua Pardon me Mr Maharaj Yeah. Could you refer us to the pages you were reading from?

Rajit. Maharaj: I'm on page number six, as you go on it?

Mr. Valenitabua Okay. I'm on page number six

Rajit. Maharaj: Sorry, chair. Thank you. The public service commission, the electoral commission, cabinet appointment, the 5 kick, legal aid, public finance, the auditor general, natural resource governance, environmental stewardship,

the code of conduct, and the constitutional amendment process. The 2nd category proposes the introduction of new constitutional principles that are not presently recognized within the 2018 constitution, but which reflect contemporary constitutional thinking and the evolving needs of Fiji.

These include the introductions of constitutional duties of citizens, directive principle of state policy, intergenerational equity, long-term national development training, physical responsibility principles, digital governance, climate resilience, national integrity, constitutional appointments, and stronger public participation in major national decisions. Recognizing that sustainable national building extends beyond public institutions alone, this commission also recommends constitutional recognition of the important contribution made by families, caregivers, volunteers, and other older patients. These recommendation acknowledged that unpaid care war, family responsibilities, volunteerism, and community service contribute significantly to Fiji's social cohesion, economic productivity, and national well-being. The submission, therefore, proposes that the Constitution provide greater recognition to the role played by families as foundation of society, and encourage policies that support Caregivers, protect older persons, strength and responsible, parenting, and promote civic participation.

Underlying all the recommendations contained in this submission, is a common objective to ensure that Fiji's constitution remains a living framework capable of responding to changing national circumstances while preserving democratic values, constitutional stability, and the rule of the law. The recommendations seek to strengthen public institution, improve accountability, encourage responsible citizenship, promote sustainable economic development, and ensure that the interest of future generations are considered in today's constitutional and public policy decision. Thus, we recognizes that constitutional reform requires careful consideration, broad consultation, and national consensus. Accordingly, this paper is presented as a constructive contribution to the CRC's review, process, and is intended to assist informed decision on how Fiji's constitutional framework can continue to evolve, in good support, governance, economic resilience, social cohesion, and long-term national prosperity. While the document has got one tier two, which talks about the proposed changes and the new provisions. We have also some priority constitutional reforms, which are

highlighted there and which pick are things if considered. By the CRC, they strengthen governance and institutional integrity, promote merit-based public administration, review Fiji's electron system, strengthen economic governance and physical responsibility, and enhance the national integrity and anti-corruption framework. Promote responsible citizenship, and civic responsibility, embed long-term national development, and intergenerational equity. These are further defined in section 7. Part seven, uh, under part seven. So um, I think much has been covered in the executive summary. So I'll allow the Chair and the members of the Constitutional Review Commission. If they can go over to the document, if you have any queries, we are here to answer. And I ask my president to contribute from here.

Mr. Valenitabua: Interesting. We will hear you until the end of your submission, and then we will discuss.

Ravinesh. Singh: Thank you, sir. Um, I just, uh, wanted to highlight a few things that he's already mentioned. Um, um, Jen, the members of Costume Review Commission, we're not going to clue for the opportunity, uh, to present fecal submission, FICAs not here to advance a political position. Our submission is intended as a constructive contribution to strengthening Fiji's constitutional framework for the long term. So, our constitutional, what we, at FICA, we think our constitution should not merely govern the Fiji of today. It should help shape the Fiji future generations will inherit.

So, I've got 4 key messages that I wanted to, apart from the executive summary, that if shared is message number one, strong institutions, build public confidence, and these are all detailed in our submission, suffices that constitutional reform should strengthen democratic governance, institutional independence, accountability, and integrity across public institutions, the institutions highlighted include the public service commission, FICAC, Auditor General, electoral commission, and the constitutional code of conduct as part of the governance and institutional integrity reform agenda. I think strong institutions are not a political preference. They are the foundation of public confidence, and economic stability and the rule of law. Institutional independence should be strengthened where appropriate, Oversight bodies should be accountable, transparent, and properly empowered. Public confidence depends on

institutions that operate beyond political cycles. Because position is aligned with its mandate to promote accountability, transparency, public sector, financial management, and institutional confidence. I think this will bring a stronger foundation for the Fiji that we want to see in future.

My 2nd message is merit by public administration matters. So the submission argues that appointments, promotions, and leadership positions in the public service and constitutional institutions should be based on merit, competence, integrity, and demonstrated capability. It also recommends strengthening the constitutional role of the public service commission to enhance professionalism, institutional continuity, and public confidence in government administration. A professional merit-based public service is one of the most important investments a country can make in a stable governance. Merit based recruitment and promotion reduce politicization, public service capability affects delivery of national priorities, institutional continuity matters, regardless of changes in government. This is directly linked to figures governance and accountability mandate.

The third message is, physical responsibility should be constitutional principle, because strong technical contribution is in physical governance. Submission states that responsible management of public finances is essential to public confidence and protecting future generations. It recommends constitutional principles around prudent borrowing, sustainable debt, transparency and expenditure, balanced budget, subject to emergencies, and intergenerational Fiscal responsibility. The third message, Fiscal responsibility is not just an annually budget issue. It is a constitutional stewardship issue. Public debt decisions made today affects future taxpayers. Strong physical principles support investor confidence, and economic resilience.

Transparency in public expenditure strengthens accountability. Long-time infrastructure and public development planning should not be limited by short electoral cycles. The 4th and final message that's in the submission is the future generation should be explicitly recognized. A central team of the submission is intergenerational equity. The document states that the decisions made today on public finances, infrastructure, education, national resources, and environmental stewardship will shape

opportunities available to future generations. It recommends that Constitution express expressly recognize stewardship of national assets and long-term national development planning. The constitutional question we should ask is, will this decision leave each stronger for the next generation? Constitutional reform should anticipate future challenges, not merely respond to the current ones.

Long term planning should cover public finances, infrastructure, environment, and national development. Fiji needs institutions capable of continuity, resilience, and evidence based decision making. Intergenerational equity is the submissions unifying principle. FICA respectfully submits the constitutional reform, should be carefully, careful, consultative and guided by national consensus. Our recommendations are not intended to replace the foundations of the Constitution, but to strengthen them. We ask the commission to consider whether FICA can more really support 3 enduring outcomes, strong institutions, strong economic governance, and stronger stewardship for future generations. Ultimately, the measure of reform should be simple. Will it strengthen Fiji for present and future generations? Thank You.

Ranjit Maharaj: If I may start on page number 21, and through which we have constructive discussion.

Mr. Valenitabua: Please proceed.

Ranjit Maharaj: Question 1, values of the state, constitutional values. The recommended amendment is to include additional constitutional values, recognizing the meritocracy, innovation, national activity, physical responsibility, are in the 21st century chair. We need to know how the demographics... of technology and digital market is changing. There should be some provisions for innovative measures, for creative measures.

That is what we are talking about in section 1. Section 5, citizenship. By the review, the constitutional framework governing citizenship by nationalization to ensure that in addition to local residents and good character, applicants demonstrate a genuine commitment to Fiji through meaningful and positive contribution to the nation's economic, social, professional or civic development. We have now, the world is moving and

nobody is sticking to their own country. Due to the liberty, everybody is moving from one country to another country. We have got skilled workers migrating out of Fiji and we have immigrants coming in. We have to be mindful in terms of just giving a 10 year period of being in Fiji, should not govern somebody to be a citizen of a country. There should be a criteria set in terms of what are the language barriers.

They should fulfill, they should meet what contribution they will put towards the country if they are given the citizenship. The electoral eligibility, the candidates seeking to election ensure that they support democratic participation while maintaining appropriate standards for public opinion. A set of criteria should be there in terms of minimum MQR in terms of a candidate to run for election. Electoral system. The current electoral system is determining whether it continues to provide the most appropriate balance between fairness, accountability and effective democratic representative. I think this must have been held by the National Review Commission in terms of one open constituency.

While we had the constituency elections, we believe it should be on the merit base, not on ethnicity divisions. There should not be one open constituency. It should be by the demographics, where the fair representatives are made through the demographic, and it also fails in the 5% threshold for political party, which is also equivalent to an independent candidate. So, an independent candidate to go to the threshold of 5% will be a challenging one. So, even the Constitution Review Commission can consider on that. The theme of the parliament, currently 4-year theme, we believe in terms of the cost, the size of the population of this country. A five-year term of a parliament for government should be considered. I will not touch on the electoral commission, but we have already highlighted the line on that. Section 91 and 96, the cabinet, there should be a limited cap for the cabinet size. And also, on very exceptional cases, there should be a provision if there is a person or the minister is limited, not within the Government, the government side should be from outside but through the deep process.

Currently we have the provision for the OTT, Attorney General, but there should be provisions for at least if there is no one capable for one ministry, for instance, Ministry of Health. The government side do not have anybody

who is a practitioner and we make somebody to be a minister of any other field. So, there should be a problem here to strengthen its governance, accountability and public confidence. Consider establishing FICAC as an independent investigative agency within the Fiji police force, just like how CID is.

We have been in the recent numbers, current consultation processes and workshops during the public service site, 42,000. So we should streamline on having FICAC, and also the prosecution should be under the Office the Public Director of Public Prosecutions. Legally. Retain the constitutional right to legal assistance while undertaking a comprehensive review of the legal aid framework to ensure the efficient, equitable and sustainable use of public resources. Our objective is not to diminish or to eliminate legal aid, but the constitution may consider whether legal aid services are best delivered through a dedicated statutory authority. or through an accredited panel of private legal practitioners reimbursed by the state as prescribed rates. Currently, this practice is there with Ministry of Health, where the GPs, the patients can go to any general practitioner where the state has prescribed them, accredited them, and then the replacement can go by the state. We are measuring the cost and the taxpayer's funds.to two different entities, but both fighting for, I am not sure, the criminal or the other side. We have DPP and we have got legal aid, and both are been paid by the taxpayers. So, the CRC should consider on this.

The Public Service Commission expands constitutional responsibilities of the PS to oversee merit-based recruitment, promotions, examination, discipline and ethical standards across the public. The Auditor General section requires timely parliamentary consideration of audit reports together with mandatory government responses to significant findings. As the speaker president has highlighted on public finance, we strongly believe that there should be balanced budget, physical sustainability, prudent debt management and long-term infrastructure investment.

Natural resources royalties replace fixed royalty concept with constitutional principle promoting equitable, transparent and sustainable benefit sharing based on economic retains. as we have the climate change and climate act, strength and constitutional protection for biodiversity, climate resilience and sustainable development for present and future

generations. Code of conduct, strength and integrity obligations to asset detection, conflict of interest, provisions and host public employment restrictions. Here the ethics and the independence and good governance should be the key priorities. So, these are some of the things that the institute thinks as part of current constitution. Section B, proposed new constitutional principles for Fiji's future.

I take you to page number 27. So, fundamental duties of citizens. The current constitution provides extensive rights, but does not prescribe civic responsibilities. Introduce a chapter outlining the responsibilities of every citizen to uphold the constitution, obey the laws of Fiji, protect public property, preserve the environment, respect the rights of others, promote racial harmony, respect indigenous cultures, participate in democratic processes, and contribute positively to national democracy. The reference has been made to Article 51 A of India's constitution.

Directive principles of state policy, now constitutional frame of guiding long term public policy objectives. CRC can consider to introduce constitutional principles requiring government to promote employment, education, agriculture, full security, innovation, digital transformation, rural development, public health, housing, climate resilience and sustainable economic growth. Future generations and intergenerational equity. Sustainability is recognized generally, but there is no constitutional obligation to consider future generations. Require the state to manage public finances, natural resources, environmental assets, and strategic infrastructure in trust of present and future generations and responsible stewardship of national assets, as alluded by the President.

National Development Commission We know that there is a national development plan, but there should be, but there is no constitutional requirement for a long-term national planning. So, established an independent constitutional commission responsible for preparing and periodically reviewing a role in NDP within 20-year national plan, and should not be just for the current government, should be, the NDP should be for any government to come in. National integrity framework. Integrity provisions exist in separate institutions but are not integrated. Introduce a constitutional framework covering ethics, conflict of interest, whistle blower protection, document integrity, lobbying, transparency and public

sector accountability. Rational, public confidence in government institutions and promote ethical leadership. As I mentioned in terms of the technology shift, digital governance and data protection. The constitution does not address digital governance. One major factor currently if everybody can see is our Facebook, social media.

Anybody can post anything and anybody can comment on any particular post. While we have got online safety, but I think if it is part of the constitution, then becomes the supreme law. The rationale on this is future proves the constitution against technological developments. We do not know, our next generation can see robots walking in Fiji. Climate change and rational resilience, environmental rights exist, but climate resilience is not specifically recognized. Reflect Fiji's vulnerability as a small island developing state. I think we have talked about and I think this should be part of the constitution.

National productivity, innovation in skills development. Education is recognized, but national productivity is not. And I think we should promote as part of the institution. We have our own membership base and we do our professional development CPD. hours and CPE hours to our members, but there should be some provision to promote quality education, technical educational training, TVET and STEM, and they are jurisdictions in the Asian countries, which have constitutional appointments permission, appointment powers are dispersed among institutions. So, enhance institutional independence. and public confidence. Establish an independent constitutional appointment commission responsible for recommending appointments to key constitutional offices by competence and competence integrity. Introduce constitutional principle recognizing the state's responsibility to plan, develop and maintain strategic public infrastructure that promotes national development and economic prosperity.

Where nationally significant projects require the acquisition of land or the relocation of affected communities, the constitution should require transparent decision making, meaningful consultation, independent assessment, fair and timely compensation, protection of cultural heritage and the environment, appropriate resettlement arrangements and compliance with due process under the law. The other topics are on the

social care, recognition of unpaid care, work and family responsibility, rights and dignity of older persons, protection of families, community service and voluntarism. This may be touch-based and considered by the CRC. Through economic value, Dr. Neelesh Gounder would know better in terms of no finance, has been involved in there, but there is economic value which are been measured only by the economists and cannot be measured because there is no value tied towards them. So, these are some of the provisions that we have and as I highlighted during our introduction, the priority areas, which has been listed on page 81, priority constitutional reforms. I think I have taken through the entire document in summary. If the CRC has got any questions for what we are proposing, we are happy to take it, questions.

Mr. Valenitabua: We will have discussions now then we will see what happens after. Mr Kohli.

Mr Kohli: I have two questions for you Mr. Maharaj. First of all you are proposing a five year parliamentary term. New Zealand has three years, Fiji has four years at the moment. We are proposing five years. If we are stuck with a bad government that means basically we are stuck with them for five years. Whereas if you've got a good government for four years or three years, they can always come back. So what's your views on that? Do you still feel that five-year term should be there? Because there is something that has to go in the constitution.

Ranjit. Maharaj: Thank you for your question. It's a good question. When we were putting this together, we knew that there will be a little bit of question on this. We are not proposing. We are only suggesting that the Constitutional Review Commission should assess and see whether five-year parliamentary term is feasible. Obviously, making sure that we are maintaining a good governance. So, we are not proposing. We are saying we should consider. So, that will help with the economy as Fiji reduce the overall expenditures incurred while having frequent elections. So that was our suggestion only. But obviously that has to be carefully reviewed by the Constitutional Review Commission. Thank you.

Mr. Valenitabua: Dr Gounder.

Mr. Gounder: Thank you, Chairman. Thank you, Mr. Maharaj and Mr. Singh, for your submission this morning on behalf of the Fiji Institute of Chartered Accountants. It's a very comprehensive submission, and we have also discussed...the argument or the rationale behind your submission. You have made 13 very broad recommendations, but some very specific recommendations as well. Section 5 of the Fiscal Management Act.

So we will see how we can strike a balance between what should go in the constitution and what should ideally remain in an act. But your fundamental arguments have been noted in the area of fiscal governance. You also talked about accountability, fiscal discipline, as well as budgeting systems. So they all are taken on board. You have also talked about the issue regarding natural resources and environmental issues. And you have also submitted regarding the National Development Plan. And I think that's something that we'll be looking at since we have received... the Ministry of Strategic Planning as well regarding the national development planning processes and the implementation of national development plan and also your argument that when governments change, then national development plans, if they are still effective, must continue until the life of the plan comes to an end, then the government can develop a new plan.

Your argument is that hen government change, plans remain still active. So we take those points on board. Just one last point. Valuing community services and volunteerism. That's a very interesting submission. That's a very important one as well. This is something that is usually overlooked. The example that I usually give is the education sector. 99% of schools are run and owned by religious bodies and rural communities and villages. And they are based on charity and volunteerism. So you make a good point about recognition of charity, volunteerism, community service and civic development, etc. So that's all I have. Just some reflections and points that you have highlighted. No question in particular. But I want to thank you for your submission this morning.

Ms. Nailatikau: Thank you Mr. Maharaj and Mr .Singh just a brief reflection followed by two questions. I really appreciate the member-centered approach that you took and the efforts that you made to inform yourselves and the targeted proposal amendments as well as principles. And I see that you've also included other jurisdictions and other references that we can benefit from. I

also wanted to draw attention to what you were hearing from members, particularly relating to what Dr. Gounder was saying around a National Development Commission, which from what I understand in your submission is about decoupling political cycles from national development cycles, which should ideally be independent and much longer term than a government term, for example. So we'd really like to hear more of your thinking towards that, how such a commission might be able to operate. And secondly, really... to digital governance, digital protection.

As we see, many countries across the world are racing to keep up with the progress of technology relating to protection, but also artificial intelligence. I'd be interested to hear how that's playing out in the experiences of your members. So just would invite you to expand on the National Development Commission thinking, since it's a new type of setup which you are proposing, or perhaps an adaptive setup, as well as data governance and more technology forward looking related proposals.

Ranjit Sing: I'll take the intergenerational and he'll take the one. I think, so, when we said intergenerational equity, what we're trying to talk about is... Trying to prepare our country for future. So if I look at the countries like Singapore, they started from somewhere, but they are preparing for probably the next 20 years. And I think when we are drafting our constitution, what we are saying is we should be preparing for the future. Like for us accountants, we are at the moment preparing for future with AI coming in.

How will that shape the accounting profession? How will that, how does, how do we as an accountant are relevant in the profession? So this is the transition that's happening in the profession and I think similarly with the Constitution and with the country, I think we should look at how the world is changing, how the world is evolving, and how can our Constitution be forward-looking. And changing this change and making sure that we are taking... account of all these changes that's coming in technological changes the mobility labor mobility so when originally the constitution was done nobody thought about the labor mobility nobody thought about that we'll have so many immigrants uh working in Fiji but right now it's happening so I think these are some of the things that the constitution review commission can look at and make it a future proof so i think one of the things that constitution reform should and is the future challenges and not merely

respond to the current ones. We have huge challenges today, but there will be future challenges. How can we change our constitution to future prove that? I think long-term planning should cover public finances, infrastructure. So we are developing infrastructures, but we are not developing it for the next 10, 20 years. We're not thinking that far. I think the constitution should be... that forward-looking and preparing the structure for the next 50 years, next 100 years.

Again, taking into consideration how the world is evolving. And there are a lot of developed countries that we can take the learnings from. Best practices we can bring in Fiji and in the current constitution and implement them. We can start learning from some of the failures from those developed countries. There are a lot of learnings that we can take and implement. it here. Environmentally, how are we looking forward? How are we contributing to the sustainable development? Again, Fiji's institutions are capable of continuity, resilience, and evidence-based decision-making. So we need a lot of evidence. We have a lot of evidence, and we should be using that to make our decisions, not get too emotionally caught up when we're making decisions.

So I think those are...COVID, for example, has taught us to be resilient. I mean, we are relying solely on tourism industry. Hitters, in a very good shape, but we came out of that. We are resilient, but I think the Constitution should look at how we can be resilient if anything as such comes in the future.

Ranjit Maharaj: Thank you. Ms. Nailatikau In terms of the digital, I think two things we should consider. I just realized I did not put or the institute did not put anything in terms of the natural intelligence. While the artificial intelligence is taking shape, we should also consider the natural intelligence. We should not undermine that natural intelligence. A day if the technology is down, 50% of workforce will not be able to work. In terms of digital, what we had in mind is the data protection, your individual's identity theft, Cyber securities, everything currently will be moved towards a hub, and we have got the CFO of Telecom Fiji here, and they are walking towards so much, so many projects currently happening in Fiji. While we have got RBF of doing our national ID, a lot of things are happening. So there should be something that is under the Constitution, that every citizenship is every citizen. That's your

right, but at the same time, it is a responsible citizen. You should take this. You should not refrain from not taking any of the developments that the government or anybody in power comes and says this is beneficial, but there is nothing under the Constitution says.

The Constitution doesn't allow me to be having this national identity card. So if it is under the Constitution, that's why I said there is a provision there to have civic pride. In that civic pride, we, as citizen, should uphold the Constitution, the law of law, and what has been governed to us. So, in terms of the digital governance and data protection, if, for instance, we have a national ID, or anything in that matter, I repeat again, not everybody will be saying yes to it. So if it is under the Constitution, people will say yes, I'm being governed by the Constitution, the Constitution is telling you to do this. So people will comply based on what's in the Constitution. The freedom is there, but the constitution is telling you to take these. So that's the consensus we had in terms of, otherwise, people will refrain from not taking, you know, the data protection, whatever the digital transformation that we are wanting to change. Some may object to this.

Ms. Nailatikau: Thank you.

Mr. Valenitabua: We'll have, uh, maybe one or two more question before I have to close, because we have one hour.

Mr. Kohli: Yeah, thank you chair. Mr. Maharaj, you are particularly concerned about your last issue I've raised. You have said that if you have something in the Constitution, which is the supreme role, then people be obligated to follow it, like you're talking about identity card. But then again, when video consultations, whole idea of having a constitution is something that is acceptable by people, not something that is imposed upon them. So how do you reconcile that? Here, we are writing a conversation, acceptable to everybody, and in consultation with everybody, which is for betterment for everybody.

Ranjit. Maharaj: Uh, thank you, Mr. Kohli, Thank you Mr. Chair. Um, very bullet point, and, uh, thanks for rising there. This should be articulated in a manner that it coincide between the supreme law and to the freedom of a person. I'm not saying you

impose it onto the citizens, but there should be a provision as a civic pride. It can be mandatory. Maybe the word could be may, not must. Thank you.

Mr. Valenitabua: One, uh, last. Question... Mr. Maharaj and Mr. Singh. At page 24 of your submission. You have address Section 118? and 13 to 15. Which deals with legal aid. I am a practicing lawyer. Mr. Kohli is a practicing lawyer. There is the legal aid commission. They give free services to the people of this country. From what I read of your submission, you are recommending, or suggesting that the... legal aid services, be... reduced... If that is a proper word, you might want to correct me. And that is, for the purpose, to save administration costs, and also, of course, do the taxpayers. You can correct me. That legal aid commission was established because people could not afford lawyers.

They just found paying for Louis, you know, too expensive. They were unable to. They are also not only covering the criminal matters, legal aid commission is also covering civil matters, including probate, applications for letters of administration, and so forth. Now, if you're going to reduce the services or remove the services of legal aid, then how would you just explain to us how would the costs be covered? Because then the private lawyers will have to deal with them. Or maybe one other institution. I don't know. Could you enlighten us on that, please?

Ranjit Maharaj: Thank you, thank you, chair. Um, I have mentioned not, as you said, the correct word, uh, if you see my submission, in atelic, open, enclosed, invaded commerce, the second sentence, the Constitutional Review Commission, may wish to consider where, whether legal aid services are best delivered through a dedicated statutory authority, and then, or, through an afflicted panel of private legal practitioners, reimbursed by the state. as prescribed. Rates at a prescribed rate. On top, we have also mentioned, for a mechanism, to have cost recovery. We know, um, the legal aid service is providing good services to those who are not able to afford, but I think, uh, the Institute had a consensus in terms of how the cost can be recovered. So it's not that we are saying there should not be no legal aid commission, but perhaps while these reviews happening, maybe you review whether the statue authority is required, needs to be lower, or through an accredit panel of private legal practitioners.

Ravinesh Singh: Sorry, through you Chair, can I just add. I think what we are also saying is we're not saying that we should, um, uh, retail, uh, the legal assistance to the people should be retained, but the issue here is how to deliver that right efficiently, equitably and sustainably. So, I think that's something the review commission might consider reviewing, doing a comprehensive review of the whole legal aid system. So that's been provided.

Mr. Valenitabua: Thank you for clarifying that. You've got the media around you. So that was why I asked the question so that you can clarify the metal. Thank you, right? So that we can get you correctly. Thank you, Dr. Gounder.

Mr. Gounder: Thank you, Mr Chair. I had not touched on the issue. I wanted my lawyer colleagues to bring it first, but now I can talk about the administrative side that you mentioned. You compared the possibility of outsourcing it to private practitioners and you use the example of the free medicine scheme. And uh, Just for the record, the free medicine scheme has not been working well.

A lot of bureaucracies and challenges in terms when government starts to outsource. Some outsourcing has worked very well. Others haven't. So one of the challenges I see with this is the cost issue. The billing from the private practitioners might actually lead to the, to a blowout in cost, because from the national development perspective, we did review the work of the legal aid commission. We did look at the funding for legal aid commission, et cetera.

So this has been looked at, but will consider your suggestion to see what can be done is more often more of an issue in terms of the operational side of things. Fundamentally, the issue is access to justice argument. But your Funding argument is more of an operational argument, but it's taken on board. We will see later all those issues that don't fall within our constitutional mandate after we decide whether it falls or not. We can always refer to government agencies to for concentrations. So I thought of just laying it out there.

Mr. Beg: Through you, Chair, sorry, just the last question. I make it quick. Thank you, Mr. Maharaj, and Mr. Singh, uh, very enlightening, uh, aspects. Just very quickly on Section B. Um, you recommended some principles for the, towards the Constitution. I take note of a section that you mentioned on

climate change and resilience. It gives us an eye opener to certain sections of the Constitution that mentions this, so that something we will need to look at. Uh, the general principles behind it, but also your, your next point on the productivity, and then a comment around TVET. Um, is interesting. These are general sort of principles for consideration for the commission. And I thank you for that. But some of that, I would think, would exist in law and policy and regulation, so the commission will have to juggle and see which one fits in the Constitution, and where we have to balance it between law and Constitution. But I recommend you for your recommendations, and thank you for that.

Mr. Valenitabua: Mr. Mahajan, Mr. Singh, we had one hour for this session. Thank you very much for your attendance this morning. Much appreciated. Thank you for... for setting out the provisions in the Constitution. on which you have given us some insight, some suggestions. We will surely look at your suspicions, and what in our deliberations try to see, if they fit into the constitutional reform, that we are undertaking. Thank You very much

Ravinesh Singh: Before we close, can I just say, that figure submission to the Constitutional Review Commission is a constructive governance focused contribution. As Fiji's professional accountancy body, our interest is in a strong institution, accountability, public, financial management, fiscal responsibility, and long-term national development. We are not advocating political change for its own sake. We are asking how future constitutional framework can better support public confidence, responsible governance, and future generations. Thank you.

----------End of Session [07-July-2026]----------

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FIJI INSTITUTE OF CHARTERED ACCOUNTANTS
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Building a Constitution for Tomorrow

"A Constitution should not merely govern the Fiji of today; it should shape the Fiji that future generations will inherit."

A Submission by the Fiji Institute of Chartered Accountants to the Constitutional Review Commission

7 July 2026

FOREWORD

The Constitution is the foundation upon which a nation builds its democratic institutions, governs its public affairs and safeguards the rights, freedoms and aspirations of its people. It is not simply a legal instrument; it is a statement of national values and a framework through which successive generations inherit and shape the future of their country.

The Fiji Institute of Chartered Accountants (FICA) welcomes the opportunity provided by the Constitutional Review Commission to participate in this important national exercise. As the statutory professional body responsible for regulating and advancing the accountancy profession in Fiji, FICA has a longstanding commitment to promoting good governance, accountability, transparency, ethical leadership and sound public financial management. These principles are fundamental not only to the accounting profession but also to the effective governance and sustainable development of our nation.

The recommendations contained within this submission have been prepared following careful consideration of the Constitution of the Republic of Fiji (2013), international governance practices and the broader aspirations for Fiji's future. They are intended to provide constructive observations from a governance, institutional and public interest perspective.

Rather than seeking fundamental constitutional change, this submission focuses on opportunities to strengthen existing constitutional provisions while proposing new constitutional principles that recognise emerging national priorities, including responsible citizenship, long-term national planning, institutional resilience, intergenerational equity and sustainable economic development.

FICA believes that constitutional reform should be guided not only by present-day challenges but also by the legacy we wish to leave for future generations. Strong constitutional institutions, responsible governance and public confidence remain essential foundations upon which a prosperous, inclusive and resilient Fiji can continue to flourish.

We respectfully commend this submission to the Constitutional Review Commission as a constructive contribution to the national dialogue and thank the Commission for providing all Fijians with the opportunity to participate in shaping the constitutional future of our nation.

Vinaka and God Bless Fiji.

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Ravinesh Singh, CA
President
Fiji Institute of Chartered Accountants

ABOUT FICA

The Fiji Institute of Chartered Accountants (FICA) is the statutory professional body established under the Fiji Institute of Chartered Accountants Act to regulate, develop and promote the accountancy profession in Fiji.

The Institute serves the public interest by promoting high standards of professional competence, ethics, governance and accountability across both the public and private sectors. Through its regulatory responsibilities, professional education programmes, advocacy initiatives and engagement with national and international stakeholders, FICA contributes to strengthening financial reporting, public confidence and institutional integrity throughout Fiji.

FICA is an active member of the International Federation of Accountants (IFAC), the Confederation of Asian and Pacific Accountants (CAPA), the Asian-Oceania Standard-Setters Group (AOSSG) and maintains collaborative relationships with Professional Accounting Organisations (PAOs) throughout the Pacific region and internationally.

Beyond regulating the profession, FICA actively contributes to national development through initiatives that promote:

- good governance and ethical leadership;
- accountability and transparency;
- public sector financial management;
- sustainability and environmental reporting;
- education and professional development;
- financial literacy;
- economic resilience; and
- strengthening public confidence in institutions.

Accordingly, the Institute considers that constitutional reform is a matter of significant public interest. A strong constitutional framework underpins effective governance, responsible public administration, investor confidence, economic growth and the rule of law principles that are closely aligned with FICA's statutory mandate and its commitment to serving the people of Fiji.

The recommendations contained within this submission are therefore presented from the perspective of strengthening governance, enhancing institutional effectiveness, promoting sustainable economic development and safeguarding the long-term interests of present and future generations.

ACKNOWLEDGEMENT

Acknowledgement

The Fiji Institute of Chartered Accountants acknowledges the Constitutional Review Commission for undertaking this important national review and for providing institutions, organisations and citizens with the opportunity to contribute to Fiji's constitutional future through an open and consultative process.

The Institute also acknowledges the contributions of members who participated in the constitutional awareness session facilitated by Mr Jon Apted, together with the members of the FICA Council whose observations and guidance assisted in refining the recommendations contained in this submission.

In preparing this document, reference has been made to the Constitution of the Republic of Fiji (2013), previous constitutional developments in Fiji, comparative constitutional practices from selected international jurisdictions and recognised principles of good governance, public administration and institutional accountability.

This submission is respectfully presented in the spirit of constructive dialogue and in support of the Constitutional Review Commission's objective of developing a constitutional framework that reflects the aspirations of the people of Fiji while strengthening governance and national development for generations to come.

DISCLAIMER

This submission has been prepared by the Fiji Institute of Chartered Accountants as a contribution to the Constitutional Review Commission's public consultation process.

The recommendations contained in this document represent the views of the Institute as approved by the FICA Council for the purposes of this submission. They are intended to contribute constructively to national discussion and should not be interpreted as legal advice or as commentary on any particular political party, government or individual.

The recommendations have been developed following consideration of constitutional governance principles, comparative constitutional practices and matters considered relevant to strengthening Fiji's governance framework, democratic institutions, sustainable economic development and public confidence.

In preparing this submission, the Secretariat utilised contemporary research and drafting tools, including artificial intelligence (AI)-assisted technology, to support comparative research, document structuring and editorial refinement. All recommendations, analysis and conclusions were reviewed, evaluated and approved through FICA's governance processes before inclusion in this submission.

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Executive Summary

The Constitution is the supreme law of the Republic of Fiji and provides the foundation upon which democratic governance, the rule of law, public administration, economic development and the protection of fundamental rights and freedoms are built. As Fiji continues to evolve socially, economically and institutionally, the current constitutional review presents an important opportunity to ensure that the Constitution not only responds to present-day challenges but also provides a strong and enduring framework for future generations.

The Fiji Institute of Chartered Accountants (FICA), as the statutory professional body representing the accountancy profession in Fiji, has a longstanding commitment to promoting good governance, accountability, transparency, sound public financial management and sustainable economic development. These principles are fundamental not only to the accounting profession but also to the effective governance of a modern democratic nation. It is therefore appropriate that FICA contributes constructively to the Constitutional Review Commission's consultation process by identifying areas where the constitutional framework may be further strengthened in the public interest.

This submission presents a balanced package of constitutional reforms intended to strengthen Fiji's governance framework, enhance institutional effectiveness, reinforce public confidence in national institutions, support sustainable economic growth and promote long-term national resilience. The recommendations have been developed following a comprehensive review of the Constitution of the Republic of Fiji (2013), consideration of the Constitutional Review Commission's Terms of Reference and consultation objectives, comparative constitutional practices from a range of democratic jurisdictions, and internationally recognised principles of good governance, accountability and the rule of law.

The recommendations are grouped into two broad categories.

The first category proposes targeted amendments to existing constitutional provisions where FICA considers the current framework could be strengthened to improve governance, accountability and institutional effectiveness. These include recommendations relating to citizenship, electoral arrangements, the Public Service Commission, the Electoral Commission, Cabinet appointments, the Fiji Independent Commission Against Corruption (FICAC), Legal Aid, public finance, the Auditor-General, natural resource governance, environmental stewardship, the Code of Conduct and the constitutional amendment process.

The second category proposes the introduction of new constitutional principles that are not presently recognised within the 2013 Constitution, but which reflect contemporary constitutional thinking and the evolving needs of Fiji. These include the introduction of constitutional duties of citizens, directive principles of state policy, intergenerational equity, long-term national development planning, fiscal responsibility principles, digital governance, climate resilience, national integrity, constitutional appointments, and stronger public participation in major national decisions.

Recognising that sustainable nation-building extends beyond public institutions alone, this submission also recommends constitutional recognition of the important contribution made by

families, caregivers, volunteers and older persons. These recommendations acknowledge that unpaid care work, family responsibilities, volunteerism and community service contribute significantly to Fiji's social cohesion, economic productivity and national wellbeing. The submission therefore proposes that the Constitution provide greater recognition to the role played by families as the foundation of society and encourage policies that support caregivers, protect older persons, strengthen responsible parenting and promote civic participation.

Underlying all of the recommendations contained in this submission is a common objective: to ensure that Fiji's Constitution remains a living framework capable of responding to changing national circumstances while preserving democratic values, constitutional stability and the rule of law. The recommendations seek to strengthen public institutions, improve accountability, encourage responsible citizenship, promote sustainable economic development and ensure that the interests of future generations are considered in today's constitutional and public policy decisions.

FICA recognises that constitutional reform requires careful consideration, broad consultation and national consensus. Accordingly, this paper is presented as a constructive contribution to the Constitutional Review Commission's review process and is intended to assist informed discussion on how Fiji's constitutional framework can continue to evolve in support of good governance, economic resilience, social cohesion and long-term national prosperity.

Priority Constitutional Reforms

While all recommendations contained in this submission are considered important, FICA recognises that constitutional reform is a significant undertaking and may be implemented progressively over time. Accordingly, the Institute considers the following reforms to be of the highest priority in strengthening Fiji's governance framework, democratic institutions, economic resilience and long-term national development:

- **Strengthen Governance and Institutional Integrity**
- **Promote Merit-Based Public Administration**
- **Review Fiji's Electoral System**
- **Strengthen Economic Governance and Fiscal Responsibility**
- **Enhance the National Integrity and Anti-Corruption Framework**
- **Promote Responsible Citizenship and Civic Responsibility**
- **Embed Long-Term National Development and Intergenerational Equity**

These priority reforms are intended to provide a strong constitutional foundation that supports democratic governance, public confidence, sustainable economic development and a prosperous, resilient and united Fiji for generations to come.

1. Introduction

Background

The Constitutional Review Commission has been established to undertake a comprehensive review of the Constitution of the Republic of Fiji (2013) and to consult widely with the people of Fiji on whether the current constitutional framework continues to meet the nation's present and future needs. This review presents an important opportunity for institutions, organisations and citizens to contribute constructive recommendations that support Fiji's continued democratic, social and economic development.

As the statutory body established under the Fiji Institute of Chartered Accountants Act to regulate and promote the accountancy profession in Fiji, FICA recognises the close relationship between constitutional governance and economic prosperity. Strong constitutional institutions promote confidence in government, strengthen the rule of law, improve public financial management, encourage domestic and foreign investment, and contribute to sustainable national development.

Accordingly, FICA considers it appropriate to participate in the constitutional review process by providing observations and recommendations that primarily relate to governance, accountability, institutional effectiveness, fiscal responsibility and long-term national development. While the Constitution necessarily encompasses a broad range of political, legal and social issues, this submission focuses on those areas where the Institute's experience in governance, public administration, financial accountability and institutional integrity can contribute meaningfully to the national discussion.

Purpose of this Submission

The Fiji Institute of Chartered Accountants (FICA), as the national professional accountancy body established under the FICA Act, is committed to promoting good governance, accountability, transparency, sound public financial management and sustainable economic development in the public interest.

This submission has been prepared to contribute constructively to the Constitutional Review Commission's review of the Constitution of the Republic of Fiji (2013). It sets out FICA's recommendations on constitutional reforms that, in the Institute's view, would strengthen Fiji's governance framework, enhance institutional effectiveness, reinforce the rule of law, support responsible public administration and promote long-term economic resilience and national development.

In developing this submission, consideration has been given to the Constitution of the Republic of Fiji (2013), comparative constitutional practices adopted in jurisdictions including India, Singapore, Australia, New Zealand, Norway, Germany, Canada and Wales, together with internationally recognised principles of good governance, institutional independence, public sector accountability, fiscal sustainability and sustainable development.

While comparative constitutional examples provide useful guidance, the recommendations contained in this submission have been developed with due regard to Fiji's unique

constitutional history, democratic traditions, cultural diversity, national values and development priorities. The recommendations are intended to support a modern constitutional framework that promotes national unity, democratic accountability, economic prosperity and the wellbeing of both present and future generations.

Approach Adopted

This submission has been developed around a forward-looking vision that seeks not only to address current governance challenges but also to establish constitutional principles capable of supporting Fiji's long-term prosperity and resilience.

The recommendations are therefore presented under two distinct categories.

Section A identifies provisions within the current Constitution that FICA considers could be strengthened or modernised to improve governance, accountability, transparency, institutional effectiveness and economic resilience.

Section B proposes new constitutional principles that are not presently contained within the 2013 Constitution but which, in FICA's view, would provide additional guidance for future governments and strengthen Fiji's constitutional framework for generations to come.

Collectively, the recommendations are guided by one overarching principle: that Fiji's Constitution should not merely respond to the needs of today, but should also provide a durable framework that protects the interests, opportunities and wellbeing of future generations.

2. Constitutional Vision for Fiji's Future

A constitution is more than a legal document. It is a statement of a nation's values, aspirations and collective vision for the future. It establishes the principles by which a country is governed, defines the relationship between the State and its people, safeguards democratic institutions, and provides the framework within which future generations will live, work and prosper.

The Constitutional Review Commission presents Fiji with a unique opportunity not simply to review existing constitutional provisions, but to consider whether the Constitution remains sufficiently equipped to respond to the opportunities and challenges of the next fifty years. Constitutional reform should therefore extend beyond addressing immediate issues and instead provide a durable framework capable of supporting long-term national development, good governance, economic resilience and social wellbeing.

FICA believes that Fiji's future prosperity will depend not only upon economic growth, but also upon the strength of its public institutions, the confidence of its citizens, the integrity of its governance systems, the responsible management of public resources and the nation's ability to adapt to changing global, technological, environmental and demographic conditions.

The Constitution should therefore provide a clear national direction that encourages governments, regardless of political affiliation, to pursue policies that strengthen institutions, promote responsible public administration, protect constitutional democracy, encourage private sector confidence and invest in the long-term wellbeing of the people of Fiji.

From FICA's perspective, constitutional reform should support the development of a nation that is:

- governed by transparent, accountable and independent public institutions;
- economically resilient, competitive and attractive for responsible investment;
- fiscally responsible and committed to prudent management of public resources;
- committed to merit, professionalism and excellence across the public sector;
- respectful of the rule of law, constitutional supremacy and judicial independence;
- environmentally responsible and committed to safeguarding natural resources for future generations;
- inclusive and united, recognising Fiji's cultural diversity while strengthening national identity;
- innovative, technologically prepared and responsive to future economic opportunities; and
- committed to improving the quality of life, wellbeing and opportunities available to every citizen.

The Constitution should not merely establish institutions of government; it should also promote a culture of responsible governance. Constitutional provisions should encourage ethical

leadership, integrity in public office, transparency in decision-making, evidence-based policy development and accountability for the exercise of public power. Strong constitutional institutions are fundamental to maintaining public confidence, attracting investment and supporting sustainable economic growth.

Equally important is the recognition that national development is not solely measured through economic indicators. A prosperous nation is also characterised by strong families, resilient communities, active citizenship and social cohesion. Many individuals contribute significantly to Fiji's development outside the formal workforce through caregiving, raising children, supporting elderly family members, volunteering within communities and preserving cultural traditions. These contributions are essential to national wellbeing and deserve greater constitutional recognition as part of a modern understanding of sustainable development.

As Fiji continues to experience demographic changes, technological advancement, climate-related challenges and increasing global economic integration, the Constitution should remain sufficiently adaptable to respond to emerging issues while preserving certainty, stability and the rule of law. Constitutional reform should therefore anticipate future challenges rather than merely respond to those of the present.

A central theme of this submission is the principle of **intergenerational equity**. Decisions made today regarding governance, public finances, infrastructure, education, natural resources and environmental stewardship will shape the opportunities available to future generations. The Constitution should therefore encourage governments to adopt a long-term perspective when exercising public authority and managing national assets, recognising that each generation has a responsibility to leave Fiji stronger than it inherited it.

Accordingly, FICA considers that constitutional reform should seek to achieve three overarching national outcomes.

(a) Stronger Institutions

Independent, transparent and accountable institutions that uphold the Constitution, administer the law fairly and maintain public confidence.

(b) Stronger Economy

A constitutional framework that promotes investment, innovation, fiscal responsibility, productivity, sound public financial management and sustainable economic growth.

(c) Stronger Society

A nation founded upon responsible citizenship, strong families, community participation, equal opportunity, respect for diversity and shared responsibility for the wellbeing of present and future generations.

Ultimately, the Constitution should not be viewed solely as a framework for governing today's Fiji. It should serve as a national covenant that guides the country's development over generations, providing stability while remaining capable of adapting to changing circumstances. Constitutional reform should therefore seek to leave a lasting legacy by

strengthening the institutions, values and principles that will shape Fiji's future long after the present generation has passed.

It is in this spirit that FICA respectfully presents the recommendations contained in this submission for consideration by the Constitutional Review Commission. Collectively, they are intended to support the development of a Constitution that promotes good governance, responsible leadership, sustainable economic development and national resilience, while ensuring that Fiji remains a prosperous, inclusive and confident nation for present and future generations.

3. Guiding Principles

The recommendations contained in this submission are founded upon a number of overarching constitutional, governance and public interest principles that, in FICA's view, should guide any future constitutional reforms. Collectively, these principles seek to strengthen Fiji's democratic institutions, enhance public confidence in governance, promote sustainable economic development and ensure that the Constitution remains capable of serving not only the needs of the present generation, but also those of future generations.

The recommendations do not seek to fundamentally alter the democratic foundations of the Constitution. Rather, they seek to strengthen the existing constitutional framework by promoting good governance, institutional resilience, responsible public administration and long-term national prosperity.

Accordingly, FICA considers that the following principles should underpin any future constitutional reforms.

3.1 Constitutional Supremacy and the Rule of Law

The Constitution should continue to remain the supreme law of Fiji and provide a stable legal framework that guarantees equality before the law, protects the separation of powers and upholds the independence of the judiciary and other constitutional institutions.

Public confidence in government is strengthened when all persons and institutions, irrespective of office or status, remain accountable under the Constitution and the law. Constitutional reform should therefore reinforce the principles of legality, due process, transparency and equal application of the law while ensuring that independent oversight institutions possess the authority and autonomy necessary to discharge their constitutional responsibilities effectively.

3.2 Good Governance, Accountability and Institutional Integrity

Good governance is fundamental to public confidence, economic prosperity and democratic stability.

The Constitution should continue to promote transparent, accountable and ethical government through strong institutions, effective parliamentary oversight and independent constitutional offices. Institutions responsible for safeguarding democracy, combating corruption, managing public finances and protecting constitutional rights should be independent, adequately resourced and accountable for the proper exercise of their functions.

Constitutional reforms should strengthen institutional integrity, minimise political interference, promote ethical leadership and reinforce public trust in national institutions.

3.3 Meritocracy and Professional Public Administration

An effective public service is one of the cornerstones of national development.

Appointments, promotions and leadership positions throughout the public service and constitutional institutions should be based upon merit, competence, integrity and demonstrated capability. Constitutional recognition of merit-based public administration would contribute

towards a professional, impartial and high-performing civil service capable of delivering efficient public services regardless of changes in political leadership.

Strengthening the constitutional role of the Public Service Commission would further enhance professionalism, institutional continuity and public confidence in Government administration.

3.4 Sustainable Economic Development and National Competitiveness

The Constitution should provide an enabling framework that encourages sustainable economic growth, entrepreneurship, investment, innovation and productivity while ensuring that economic development benefits all citizens.

Constitutional governance should support prudent economic management, encourage private sector confidence, facilitate responsible investment and promote the development of a highly skilled workforce capable of responding to changing global economic conditions.

Long-term national prosperity depends not only upon political stability but also upon constitutional arrangements that encourage productivity, competitiveness and responsible economic stewardship.

3.5 Fiscal Responsibility and Sound Public Financial Management

Responsible management of public finances is essential to maintaining public confidence and protecting future generations.

The Constitution should encourage prudent borrowing, sustainable debt management, transparency in public expenditure and value-for-money investment in national development. Fiscal responsibility should not merely be regarded as a matter of government policy but as an enduring constitutional principle that guides successive governments in managing public resources responsibly.

Embedding principles of fiscal sustainability within the Constitution would contribute to long-term economic resilience while safeguarding the nation's financial position for future generations.

3.6 Intergenerational Equity and Future Generations

One of the defining responsibilities of any Constitution is to safeguard not only the interests of today's citizens but also those who will inherit the nation tomorrow.

Government decisions relating to public finances, natural resources, infrastructure, environmental protection and national development should recognise their long-term consequences for future generations.

FICA considers that the Constitution should expressly recognise the principle of intergenerational equity by encouraging responsible stewardship of the nation's resources, prudent financial management and sustainable development so that future generations inherit a nation that is environmentally, socially and economically stronger than that of today.

3.7 Responsible Citizenship and Civic Responsibility

Constitutional rights are fundamental to every democratic society. However, rights are most effective when accompanied by corresponding responsibilities.

FICA considers that the Constitution should encourage responsible citizenship by recognising the duties of every citizen to respect the Constitution, obey the laws of Fiji, respect the rights and freedoms of others, protect public property, preserve the environment, promote national unity and contribute positively to the nation's economic and social development.

Strengthening civic responsibility would reinforce national cohesion, encourage active participation in democratic processes and foster greater respect for the rule of law.

3.8 Families, Communities and Social Wellbeing

Strong families and resilient communities form the foundation of every successful nation.

The Constitution should recognise the significant contribution made by families, caregivers, volunteers and community organisations in supporting social cohesion, child development, healthy ageing and community resilience.

Recognition of unpaid care work, responsible parenting, community service and volunteerism would acknowledge important contributions to national development that are often overlooked despite their substantial social and economic value.

Constitutional recognition of these contributions would promote a more inclusive understanding of national development and reinforce Fiji's long-standing traditions of communal support and shared responsibility.

3.9 National Unity, Equality and Social Cohesion

Fiji's diversity is one of its greatest strengths.

The Constitution should continue to promote equality, inclusiveness, mutual respect and national unity while recognising and preserving Fiji's unique cultural heritage and the distinct identities of its various communities.

Constitutional reforms should strengthen opportunities for all citizens to participate in national development based upon merit, capability and equal opportunity while fostering mutual respect and shared nationhood.

3.10 A Constitution for the Next Generation

Constitutions should not simply respond to the challenges of the present; they should anticipate the opportunities and challenges of the future.

Accordingly, FICA considers that constitutional reform should be guided by a long-term vision that promotes institutional resilience, economic sustainability, responsible governance and national development over generations rather than electoral cycles.

The recommendations contained in this submission have therefore been developed with the objective of contributing towards a constitutional framework that remains relevant, adaptable and capable of supporting Fiji's continued prosperity, democratic stability and social wellbeing throughout the twenty-first century and beyond.

4. Summary of Recommendations

The Constitution of the Republic of Fiji (2013) has provided the foundation for democratic governance, the protection of rights and freedoms, and the operation of public institutions over the past decade. As Fiji continues to evolve socially, economically and institutionally, FICA considers that constitutional reform presents an important opportunity to strengthen those foundations while preparing the nation for the opportunities and challenges of future generations.

The recommendations contained in this submission are intended to support the development of a modern constitutional framework that promotes good governance, strengthens public institutions, encourages sustainable economic development, reinforces responsible citizenship and ensures that Fiji remains resilient, competitive and united for generations to come.

The recommendations have been categorised into two broad parts:

- **Section A** proposes amendments to existing provisions of the Constitution of the Republic of Fiji (2013); and
- **Section B** proposes new constitutional principles that are not presently recognised within the Constitution but which, in FICA's view, would further strengthen Fiji's constitutional framework and contribute to long-term nation-building.

For ease of reference, the recommendations are organised into the following Areas of Reform.

Area of Reform 1
Governance, Accountability and Institutional Integrity
Effective constitutional governance depends upon independent institutions, ethical leadership, transparency and accountability.

The recommendations under this Area of Reform seek to strengthen constitutional institutions responsible for safeguarding democracy, maintaining public confidence and ensuring the responsible exercise of public authority. Particular emphasis is placed on enhancing institutional independence, promoting merit-based public administration, strengthening integrity mechanisms and reinforcing parliamentary oversight.

Key recommendations include:

- strengthening the constitutional values of the State;
- strengthening the Public Service Commission;
- reviewing the constitutional framework governing FICAC;
- strengthening the Auditor-General;

- enhancing the constitutional Code of Conduct;
- strengthening the Electoral Commission; and
- establishing stronger constitutional governance and accountability mechanisms.

Area of Reform 2
Economic Development, Fiscal Sustainability and National Prosperity
A modern Constitution should not only establish democratic institutions but also provide an enabling framework that supports sustainable economic growth, responsible public financial management and long-term national prosperity.

The recommendations under this Area of Reform seek to promote fiscal discipline, encourage investment, strengthen productivity, improve resource governance and support long-term economic resilience while safeguarding the interests of future generations.

Key recommendations include:

- strengthening constitutional public finance principles;
- introducing constitutional fiscal responsibility principles;
- promoting equitable and transparent natural resource governance;
- recognising strategic national infrastructure;
- promoting productivity, innovation and skills development;
- encouraging long-term national development planning; and
- strengthening environmental sustainability.

Area of Reform 3
Democracy, Constitutional Governance and Public Administration
Strong democratic institutions require constitutional arrangements that promote effective representation, public confidence and responsive government.

The recommendations under this Area of Reform seek to improve democratic representation, strengthen constitutional governance and ensure that public administration continues to operate in the public interest.

Key recommendations include:

- reviewing citizenship and naturalisation provisions;
- reviewing electoral representation;
- strengthening democratic accountability;
- reviewing Cabinet arrangements;
- reviewing constitutional amendment procedures; and
- strengthening constitutional oversight institutions.

Area of Reform 4
Families, Responsible Citizenship and Social Wellbeing
Nation-building extends beyond public institutions.

Strong families, responsible citizens, caregivers, volunteers and communities contribute significantly to Fiji's economic, social and cultural wellbeing. These contributions deserve greater constitutional recognition as part of a modern understanding of sustainable national development.

The recommendations under this Area of Reform seek to encourage responsible citizenship while recognising the important contribution of families and communities in supporting social cohesion and national resilience.

Key recommendations include:

- introducing Fundamental Duties of Citizens;
- recognising unpaid care work and family responsibilities;
- recognising the family as the foundation of society;
- protecting the dignity and wellbeing of older persons;
- recognising volunteerism and community service; and
- encouraging active citizenship and civic responsibility.

Area of Reform 5
Future Generations, Sustainability and National Resilience
The Constitution should encourage governments to make decisions that extend beyond immediate priorities and contribute to the long-term wellbeing of the nation.

This Area of Reform reflects one of the central themes of this submission that constitutional reform should leave a lasting legacy by strengthening Fiji for future generations.

The recommendations seek to encourage responsible stewardship of public finances, natural resources, infrastructure and the environment while preparing Fiji to respond effectively to future social, technological, environmental and economic challenges.

Key recommendations include:

- introducing the constitutional principle of intergenerational equity;
- recognising stewardship of national assets for future generations;
- introducing Directive Principles of State Policy;
- strengthening climate resilience;
- promoting digital governance and technological preparedness;
- encouraging long-term infrastructure planning; and
- strengthening national resilience through sustainable constitutional governance.

Overall Outcome Sought

Collectively, the recommendations contained in this submission seek to support the development of a constitutional framework that:

- strengthens democratic governance and institutional independence;
- promotes transparency, accountability and integrity across public institutions;
- encourages responsible public financial management and sustainable economic growth;
- supports innovation, productivity and national competitiveness;
- strengthens responsible citizenship, families and community wellbeing;
- protects Fiji's natural resources and environment;
- promotes long-term planning and sustainable national development; and
- safeguards the interests, opportunities and wellbeing of future generations.

FICA respectfully considers that constitutional reform should not be viewed solely as an exercise in amending legal provisions. Rather, it presents a unique opportunity to reaffirm Fiji's national values, strengthen democratic institutions, encourage responsible governance and establish a constitutional framework capable of supporting a prosperous, resilient and united Fiji for generations to come.

5. Section A – Proposed Amendments to Existing Constitutional Provisions

5.1 Introduction

FICA recognises that the Constitution of the Republic of Fiji (2013) provides the legal and institutional framework upon which Fiji's democracy, governance systems and public administration are founded. The Constitution has played an important role in protecting fundamental rights, defining the powers of the State and establishing independent constitutional institutions.

However, constitutional reform should not be viewed as an exercise in replacing existing constitutional arrangements. Rather, it provides an opportunity to periodically review whether current constitutional provisions continue to reflect the aspirations of the people of Fiji, support effective governance and respond to the changing economic, social and institutional needs of the nation.

FICA therefore considers that the existing constitutional framework should be strengthened where appropriate to improve institutional effectiveness, reinforce public confidence, encourage responsible governance and better prepare Fiji for future challenges.

The recommendations contained in this section are therefore intended to strengthen existing constitutional provisions while preserving the fundamental principles of constitutional democracy, the rule of law and the protection of fundamental rights.

Collectively, the proposed amendments seek to:

- strengthen democratic governance and constitutional institutions;
- improve accountability, transparency and integrity across the public sector;
- promote merit-based public administration;
- strengthen responsible public financial management;
- improve democratic representation and public confidence;
- encourage sustainable economic development;
- strengthen environmental stewardship; and
- ensure that constitutional governance continues to safeguard the interests of present and future generations.
- **This section covers Area of Reforms 1, 2 and 3.**

Current Constitutional Provision	Subject Matter	Recommended Amendment	Rationale
Preamble	Future Generations	Expand the Preamble to expressly recognise intergenerational responsibility and stewardship of Fiji's natural resources and public assets for present and future generations.	Embeds long-term thinking into constitutional governance and establishes a guiding principle for future legislation and public policy.
Section 1 – Values of the State	Constitutional Values	Include additional constitutional values recognising meritocracy, innovation, national productivity, fiscal responsibility, resilience and intergenerational equity.	Modernises the constitutional values framework and better reflects contemporary governance and development priorities.
Section 5 – Citizenship	Citizenship	Review the constitutional framework governing citizenship by naturalisation to ensure that, in addition to lawful residence and good character, applicants demonstrate a genuine commitment to Fiji through meaningful integration and positive contributions to the nation's economic, social, professional or civic development. Consideration may also be given to an appropriate understanding of Fiji's Constitution, national values and the responsibilities of citizenship, together with reasonable proficiency in an official language. Furthermore, consideration should be given to requiring a minimum period of citizenship before a naturalised citizen becomes eligible to contest parliamentary elections, in place of permanent restrictions, thereby balancing democratic participation with an appropriate period of national integration and civic commitment.	Citizenship is one of the highest privileges a nation can confer and should reflect more than the fulfilment of residency requirements. Strengthening the naturalisation framework would promote meaningful integration, reinforce national identity, encourage long-term commitment to Fiji's development, and ensure that citizenship is granted to individuals who have demonstrated a genuine contribution to the country's future prosperity and wellbeing.
Section 23 – Political Rights	Electoral Eligibility	Review eligibility requirements for candidates seeking election to ensure they support democratic participation while maintaining appropriate standards for public office.	Strengthens confidence in elected representatives while preserving democratic rights.

Sections 53–56	Electoral System	Review Fiji's current electoral system to determine whether it continues to provide the most appropriate balance between fairness, accountability and effective democratic representation. As part of that review, the Constitutional Review Commission should consider alternative electoral models, including a constituency-based electoral system or a mixed-member electoral system combining constituency representation with proportional representation. The objective should be to strengthen the connection between Members of Parliament and the communities they serve while preserving fair and inclusive national representation. Should constituency representation be adopted, constituency boundaries should be determined using objective criteria such as population, geography and communities of shared interest, rather than ethnicity, thereby promoting equality, national unity and fair representation for all citizens. The review should also consider whether the electoral framework encourages the election of representatives based on their integrity, capability, commitment to public service and the confidence of the communities they represent, rather than ethnic affiliation or other divisive considerations. Consideration should also be given to whether the current electoral framework provides equitable opportunities for both political party candidates and independent candidates to secure parliamentary representation based on the support they receive from the electorate.	A periodic review of the electoral system is consistent with good democratic governance and helps ensure that it continues to meet Fiji's evolving needs. An electoral framework that strengthens accountability between elected representatives and their communities, enables voters to clearly identify their representatives, promotes equality of opportunity for candidates, and encourages the election of representatives based on integrity, capability and public confidence rather than ethnic affiliation will strengthen democratic governance, national unity and public trust in Parliament.

Section 58	Term of Parliament	Review the current four-year parliamentary term to determine whether extending the maximum term to **five years** would better promote policy continuity, long-term national planning and effective implementation of government programmes, while preserving democratic accountability through regular elections.	A five-year parliamentary term is adopted in a number of parliamentary democracies and may provide greater continuity for long-term policy implementation, national development planning and major infrastructure projects, while reducing the frequency and cost of general elections. Any extension should, however, maintain an appropriate balance between effective governance and regular democratic accountability
Sections 75–76	Electoral Commission	Strengthen appointment processes and institutional independence of the Electoral Commission.	Reinforces public confidence in electoral administration and democratic processes.
Sections 91–96	Cabinet	Provide for a constitutionally prescribed maximum number of Cabinet Ministers, reflecting the portfolios necessary for the effective administration of Government. In exceptional circumstances, permit the appointment of a limited number of suitably qualified persons from outside Parliament as Ministers where specialised expertise is required and no suitably qualified Member of Parliament is available, subject to parliamentary approval, accountability and any other safeguards prescribed by law.	Promotes an efficient and cost-effective Cabinet structure while ensuring that Government has access to specialised expertise where required. The proposal strengthens good governance by balancing democratic accountability with the flexibility to appoint highly qualified professionals to key ministerial portfolios in exceptional circumstances.
Sections 115 & 121	FICAC	Review the constitutional framework governing the Fiji Independent Commission Against Corruption to strengthen its governance, accountability and public confidence. Consider establishing FICAC as an independent investigative agency within the Fiji Police Force framework, while assigning the responsibility for all prosecutions to the Office of the Director of Public Prosecutions. The appointment, reporting and oversight arrangements should also be reviewed to reinforce transparency, accountability and operational effectiveness.	Clarifies the separation between investigative and prosecutorial functions, aligns with established criminal justice principles, strengthens institutional accountability and enhances public confidence in the integrity and independence of anti-corruption investigations and prosecutions.

Sections 118 & 13–15	Legal Aid	Retain the constitutional right to legal assistance while undertaking a comprehensive review of the Legal Aid framework to ensure the efficient, equitable and sustainable use of public resources. Consider alternative service delivery models, including the greater utilisation of private legal practitioners under a State-funded legal aid scheme, strengthened means-testing, mandatory client contributions based on financial capacity, and cost recovery mechanisms where appropriate. *"The objective of this recommendation is not to diminish the constitutional right to legal representation, but to ensure that public funds are utilised efficiently. The Constitutional Review Commission may wish to consider whether legal aid services are best delivered through a dedicated statutory authority or through an accredited panel of private legal practitioners reimbursed by the State at prescribed rates. Such a model could reduce administrative overheads, expand access to legal representation across Fiji, and encourage greater accountability and cost-effectiveness, while maintaining appropriate safeguards for persons who genuinely cannot afford legal representation."*	Preserves access to justice while promoting fiscal responsibility, value for money and efficient use of taxpayer-funded resources. A diversified service delivery model may reduce administrative overheads, improve access to legal representation throughout Fiji, support the private legal profession, and ensure that public funding is directed to those with genuine financial need while requiring beneficiaries to contribute where reasonably able.
Sections 125–127	Public Service Commission	Expand constitutional responsibilities of the PSC to oversee merit-based recruitment, promotions, examinations, discipline and ethical standards across the public service.	Strengthens professionalism, integrity and capability throughout the civil service.
Sections 151–152	Auditor-General	Require timely parliamentary consideration of audit reports together with mandatory government responses to significant findings.	Improves accountability, transparency and implementation of audit recommendations.

Sections 139–148	Public Finance	Introduce constitutional principles supporting balanced budgets, fiscal sustainability, prudent debt management and long-term infrastructure investment.	Encourages responsible financial management and safeguards fiscal stability for future generations.
Section 30	Natural Resource Royalties	Replace fixed royalty concepts with constitutional principles promoting equitable, transparent and sustainable benefit-sharing based on economic returns.	Provides greater flexibility while ensuring fair distribution of national resource wealth.
Section 40	Environment	Strengthen constitutional protection for biodiversity, climate resilience and sustainable development for present and future generations.	Aligns Fiji's Constitution with evolving international environmental governance standards.
Section 149	Code of Conduct	Strengthen integrity obligations through enhanced asset declarations, conflict-of-interest provisions and post-public employment restrictions.	Promotes ethical governance and strengthens public trust in public office holders.
Chapter 11	Constitutional Amendment Process	Review amendment procedures to ensure constitutional reform remains achievable while maintaining appropriate safeguards against arbitrary change.	Provides constitutional stability while allowing future reforms to respond to changing national needs.

6. Section B – Proposed New Constitutional Principles for Fiji's Future

6.1 Introduction

While the recommendations contained in Section A seek to strengthen existing constitutional provisions, FICA considers that the Constitutional Review Commission also presents a unique opportunity to consider whether the Constitution should recognise new constitutional principles that reflect the evolving needs and aspirations of Fiji.

Since the adoption of the 2013 Constitution, Fiji has continued to experience significant social, economic, environmental and technological change. Increasing global interconnectedness, climate change, demographic shifts, rapid technological advancement, changing workforce expectations and evolving governance standards present new challenges that were not contemplated to the same extent when the current Constitution was enacted.

Accordingly, FICA considers that constitutional reform should not be limited to reviewing existing provisions alone. It should also provide an opportunity to introduce constitutional principles that strengthen the nation's long-term resilience, promote sustainable development and establish a clear constitutional vision capable of guiding future governments and future generations.

The recommendations contained in this section are therefore intended to complement, rather than replace, the existing constitutional framework. They seek to establish enduring constitutional principles that encourage responsible governance, strengthen national development, recognise important contributions to society that are presently under-recognised, and ensure that Fiji remains well positioned to respond to future opportunities and challenges.

Collectively, these recommendations seek to:

- encourage long-term national planning;
- strengthen responsible citizenship;
- promote sustainable economic development;
- recognise the contribution of families and communities;
- strengthen ethical governance;
- prepare Fiji for technological and demographic change;
- reinforce stewardship of natural resources; and
- embed the principle that constitutional governance should always consider the interests of future generations.
- **This section covers Area of Reforms 1, 2, 3, 4 and 5.**

Proposed Constitutional Principle	Current Position	Recommendation	Rationale	Comparative Jurisdictions
Fundamental Duties of Citizens	The Constitution provides extensive rights but does not prescribe civic responsibilities.	Introduce a chapter outlining the responsibilities of every citizen to uphold the Constitution, obey the laws of Fiji, protect public property, preserve the environment, respect the rights of others, promote racial harmony, respect indigenous cultures, participate in democratic processes, and contribute positively to national development.	A Constitution should balance rights with responsibilities. Encouraging responsible citizenship strengthens national unity, social cohesion and respect for the rule of law.	India (Article 51A)
Directive Principles of State Policy	No constitutional framework guiding long-term public policy objectives.	Introduce constitutional principles requiring Governments to promote employment, education, agriculture, food security, innovation, digital transformation, rural development, public health, housing, climate resilience and sustainable economic growth.	Provides long-term national policy direction while allowing future Governments flexibility in implementation.	India, Ireland, Nepal
Future Generations and Intergenerational Equity	Sustainability is recognised generally but there is no constitutional obligation to consider future generations.	Require the State to manage public finances, natural resources, environmental assets and strategic infrastructure in trust for present and future generations.	Encourages long-term decision-making and responsible stewardship of national assets.	Norway, Wales
National Development Commission	No constitutional requirement for long-term national planning.	Establish an independent constitutional commission responsible for preparing and periodically reviewing a rolling National Development Plan with a 20-year planning horizon.	Promotes policy continuity, infrastructure planning and national development beyond electoral cycles.	Singapore

National Integrity Framework	Integrity provisions exist in separate institutions but are not integrated.	Introduce a constitutional framework covering ethics, conflicts of interest, whistleblower protection, procurement integrity, lobbying transparency and public sector accountability.	Strengthens public confidence in government institutions and promotes ethical leadership.	OECD and Commonwealth practice
Digital Governance & Data Protection	The Constitution does not address digital governance.	Recognise principles relating to personal data protection, cybersecurity, digital government, artificial intelligence and responsible use of emerging technologies.	Future-proofs the Constitution against technological developments.	Estonia, Singapore
Climate Change and National Resilience	Environmental rights exist but climate resilience is not specifically recognised.	Require the State to prepare for climate change, strengthen disaster resilience, protect coastal communities and promote renewable energy.	Reflects Fiji's vulnerability as a Small Island Developing State.	Various modern environmental constitutions
National Productivity, Innovation and Skills Development	Education is recognised but national productivity is not.	Require the State to promote quality education, technical and vocational education and training (TVET), science, technology, engineering and mathematics (STEM) education, entrepreneurship, research, innovation and lifelong learning to enhance national productivity, competitiveness and sustainable economic development.	Strengthens Fiji's human capital by encouraging the development of a highly skilled and innovative workforce capable of responding to technological advancement, economic diversification and future labour market demands.	Singapore, South Korea
Constitutional Appointments Commission	Appointment powers are dispersed among institutions.	Establish an independent Constitutional Appointments Commission responsible for recommending appointments to key constitutional offices based on merit, competence and integrity.	Enhances institutional independence and public confidence.	Commonwealth best practice

Fiscal Responsibility Principles	Public finance provisions exist but there are no overarching fiscal principles.	Introduce constitutional principles promoting prudent borrowing, sustainable debt, balanced budgets (subject to emergencies), transparency and intergenerational fiscal responsibility.	Protects future generations from unsustainable public debt and strengthens fiscal discipline.	Germany, New Zealand
Strategic National Infrastructure and Public Interest Development	The Constitution protects property rights and environmental interests but does not establish guiding constitutional principles for the planning and implementation of nationally significant public infrastructure or the relocation of affected communities where necessary.	Introduce constitutional principles recognising the State's responsibility to plan, develop and maintain strategic public infrastructure that promotes national development and economic prosperity. Where nationally significant projects require the acquisition of land or the relocation of affected communities, the Constitution should require transparent decision-making, meaningful consultation, independent assessment, fair and timely compensation, protection of cultural heritage and the environment, appropriate resettlement arrangements, and compliance with due process under the law.	Supports sustainable economic growth through the timely delivery of nationally significant infrastructure while safeguarding the rights, livelihoods, cultural heritage and wellbeing of affected communities. Establishes a balanced constitutional framework that promotes development in the public interest while ensuring transparency, fairness, accountability and environmental stewardship.	
Recognition of Unpaid Care Work and Family Responsibilities	The Constitution recognises rights relating to work, education, health and social security but does not expressly recognise the economic and social contribution of unpaid care work.	Recognise the social and economic value of unpaid care work, family responsibilities and community service. Require the State to endeavour to develop policies that support caregivers, strengthen families and promote the wellbeing of children, older persons and vulnerable members of society.	Acknowledges an often-overlooked contribution to national wellbeing and economic productivity while supporting inclusive social policy. The provision should be gender-neutral and recognise all caregivers.	Ireland; South Africa; Colombia Mexico; CEDAW
Rights and Dignity of Older Persons	No specific constitutional recognition of the rights	Recognise that older persons have the right to live in dignity, security and respect, and require the State to take reasonable measures to protect them from neglect,	Responds to Fiji's ageing population and promotes healthy	South Africa; Brazil; Bolivia

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	and wellbeing of older persons.	abuse and exploitation while promoting their participation in family, community and national life.	ageing, social inclusion and protection of vulnerable persons.	
Protection of Families	Although individual rights are protected, there is no overarching constitutional recognition of the family as the fundamental unit of society.	Recognise the family as the fundamental unit of society and encourage policies that strengthen families, responsible parenting, child development, caregiving responsibilities and the dignity of all family members.	Supports social cohesion, child wellbeing and stronger communities while complementing the proposed Fundamental Duties of Citizens.	Commonwealth constitutional practice
Community Service and Volunteerism	Volunteerism and civic participation are not expressly recognised.	Recognise volunteerism, community service and civic participation as important contributors to national development and social cohesion, reflecting Fiji's traditions of *solesolevaki* and community support.	Encourages active citizenship, strengthens community resilience and recognises voluntary contributions that underpin national development.	International good governance practice

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7. Priority Constitutional Reforms

While all recommendations contained in this submission are considered important, FICA recognises that constitutional reform is a significant undertaking and may be implemented progressively over time. Accordingly, the Institute considers that the following reforms represent the highest priorities for strengthening Fiji's governance framework, democratic institutions, economic resilience and long-term national development.

These priority reforms are intended to provide a strong constitutional foundation that supports responsible governance, public confidence and sustainable prosperity for present and future generations.

Priority Area	Recommendation	Strategic Importance
1. Strengthening Governance and Institutional Integrity	Strengthen the constitutional independence, accountability and effectiveness of key institutions including the Public Service Commission, FICAC, the Auditor-General, the Electoral Commission and the constitutional Code of Conduct.	Strong institutions are the cornerstone of democratic governance, public confidence and the rule of law. Independent and accountable institutions provide continuity, integrity and stability regardless of changes in government.
2. Merit-Based Public Administration	Strengthen the constitutional role of the Public Service Commission to oversee merit-based recruitment, competitive examinations, promotions, leadership development and professional standards across the public service.	A capable and politically impartial public service improves service delivery, strengthens institutional continuity and supports effective implementation of government policy.
3. Democratic Representation and Electoral Reform	Review the current electoral system to determine whether a mixed-member electoral model combining constituency representation with proportional representation would improve democratic accountability, accessibility and representation while preserving equality and national unity.	Democratic systems should provide fair representation while ensuring elected representatives remain closely connected to the communities they serve.
4. Sustainable Economic Governance and Fiscal Responsibility	Introduce constitutional principles promoting prudent public financial management, sustainable debt, fiscal responsibility, long-term national planning and transparent management of public resources.	Sound economic governance strengthens investor confidence, supports sustainable development and protects future generations from unsustainable financial obligations.
5. National Integrity and Anti-Corruption Framework	Review the constitutional framework governing FICAC and introduce a broader National Integrity Framework that promotes ethical leadership, transparency,	Integrity in public administration is fundamental to maintaining public confidence, attracting investment and

	accountability and effective anti-corruption measures across the public sector.	ensuring accountability in the exercise of public power.
6. Responsible Citizenship and Civic Responsibility	Introduce constitutional recognition of the duties of citizens to uphold the Constitution, obey the law, respect the rights of others, protect public property, preserve the environment and contribute positively to national development.	Strong democracies depend not only on constitutional rights but also on responsible citizenship, civic participation and respect for the rule of law.
7. Long-Term National Development and Future Generations	Introduce constitutional principles recognising intergenerational equity, stewardship of national assets and the establishment of a long-term National Development Commission to support strategic planning beyond electoral cycles.	Governments should be encouraged to consider the long-term consequences of decisions affecting public finances, infrastructure, natural resources and national development to ensure that future generations inherit a stronger and more resilient Fiji.

8. A Legacy for Future Generations

The Constitution of the Republic of Fiji is more than the supreme law of the nation. It is the enduring framework that defines the relationship between the State and its people, establishes the principles upon which democratic governance is exercised and provides the foundation upon which future generations will continue to build their lives.

Constitutional reform should therefore be viewed not merely as an opportunity to review existing legal provisions, but as a once-in-a-generation opportunity to reaffirm Fiji's national values, strengthen public institutions and establish a constitutional framework capable of guiding the nation through future economic, social, technological and environmental change.

Throughout this submission, FICA has sought to present recommendations that extend beyond individual constitutional amendments. Collectively, the recommendations seek to promote a constitutional framework that encourages responsible governance, strengthens democratic institutions, supports sustainable economic development, reinforces public confidence and recognises the shared responsibility of all citizens in contributing to national development.

The recommendations also recognise that successful nation-building depends upon more than government institutions alone. Families, caregivers, volunteers, community organisations, businesses and civil society all contribute significantly to Fiji's prosperity and resilience. A modern Constitution should therefore acknowledge these contributions while encouraging governments to develop policies that strengthen families, support vulnerable members of society and promote responsible citizenship.

Equally important is the recognition that constitutional governance must increasingly adopt a long-term perspective. Decisions relating to public finances, natural resource management, infrastructure, education, climate resilience and institutional development have consequences

that extend well beyond the present generation. FICA therefore believes that the Constitution should encourage governments to exercise stewardship over the nation's resources and institutions in a manner that protects the interests of those who will inherit Fiji in the decades to come.

The recommendations contained in this submission are guided by five overarching Areas of Reform:

- strengthening governance, accountability and institutional integrity;
- promoting sustainable economic development and fiscal responsibility;
- reinforcing democratic governance and effective public administration;
- recognising the importance of responsible citizenship, families and community wellbeing; and
- embedding the principles of sustainability, resilience and intergenerational equity within Fiji's constitutional framework.

Collectively, these recommendations are intended to support the development of a Constitution that not only protects rights and establishes institutions but also provides a clear national direction that encourages integrity, innovation, resilience, opportunity and long-term prosperity.

FICA acknowledges that constitutional reform is ultimately a matter for the people of Fiji. The Institute does not suggest that constitutional change should be pursued for its own sake. Rather, any amendment should be carefully considered, widely consulted upon and assessed against one fundamental question:

Will this strengthen Fiji for present and future generations?

Where the answer is yes, constitutional reform presents an opportunity to leave a lasting legacy for the nation.

Looking Beyond the Present

Every generation inherits a nation shaped by the decisions of those who came before it.

Likewise, every generation bears a responsibility to ensure that the institutions, laws and governance frameworks it leaves behind provide greater opportunity, stronger public confidence and improved quality of life for those who follow.

Constitutional reform should therefore not be measured solely by the number of provisions amended, but by the strength of the institutions created, the confidence inspired in the people, the resilience of the economy and the opportunities made available to future generations.

In this regard, FICA respectfully submits that the Constitutional Review Commission has a unique opportunity to develop a constitutional framework that continues to protect democratic governance while preparing Fiji to meet the challenges and opportunities of the twenty-first century and beyond.

8. Final Reflection

The recommendations contained in this submission have been developed with one enduring objective:

To contribute towards a Constitution that is principled enough to preserve the values that define Fiji today, yet progressive enough to prepare Fiji for the opportunities and challenges of tomorrow.

FICA believes that constitutional reform should leave a legacy by strengthening public institutions, promoting responsible governance, encouraging sustainable economic development and recognising the shared responsibility of all citizens in building a prosperous, inclusive and resilient nation.

Ultimately, a Constitution should not merely govern the Fiji of today it should shape the Fiji that future generations will inherit.

Steven Ratuva

Professor Steven Ratuva
Date: 8-7-2026

Mr. Ratuva: Good morning. Hello. Yeah, I can hear you.

Mr. Valenitabua: Are you able to hear me? I call the Zoom meeting or Zoom consultation to order now. You can see us through that screen that you might have in front of you. I am here in the center as chairperson. And on my left, the immediate left, is Mr. Conway, Conway Beg. And on the far end is Dr. John Fatiaki. To my right is Mr. Ami Kohli, a lawyer in Labasa. And on the far right is Dr. Neelesh Gounder. And I'm, as you know, Mr. Sevuloni Valenitabua. These are the commissioners which are here this morning.

And thank you very much for accepting this Zoom meeting or Zoom consultation. I'm sure you know what our task is, as has been given to us by His Excellency the President. We are to review the 2013 Constitution. And we are hearing submissions from our people, and from some overseas. We've had a number of Zoom meetings. The latest was yesterday afternoon.

Now, this morning, we have you. And we are pleased to have you online right now to give us some views, some of your suggestions, some of your recommendations in relation to what we may add to the 2013 amended Constitution. That does not exclude us from removing some of the provisions. And you might want to give us recommendations on which provisions we may remove. So, without further ado, I will now hand over to you so that you can address us this morning. We have an hour. And please, carry on. We give you the mic now. You can proceed.

Mr. Ratuva: Welcome. Greetings from cold New Zealand. I know it's nice and warm in Suva. This opportunity is great to meet some old friends. And we haven't seen each other for a long time. And I hope that our discussion today will be fruitful. I hope the system is good enough. There is an interruption in the network or whatever we call it in the system.

Mr. Valenitabua: So... Mr. Ratuva, could you... Let's try this. Could you switch off your video, please? Might assist with the audio. Oh, OK. Can you hear us? Can you hear us? Hello? Yeah, can you hear us?

Mr. Ratuva: Yes, I can hear you.

Mr. Valenitabua: All right, please proceed. I can hear you. We can hear you, too. Please proceed. OK, good.

Mr. Ratuva: So, in that case, I'll... I'll... I'll speak something which... And, of course, for constitutional making, there are a number of things we basically focus on. That is, how do we make the future better? And how do we make sure that the governance... Can you hear me?

Mr .Valenitabua We have just come online. We did hear your introductions and all that.

Mr. Ratuva: Could you please start again, if you may? OK, let me try another system here.

Mr. Valenitabua: We are hearing you clearly.

Mr. Ratuva: OK. So, can I... So, I start again?

Mr. Valenitabua: Yes, please.

Mr. Ratuva: OK. Yeah, thank you so much for this opportunity, and thank you so much for the chance to share with you some of the thoughts which I have in terms of the constitutional process moving forward.

My presentation will be basically in two parts. One is the bigger picture of the constitution-making, and perhaps some of it I can provide you with to guide you, some of the things that you're probably doing, putting together the final draft. And I know it's not an easy task. I know that you've been working very, very hard. Thank you so much for the great work you've been doing. You've been excellent.

And, of course, the country relies on you. In terms of moving things forward. The second part will be basically looking at taking on some of these more specific aspects of past constitutions, the current constitutions, and what we probably might need to look at in the future in terms of the new constitution, because the world is changing.

Our society is changing. There have been layers and layers of issues, as we know, as we speak, in the judiciary, in the political arena, in the civil service. Every time you read the papers, there are all kinds of issues.

So how do we address some of those issues moving forward? And, of course, we have a history of political instability, of course, in the past. And how do we look at the past and look at the present and look at the

future in terms of what we're going to do? Now, I don't have any written presentation. It's all just a verbal one, because I have no time to write, because I'm writing so many things at the moment.

So, it's going to be specifically you recording it or just writing things down. So, it's certainly something which it's up to you how you deal with it. Now, so first of all, particularly in the context of modern constitution-making, it's always useful to use multiple lenses.

I've been watching and listening to some of the presentations that have gone through. Of course, we expect people to come with their personal, their community-based, their culture-based, their professional-based views and how they want to see themselves in the constitution, whether it's to do with land, whether it's to do with security, and so forth. Now, that is fine.

But I suppose from the point of view of the commission, it's important to see the process using multiple lenses. And we'll go through very, very quickly some of those lenses with which you can use or we can use to identify certain things which really are crucial in terms of constitution-making, particularly in modern-day constitution-making. Different countries have come up with different ways of framing new constitutions. And I'm sure you must have thought up new ways of doing that as well. Now, it's like wearing glasses. Every time when you wear red glasses, the world looks red.

When you wear dark glasses, the world looks dark. When you wear blue glasses, the world looks blue. So, it's like... So that's where those lenses which people use, they only see things in terms of where they are.

So, I suppose from the bigger picture, those multiple lenses are important across the board. Now, so there are about 15 lens components. The check-and-balance setup, there's the different organs of the state, the district, state, and civil service provide that stability.

And what kind of stability? I'll talk about some of those in detail later. And so, the governance lens is very, very significant here, especially looking at the problems in Fiji at the moment. There's a lot of issues in relation to governance.

There's a lot of issues all across the board. And then when you see layers and layers of things playing out, the second one is the security lenses. Is

the constitution sufficient in terms of the security footprints to make sure that we have a more stable future? Because we've had an insecure past since 87, and then we had a series of coups.

And we continue in a presentation which I gave in Fiji, I talked about, was it October last year, when I organized the UNDP. Some of you may have been there at the GPH. I talked about the long tail in terms of impact, in terms of the psychological impact, the trauma, in terms of the institutional impact on the judiciary, on the political system that's still with us.

So now it's like the river. When all this debris comes down the river, and then they get caught up at some point, and then they pile up. So, we are in the process of piling up at the moment.

So, the issue of security lenses is very important to make sure that we don't go through some of the security issues. And there are different ways in which you do the constitutional check and balances for long-term security of the country. The third lens is the ethics and integrity lens.

This is very, very significant, because the constitution should not only be looking at institutions, and not only be looking at processes, also behavior. The ethics and integrity lens is something which, again, unfolding in front of us, happening in Fiji, and of course over the years. And how do you make sure that people are accountable? How do you make sure that politicians behave in a particular way? How do you make sure that the executives behave in particular ways? So, some of these things need to be in the constitutional process, so that ultimately that will be, if you like, the point at which people blink to for redress.

And the fourth lens is the social justice lens. This is very significant. I think in the 1997 constitution, they had that as well, social justice.

The issues of gender equality, for instance, the children and the vulnerable, and their rights, how do you address some of those? I'll come to social justice later when I begin to look at some of the more specific examples. For instance, I'll come to that later. So social justice, depending on the constitution, make sure that people are protected.

It's a protective mechanism to make sure they're not vulnerable to political predators, to corporate predators, to exploitation of cheap labor, exploitation of human trafficking and all those things which are

happening. So, it's important to protect the lives of citizens. And then the fifth is the well-being lens, to do with health, to do with some constitutions actually have happiness as part of their, some have what they have means to happiness, to make sure that the citizens enjoy the well-being which they need to.

And, of course, in Fiji we have the issue of drug, of crime, which undermine the well-being of people. And this is where the constitution, and I'll put together a framework which I sent to the UNDP, also the police in relation to how to address the drug issue. There's a team who put together experts.

These are Fiji experts overseas and also locally. At the moment, the process is basically one-dimensional to do with law enforcement, when in fact it's much more complex. So, the constitutional mechanisms, the framework, is very important long-term in terms of well-being for the youth, for the health, because they're all interconnected in various ways.

The sixth lens is the equality and equity lens. Again, some of the constitution, the 1997 constitution in particular, tried to address that, but not so well. The 2013 constitution had a different way of looking at that.

In fact, it took it away. Because that's very, very significant here, because many, particularly new constitutions in the world, they make sure that they have footprints of addressing inequality, of equity, in different ways. Because that's significant in certain ways.

One is a way of addressing conflict, because inequality, there's a lot of research to show that inequality actually contributes to conflict, contributes to destabilization. And I think it's very, very important that if you look at the coups in the past, some of the issues which came up was to do with inequality in terms of business, in terms of wealth, and so forth. And you've seen that playing out in different countries in the world with a lot of tensions.

In fact, civil wars in Washington, all those have to do with access to resources, to do with opportunities. And they play out in political ways, because socioeconomic inequality, for instance, can easily be translated into political grievances, and that will explode at some point. And we've seen bits of that in the past.

So, it's important for the Constitution to see where it can address some of those. Now, the other one which is closely connected to that is diversity and inclusion lenses. So, we have to make sure that inclusion, particularly in relation to the sustainable development goals of the United Nations, which Fiji has signed up to, that they leave no one behind.

It's still there, and the politicians have been using it. But in a very highly politicized way, and I'll talk about it in more detail later, there are minorities in Fiji who have always been outside the Constitution group or commission. They might not like the small islanders that you have, the civil islanders that you have, all those little groups, small, sorry, minorities.

Often, the focus is on the individuals in the Philippines. So how do we include? What are the inclusion processes? And also inclusion in terms of gender, and also inclusion in terms of those who are most vulnerable. It's very, very important for the Constitution to have some of those.

Now, the eighth one is the identity lenses. Now, this is a controversial bit because all constitutions have been trying to grapple with that in different ways. Like in New Zealand, for instance, when they do the – I was part of the national statistical process of definition of different ethnic groups.

It's not easy to do that because you have what sociologists call in-group definition and what they're all exposed to, out-group definition, in-group definition, how the group itself defines itself. And out-group definition is how others define you. So, there's always sometimes there's congruence between them.

Sometimes there's conflict between them. And we see that playing out in 15 different ways. I'll talk about that later because I notice that a lot of submissions have to do with that, the identity issue. It's really important. At the same time, identity can be unified. At the same time, it can be destabilizing.

At the same time, it can be disuniting, fracturing, particularly when – especially when the space within which we're trying to get them together is not conducive to unity. We'll talk about that later in some detail. So at some point, the constitution must have identity lenses, making sure that

people are comfortable with the idea of who they are and how – because that is not just a label.

I think the constitutions in the past have used very, very artificial labels. The 1990 constitution, the 1970 constitution, for instance, which is Indian, Fijian, and others, they put it in a box and collect it in New Zealand, Pacific Islanders. They put everybody in a box and say Pacific Islanders or Pacifica.

And then we say, no, no, no, no. We have distinctive identities. We are not just – the other – the ninth lens is the human rights lens.

Is there – are there human rights footprints to protect people's rights? That's fundamental to any constitution in the world anyway, the old constitutions and the new constitutions. But then the question is how do you define human rights in the context of Fiji? That's been very, very contested. On one hand are those who argue that human rights is an individual right.

And there are others who say that human rights is linked to a whole lot of things like gender rights, linked to communal rights. There's always this tension, particularly between – in the minds of legal scholars and sociologists and political scientists, there's a relationship between individual and communal identity and rights. So how do you ensure that these different kinds of rights do not step on each other's toes and therefore cause a bit of commotion? Well, the tenth lens has to do with prosperity, the prosperity lens.

Some constitutions now, today they focus on things like development. They focus on things like growth. But growth is being defined as inclusive growth rather than just growth, so that this way inequality and equality and equity comes in, and how you make sure that growth is something which benefits the whole country rather than just certain individuals.

And then that's where the issue of land comes in as well, because land is very, very significant. I noticed that a number of submissions have to do with land. Now, in the case of Fiji, there have been – I'll look at that in more detail later when we come to looking at some of those specific aspects, because I think it's very significant to understand not only where people are coming from but also how we make sure that the issue of prosperity, often prosperity means that some people get richer than others, and that can be a cause of conflict as well, and how do you make

sure that prosperity becomes not just a constitutional concept but also applied in a way which is inclusive, which is – which generates a range of benefits, which is for the country altogether.

Now, the left one is the national unity lens. Again, that's where a lot of constitutions try to do that, and a lot of constitutions fail as well. They have provisions for national unity, but sometimes when you try to put together mechanisms for national unity, they can actually lead to the opposite.

It depends very much on the circumstances. Constitutions themselves are supposed to lead to national unity, but sometimes the way people use it and they interpret that can actually lead to the opposite. So that's an area which we have to be careful of, and certainly the footprints of national unity.

In different way, it's not just a statement, but has to be embedded not just in some of the normative narratives and what we call rhetoric, but also embedded in the structures which we build in the constitutional process. The other lens which has been absent from previous constitutions, which some constitutions in the world actually in recent years have tried to use, is the conflict resolution lens, because politics is politics. Society, at some point, the conditions to do with development, or the circumstances leading to conflict, and how do you address some of these conflicts? Our constitutions, 2013, even the 2019 constitutions, they don't have those.

So there has to be explicit conflict resolution measures within the constitution in terms of conflict within, between, let's say, the judiciary and the executive, for instance, or between parliament and the military, for instance. These things have happened in the past, and we didn't know what to do. So the constitutional measures to ensure that we address some of these in a very conscious way, because we've been through it since 1987.

There are conflicts everywhere within the state system. And now we try to do conflict resolution outside the constitutional process through the goodwill of people, when in fact there shouldn't be any constitutional measures that we can use as well. Now, the other lens which is also missing, which a lot of new constitutions are using now, is to do with sustainability, because that's a very significant now, because the UN

Sustainability Project Sustainable Development Goals, all countries in the world are supposed to sign up to it, and yet Fiji is not doing very well.

The Pacific is not doing very well. And the world, of course, is sort of because of the conflict, because of the poverty, because of all this. So, some European, especially as a result of climate change, Fiji is very much in the Pacific.

So as a result of the growing fear of the impact of climate change, the sustainability aspect of some constitutions are very specific about what you want to do. And that is very important now, especially when, remember that the International Court of Justice that made a ruling that states are going to be responsible for the kinds of activities they do, which cause damage to the environment. And, of course, that started off with some war students from Vanuatu, but then went up to the United Nations and passed that, and then went up to ICJ.

So, Fiji was signatory to that. So, some new constitutions, particularly the Constitution of Wales, are trying to get that into their constitutions as well, just to make sure that Fiji is a big one. You know, every time there's a big category 5 cyclone, category 4 cyclone, category 3 cyclone, we're in a big mess.

Our economy is in a mess. And then we spend so much resources trying to address it. So it's so important, so significant, that we need to have a constitutional framework to do with sustainability to address some of these issues, because it impacts stability, it impacts on poverty, it impacts on people's well-being.

So it's important we have that as well. Now, the other lens is to do with intergenerational lens, looking at the future. A lot of the constitutions that we've had is basically just looking at the now.

What do we do now? And I think it's important for us to look at how to transform, and therefore it is assumed that if we keep the stability now, the future will take care of itself. That's not often the case. In fact, for instance, the last constitution, which had a very rigid amendment, a clause, assumes that a particular document is going to be there forever, and then give us a lot of problems, a lot of headaches.

What do we do? We can't follow the prescribed process of amendment. There's some way to court to do it, and then to parliament, and so forth. So that's one of the dilemmas, as you know.

So, we have to have a futuristic view. What will it be like in the future? How transformative is this constitution? And how do we adapt to the changes? The world is changing very, very fast, faster than we think. By the time we finish writing a constitution and addressing some problems, the world has moved on, and then we keep trying to catch up.

So some of the work that I do with a number of international organizations basically has to do with catching up with SDG now. We'll talk about that later. And, of course, the last lenses that the constitution should have is the accountability and responsibility lenses.

Now, that's very, very important because it's a science to adapt to all these changing circumstances. So I'm trying to look at my watch. I don't want to be speaking forever.

Academics tend to go on, going blah, blah, blah, endlessly. Now, those are the 15 lenses that I think would be good, particularly when you finish your draft, and use those lenses to see where they are. And, of course, as you're doing this, as people bring in their consultation, you may add other lenses as well, just to cross-check, just to make sure that you're on a number of things.

One is based on the broader interest of the nation. People will come in, basically a reference, and if there's a national interest, a community interest, but I think it's important for the commission to look at the bigger national interest. Now, let me look at some of the detail.

Mr. Valenitabua: Mr. Ratuva, It's about 11.39 now. Are we okay with time? We are to finish before 11, please. Before 12.

Mr. Ratuva: Sorry, I can't hear you.

Mr. Valenitabua: We are to finish before 12. We are on 11.39. Can we finish before 12? We are to finish before 12?

Mr. Ratuva: Okay, sure. Maybe we can finish, maybe try to finish, maybe, say, 11.45? Yeah, 11.45, if you have any questions. Yes.

Mr. Valenitabua: We could have some questions from you.

Mr. Ratuva: Let me quickly go through the last bits. Now, those are the broad lenses. We can choose on some issues, which I think, you know, out of those lenses, it's not in any order whatsoever.

It's quite random, and how we might be able to address some of those. The first one is sustainable development, because although there's something to go in the development plans, but increasingly a lot of countries in the world are looking at that as being significant in the Constitution, again, because of climate change, because of the way in which the global economy has impacted on their lives and the way in which inequality has emerged in their countries and how they want to make sure that it's part of the Constitution framework so that people can, you know, have some constitutional regress in terms of sustainable development as well. Now, as part of the Sustainable Development Goals Review Team, which was appointed by the Secretary General of the United Nations, they call it the International Group of Scientists, and then SDG comes with that in 2013, and we're looking at what's beyond that, what is there, and we're putting together the Global Sustainable Development Report for next year.

Now, there are a number of things. One is I look after the section on inequality, and one of the things that's coming out is that how can countries actually constitutionalize some of those aspects of sustainable development to make sure that they're on track in achieving what they want, what needs to be achieved, because it's sustainable development, and so we loosely framed many countries in the world, in fact, in the Pacific, we're doing very, very badly, because it's not just the UN box. It's really to address some of the fundamental issues of inequality, which is prevalent in our country.

And, of course, climate change is a big issue, and how do we make sure that we, as part of the Sustainable Development Framework, the constitutional framework, address some of those issues. Now, the other issue is I mentioned about conflict resolution. At the moment, we have a Truth and Reconciliation Commission, which is doing its work.

Now, so we have to wait until such a time when we have to have external intervention into that, where, in fact, it would have been great if we had something in the constitution. In fact, I put together the concept note for the TRC Truth and Reconciliation Commission, which we're using now,

and still doing some work for that as well, writing something up on kind of long-term security in Fiji. So, now, I think one of the problems is that because we haven't been able to contain conflict constitutionally, we're allowed to bring in sustainability in the long run.

Now, the other issue I was going to talk about is I talked about the ethics and integrity lenses. How do you address issues of corruption, for instance? How do you address issues of misconduct, for instance? How do you address issues of favoritism? Again, it's a play now in front of us in different ways. Again, this is where the integrity system comes in, and how do you ensure that systems of integrity are embedded in the constitution to make sure? To make sure? *Yeah, I can't hear the whispering.*

Because it has more implications in terms of human behavior because of constitutions. Not only for the purpose of institutional engineering, it's also for the purpose of behavioral engineering. In other words, how do you change people's behavior as well? Because there is a theory in sociological structuration where the institution and the human agency interact.

Certainly, the constitution is where they still need to interact. If you just focus on institutions, you can have a nice, clean institution. But if you don't address issues of people's behavior, of how people respond to certain circumstances in relation to their roles in the institution, then they're going to have issues.

And, of course, those issues, we've seen them playing out over the years. So, the other one is, again, to do with democratic governance. Let's just do the electoral system.

The electoral system that we have, the PR system, its history was quite traumatic because it was assumed that if you have a proportional representation when the system was first moved in Europe in the early 1900s, it was assumed that it was going to create balance. There are different variants of the PR system, different parts of the world have used. In Germany, in fact, most European countries use it.

In New Zealand, here, you have two types. Again, one is the PR system, and the other one is the first-past-the-post. That's why they call it the mixed representation system.

Ours is actually on the extreme side because there's only one constituency, and that's part of the problem because it allows for what they refer to as a coattail effect where political stars are able to attract attention and get the votes, and then people who don't get votes get elected as well. It creates an anomaly. Secondly, the representation, because it's national, politicians themselves don't know what to do and who are they accountable to, so that's why we need constituencies.

The number of constituencies depends very much on the circumstances. Of course, you can have a PR system with multiple constituencies. Another thing is because the representation of women has been very low.

I think this is also another thing with SDGs, looking at representation of women across not only politics, but also in the corporate sector. Some constitutions have that as well. This is something we can look at up to a point.

Some women argue that it's very patronizing, but given the extremities of the situation, I think it's important to start off somewhere. The other one to do with security, the security lenses, is immunity. I think the immunity has given the military a lot of embodiments to be doing what they're doing.

They've been doing it in terms of staging coups. The new constitution really should be upright and say no more immunity. It has to be associated with the legal sanction or punishment for treason.

It has to be upfront because we had too many coups. It has to be upfront, it has to be there, because that is one way of making sure that the coup cycle and the long tail of the coup at some point stops. It's quite heartening to note that the commander-in-chief himself has come out and mentioned that, which is good.

It's something which has been in people's minds, but they can't say it because there's fear in case, they might make the military angry. The other one is social justice. I talked about the social justice lenses.

Social justice has to be there fundamentally because it's one way of addressing inequality in society. But it has to be done in such a way so

that it's not hijacked by political players. The social justice provision of the 1997 constitution was there.

As a result of that, they put together the affirmative action plan, the 50-50 affirmative action plan. I was actually asked to do that, to put together the affirmative action plan, the 50-50 affirmative action plan.

Mr. Valenitabua: Professor Ratuva, could you please wrap up, please? The commissioners need to ask you a number of questions.

Mr. Ratuva: Oh yeah, sure. Thank you. I have a problem with repeating.

Yeah, the social justice identity, it was meant by identity as well, because I think it's very, very important in terms of where we're moving. And I'll probably just stop there so that we have more time for discussion, because we have, let's say, ten minutes. So, I'll be very happy to respond to any questions that you have.

Mr. Beg: Thank you very much, Mr. Ratuva. Just on the point on the, you know, you mentioned the word climate change and the use of it and how it's embraced by the UN with its SDG 17 goals and so on. Small island states, and my gripe with this is that small island states should not be forced to carry out the financial and administrative burden of this global climate policy.

And, you know, our major industrial infrastructure and how we deal with it. I'm curious, like, you know, this is written entrenched in our constitution. Your views are expressed that you sit on the committee.

I'm just wondering how much of a weight will this, and your recommendations that you're saying, but I see it as a bit of a burden. I'd just like you to just comment a bit more about that. Thank you.

Mr. Ratuva: Well, that's a very good question. Yeah, yeah. So there's a very good point that you raised in relation to, because the big powers, they're the ones who pay the price, and we are the ones who suffer the consequences in terms of sea level rise and other impacts of climate change.

And I mentioned about the ICJ that puts back the pressure and the responsibility and accountability on the big polluters. So what we can do

is maybe use the constitution as a way of putting pressure, like New Zealand and Australia. Australia is a big polluter, New Zealand as well.

They're trying to do their own thing. China, United States, Europe, and so forth. At the moment, we don't have, well, the ICJ is there for ourselves to have a commitment to that sort of thing.

So, it's to do with how we think properly about how we can safeguard ourselves in relation to, because of course nowadays, I just wrote a book on global climate security where the big corporations are actually paying for scientists to re-interpret data so that they look good, and so forth. There're so many things around us that we're probably not aware of. So, the question is, how do we safeguard ourselves more in terms of, I know we have policies to deal with climate change.

It doesn't have to say climate change. It just, some constitutions, they use the term environment. Climate change is too specific.

Mr. Beg Some would use the word sustainable development. So how about the word, so Professor Ratuvao, what about environmental degradation? Is that a word that we could use?

Mr. Ratuva: Yeah, totally. Environmental degradation is also linked to environmental rights, human rights, because human rights is very linked to environmental degradation.

Remember the issue about Vuda? Now that's a classical example of the way in which people were running around. There was no constitutional provision to say, ha-ha, how do we address this? So, it was just out of people's willpower and connection, and of course it went through the process of government process. And then, so no one had, the coder from the constitution said, ha-ha, the only, somebody did, but only in terms of rights, our right to, but if there's something more specific, because there are going to be in the future, those who want to have similar kinds of approaches, and so we have a constitutional platform to stand on.

Thank you very much, sir. Appreciate that. Dr. Ratuva,

Mr. Kohli: I think you were about to speak about identity, and we cut short there.

I shall be grateful if you can address on that, the identity aspect.

Mr. Ratuva: It's a really good question. People either avoid that, or they use it in a way which suits themselves.

I want to see the number of contacts. Because, so there are two ways in which we define identity. One is internal identification of the group itself.

The other is somebody defining you. So the word iTaukei is a word which the iTaukei used to define themselves. It's been there.

When we talk to each other, okay, the iTaukei is full of mana. It's full of the connection with the land. Now the word Fijian doesn't do that.

Well, Fijian is very much an introduced term. Let me tell you the history. Historically, Fiji was called Viti, and all around the Pacific they say Fiti in Samoan, the Fiti, the Maori, the Tahitians, the whole ancient stories of migration.

Fiti is a land in the east of Biti. Now the Tongans, because their language is different, they refer to us as Fiji. And when Captain Cook came to Tonga in the 1770s, he saw some Fijians, because the Fijians were hired by Tongan chiefs as mercenaries to go and fight the wars.

The Tongans were fighting the Germans before it was unified under King George. So, Captain Cook asked, where are these people from? Oh, Fiji, Fiji. And in the minds of the Englishmen, Fiji was Fiji.

So he wrote down his diary, F-E-E-J-E-E. So we became Fiji for a long time, and then became F-I-J-I later on when the wrecking started. And then we said, oh, it's too long, let's make it shorter.

And of course, the colonialists came and said, that's a good idea. And then that's how, so it's very short. It's very much an introduced European frame.

That's what a lot of us iTaukei don't realize. So, if we really want to have connections with our land, with our culture, with our history, then iTaukei is a term that you must use. And of course, let's allow the other ethnic groups to define themselves.

What is best for them? It's important for them to define themselves. Like the Indo-Fijians, there were Rotuman's, the Solomon Islanders, they call themselves the Solmonian people. Some of the terms, labels can be degrading.

Labels can also be empowering. So let them use terms which are empowering for them, rather than to degrade each other. So there has to be, there's a big sociological debate about how we frame people.

When we were doing the discussion here in relation to ethnic categories in New Zealand, we ended up with almost more than 20, 30, because people want to be identified in multiple terms. One, two, three, four, five, and so forth. And so, in terms of identity, because once you constitutionalize a particular name, because of political pressure, or because of a particular communal interest, if it's coming from the community, by itself, that's fine.

But those communities must realize, not only the history of those terms, but the consequences of those terms in the long term. So those identities can be unified, like I mentioned earlier, at the same time. If you're not careful, it can be fragmented as well.

That's what we've seen in different parts of the world, in Washington, in the Solomon Islands, and it's playing out in various parts of Europe, and of course in the United States, and so forth. In New Zealand, too, we have that. Thank you.

Mr. Valenitabua: Professor Ratuva, Hello? Are you still online?

Mr. Ratuva: Oh, sorry, I'm frozen then. Okay. I was frozen for some time.

Mr. Valenitabua: Okay. It is now 12, right? It is now 12 noon. We have another submitter coming up.

If I may finish this off now. Okay. Do you have any comment to finalize things?

Mr. Ratuva: Not so much at this point.

I think the point I was trying to make before on social justice, I think before we finish, was to do with out of the social justice provision of the 1997 constitution, we had affirmative action. I was asked to put together affirmative action plan 50-50, but then it failed because politicians use it for their political purposes, and some people end up in jail, as you may have known. So social justice will never work if it becomes politicized, if we leave it in the hands of politicians and parliamentarians.

So, it should be embedded in communities, in institutions which are trustworthy, rather than in the hands of those who will use it for political purposes.

Mr. Valenitabua: All right. Okay.

So, are you hearing me? Yes, yes. All right. I'd like to bring this to an end now.

I have to thank you very much indeed for your contribution to this process we are undertaking here in Suva. Thank you very much for your submissions. Thank you very much for your thoughts.

Thank you for your time too. I believe you are busy with other writings and other papers to be written, and the commissioners here, I speak on behalf of the commissioners, we thank you very much indeed. Vinaka.

----------End of Session [8-7-2026]----------



THE GAP BETWEEN GLOBAL THINKING AND LOCAL LIVING: DILEMMAS OF CONSTITUTIONAL REFORM IN NAURU

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THE GAP BETWEEN GLOBAL THINKING AND LOCAL LIVING: DILEMMAS OF CONSTITUTIONAL REFORM IN NAURU

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In a watershed event on 27 February 2010, the Nauru voters overwhelmingly rejected a major constitutional reform initiative in a referendum which was meant to reform and stabilise a lethargic and corruption-ridden political system and rejuvenate a languid economy in the wake of the collapse of phosphate production, the mainstay of the economy. The failure of the referendum temporarily stalled but did not permanently end the reform process. Nevertheless, the political and psychological impact on the Nauru community of 10,000 people was deep and the implications are just beginning to sink in. The constitutional reform was instigated in 2004 by a group of young reform-minded politicians who were determined to exorcise Nauru, once the richest country in the world per capita, of poor political governance and economic mismanagement. This was the very first United Nations Development Program (UNDP) sponsored constitutional reform in the Pacific region, as well as the very first constitutional reform to be carried out in the Pacific through a referendum.

While there was consensus that reform was needed urgently, there were differences as to what was to be changed and how changes could be made. This article argues that these differences need to be understood in the context of the fundamental differences between two major development discourses: on one hand, the global discourse represented by UNDP and its "international best practice" aphorism; on the other hand, the local Nauru community and its ways of knowing, shaped by years of colonial control and cultural degradation.

In the era of contemporary globalisation, the interplay between the local and global often assumes syncretic and multiple forms such as homogenisation, hybridisation, accommodation and contradiction (Dore 1985, Hall 1997, Hannerz 1990, Huntington 1993, Mathews 2000, Scholte 2000, Tomlinson 1999). The incorporation of Nauru into the world system was through three phases of colonialism—German, Japanese and Australian—which were profoundly disruptive and transformative. The Nauru colonial experience was traumatising and etched a deeply embedded sense of alienation, anguish and cynicism, and a deep distrust of outsiders. It is precisely in the context of these conditions that we need to understand the contemporary Nauru sense of place as they engage with outside global forces.

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Based on the author's fieldwork in Nauru in December 2010, this article examines the process of constitutional reform in Nauru with emphasis on the gap between the global discourse of "international best practice," espoused by the UNDP to guide and justify the constitutional reform process (UNDP 2006) and the Nauru cultural ways of knowing. More specifically it focuses on how these relationships were played out either in manifest or latent ways and how they impacted on the results of a referendum. In the next section, I explore some issues relating to the Nauruan sense of the local and the nurturing of resilience and resistance in the face of globalisation. This is followed by a discussion of the global notions in the form of the UNDP policy discourse and its hegemonic tendencies. How the two distinct cultural forces interacted with and shaped each other is explored in the following section on constitutional reform. Finally there will be discussion of some local-global dilemmas resulting from the six reform steps that led directly or indirectly to the failure of the referendum and thwarted hopes for a more sustainable and better future for this smallest republic in the world.

UNDERSTANDING THE NAURUAN SENSE OF LOCAL AND PLACE

To fully appreciate the Nauruan sense of place we need to situate it in the broader framework of their colonial and post-colonial experience.

Nauru, an isolated single island of 10,000 people, went through years of external control first by the Germans from 1888 to the end of the First World War when it became a League of Nations Mandate jointly administered by Britain, Australia and New Zealand after Germany's defeat (Tabucanon and Opeskin 2011). Nauru was occupied by the Japanese during the Second World War after which it became a United Nations Trust Territory as a Class C Mandate under the joint responsibility of Britain, Australia and New Zealand with Australia as the main administering power. Nauru became independent on 31 January 1968 (Viviani 1970).

Colonial domination took its toll on the previously isolated and culturally distinct population (Tabucanon and Opeskin 2011). For instance, after the First World War about 20 percent of the island's population succumbed to the influenza epidemic (Davidson 1968: 145). In 1942 the Japanese deported more than half of the population to Truk in the Federated State of Micronesia where they had set up their military base (Hughes 2004: 3). Only 40 percent of the 1200 deportees survived the ordeal of slave labour, disease and starvation. Among the survivors was Hammer De Roburt, who became the first president of Nauru upon independence.

These experiences were traumatising and left deep scars on the collective consciousness of Nauru's people. However, the end of the war did not end their sense of exploitation either as they realised that they were not

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getting a fair return in terms of royalties for the phosphate mined from their land. Although the United Kingdom, Australia and New Zealand as administering authorities were obligated under the trusteeship agreement to safeguard the interests of the Nauru population and "promote their economic, social, educational and cultural advancement", the level of royalties per ton was low in relation to the sale price and, worse still, Nauru phosphate was significantly under-priced relative to the world market price (Hughes 2004). In 1960 the royalties received by Nauru was only 2.8 percent of the value of the annual phosphate produced, evidence that Nauru was subsidising New Zealand and Australian farming (Weeramantry 1992). In the 1950s, in recognition of this anomaly, the people of Nauru made their dissatisfaction clear to the United Nations triennial visiting missions as well as by petitioning the Trusteeship Council to express their rejection of the idea of being paid on the basis of needs rather than rights. In other words, they demanded that they had the right to be paid the market price rather than being paid in accordance with what the administering authorities determined they needed. In 1964, after negotiations, the royalties increased to 7.6 per cent of the value of the phosphate. However, further attempts to increase the royalties and control interest in the ownership of the company were resolutely rejected (Weeramantry 1992). It was not until Independence in 1968 that Nauru was able to exert control over its resources and a combination of sustained production and high world prices for phosphate generated hitherto unknown wealth for Nauru (Tabucanon and Opeskin 2011). For instance, between 1968 and 2001 it was estimated that earnings through export totalled around AUD$3.6 billion which amounted to $50,000 per capita, making Nauru second only to Saudi Arabia as the richest country in the world (Hughes 2004). However, much of this wealth disappeared as phosphate reserves dwindled and acute mismanagement and corruption wiped out financial reserves (Connell 2006, Toatu 2004). This was unexpected and traumatising for many of Nauru's people who had no idea what the causes of their impoverishment were (Quanchi 2007).

Another matter that tested the Nauruan sense of resilience was the resettlement proposals in the 1950s and 1960s. Among the options suggested were Laucala Island in Fiji, Woodlark Island in Papua New Guinea, and the Australian islands of Fraser, Prince of Wales, and Curtis. One of the reasons why the resettlement proposals were rejected was because the Nauru people feared that relocation would lead to the disintegration of their close knit community and loss of their culture already damaged by the terrible excesses of colonial rule (Tabucanon and Opeskin 2011). Despite the gravity of their situation the Nauru people could not imagine being physically and culturally uprooted from their ancestral land.

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The collective experience of depopulation from epidemics, of deportation and dislocation caused by the war, of resource exploitation by foreigners, and of the sudden disappearance of their wealth produced a sense of anxiety among the Nauruan people and strengthened their resolve to ensure the survival of their community and collective identity in the midst of adversity (Hughes 2004, Quanchi 2007, Tabucanon and Opeskin 2011). A new surge in local resilience and suspicion of many things foreign has developed as they redefine their place and their local identity in the contemporary world.

Instead of permanently fracturing the Nauruan notion of place, colonial experience had actually reconfigured it, made it more resilient and durable as a means of self-preservation. In this regard Huffer and Rakuita (2008) have made the point that while colonialism may have transformed basic institutions in the Pacific, it had failed to neutralise certain inherent values and symbolisms which connected people to their cosmology. An example was the durability of the notion of "place". They argued that "the legacies of colonialism and neo-colonialism" had "largely been unsuccessful at replacing place-based with space-based thinking" (Huffer and Rakuita 2008: 7). To Huffer and Rakuita, place-based thinking refers to identification with a familiar local land area with a defined boundary and associated cultural values, sense of ownership and identity. Words (often cognate forms) used in Pacific communities to denote 'place' are: Fijian *vanua*, Aotearoa *whenua*, Tongan *fonua*, Samoan *fanua*, Maohi Nui/Tahitian *fenua*, West Kwara'ae (Malaita) *fanoa*, and Kiribati *te aba*. In contrast, space-based thinking refers to the notion of an "empty" world without any defined boundary and distinctive cultural characteristics, and thus subject to external occupation and commodification. Huffer and Rakuita (2008) claimed that this notion of a boundless and "ownerless" universal space provided one of the moral justifications for colonial annexation.

The strong sense of Nauru's ethno-nationalism, built around their sense of place, is interpreted in different ways by others. Some foreigners working in Nauru with whom I spoke interpreted Nauruan community pride and independence, in their words, as "arrogance" and "unfriendly". Nauruan's sense of loyalty is first and foremost to their matrilineal-based kin groups. Kinship defines socio-cultural relations and there are 12 named clans: Eamwit, Eamwidumwit, Deboe, Eoaru, Emea, Eano, Emangum, Ranibok, Eamwidara, Iruwa, Irutsi (extinct) and Iwi (extinct). Apart from the clan boundaries, there are administrative divisions consisting of 14 districts divided into eight parliamentary constituencies which are used as cultural markers of sorts.

Despite the tragedies of their past history, the Nauru people continued to sustain a community that was firmly rooted in the land and kinship while adopting new strategies as they engaged selectively and cautiously with outside

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cultures. The land provides physical nourishment, cultural identity and sense of socio-spiritual validation to being Nauruan.[1] The desecration of this sacred link through phosphate mining undermined their sense of identity, which in turn aroused deep anguish that progressively worsened over time.[2]

Political Instability

The instability of the political system had arisen from factional political interests which used the no-confidence provision in the Constitution without restraint to change the president and government. During the 42 years since Independence in 1968 there have been 36 changes in government, on average a new government after every 1.16 years. Since 1977 there have been 30 motions of "no confidence" and 13 of these had passed. Perhaps the most changes were in 1997 when Nauru had four different presidents within four months. There was a brief period of political stability following the election of a reformist politician as President on 23 October 2004 through a snap election with the support of 15 parliamentarians out of 18. That government was uniquely able to serve the full three-year term. The President and his group of reformists were re-elected in August 2007 but fractures within the group led to a successful vote of no-confidence in December 2007 which saw Marcus Stephen's ascent to power. Not long after there was a series of destabilising events including an unsuccessful motion of no confidence against the government and the resignation of the Speaker.

This was followed by a stalemate when three parliamentarians declined nominations for the position of Speaker. Things got worse when nine government parliamentarians were suspended by the new Speaker for un-parliamentary behaviour while he was delivering a statement on a Supreme Court decision. In the absence of the nine parliamentarians, controversial amendments to the Citizenship Act were made and the Chief Justice, a Fijian, later declared the amendments invalid. Consequently, without any other way out of the impasse, the President declared a state of emergency and dissolved parliament and called for a snap election eight months later on 26 April 2008.

Marcus Stephen was returned as President but two electoral petitions were filed in court questioning the validity of the election which were dismissed. Parliament was dissolved again on 20 March 2010 as a result of attempts to remove the government and the election, due to be held in 2011, was brought forward by a year. Again the opposition tried twice to oust the government: the first attempt on 17 February 2010 failed and, before the second one was considered by Parliament, the president advised the Speaker to dissolve Parliament on 13 March 2010. This led to the election in April 2010 which saw the re-election of Marcus Stephen, a former Commonwealth Games weightlifting gold medallist.

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These frequent political changes impacted on the people's sense of community and undermined their trust in the formal political process. A politician told me how much he had noticed the increase in people's cynicism about politics over the years. This instability at the national level may have strengthened people's identification with their local community and sense of independence and resilience.

The historical experience of Nauru, compounded by the continuing political instability and economic crisis, has profoundly influenced local sentiments. The voters' resentment and antagonism were apparent in the results of the reform referendum. Any attempt to touch on sensitive issues such as land reform was bound to strike raw nerves and evoke strong emotions.[3] The reform process failed to take into account these social realities by not actively promoting local ownership of it in a sustained way. Instead it was largely driven by the objectives and approaches emanating from the Fiji-based UNDP.

THE UNDP AND THE GLOBAL DISCOURSE

On the other side of the divide is the United Nations which sees its role in constitution-making as a critical component of its work on the rule of law, the focus being on both the "process" and "substance" which purported to promote "national ownership and support for inclusive, participatory and transparent processes" (UNDP 2006). These principles are deemed to be universally applicable in any political or cultural context anywhere in the word. It is assumed that normative values, such as transparency, inclusivity and universal participation are trans-cultural in appeal and application.

While the UN has overseen a number of constitution-making projects, Nauru was the very first Pacific state where the UN was involved in constitutional reform and was seen as providing a test case for constitutional reform in a small island state. UNDP's role in overseeing the reform gave it significant power and control, working in close collaboration with the Nauruan Parliament represented by the Constitution Reform Committee (CRC) of ten parliamentarians, to co-ordinate and administer the review process. UNDP provided the consultant who conceptualised the process as well as technical and managerial support. Liaising with the CRC, UNDP supervised the use of US$300,000 provided by the United Nations Democracy Fund (UNDF), which provided the major source of funding (UNDP 2011).

Ideologically, UNDP often uses its global status and image of impartiality as a way of generating universal consent and global legitimacy for its projects (Bernabeu 2007). The UNDP's proclaimed impartial status means that it is in a position to deploy a "one size fits all" reform template that does not recognise cultural and political diversities in any country in the world, despite varying conditions.[4]

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From the UNDP perspective, the solutions to these Pacific problems require an equally universally applicable template:

> [T]he cooperation of the executive, judiciary, legislature, effective legal systems, law enforcement and civil society to underpin sustainable development, economic growth, environmental and social stability and security and human rights for all across the Pacific... and integrated decision making across all sectors at both regional and national levels.[5]

Of interest here is the absence of local culture and communities, which are often placed outside the rubric of the local state system and civil state organisations — CSOs. The focus is on institutional processes and formal procedures rather than people in their social and cultural place.

The UNDP's notion of "global democratic best practice",[6] consistently used as a moral justifier and political legitimiser, refers to universal ethical values such as human rights, gender equality, inclusiveness and people participation (UNDP 2010). How these apply to the local context or how the local community might interpret and react to them in Nauru were not part of the project prescription and were regarded as the contribution of the local project partners. At the conceptual level, the Nauru reform was to be "inclusive, open and [reflective of] global democratic best practice in constitutional review processes" designed to achieve the goal of "a stable, trustworthy, fiscally responsible government with transparent, accountable parliamentarians, cabinet and public service" (UNDP 2006: 1).

These goals were part of the social engineering process to reform the formal state and government structure. Again there was little if any explicit provision for improving community livelihood, an issue raised with me by a number of people in Nauru. The UNDP did not provide any reform template that was specifically in response to the particular historical realities of Nauru or geared towards the local Nauru reality of the present. A basic assumption was that the Nauru people like anyone else needed to adapt and conform to the universal UNDP reform principles, rather than the other way around or even a hybrid approach sensitively synthesising important aspects of both.

CONSTITUTIONAL REFORM

The Nauru constitution had only been amended once since Independence on 31 January 1968. This was on 17 May 1968. In 1971, Hammer DeRoburt, the first President, proposed changes to the constitution but nothing eventuated. In 1985 another notice of motion for a constitutional review was given but then withdrawn (McDowell 1986). Yet on 14 October of the same year a similar motion was passed by Parliament, calling for the establishment

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of a constitutional convention but again this did not go far. Meanwhile a number of cases were heard by the Supreme Court of Nauru (SCN) regarding constitutional challenges and interpretations.

Not until 2004 was there a major initiative to amend the constitution. This constitutional reform was to be part of a broader political and economic 25-year strategic plan in the form of the National Sustainable Development Strategy (NSDS) aimed at building "a sustainable quality of life for all Nauruans" and achieving "a stable, trustworthy, fiscally responsible government with transparent and accountable parliamentarians, cabinet and public service" (Government of Nauru 2005). Constitutional reform was seen as the major mechanism to achieve these optimistic ideals.

Earlier, in 2004, the Pacific Islands Forum Secretariat (PIFS) had carried out a Legislative Needs Assessment (LNA) and somewhat later UNDP, with funding from the UNDF, facilitated the constitutional review process aimed at improving capacity building of governance institutions including Parliament. The project was concluded in March 2010. The actual reform process started in July 2006 and involved six steps as shown in Table 1.

STEPS 1 AND 2: Manufacturing Consent through Public "Awareness" and "Consultation"

Based on Gramsci's theory of hegemony, the phrase "manufacturing consent" used by Herman and Chomsky (1994) specifically focuses on how dominant views and ideologies are propagated, most visibly by the media to shape public opinion. However, the Herman and Chomsky thesis assumed that both the media and the society it operated in (i.e., the United States) were culturally compatible. This was not so in the case of Nauru where a Western-style media was used in a largely post-colonial cultural context.

The two initial phases of the reform, "awareness" (Step 1) from July to August 2006 and "consultation" (Step 2) from October to November 2006, were meant to increase the Nauru people's understanding of their Constitution and of the need for constitutional review.

The first phase mainly employed the media and the second was based on community visits. The relevance of the notion of manufacturing consent in this case is more to do with the deliberate deployment of different tactics to shape public opinion in a small island community where modern communicative logistics and strategies were not well suited to the local people's sense of information validation. This was essentially a one way process because the government controlled all the media, including the radio station, newspaper and television, and naturally it was in a hegemonic position to unilaterally determine the contents and method of delivery. There were no alternative

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Table 1. Steps of the Nauru constitutional review process.
Sources: Nauru 2006, UNDP 2011.

Step	Activities	Time frame
Step 1	Public awareness: A campaign to raise public awareness of the review and of the constitution and possible amendments, which involved nation-wide media campaign, posters and distribution of pamphlets.	July-Aug 2006
Step 2	Public consultation: A series of 40 public consultation meetings throughout Nauru, and the receipt of 40 written submissions from the public. About 700 people altogether were consulted.	Oct-Nov 2006
Step 3	Independent Review Commission: A three-person Constitutional Review Commission set up to put together the views expressed by the public through the consultation process and make recommendations for amendment to the Constitution.	Dec 2006-Feb 2007
Step 4	Constitutional Convention: A Constitutional Convention, held over a period of six weeks, debated the recommendations of the Commission. The Convention members were both elected and appointed and prepared two draft bills reflecting the motions passed by the Convention.	April-May 2007
Step 5	Parliament:Consideration of the bills by Parliament, beginning with five weeks of detailed consideration in the Select Committee on Constitutional Amendment Bills in early 2009, and then three weeks detailed debate in the Committee of the Whole in June and August 2009. Parliament passed the two constitutional amendment bills on 21 August 2009	June 2007-Aug 2009
Step 6	Referendum: A referendum on certain proposed constitutional amendments that required approval by referendum was held on 27 February 2010. It did not succeed.	Feb 2010

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sources of information except information supplied at the community level by civil society organisations. The director of the media services, an Australian, primarily used mainstream public relations methods, such as daily news, government statements and interviews with members of the CRC, and directly urged the people to vote for the referendum. An opportunity for people ring up and make their views heard was provided through talk-back shows. The broadcasts were in both English and Nauruan. More or less the same format was used by the local television station. One of the major drawbacks was that both local radio and TV had limited coverage on the island because of the damage caused to the transmission tower by a forest fire a few days before (Le Roy 2006). In any case, many households did not have television and radio sets and there was no established culture of using these modern technologies for communication. People still relied on daily and informal word of mouth for information. What people heard over the radio or saw on TV would be relayed around the island by word of mouth.

Because of the lack of a standard written Nauruan, all the written materials were in English. Three billboards were put up and a total of 5219 leaflets were produced and distributed. The Australian Government did its part by funding the printing and distribution of 1000 copies of the Constitution, and the head of the Australian mission made public statements urging the Nauruans to endorse the constitutional amendments.

Altogether nine local staff and two Australian consultants (a legal expert and a public relations expert) carried out the awareness programme. It was not easy to find the right people, who would ideally "have good communication skills, computer literacy, good organisational skills, ability to comprehend and explain complex material, ability to take initiative and to work well in a team, ability to work hard and meet deadlines, and proficiency in Nauruan and English [were] the criteria used to select the local team" (Le Roy 2006: 10). Nevertheless, a team was put together. One of the criticisms was that these people did not have any proper training and, because they were necessarily mostly young people, older people in the community did not take them very seriously.[7] This was not surprising in a culture where increasing age is intrinsically linked with increased knowledge, authority and status.

Favouring the use of the English language over the local Nauruan language exacerbated what Brown (2004: 200) has referred to as the "epistemological gap" or divide "between two ways of reasoning". There were different modes of interpreting media representations. The state had faith in its technical ability to deliver messages but people responded in diverse ways, often with a mixture of suspicion, complacency and mild endorsement. The use of the media blitz was something new and provoked a sense of aggression and distance. Some people complained of the psychological intimidation they felt.

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However, within the broader framework of the transmission-reception relationship, the major challenge was how the information reached the population at large and how the texts were processed, interpreted and understood by the public in the context of what Hall (1980) categorised as "dominant," "negotiated" or "oppositional" modes of reception. In other words, was the awareness programme seen as part of the government's hegemonic stance in controlling information and using it as a means of domination, or were people given a chance to arrive at a negotiated meaning, or did the programme create opposition as people became conscious of their own ideological domination and subaltern position in the process?

From discussions with people, I gathered that the impact was not as directly positive as the state intended and later claimed. In a community with strong communal and kinship bonds and where social communication was part of kinship networks, the validity of information was judged not by the presentation of the contents but by the reliability and legitimacy of the messenger. The messenger can become more important than the message itself. Messengers are not only bearers of information but more than that they help consolidate relationships and give the message more authority and legitimacy. In Nauruan cosmology, the contents of the message cannot be isolated and transmitted independently of the messenger but rather the two are inseparably part of a communicative process.

The extent of the gap was widened by the continuing distrust of the government because of long experience of its failed investments, corruption, continuing power struggles, instability and poor governance. The reform came to be seen by some as a conspiratorial government imposition resulting in apathy and withdrawal of active participation.

While the first step was largely media driven, the second step (public consultation) was focused on community engagement. The consultation team, consisting of seven Nauruans (some of whom were involved in the first step) and the two Australian consultants, carried out the public consultations which involved community meetings where the team was to explain to the public the contents of the Nauru Constitution and impress upon them the need for constitutional reform. For many Nauruans, the exercise was very useful because for the first time they were exposed to the knowledge that they actually had a constitution, as well as the role of the constitution and how it impacted on their daily lives. This was empowering knowledge for a society where there was a significant gap between the state institutions and the community, and where serious civic education had not really taken place. Altogether 700 people attended 40 consultations with attendance ranging from five to 40 people per consultation over a six-week period from August to November 2006 (Balm and Le Roy 2006).

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Just as in the first phase, there were once again communication problems between the public consultation team and the community. The consultation format called for small group discussions under the direction of local facilitators conducted in the Nauruan language. The consolidated views were translated into English and then discussed in the major plenary session conducted in English. The use of the English language to satisfy the two foreign consultants posed two problems: the clarity in communicating local knowledge and the intention of local ownership of the change process. Furthermore, the classroom-like pedagogy deployed did not take into consideration the socio-cultural paradigm for communicative engagement in the local communities. For instance, as in Step 1, the notion of the messenger being a validating agent of the message was overlooked. Most of the consultation team members were relatively young civil servants and members of civil society organisations. This did not go down well with community elders who felt that those involved in such important work, if it were to be fully accepted, should be of reasonable maturity. Being advised by young people to believe in and do something foreign to them was not considered culturally appropriate. The common response was silence at the meetings and later expressions of dissatisfaction through informal gossip. Another technique was to pretend to go along with the wishes of the consultation team by nodding and affirming loudly while inwardly harbouring opposition. The few who spoke English responded argumentatively on behalf of the "silent majority". An evaluation of the process by an independent consultant suggested the use of a more culturally friendly pedagogical approach such as Participatory Learning Appraisal (PLA) in such a situation (UNDP 2011).

While in theory the intent and application of the term "consultation" was laudable, the reality turned out to be a hegemonic encounter where the consultation team determined the contents and approach. The term consultation itself came to connote imposed ideas, principles and values which had to be discussed with the local community to gauge their responses, whether positive or negative as a way of legitimation. There was an unequal power relationship where the state decided and defined the agenda even before consultation. There was no dialogue and participatory engagement to empower the community and provide a base for local ownership of the process.

None of the local members of the team was a qualified translator or legal expert who could competently explain technical matters in Nauruan. They were mostly high school and primary school leavers who had been working as civil servants or members of civil society organisations. Their tasks called for a combination of legal, constitutional, political, linguistic, educational and cultural expertise for which they had limited qualifications. They were to translate the constitutional provisions from English to Nauruan (despite

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the absence of any written material in the Nauruan language), explain to people the meaning of the provisions and the reasons for the amendments, and discuss with them the political implications of them all. The role of the two Australian consultants was to intervene when the local team members could not respond satisfactorily to questions. Some team members told me that they were fully aware of their own deficiencies but there was no other choice since they were the best the country could produce and they felt that it was their patriotic duty to carry out their responsibilities. The members of the community also were cognisant of these deficiencies and the superficiality of the process. A community leader joked that it was like "the blind leading the blind" and "fools teaching fools".

The chances of information being successfully imparted by those not proficient in the subject, using a language in which both the local consultation team and the local community were not competent, was highly questionable. This was a crucial phase in the reform program because it was intended to transmit information as well as transform political consciousness. Its failure to inform and transform helped to create more doubts within an already suspicious community.

Another important issue was the question of representativeness of the views captured in the consultations. Often only certain educated and informed individuals contributed to the discussions on behalf of others. In Nauruan culture, elders are considered the guardians of sacred knowledge and wisdom and their voices are representative of the collective will. Because most did not understand English and even the interpreted legal concepts and arguments, they were marginalised outside the communicative circle, thus severely compromising their influence within the community.

It was clear that the consultation team was driven by the desire to fulfil the requirements of the reform plan as expected by the project objective within the specified time and budget. Whether the community absorbed and understood the contents and implications of the contents became a mere secondary consideration. There were no monitoring or feedback mechanisms to determine the effectiveness of the community consultation. It was assumed that Steps 1 and 2 were very successful because of few verbalised criticisms. In the Nauru culture, rejection is not readily verbalised but could be projected through silence and allusive expressions.

STEPS 3 AND 4: Legitimising Mechanisms: The Constitutional Review Commission and the Constitutional Convention

To implement Step 3 three prominent people were appointed as members of the Constitutional Review Commission (henceforth Commission). They were Ruby Thoma (the Commission chair), a prominent woman politician

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and community leader; Leo Keke, a local lawyer; and Dr Guy Powles, a New Zealand constitutional expert. The Commission collected and analysed the reports from the 40 public consultations, 40 written submissions and other materials they had gathered, and synthesised them into a report with a series of recommendations (Nauru CRC 2007). The Commission was the intellectual powerhouse of the reform process because it was responsible for collecting, processing, categorising and documenting a massive amount of information which was eventually translated into recommendations for constitutions reform.

While the Commission consisted of well qualified individuals with deep commitment to Nauru's interests, the notion of having an elite body which provided the intellectual direction of the reform discourse for the entire community raised questions of legitimacy and ownership. This procedure was made necessary by accepting that it was pragmatically and logistically prudent to use a small professional group to put all the views together. A vital question here is: given the concerns about how the consultations were conducted and the representativeness of the views generated from the community, how much of the contents of the Commission's work could be said to be truly reflective of the collective community will?

As had been planned from the outset, the Commission never interacted directly with the community. It collected information from the public through the consultation team. The use of the third party, while logistically convenient, simply reinforced the social distance between the Commission and the community.

The Commission's report was the basis for discussions and recommendations of the Constitutional Convention (henceforth Convention), which was Step 4 of the process. The Convention was composed of 36 members: 9 were members of the Constitutional Review Commission, 18 were elected by the various districts and 9 were appointed by various civil society organisations. The civil society representatives consisted of two each from the Nauru Youth Council, from the Nauru Women's Council and from those who had been members of the first and only convention in 1968, and one each from the Catholic Church, the Congregational Church and the Nauru Disabled Association (Nauru CRC 2007). The UNDP paid all the expenses, including allowances for the participants. The landowners associations, private sector and some vocal civil society organisations were not represented. When I asked why these organisations were not represented, I was told by the UNDP consultant that everyone involved in the convention "was a landowner", the private sector was "too small" and the vocal civil society organisations were "too disruptive". The reality, however, was that the landowners association and the "disruptive" organisations had enough political clout to influence the ordinary people to

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vote "No" during the referendum. While the process attempted to be inclusive, it was not inclusive enough to co-opt the dissenting elements.

Debate became very intense during the Convention and things began to unravel. About 20 of the recommendations made by the Commission were rejected. Some of these related to the issue of land acquisition by the state, election of the President and other issues relating to political governance. However, later, to everyone's surprise, the Parliamentary Committee on Constitutional Reform decided to go along with the Commission's recommendations that had been rejected by the Convention, which was a truly representative body. The Government and UNDP were taken by surprise by the results of the Convention. The message was very clear at this point—the people were beginning to raise their voices and reject some of the important amendment proposals which they believed undermined their interests.

STEP 5: Reform and Political Brinksmanship

After the Convention completed its task in May 2007, the recommended amendments were submitted to Parliament in June. This was Step 5 and no doubt the most problematic part of the reform because it coincided with the sudden change of government resulting from a vote of no confidence. All along, the reform process was perceived and treated as non-partisan but all this changed when a new government came into power and as a consequence the political dynamics suddenly changed into one of intense partisanship. A constitutional requirement was that Parliament had to hold a debate on the amendments for a minimum of 90 days before they were passed. But before August 2007, when the 90 days lapsed, an election was called and consequently Parliament could not deliberate or vote on the amendment bills.

The election resulted in the return of the incumbent government; however, in December of the same year, a motion of no confidence was passed on the government and in April 2008 the President declared a state of emergency. These political developments delayed the passing of the amendment bills and eventually the two constitutional amendment bills were reintroduced to Parliament in November 2008. The first bill dealt with constitutional amendments which could be carried out through a parliamentary vote, while the second bill dealt with amendments which would later be subjected to a voter referendum (UNDP 2011).

Parliament needed time to carefully look at a number of resolutions of the Convention which were "legally unfeasible and internally inconsistent" and which needed legal fine-tuning and amendment before passing (UNDP 2010). This was significant because, increasingly, the role of Parliament rather than of the Convention, which had been a more representative body, became paramount.

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Once the political situation stabilised, Parliament proceeded with consideration of the motions. In December 2008 the second reading of the Constitution Amendment Bills took place. At the same time, Parliament resolved to establish a Select Committee on Constitutional Amendment Bills to consider in detail and make recommendations for amendment to the two bills to amend the constitution that were (re-)introduced to Parliament in November 2008. This Select Committee met for a total of five weeks in January, February and March 2009. All these meetings were accompanied by media interviews to keep the public informed of what was happening in the spirit of openness. The meetings were conducted in the Parliamentary Chamber while the gallery was open to the public. All meetings were broadcast live on the radio to generate public interest in the proceedings. The Committee produced its report and recommendations on 10 March 2009.

Despite the political turmoil, parliamentarians were able to maintain a sense of solidarity and co-operation since most were determined to see through the reforms which promised to bring about political stability and greater economic development. The parliamentary debates were open to the media for the first time to project images of transparency and also to mobilise support for the referendum. Parliament eventually passed the bills unanimously and the way was finally clear for the Referendum.

STEP 6: The Paradox of Democratic Optimism—The Referendum

In December 2009 the question for the Referendum was prepared and a Referendum public awareness programme started in February 2010. The Referendum was held in February 2010. The observer team of 14 expatriates based in Nauru were invited by the government to observe the Referendum noted that "the vote was conducted in a professional, fair, free and open environment" (Final Referendum Observers Report 2010: 6).

There were altogether 34 proposals for change in a single constitutional amendment package to be decided with the single referendum question: "Do you approve of the proposed law entitled the Constitution of Nauru (Referendum Amendment) Bill 2009?" The amendments included extending the list of rights to include protection of rights to privacy and personal autonomy, rights to information, health services, education, environmental protection and employment, and women's rights, children's rights and rights of persons with disabilities ([Referendum] Amendments Bill 2009).

Another significant proposal for amendment was the method of electing the President. The original Constitution provided for a President, as both Head of State and Head of Government, to be elected by Parliament. This has been a major cause of instability as groups of parliamentarians could mobilise and use their simple majority in the 18 member parliament to oust

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the President and his government. The amendment provided that Parliament would select two or three suitable candidates and the people would directly choose the President through a national election.

A new proposal was the establishment of a Council of State, consisting of the most senior public officers in Nauru, such as "the Chief Justice of the Supreme Court or, if the Chief Justice is not a Nauruan, a Nauruan person nominated by the Chief Justice), the Speaker of Parliament (who would not be a member of Parliament as a result of other changes to the Constitution made by Parliament), the Chief Secretary or, if the Chief Secretary is not a Nauruan, a Nauruan person nominated by the Chief Secretary" (Nauru 2009b: 15). The idea was that, in the event of a political crisis, the Council of State would be called upon to perform the functions of a caretaker government until a new President was elected. This was meant to be a politically stabilising mechanism.

Perhaps the most controversial amendment proposal dealt with the acquisition of property by the Government under "just terms". The Constitution already had provision for such an acquisition but did not clearly spell out what "just terms" meant in relation to compensation. The proposed amendment required the Government and relevant landowners to engage in negotiated agreement and if this failed then the Supreme Court would be called to intervene and make a final judgement based on the current use of the property, the importance of the public purpose for which the property was being acquired and any hardship to the owners.

Other amendments dealt with clarifying the roles of the President and Cabinet, and explicitly stated that all public officers who receive money by or on behalf of Nauru must pay the money into the Treasury Fund.

Of the 4389 voters who cast their vote, 1450 voters (33.04%) voted "Yes", and 2939 (66.96%) voted "No" . The voter turnout was 78 percent of the 5238 registered voters. The results of the referendum by districts are shown in Table 2.

The vote against the referendum was overwhelming in all the districts, except in Yaren, Nauru's "capital" where the Parliament, government offices and airport are located. Many civil servants, based in Yaren, voted for the reform. Overall, the results reflected the failure of the five phases of the reform to generate and consolidate the support of the Nauru citizens. The 67 percent "No" vote was surprising especially after Parliament had passed the amendment bills unanimously and it was assumed that people would simply replicate that spirit of consensus. The Nauru Government through the acting President referred to the results of the referendum as "disappointing but not entirely unexpected", while UNDP ironically referred to the reform as a "success" (UNDP 2010). This use of the Orwellian language to dispel disappointment and embarrassment had an important ideological and political

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Table 2. Results of the Nauruan constitutional reform referendum. Source: UNDP 2011.

Constituency	Yes	No	Total
Aiwo	105	327	432
Anabar	78	157	235
Anetan	64	187	251
Anibare	36	71	107
Baitsi	92	209	301
Boe	194	263	457
Buada	106	286	392
Denigomodu	56	104	160
Ewa	61	194	255
Ijuw	36	86	122
Meneng	293	400	693
Nibok	104	247	351
Uaboe	61	232	293
Yaren	164	176	340
Total	1450	2939	4389
Percentage	*33.04*	*66.96*	*100*

role to maintain the state's sense of legitimacy in the face of what could be construed as a vote of no-confidence in state leadership by voters. On the other hand, critics of the state saw it as a "victory" by the silent majority. So what exactly went wrong? I examine this next.

MAJOR NEGATING FACTORS AGAINST THE REFERENDUM

The Land Curse

Although the amendment provided more legal clarity and gave more power to landowners if the state wanted to acquire their land for public purposes, many landowners held the deep conviction that land issues should not be tinkered with at all. The issue of land has been extremely sensitive for the people of Nauru given the history of alienating and exploitative land policies starting

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with the Germans (1888-1914) and later the Australian-led Administration (1919-1968). There were large-scale changes to the indigenous land tenure system and rights which were both patrilineal and matrilineal under the chief's authority. Land was readily exchanged and the boundaries extended to the reef and rights to coconut trees and other plants were as important as rights to land itself (MacSporran 1995). The German attitude towards indigenous land could be summed up thus:

> ... it was taken for granted at the time, that the annexation of a territory by Germany as a colony did have no effect on the private rights of the indigenous people, that the rights were protected; they were not wiped out by the annexation but they would survive. (Transcript of Commission of Inquiry *Proceedings*, quoted in MacSporran 1995: 7)

While this was a general German imperial policy, a special dispensation was later given to Jaluit Gesellschaft, a German mining company, through a major concession in 1906. The Mining Ordinance of 1906 introduced changes that undermined the rights of Nauruan landowners and among them was the provision that phosphate was regarded as a "free" mineral that upon extraction became the property of the miner. However, there were other provisions of the mining law, as well as Article 249 of the Civil Code, which provided for restoration of damaged land and compensation to make this possible (MacSporran 1995). These compensatory provisions were hardly adhered to.

Upon the takeover of Nauru administration by Australia in 1919, a number of changes took place that further alienated Nauruans' control over their land. For instance on 25 June 1920 the British Phosphate Commission (BPC) was given a mining concession and in the process gained virtual control and a monopoly over mining on the island. A series of mining laws were passed for the purpose of regulating use of land (such as the 1921 and 1927 Mining Ordinances) but these were carried out without consultation with landowners (Hughes 2004). In 1928, a Nauru Land Committee, consisting of some local chiefs, was formed to represent local landowners in all land dealings to ensure a more systematic process of negotiation under these new laws. This Committee was given legislative backing in 1956 (Nauru Lands Committee Ordinance 1956). The aim of the ordinance was to allow the identification and codification of landownership, but it was never carried out. Later attempts to codify landownership met resistance because it did not coincide with the more flexible indigenous system. Determination of ownership of land for leasing purposes by the BPC led to numerous claims and counter-claims that provoked conflict.

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Upon independence, the right to mine was transferred to the Government of Nauru and the Nauru Phosphate Corporation (Hughes 2004). The later land law was based on the 1976 Land Act which continued the previous system except when the minister might endorse a lease if three-quarters of the joint owners of a property agreed to lease land for public purposes thus overriding the views of the minority (MacSporran 1995).

In all past land deals, landowners were mere passive participants and were denied a voice in many strategic decisions. In fact there was a strong view among many colonial and mining officials that the interior of the island where mining started was not owned at all and so Nauruans did not need to be consulted. After the total destruction of their land through mining and the subsequent collapse of the Nauruan economy, people began to develop a deep-seated distrust of their Government which they felt had failed them. Land was seen as more a source of anguish than of prosperity and any attempt by the government, or anyone else for that matter, to do anything that would impact on it, became extremely sensitive and could invoke resistance. This was precisely what happened during the Referendum.

The proposed amendment to the provision on land acquisition contained technicalities which created confusion. In relation to acquisition of land by the state, Article 8 (1) of the Constitution states that "No person shall be deprived compulsorily of his property except in accordance with law for a public purpose and on just terms" (Constitution of the Republic of Nauru 1968). The "just terms" were not specified so the amendment attempted to propose conditions such as: (i) the current use of the property, (ii) the history of the acquisition and use of the property, (iii) the importance of the public purpose for which the property is being acquired, (iv) the interests of those affected by the acquisition, and (v) any hardship to the owners (Constitution of Nauru (Referendum) Amendments Bill 2009b).

It was optimistically assumed that the amendment gave the landowners a lot of power and also would dispel any ambiguity and confusion over what "just terms" meant. However, the reaction from voters was different. One of the opposing opinions was that by listing the five conditions, the amendment ironically limited the options of the Supreme Court, which was to make the final decision, compared to the ambiguous but more open provisions of the Constitution. Perhaps the most significant factor was the fear, albeit unfounded, that the Government would try and use Article 8 to take away land. This fear was effectively spread around the island through community communicative networks.

The land issue became politicised and opinion makers within the community used the opportunity to mobilise anti-referendum campaigns. The Government responded by attempting to allay people's fears through extensive use of the media. The competition between the media and the

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informal discursive engagements within the community to win the public relations continued for weeks up to the referendum itself. The government media had to go into overdrive to compete with the wave of fear and dissent provoked by the land amendment proposal.

Election of the President

The second contentious issue was the election of the President, in particular whether the President, who was both Head of Government and Head of State, was to be elected by Parliament or directly by the people. As a unicameral parliamentary system under the Constitution, the President was elected by the 18 members of Parliament representing eight multi-member constituencies. Since there were no political parties, the President appointed any four or five parliamentarians as Ministers which then made up the Cabinet. The President and Cabinet held executive power and those not part of this ruling circle regarded themselves as the "opposition".[8]

The referendum bill recommended that Part 111 of the Constitution be amended to ensure that the President would be elected directly by the voters as in Kiribati. However, to control the number of candidates, the amendment also suggested that candidates for the presidency were to be nominated "from among members of Parliament, not fewer than two nor more than three candidates for election as President, and no other person may be a candidate" (Nauru Constitutional Amendment (Referendum) Bill 2009b: 11).

Opposition to this recommendation was based on the argument that the reform was not democratic enough because, while it suggested that presidents were to be elected directly by the people outside the confinement of Parliament, who could stand was restricted by a decision left once again to Parliament. Many regarded this contradictory to the principles of democracy and very patronising of the Nauru people.

Lack of Confidence in the State and Politics

Related to the above, was the deeply embedded lack of trust in the state system and political leadership which over the years had bred complacency and cynicism. While partially owing to the continuing instability in governance as discussed above, these attitudes reflected the continuing economic disaster, which were blamed squarely—rightly or wrongly—on political elites. Over the years, problems of poverty and socio-economic marginalisation, poor housing, limited fresh water and fresh food increased markedly, thus putting significant pressure on the already diminished island resources and capacity of an unstable government.[9] This was a far cry from the times of bounty when phosphate trade was at its peak and the citizens enjoyed a first-world lifestyle of high consumption and luxury. By the 1990s Nauru's assets were almost depleted

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as a result of "corruption, poor investment decisions, overspending and lack of planning" and the government was operating on a deficit budget, forcing it to tap into its reserves (Government of Nauru 2010: 2). Excessive borrowing resulted, so that by 2010 about 70 percent of the budgetary allocation was sourced through foreign aid. By the 2009-2010 budget year, Nauru had a total debt of US$869 million, roughly 20 times the budget (UNDP 2011).

The situation was further worsened by problems of governance and accountability. For instance, between 1998 and 2004 there was no government audited public account submitted to Parliament (Nauru Constitutional Review Commission 2007). In the case of several government statutory corporations, there had been no audited accounts since 1991-92 (Nauru Constitutional Review Commission 2007). The list of fiscal and ethical problems was staggering and included failure of collective responsibility by former cabinets and former governments to account for the use of public funds to the people of Nauru through Parliament, absence of statutory penal provisions to prevent such failures, breakdown of the computer system from 2001, absence of qualified accountants and loss of records. As if by political design, the Director of Audit had no access to Parliament records and expenditure.

The constitutional reform was expected to strengthen political, administrative and financial governance to reverse the instability, corruption, poor management and unscrupulous business practices of the previous years which led to Nauru's economic downfall. However, not many people were convinced that this optimism was workable because of the fixed perception that political leaders were unchangeable given Nauru's past history. Nauru people held their leaders responsible and their views were explicitly expressed during the consultations where some independent civil society organisations and community leaders openly challenged the reform and cast further doubt and distrust in the minds of other citizens.

Marginalising Community Dissent

A critical factor was the inability of the UNDP, Government and Constitutional Review Committee to include and co-opt dissenting voices in the community. Instead dissenting voices were ignored and marginalised as minor irritants which had no clout and thus no significant influence. They totally misread the situation. These dissenting voices represented a sizeable silent majority and took advantage of the kinship and community-based networks to extend their influence. The UNDP, Government and CRC used sophisticated media and public relations methods to mobilise public opinion as well as undermine dissenters. Instead of listening to and dialoguing with dissenters and tactically co-opting them gradually and progressively into the pro-reform bloc, they were basically treated with disdain. This merely strengthened the resolve of

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the dissenters to derail the process as the political campaigns became very personal and directed at times. Derogatory remarks often targeted Australians who some Nauru people believed had hijacked the reform process. This belief was justified by the involvement of Australian consultants, the public speech by the Australian Ambassador during the campaign urging people to vote "Yes", heavy involvement of an Australian in the media campaign as Director of Information and Australia's direct contribution in printing the Nauru constitution for distribution. All these activities provided ammunition for the dissenters who strategically whipped up people's feelings of ethno-nationalism and made the divide even wider.

Technical Blunder

The major technical blunder was bundling all the 34 amendments into the single "Yes" or "No" question: "Do you approve of the proposed law entitled the Constitution of Nauru (Referendum Amendment) Bill 2009?" In other words, it was impossible for the individual voters to choose what specific amendments they wanted to vote for. There was no provision for voters to vote on individual amendments so it was a case of either agreeing or disagreeing with the whole package. If person disagreed with two or three amendments out of 34, the only available option was to simply vote "No" for everything. For instance, while there was general endorsement of the human rights provisions, there was disagreement with the land acquisition issue.

This sparked off further debate about why the amendments were drafted this way. The UNDP consultant and later parliamentary counsel argued that the Constitution stated that the amendments had to be in the form of single bills. The consultant advised that all the amendments should be in a single bill instead of having a series of single bills (Le Roy 2008). The argument was that a series of single amendment bills would be confusing to the voters (CRC Minutes of meeting 2009). The critics thought otherwise, arguing that given the dire need for reform, minor technicalities, which might potentially derail the process, could have been easily ignored to ensure that the bigger goals were achieved. A CSO activist claimed that putting together the amendments in a bundle was reflective of the "paternalistic and neo-colonial thinking" of the UNDP and the CRC in assuming that Nauru people were "too dumb" to distinguish between the different amendments and would simply endorse the whole package. Accepting there was truth in this view, the fact that the "No" vote prevailed showed that Nauruan voters were informed and critical enough to articulate their views even in a dissenting way.

* * *

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It took the costly path of going through the Referendum for the UNDP and CRC to realise their shortcomings and as a result they have decided to carry out a national survey to find out how people voted and their reasons for voting to help them design a new approach in the next referendum (CRC Draft Survey questions 2010). After the failure and embarrassment those concerned realised that the best way forward was to reconsider their approach and this time around to seriously consider the importance of local thinking and sentiments, something they had ignored earlier. In addition, they would try and break down the amendments into separate bills representing separate issues rather than bundling them all together. At the same time the CRC is continuing with certain amendments which could be carried out by the Parliament itself without another referendum (Constitution of Nauru Parliamentary Amendments Act 2009a). Perhaps one of the most positive aspect of the referendum was that it enabled the state and UNDP to begin to recognise the importance of engaging with local ways of knowing in the political reform process.

The Nauru Referendum provides a lesson for other constitutional review processes in the Pacific—that is, the need to strike a balance between the global and the local. It is imperative to note that approaches to reform should not be based on the notion that the global and local are essentially dichotomous and that the former is naturally superior to the latter. On the contrary, both are evolving societal constructs that are amenable to accommodation as well as contradiction. While certain international best practices such as equality, inclusivity, human rights and people participation have universal appeal, they are, at the same time, culture bound in their definitions and application. The inability to recognise and appreciate others' ways of knowing can create a situation of disjuncture and tension.

The UNDP-sponsored reform process held the erroneous assumption that as a small homogenous community, it would be easy to achieve a broad consensus among the people of Nauru. However, this assumption was misplaced because it failed to take into serious and practical consideration their traumatising historical experience and how this had been a major factor in shaping their apathy and suspicion of outsiders and political authority.

Furthermore, it must be noted that the reform was focused on reconfiguring the state's political and economic capacity and little attention was paid to improving the livelihood of the ordinary people. The inability to make the connections between high level institutional reforms and people's local concerns added to the people's sense of distance and disengagement. The gap between the formal sphere consisting of the state, consultants and UNDP on one hand and the local community and its ways of knowing on the other

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appeared intractable, and attempts to bridge the divide using conventional means of public relations and consultation failed to achieve the desired results. The UNDP measured the success of the different steps in terms of formally constructed and systematically codified activities using different sets of documents and not how effective the activities were in changing people's thinking and behaviour. This reliance on pre-formulated planning and monitoring systems used by UNDP did little to unearth and address the deeper sentiments and concerns of the community.

Alternatively, a more participatory and innovative approach could have been deployed to ensure greater community ownership and address the issue of historical trauma, alienation and division as a preparatory approach for the reform. For instance, the reform could have been preceded by an extended conversation between Nauru and other Pacific states as a way of sharing mutual reform experiences. Also important was the need for a national dialogue initiative based on the indigenous peace-building processes as a way of ameliorating vertical and horizontal differences which might create obstacles for reform (Boege and Brown 2009). The translation of the constitution into Nauruan and the use of the Nauruan language in all phases of the reform were vital to raise the level of consciousness and empowerment. Unfortunately they did not happen. Using a mixture of culturally familiar and appropriate introduced tools are of paramount importance in developing societies.

The Nauruan constitutional reform provided important lessons that need to be heeded. First is the importance of recognising the strengths and limits of both the global and local approaches and their capacity to co-exist and even synthesise creatively. Both have transformational potential that can be nurtured for reform purposes. Second, because of their hegemonic position, global discourses are not necessarily superior; "superiority" needs to be measured against appropriateness to local realities. Global ideas and practices are not necessarily universally applicable and acceptable as they need to be subjected to local cultural interpretations. Third, the defeat of the reform through the referendum (despite Parliament passing the reform bill through consensus) showed that parliaments and the state systems do not necessarily represent the democratic aspirations of the community as conventional wisdom dictates. Fourth, for acceptance of political reform, there should be local ownership of the reform process through use of local languages, communication channels and socio-cultural networks. Fifth, understanding history, not only official history but also the living experiences of colonised people and their collective suffering and trauma must be a factor in analysing their contemporary cultural notions and collective political responses. Modern day Nauru is the embodiment of such a historical dilemma.

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NOTES

1. My discussions with representatives of the landowners association showed that dispute over land affected community stability and peace in a significant way. This was exacerbated by the distribution of mining royalties. Normally, matrilineal family heads were regarded as "landowners".
2. Many Nauruans I talked to still showed deep-seated anger about their history. Some would prefer not to discuss past issues when discussing current issues today.
3. Much of this information was shared by people in focus group discussions.
4. The Pacific states are quite diverse in political and economic characteristics and these variables do not capture the specificities. See http://www.undppc.org.fj/pages.cfm/our-work/democratic-governance/ for source of quotation.
5. These are a standard list of participants in reforms which are universally used by international agencies, civil society organisations and even states. For quotation, see UNDP http://www.undppc.org.fj/pages.cfm/our-work/democratic-governance/.
6. Sometimes the term "international best practice" is used.
7. These were based on interviews with some voters and members of the civil society organisations.
8. Parliament has a three-year term and there is universal suffrage with voting age at 20. The districts were administered by the NLGC until 1992 when they were abolished and today individual districts have their own community committees consisting of elected representatives. These committees carry out community projects and at times act as representative entities, although they are not legally constituted and regulated by law.
9. Based on the 2006 census, the unemployment rate was 34 percent and the Gross National Income (GNI) was minus 3.2 million. See Nauru Government (2010).

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ABSTRACT

The dilemma posed by the gap between global thinking and local living is examined in relation to the constitutional reform process in Nauru. My article looks at the role of UNDP as a global player and how, in partnership with the local political elites, designed and administered a reform process which was defeated by the voters during the referendum in February 2010. The case illustrates the consequences of attempting to apply global principles and methods of reform in an isolated community whose traumatic colonial history created deep anguish and suspicion of outsiders, and provides some lessons for constitutional reform in the Pacific states.

Keywords: global discourse, local culture, constitutional reform, referendum, Nauru

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Gmail **Constitution Review Commission <commissioners2026@gmail.com>**

Fiji Constitution Review Commission - Invitation to Consultative Session

Steven Ratuva <steven.ratuva@canterbury.ac.nz> Tue, Jun 30, 2026 at 10:03 AM
To: Constitution Review Commission <commissioners2026@gmail.com>
Cc: Leah Duru <leahduru94@gmail.com>, Kesaia Balewai <kesaia.balewai@corrections.gov.fj>, "prashant.lal@ag.gov.fj" <prashant.lal@ag.gov.fj>, "jone.naituivau@ag.gov.fj" <jone.naituivau@ag.gov.fj>, Noleen Narayan <noleennarayan@gmail.com>, "david.hurricane96@gmail.com" <david.hurricane96@gmail.com>, Sevuloni Ratumaiyale <sratumaiyale55@gmail.com>

Bula vinaka Leighton,

While awaiting our consultation next week, I want to send you an article I wrote in 2010, while I was still in Auckland, regarding the constitutional review process in Nauru and why it was rejected in a referendum in 2010. It was the very first constitutional referendum in the Pacific and it failed. I was asked by UNDP (which facilitated the constitutional reform) to go to Nauru to review the process and find out exactly what went wrong with the review process. There are some lessons here which our Constitutional Review Commission might want to learn from, especially since we are going to have our very first constitutional referendum ever.

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Social Democratic Liberal Party (SODELPA)

SODELPA
Date: 8-7-2026

Mr. Valenitabua: The consultation session this afternoon is now called to order. I welcome the Minister of Education, Member of Parliament, Mr. Aseri Radrodro, and I believe the leader of SODELPA, and I welcome you gentlemen and lady, members of the SODELPA political party. It is indeed a pleasure receiving you here this afternoon. I know that you had asked for a slot for next week. We are really tied up, and that was why I made a suggestion yesterday to your General Secretary that you can appear before us today, give us a brief summary of your submission, and then send us the submissions later on, your completed submissions. However, I'm happy to see that together with you, you have also brought your written submissions. So, some quick work must have been done last night in order to complete your submissions, and I thank you for that. The Commissioner sitting here this afternoon, I will ask them to introduce themselves.
And before I move on with the introductions and the opening, we will start from my right, and the introductions will follow.

Dr. Fatiaki: Through you, Chair, and welcome Honourable Minister and members of the SODELPA. My name is John Charles Fatiaki. I'm a medical practitioner in Suva. I come from the village of Motusa on Rotuma, and I'm a former senator and medical doctor. Bula Vinaka, Minister and SODELPA Party members.

Ms. Nailatikau: I'm Merewalesi Nailatikau. My background is in public diplomacy and policy. Bula Vinaka, Honourable Minister and leader of the Social Democratic Liberal Party.

Mr. Beg: Welcome. Thank you for coming. My name is Conway Baig. I'm an architect by profession, and I'm happy to be here and listen to you. Thank you. Good afternoon, Minister and members.

Mr. Kohli: My name is Ami Koli. I'm a lawyer from Mombasa. Mula vinaka, Honourable Minister and leader of Sodelpa Party and colleagues from Sodelpa.

Dr. Gounder: Good to have you today. My name is Niles Gounder. I'm an academic at USP. Today, I'm sitting here as one of the commissioners of the CRC, and we look forward to your submission this afternoon.

Mr. Valenitabua: Thank you, Commissioners. I am Sevuloni Valenitabua, and the chairperson of the Constitutional Review Commission. I'm a lawyer by profession. Vinaka, Honorable Minister and members of SODELPA Party, the commission, the CRC, was appointed, as you would know, by His Excellency, the President of the country. We were appointed to review the 2013 Constitution, and reviewing means, as is defined in the Constitution, it can mean repeal, it can mean amending, it can mean other things, changes and things like that. So, that is our objective. Part of the term of reference required us to go around the country and collect submissions and views from our people as to what they think should be included in the amended 2013 Constitution. We have been around the country, Lau Group, Vanua Levu, Viti Levu, and the islands, and we are now in the last week of consultations at Level 9.

We were in, I think, Matuku or Moala when the Minister was there to open some classrooms, and he interrupted our program that day, but no qualms about that.

Anyway, we are here to listen to your submissions. We are strapped for time, so I believe that your presenter will summarize to us what's in your written submission. Without much ado, or without further ado, I will now give the mic and the floor to you, so that you can present us with your submissions.

Mr. Radrodro: Thank you. Thank you, Mr. Chair, the CRC and members of the CRC. I would like to take this time to thank you for accommodating us.
We should have been scheduled for an earlier time, and thank you for giving us this time. We would prefer a much later time, but like you said, we had to do with the time given to us to make the presentation today. So, before I will be making the presentation, and maybe the members can also introduce themselves, starting from my right, who will be assisting in the submission that is made today.

Mr. Dagoa: My name is Jone Dagoa, former geologist, I previously worked in the mines division in the Mineral Resources Department in the development sector, and I hail from Nasiriji, Tavua.

Mr. Takayawa: My name is Viliame Takayawa, I am the aspiring candidate for the 2026 elections, and I hope you will vote for us.

Ms. Raduva: My name is Mary Raduva, I am a youth candidate for this year's general elections.

Mr. Tiko: My name is Varinava Tiko, I am a candidate for SODELPA, and I am not a backbencher.

Mr. Rasova: My name is Simione Rasova, I am from Nabouwalu, Kadavu, and I am the General Secretary for the SODELPA.

Mr. Radrodro: Thank you Mr. Chair, and I am Aseri Radrodro, the current Minister for Education and also the party leader for SODELPA. I would like to start our presentation, if you allow us, given that we are pressed for time, we will just go through the main topics that we would like to highlight, and our members can also pitch in should they wish to, given the time constraints. So, we will start, Mr. Chair, as the party for SODELPA respectfully submits that Fiji now has a historic opportunity to settle the constitutional questions that have divided the country for more than a generation, and the review of the 2013 constitution must not be treated as a narrow legal exercise.

It must be a national act of healing, reconstruction, and democratic renewal, and a durable constitution must be owned by the people, reflects the lived realities of Fiji's communities, protect equal citizenship, restore confidence in indigenous institutions, remove the culture of coup immunity, strengthen the rule of law, and create institutions that no government can easily capture.

This submission draws on the present constitution, the Constitution Review Commission process in 1997, Constitution in 2012, Yash Ghai draft, the SDL party's 2012 submissions, the Citizens Constitution Forum comparative analysis, the Great Council of Chiefs Review Report 2023, the Matanitu iTaukei Review 2024, relevant Fiji laws and international human rights principles, as it further updates the submission that was made in 2012 to Yash Ghai, and recommendations in a manner that is democratic, inclusive, modern, culturally respectful, and forward-looking. So, the central recommendations of these submissions, number one, SODELPA wishes to reinstate Fiji Islander as a common civic national identity for every Fijian in Fiji, while reserving the term Fijian for indigenous Fijians as first nations of Fiji, and as registered in the Vola ni Kawa Bula.

This must be done in a way that guarantees equal citizenship and equal human dignity for all citizens and recognizes the rightful place of the Rotuman's, of Indo-Fijians, of Banabans, descendants of Solomon and

Vanuatu people, Europeans, Chinese, and all other communities who have made Fiji their home. Secondly, SODELPA wishes to recommend removal of entrance immunity for coup makers for those involved in unconstitutional overthrow of elected governments, and the Constitution should prohibit future immunity for treasons, coups, torture, serious human rights abuse, serious corruption, and unlawful seizure of power. The role of RFMF must be reinvigorated, enhanced, and financially supported to secure its role in nation building, strategic defense, youth development, security, border protection, strategic development, crisis response, and regional security.

Number four, reinforce a national truth reconciliation and constitutional accountability commission to address national issues of importance, including the coups and the victims, support restorative justice, document institutional failures, recommend reparations, and recommend conditional amnesty only where truth, accountability, and victim participation are satisfied.

Number five, constitutionally recognize the Bose Levu Vakaturaga, the great council of chiefs as an independent, non-partisan of improperly funded institutions of the Vanua, responsible for Itaukei culture, language, traditional knowledge, customary leadership, community cohesion, reconciliation, and advice on matters affecting the Vanua. The great council of chiefs and its role must be constitutionally recognized as a GCC for all Fiji Islanders, have advisory role in national security as a member of the national security council, resource management, climate discourse, and retain an advisory role on all issues pertaining to indigenous issues as prescribed in the 1875 Bose Levu Vakaturaga meeting in Draiba.

The constitution should guarantee equal citizenship, a strong bill of rights, and progressive social justice rights covering education, health, housing, water, food, work, social security, disability inclusion, women's rights, children's rights, youth participation, labor rights, digital rights, and environmental rights. Position the RFMF under clear civil democratic control and remove any constitutional guardian or oversight role and reorient security resources towards external defense, maritime security, peacekeeping, disaster response, and national resilience. Create a representative and accountable parliament, ideally through a personalized national open list system, and consider a House of Review

or Senate to ensure provincial maritime, Rotuman, Banaban women's, youth, disability, customary, and civil society voices are heard.

And SODELPA proposes that the commission under a personalized national open list system as a Fiji-Taylor electoral option. It retains the democratic strength of a ballot and proportional party outcomes while adding a clear human and provincial connection between voters and candidates. Strengthen independent institutions including judiciary, electoral commission, Auditor General, Human Rights Commission, Public Service Commission, Ombudsman or Ethics and Integrity Commission, and an anti-corruption framework free from political control.

Protect Itaukei, Rotuman, Kioa, and Banaban land, Qoliqoli, culture, language, sacred sites, customary law, and benefits sharing rights while ensuring that the customary mechanisms operate consistently with human rights, natural justice, and access to courts. Protect local investments, business interests, SMEs of small micro-enterprises, and encourage aggressive investment to further and sustain the sustainable national development agenda. Adopt a balanced amendment procedure reflecting the Supreme Court's 2025 advisory guidance that constitutional change should be possible through a strong parliamentary majority and a referendum, while requiring enhanced consultation for protected rights, land, indigenous institutions, the Bill of Rights, and the judiciary.

Mr. Chair, the guiding principles of this submission is simple. Fiji's future cannot be built by erasing history, rewarding unlawful power or centralizing authority. It must be built by recognizing every community, protecting the nation's indigenous foundations, respecting equal citizenship, ending immunity for coups, and making the constitution a living covenant of peace.

As part one of the submission, Mr. Chair, SODELPA welcomes the establishment of the Constitution Review Commission and the nationwide public awareness and civic education. The current process recognizes that the constitution must be understood by the people before the people can meaningfully contribute to its review. And the Prime Minister's ministerial statement describes the review as a chance for ordinary people from every community and all walks of life to have a say in the review of the Supreme Law and notes that the commission is

tasked with listening to views, receiving written submission, and preparing a report with a draft constitution bill.

SODELPA therefore approaches this process in good faith. And the party submits that a legitimate constitution must be more than a legal text. It must be a national settlement.

It must be an answer. It must answer the unresolved questions that have repeatedly destabilized Fiji. The status of the indigenous Fijians, the meaning of equal citizenry or citizenship, the role of the vanua, the place of the Great Council of Chiefs, the protection of the land and resources, the civilian control of the military, the removal of the community, and the creation of independent institutions that can survive changes of government.

The current civic education process, including the base sessions facilitated by the Office of the Auditor General with other state institutions reflect the principles that public participation must be informed and accessible. The submission, Mr. Chair, asks that the commission to go further and ensure that the voices of villages, settlements, province, maritime islands, Rotuma, Rabi, Kioa, voices of women, voices of youth, persons with disability, faith communities, workers, businesses, farmers, landowners, tenants, industrial citizens are all captured before a final draft is prepared.

The sources and methodologies are highlighted in there, in the Section 2. And the principles of a legitimate constitution, as I've already mentioned, proposal against the following principles, legitimacy, continuity and correction, equal citizenship, indigenous recognition, rule of law, anti-co-constitutionalism, institutional independence, social justice, participation, and the future generations.

On Part 2 of our submission, Mr. Speaker, on national identity, unity and preamble, the reinstating Fiji Islander as a common national identity. The question of national identity is not a symbolic side issue. It is a constitutional question that affects belonging, historical memory, citizenship, reconciliation, and emotional legitimacy of the state.

And SODELPA submits that Fiji must build one civic family without erasing the historic name of the indigenous people. The 2013 constitution declares that all citizens are Fijian, united by a common and equal citizenship. While SODELPA acknowledges the value of common

and equal citizenship, it submits that the naming formula has remained deeply contested because it was imposed without sufficient consultation and without the concurrence of indigenous Fijians.

The SDL party, in its 2012 submission, was clear the word Fijian should be used for indigenous Fijians only, while Fiji Islander should remain the common name for all Fiji citizens. Therefore, Mr. Chair and members of the commission, SODELPA proposes the following constitutional settlement. All citizens of Fiji are Fijians and enjoy equal citizenship, equal dignity, equal protection of the law, and equal rights and responsibilities.

And the term Fijian refers to the indigenous Fijian people of Fiji, the First Nations of Fiji, and is registered under the Vola ni Kawa Bula. The recognition does not diminish the citizenship or dignity of any citizen or community. It affirms both equal civic belongings and the distinct historical identity of the indigenous people.

This approach is not exclusionary. It is a respectful data recognition, dual recognition model. It allows every citizen to share one civic identity as Fiji Islanders while restoring the historical rooted identity of indigenous Fijians.

It also avoids the false choice between equal citizenship and indigenous recognition. And Fiji can, can, and must have both. There is a table, Mr. Chair, that gives specific justification to the Fiji Islander and the Fijian names.

A preamble that tells the truth and heals the nation. And the constitution should begin with a preamble that is historically honest, spiritually respectful, inclusive, and aspirational. And so Delco proposes a preamble that combines the historical honesty of the 1997 constitution, the progressive values of the Yash Ghai draft, with the identity formulation of the submission that was made by the party, SDL, in 2012, which states that we, the people of Fiji Island, seeking the blessings of God and mindful of the spiritual heritage of these islands, recognizing the first settlement, spiritual connection, culture, land, and traditional institutions of the indigenous Fijians and the Rotuman people, acknowledging the descendants of indentured laborers, descendants of Solomon and Vanuatu people, Banabans, Tuvalu, Europeans, Chinese, and all other settlers and migrants who have made Fiji their home, affirming that all citizens are Fiji Islanders, equal in dignity and rights,

respecting the identity of the Fijian people as indigenous Fijians, determined to heal the divisions of the past and the coup culture, protect our land and ocean, and build a just, democratic, multicultural, and sustainable nation, give ourselves this constitution.

Mr. Chair, languages, faith, and spiritual heritage of Fiji, in our earlier submission, 2012, proposed strong recognition of the Fijian language, the continued use of English and Hindustani, the recognition of Fiji's Christian heritage, and SODELPA submits that this point should be modernized in a way that both honors tradition and protects equal freedom of conscience. The constitution should recognize English, Fijian, or Vosa Vaka Viti, Fiji Hindustani, Chinese, Mandarin, and Cantonese, and determine as language of national importance. English should remain a working language of the state.

The Fijian language should be recognized as the language of indigenous Fijians and strengthened in education and parliament, courts, and public services. Fiji Hindustani should be recognized as a living language of a major community. Rotuma should be recognized and protected as a language of Rotuma.

Public bodies should progressively provide services in these languages and where appropriate, in other accessible forms. On faith, Mr. Chair, members of the commission, SODELPA proposed that the constitution recognizes the historic and continuing role of Christianity in Fiji, especially in the life of the indigenous Fijian community, while also recognizing the contribution of Hinduism, Sikhism, other Christian denominations, other faith, and those of no religious belief. And the state should guarantee freedom of religion, conscience, and belief for all.

And the constitution should not be used to discriminate against any citizen on the basis of faith. On equal citizenry and modern compact, SODELPA proposes a modern compact that is justiciable where appropriate, interpretive where appropriate, and clear enough to guide all public institutions. The modern compact should affirm, as listed in bullet points there, that all Fiji Islanders are equal citizens and no citizen is a guest in the country of their birth or lawful citizenship.

The indigenous people have a distinct identity, land base, culture, language, and traditional institutions that must be constitutionally protected. The Rotuman people have distinct land, culture, language, and institutional rights that must be protected. Banaban identity, the

special position of Rabi, and the rights of the Banaban community require constitutional recognition and protection.

All communities, including Indo-Fijians, Solomons, Vanuatu, Tuvalu, Europeans, Chinese, and new citizens have made important contributions to Fiji, and it must be respected. Social justice and equity measures should address disadvantages where it exists, including in rural maritime, indigenous settlement, women, youth, disability, and low-income communities. The state must actively promote national unity through fair development.

Civic education language, language respect, sports, culture, volunteer services, and equitable access to public services. Part three of our submission, Mr. Chair, is regarding indigenous rights, land, customs, and the great council of chiefs. SODELPA submits that the constitution must protect indigenous rights in a manner consistent with equal citizenship and international standards.

UNDRIP recognizes indigenous people's rights to self-determination, institutions, cultural land, resources, consultation, and free, fair, and informed consent. In a submission in 2012, similar emphasis was on land security, mahogany minerals, customary law, and indigenous institutions. We affirm that the constitution should protect, number one, Itaukei land from permanent alienation, arbitrary acquisition, or executive manipulation, Rotuma land, culture, and institution, Banaban interest, identity, and the special position of the Rabi community, the customary fishing rights, qoliqoli, and marine resource interest, the sacred sites, burial grounds, regional pathways, cultural landscape, and cultural intellectual property, traditional knowledge, language, genealogy, oral history, cultural expression, motives, designs, music, chants, and ecological knowledge, community benefit sharing from tourism, mineral, forest, water, biodiversity, carbon markets, blue economy, initiatives, and conservative finance.

Free and prior and informed consent for major projects affecting land, qoliqoli, sacred sites, and community resources, and access to independent courts of tribunal for lands, resources, and customary disputes. We propose as SODELPA party a constitutional duty to consult affected landowners, resource owners, provincial councils, tequila councils, village institutions, and relevant customary authorities before any law or policy, or lease, project, or concession material which affects lands, qoliqoli, customary rights, or sacred sites. Consultation must be

early, meaningful, accessible, culturally appropriate, and documented, and consent should be required to, for higher impact projects and any projects affecting sacred or essential, or existing land resources.

Mr. Chair, I would like to take us to number 10. So dear SODELPA, strongly submits that the Bose Levu Vakaturaga, the Greek Council of Chiefs, must be constitutionally recognized as an independent, non-partitioned, and properly resourced institution. In our 2012 submission, as SDL, the BLV be established under the constitution that Parliament pass a BLV Act setting out its role, its functions, its powers, funding, accountability, and reform responsibilities.

In the 2012 guide draft, it recognizes the Bose Levu Vakaturaga as custodians of iTaukei culture and traditions, and as a non-partitioned organ of civil society that could promote wider understanding of iTaukei culture consistently with Fiji's multicultural character. The review report also emphasized that the GCC can contribute to sustainable development, cultural preservation, community engagement, conflict resolution, peace, justice, and strong institutions. The party SODELPA proposes the following constitutional formula.

There shall be a Bose Levu Vakaturaga, the Great Council of Chiefs, as an independent and non-partitioned constitutional institution of all Fijian communities. The Bose Levu Vakaturaga shall be custodian of Fijian culture, language, customary leadership, traditional knowledge, chiefly system, indigenous heritage, reconciliation, and the well-being of all Fijian communities. It shall perform its functions consistently with democracy, human rights, gender, dignity, the rule of law, the rights of indigenous people, and the multicultural character of Fiji.

The GCC should not be reduced to ceremony. It should have practical constitutional functions, which are included in the bullet points that I have given before you. The independence and funding and accountability of the GCC should not be dependent on the political goodwill of the government of the day.

The constitution should provide for a standing annual appropriation, an independent secretariat, audited accounts, annual reporting to Parliament, and provincial councils' transparent appointment process, code of conduct, and protection from arbitrary abolition or suspension. Parliament should enact the Great Council of Chiefs Act within 12 months of the new constitution's commencement. A modern re-armed

GCC model should deliver proposals that the GCC should be modernized through three complementary arms.

The Council of Chiefs, the Derivative Cultural and Advisory Boarding, the Itaukei Cultural Research and Development Trust, a funding and research arm for language, culture, leadership, education, entrepreneurship, traditional knowledge, and intergenerational transmission. This funding arm should be an amalgam of all iTaukei institutions, including ITLTB, Fijian Holding, TTFB, and all other potential funding sources, including government. And the third one is the Vanua Social Concern and Community Resilience Arm, a non-profit arm supporting village, development, poverty reduction, climate resilience, disaster preparedness, youth services, women's leadership, disability inclusion, and conflict resolution.

Mr. Chair, I'll put number four on democracy, anti-coup, safeguards, and institutional reform. Removing immunity and ending the coup culture. SSODELPA submits that the entrenched immunity provisions in Chapter 10 of the 2013 Constitution are incompatible with constitutional democracy.

The 2013 Constitution constitutes immunity under the 1990 Constitution, which continues immunity under the limitation of liability for prescribed political events. Decree 2010 grants further absolute and unconditional immunity to wider categories of public actors for direct and indirect participation in government from 5 December 2006. The SDL party warned in 2012 that unilateral immunity would desecrate the sanctity of the constitutional documents and perpetuate a cycle of coup, an immunity coup, and immunity.

SODELPA now submits that no new constitution will be morally or democratically legitimate if it leaves this structure untouched. Our recommendation is to repeal the entrenched immunity provisions and all clauses purporting to make them unamendable. Declare that no future constitution law, decree, or executive arm may grant immunity for treason, unconstitutional seizure of power, torture, extrajudicial killing, enforced disappearance, sexual violence, serious corruption, or gross human rights violation.

Provide that any attempt to establish government other than under the constitution is unlawful, void, and incapable of validation except through a lawful democratic transition approved by the people. Disqualify

principal co-leaders and principal beneficiaries from public office, military command, police command, constitutional office, and ministerial office subject to due process. Require all members of the disciplined forces, public officers, ministers, members of parliaments, and judges to swear an oath rejecting unconstitutional seizure of power. And create civic education in the RFMF, police, corrections, schools, public services, and communities on constitutional democracy and civilian authority. The amnesty to the reconciliation is not a blanket immunity, and SODELPA supports a national reconciliation, but reconciliation cannot be built on silence. The submissions of the party in 2012 distinguish amnesty from immunity and propose a special commission to examine the cause, document participation, and make recommendations for amnesty.

And SODELPA proposes a modern victim-centered national truth, reconciliation, and constitutional accountability commission. The commission should carry out those responsibilities as in the bullet points. Civilian control and reform of the RFMF.

SODELPA, Mr. Speaker, Sir, Mr. Chair, Sir, recommends to define the roles of RFMF external defense, maritime security, peacekeeping, disaster support and assistance to civil authorities under law. Remove any broad constitutional phrase that could be interpreted as a political guardian role. Require the RFMF to be politically neutral and subordinate to the elected civilian government and the constitution.

Create a civilian-led national security council accountable to parliament. Require parliamentary approval for the defense budget, major procurement, and security policy. Require the General to audit defense expenditure subject to narrow and reviewable national security reduction and rebalance military expenditure toward maritime surveillance, border protection, engineering, disaster response, climate relocation support, regional peacekeeping professionalism, and contributing to mandatory national service for school leavers and dropouts.

On the parliamentary electoral reforms and a House of Review, Fiji needs an electoral system that produces fair representation, stable government, and a real connection between the voters and representatives. The 2013 Single National Constituency weakens local accountability and makes it difficult for citizens in provinces, maritime islands, and local communities to know who directly represents them.

And SODELPA proposed a system that preserves proportional fairness while restoring constituency representation.

The submissions by the party in 2012 supported a bicameral system, bicameral parliament, the removal of compulsory voting, and the movement toward one person, one vote, one vote through a mixed-member proportional approach. SODELPA proposed that the Commission consider a mixed breed of personalized national open list system as a Fiji-tailored electoral option. It retains the democratic strength of a national proportional system, one person, one vote, one value, a single national ballot, and proportional party outcomes.

While adding a clearer human and provincial connections between voters and candidates. The purpose is not to return Fiji to communal roles or rigid provincial seats. The purpose is to give every voter a simple way to support either a trusted provincial voice or a nationally-advised leader, while ensuring that each vote still contributes fairly to the party's national vote. The proposal, the details of the proposed personalized national system are there in 14.1, Mr. Chair and the members. And if you need any clarification, we will be able to address and provide information after the presentation. The international validation and Fiji's opportunity to innovate. The exact Fiji model proposed here would be new, but its components are not experimental. International comparative practice recognizes least proportional representation, open list personalized candidate choice.

Fiji's present constitutional model is already a national open list proportional representation system.
And Fiji's electoral profile records that members of parliament are elected by a multi-member open list proportional representation system. SODELPA therefore submits that Fiji can be both cautious and creative. The personalized national open list system is not radical because it preserves a single national ballot, equal voting value, and proportional party outcomes.

The recommended constitutional legislative safeguards, the constitution should state the core principles only. Parliament is elected through a system of proportional representation based on one person, one vote, one value. With voter choice among candidates and with mechanisms for both national and provincial accountability. The model should be explained through voter education in English, iTaukei, Fiji Hindi, Rotuma, and accessible formats, including work examples for

rural, urban, and maritime voters. After two general elections, an independent review should assess whether the system has improved local accountability, women's participation, youth representation, provincial vote, voter understanding, and proportional fairness. The proposed position, SODELPA recommends that the commission include the personalized national open list system as a serious electoral reform option for public consultation.

It should be presented not as a rigid final formula, but as a principled Fiji design model capable of reconciling national proportional fairness with provincial accountability and voter confidence. The House of Review or Senate, SODELPA proposes serious consideration of a second chamber. A House of Review or Senate that is not a rival government, but a constitutional safeguard for deliberation, regional voice, indigenous consultation, and quality lawmaking.

It may include representation from provinces, from Rotuma, from Rabi, Kioa, and municipalities, women, youth, persons with disabilities, labor, business, faith, communities, civil society, and the vanua. The GCC and provincial council should have a defined role in nominating or selecting a limited number of members whose role is to review and advise, but not to exercise partisan control over government. The House of Review or Senate should have delaying and consultative powers, enhanced powers over protected matters, and a duty to review legislation for consistency with the Bill of Rights, land protection, indigenous rights, public finance, responsibility, and constitutional values.

Executive governments, governments and limits of concentrated power, the Constitution should provide that cabinet is collectively accountable to Parliament. The Prime Minister appoints ministers, but appointments to independent officers must not be controlled by the Prime Minister or the Attorney General. The Attorney General should be the government's principal legal advisor, but should not dominate judicial, prosecutorial, electoral, disciplinary, anti-corruption, legal profession, or accountability appointments.

The President should be a unifying, nonpartisan head of state, appointed by a broad parliamentary consensus, with a fallback mechanism that requires cross-party participation. Major constitutional appointments should require open advertisement, merit assessment, independent recommendation, and parliamentary confirmation. Cabinet size should be limited by law to reduce patronage and cost.

Ministers should be subject to enforceable conflict of interest, asset declaration, procurement, gifts, travel, and post office employment rules. On the judiciary and rule of law, judicial independence is the spine of constitutional democracy. The Constitution guarantees the independence of all courts, protects judicial tenure and remuneration, prohibits executive interference, and allows courts to enforce the Constitution against all branches of government.

The Judicial Service Commission should be independent of executive dominance and should include the Chief Justice, senior judicial representatives, representatives of the legal profession, persons of high integrity appointed by a transparent process, and limited non-voting administrative support. Attorney General should not control judicial appointments or the disciplinary process. SODELPA made the recommendations to restore full court jurisdiction to interpret and enforce all parts of the Constitution, including transition and immunity questions, appoint judges through merit-based, transparent process, protect tenure, remunerations, and security of officers.

Create transparent judicial complaints, procedures that cannot be used for political retaliation, and protect the independence of the Directors of Public Prosecution, guarantee legal aid and access to courts, including for rural and maritime communities, recognize customary disputes, resolution, but preserve access to the courts. On the independent Constitutional Offices and Integrity Institutions, I ask Mr. Karavaki to take over from this presentation.

Mr. Karavaki : Fiji Independent Offices must be independent in substance and not only in name. The 2013 Constitution creates a Constitutional Office Commission chaired by the Prime Minister and including the Attorney General, which raises concerns about executive dominance over key appointments. SODELPA proposes a rebalance COC. A COC should include the President on Nominee, Leader of the Opposition Chief Justice on Nominee, a representative of the Fiji Law Society, a representative nominated by the GCC Provincial Institution for Indigenous Institutional Matters, and independent members selected through a transparent parliamentary process.

The Prime Minister and Attorney General should not together control the majority as we have experienced in the 2018 Constitution. The Constitution should strengthen Electoral Commission and Supervisory

Elections, the Auditor General, and all those that are listed on the bullet points. They are all Constitutional Offices.

The Public Service and State Services. SODELPA proposes a public service that is professional, nonpartisan, decentralized, and people-centered. Public officers must serve the Constitution and the public, not the party in government.

The Public Service Commission should protect merit appointments, fair, disciplined, equal opportunity, gender-balanced disability, inclusion, linguistic capacity, and regional representation. The Constitution should support decentralization of services to divisions, provinces, towns, something that is being partially done at the moment, but we believe that it should be a very extensive process. The rights, social justice, and inclusive development.

A strong and enforceable Bill of Rights. We see all the Bill of Rights that are listed on the bullet points. Unfortunately, we see that the Bill of Rights are all unenforceable to the major extent of it.

Because in every Bill of Rights, you see the exceptions underneath. That only if the government has the funding, then those Bill of Rights can be exercised. Otherwise, they are there by words for selling to international communities, but they are unenforceable locally.

Something we feel that it should be changed, as we will be later on advocating in one of these particular rights to demonstrate our commitment to the enforcement of those rights for the better living of our citizens in this country. Women, equality, and leadership. SDL 2012 submission recognized CEDAW, the Beijing platform, commitments, women empowerment, women in decision-making, women, and the law.

Employment, livelihoods, elimination of violence, and women's health. It supports an immediate target of 30% women in Parliament and parity in the long term. We hope that we can demonstrate this as an example in the coming elections.

CEDAW proposes to modernize this recommendation by recognizing that temporary special measures are not contrary to merit. They are tools to remove barriers of equal opportunity. The constitution should

require state and political parties to promote women's equal participation in Parliament.

Cabinet, public boards, the public service, provisional institutions, municipal councils, statutory authorities, and the private sector. Specific constitutional legislative measures should include gender balance. Party listing using a cyber alternative placement system where party lists are used.

Public funding incentives for parties that meet women's representative targets and all those bullet points. The youth empowerment, SDL in its 2012 submission proposes constitutional provision for youth representation in Parliament. You will see that on the right of our party leader we have a youth aspiring candidate for the coming general elections.

A young woman who is interested and we hope that we can demonstrate exactly what we are talking about over here in our proposal. Also disability, we have the president of the disability association who is also an aspiring candidate for the coming election. That's what we also want to promote and we hope that this commission can take serious recognition of that in our submission.

Pension entitlement and protection for accrued rights. SDL in 2012 submission proposed that pension entitlement is a right. SODELPA supports the constitutional protections.
This is our elders who have worked tirelessly in the past and giving us a very bright opportunity as we look to the future. The social justice equity and shared prosperity. SODELPA proposes social justice chapter that requires the state to take targeted evidence-based measures to secure equality of opportunity.

This should include programs for indigenous Fijians, Rotuman's, Banabans, Indo-Fijians and other communities where disadvantage is shown and for women, youth, persons with disability, elder persons, rural and maritime communities, informal settlements, workers, farmers, students and low income families. Social justice measures should be transparent, time bound or appropriately reviewed by parliament based on need and historical disadvantage and designed to promote dignity, capability and national unity rather than dependency or division. The decentralization public finance environment and future generation.

SODELPA submits that democracy must be visible in the daily lives of people. It must reach villages, settlements, maritime islands, towns, provinces and out islands. The constitution should require regular local government elections, strengthened provisional councils, meaningful village planning and fair fiscal transfers of local and provincial institutions.

Something that SODELPA believes, the decentralization so that our people in the rural areas, in villages, in settlements, they feel that we are traveling together as a people, as a nation. The public finance revenue expenditure, the constitution should make public finance transparent, responsible and people centered public funds must be used for public benefit, major borrowing, guarantees, public private partnership, natural resources, concession and state asset disposal should be transparent and subject to parliamentary scrutiny. SODELPA proposes those, under those bullet points, the climate, environment, oceans and future generation.

The 2012 guide draft included an entire chapter on natural heritage, including the natural environment, land rights, land use, fishing grounds, natural resources, consultations and land laws. The CCAF analysis noted that the more detailed environment and resource provisions of the 2012 draft were largely omitted from the 2018 government draft. SODELPA proposes restoring and strengthening these provisions.
It should protect the rights of future generations. It should require fair benefits, sharing for common markets, rural economy projects, mineral extraction, tourism, conservation, finance and other resource uses. It should protect communities facing climate displacement through consultation, land security, cultural continuity, relocation support and legal recognitions of climate affected rights.

Constitutional amendment and transition, 2018 constitution originally required very high thresholds for amendment and transition immunity provisions. The Supreme Court 2035 advisory opinion is summarized by international idea and Fiji news reporting opening pathway by confirming that amendments can proceed with a two-thirds parliamentary majority and a majority in a referendum while keeping the people referendum rule. SODELPA proposes a balanced amendment formula which is listed under those bullet points.

Law inconsistent with constitutional democracy should be amended or repealed within a defined period. The term Fijian refers to the indigenous Fijian people of Fiji, the first nation of Fiji as defined under the voluntary formula. No law, policy or public act may use this recognition to deny or diminish the equal citizenship rights or dignity of any citizens or community.

The clause 2, the recognitions of communities. The Republic recognizes the indigenous Fijian people, the Rotuman people, the Banaban community, descendants of indigenous laborers, Pacific Islanders, Solomon, Vanuatu, Europeans, Chinese and all other communities who have made Fiji their home. The Republic shall protect the language, culture, heritage and dignity of every community and shall promote unity through justice, respect and equal citizenship.

Clause 3, the anti-coup provision. Any attempt to establish, support, recognize or maintain a government other than in accordance with its constitution is unlawful and void. No person may claim public authority arising from a coup, treason, insurrection, military intervention or unconstitutional seizure of power.

No immunity shall be granted for such conduct. Clause 4, the truth, reconciliation and accountability. Parliament shall establish a National Truth, Reconciliation and Constitutional Accountability Commission to inquire into unconstitutional seizures of power, coups, attempted coups and related abuses.

Here, victims receive disclosures, recommend reparations, institutional reform and civic education, and recommend conditional amnesties only in accordance with the constitution and the rights of victims. Clause 5, The Bose Levu Vakaturaga. There shall be a Bose Levu Vakaturaga, the Great Council of Chiefs, as an independent, non-partisan constitutional institution of the vanua.

Its functions, composition, funding, reporting and obligations, code of conduct and secretariat shall be prescribed by law, consistently with its role as custodians of Fijian culture, language, traditional knowledge, customary leadership, reconciliation and the well-being of the vanua. Clause 6 is about the land of qoliqoli and customary rights. We say this, the ownership and beneficial interests and customary rights of indigenous Fijians, Rotuman's and Banabans in land of qoliqoli, sacred

sites, cultural heritage, traditional knowledge and natural resources shall be protected.

No law or administrative act may arbitrarily alienate, diminish or extinguish those rights. The State shall ensure meaningful consultation and, where required by law, free, prior and informed consent. Clause 7, the Civil and Control of Discipline Force, this is our proposition.

The Republic of Fiji Military Forces, Fiji Police Force and the Fiji Correction Services shall be politically neutral, professional and subordinate to the Constitution and the elected civilian authority. The military shall have no role in determining the legitimacy of an elected government, parliament or court. Clause 8, the Rights of Limitations.
A right of freedom may be limited only by law and only to the extent that the limitation is reasonable, necessary and demonstrably justifiable in a free and democratic society, based on human dignity, equality, freedom, democracy and the rule of law. Clause 9 is about public participation and this is our proposition. The public bodies shall facilitate meaningful public participation in law making, policy making, building and decision-affecting communities.

Participation must be timely, informed, accessible, culturally appropriate and inclusive of women, youth, persons with disabilities, rural and maritime communities, linguistic communities and affected customary authorities. So the clause 10, the amendments, it says this, this Constitution may be amended only by the procedures set out in this chapter. No amendment may grant or entrench immunity for unconstitutional seizure of power, treason, coup, torture, serious human rights, abuse or serious corruption.

Protected methods require enhanced consultation with affected communities and approved by referendum.

Mr. Valenitabua: Mr. Karavaki, it's now after 3pm, our time was to have finished at 3. If you look to your left, we have the next group outside who are here to also make submissions to us. May I ask that you wrap up now so that we can bring this consultation to a close, please.

Mr. Karavaki : Thank you, Mr. Chair. Can we just highlight just a few points? I think we should stop reading. Can we just highlight a few issues? Everything that we are reading is here for your deliberations. Just highlight a few points before we conclude, sir.

Mr. Valenitabua : Yes, just please be aware that we have the Ministry of Lands officers waiting outside. Thank you.

Mr. Radrodro : I just want to refer you to the clarification and deliberation in terms of RFMF role in the National Service Programme that we had alluded to earlier. The evolving dynamics that is in page 36, these are some supporting documentations, additional proposal and policy that the Commission can take into consideration.

For the role of the Fiji military forces to provide clarity in terms of youth development and the proposal for the National Service Pathway for youths aged 17 and 18. We are proposing that the Constitution would highlight this for youths aged 17 and 18 to enroll in the National Service Programme under the RFMF to ensure that it addresses youth unemployment and skills gap. It addresses strengthening discipline and responsibility for civic values.

It addresses building national unity and social cohesion. It addresses enhancing national security and disaster preparedness and supporting youth development and reducing social risks and creating pathways for leadership and national contribution. This is a best practice and international precedent that has been practiced globally as you can see in page 39.

It has been practiced in some of the countries overseas, in Singapore, in South Korea, Norway and Denmark and likewise in New Zealand. It also aligns with the Fiji national needs in terms of addressing high youth population, rising social challenges, increasing climate disaster and the need for stronger values and ensuring fairness and inclusivity by making a National Service Programme under the RFMF. So those are the supporting documentation to our presentation and in conclusion, Mr. Chair, we respectfully submit that Fiji requires a constitution that is both principled and practical.

A Constitution that every Fiji Islander can call their own. A Constitution that restores the name and dignity of indigenous Fijians. A Constitution that protects the Vanua, Rotuman, Banaban identity and all communities. A Constitution that removes immunity for coups. A Constitution that strengthens the Great Council of Chiefs as an independent, non-partisan and modern institution. A Constitution that

protects equal citizenry and human rights and a constitution that finally closes the door on unconstitutional seizure of power.

For Fiji, for the vanua, for every Fiji Islander and for the generation yet to come. SODELPA as a party urges the Constitution Review Commission to recommend a democratic, inclusive, accountable and culturally grounded Constitution, constitutional settlement worthy of our nation's future. Mr. Chair and members of the Commission. Thank You!!

Mr. Karavaki: We are just winding up. I would like just to highlight on page 10, we are going back just at the top of the, it says that Tauke land should not be permanently lineated arbitrary acquisition or executive manipulations. This refers to Section 27 and 28 of the Constitution.

And our position, we are saying this, the present process when the iTaukei land or even Freehold is acquired, compulsory acquired, the whole classification of the land changed to become state land. We are saying that through that process, a lot of land that was in the Tauke, they are now Freehold. Through that process, because it was acquired first for public purpose.

When the public purpose reasons has already ended, those lands were not returned. We are not saying, like other submitters had said to be returned, we are saying just don't change the land classification. When you acquire the land, you do not change the classification from native to state. Leave it as native. Because if you change it without even the knowledge of the landowners, it's just like you stealing an object. And we are saying that is an evil element that is in our laws. And we would like that to be corrected. Do not steal. Do not change the land classification.

Leave it as native. If the government has to lease, it has to lease it. And it will not highlight any risk at all to have that land to be in a properly being changed classification to become Freehold now.

Mr. Valenitabua: We want that to be very clear. We'll take note of that, Mr. Karavaki. Thank you very much. Thank you very much, Honorable Minister for Education and Leader of Party. Like I said, we had one hour. If we had met earlier, we were allocating one and a half hours for each submitter. However, we are time strapped now. We've got the Minister of Lands and his offices waiting outside. So, I have to bring this to an end. We will come back to you during our deliberations if we need any further clarifications.

We usually ask questions at the end of sessions. Unfortunately, we cannot do that now.

----------End of Session [8-7-2026] ----------

Social Democratic Liberal Party

Submission to the Constitution Review Commission of Fiji

By the Social Democratic Liberal Party (SODELPA)

Rebuilding Fiji's Constitutional Foundation: Identity, Democracy, Indigenous Rights, Equal Citizenship, Accountability and National Reconciliation

Wednesday 8th July 2026

Abbreviations

Abbreviation	Meaning
BLV / GCC	Bose Levu Vakaturaga / Great Council of Chiefs
CRC	Constitution Review Commission
COC	Constitutional Offices Commission
FICAC	Fiji Independent Commission Against Corruption
MMP	Mixed Member Proportional electoral system
PACE	Public Awareness and Civic Education Program
RFMF	Republic of Fiji Military Forces
SDL	Soqosoqo Duavata ni Lewenivanua Party
SODELPA	Social Democratic Liberal Party
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

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Executive Summary

SODELPA respectfully submits that Fiji now has a historic opportunity to settle the constitutional questions that have divided the country for more than a generation. The review of the 2013 Constitution must not be treated as a narrow legal exercise. It must be a national act of healing, reconstruction and democratic renewal. A durable Constitution must be owned by the people, reflect the lived realities of Fiji's communities, protect equal citizenship, restore confidence in indigenous institutions, remove the culture of coup immunity, strengthen the rule of law, and create institutions that no government can easily capture.

This submission draws on the present Constitution Review Commission process, the 1997 Constitution, the 2012 Yash Ghai Draft, the SDL Party's 2012 submission, the Citizens' Constitutional Forum comparative analysis, the Great Council of Chiefs Review Report 2023, Matanitu iTaukei Review, 2024, relevant Fiji laws, and international human rights principles. It further updates the 2012 SDL recommendations in a manner that is democratic, inclusive, modern, culturally respectful and forward-looking.

The central recommendations are as follows:

- Reinstate "Fiji Islander" as the common civic national identity for every citizen of Fiji, while reserving the term "Fijian" for indigenous Fijians as First Nations of Fiji and as registered in the Vola ni Kawa Bula (VKB). This must be done in a way that guarantees equal citizenship and equal human dignity for all citizens and recognises the rightful place of Rotumans, Indo-Fijians, Banabans, descendants of Solomon and Vanuatu peoples, Europeans, Chinese and all other communities who have made Fiji their home.
- Remove entrenched immunity for coup makers and those involved in unconstitutional overthrow of elected governments. The Constitution should prohibit future immunity for treason, coups, torture, serious human rights abuse, serious corruption and unlawful seizure of power.
- The role of the RFMF must be reinvigorated, enhanced and financially supported to secure its role in nation building, strategic defence, youth development, security, border protection, strategic development, crisis response and regional security.
- Reinforce a National Truth, Reconciliation and Constitutional Accountability Commission to address national issues of importance, including the coups and their victims, support restorative justice, document institutional failures, recommend reparations and recommend conditional amnesty only where truth, accountability and victim participation are satisfied.
- Constitutionally recognise the Bose Levu Vakaturaga, the Great Council of Chiefs, as an independent, non-partisan and properly funded institution of the vanua, responsible for iTaukei culture, language, traditional knowledge, customary leadership, community cohesion, reconciliation and advice on matters affecting the vanua.
- The GCC and its role must be constitutionally recognised as a GCC for all Fiji Islanders, have advisory roles in national security as a member of the National Security Council, resource management, climate discourse and retain an advisory

role on all issues pertaining to indigenous issues as prescribed in the 1875 Bose Vakaturaga meeting in Draiba, Ovalau.

- Guarantee equal citizenship, a strong Bill of Rights, and progressive social justice rights covering education, health, housing, water, food, work, social security, disability inclusion, women's rights, children's rights, youth participation, labour rights, digital rights and environmental rights.
- Position the RFMF under clear civilian democratic control, remove any constitutional guardian or oversight role, and reorient security resources toward external defence, maritime security, peacekeeping, disaster response and national resilience.
- Create a representative and accountable Parliament, ideally through a Personalised National Open List System, and consider a House of Review or Senate to ensure provincial, maritime, Rotuman, Banaban, women's, youth, disability, customary and civil society voices are heard.
- SODELPA proposes that the Commission consider a Personalised National Open List System as a Fiji-tailored electoral option. It retains the democratic strengths of a national proportional system with one person, one vote, one value, a single national ballot and proportional party outcomes, while adding a clearer human and provincial connection between voters and candidates.
- Strengthen independent institutions, including the judiciary, Electoral Commission, Auditor-General, Human Rights Commission, Public Service Commission, Ombudsman or Ethics and Integrity Commission, and an anti-corruption framework free from political control.
- Protect iTaukei, Rotuman, Kioa and Banaban land, qoliqoli, culture, language, sacred sites, customary law and benefit-sharing rights, while ensuring that customary mechanisms operate consistently with human rights, natural justice and access to courts.
- Protect local investments, business interests, SMES and encourage aggressive investments to further the sustainable national development agenda.
- Adopt a balanced amendment procedure reflecting the Supreme Court's 2025 advisory guidance that constitutional change should be possible through a strong parliamentary majority and a referendum, while requiring enhanced consultation for protected rights, land, indigenous institutions, the Bill of Rights and the judiciary.

The guiding principle of this submission is simple: Fiji's future cannot be built by erasing history, rewarding unlawful power, or centralising authority. It must be built by recognising every community, protecting the nation's indigenous foundation, respecting equal citizenship, ending immunity for coups, and making the Constitution a living covenant of peace.

Part I - Constitutional Context and Method

1. The national moment

SODELPA welcomes the establishment of the Constitution Review Commission and the nationwide public awareness and civic education process. The current process recognises that the Constitution must be understood by the people before the people can meaningfully

contribute to its review. The Prime Minister's ministerial statement describes the review as a chance for ordinary people, from every community and all walks of life, to have a say in the review of the supreme law, and notes that the Commission is tasked with listening to views, receiving written submissions and preparing a report with a draft Constitution Bill. [R1]

SODELPA therefore approaches this process in good faith. The Party submits that a legitimate Constitution must be more than a legal text. It must be a national settlement. It must answer the unresolved questions that have repeatedly destabilised Fiji: the status of indigenous Fijians, the meaning of equal citizenship, the role of the vanua, the place of the Great Council of Chiefs, the protection of land and resources, the civilian control of the military, the removal of coup immunity, and the creation of independent institutions that can survive changes of government.

The current civic education process, including PACE sessions facilitated by the Office of the Attorney-General with other state institutions, reflects the principle that public participation must be informed and accessible. [R2] This submission asks the Commission to go further and ensure that the voices of villages, settlements, provinces, maritime islands, Rotuma, Rabi, Kioa, women, youth, persons with disabilities, faith communities, workers, businesses, farmers, landowners, tenants and diaspora citizens are all captured before a final draft is prepared.

2. Sources and methodology

This submission is founded on five layers of analysis. First, it incorporates and modernises the SDL Party's 2012 submission to the Constitution Commission. That document raised questions of identity, the role of the BLV, constitutional recognition of indigenous institutions, removal of unilateral immunity, reform of the RFMF, social justice, women's participation, youth participation, customary law, pension rights, electoral reform and the protection of land and resources. [R4]

Second, it uses the 2012 Yash Ghai Draft as a significant democratic reference point. The Ghai Draft was produced after a broad consultation process and contained strong provisions on natural heritage, land and resources, socio-economic rights, public participation, civil society, leadership, ethics, the BLV, women, persons with disabilities and the environment. [R5]

Third, it uses the 1997 Constitution as an important reference point because it recognised Fiji's multicultural society, common citizenship, the Compact, social justice, land protection, the BLV, the Senate, independent institutions and a rights framework. [R11]

Fourth, it analyses the weaknesses of the 2013 Constitution. The 2013 Constitution recognises some important rights, including socio-economic and environmental rights, but it also entrenches immunity, centralises power, weakens institutional independence, omits the GCC from the constitutional architecture, and originally made amendment virtually impossible. [R7] [R8] [R9] [R10]

Fifth, it draws from international human rights standards, especially the rights of

indigenous peoples, participation in public affairs, women's political participation, disability inclusion, economic and social rights, and equality before the law. [R14] [R15] [R16] [R17] [R18] [R19]

3. Principles for a legitimate Constitution

SODELPA proposes that the Commission assess every constitutional proposal against the following principles:

- *Legitimacy:* the Constitution must derive authority from genuine public consultation and informed consent.
- *Continuity and correction*: the Constitution should retain what is sound in the 1997, 2012 and 2013 texts, but correct what is unjust, imposed, undemocratic or unworkable.
- *Equal citizenship*: every citizen must have equal dignity, equal rights and equal protection of the law.
- *Indigenous recognition:* equal citizenship must not erase the status, identity, land, culture, language and institutions of indigenous Fijians, Rotumans and Banabans.
- *Rule of law:* no person, institution, office holder or armed force is above the Constitution.
- *Anti-coup constitutionalism:* the Constitution must make unconstitutional seizure of power impossible to legitimise and unattractive to attempt.
- *Institutional independence:* courts, commissions and accountability bodies must not be controlled by the executive.
- *Social justice:* rights must be meaningful in villages, settlements, schools, hospitals, workplaces, markets, maritime islands and farms, not only in courts.
- *Participation:* the people must have a permanent constitutional right to participate in public decision-making.
- *Future generations:* the Constitution must protect land, oceans, culture, language, climate security and public resources for children yet unborn.

Part II - National Identity, Unity and the Preamble

4. Reinstating Fiji Islander as the common national identity

The question of national identity is not a symbolic side issue. It is a constitutional question that affects belonging, historical memory, citizenship, reconciliation and the emotional legitimacy of the State. SODELPA submits that Fiji must build one civic family without erasing the historic name of the indigenous people.

The 2013 Constitution declares that all citizens are Fijians united by common and equal citizenry. [R10] SODELPA acknowledges the value of common and equal citizenship, but submits that the naming formula has remained deeply contested because it was imposed without sufficient consultation and without the concurrence of indigenous Fijians. The SDL Party's 2012 submission was clear: the word "Fijian" should be used for indigenous Fijians only, while "Fiji Islander" should remain the common name for all Fiji citizens. [R4]

SODELPA therefore proposes the following constitutional settlement:

All citizens of Fiji are Fijians and enjoy equal citizenship, equal dignity, equal protection of the law, and equal rights and responsibilities. The term Fijian refers to the indigenous Fijian people of Fiji, the First Nations of Fiji, and is registered under the Vola ni Kawa Bula. This recognition does not diminish the citizenship or dignity of any citizen or community. It affirms both equal civic belonging and the distinct historical identity of the indigenous people.

This approach is not exclusionary. It is a respectful dual-recognition model. It allows every citizen to share one civic identity as Fiji Islanders, while restoring the historically rooted identity of indigenous Fijians. It also avoids the false choice between equal citizenship and indigenous recognition. Fiji can and must have both.

SDL 2012 recommendation integrated	Proposed constitutional response
"Fiji Islander" as common name for all citizens	Adopted as the common civic identity in the proposed preamble, citizenship clause, passports and national civic language.
"Fijian" reserved for indigenous Fijians as First Nations of Fiji and registered under the Vola ni Kawa Bula	Adopted as a protected historical and cultural identity, while ensuring equal citizenship for all Fiji Islanders.
Resolution through consultation and consensus	Constitutional text should be preceded by public dialogue, including with indigenous institutions and all communities.
Do not use identity as a tool of division	The new wording must be accompanied by civic education that teaches our history, equal citizenship, mutual respect and shared responsibility.

5. A preamble that tells the truth and heals the nation

The Constitution should begin with a preamble that is historically honest, spiritually respectful, inclusive and aspirational. The 1997 Constitution recognised the settlement of the islands by the ancestors of the indigenous Fijian and Rotuman peoples; the arrival of later communities; the enduring influence of Christianity and the contributions of other faiths; the multicultural character of society; common citizenship; social justice; human rights; and the rule of law. [R7] [R11]

The 2012 Ghai Draft used progressive language of healing, trust, tolerance, inclusiveness, compassion, human dignity, equality, democracy, social justice, human rights, rule of law and stewardship of nature. [R5] [R7]

SODELPA proposes a preamble that combines the historical honesty of 1997, the progressive values of the Ghai Draft, and the identity formulation of the SDL 2012 submission.

We, the people of the Fiji Islands, seeking the blessing of God and mindful of the spiritual heritage of these islands; recognising the first settlement, spiritual connection, culture, land and traditional institutions of the indigenous Fijian and Rotuman peoples; acknowledging the descendants of indentured labourers, descendants of Solomon and Vanuatu peoples, Banabans, Tuvalu, Europeans, Chinese and all other settlers and migrants who have made Fiji their home; affirming that all citizens are Fiji Islanders equal in dignity and rights; respecting the identity of the Fijian people as indigenous Fijians; determined to heal the divisions of the past, end the coup culture, protect our land and ocean, and build a just, democratic, multicultural and sustainable nation; give ourselves this Constitution.

6. Languages, faith and the spiritual heritage of Fiji

The SDL 2012 submission proposed strong recognition of the Fijian language, the continued use of English and Hindustani, and recognition of Fiji's Christian heritage. [R4] SODELPA submits that these points should be modernised in a way that both honours tradition and protects equal freedom of conscience.

The Constitution should recognise English, Fijian (Vosa Vakaviti), Fiji Hindustani, Chinese (Mandarin and Cantonese), and Rotuman as languages of national importance. English should remain a working language of the State. The Fijian language should be recognised as the language of indigenous Fijians and strengthened in education, Parliament, courts and public service. Fiji Hindustani should be recognised as a living language of a major community. Rotuman should be recognised and protected as a language of Rotuma. Public bodies should progressively provide services in these languages and, where appropriate, in other accessible formats.

On faith, SODELPA proposes that the Constitution recognise the historic and continuing role of Christianity in Fiji, especially in the life of the indigenous Fijian community, while also recognising the contribution of Hinduism, Islam, Sikhism, other Christian denominations, other faiths and those of no religious belief. The State should guarantee freedom of religion, conscience and belief for all. The Constitution should not be used to discriminate against any citizen on the basis of faith.

7. Equal citizenship and the modern Compact

The 1997 Compact attempted to reconcile collective recognition with individual rights. It acknowledged the rights and interests of all communities, the protection of Fijian and Rotuman land, equity and social justice programmes, and the need for all communities to benefit from national progress. [R11]

SODELPA proposes a modern Compact that is justiciable where appropriate, interpretive where appropriate, and clear enough to guide all public institutions.

The modern Compact should affirm:

- All Fiji Islanders are equal citizens and no citizen is a guest in the country of their birth or lawful citizenship.
- The indigenous Fijian people have a distinct identity, land base, culture, language and traditional institutions that must be constitutionally protected.
- The Rotuman people have distinct land, culture, language and institutional rights that must be protected.
- Banaban identity, the special position of Rabi, and the rights of the Banaban community require constitutional recognition and protection.
- All communities, including Indo-Fijians, Solomon, Vanuatu, Tuvalu Europeans, Chinese and newer citizens, have made important contributions to Fiji and must be respected.
- Social justice and equity measures should address disadvantage wherever it exists, including in rural, maritime, indigenous, settlement, women, youth, disability and low-income communities.
- The State must actively promote national unity through fair development, civic education, language respect, sports, culture, volunteer service, and equitable access to public services.

Part III - Indigenous Rights, Land, Custom and the Great Council of Chiefs

8. Indigenous rights, land, qoliqoli and natural resources

SODELPA submits that the Constitution must protect indigenous rights in a manner consistent with equal citizenship and international standards. UNDRIP recognises indigenous peoples' rights to self-determination, institutions, culture, lands, resources, consultation and free, prior and informed consent. [R14] The SDL 2012 submission similarly emphasised land security, qoliqoli, mahogany, minerals, customary law and indigenous institutions. [R4]

The Constitution should protect:

- iTaukei land from permanent alienation, arbitrary acquisition or executive manipulation.
- Rotuman land, culture and institutions.
- Banaban interests, identity and the special position of the Rabi community.
- Customary fishing rights, qoliqoli and marine resource interests.
- Sacred sites, burial grounds, traditional pathways, cultural landscapes and cultural intellectual property.
- Traditional knowledge, language, genealogy, oral history, cultural expressions, motifs, designs, music, chants and ecological knowledge.
- Community benefit-sharing from tourism, minerals, forests, water, biodiversity, carbon markets, blue economy initiatives and conservation finance.
- Free, prior and informed consent for major projects affecting land, qoliqoli, sacred sites and community resources.
- Access to independent courts or tribunals for land, resource and customary disputes.

SODELPA proposes a constitutional duty to consult affected landowners, resource owners, provincial councils, tikina councils, village institutions and relevant customary authorities before any law, policy, lease, project or concession materially affects land, qoliqoli, customary rights or sacred sites. Consultation must be early, meaningful, accessible, culturally appropriate and documented. Consent should be required for high-impact projects and any project affecting sacred or existential resources.

9. Customary law and traditional dispute resolution

The SDL 2012 submission proposed that Parliament make legislation for the operation of customary law and for dispute resolution through traditional Fijian processes. [R4] SODELPA reaffirms this but proposes a rights-consistent framework. Customary law should be recognised as part of Fiji's legal heritage and as a practical tool for mediation, reconciliation, land-related conflict resolution and community cohesion.

However, customary processes must operate consistently with the Bill of Rights, natural justice, the dignity of women and children, disability inclusion, protection from violence, equality before the law, and the right of access to courts. Customary law should not be used to shield criminal conduct, gender-based violence, child abuse, corruption or arbitrary deprivation of rights.

The Constitution should require Parliament to enact a Customary Law and Traditional Dispute Resolution Act. That Act should define the status of customary law, the matters in which it may be applied, safeguards for vulnerable persons, the relationship between customary processes and courts, rules for recording outcomes, and appeal or review mechanisms.

10. Constitutional independence of the Great Council of Chiefs

SODELPA strongly submits that the Bose Levu Vakaturaga, the Great Council of Chiefs, must be constitutionally recognised as an independent, non-partisan and properly resourced institution. SDL proposed in 2012 that the BLV be established under the Constitution and that Parliament pass a BLV Act setting out its role, functions, powers, funding, accountability and reform responsibilities. [R4]

The 2012 Ghai Draft recognised the BLV as custodian of iTaukei culture and traditions and as a non-partisan organ of civil society that could promote wider understanding of iTaukei culture consistently with Fiji's multicultural character. [R5] [R7] The 2023 GCC Review Report also emphasised that the GCC can contribute to sustainable development, cultural preservation, community engagement, conflict resolution, peace, justice and strong institutions. [R13]

SODELPA proposes the following constitutional formula:

> *There shall be a Bose Levu Vakaturaga, the Great Council of Chiefs, as an independent and non-partisan constitutional institution of all Fiji Islanders. The Bose Levu Vakaturaga shall be custodian of Fijian culture, language, customary leadership, traditional knowledge, chiefly systems, indigenous heritage, reconciliation, and the wellbeing of all Fiji Islanders. It shall perform its functions consistently with democracy, human rights, gender dignity, the rule of law, the rights of indigenous peoples, and the multicultural character of Fiji.*

The GCC should not be reduced to ceremony. It should have practical constitutional functions, including:

- Advising Parliament and Cabinet on laws and policies affecting Fijian culture, land, qoliqoli, language, natural resources, customary leadership, provincial governance and the vanua.
- Promoting Fijian language, traditional knowledge, cultural education, genealogy, chiefly protocols, oral history, cultural arts, architecture, music, ceremonies and indigenous research.
- Support discourse on national security, resource utilisation, and climate change, human well-being and sustainable development.
- Supporting reconciliation and conflict resolution within and between communities.
- Supporting provincial, tikina, village, yavusa, mataqali and tokatoka governance reform.
- Advising on indigenous economic development, community enterprises, climate adaptation, village planning and sustainable resource management.
- Promoting women's dignity, youth leadership, disability inclusion and intergenerational responsibility within the vanua.
- Having standing to seek an advisory opinion from the Supreme Court on constitutional questions affecting indigenous rights, land, qoliqoli, custom or the GCC.
- Providing a formal channel of consultation between the State and the vanua.

10.1 Independence, funding and accountability

The GCC should not be dependent on the political goodwill of the government of the day. The Constitution should provide for a standing annual appropriation, an independent secretariat, audited accounts, annual reporting to Parliament and provincial councils, transparent appointment processes, a code of conduct, and protection from arbitrary abolition or suspension. Parliament should enact a Great Council of Chiefs Act within 12 months of the new Constitution's commencement.

10.2 A modern three-arm GCC model

SODELPA proposes that the GCC be modernised through three complementary arms:

- The Council of Chiefs: the deliberative, cultural and advisory body.
- The iTaukei Cultural, Research and Development Trust: a funding and research arm for language, culture, leadership, education, entrepreneurship, traditional knowledge and intergenerational transmission. This funding arm should be an amalgam of all iTaukei institutions, including TLTB, Fijian Holdings, TTFB, and all other potential funding sources, including government.
- The Vanua Social Concern and Community Resilience Arm: a non-profit arm supporting village development, poverty reduction, climate resilience, disaster preparedness, youth service, women's leadership, disability inclusion and conflict resolution.

This model retains the dignity of the GCC while making it relevant to a modern democratic Fiji.

Part IV - Democracy, Anti-Coup Safeguards and Institutional Reform

11. Removing immunity and ending the coup culture

SODELPA submits that the entrenched immunity provisions in Chapter 10 of the 2013 Constitution are incompatible with constitutional democracy. The 2013 Constitution continues immunity under the 1990 Constitution, continues immunity under the Limitation of Liability for Prescribed Political Events Decree 2010, grants further absolute and unconditional immunity to wide categories of public actors for direct or indirect participation in government from 5 December 2006 to the first sitting of Parliament after the 2013 Constitution, bars review of immunity, removes court jurisdiction and bars compensation. [R10]

The SDL Party warned in 2012 that unilateral immunity would desecrate the sanctity of constitutional documents and perpetuate a cycle of "coup - immunity - coup - immunity". [R4] SODELPA now submits that no new Constitution will be morally or democratically legitimate if it leaves this structure untouched.

SODELPA recommends:

- Repeal the entrenched immunity provisions and all clauses purporting to make them unamendable.
- Declare that no future Constitution, law, decree or executive act may grant immunity for treason, unconstitutional seizure of power, coups, torture, extrajudicial killing, enforced disappearance, sexual violence, serious corruption or gross human rights violations.
- Provide that any attempt to establish government other than under the Constitution is unlawful, void and incapable of validation except through a lawful democratic transition approved by the people.
- Disqualify principal coup leaders and principal beneficiaries from public office, military command, police command, constitutional office and ministerial office, subject to due process.
- Require all members of the disciplined forces, public officers, Ministers, MPs and judges to swear an oath rejecting unconstitutional seizure of power.
- Create civic education in the RFMF, Police, Corrections, schools, public service and communities on constitutional democracy and civilian authority.

12. Amnesty, truth and reconciliation - not blanket immunity

SODELPA supports national reconciliation, but reconciliation cannot be built on silence. The SDL 2012 submission distinguished amnesty from immunity and proposed a special commission to examine the coups, document participation and make recommendations for amnesty. [R4] SODELPA proposes a modern, victim-centred National Truth, Reconciliation and Constitutional Accountability Commission.

The Commission should:

- Hear victims of coups and other significant national events, human rights abuse, unlawful detention, displacement, loss of property, lost livelihoods and institutional discrimination.
- Receive voluntary disclosures from perpetrators and institutional actors.
- Document the causes, financing, planning, execution and consequences of coups and attempted coups.

- Recommend reparations, memorialisation, official apologies, institutional reform and civic education.
- Recommend conditional amnesty only for eligible offences after full disclosure and victim participation.
- Exclude serious crimes, serious corruption, personal enrichment, torture, killings, sexual violence and other gross violations from amnesty.
- Recommend disqualification from office where necessary to protect democratic institutions.

This approach gives Fiji a path to healing without rewarding unlawful power. It allows truth, apology, forgiveness and accountability to stand together.

13. Civilian control and reform of the RFMF

The SDL 2012 submission recognised the RFMF's international peacekeeping reputation but also noted that the coups of 1987, 2000 and 2006 required clear constitutional limits on military intervention in politics. It proposed that the Commander be appointed under the Fiji Military Forces Act with the advice to the Constitutional Office Commission (COC), to determine the size of the military and the qualifications for the Commander. [R4]

The 2013 Constitution states that the RFMF has responsibility to ensure the security, defence and wellbeing of Fiji and all Fijians. [R10] SODELPA submits that this wording is too broad and risks constitutionalizing a political guardian role. The military must defend the Constitution; it must not interpret itself as a supervisor of elected civilian government.

SODELPA recommends:

- Define the RFMF's role as external defence, maritime security, peacekeeping, disaster support and assistance to civil authorities under law.
- Remove any broad constitutional phrase that could be interpreted as a political guardian role.
- Require the RFMF to be politically neutral and subordinate to the elected civilian government and the Constitution.
- Create a civilian-led National Security Council accountable to Parliament.
- Require parliamentary approval of the defence budget, major procurement and security policy.
- Require the Auditor-General to audit defense expenditure, subject to narrow and reviewable national security redactions.
- Rebalance military expenditure toward maritime surveillance, border protection, engineering, disaster response, climate relocation support and regional peacekeeping professionalism and contributing to mandatory national service for school leavers and dropouts.

14. Parliament, electoral reform and a House of Review

Fiji needs an electoral system that produces fair representation, stable government and a real connection between voters and representatives. The 2013 single-national constituency weakens local accountability and makes it difficult for citizens in provinces, maritime islands, and local communities to know who directly represents them. SODELPA proposes a mixed system that preserves proportional fairness while restoring constituency representation.

The SDL 2012 submission supported a bicameral Parliament, the removal of compulsory voting, and a movement toward one person, one vote, one value through a mixed-member proportional approach. [R4]

14.1 Personalised National Open List System: a Fiji-tailored option for voter choice, provincial connection and national stability

SODELPA proposes that the Commission consider a Personalised National Open List System as a Fiji-tailored electoral option. It retains the democratic strengths of a national proportional system - one person, one vote, one value, a single national ballot and proportional party outcomes - while adding a clearer human and provincial connection between voters and candidates. The purpose is not to return Fiji to communal rolls or rigid provincial seats. The purpose is to give every voter a simple way to support either a trusted provincial voice or a national-at-large leader, while ensuring that each vote still contributes fairly to the party's national vote total.

This proposal addresses a common concern raised by citizens under the present national open-list model: voters may support a party nationally but feel disconnected from the candidates who enter Parliament. In rural, maritime, and provincial Fiji, people often want to know who will listen to their village, district, tikina, province, island, or urban settlement. At the same time, Fiji must avoid returning to electoral arrangements that divide citizens by ethnicity or create unequal votes. The Personalised National Open List System is therefore designed as a civic, non-communal and nationally proportional model. A provincial identifier is a statement of community accountability, not a separate electorate and not an ethnic category.

Under the model, Fiji would retain a single national ballot paper. Each candidate would appear under his or her party and would choose, before nomination closes, to run either as a Provincial Candidate or as a National At-Large Candidate. A Provincial Candidate may display one approved provincial flag or identifier, such as Naitasiri, Ba, Lau, Rewa, Cakaudrove, Kadavu or another recognised province. This tells voters: "I am placing myself before the country as a candidate with a special accountability to this province." A National At-Large Candidate would appear without a provincial flag and would tell voters: "I am seeking support across Fiji as a national candidate."

Every voter would still make one single mark. Whether the voter chooses a Provincial Candidate or a National At-Large Candidate, the vote has exactly the same value. It is counted in two linked ways: first, for the candidate's personal total; and second, for the party's national total. In this way, the voter never wastes their voice. A voter in Serea, for example, may choose a Naitasiri-flagged candidate to strengthen a local provincial voice; or, if local politics has become divisive, that voter may choose a national candidate whom they trust. In both cases, the vote still strengthens the preferred party and contributes to the national proportional result.

Seats would first be allocated to parties according to their national vote share. For example, in a 55-member Parliament, a party that wins 20 percent of the valid national vote would be entitled to approximately 11 seats, subject to the final seat allocation formula and threshold adopted by law. Those party seats would then be filled through two internal tracks. Track One would recognise provincial strength by considering candidates who performed strongly within their declared province. Track Two would provide a national top-up safeguard by filling the remaining seats from the highest vote-getters nationwide, including National At-Large Candidates and strong Provincial Candidates who did not enter through Track One. The detailed formula should be set out in legislation, published before polling day, independently administered, and tested through public simulations before adoption.

The model therefore balances three needs that Fiji must hold together. First, it protects national proportionality so that Parliament reflects the total will of the people. Second, it restores a meaningful provincial link so that candidates have a visible place of accountability. Third, it protects strong national candidates from being destroyed by temporary village-level smear campaigns, factional provincial politics or localised swings that do not reflect their broader public support.

This proposal also gives parties a healthier incentive structure. Parties would be encouraged to build credible provincial leadership teams, develop women and youth leaders in the provinces, and select national candidates who can speak to all Fiji Islanders. It would reward candidates who do real grassroots work while still preserving space for national policy leaders, technocrats, women leaders, youth leaders, persons with disabilities, diaspora voices, and experienced public servants who may not fit neatly into any one local political base.

Plain-language summary of the proposed model

Feature	How it works
Ballot paper	One national ballot paper is retained. Voters do not receive separate provincial or communal ballots.
Candidate choice	Each candidate may run as a Provincial Candidate with one approved provincial identifier, or as a National At-Large Candidate.
One vote	The voter makes one single mark. The vote has equal value wherever it is cast and whichever candidate type is chosen.
Two linked counts	The vote counts toward the candidate's personal total and the party's national total.
Party seat entitlement	Each party's total seats are determined by its national vote share, preserving proportional fairness.
Track One: provincial strength	Within each party's seat entitlement, candidates with strong support in their declared province are considered first under a transparent formula.
Track Two: national top-up	Remaining seats are filled by the next strongest candidates nationally, protecting national leaders and high-performing candidates.
Safeguard	Provincial identifiers do not restrict voter choice, create ethnic rolls, or make votes unequal. Any voter may vote for any candidate on the national ballot.

International validation and Fiji's opportunity to innovate

The exact Fiji model proposed here would be new, but its components are not experimental. International comparative practice already recognises List Proportional Representation, open lists, personalised candidate choice, regional or subnational list design, and compensatory top-up mechanisms. International IDEA explains that electoral systems shape representation, campaign behaviour, party incentives and government formation, and that design choices can help encourage accommodation in divided societies. It also defines List PR as a system in which parties receive seats in proportion to their vote share, with open lists allowing voters to influence which candidates are elected. [R23] [R24]

Fiji's present constitutional model is already a national open-list proportional representation system. ACE's Fiji electoral profile records that members of Parliament are elected by a multi-member open-

list proportional representation system, with one vote of equal value and a single national electoral roll. [R25] The Personalised National Open List System therefore does not discard the national logic of Fiji's current model. It refines that logic by adding provincial candidate identifiers and a transparent two-track method for filling party seats.

The model also draws from compensatory systems such as Mixed Member Proportional voting. International IDEA describes MMP as a linked system in which the list component compensates for disproportionality and seeks overall proportionality. [R26] New Zealand's Electoral Commission explains that, under MMP, voters choose both a party and a local candidate, with the party vote largely determining each party's total seats. [R27] Germany's personalised proportional system similarly combines a personal vote with proportional representation. [R28] Lesotho adopted MMP in response to severe disproportionality following earlier constituency results, demonstrating how compensatory design can be used to restore confidence in representation. [R29]

Mauritius offers a distinct lesson through its Best Loser mechanism: electoral systems can include corrective safeguards to ensure that important voices are not excluded after the ordinary count. [R30] Fiji should not copy the communal or ethnic classification features of the Mauritian model. However, the broader safeguard principle is useful: where the ordinary contest produces an unfair or politically damaging exclusion of credible voices, carefully designed top-up mechanisms can strengthen national confidence.

SODELPA therefore submits that Fiji can be both cautious and creative. The Personalised National Open List System is not radical because it preserves a single national ballot, equal voting value, and proportional party outcomes. It is not a return to communal voting, as all voters remain on a single national roll and may vote for any candidate. It is not an untested leap because its building blocks exist in democratic practice. Its innovation lies in combining these mechanisms in a simple Fiji-tailored way: one ballot, one vote, two candidate pathways, provincial visibility, national proportionality and a top-up safeguard.

Recommended constitutional and legislative safeguards

The Constitution should state the core principle only: Parliament is elected through a system of proportional representation based on one person, one vote, one value, with voter choice among candidates and with mechanisms for both national and provincial accountability.

The detailed formula should be placed in ordinary electoral law after public consultation, technical modelling and independent advice from the Electoral Commission, constitutional experts and civic education bodies. Provincial identifiers must be civic and geographical only. They must not recreate communal rolls, ethnic seats or unequal voting weight.

Every voter must be free to vote for any candidate on the national ballot, whether provincial or national at large. Candidate nomination rules should require a genuine connection to the declared province, such as birth, residence, chiefly or customary connection, family link, long-term service, landowning connection, or other transparent criteria prescribed by law.

Parties should be required to publish provincial and national-at-large candidate lists before polling day and to comply with gender, youth, disability and regional inclusion standards. The seat allocation formula, thresholds, recount rules and tie-breaking rules must be simple, published in advance, independently administered and capable of public verification.

The model should be explained through voter education in English, iTaukei, Fiji Hindi, Rotuman and accessible formats, including worked examples for rural, urban and maritime voters. After two general elections, an independent review should assess whether the system has improved local

accountability, women's participation, youth representation, provincial voice, voter understanding and proportional fairness.

Proposed position. SODELPA recommends that the Commission include the Personalised National Open List System as a serious electoral reform option for public consultation. It should be presented not as a rigid final formula, but as a principled Fiji-designed model capable of reconciling national proportional fairness with provincial accountability and voter confidence.

14.2 House of Review or Senate

SODELPA proposes serious consideration of a second chamber - a House of Review or Senate - that is not a rival government but a constitutional safeguard for deliberation, regional voice, indigenous consultation and quality law-making. It may include representation from provinces, Rotuma, Rabi, Kioa, municipalities, women, youth, persons with disabilities, labour, business, faith communities, civil society and the vanua. The GCC and provincial councils should have a defined role in nominating or selecting a limited number of members whose role is to review and advise, not to exercise partisan control over government.

The House of Review should have delaying and consultative powers, enhanced powers over protected matters, and a duty to review legislation for consistency with the Bill of Rights, land protections, indigenous rights, public finance responsibility and constitutional values.

15. Executive government and limits on concentrated power

A key lesson from Fiji's constitutional history is that excessive concentration of power invites abuse. The CCF analysis of the 2013 Government Draft warned of an extreme concentration of authority in the offices of the Prime Minister and the Attorney-General, particularly in appointments to the judiciary, commissions, and senior state services. [R8] SODELPA proposes clear limits on executive power.

The Constitution should provide that:

- Cabinet is collectively accountable to Parliament.
- The Prime Minister appoints Ministers, but appointments to independent offices must not be controlled by the Prime Minister or Attorney-General.
- The Attorney-General should be the Government's principal legal adviser but should not dominate judicial, prosecutorial, electoral, disciplinary, anti-corruption, legal profession or accountability appointments.
- The President should be a unifying, non-partisan Head of State appointed by broad parliamentary consensus, with a fallback mechanism that requires cross-party participation.
- Major constitutional appointments should require open advertisement, merit assessment, independent recommendation and parliamentary confirmation.
- Cabinet size should be limited by law to reduce patronage and cost.
- Ministers must be subject to enforceable conflict-of-interest, asset declaration, procurement, gift, travel and post-office employment rules.

16. Judiciary and rule of law

Judicial independence is the spine of constitutional democracy. SODELPA proposes that the Constitution guarantee the independence of all courts, protect judicial tenure and remuneration, prohibit executive interference, and allow the courts to enforce the Constitution against all branches of government.

The Judicial Services Commission should be independent of executive dominance and should include the Chief Justice, senior judicial representatives, representatives of the legal profession, persons of high integrity appointed by a transparent process, and limited non-voting administrative support. The Attorney-General should not control judicial appointments or disciplinary processes.

SODELPA recommends:

- Restore full court jurisdiction to interpret and enforce all parts of the Constitution, including transition and immunity questions.
- Appoint judges through merit-based, transparent processes.
- Protect tenure, remuneration and security of office.
- Create transparent judicial complaints procedures that cannot be used for political retaliation.
- Protect the independence of the Director of Public Prosecutions.
- Guarantee legal aid and access to courts, including for rural and maritime communities.
- Recognise customary dispute resolution but preserve access to the courts.

17. Independent constitutional offices and integrity institutions

Fiji's independent offices must be independent in substance, not only in name. The 2013 Constitution creates a Constitutional Offices Commission chaired by the Prime Minister and including the Attorney-General, which raises concerns about executive dominance over key appointments. [R10] SODELPA proposes a rebalanced COC.

The COC should include the President or nominee, Leader of the Opposition, Chief Justice or nominee, a representative of the Fiji Law Society, a representative nominated by the GCC/provincial institutions for indigenous institutional matters, and independent members selected through a transparent parliamentary process. The Prime Minister and Attorney-General should not together control the majority.

The Constitution should strengthen:

- Electoral Commission and Supervisor of Elections.
- Auditor-General.
- Ombudsman or Ethics and Integrity Commission.
- Human Rights and Anti-Discrimination Commission.
- Public Service Commission.
- Police and Corrections oversight bodies.
- Anti-corruption commission with safeguards against political misuse.
- Information Commissioner for access to information and data privacy.
- Public Accounts Committee chaired by the Opposition.

18. Public service and state services

SODELPA proposes a public service that is professional, non-partisan, decentralised and people-centred. Public officers must serve the Constitution and the public, not the party in government. The Public Service Commission should protect merit appointments, fair discipline, equal opportunity, gender balance, disability inclusion, linguistic capacity and regional representation.

The Constitution should support decentralisation of services to divisions, provinces, towns, maritime islands and online platforms. Citizens should not need to travel to Suva for services that can be delivered locally or digitally. Integrated government service centres should be constitutionally encouraged and operationally required by law.

Part V - Rights, Social Justice and Inclusive Development

19. A strong and enforceable Bill of Rights

SODELPA supports a strong Bill of Rights covering civil, political, social, economic, cultural, environmental and digital rights. The 2012 Ghai Draft contained a broad rights framework, including rights to equality, privacy, expression, association, assembly, information, education, economic participation, adequate standard of living, employment relations, environmental rights, administrative justice, access to courts, women, persons with disabilities, elderly persons and cultural communities. [R5] The 2013 Constitution also recognises several socio-economic rights, but many rights are subject to broad limitation clauses. [R10]

The Constitution should guarantee:

- Right to life, liberty, dignity and security of the person.
- Freedom from torture, cruel treatment, forced labour and trafficking.
- Freedom of expression, media, academic research and artistic creativity.
- Freedom of religion, conscience, association, assembly and petition.
- Political rights and free, fair, regular elections.
- Equality and freedom from discrimination.
- Rights of women and girls, including freedom from violence and equal participation.
- Rights of children and the best interests of the child.
- Rights of persons with disabilities, including accessibility and political participation.
- Rights of elderly persons.
- Labour rights, trade union rights, collective bargaining, safe work and just wages.
- Rights to education, health, sanitation, food, water, transport and social security.
- Rights to housing, safe refuge and protection.
- Cultural, religious and linguistic community rights.
- Environmental and climate rights.
- Digital rights, privacy, data protection and cybersecurity dignity.
- Administrative justice and access to courts.

Any limitation of rights must be lawful, reasonable, necessary and demonstrably justifiable in a free and democratic society. Emergency limitations must be strictly necessary, time-bound, consistent with international law, subject to Parliament, and reviewable by the courts.

20. Women's equality and leadership

The SDL 2012 submission recognised CEDAW, the Beijing Platform commitments, women's empowerment, women in decision-making, women and the law, employment, livelihoods, elimination of violence and women's health. It supported an immediate target of 30 percent women in Parliament and parity in the long term, while emphasising ability. [R4]

SODELPA proposes to modernise this recommendation by recognising that temporary special measures are not contrary to merit; they are tools to remove barriers to equal opportunity. The Constitution should require the State and political parties to promote women's equal participation in Parliament, Cabinet, public boards, the public service, provincial institutions, municipal councils, statutory authorities and the private sector.

Specific constitutional and legislative measures should include:

- Gender-balanced party lists using a zipper or alternating placement system where party lists are used.
- Public funding incentives for parties that meet women's representation targets.

- Protection from political violence, online abuse, harassment and intimidation.
- Equal pay for work of equal value.
- Maternal health, parental leave and workplace dignity.
- Support for women in rural, maritime, informal and market sectors.
- Recognition of women's roles in the vanua, faith communities, business, education, health, care work and national leadership.

21. Youth empowerment and political participation

The SDL 2012 submission proposed constitutional provisions for youth representation in Parliament and recognised the multi-faceted nature of youth issues. [R4] SODELPA supports youth representation, youth service and youth participation in law-making, climate action, innovation, culture, sports and entrepreneurship.

The Constitution should require Parliament to establish mechanisms for youth representation, including a National Youth Council, youth seats or list incentives, youth advisory committees to Parliament, and a voluntary national service programme focused on skills, climate resilience, cultural learning, disaster response, agriculture, maritime safety, digital skills and community service.

22. Disability inclusion

The Constitution should implement the CRPD principle that persons with disabilities have political rights and the opportunity to enjoy them on an equal basis with others. [R18] This includes accessible voting, accessible public information, sign language access, reasonable accommodation, inclusive education, accessible buildings, disability representation in public bodies, and disability-inclusive disaster response.

23. Pension entitlement and protection of accrued rights

The SDL 2012 submission proposed that pension entitlement is a right. [R4] SODELPA supports constitutional protection for accrued pension and retirement rights. Public officers and retirees should not have vested entitlements arbitrarily reduced by retrospective law or executive decree. Reform may occur only under law, after consultation, with fairness, non-discrimination and protection of vulnerable retirees.

24. Social justice, equity and shared prosperity

SODELPA proposes a social justice chapter that requires the State to take targeted, evidence-based measures to secure equality of opportunity. This should include programmes for indigenous Fijians, Rotumans, Banabans, Indo-Fijians and other communities where disadvantage is shown, and for women, youth, persons with disabilities, elderly persons, rural and maritime communities, informal settlements, workers, farmers, students and low-income families.

Social justice measures should be transparent, time-bound where appropriate, reviewed by Parliament, based on need and historical disadvantage, and designed to promote dignity, capability and national unity rather than dependency or division.

Part VI - Decentralisation, Public Finance, Environment and Future Generations

25. Decentralisation, provinces and local government

SODELPA submits that democracy must be visible in the daily lives of people. It must reach villages, settlements, maritime islands, towns, provinces and outer islands. The Constitution should require regular local government elections, strengthened provincial councils, meaningful tikina and village planning, and fair fiscal transfers to local and provincial institutions.

The Constitution should:

- Guarantee elected municipal councils and regular local government elections.
- Strengthen provincial councils while ensuring transparency, gender participation and youth representation.
- Recognise Rotuma's special administrative and cultural position.
- Create service standards for rural and maritime communities.
- Require decentralised government service centres and digital access to public services.
- Support participatory budgeting at local level.
- Protect informal settlement communities from arbitrary eviction and create pathways to secure tenure.
- Promote local economic development in agriculture, fisheries, tourism, culture, small business, creative industries and climate adaptation.

26. Public finance, revenue and expenditure

The Constitution should make public finance transparent, responsible and people-centred. Public funds must be used for public benefit. Major borrowing, guarantees, public-private partnerships, natural resource concessions and state asset disposals should be transparent and subject to parliamentary scrutiny.

SODELPA proposes:

- Independent Auditor-General with secure tenure and adequate budget.
- Public Accounts Committee chaired by the Opposition.
- Open budget requirements and citizen budget summaries.
- Parliamentary approval for major loans, guarantees and strategic asset disposals.
- Transparent procurement with beneficial ownership disclosure.
- Annual public debt and contingent liability reporting.
- Protection of pensions and standing appropriations lawfully owed.
- Transparent reporting of defence, disaster and climate expenditure.

27. Climate, environment, oceans and future generations

The 2012 Ghai Draft included an entire chapter on natural heritage, including the natural environment, land rights, land use, fishing grounds, natural resources, consultation and land laws. [R5] The CCF analysis noted that the more detailed environmental and resource provisions of the 2012 Draft were largely omitted from the 2013 Government Draft. [R8] SODELPA proposes restoring and strengthening these provisions.

The Constitution should guarantee a right to a clean, healthy and sustainable environment, recognise climate change as a constitutional challenge, protect oceans, reefs, mangroves, forests,

rivers, biodiversity and traditional ecological knowledge, and impose duties on the State to protect the rights of future generations.

It should require fair benefit-sharing for carbon markets, blue economy projects, mineral extraction, tourism, conservation finance and other resource uses. It should protect communities facing climate displacement through consultation, land security, cultural continuity, relocation support and legal recognition of climate-affected rights.

28. Constitutional amendment and transition

The 2013 Constitution originally required very high thresholds for amendment and entrenched immunity provisions. [R10] The Supreme Court's 2025 advisory opinion, as summarised by International IDEA and Fiji news reporting, opened a pathway by confirming that amendment can proceed with a two-thirds parliamentary majority and a majority in a referendum, while keeping the people's referendum role. [R20]

SODELPA proposes a balanced amendment formula:

- Ordinary amendments require two-thirds of Parliament and a referendum approved by a majority of valid votes cast.
- Protected matters require two-thirds of Parliament, a referendum, and enhanced public consultation. Protected matters include the Bill of Rights, land, qoliqoli, indigenous rights, Rotuma, Banaban rights, the GCC, judicial independence, electoral democracy, amendment procedures and anti-coup provisions.
- No immunity clause may be entrenched or placed beyond amendment.
- Any amendment must have a minimum public education period, publication in English, Fijian, Fiji Hindi and Rotuman where relevant, and accessible formats for persons with disabilities.
- The courts must retain jurisdiction to determine whether amendment procedures have been followed.

Transition should also include a statutory review of all decrees, promulgations and transitional laws that continue to affect rights, institutions, land, public finance, media, unions, NGOs, elections and public service governance. Laws inconsistent with constitutional democracy should be amended or repealed within a defined period.

Part VII - Model Constitutional Clauses

The following model clauses are offered for consideration. They are policy drafting examples and should be refined by constitutional counsel.

Clause 1 - National identity and citizenship

All citizens of Fiji are Fiji Islanders and are equal in dignity, citizenship, rights and responsibilities. The term Fijian refers to the indigenous Fijian people of Fiji, the first nations of Fiji as defined under the VKB. No law, policy or public act may use this recognition to deny or diminish the equal citizenship, rights or dignity of any citizen or community.

Clause 2 - Recognition of communities

The Republic recognises the indigenous Fijian people, the Rotuman people, the Banaban community, descendants of indentured labourers, Pacific Islanders, Solomon, Vanuatu, Europeans, Chinese, and all other communities who have made Fiji their home. The Republic shall protect the language, culture,

heritage and dignity of every community, and shall promote unity through justice, respect and equal citizenship.

Clause 3 - Anti-coup provision

Any attempt to establish, support, recognise or maintain a government other than in accordance with this Constitution is unlawful and void. No person may claim public authority arising from a coup, treason, insurrection, military intervention or unconstitutional seizure of power. No immunity shall be granted for such conduct.

Clause 4 - Truth, reconciliation and accountability

Parliament shall establish a National Truth, Reconciliation and Constitutional Accountability Commission to inquire into unconstitutional seizures of power, coups, attempted coups and related abuses; hear victims; receive disclosures; recommend reparations, institutional reform and civic education; and recommend conditional amnesty only in accordance with this Constitution and the rights of victims.

Clause 5 - Bose Levu Vakaturaga

There shall be a Bose Levu Vakaturaga, the Great Council of Chiefs, as an independent, non-partisan constitutional institution of the vanua. Its functions, composition, funding, reporting obligations, code of conduct and secretariat shall be prescribed by law consistently with its role as custodian of Fijian culture, language, traditional knowledge, customary leadership, reconciliation and the wellbeing of the vanua.

Clause 6 - Land, qoliqoli and customary rights

The ownership, beneficial interests and customary rights of indigenous Fijians, Rotumans and Banabans in land, qoliqoli, sacred sites, cultural heritage, traditional knowledge and natural resources shall be protected. No law or administrative act may arbitrarily alienate, diminish or extinguish those rights. The State shall ensure meaningful consultation and, where required by law, free, prior and informed consent.

Clause 7 - Civilian control of disciplined forces

The Republic of Fiji Military Forces, Fiji Police Force and Fiji Corrections Service shall be politically neutral, professional and subordinate to the Constitution and the elected civilian authority. The military shall have no role in determining the legitimacy of an elected government, Parliament or court.

Clause 8 - Rights limitation

A right or freedom may be limited only by law, and only to the extent that the limitation is reasonable, necessary and demonstrably justifiable in a free and democratic society based on human dignity, equality, freedom, democracy and the rule of law.

Clause 9 - Public participation

Public bodies shall facilitate meaningful public participation in law-making, policy-making, budgeting and decisions affecting communities. Participation must be timely, informed, accessible, culturally appropriate and inclusive of women, youth, persons with disabilities, rural and maritime communities, linguistic communities and affected customary authorities.

Clause 10 - Amendment

This Constitution may be amended only by the procedure set out in this Chapter. No amendment may grant or entrench immunity for unconstitutional seizure of power, treason, coups, torture, serious human rights abuse or serious corruption. Protected matters require enhanced consultation with affected communities and approval by referendum.

Part VIII - Implementation Roadmap

Phase	Proposed constitutional response
Immediate - before final draft	CRC conducts targeted consultations with vanua institutions, Rotuma, Rabi, Kioa, Indo-Fijian organisations, faith communities, women, youth, disability organisations, unions, business, farmers, maritime communities, civil society and diaspora citizens.
0-3 months after adoption	Constitutional education campaign in English, Fijian, Fiji Hindi, Rotuman and accessible formats. Establish transition committees for GCC, electoral reform, independent appointments and decree review.
3-6 months after adoption	Enact laws on GCC, Truth and Reconciliation, Constitutional Offices Commission, Code of Conduct, Access to Information, Political Finance and Customary Dispute Resolution.
6-12 months after adoption	Reconstitute independent commissions; appoint key offices through transparent procedures; commence national civic education in schools and disciplined forces.
12-24 months after adoption	Implement electoral boundary review and prepare for first elections under new system; establish House of Review if adopted; implement decentralisation and local government election timetables.
24-36 months after adoption	Review public finance, defence posture, public service decentralisation, land/resource consultation laws, and climate/future generations obligations.

Part IX Additional Information: Policy Proposals and Public Submissions

This Part is to be read together with Parts I to VIII above as a consolidated record of additional policy proposals, public consultation themes, and individual submissions that reinforce and extend SODELPA's constitutional position. This section also serves as a reference section providing raw and unfiltered submissions to provide additional context to support points raised in previous sections.

The material below has been retained in substance and placed within this document so that the Commission receives one submission. Where a proposal repeats or expands an earlier recommendation, it should be understood as strengthening that earlier recommendation rather than replacing it.

The Social Democratic Liberal Party (SODELPA) submits this document in recognition of a defining moment in Fiji's constitutional journey.

Across the country – from village greens to urban settlements, from provincial councils to youth groups – one message has emerged with unmistakable clarity: **Fijians want a Constitution that feels closer to them, protects their dignity, strengthens their opportunities, and reflects the realities of a rapidly changing nation.**

The 2013 Constitution, while providing a foundational legal framework, has not kept pace with Fiji's evolving social, economic, technological, and security landscape.

Public consultations have revealed deep concerns about representation, affordability, cultural identity, youth development, digital safety, and national stability.

People want a Parliament that is accessible, a fair housing system, a digital environment that protects children, an economy that empowers local families while welcoming investment, and national institutions – including the RFMF and the Great Council of Chiefs – that are clearly defined, modern, and accountable.

SODELPA believes that constitutional reform must not be driven by political convenience or partisan interest, but by **the lived experiences of ordinary Fijians**. Our submission is grounded in four guiding principles:

1. **Restoring meaningful representation** so that every voter feels connected to their leaders and every province sees its voice reflected in Parliament.
2. **Protecting human dignity and social justice**, especially in areas such as housing, digital safety, and economic empowerment.
3. **Strengthening national unity and cultural identity**, ensuring that traditional institutions like the Great Council of Chiefs are modernised, independent, and positioned as stabilising guardians of national cohesion.
4. **Preparing Fiji for the future**, through clearer mandates for the RFMF, structured national service for youth, climate resilience, and balanced economic partnerships.

This submission does not seek to return Fiji to the past. It seeks to **equip Fiji for the next 50 years** – with constitutional mechanisms that are practical, enforceable, culturally grounded, and resilient in the face of global uncertainty.

Our proposals – from electoral reform to national service, from housing affordability to digital child protection, from indigenous economic empowerment to investor confidence – are designed to strengthen the Constitution's ability to serve *all* Fijians: iTaukei, Indo-Fijian, Rotuman, minority communities, youth, elders, rural families, and urban workers alike.

SODELPA's vision is simple: **A Constitution that protects the vulnerable, empowers the capable, honours tradition, embraces modernity, and unites Fiji as one nation.**

We present this submission with respect, humility, and unwavering commitment to Fiji's democratic future. We trust that the Commission will consider these proposals not as partisan recommendations, but as reflections of the hopes and concerns voiced by the people themselves.

01. THE VOTING SYSTEM

Finding that exact balance – where voters are given a meaningful choice between supporting local provincial leaders or voting for national figures anywhere in the country – is the ultimate holy grail of electoral design.

"The Best of Both Worlds"

The ongoing public consultations have made one thing overwhelmingly clear: the people of Fiji feel completely disconnected from their Members of Parliament. They want a visible, accountable representative tied to their province, their Vanua, and their local community.

However, simply retreating to old-school, pure constituency boundaries introduces a dangerous vulnerability.

In our modern digital landscape, hyper-localized campaigns, digital hit-squads, and sudden regional political waves can completely dismantle an exceptional candidate's local standing overnight.

A pure constituency system risks robbing our national parliament of some of its finest legal, economic, and educational minds simply because they fell victim to a localized smear campaign or a regional block-vote.

We propose a refined **Personalized National Open-List System**.

This model preserves the robust structural shield of the single national constituency—ensuring that a candidate's national appeal, merit, and scattered votes across Fiji are fully protected. Yet, by allowing candidates to carry a 'Provincial Designation Flag' directly on the ballot, it gives the public the direct connection to their geographic roots they are crying out for. It is a system that pairs local heart with national stability."

To bridge this gap cleanly, SODELPA can propose a highly personalized version of a mixed system called the **"Best Loser" Open-List System** (or a Personalized National Open List).

The Solution: A Single National Ballot with "Provincial Flags"

Instead of forcing voters to use two separate votes or changing the ballot paper completely, Fiji can keep **one single national constituency ballot paper**, but allow candidates to choose how they run.

1. How the Ballot Works for the Voter:

The voter walks into the booth with one ballot paper. They have absolute choice:

- **Choice A (Local Focus):** If a voter in Serea wants to support a local champion who knows Naitasiri's roads, schools, and land issues, they vote for a candidate explicitly flagged on the ballot as representing **Naitasiri**.
- **Choice B (National Focus):** If that same voter decides, "*I don't care about the local candidates; I want to vote for an elite legal expert, an economic strategist, or a national leader who is running at-large from Suva or the Western division,*" they can cast their vote directly for that national candidate.

Every single vote cast—whether for a local provincial candidate or a national candidate—counts directly toward **SODELPA's total national party percentage**.

2. How the Seats are Awarded (The Safeguard)

Let's say Parliament has 55 seats, and SODELPA wins 20% of the total vote across Fiji, giving the party **11 seats in Parliament**.

To fill those 11 seats, the system looks at the individual votes your candidates received using a dual-track formula:

- **Track 1 (The Provincial Allocation):** The system first awards seats to the SODELPA candidates who won the highest percentage of votes in their designated provinces (e.g., the strongest performers in Ba, Lau, or Tailevu).

- **Track 2 (The National Top-Up Safeguard):** The remaining seats are filled by the next highest vote-getters on the SODELPA list, **regardless of geography**.

3. Why this saves Fiji's best candidates from "Vanua Politics":

Imagine a highly competent SODELPA candidate runs under the "Cakaudrove provincial flag." A massive political wave hits Loa and the surrounding villages, and 75% of the province votes NFP. The SODELPA candidate loses the local Cakaudrove race.

Under an old-school constituency system, that candidate is dead out of luck.

But under this balanced system, **Track 2 kicks in.** Because that candidate is well-known nationally, they still manage to pull thousands of "national choice" votes from supporters in Suva, Lautoka, and Labasa who admired their background. Those scattered national votes keep their individual total high enough to beat out others on the party list. They are safely "topped up" into Parliament.

4. Recommendation: Implementation of a Personalized National Open-List System with Regional/Provincial Options

The Principle: To preserve the democratic advantages of the single national constituency (which protects national-caliber candidates from hyper-localized smear campaigns and political block-voting), while restoring direct accessibility to voters wishing to elect geographic representatives.

The Mechanism:

1. Fiji shall maintain a single national constituency for the calculation of proportional party seats in Parliament.
2. Political parties shall be permitted to designate specific candidates on their open list to represent designated geographic or provincial boundaries (e.g., the 14 Provinces), while leaving other candidates un-designated as National At-Large candidates.
3. Voters shall retain the absolute right to vote for either a geographically designated candidate or a national at-large candidate on the same ballot.
4. Seats won by a political party shall be filled progressively, balancing the highest-performing geographic candidates with the highest-performing national candidates based on total individual votes received.

The Winning Narrative for FIJI:

This proposal gives the public exactly what they are asking for in the consultations (a link back to their provinces) but leaves the democratic power completely in the hands of the voter. It ensures that a party of principle like SODELPA can cultivate grassroots provincial leaders without ever risking the political survival of its core national assets.

To give you a clear, practical picture, we have designed a **"Two-Track, One-Vote" Ballot Paper.**

This completely avoids the confusing "Sudoku style" numbers-only sheet from the 2013 system (which made it incredibly easy to execute dirty tricks and confuse elder or rural voters). Instead, it shows **Party Names, Party Symbols, Candidate Names, and their Provincial Flags.**

The beauty of this design is that the voter still only makes **ONE single mark.**

How the Scenarios Play Out for the Serea Voter (Naitasiri)

How this protects SODELPA from dirty village-level campaigns:

- **Scenario 1: The Voter wants to back the Local Leader.** A voter in Serea chooses to mark **[✓] next to #202 (Adi Iva Loki)** because they want an expert directly carrying Naitasiri's specific voice on land use into Parliament.
    - *Result:* This vote adds +1 to Adi Iva's personal tally **AND** +1 to SODELPA's total national pool.
    -
- **Scenario 2: The Village faces a massive NFP Wave / Fake Account Attack.** Let's say a localized online smear campaign completely floods Tamavua, lying about the SODELPA local candidate. Terrified of the local drama, a voter decides they cannot vote for the local candidate, but they *still love SODELPA's national vision*.
    - They look at the ballot and see **#201 (Radrodro, Aseri)** is running as a **National At-Large** candidate. They confidently mark **[✓] next to #201.**
    - *The Magic Safeguard:* Even though the local candidate was unfairly damaged in that village, **SODELPA still secures the vote.** The voter didn't flee to another party; they simply shifted their support to a trusted national figure.

Why this is a Winner:

It is incredibly simple to read, keeps the democratic "One Person, One Vote, One Value" intact, and gives political parties complete flexibility to protect their top brains while growing their rural grassroots base!

SODELPA POSITION ON ELECTORAL SYSTEM

Because Fiji is already in an election year, any major structural changes to the electoral system would not be practical or fair to voters, candidates, or election administrators at this stage.

For this reason, the proposed **Personalized National Open-List System** is being presented as a **future reform option** for national discussion, not for immediate implementation.

To ensure fairness, transparency, and stability for all participants in the upcoming election, SODELPA supports continuing with the **current electoral system** for this cycle while inviting the public to explore and debate long-term improvements for Fiji's democracy.

REPUBLIC OF FIJI GENERAL ELECTION

OFFICIAL BALLOT PAPER

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INSTRUCTIONS TO VOTER:

Mark a clear cross [X] or tick [✓] in the box next to ONE candidate only.

You have the freedom to choose a local Provincial Candidate OR a

National At-Large Candidate. Your one vote counts for both the candidate

and their political party.

==========

[SYMBOL] SOCIAL DEMOCRATIC LIBERAL PARTY (SODELPA)

Candidate No. | Candidate Name | Provincial / National

[ ] # 201 | RADRODRO, Aseri | [NATIONAL AT-LARGE]

[ ] # 202 | LOKI, ADI Iva | [NAITASIRI PROVINCE]

[ ] # 203 | KAMIKAMICA, Jone | [BA PROVINCE]

[SYMBOL] THE PEOPLE'S ALLIANCE PARTY (PAP)

Candidate No. | Candidate Name | Provincial / National

[ ] # 301 | RABUKA, Sitiveni | [NATIONAL AT-LARGE]

[ ] # 302 | ROKOMALOMA, Filimoni | [NAITASIRI PROVINCE]

[ ] # 303 | VULA, Tevita | [BA PROVINCE]

[SYMBOL] NATIONAL FEDERATION PARTY (NFP)

Candidate No. | Candidate Name | Provincial / National

[ ] # 401 | PRASAD, Biman | [NATIONAL AT-LARGE]

[ ] # 402 | SINGH, Charan | [BA PROVINCE]

02. "HOUSING AS A HUMAN RIGHT-NOT A SPECULATIVE COMMODITY"

Section 35 of our current Constitution promises the right to adequate housing, but to an ordinary family living along the Suva-Nausori corridor, that promise is completely hollow. A right is not real if it is entirely unaffordable.

Our current system treats housing purely as an unregulated commercial market. The result? Real estate speculation has driven rents and house prices to astronomical heights, forcing our workers into expanding informal settlements while foreign speculators freeze locals out of homeownership.

SODELPA argues that shelter is a fundamental pillar of human dignity and social justice. We are recommending that the word **'Affordable'** be constitutionally bound to the right to housing. This will legally empower Parliament to step in, regulate predatory rent spikes, and actively partner with traditional iTaukei landowners. By guaranteeing long-term returns to the Vanua while providing subsidized, secure, low-interest housing lots for our young families, we turn the right to housing from a passive legal phrase into a lived, everyday reality for all Fijians."

The 2013 Constitution *technically* contains the right to housing under **Section 35**, which states:

"*The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to accessible and adequate housing and sanitation.*"

The problem is the phrase **"progressive realisation... within available resources."** This acts as a standard legal loophole. It allows the state to say, "*We want to provide affordable housing, but we don't have the money right now, so we aren't violating your rights.*" Meanwhile, the unregulated real estate market continues to price everyday families completely out of the market.

To address this from a genuine social justice and human rights standpoint, SODELPA is proposing transforming Section 35 into an actionable, state-enforced protection mechanism.

1. Concrete Constitutional Recommendations

SODELPA is submitting two amendments to the Bill of Rights to give Section 35 real legal teeth.

Amendment A: Redefining "Adequate" to Include "Affordable"

Right now, the law focuses heavily on structural "adequacy" and sanitation, but ignores the price tag. SODELPA is strongly recommending adding **affordability** and **market regulation** to the constitutional mandate.

- **The Proposed Text (Amending Section 35):**

> *"Every person has the right to accessible, adequate, and **financially affordable** housing. The State shall actively intervene through progressive legislative measures, targeted subsidies, and market regulatory frameworks to prevent anti-competitive real estate speculation and ensure that rental and property acquisition costs remain proportional to national minimum and median household incomes."*

Amendment B: Constitutionalizing the Partnership with Landowners (*Mataqali*)

Fiji's unique advantage is that 87% of land is customary. Prime Minister Sitiveni Rabuka and the Ministry of Housing have emphasized that fixing affordable housing relies completely on partnering with traditional landowners. SODELPA proposes to elevate this to a constitutional principle to benefit both tenants and the *Vanua*.

- **The Proposed Text:**

> *"The State shall establish a permanent, constitutionally protected **Customary Land Housing Trust Framework** in partnership with the iTaukei Land Trust Board (TLTB). This framework will guarantee that traditional landowning units who voluntarily designate land for social and affordable housing developments receive guaranteed, long-term sovereign returns, while protecting tenants with long-term, secure, and affordable leases."*

Proposed Landowner Benefits Under a Customary Land Housing Trust Framework

(Suggested cost structures and long-term returns)

Below is a simple, public-friendly outline of **how landowners could financially benefit** when they voluntarily designate customary land for affordable housing.

1. Guaranteed Annual Sovereign Returns

Landowners could receive **fixed annual payments** protected by constitutional law. These payments would be stable, predictable, and long-term.

Possible cost ranges:

- **$1,500 – $3,000 per acre per year** for designated housing land
- **$5,000 – $10,000 per hectare per year**
- Payments guaranteed for **30–99 years**, depending on lease structure

Why this matters:

Landowners get **steady income every year**, regardless of market changes.

2. Long-Term Lease Revenue (TLTB-Managed)

TLTB could manage leases and ensure landowners receive **fair rental returns**.

Possible structures:

- **Fixed lease payments** (e.g., $500–$1,200 per lot per year)

- **Indexed leases** that increase slightly every 3–5 years
- **Community dividend payments** shared across the mataqali

Why this matter:

Income grows over time and is protected from sudden political changes.

3. Infrastructure Co-Investment Benefits

When land is designated for housing, the government and developers often invest in:

- Roads
- Water systems
- Sewerage
- Electricity
- Footpaths
- Drainage

Estimated value:

- **$50,000 – $150,000 per hectare** in infrastructure upgrades
- These improvements permanently raise the **value of the surrounding customary land**

Why this matter:

Landowners benefit even on land **not used** for housing.

4. Equity Participation in Housing Projects

Landowners could receive **shares** in the housing development.

Possible models:

- **5–15% equity stake** in the project
- Annual dividends from rental income
- Profit-sharing when units are sold

Why this matter:

Landowners become **co-owners**, not just lease providers.

5. Employment and Contracting Opportunities

Housing projects create jobs and contracts.

Possible benefits:

- Priority hiring for mataqali members
- Contracts for:
    - Land clearing
    - Security
    - Maintenance
    - Landscaping

- Transport
- Construction support

Estimated value:

- **$200,000 – $500,000** in local contracting opportunities per project

Why this matter:

Income flows directly into the community.

6. Community Facilities Built on Customary Land

Developers often build community assets such as:

- Playgrounds
- Community halls
- Bus shelters
- Footpaths
- Small parks
- Market stalls

Estimated value:

- **$20,000 – $80,000** in community facilities per development

Why this matter:

The mataqali gains **long-term social infrastructure**.

7. Protection of Undesignated Land

Only the land **voluntarily designated** is used. All other customary land remains fully protected.

Benefits:

- No compulsory acquisition
- No permanent alienation
- No loss of ownership
- Landowners retain full cultural and traditional authority

In Simple Terms Under this framework, landowners receive:

- **Guaranteed annual income**
- **Long-term lease payments**
- **Infrastructure upgrades**
- **Equity shares**
- **Employment opportunities**
- **Community facilities**
- **Full protection of remaining land**

This turns housing development into a **true partnership** between the State, TLTB, and the Vanua.

03. THE GREAT COUNCIL OF CHIEFS- BOSE LEVU VAKATURAGA

The dilemma regarding the **Great Council of Chiefs (Bose Levu Vakaturaga – GCC)** hits at the very core of Fiji's constitutional debate: how to bridge the gap between deeply respected traditional authority and a modern, fast-changing democratic framework.

As an advisory body, the GCC risks being perceived as a symbolic relic. However, pushing too far toward direct executive or legislative power risks clashing with democratic principles of universal suffrage and secular governance. Elevating the GCC into an independent, viable, and modernization-ready institution requires balancing cultural custody with institutional functionality.

1. Establishing Independence and Viability

For the GCC to be a "viable entity" in changing times, it must shift from merely receiving state funding to achieving **institutional and financial autonomy**. This shields it from being used as a political football by alternating governments.

- **Financial Self-Sustainability:** SODELPA is recommending for the GCC to have its own independent asset-management arm (akin to indigenous trusts globally, like New Zealand's *iwi* corporate structures or local investment frameworks). By backing village and provincial development funds—much like the long-term community resilience models currently advocated by GCC Chair Ratu Viliame Seruvakula—the GCC positions itself as an economic anchor, independent of the national budget.

2. The Electoral College for the Head of State

Prior to 2013, the GCC functioned as the electoral college to appoint the President and Vice President.

- **Depoliticizing the Presidency:** SODELPA is proposing returning the power of appointing the President to the GCC.
- **The Unifying Anchor:** This ensures the Head of State remains entirely independent of parliamentary party majorities. In critical national scenarios or constitutional crises, a GCC-appointed President serves as a neutral, traditional referee, holding the state together free from partisan bias.

3. Statutory Integration in Crisis and Climate Resilience

Instead of broad, ambiguous powers, SODELPA is recommending that the GCC to have **explicit statutory roles embedded** in specific modern legislation:

- **Climate & Relocation Frameworks:** Given that climate change disproportionately forces the relocation of traditional *iTaukei* villages and threatens customary land tenure, the GCC could be legally designated as a mandatory joint-authority alongside the Ministry of Environment and Ministry of iTaukei Affairs.
- **National Security Advisory Status:** The GCC could be granted a permanent, statutory seat on the National Security Council. This solidifies their role during "critical national scenarios" by giving them a legal right to advise on national stability, emergency responses, and social cohesion.

The Delicate Balance: The challenge for FIJI lies in framing these proposals so they unite the country rather than fracture it. To earn widespread national legitimacy in a multicultural Fiji, the GCC must be positioned not as an exclusive political authority, but as a stabilizing, non-partisan guardian of national identity, human security, and cultural resilience.

0.4 CHILD DIGITAL PROTECTION (BANNING HARMFUL SITES)

Protecting Children Under 17 from Online Harm & Pornography

To legally enforce a ban on pornographic sites for children under 17, SODELPA is proposing an addition to **Section 41 (Right to Education)** or **Section 11 (Rights of Children)** in the Bill of Rights.

Because the internet is fluid, the Constitution must mandate the *mechanism* of protection, which can then be enforced by the Online Safety Commission (OSC) and internet service providers (ISPs).

Proposed Constitutional Amendment: The Child Digital Safety Mandate

Add a new subsection to Section 11 (Rights of Children):

"Every child under the age of 17 has the right to be protected from digital exploitation, online harassment, cyber-bullying, and exposure to commercially distributed pornographic or sexually explicit material. The State shall mandate internet service providers and regulatory authorities to implement robust, age-verified firewalls and automated blocking mechanisms to restrict access to such harmful materials on all public, private, and school digital networks accessed by minors."

How to enforce this legislatively (The Strategy):

- **Mandatory ISP-Level Filtering:** Under this constitutional mandate, SODELPA is recommending amendments to the *Online Safety Act 2018* requiring Vodafone and Digicel to activate default, network-level blocks on known explicit domains for mobile packages or internet connections registered to minors/schools.
- **Age Verification Laws:** Require local digital services in Fiji to implement secure age-gating before access is granted to mature platforms.

0.5 INVESTMENT PROMOTION & PROTECTION

Balancing the protection of local micro, small, and medium enterprises (MSMEs) with the aggressive recruitment of foreign direct investment (FDI) is the defining economic puzzle for developing nations.

If Fiji protects locals too aggressively via isolationist policies, international capital flees. If Fiji opens the floodgates entirely, massive multinational corporations risk wiping out local family-owned and *iTaukei* cooperative businesses.

SODELPA, is proposing an **"Economic Partnership Model."** Instead of treating foreign investors and local resource owners as adversaries, the Constitution and supporting laws can be amended to make them institutional partners.

1. Targeted Constitutional Amendments for the Submission

The 2013 Constitution is largely silent on explicit structural protections for local economic empowerment. SODELPA is proposing two amendments to Chapter 2 (Bill of Rights) to create an institutional baseline for trade and investment.

Amendment A: Elevating Indigenous and Local Enterprise Protection

Currently, Chapter 2 protects general property and economic rights, but does not provide a mandate to uplift historically marginalized or local commerce.

- **The Proposed Text:**

"The State shall recognize and promote the progressive development of domestic and indigenous commerce, micro-enterprises, and resource-owner cooperatives, and may enact targeted legislative and affirmative action frameworks to reserve specific micro-economic sectors exclusively for domestic citizens."

The above provision gives parliament the permanent constitutional authority to shield everyday local markets (like retail, taxi services, handicrafts, and small-scale agriculture) from being overtaken by massive foreign capital, while explicitly legalizing affirmative economic programs.

Amendment B: Constitutionalizing Investor Safeguards Against Arbitrary Policy Swings

International investors are terrified of "sovereign risk"—the fear that a new government will suddenly change the laws, seize property, or block them from taking their profits home. To attract high-value investors, Fiji must offer ironclad stability.

- **The Proposed Text (Amending Section 27 - Property Rights):**

"Every registered investor, domestic or international, shall be secure in their capital investments. The State guarantees freedom from arbitrary expropriation and ensures the unhindered, lawful repatriation of investment returns and usable currencies, subject only to non-discriminatory taxation and national security laws enacted by Parliament."

The above amendments ensure basic investor guarantees instead of any standard legislation (which can be changed by a simple majority in Parliament) and cement them in the Constitution. It sends a massive signal to global markets that Fiji is a safe, predictable place to do business.

To bring these constitutional principles to life, SODELPA is advocating the updating of the **Investment Act 2021**(specifically regarding its *Reserved and Restricted Activities Regulations*).

- Rather than outright blocking foreign investors from lucrative sectors, SODELPA is proposing a **"Tiered Entry & Joint-Venture Partnership"** system.

PROPOSED STRATEGIC JOINT-VENTURE INVESTMENT FRAMEWORK

(Aligning Local Protection with Investor Confidence)

INVESTMENT TIER	CAPITAL THRESHOLD	LOCAL PROTECTION & PARTNERSHIP MECHANISM
TIER 1: RESERVED LIST **RETAIL; AGRI; SMALL SERVICES**	UNDER $500,000 FJD	❖ 100% RESERVEDFOR FIJI CITIZENS ❖ FOREIGN INVESTMENTS ARE COMPLETELY RESTRICTED TO SHIELD LOCAL FAMILY RUN MARKETS, TAXIS & SMALL-SCALE HANDICRAFTS
TIER 2: RESTRICTED LIST (TOURISM; LOGGING; RESOURCE EXTRACT)	$500,000 TO $5,000,000 FJD	❖ MANDATORY LOCAL EQUITY; (MINIMUM 30%) ❖ FOREIGN CAPITAL MUST LEGALLY PARTNER WITH DOMESTIC BUSINESSES; MATAQALI LANDOWNING UNITS; OR LOCAL PROVINCIAL COOPERATIVES TO OPERATE
TIER 3: OPEN STRATEGIC LIST (TECH, GREEN ETC)	OVER $5,000,000 FJD	❖ 100% OPEN TO FOREIGN CAPITAL ❖ FULL NATIONAL TREATMENT; FAST TRACK REGULATORY HANDLING; & TAX HOLIDAYS. AS THESE HIGH TECH SECTORS BRING NEW INDUSTRIES WITHOUT DISPLACING LOCALS

SODELPA believes that a thriving economy requires two lungs to breathe: a protected local MSME sector and a highly confident international investor community.

Our submission does away with the outdated idea that we must choose between the two. By amending the Constitution, we accomplish two urgent goals simultaneously:

1. We draw a legal boundary around our local marketplaces, ensuring that small-scale tourism, retail, and traditional trades remain firmly in the hands of our people and provincial cooperatives.
2. We offer global investors the highest form of legal security—constitutional protection against arbitrary policy shifts and a clear, transparent framework for their returns.

When an international investor knows their capital is secure, and when our local resource owners are legally built into those projects as equity partners rather than passive bystanders, everyone wins. This is how we build an economy that is fiercely protective of its people, yet proudly open for business.

0.6 THE ROLE AND MANDATE OF THE REPUBLIC OF FIJI MILITARY FORCES

SODELPA affirms the importance of the RFMF as a national institution entrusted with safeguarding Fiji's sovereignty, territorial integrity, and national security.

In light of evolving regional dynamics, youth development needs, and Fiji's long-term stability, SODELPA proposes a strengthened, clearly articulated, and future-focused constitutional mandate for the RFMF.

Rationale for Constitutional Reform

SODELPA's proposals are guided by the following principles:

- **National Security Preparedness:** Fiji's strategic environment requires a modern, capable, and community-integrated defence force.
- **Youth Development:** Structured national service can build discipline, patriotism, skills, and resilience among young people.
- **Clarity of Mandate:** The Constitution should explicitly outline all roles of the RFMF to avoid ambiguity and strengthen accountability.
- **Nation-Building:** The RFMF can play a constructive role in civic development, disaster response, infrastructure support, and community resilience.

3. Proposed Constitutional Amendments

A. Expanded and Explicit Constitutional Mandate for the RFMF

SODELPA proposes that the Constitution explicitly outline all core and auxiliary roles of the RFMF, including:

1. **Defence and National Security:** Protection of Fiji's sovereignty, territorial integrity, and national interests.
2. **Disaster Response and Humanitarian Assistance:** Formal recognition of the RFMF's role in natural disaster response, humanitarian relief, and national emergencies.
3. **National Infrastructure Support:** Engagement in engineering, rural development, and national infrastructure projects where specialised capacity is required.
4. **Youth Development and National Service:** A constitutionally recognised role in administering national service programs for young people.

5. **Peacekeeping and International Cooperation:** Continued participation in UN peacekeeping missions and regional security partnerships.
6. **Support to Civil Authorities:** Clearly defined circumstances under which the RFMF may assist civilian authorities, ensuring alignment with democratic principles and rule of law.

SODELPA recommends that these roles be **explicitly listed** in the Constitution to ensure clarity, transparency, and alignment with Fiji's long-term national interests.

B. Introduction of Mandatory National Service for Students

SODELPA proposes the establishment of a **6–8 month National Service Program**, administered by the RFMF, to be undertaken by all students upon completion of **Year 12 or Year 13**.

Key Features:

- Mandatory participation for all students completing secondary education.
- Training to include civic education, leadership, discipline, national identity, disaster-response skills, and basic military orientation.
- Integration of vocational skills, community service, and national development projects.
- Certification upon completion to support future employment or tertiary education pathways.

This program aims to strengthen patriotism, unity, resilience, and civic responsibility among Fiji's youth.

C. Optional National Service Pathway for Youths Aged 17–18

For youths who are not in formal schooling, SODELPA proposes an **optional national service pathway**:

- Youths aged **17 or 18** may voluntarily enrol in the National Service Program.
- This ensures inclusivity for out-of-school youth, early school leavers, and those seeking structured development opportunities.

Policy Arguments Supporting National Service for Young People

1. Strengthening Discipline, Responsibility, and Civic Values

A structured National Service programme provides young people with an environment that reinforces discipline, accountability, and respect for national values. Research from countries with similar programmes (e.g., Singapore, South Korea, and Israel) shows that:

- **Routine, structure, and clear expectations** help young people develop self-discipline.
- **Team-based activities** build responsibility, cooperation, and respect for authority.
- **Civic education modules** strengthen understanding of rights, responsibilities, and national identity.

For Fiji, where concerns about youth discipline and social behaviour are frequently raised by communities, National Service offers a **non-punitive, developmental pathway** to build stronger character and civic responsibility.

2. Addressing Youth Unemployment and Skills Gaps

National Service can help young people transition into adulthood by providing:

- **Vocational skills training** (e.g., carpentry, mechanics, ICT, agriculture).

- **Disaster-response and emergency skills**, which are highly relevant in Fiji's climate-vulnerable environment.
- **Leadership and teamwork experience** valued by employers.
- **Certification** that supports employment or further education.

This helps reduce youth unemployment and equips young people with practical skills that benefit both the individual and the nation.

3. Building National Unity and Social Cohesion

Fiji's multicultural society benefits from programmes that bring young people together across ethnic, religious, and socio-economic backgrounds. National Service:

- Creates **shared experiences** that strengthen unity.
- Promotes **mutual understanding** among youths from different communities.
- Reinforces a **common national identity** and sense of belonging.

This contributes to long-term social stability and reduces divisions that may arise from unequal opportunities or community fragmentation.

4. Enhancing National Security and Disaster Preparedness

Fiji faces increasing climate-related disasters, including cyclones, floods, and landslides. National Service can:

- Train young people in **first aid, emergency response, evacuation procedures, and community resilience.**
- Build a reserve pool of trained individuals who can support national disaster operations.
- Strengthen Fiji's overall preparedness and reduce reliance on limited emergency personnel.

This is not militarisation – it is **civil defence capacity-building**, which many countries adopt to protect communities.

5. Supporting Youth Development and Reducing Social Risks

National Service provides a structured environment that can help reduce:

- Youth involvement in crime
- Substance abuse
- Anti-social behaviour
- School dropouts
- Lack of direction or purpose

By offering mentorship, guidance, and positive role models, National Service becomes a **preventative social-development tool**, not a punitive measure.

6. Creating Pathways for Leadership and National Contribution

Young people who complete National Service often emerge as:

- More confident
- More disciplined

- More community-oriented
- Better prepared for leadership roles

This strengthens Fiji's future leadership pipeline across government, civil society, and the private sector.

7. International Precedent and Best Practice

Many countries use National Service to build discipline, unity, and resilience, including:

- **Singapore** – National Service is credited with strengthening discipline and national cohesion.
- **South Korea** – Mandatory service builds national readiness and civic responsibility.
- **Norway & Denmark** – Voluntary service builds social cohesion and national identity.
- **New Zealand (historical)** – National Service supported youth development and defence readiness.

These examples demonstrate that National Service is a **globally recognised tool** for youth development and nation-building.

8. Alignment with Fiji's National Needs

Fiji's unique context makes National Service particularly relevant:

- High youth population
- Rising social challenges
- Increasing climate disasters
- Need for stronger civic values
- Need for skilled manpower in rural development
- Desire for national unity and stability

National Service directly addresses these needs in a structured, equitable, and future-focused manner.

9. Ensuring Fairness and Inclusivity

By making National Service:

- **Mandatory for Year 12/13 graduates**, and
- **Voluntary for out-of-school youths aged 17–18,**

the programme ensures fairness, avoids discrimination, and provides opportunities for all young people regardless of educational background.

10. Supporting a Modern, Community-Integrated RFMF

National Service strengthens the RFMF's role in:

- Youth development
- Disaster response
- Community service
- National infrastructure support
- Peacekeeping readiness

This aligns the RFMF with modern defence forces worldwide that play **hands-on, community-focused roles** beyond traditional military functions.

CLOSING COMMENTS

The Social Democratic Liberal Party (SODELPA) submits these proposals with deep respect for the constitutional process and with full recognition of the responsibility entrusted to the Constitution Review Commission. Throughout the nationwide consultations, the people of Fiji have spoken with clarity, urgency, and hope. They want a Constitution that protects their families, strengthens their communities, honours their traditions, and prepares their children for a rapidly changing world.

Our recommendations — from electoral reform to national service, from housing affordability to digital child protection, from indigenous economic empowerment to investor confidence, and from the modernisation of the RFMF to the revitalisation of the Great Council of Chiefs — are not isolated policy ideas.

They form a **coherent national vision**: a Fiji that is more secure, more inclusive, more resilient, and more united.

SODELPA believes that constitutional reform must be guided by the lived realities of ordinary Fijians, not by political expediency. The Constitution must be a shield for the vulnerable, a platform for opportunity, and a compass for national unity. It must reflect who we are as a people — our Vanua, our multicultural identity, our democratic aspirations, and our shared future.

We therefore urge the Commission to consider these proposals as constructive pathways toward a stronger Fiji: **a Fiji where every voter feels represented, every child feels protected, every family can afford a home, every youth has a pathway to discipline and purpose, every landowner is empowered, every investor is secure, and every national institution is clearly defined and accountable.**

SODELPA stands ready to support the Commission's work, participate in further dialogue, and contribute to a constitutional framework that will serve Fiji for generations to come. With humility and conviction, we offer this submission in the spirit of national unity, democratic progress, and unwavering commitment to the people of Fiji.

ENDS

Submission of Ms. Raduva

CLIMATE CHANGE, ENVIRONMENTAL SUSTAINABILITY AND RELOCATION STRATEGY.

SODELPA recognizes that climate change is an existential threat to both humans and our environment.

SODELPA is committed to ensure that there are accountable and transparent climate policies put in place to prevent climate refugeesim, pollution, land degradation, ocean acidification and extinction of biodiversity and wildlife in Fiji.

BACKGROUND

SODELPA advocates for climate action in Fiji by prioritizing grassroot empowerment, appreciating and acknowledging traditional knowledge, protecting indigenous land rights and the equitable sharing of climate funding. As a key partner in Fiji's coalition government, the party emphasizes practical, community-led resilience that ensures the safety of all Fijians.

SODELPA's vision in tackling the climate crisis is to strengthen existing (and to explore) collaborations within the Blue Pacific to strongly advocate for a net-zero global emissions by 2050, seek collaborations with NGO's and local activists in tackling environmental issues in Fiji to ensure a clean, safe and sustainable future for our future generations and to work closely with the NDMO and essential government departments in addressing disaster risk management and to establish proper evacuation centers that are cyclone resistant for stronger shelters and is safe and accessible for ALL FIJIANS.

SODELPA strongly believes in protecting Fiji's key infrastructure and assets from rising sea waters, Category 5 natural disasters and an aggressive global climate change crisis. Since COVID 19, Fiji is heavily reliant on our tourism and civil aviation industry. A brief geographical look at the location of Fiji's two international airports *[Nadi International Airport and Nausori International Airport, Suva]* and 13 domestic airports *[Labasa, Savusavu, Taveuni, Rotuma, Lakeba, Cicia, Ono I Lau, Moala, Vanua Balavu, Koro, Gau, Levuka and Kadavu]* puts SODELPA's commitment to advocate for a resilient climate management strategic plan as a priority.

VISION

A Fiji where our people and the environment simultaneously thrives is a prosperous Fiji for ALL.

1. LOCAL INCLUSIVITY

Ensure frontline, indigenous and marginalized communities are provided a safe space to direct their concerns in the design and execution of national climate policies and negotiations.

Work together with expert local environmentalists, community and traditional leaders in navigating through climate negotiations and strategies.

Implement policies that will protect indigenous land and marine protected areas from all kinds of pollution and harmful hazards.

2. ECOSYSTEMS AND CIRCULAR ECONOMY

Revive Fiji's commitment in the "30 million trees in 15years" that was launched in 2019 to combat climate change and restore biodiversity and wildlife in Fiji.

Implement strict circular-economy regulations, that includes ban on single-use plastics, balloons and harmful industrial chemicals.

3. GREEN ECONOMY AND "JUST TRANSITION".

Allocate funding and provide specialized green-collar job opportunities in Fiji to boost environmental stewardship and sustainability.

Prioritizing grants and not loans and to ensure that these funds are solely for the purpose of rebuilding and restructuring vulnerable communities that are heavily impacted by climate change.

Revise the Fiji Litter Act 2008 and include balloon releasing as a form of littering, strictly impose environmental fines that will lower the rate of plastic pollution and other items.

Strategically manage key national infrastructure and assets within the aviation and tourism industry.

4. COMMUNITY-LED RELOCATION AND CLIMATE RESILIENCE

Ensure that the participation of all Fijians in every community are present and acknowledged in any development planning.

Decree that all relocation centers are built with renewable energy, secure water supplies, sustainable waste management and is disability friendly.

Provide post-cyclone grants and counselling programs for individuals and families in adapting to their new environment.

SODELPA recognizes that the climate crisis will no doubt affect the livelihoods of all Fijians. The party's vision, mission and leadership in combating the impacts of the climate crisis is through honest and strong willpower to protect all Fijians.

Submission of Mr. Joni Dagoya

Constitutional Review Commission

Constitutional Foundations

- **1997 Constitution (Repealed):** Protected communal ownership of land/resources, emphasizing iTaukei rights.
- **2013 Constitution (Current):** Declares all natural resources as belonging to the State, while land ownership remains with iTaukei via the Mataqali system.
- **Challenge:** Resource owners feel excluded, receiving only lease payments while the State controls exploitation.

Proposed Constitutional Amendments

1. **Resource Equity Clause**
    - Mandate that all resource projects (oil, gold, forestry, water, energy) allocate **15–25% equity shares** to land/resource owners.
    - Restores the spirit of the 1997 protections while aligning with the 2013 framework.
2. **Government Facilitation Fund**
    - Government provides seed capital for Mataqali and village trusts to buy into projects.
    - Example: Mahogany integration model, where landowners receive royalties + dividends.
3. **Community Development Trusts**
    - Shares pooled into village/district trusts to fund education, healthcare, and infrastructure.
    - Prevents fragmentation of benefits across individuals.
4. **Transparent Trustee Oversight (TLTB Role)**
    - Trustees manage equity shares on behalf of Mataqali, ensuring accountability.

Oil & Gold Resource Integration

Oil Forecast (2026–2030)

- **Low Extraction (20m barrels/year):** USD 6.2b (FJD 13.8b) → Debt halved, low taxes, balanced growth.
- **High Extraction (100m barrels/year):** USD 31.2b (FJD 69.5b) → Debt eliminated, tax substitution, massive infrastructure, sovereign wealth fund.

Gold Forecast (2026–2030)

- **Low Extraction (100k oz/year):** USD 940m (FJD 2.1b) → Debt relief, lower VAT, rural services.
- **High Extraction (500k oz/year):** USD 4.7b (FJD 10.5b) → Tax substitution, nationwide infrastructure, job creation.

Legal Pathways

- **Constitutional Amendment:** Insert "Resource Benefit-Sharing" provision.

- **Statutory Reform:** Enact a **Resource Equity Participation Act** mandating landowner shareholding in all projects.
- **Sovereign Wealth Fund:** Oil and gold revenues saved for future generations, modeled after Norway.

Benefits

- Restores dignity and ownership rights for land/resource owners.
- Creates sustainable income streams beyond leases.
- Reduces disputes and threats of shutdowns.
- Funds nationwide infrastructure, healthcare, and education.
- Aligns Fiji with global best practices in resource governance.

Circulation Summary

This draft proposes a **hybrid constitutional model**:

- Protects iTaukei communal rights.
- Ensures **equity participation** in oil, gold, and forestry projects.
- Uses **low taxation funded by resource revenues** to reduce Fiji's high cost of living.
- Establishes **community trusts and sovereign wealth funds** for long-term stability.

Constitutional Integration Framework

1. Resource Ownership & Equity

- **Resource Equity Clause**: Amend the 2013 Constitution to guarantee **15–25% equity shares** for iTaukei land/resource owners in all major projects (forestry, mining, oil, gold, water, energy).
- **TLTB Trusteeship**: The iTaukei Land Trust Board manages equity shares transparently on behalf of Mataqali, ensuring accountability and preventing elite capture.
- **Community Trusts**: Shares pooled into village/district trusts to fund education, healthcare, and infrastructure, ensuring benefits reach grassroots communities.

"Resource development projects shall allocate equity shares to land/resource owners, restoring the dignity and rights enshrined in the 1997 Constitution."

2. Economic Resource Models

- **Oil Extraction Forecasts**:
  - *Low extraction*: Steady growth, debt halved, reduced VAT/income tax, balanced economy.
  - *High extraction*: Debt eliminated, massive infrastructure, sovereign wealth fund, but requires safeguards against the resource curse.
- **Gold Extraction Forecasts**:
  - *Low extraction*: Supports rural electrification, healthcare, and lower taxes.

- *High extraction*: Nearly GDP-equivalent revenue, tax substitution, nationwide infrastructure, job creation.

Integration Principle: Oil and gold revenues must **substitute taxation**, directly lowering household costs while funding development. This aligns with SODELPA's mission to ease the cost of living for ordinary Fijians.

3. Governance & Legal Pathways

- **Constitutional Amendment**: Insert a "Resource Benefit-Sharing" provision mandating equity participation and revenue distribution.
- **Statutory Reform**: Enact a **Resource Equity Participation Act** to operationalize shareholding, royalties, and community trusts.
- **Sovereign Wealth Fund**: Establish a Fiji Resource Fund (modeled on Norway) to stabilize against commodity price volatility and secure future generations.

4. Social & Cultural Alignment

- **Restoring iTaukei Dignity**: Recognizes communal ownership while integrating modern equity structures.
- **Inclusive Development**: Ensures rural villages, not just elites, benefit from resource wealth.
- **Balanced Growth**: Oil and gold revenues fund diversification – tourism, agriculture, fisheries, and renewable energy – preventing dependency.

🌴 Benefits for Fiji

- Restores indigenous rights and dignity.
- Reduces cost of living via tax substitution.
- Eliminates or reduces national debt.
- Funds massive infrastructure and social services.
- Prevents disputes over resource exploitation.
- Aligns Fiji with global best practices in community-inclusive governance.

✨ **In essence:** A new constitution under SODELPA's vision would **blend the 1997 protections with the 2013 framework**, ensuring that iTaukei landowners are not just lease recipients but **shareholders in Fiji's resource wealth**. Oil and gold revenues would **replace taxation**, directly lowering household costs while building a debt-free, infrastructure-rich, and inclusive Fiji.

Submission of Mr. Takayawa.

SDL 2012 Position	SODELPA 2026/2027 Recommended Position
Christian State / State Religion	Referendum. Protect Fiji's Christian heritage, while guaranteeing freedom of religion for all.
Common name: "Fiji Islander" for all citizens; "Fijian" for indigenous people	Referendum. This is now a national identity issue and must be decided by the people.
Dual citizenship not allowed	Review and modernise. Referendum only if placed in the Constitution; otherwise ordinary legislation can decide.
Delete "sexual orientation" protection	Do not frame as removal of rights. Referendum only on definition of marriage/family if necessary, while maintaining equal dignity under law. Ireland used a referendum for marriage equality.
Electoral system: communal/open mix and MMP	Referendum. New Zealand changed to MMP after public inquiry and referendums.
Senate and two-house Parliament	Referendum. This affects national structure and representation.
Bose Levu Vakaturaga / GCC constitutional role	Retain as core SODELPA position, but modernise its role as advisory, cultural, and guardian institution—not a competing government.
Indigenous land, qoliqoli, customary law	Strengthen. Vanuatu constitutionally protects custom land ownership, showing this is not unusual in the Pacific.
Amnesty not immunity	Retain, but align with Truth and Reconciliation principles and victim compensation.
Amendment of Constitution	Strengthen by requiring referendum for entrenched national issues.

Submission of Mr. Tiko

SOCIAL DEMOCRATIC LIBERAL PARTY (SODELPA)

Soqosoqo Duavata ni Lewenivanua

Party Headquarters, Suva, Fiji

SUBMISSION TO THE CONSTITUTIONAL REVIEW COMMISSION

Introduction

SODELPA welcomes the establishment of the Constitutional Review Commission and thanks the Commissioners for the opportunity to make this submission. As a party whose foundation and continuing mandate rest on the protection and advancement of the *Vanua, Lotu,* and *Matanitu,* and on the wellbeing of the *lewenivanua* as a whole, SODELPA regards this review as a historic opportunity to correct the democratic shortcomings of the 2013 Constitution identified by the Supreme Court, and to produce a supreme law that genuinely reflects the will, values, and lived realities of all communities in Fiji.

This submission draws on SODELPA's manifesto commitments and long-standing policy positions. It is organised around eight areas where the Party considers constitutional reform most urgent.

1. Recognition of iTaukei as Indigenous First Nations People of Fiji

The Constitution should expressly recognise iTaukei people as the indigenous, First Nations People of Fiji, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), to which Fiji is a signatory. This recognition affirms the unique and inalienable relationship of iTaukei people to their Vanua — land, sea, and cultural heritage — as the original inhabitants of these islands, predating all subsequent settlement. Such recognition is not a claim to ethnic supremacy or a diminishment of the citizenship and rights of other communities who have made Fiji their home, including Fiji's Indo-Fijian, Rotuman, and other communities, whose contributions to the nation are equally valued and protected under this Constitution. Rather, it is a foundational acknowledgment consistent with international indigenous rights norms, and one that underpins the specific protections already extended to iTaukei land (under the iTaukei Land Trust Act), customary fishing grounds (*Qoliqoli*), and traditional governance structures (the *Bose Levu Vakaturaga*), ensuring these protections rest on a clear and legally coherent constitutional foundation rather than on scattered statutory recognition alone.

2. Constitutional Recognition of the Bose Levu Vakaturaga (Great Council of Chiefs)

SODELPA has long campaigned for the restoration of the *Bose Levu Vakaturaga* (BLV) to its rightful place in national life and welcomed its reinstatement in 2023 as an advisory body. The party submits that the Commission should now consider entrenching the BLV's status, composition, and advisory functions directly in the Constitution, rather than leaving it dependent on ordinary legislation or executive discretion. This would ensure that no future government can unilaterally disband or diminish the Council, as occurred in 2012.

SODELPA recommends that the Commission examine, in consultation with the BLV itself, appropriate constitutional mechanisms for the Council to formally advise on matters of iTaukei custom, land, and identity.

As a start, SODELPA recommends that the BLV must, before consideration by Parliament, consider and approve all laws, touching on the rights and interests of iTaukei people in relation to:

(i) iTaukei land;

(ii) the extraction of minerals under any iTaukei land;

(iii) any state land under section 28(2) of the Constitution;

(iv) any state foreshore land which the Minister of Lands has power to approve a lease for, under section 21 of the State Lands Act.

3. Protection of iTaukei Land and Resource Rights

Consistent with its manifesto commitments, SODELPA submits that the Constitution should contain stronger, more explicit guarantees for the inalienability of native land administered under the iTaukei Land Trust Act, and should entrench protections against future legislative amendments of the kind SODELPA opposed in the previous Parliament, which the party viewed as weakening landowner consent and control over their land.

- Constitutional entrenchment of the requirement for free, prior, informed landowner consent (FPIC) prior to any leasing, use, or disposal of native land or resources.
- Constitutional recognition of customary fishing rights (*qoliqoli*) and a clear legal framework for their recognition and compensation where those rights are affected by development. The compensation framework must acknowledge economic, ecological and cultural value to iTaukei people.
- A constitutional requirement that any future amendment to native land legislation receive a special parliamentary majority, to protect iTaukei landowners from ordinary legislative change. This requirement should complement the role of the BLV recommended above.

4. The Character of the State and Freedom of Religion

SODELPA has consistently affirmed that Christian principles and values are foundational to the great majority of communities in Fiji, while also affirming respect for the freedom of worship of all faiths present in the country, including the Hindu, Muslim, and other communities that form part of the national fabric. The party submits that the Commission should consider a preambular or substantive constitutional acknowledgement of Fiji's Christian heritage and the contribution of faith communities to national life, alongside an unqualified guarantee of freedom of religion and belief for all citizens, so that recognition of the majority's heritage does not come at the expense of the rights of religious minorities.

5. Electoral Representation

SODELPA submits that the Commission should review the current electoral system with a view to strengthening the link between elected members and the communities and provinces they represent. The party's experience contesting elections under the existing open-list proportional system, and its experience as a small party achieving disproportionate influence relative to its vote share in 2022, illustrate broader concerns about representativeness and accountability that the Commission should examine closely. SODELPA recommends a return to some element of constituency- or province-based representation to better serve smaller and outer-island communities.

SODELPA submits that the Constitution should guarantee a minimum quota of 30 percent for either sex at both candidacy and elected level. SODELPA regards this measure as necessary and proportionate steps to correct the long-standing under-representation of women in Fiji's Parliament, and submits that a minimum quota is preferable to aspirational language, which experience has shown does not reliably translate into elected representation.

6. Executive Term Limits and the Presidency

Limiting the Tenure of the Prime Minister

SODELPA submits that the Constitution should impose a limit of three terms on any individual holding the office of Prime Minister, whether those terms are served consecutively or otherwise. The party considers that Fiji's history of prolonged, unbroken incumbency has weakened institutional accountability and contributed to the concentration of executive power criticised by the Supreme Court in its observations on the 2013 Constitution. A firm, self-executing term limit removes this risk regardless of which party or leader is in office, and SODELPA submits that this reform should apply irrespective of the party's own electoral fortunes.

Equitable Representation at Presidential Level

SODELPA further submits that the Constitution should require that no more than two consecutive Presidents shall be of the same sex. The party considers that the Presidency, as Fiji's ceremonial head of state and a unifying constitutional office, is well suited to entrench this principle of gender balance at the highest level of the State, and that doing so would complement the party's proposed 30 percent quota for either sex in Parliament by ensuring that equitable representation is visible and guaranteed in the nation's highest office.

7. Clear Demarcation of Ministerial and Permanent Secretary Roles

SODELPA recommends an amendment to section 127(3) which currently morphs the role of a Minister and that of a Permanent Secretary. The Constitution should expressly delineate the separation of political and administrative authority within government ministries. The Minister, as the political head of a ministry, shall be responsible for setting policy direction, representing the ministry in Cabinet and Parliament, and bearing political and public accountability for the ministry's performance. The Permanent Secretary, as the administrative head, shall be responsible for the day-to-day management and operations of the ministry, the implementation of government policy, financial and human resource administration, and the provision of frank, impartial professional advice to the Minister.

The Permanent Secretary shall be a career public servant appointed and removed through an independent public service process free from ministerial or political direction, to preserve the political neutrality and institutional continuity of the civil service across changes in government. A Minister shall not direct a Permanent Secretary or ministry staff in matters of individual personnel decisions, procurement, or operational administration falling within the Permanent Secretary's statutory responsibility, save through formal policy directive issued in writing and subject to record. This demarcation is intended to prevent the politicisation of the civil service, protect public servants from undue political interference, and ensure that ministerial accountability to Parliament is matched by a professional, merit-based administration capable of serving successive governments with equal competence and loyalty to the State.

8. Accountability and Good Governance

SODELPA submits that the Commission should use this review to strengthen the independence and accountability of key oversight institutions, narrow blanket immunity provisions inherited from previous Constitutions so that they do not shield serious offences from future scrutiny and ensure that any anti-corruption body operates independently of executive direction. SODELPA supports, in principle, submissions from the Fiji Law Society and others calling for clearer separation between investigative and prosecutorial functions in corruption matters.

Conclusion

SODELPA reiterates its appreciation for the Commission's work and its commitment to engaging constructively and in good faith throughout the consultation process. The party looks forward to participating in further public hearings and stakeholder engagements, and stands ready to provide additional detail on any of the matters raised in this submission upon request.

Submission of Mr. Josh Gaunavinaka

Policy Submission: Review of Section 23 (Political Rights) – Limiting the Number of Political Parties.

Background

Section 23 of the 2013 Constitution guarantees citizens the right to freedom of political association, including the formation of political parties. While this provision upholds democratic freedoms, the absence of limits on party formation has led to the proliferation of numerous small parties. This

fragmentation weakens political stability, complicates coalition-building, and undermines effective governance.

Issue

Fiji's political landscape has seen the emergence of multiple parties with limited membership and narrow agendas.

Excessive party formation dilutes voter choices, creates unstable coalitions, and hinders long-term policy continuity.

The Constitution currently provides no mechanism to regulate or limit the number of parties contesting elections, resulting in inefficiency and instability in governance.

Recommendation

It is proposed that Section 23 of the Constitution be amended to introduce a limitation on the number of political parties eligible for registration and participation in national elections.

Suggested Amendment Wording: "While citizens retain the fundamental right to freedom of association and political participation, the registration of political parties shall be limited to a maximum of five (5). The Electoral Commission shall establish transparent criteria for party registration, ensuring that only parties with broad national representation, demonstrated organizational capacity, and commitment to democratic governance are eligible to contest elections."

Expected Impact

Political Stability: Consolidation of parties will reduce fragmentation and strengthen governance.

Accountability: Larger, well-structured parties will be more accountable to voters and more capable of delivering coherent policies.

Efficiency: Streamlined party registration will simplify electoral processes and reduce administrative burdens.

Youth Engagement: Stronger parties with broader platforms will provide clearer pathways for youth participation and representation.

Conclusion

Reviewing Section 23 to limit the number of political parties is a necessary step toward strengthening Fiji's democratic institutions. By balancing the right to political association with the need for stability, this amendment will foster effective governance, enhance accountability, and ensure that citizens – especially youths – are represented within robust and sustainable political structures.

Submission of Mr. Drole

INTRODUCTION

1. The Constitutional Rights of:
   - *The Arrested and detained persons; and*
   - *The Accused persons.*

2. The rights of the persons during the *investigation process* and the rights of the person during the *prosecutorial process* need review in order such rights are not only exist as constitutional texts but ensuring that they serve their intended constitutional threshold.

3. The criminal investigation process is like an "investigation pathway" consisting of three distinct but interconnected stages:
   - the suspicion and arrest stage - starting point;
   - the caution interview stage - middle point; and
   - the charging stage - end point.

4. That if the *Criminal Investigation Process* is flawed then the cautioned interview statement is involuntarily given thus it would be inadmissible as evidence.

SUBMISSION

5. Section 13 of the Constituion

Rights of arrested and detained persons

13. – (1) Every person who is arrested or detained has the right –

(a) *to be informed promptly, in a language that he or she understands, of –*

(i) *the reason for the arrest or detention and the nature of any charge that may be brought against that person;*

(ii) *the reason for the arrest or detention and the nature of any charge that may be brought against that person; the right to remain silent; and*

(iii) *the consequences of not remain silent*

6. **We submit that the constitutional threshold with respect to *arrest* must be clearly stated in the Constitution, if not then the prosecutorial process is already contaminated when the arresting threshold is not fulfilled at the time of the arrest. The current practice is where the police will only say to the suspect *"can we go to the police station"* or in the taukei language *"rawa ni tou gole mada kina police station" without promptly informing him/her the reason of his/her arrest.***

(b) *to remain silent;*

(c) *to communicate 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 so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission;*

7. **We submit that the constitutional threshold with respect to the *"right to communicate with a legal practice"* must be clearly stated in the constitution. That in the absence of such threshold the police always had an unjust easy journey to exploit the vulnerability of the detained person. The accused must get the proper legal advice that is necessary before he walks into the interview room and be subjected under a cautioned interview, or otherwise it just a legal ambush thus *right to communicate with a legal practitioner* is improperly exercised and adversely denied.**

(d) *not to be compelled to make any confession or admission that could be used in evidence against that person;*

(e) *to be held separately from persons who are serving a sentence, and in the case of a child, to be kept separate from adults unless that is not in the best interests of the child;*

(f) *to be brought before a court as soon as reasonably possible, but in any case not later than 48 hours after the time of arrest, or if that is not reasonably possible, as soon as possible thereafter;*

8. **We submit that the constitutional 48 hours threshold, is been breached and abused by the police all the time and it appears they have been relying on the exception attached to it where it say "*...or if that is not reasonably possible, as soon as possible thereafter*". We submit that the exception should only apply to small outer islands in maritime region and not to the main islands such as Viti Levu , Vanua Levu, Kadavu and Taveuni.**

(g) at the first court appearance, to be charged or informed of the reasons for the detention to continue, or to be released;

(h) to be released on reasonable terms and conditions, pending a charge or trial, unless the interests of justice otherwise require;

(i) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;

(j) conditions of detention that are consistent with human dignity, including at least the opportunity to exercise regularly and the provision, at State expense, of adequate accommodation, nutrition, and medical treatment; and

(k) to communicate with, and be visited by, –

(i) his or her spouse, partner or next-of-kin; and

(ii) a religious counsellor or a social worker.

(2) Whenever this section requires information to be given to a person, that information must be given simply and clearly in a language that the person understands.

(3) A person who is deprived of liberty by being detained, held in custody or imprisoned under any law retains all the rights and freedoms set out in this Chapter, except to the extent that any particular right or freedom is incompatible with the fact of being so deprived of liberty.

THE INVESTIGATION PATHWAY AND THE CONTINUING FAIRNESS AND OBLIGATIONS

9. We submit that in the current practice of the investigative process is been viewed and practised in segments and not holistically.

10. We submit that the criminal investigation process as an "investigation pathway" consists of three distinct but interconnected stages:

- the suspicion and arrest stage;
- the caution interview stage; and
- the charging stage.

11. We submit that constitutional safeguards, particularly the *right to silence* and the *right to legal representation*, operate continuously throughout all stages of the investigation pathway.

12. Accordingly, we submit the admissibility inquiry cannot be artificially confined to the caution interview alone. Any substantial unfairness occurring at the point of arrest, detention, interview, or charging may contaminate the entire process and render the resulting confession inadmissible.

13. We submit that the Prosecution focused narrowly on voluntariness of confession while failing to adequately address the broader question of procedural fairness throughout the entire and complete investigative process.

BREACH OF THE ACCUSED'S CONSTITUTIONAL RIGHT TO LEGAL COUNSEL

14. Section 13(1)(c) of the Constitution guarantees a detained person the right to communicate with and be visited by a legal practitioner without delay.

15. We submit that this constitutional protection requires more than the mere recitation of rights through formal cautioning.

16. When evidence reveals a material inconsistency regarding whether the Accused actually communicated with legal counsel during detention or had communicated with a legal counsel but the required legal advice was not afforded to the detained person. Such contradiction raises serious doubt regarding whether the constitutional right is genuinely facilitated in practice.

17. We submit a detained person, particularly one facing serious allegations, may be vulnerable, intimidated, confused, or unaware of the practical significance of legal representation. In such circumstances, fairness requires police to actively facilitate the opportunity for legal consultation before interrogation proceeds.

18. We submit that the failure to ensure effective access to counsel before the caution interview contributed materially to the overall unfairness of the investigative process.

19. Section 14 of the Constitution:

Rights of accused persons

14. – (1) A person shall not be tried for –

(a) any act or omission that was not an offence under either domestic or international law at the time it was committed or omitted; or

(b) an offence in respect of an act or omission for which that person has previously been either acquitted or convicted.

(2) Every person charged with an offence has the right –

(a) to be presumed innocent until proven guilty according to law;

(b) to be informed 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 defence, 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 own choice, and to be informed promptly of this right or, if he or she does not have sufficient means to engage a legal practitioner and the interests of justice so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission, and to be informed promptly of this right;

(e) to be informed in advance of the evidence on which the prosecution intends to rely, and to have reasonable access to that evidence;

(f) to a public trial before a court of law, unless the interests of justice otherwise require;

(g)to have the trial begin and conclude without unreasonable delay;

(h) to be present when being tried, unless –

(i) the court is satisfied that the person has been served with a summons or similar process requiring his or her attendance at the trial, and has chosen not to attend;

(ii) the conduct of the person 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) *to be tried in a language that the person understands or,* if that is not practicable, to have the proceedings interpreted in such a language at State expense;

(j) *to remain silent, not to testify during the proceedings, and not to be compelled to give self-incriminating evidence, and not to have adverse inference drawn from the exercise of any of these right;*

(k) *not to have unlawfully obtained evidence adduced against him or her unless the interests of justice require it to be admitted;*

(l) *to call witnesses and present evidence, and to challenge evidence presented against him or her;*

(m) *to a copy of the record of proceedings within a reasonable period of time and on payment of a reasonably prescribed fee;*

(n) *to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time the offence was committed and the time of sentencing; and*

(o) *of appeal to, or review by, a higher court.*

(3) *Whenever this section requires information to be given to a person, that information must be given as simply and clearly as practicable, in a language that the person understands.*

(4) *A law is not inconsistent with subsection (1)(b) to the extent that it –*

(a) *authorises 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.*

FAILURE TO PROPERLY EXPLAIN THE CONSEQUENCES OF CHARGING

20. We submit that while the charging process is in progress, the Accused must be advised of the legal consequences arising at the transition point whereas the detained person with change status that is from a *detained* person to an *accused* person.

21. We submit that Constitutional Rights do not operate mechanically. They exist to ensure informed participation within the criminal process. A suspect cannot meaningfully exercise rights without understanding the legal implications of the procedures being undertaken.

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Closing Submission

SODELPA respectfully submits that Fiji requires a Constitution that is both principled and practical: a Constitution that every Fiji Islander can call their own; a Constitution that restores the name and dignity of indigenous Fijians; a Constitution that protects the vanua, Rotuma, Banaban identity and all communities; a Constitution that removes immunity for coups; a Constitution that strengthens the Great Council of Chiefs as an independent, non-partisan and modern institution; a Constitution that protects equal citizenship and human rights; and a Constitution that finally closes the door on unconstitutional seizure of power.

For Fiji, for the vanua, for every Fiji Islander, and for the generations yet to come, SODELPA urges the Constitution Review Commission to recommend a democratic, inclusive, accountable and culturally grounded constitutional settlement worthy of our nation's future.

Ministry of Lands and Mineral Resources (MLMR)

Ministry of Lands
Date:8-7-2026

Mr. Valenitabua: The Honourable Minister for Lands and Officers from the Ministry of Lands and Mineral Resources will now call this consultation session to order. I thank you very much for your attendance this afternoon, Honourable Minister and your officers. I do apologies for having to let you stand outside while SODELPA was finishing off. We went over time a little bit. We are allocated one hour. My apology for the short order allocation. now that we are at the last week of consultations, we have just been inundated with requests for submissions of submitters to come in and appear before us. However, the Ministry of Lands had given us, or requested us for the allocation well before and that is why we are here this afternoon.

The Commission, Constitution Review Commission is to review the 2013 Constitution. Our task includes, as directed in our term of reference from His Excellency the President, it includes hearing submissions from figures and that I mean generally speaking. The submissions have been received from various levels in society, from the very grassroots to the ministries and today we have two ministers who have appeared before us. The first one is the Minister of Education and the second one is the Minister of Lands who is sitting with us. Now for introduction, on my left is Dr Niles Gounder, an economist, lecturer at USP and has been used a lot by the government for various daily duties.

Next to him here on my left is Mr Ami Kohli, a lawyer of Labasa. I am the chairperson, Sevuloni Valenitabua, a practicing lawyer and on my right is Mr Conway Bag, an architect well known to you, to you I believe and also on the other end is Merewalesi Nailatikau. We have a commissioner sitting this afternoon and we are here to listen to submissions from the Ministry of Lands and Natural Resources. Without further ado, I now hand over the floor and the mic to you Honourable Minister or to the presenter to make your submissions. Thank you.

Mr. Vosarogo : Mr Chairperson. On behalf of the Ministry of Lands and Natural Resources and the senior staff, we would like to thank you and your commission for the invitation and also for an opportunity to come and discuss matters of not just national importance but also of constitutional importance. Today we have, we must say that we followed your journey from day one and we have also followed through

some of the issues that we feel we are going to be required to contribute to in this very important National Dialogue. No need for apology Mr Chairperson. We would wait until our turn because we know that this is a very important task that you have. You have a ton of reference that you must meet and even stricter timelines to meet and I on behalf of the Ministry of Lands and Natural Resources would like to thank you for the tireless effort that you have put into this very important national work in the past few months.

At the outset Mr Chairperson and members of the Commission, I would like to acknowledge the hard work that has been undertaken by the Commission to this date. Constitution as we all know is not just any piece of law. It is the supreme law of our country and so we feel very respected to be asked to come and contribute to this process with you today. The Ministry of Lands and Mineral Resources welcome this opportunity to contribute here today in this National Dialogue. As you would understand Mr Chair, Ministry plays a very critical role in the sustainable management, administration and development of Fiji's land, Fiji's minerals, its groundwater and above us our geospatial resources. Through these responsibilities we at the Ministry we interact daily with issues that are directly linked to constitutional principles relating to land ownership, resource management, environmental stewardship, economic development, minerals ownership and the equitable distribution of benefits to all Fijians.

May I just highlight Mr Chairperson, there are three ongoing legislative review processes that we are undertaking at the Ministry to this date. The Mining Act of 1965 is I would submit highly relevant to the review of the 2013 constitutions because these statutes give practical effect to the constitutional provisions relating to land ownership, resource governance, property rights, environmental protection and sustainable development.

Firstly, Mr Chairman Sir, the State Lands Act governs the administration, allocation and management of state-owned lands. It reviews present presents an opportunity to ensure that legislative provisions are fully aligned with constitutional principles of transparency, accountability, equitable access and public benefit. Given the increasing demand for land to support housing, support infrastructure, investment and climate resilience initiatives, the review that we have undertaken is essential in ensuring that state land management continues to serve both national

development priorities and the interest of present and future generations. Secondly, the Land Use Act plays an important role in facilitating productive use of land while balancing the rights of landowners with broader socio-economic development objectives or under our national development plan.

The review of this legislation provides an opportunity to assess whether existing frameworks adequately support agricultural development, investment, food security and sustainable land management while safeguarding constitutional protection relating to ownership, access, fair treatment of landowners and of our natural resources. Thirdly Mr Chairman Sir, the Mining Act has been in existence for over many decades now. It has come a time where it requires modernization to address contemporary challenges and opportunities within the extractive industry.

The review is particularly significant in the context of constitutional principles relating to natural resource management, environmental sustainability, social justice and equitable distribution of benefits. A modern legislative framework can strengthen regulatory oversight, enhance community participation, improves environmental safeguards, provide greater certainty for investment and ensure that mineral resource development contributes meaningfully to national development. Collectively, the review of these three key principles or pieces of legislation presents an opportunity to ensure coherence between constitutional provisions and the laws governing Fiji's land and mineral resources.

It allows for the strengthening enhancement of stakeholder participation, promotion of sustainable resource management practices that supports long-term national development. The Ministry therefore views the constitutional review and the ongoing legislative review as complementary processes that should inform and reinforce one another to achieve a modern, effective and resilient legal framework for Fiji's land and mineral resource sector. As such, the Ministry's submission is guided by several key considerations.

These include strengthening the protection of land rights, promoting transparent and accountable governance of natural resources, ensuring equitable access to economic opportunities arising from resource development, enhancing environmental safeguards and supporting

sustainable development outcomes that benefits all of Fiji. Our submission is also informed by practical experiences gained through the Ministry's operational responsibilities, stakeholder consultation, policy implementation and emerging challenges associated with climate change, resource development, urban expansion and increased demand on land and on our natural resources. The Ministry of Land and Mineral Resources submits that consideration should be given to the formal recognition of state land as an integral component of Fiji's land tenure system within the constitution.

While the constitution provides extensive recognition and protection of iTaukei land ownership and acknowledges freehold land rights, state land remains a significant category of land that supports national development, provides public infrastructure, social services, environmental conservation and economic investment. The Ministry further submits that constitutional recognition would not diminish the protections afforded to iTaukei land owners or of those freeholders. Rather, it would acknowledge the reality of Fiji's land tenure system by expressly recognizing the important role that state lands play in advancing national development objectives and safeguarding our public interest.

Accordingly, the Ministry recommends that the constitution be amended to also expressly recognize state lands as a distinct and essential component of Fiji's land tenure system to be administered and managed by the state for the benefit of all the people of Fiji in accordance with the law. The Ministry of Lands and Marine Resources submits that the constitution should provide stronger recognition of the state's responsibility to progressively address the challenges associated with informal settlements while balancing the rights, dignity and welfare of affected communities. The growth of informal settlements, Mr Chairman Sir, has become a significant national issue and they're driven by urbanization, internal migration, population growth, economic challenges and limited access to affordable housing and service land.

These settlements often lack secure tenure, adequate infrastructure, basic services and resilience to natural disasters and climate-related risks. Given the increasing prevalence of informal settlements across Fiji, there is a need for a constitutional framework that supports coordinated and sustainable solutions. Such recognition would provide guidance for legislative framework, provide guidance for policymaking

and development programs aimed at improving living conditions and promoting orderly urban development.

The ministry further notes that a significant proportion of informal settlements throughout Fiji are located on state lands. This, Mr Chairman, underscores the importance of effective state land management policies that supports regularization, affordable residential leasing programs, planned resettlement where necessary and the provision of essential services and infrastructure. Accordingly, the ministry recommends that the constitution recognize the state's role in facilitating access to adequate housing and promoting sustainable settlement development while enabling legislative and policy measures to address informal settlements in a manner that is equitable, practical and consistent with national development objectives.

Mr Chairman, Ministry of Lands and Mineral Resources submit that consideration should be given. I come to minerals in these few paragraphs. The Ministry of Lands and Mineral Resources submit that consideration should be given to broadening the constitutional and legislative definition of minerals to also include mineral water, spring water and groundwater extracted for commercial purposes.

The existing legal framework governing mineral resources has traditionally focused on solid minerals and extractive resources such as river sands and gravels. However, the growing commercial exploitation of groundwater, particularly for bottled water production and other commercial enterprises, highlights the need for a modern approach to resource governance. Groundwater and natural spring water are valuable natural resources that contribute significantly to Fiji's economy, employment, exports and national development.

Their extraction and commercial utilization generate substantial economic benefits and, like other natural resources, require effective regulations to ensure sustainability, accountability and equitable benefits for the people of Fiji. The Ministry recognizes the distinction between groundwater extraction for domestic, agricultural, community and public purposes and groundwater extraction undertaken for commercial gain. Accordingly, any expanded definition should be limited to groundwater, mineral water and spring water that are extracted, processed, packaged, sold or otherwise utilized for commercial gain.

The Ministry therefore recommends that the Constitution provides a basis for legislation to recognize mineral water, spring water and groundwater extracted for commercial purpose as a strategic natural resource subject to state regulations and sustainable management according to law. I come now, Mr. Chairman Sir, to perhaps the most prolific point that needs to be discussed, which is ownership of minerals. Allow me, Mr. Chairman, to outline some of the philosophical foundations upon which globally minerals are said or determined to be owned by the state for and on behalf of everybody.

In the end, Mr. Chairman, I will provide a caveat and before I provide that caveat, I will go to the Bill of Rights and explain why in these discussions the state cannot have, the state cannot have and should not have a say when it comes to provisions of the Bill of Rights. But allow me, Mr. Chairman, just to outline the principles that I said before were considered historically to how the state owns or is said to own minerals and not those on whose land those minerals are found. First, Mr. Chairman, we must look at the prevailing argument in this.

The 2013 Constitution of course recognizes, perhaps for the first time, that there is a distinct and separate right of the state to own all minerals wherever they're found. But there is a provision for the fair and equitable distribution of proceeds. Where does that come from? The prevailing argument is this, Mr. Chairman.

These minerals do not belong to the individual who happen to hold surface title. They belong to the state. And before we dismiss this as a status orthodoxy, let us examine the deep rationale and profoundly compelling architecture behind this global principle.

First, Mr. Chairman, we must look to history and the foundation of law. For centuries, Mr. Chair, two doctrines have shaped our world. First, the regalian doctrine tells us that the sovereign, the state, holds the ultimate title to all sub-earth wealth.

It recognizes a crucial distinction. Ownership of the soil is not ownership of the eternal depth beneath it. This, Mr. Chair, you would know as a lawyer, goes back to Roman and civil law.

But even more profound and more powerful is the public trust doctrine. This doctrine states that the state is not the owner of these resources in

the way a private citizen owns a car or a house. No, the state is a custodian, a trustee.

It holds these resources not for its own enrichment, but for the benefit of all. In other countries of the world, in South Africa, in Canada, it means all citizens. Closer to home, in Papua New Guinea and in the Solomon Islands, it means to all of their citizens.

Critically, for all of their future generation. This, Mr. Chairman, is the foundational social contract. Secondly, and perhaps more critically, we must consider the public interest and allow me to be clear.

The private landowner is driven by a singular legitimate but narrow motive, maximizing personal profit. This is the engine of markets, but it is a dangerously short-sighted engine when applied to a finite natural wealth. A private owner will extract quickly, efficiently, and for immediate gain.

The state, however, is charged with a longer horizon. It is the custodian and a guardian of the common good. The state ensures that the benefit of a nation's inheritance are distributed broadly across the population, rather than accruing exclusively to the fortunate few who happen to live above a particular poor body.

Thirdly, let us turn to the hard economics, because values are nothing if they are not backed up by viable fiscal frameworks. State ownership, Mr. Chair, is not an ideological luxury. It is an economic imperative.

When the state holds the title, it can capture the economic rent, the windfall profits, through royalty, taxes, and equity participation. This revenue becomes the lifeblood of public services, our schools, our hospital, our infrastructure, and defines a functioning society. Furthermore, think about the balance sheet of the nation.

If the state owns its minerals wealth, that wealth can be counted as a national asset. It reflects in the nation's account. It accounts, it allows the government to borrow against future revenue to finance development today.

But perhaps the most elegant economic argument lies in addressing market failures. Private landowners have no incentives, none to account

for the externalities of extraction, the environmental degradation, the water contamination, societal displacements. These are costs borne by the many, while the profit are captured by the few.

State stewardship allows what we might call the full social accounting, ensuring that the price of extraction truly reflects its cost to society. And paradoxically, a clear centralized state framework does not deter investment, it attracts it. Large-scale global capital requires certainty, consistency, and a single legal counterparty, not a patchwork of a thousand private deals.

Fourth, and increasingly urgent, is the matter of strategic sovereignty. We are in a race, Mr. Chairman, for critical minerals. This is not merely about economics.

It's about national security, defense, and energy transition. State must secure its own supply and must secure its own supply chains. By retaining ownership, state retains a stake in strategic project, ensuring that national interests are protected even when foreign expertise and capital are welcomed.

This is a fundamental expression of political sovereignty. To assert ownership over the subsurface is to assert control over the nation's destiny. Fifth, we must not forget the moral social imperative.

In many nations, the historical concentration of mineral wealth was a tool of dispossession and colonial exploitation. In South Africa, the shift to state custodian was a deliberate righteous, albeit righteous act, to overturn apartheid era laws that locked wealth minerals in the hands of a small white minority. It is a tool for redress, for black economic empowerment, and for creating equitable access to the mining industry. Private ownership without regulation, Mr. Chair, can lead to the dispossession of indigenous communities and the prioritization of extraction over human dignity. And finally, we must acknowledge the pragmatic administrative reality. Centralized regulation is simply more efficient.

A mineral reserve cannot last a single human lifetime, outlast a single company's shareholding, outlast the short-term mining license. The state provides a long-term planning horizon required to match the

lifespan of the resource itself. I see it etched into the common law principle.

Whoever owns the soil owns everything up to the heavens and down to the dead. It is a powerful ancient doctrine. It is a cornerstone of private property rights in certain legal traditions.

But I put it to you this evening, Mr. Chair, members of the committee, the commission, that principle may offer limited benefit and varying standards of resource management. It is the doctrine of the feudal lord, not the doctrine of the modern inclusive and sustainable nation state. The shift to state ownership in countries closer to home, PNG, the Solomon Islands, and us, is a deliberate, perhaps a conscious policy choice by our forefathers.

It is an overriding of an old private right, not to stifle enterprise, but elevate the broader public good, to ensure that assets of the nation serve the nation today and for generations yet to come. So when we ask who owns the mineral well, the answer, Mr. Chairman and members of the commission, is not just a matter of law, it is a matter of national identity. It is a reflection of who we are and whom we serve.

And at government, we are called to serve all citizens of Fiji, who rely on government for health care, roads, and social wages. I ensured, Mr. Speaker, that I would speak to the notion of the state's ownership of minerals under the surface of our land, because as I had imagined, Mr. Speaker, Mr. Chairman, having followed your roadmap in various locations where you have heard public consultations, the cry for landowning units to own minerals have been overwhelming. And we are not in opposition to that.

Today, we've come to explain the philosophical foundation of why in most countries, perhaps in the Commonwealth, it is said or espoused under law and even in our constitution to belong to the state. But I did mention to you, Mr. Chairman, that I shared those views with a caveat. And the caveat is this, Mr. Chairman.

As a lawyer, you and I know that the Bill of Rights do not belong to the state. The Bill of Rights belong to the people. And I wanted to clarify this because what I have said is a matter that is contained under the Bill of Rights.

So, whilst most members of the community that you have heard have called for the ownership of minerals to be retained by landowning units, the state has offered the alternative view of why minerals are said to belong to the states in most, if not all, of the mining countries and in the Commonwealth. And I said to you, Mr. Chairman, that the caveat in my proposition is that whilst we're addressing you today, and we are addressing you on a matter that is contained in the Bill of Rights, the Bill of Rights is something that belongs not to the state. It belongs to the people.

And so, I wanted to clarify that position, Mr. Chairman, in order to invite a deeper reflection on the very nature of the document that you, Mr. Chairman and members of the Commission, you are now charged with reviewing. I want to challenge us to consider the fundamental question today. What is a constitution? Can I take you back, Mr. Chairman and members of the Commission? I may be running out of time.

You can stop me anytime you want. In 2017, the confirmation hearing of Justice Neil Gorsuch of the United States Supreme Court, and during his confirmation hearing, he referred to the United States Constitution as a negative document. His words, Mr. Chairman, was not casual.

They were a distillation of a profound philosophy about the relationship between the citizen and the state. And I submit to you today that this philosophy holds very vital lesson in our own constitutional making project today. What did he say, Mr. Chairman? Justice Gorsuch said, and I quote, the constitution is a negative document.

And the theory behind it, in short order, was to divide power to better protect liberty. That was the theory. If you put all powers into one set of hands, you are going to get tyranny.

And our founders, the American founding fathers, had too much evidence of that in their own time. Mr. Chair, we've had a few constitutions, and I'm sure our story, although not as long as the American story, has the same handworks found all over it. Justice Gorsuch went on to explain that the constitution divides the federal government into three branches to safeguard liberty, and that state retains power not delegated to the federal government.

But these structures, safeguards, he noted, were not thought enough, which is why the founders decided we are going to add a bill of rights, enumerating 10 specific protections, including freedom of speech, life, religion, and the right to bear arm. When Justice Gorsuch called the constitution a negative document, Mr. Chair, he's articulating a specific philosophy about its purpose and about its function. And allow me, Mr. Chair, just to break that down, because it would make meaning of my earlier utterances.

First, Mr. Chair, it restricts government and it does not grant government rights. The core idea, as Senator Ben Sasse articulated before Gorsuch echoed it, is that the constitution is not the government giving people freedoms. It is people giving government a limited set of enumerated powers.

And under this view, Mr. Chair, rights are pre-existing. They belong to the people by nature. They are not gifts from government.
The constitution does not create or bestow liberties. It simply recognizes them and restricts the government from infringing upon them. Thinking about the profound implication of that, Mr. Chair, if rights are inherent, then the burden lies with the government to then justify how it interferes with it.
The default position, of course, is liberty. The exception is state power.
Second, Mr. Chair, it is about negative liberties.

In political philosophies, you would understand, Mr. Chair, a negative right is a right to be free from government interference. Freedom of speech, freedom of religion, the right to own property, the right to bear arms in the American. These are rights of non-interference.

This contrasts sharply with the positive rights, which would require governments to provide something, requires government to provide health care, education, housing, and welfare. By calling the constitution a negative document, Justice Gorsuch aligns with the view that primary function is to protect citizens from government's overreach, not to empower government to deliver benefits. This is not a denial of the importance of social goods, but it is a statement about the proper role of a constitution.

The constitution is the fence around power, not the blueprint of a state's agenda. Justice Gorsuch emphasized that the founders were very

suspicious and very jealous of their liberties. They had experienced tyranny in their lifetime.

They knew in their bones what happens when power is concentrated in the hands of a few. And so they designed a system where power is divided and checked horizontally and across all branches of government, vertically between nations and provinces. They build a machine of many moving parts precisely because they trusted no single concentration of authority.

Fourth, Mr. Chair, and this view carries a profound implication of how judges, and I've come to that in a minute, and indeed all public officials, including us, should interpret the constitution. Because we should stand in alliance with the role of the judiciary to interpret and not make laws. Now I say this, Mr. Chairman, because in my early submissions, as I had indicated, providing the alter argument to the ownership issue of minerals.

And as I said in your road trip around the country, and we have witnessed many calls around ownership issues, not only of this land, but also about minerals. We've established before you this afternoon why philosophically everywhere else around the world it is labeled and considered to be an asset and a belonging of the state. And I preface that, Mr. Speaker, Mr. Chairman, by saying that whilst we have addressed, we, as a part of government, a ministry of the state, whilst we have addressed you on things that have come out as topical during your discussions, the state, in my view, has no right to say anything about the Bill of Rights.

Because the Bill of Rights, as I said, a constitution is involved in a negative document, or is a negative document, which means that the people who own the rights tell the government this is the extent to which you can limit or lawfully infringe on those rights. The rights belong to the people, and that's why you are consulting with us and with the rest of the population of Fiji in ensuring that we bring about a constitution that will best reflect not only just the realities of today, but also reflect the voices that have come out from your public consultations. We are prepared to answer questions, Mr. Speaker, Mr. Chairman, this afternoon. Thank you.

Mr. Valenitabua: Thank you very much indeed, Honorable Minister for Lands and Middle Resources. Very clear and comprehensive submission it was this afternoon. I believe that you have your hard copy there. We would really appreciate it if we can be provided with a hard copy or with a soft copy to be sent to us, so that we can have them printed and be used for our deliberations starting next week. Mr. Chairman, sir, we will oblige. We will send a soft copy across to your commission. Thank you. The email address can be given by one of the girls to which the submission could be sent. We have heard you, Honorable Minister. As you rightly stated, we have gone around the country. We have heard submissions from the grassroots people. We have heard submissions from middle class, if I may say. We have heard submissions from everybody at all levels of society.

The issue in relation to the ownership of minerals was one of the subjects of consultations and submissions which were recurring all over our Fiji. Suggestions have been put to us in relation to the ownership of minerals under Section 30 of the Constitution, as you would know. Suggestions have been made that all ownership of all minerals found on Itaukei lands, for example, have to be returned to the landowners. That is the suggestions and recommendations that have been recurring all over the country.

Now, that is the stance taken by our people. Now, this afternoon, we have heard submissions from you in relation to the philosophical aspect of that issue, the issue of ownership of mineral resources. It has given us another aspect of the ownership of minerals, particularly on how it has been suggested to us that the state has these minerals as a custodian. Rather than give them to the landowners, the minerals might be abused and then taken out of control. Now, I hope that there is a correct interpretation of what you have been telling us. If you want to correct me, better correct me now.

Mr. Vosarogo: Thank you, Chair. I open by saying that I would identify the philosophical principle of why the state owns minerals, not just in Fiji, Solomon Islands, and Papua New Guinea, closer to home, and most, if not all, of the mining countries in the Commonwealth. So, I've clarified why there is a foundational philosophy to that law. I then go on by clarifying that we are dealing with Bill of Rights. The Bill of Rights belongs to the people. It will not be in line for the state to be making that right the state's right. The Bill of Rights is supposed to belong to the people first off. It is the government

that can limit, or the people will then, in that same document, the Constitution, provide for lawful inroads, interventions, on how those rights could be limited in certain circumstances. But the Bill of Rights is not a space for the state. The Bill of Rights is the space for those who own those rights.

Mr. Valenitabua: Well, thank you for that clarification. Now, with what we have heard this afternoon, it's going to be, we will be sitting down for deliberations, and then we will be considering that versus what the people want in relation to ownership of minerals. It goes for that we've been received; we have received submissions in relation to the ownership of as you rightly said, that is from the sky down to the center of the earth. That is what we should own as landowners. However, we have heard you, vulnerable minister, and I am sure we are going to be balancing these two who will affect us during our deliberations.

What I would say, when I would send through Mr. Chair my, the soft copy of the submissions, you find the added parts about the administration, the regulations of, because you have just highlighted about foreshore, we will also provide that to you. And I guess the bottom line of all of this is that the state administers what the people want the state to administer. That's the long and short of it.

Mr. Valenitabua: Thank you. Usually, the commissioners might want to ask questions. Commissioners? Mr. Kohli.

Mr. Kohli: Thank you, honorable minister. I hear you very clearly where you're coming from, and that is in line with other countries as well. Because when developers want to develop, they invest a lot of money. They want clarity. They want to deal with the entity rather than group of people who may disagree, particularly so in Fiji. Now, if I hear you correctly, I think what you're trying to say is that Bill of Rights actually is limiting your powers. If you look at it here, it, the state that, land that is taken by the state, for example, for certain purposes, have to be returned again. And we are hearing from the people that the land that is taken from the iTaukei people should be, if it's not required by government, should be returned to them as iTaukei land. That's the one thing we're hearing.

Mr. Vosarogo: Thank you, Mr. Chair. Through you, I think the submissions that you're hearing are referring to historical wrongs, historical injustices, where lands that were taken or asked for, for public purposes, have been

retained by the state, or its usage have been changed by the state over the, over its lifetime. And so they're not, they're not too sure if the existing usage was what was, it was originally given for. In many of our, not in many, sorry, Mr. Chair. In some of our research, we have discovered that some state lands that were initially acquired for public purposes, no longer are being used for that original purpose. We've identified them and we've returned them.

This question is again as to the ownership of minerals by the state, as against what you've been hearing from the people. I do not know whether this is a solution or not, but we have been mandated here to look at the equitable share. So how that formula operates at the moment, I think is 5% or 80% or something.

Yes. So the, the formula, Mr. Chairman, through you, the formula is with precious minerals, with precious metals, minerals, gold and silver. We have two gold producing mines in Fiji, Vatukoula and Tuvatu.

Before they send the bar of gold across overseas, they get certification from MRD and they also get a certification from RBF that states the price of gold on the day. And so the 5% of royalty is calculated on the FOB, on the current FOB before the gold gets shipped. It's 5% at the moment.

And that's something that in our Mining Act review, we are also, we're also hearing views about whether it's 5% or it should go up. In the course of the next two weeks, our commissioners who are conducting, and this is the last week as well of public consultation on the Mining Review, Mining Act review, they're going to be traveling across to Australia and on to PNG. When they come back, they'll have a comparative analysis of the industry as it is in Australia right now and in Papua New Guinea, where there's a lot of mining activities that's going on.

And then hopefully they will, you know, we're going to have a proposal or a bill that's going to go to Parliament encompassing all of these new things that we would want to have in the Mining Act. So whilst you are doing your review, Mr Chairman, so the Mining Act is also being reviewed right now. And we're also hearing the same submission that you've heard from the landowners.

We would want the ownership to be returned. And so we're hearing that and I'm sure it's going to be captured as well in the new Mining Act.

Mr. Kohli: Thank you, Honourable Minister.

Dr. Gounder: Thank you, Chair. Thank you, Honourable Minister for your very well thought and clearly laid out submission this afternoon. Given the submissions we have received, your submission will play a key role in the discussion that we are going to have in terms of how to deal with the demand from the landowners. And I must say, after listening to the submissions from the people in the communities, in the villages, I went back to look at the Reefs Commission report. And they received very similar submissions during their time as well. But if you go further back, you see similar submissions received all over the country. But for some reason, those who are in charge of drafting the regulations did not see fit to make any further changes, which I believe is the foundation of your argument as well. And, you know, the economics of it, when you see the resource sharing and protection of resource as well as resource management fits in very well with the argument that you have made today. So, I want to thank you for a very honest submission, and it will be very useful in our deliberations.

Ms. Nailatikau: Thank you very much. Thank you very much. Thank you, Honourable Minister and colleagues. Just to add on to my fellow Commissioner's comments and a question potentially, I appreciate your laying out the philosophical underpinnings. Speaking in defense of philosophy, they do have real life implications, as you've stated, in terms of public infrastructure, service delivery, and also a predictable environment for investment to thrive. We've certainly heard submissions in that vein as well about the importance of predictability and standardization for enabling growth. I also wanted to ask something related to the equitable share, the matter of equitable share. People had a wide spectrum of submissions, as you would have heard, around this notion of absolute ownership or sovereignty in relation to ownership. But there was also an undertow or request for advisory support for some form of regulation in terms of enabling this permanent alienation, or as you say, as we are seeing globally, you know, threats to strategic sovereignty, for instance. So, I'd just be interested to hear from you any matters relating to the aspect of equity in terms of share, but also these matters of forward-looking concerns around strategic sovereignty.

Mr. Vosarogo : Thank you very much for the question, Mr Chairman, through you. In the Minerals Bill review that we are currently conducting, we certainly have

heard more than the issue of ownership. We've heard from landowners about being part of the business, being part of the operation. And so certainly there's going to be, I certainly hope that we will develop regulations that would ensure that they're not just said to be landowners or said to be mineral owners, but they're also going to be active participants, most hopefully as equity partners in any business that comes to do mining in their area.

The problem, as I see, Mr Chairman, is not so much. I think that, to be honest, the ownership is like the back wall. It's the equity participation and equity benefit that is the main source of cry. They see that quite possibly a lot of minerals are being extracted, but not a lot of outlay that has come out from it for community benefit. That is something that we're very conscious about in our review of the Minerals Law, and we're most certainly hopeful that this is going, once we address this, we are going to address the common cry that also includes ownership from those who know that they have minerals in their space. They have minerals underneath their feet, but they are not willing to come and engage with the companies simply because they feel that this is one business that we're going to be a part of, and after a while we're going to be left out.

So the main line of defense there is we want ownership to be in our hands so that it secures us when we go forward with any form of negotiation. Government, of course, has the central role of administrating the law, making sure that there are regulations. You tick the boxes before you are issued with, say, a special prospectus license. That's government's job. Right now, my staff at the Ministry of MRD are doing that. We're losing a lot of expertise in MRD, Mr Chair. In fact, there are some senior positions that are not even filled to this date because there are better offers from companies here and from companies in Australia and in Papua New Guinea. So despite that, I still feel that we're able to meet the challenges that are up ahead of us. The 1965 laws have served its usefulness. I think we are into a period now where we need to review it so that we can create the equity that landowners will be happy to participate in fully.

Mr. Valenitabua: Honorable Minister and the staff members of the Ministry of Lands and Mineral Resources, I have to bring this consultation session to an end because we've got officers from the Ministry of the Civil Service waiting for their consultation this afternoon. I thank you very much indeed for the

submissions that we have heard. We will surely use it during our deliberations, which will start next week.

----------End of Session [8-7-2026]----------

National Youth Council of Fiji (NYCF)

National Youth Council of Fiji
Date:8-7-2026

Mr. Valenitabua: Okay, ladies and gentlemen, I will now call this consultation session to order. I understand you are from the National Youth Council of Fiji. We welcome you to the commission this morning.

We have allocated you time from 9 a.m. to 10 a.m. as a one-hour slot. And I believe that you know why you are here. You are here for submissions to the commission in relation to what the National Youth Council of Fiji recommends to be included in the amended constitution which we are working on.

We were appointed to review the 2013 constitution. And we have been tasked to collect submissions, get your views, get recommendations from our people in Fiji in relation to what should be in the constitution. Now that is the short introduction I will make this morning, except to say that on my right is Mr. Conway Beg, the commissioner and architect by profession.

I am the chairperson, Sevuloni Valenitabua, a practicing lawyer. On my left here is Mr. Ami Kohli, a practicing lawyer of Labasa. And on the far left is Dr. Neelesh Gounder, a lecturer and academic at USP who is also an economist.

So we are sitting here this morning to listen to your submissions. I now pass the mic to you and the floor, you may proceed, considering that we have one hour. Thank you.

Ms. Eliano: Thank you and a very good morning to you all. My name is Mere Eliano, the general secretary for the National Youth Council of Fiji. The National Youth Council of Fiji respectfully submits these recommendations to the Constitutional Review Commission for consideration in the review of the 2013 constitution of the Republic of Fiji.

The National Youth Council of Fiji is made up of two affiliate bodies, which are the Provincial Youth Forum of Fiji, which looks after and works with the youth in the rural areas in the 15 provinces of Fiji, including Rotuma. The Youth Assemblies of Fiji, which looks after and works with youth from the urban, semi-urban and peri-urban areas of Fiji, focusing on thematic areas and working with other organizations, youth groups,

uniform groups, faith-based organizations, amongst others. Each affiliate body makes up of 50% of the council and combined, make the National Youth Council, which is the highest youth consultative youth body in Fiji for the government.

This submission is made from the perspective of Fiji's young people, who are not only citizens of today, but also the generation that will inherit the long-term consequences of constitutional decisions made now. A constitution must not only organize government, it must protect rights, preserve identity, strengthen democracy, uphold accountability and secure the future of the nation. The National Youth Council of Fiji therefore submits that constitutional reform must place young people, indigenous identity, democratic participation, environmental justice, public accountability and intergenerational responsibility at the center of Fiji's constitutional future.

Mr. Maharaj: Thank you, Madam General Secretary. To the Honorable Commissioners, good morning once again. It is an honor to be back here again.

We have met and when I made submissions on behalf of Fiji Council of Social Services. So, on my right, we have the General Secretary of the National Youth Council, Ms. Maria. To my immediate left is Mr. Severo and after him is Mr. Semesa.

He looks after the Provincial Youth Forum Constitution Review. And to my far left is the Vice President of Youth Assemblies of Fiji, as mentioned in the introduction, and I am Vipin Maharaj, the Chair of the Governance Committee of the National Youth Council of Fiji and the President of the Youth Assemblies of Fiji. We will take our submissions as by chapter and it will be a bit here and there.

However, different speakers have different allocations on what they will be speaking on, beginning with the Madam General Secretary.

Mr. Valenitabua: If I may say, Mr. Maharaj, could you just summarize the points and then summarize?

Mr. Maharaj: Yes.

Mr. Valenitabua: Thank you.

Ms. Eliano: Chapter 1 of the Constitution should expressly recognize that constitutional reform affects not only current citizens but also children, young people and future generations. The Constitution is not a short-term political document. It is the highest law of the nation and must guide Fiji for many years to come.

This recommendation is straightforward. Young people are not passive beneficiaries of government decisions. They are constitutional stakeholders.

They will live the longest with the consequences of today's decisions. A constitution that does not expressly speak to future generations risks being too narrowly focused on present political arrangements. For this reason, the value in Chapter 1 should include intergenerational responsibility.

This means that the state must make decisions today with proper regard to the rights, welfare and future security of those who will live with the consequences tomorrow. Young people must not be treated only as future voters or future leaders. They are citizens now.

They are affected by decisions on education, land, climate change, employment, governance, technology, health, culture and national development. The Constitution should therefore clearly recognize that the interests of children, youth and future generations must be considered in national decision-making. A recommendation in Chapter 1 should be amended to include a constitutional principle requiring the state to protect the interests of children, young people and future generations in all major public decisions.

Mr. Severo: On Section 4.31.4, Civic Education, Health and Political Participation Training, Section 4.31.4 should be strengthened to allow the state to require educational institutions to teach subjects relating to health and well-being, civic education, political participation, leadership, constitutional literacy and issues of national interest. A council is concerned that some of the children progress through the education system without adequate foundational literacy and numeracy. When a student teaches high levels of schooling without being able to read, write or count at an age-appropriate level, that is not simply an individual failure, it is a system failure.

The Constitution should support early identification of learning needs, remedial support, inclusive education and flexible pathways that prioritize mastery of basic skills. A democratic society cannot function properly if citizens do not understand their rights, responsibilities, institutions and laws. Many young people leave school without proper understanding of Parliament, elections, the Constitution, local government, public finance, climate responsibility, national unity or peaceful civic participation.

Civic education must therefore be treated as a national priority. Young people should be taught how democracy works, how to participate respectfully, how to advocate for their communities and how to hold the leaders accountable without violence, hatred or division. Health and well-being should also be recognized because young people face increasing challenges relating to mental health, substance abuse, lifestyle disease and reproductive health, cyber safety and social pressures.

Proposed amendments, amendment section 31-4 may be amended to provide that the state may directly, may direct any educational institution to teach subjects relating to health and well-being, civic education, constitutional literacy, political participation, leadership training, national development and issues of national interest and every educational institution must comply with such direction. On section 40, environmental health, environmental rights, climate justice and interrogational equity, section 40 of the Constitution recognize environment's right, environmental right. The National Youth Council of Fiji recommends that this provision be expanded to expressly include climate justice and intergenerational equity.

Young people will live with a long-term consequences of climate change, sea level rise, coastal erosion, poor waste management, unsustainable development, pollution and environmental destruction. For many communities in Fiji, climate change is not a future risk, it is already affecting homes, food security, water sources, livelihoods, culture and relocation decisions. Environmental protection must not only be about land and resource today, it must also be about survival, dignity and security of future generation.

Young people should therefore have a constitutional right to participate in climate and environmental decision making. A recommendation for section 40 should be amended to include the right of present and future generations to a clean, healthy and sustainable environment, a duty on the state to act on climate change, the right of young people to participate in climate related decision making, a requirement that development decision consider long-term environmental consequences.

On section 4, rights of children and discipline, section 41 sorry, section 41 protects the rights of children including protection from abuse, neglect, harmful cultural practices, violence, inhumane treatment and exploitative labor.

The submission raises concern that discipline among children has declined, this has resulted in delinquency and other forms of unacceptable behavior and that parents and teachers feel restricted in correcting children. If proposed that the constitution clarify the difference between abuse and lawful discipline, the issue must be approached carefully, the constitution must protect the children from abuse, violence and degrading treatment. At the same time, families and school require proper disciplinary frameworks that guide children correct harmful behavior and support moral development.

A recommendation for section 41 that it should be reviewed to clarify that child protection laws should not prevent reasonable, lawful and proportionate discipline, provided such discipline does not amount to abuse, injury, cruelty, humiliation and inhumane treatment. Any discipline framework must be strictly regulated, child sensitive and consistent with the best interests and dignity of the child, acknowledging that Fiji had a penal code which was later repealed within the repeal penal code, there was threshold set to 12 strikes for corporal punishment, this framework could be used to avoid any corporal punishment mechanism for reaching out to the outright physical abuse.

Constitutional recognition on the great council of chiefs, a great council of chiefs or the Boselevu Vakaturaga should be constitutionally recognized as a principal traditional advisory institution to the Itaukei people.

The GCC has historically served as highest traditional institution representing indigenous leadership, while Fiji is a democratic state, there remains value in recognizing a national traditional institution that can advise on matters affecting indigenous culture, customary practices, traditional leadership, heritage preservation, reconciliation and national unity. The GCC should not replace parliament or elect government, however it can play an important advisory role on matters affecting indigenous communities and the Vanua. Our recommendation for the constitution, the constitution should recognize the Bose Vakaturaga, the principal traditional advisory institution for the Itaukei people, empowered to provide advice on the indigenous customs, traditions, culture, leadership, heritage and reconciliation. The submission further recommends that the GCC be given the constitutional role of appointing and nominating the president of Fiji, reflecting its position as a pinnacle traditional body compromising Fiji's chieftains and restoring an important historical practices.

Mr. Semesa: Looking at section 28 regarding land, fishing grounds and minerals, section 28 currently recognizes that the ownership of Itaukei land remains with the customary owners and that Itaukei land cannot be permanently alienated except in accordance with the constitution, however this protection is incomplete if customary owners are recognized as owners in principle but do not have meaningful control over land, fishing grounds and resources connected to their traditional identity and survival. The submission raises concerns that authority of Itaukei land is largely exercised through statutory bodies such as the Itaukei land trust board and the Itaukei land trust act, which first is controlled over the land through the board.

It also raises concern that traditional fishing grounds are often treated as areas of access rather than full ownership and that minerals are vested entirely upon the state rather than the customary land owners. For indigenous communities, land is not merely an economic asset, it is connected to identity, ancestry, chiefly systems, food security, culture, spirituality and future generations. The same applies to traditional fishing grounds including river and coastal resources.

The recommendation section 28 should be amended to recognize not only ownership but also meaningful control for customary owners of Itaukei land, traditional fishing grounds and associated national resources. The proposed amendment looking at section 28 and

ownership and control of all Itaukei land traditional fishing grounds including sea and river fishing grounds and associated customary resources shall remain with the customary owners of that land and that fishing grounds. Such land, fishing ground and resources shall not be permanently alienated by sale, grant, transfer or exchange except to state accordance with section 27 and only with the free, prior and informed consent of the customary owners.

This recommendation would require related amendments to land, fisheries and minerals legislation so that constitutional protection is reflected in ordinary law. Looking at recognition of cultural governance structures, the constitution should expressly recognize indigenous cultural governance structures including the Tokatoka, Mataqali, Yavusa, Vanua and if applicable Matanitu. The Vanua represents far more than land ownership.

It embodies traditional leadership, kinship systems, cultural identity, social responsibility, community governance, stewardship of natural resources and the transfer of knowledge, customs and values across generations. These traditional structures continue to play an important role in maintaining social order, resolving disputes, preserving culture, supporting community development and protecting natural resources. Their recognition would not undermine the democratic state, rather it would acknowledge Fiji's indigenous social foundation and ensure that traditional institutions are respected within the constitutional order.

The recommendation a new constitutional provision should recognize the Tokatoka, Mataqali, Yavusa, Vanua and Matanitu if applicable as integral components of indigenous social organization and customary governance. Moving on to youth culture and political parties, political parties should be required to include youth representation within their structures. Young people should not only be engaged as campaign workers during election, they should be involved in policy development, manifesto, drafting, candidate selection, internal party leadership and national political decision making.

In 2022, only a very small number of members of parliament was sworn in under the age of 35. This demonstrates that youth participation cannot be left to chance. The recommendation looking at section 53 dealing with political parties should be amended to require every registered political party to maintain at least 30 percent of youth representation

within its membership, leadership structures or candidate development process.

The youth quota would encourage political parties to build young leaders early and ensure that youth voices are heard inside party decision-making structures. If the commission does not support reserved seats or dedicated seats, the council recommends alternative constitutional mechanisms such as mandatory youth representation in parliament committees, a standing youth advisory mechanism to parliament or youth representation requirements in electoral laws. Moving on to youth participation in state services and public bodies, young people should be also represented in public bodies, advisory structures and national committees.

Youth participation should not depend on goodwill alone, it should be built into governance. Young people should have representation in national development boards, municipal consultations, climate bodies, education committees, employment policy forums and other public decision-making spaces. The recommendations chapter six should recognize qualified youth participation in public bodies and require the state to ensure youth representation in advisory and decision-making structures.

Moving on to the constitutional recognition of provincial councils, provincial councils should be recognized in the constitution of Fiji as important institutions linking communities, traditional leadership and government. Provincial councils provide a platform for community consultations, development planning, cultural preservation, education initiatives, disaster preparedness, social cohesion and communication between government and indigenous communities. Their role is especially important in rural and maritime areas where communities may not always have direct access to central government decision-making.

Constitutional recognition would strengthen their legitimacy and ensure that provincial voices are properly considered in national development. The recommendation, the constitution should recognize provincial councils as representative institutions of indigenous people at the provincial level, the responsibility to promote social, cultural and developmental advancement within the provinces. The Itaukei affairs

framework should also be constitutionally recognized so that indigenous governance is protected at the highest legal level.

Mr. Severo: On protection of indigenous language, culture, heritage and additional knowledge, the constitution should contain a specific right protecting indigenous language, cultural heritage, traditional knowledge and cultural expressions. This should include protection for massive motifs, traditional tattoo patterns, clan and tribal symbols, traditional songs and chants, traditional dances, indigenous artwork, ceremonial regalia and traditional medicinal knowledge. These cultural expressions are not merely designs or performance, they carry history, identity, spirituality and collective ownership.

They belong to communities, clans, yavusa, mataqali and provinces. They should not be copied, commercialized or registered by outside parties without consent. Our recommendation is a new constitutional right should provide that the state shall recognize, protect, preserve and promote the identity, language, customs, traditional knowledge, cultural expression and intellectual property of indigenous Itaukei people as the first peoples and traditional custodians of Fiji.

The constitution should also require that traditional cultural expression and indigenous knowledge shall remain the collective property of the community which they belong and shall not be reproduced, commercialized, registered or exploited without free, prior and informed consent. Where traditional knowledge or design are used commercially, there should be proper consent, royalties and penalties for misuse. On chapter three, stronger public participation before laws are passed.

Parliament should be constitutionally required to conduct meaningful public consultation before major laws are passed, especially with the youths of the country. Youth participation must not be symbolic, it must allow affected communities, young people, civil societies, rural communities, faith-based organization, persons with disabilities, women, workers and marginalized groups to be properly heard. The constitution should require youth impact assessment for major bills.

Lawmakers should consider how proposed law affects children, youth, education, employment, climate, mental health, technology, civic space and future generations. A recommendation on chapter three should be

amended to require meaningful public consultation and youth impact assessment before the passage of major legislation.

Mr. Fonorito: Kamna Meuri, Joseph Unarito from the National Youth Council.

On item number 13, dedicated youth seats in parliament. The constitution guarantees civic participation, political participation and equality, including protection from discrimination on the ground of age. Despite this, young people remain significantly underrepresented in parliament and national decision-making.

Young people are often used during campaign as volunteers, mobilizers and supporters, yet they are rarely given a real seat at the dedicated decision-making table. This creates a gap between political participation and political representation. The National Youth Council of Fiji submits that youth representation should be constitutionally guaranteed, not left to political goodwill.

The National Youth Council of Fiji's recommendation is that at least four dedicated youth seats should be created in parliament through the National Youth Council of Fiji, with two seats allocated through the youth assemblies of Fiji and two seats allocated through the provincial youth forums of Fiji. This would ensure that young people have a direct voice in the highest halls of national law-making and governance. It would also support inclusive decision-making, reduced age-based exclusion and aligns Fiji's constitutional framework with the principle of democratic participation and equality.

Item 14, Section 52, Qualification and Competency of Members of Parliament. The submission recommends that the Member of Parliament should possess a minimum level of education and relevant experience. Parliament is the highest law-making body in the country.

Members of Parliament are responsible for passing laws, scrutinising budget, debating national policies and representing the people. It is therefore important that those elected to Parliament have the capacity to understand complex public issues. The submission further recommends that the Minister should have relevant experience or competency in the area they are appointed to lead.

For instance, a Minister responsible for education should have a leadership, administrative or professional experience relevant to the education, training, youth development or public policy. The National Youth Council of Fiji's recommendation to Section 52 that it should be reviewed to concede a minimum qualification, training or competency requirement for Members of Parliament and a stronger suitable criteria for Ministerial appointment. MPs or Members of Parliament should have at least diploma and relevant experience in the related field.

We acknowledge this may unintentionally exclude capable rural leaders, customary leaders, workers and community advocates who have practical knowledge but limited formal education. However, Fiji is rapidly moving towards the future with concepts such as AI, which requires our leader to be able to adapt to the changing society and have a minimum qualification to uphold integrity of Parliament.

Ms. Eliano: The proposed amendment to Section 147, funding of the Secretariat of the National Youth Council of Fiji.

The National Youth Council of Fiji respectfully recommends that Section 147 be amended to explicitly provide for government funding for the NYCF Secretariat as part of the offices and personnel supported through the national budget. The NYCF is the highest consultative body of the government on youth matters and serves as the nationally recognized representative platform for young people across Fiji. To effectively fulfill this statutory mandate, the Council requires a professionally staffed and adequately resourced Secretariat.

Historically, the NYCF Secretariat was housed within the Ministry of Youth and Sports with Secretariat staff funded through the government budget. This arrangement ensured continuity of operations and enabled the Council to effectively engage with young people, provide policy advice and coordinate national youth initiatives. Following the relocation of the NYCF from the Ministry under the previous administration, this funding arrangement ceased.

Since then, the NYCF has operated with a very limited budget, which has proven insufficient to sustain even basic operational requirements. The reduction in the current financial years allocation has placed further strain on the Council's ability to deliver its statutory functions. The

existing budget is nowhere near sufficient to employ the Secretariat staff required to support the Council's work.

The continued reliance on volunteers and unpaid young people to undertake essential functions is neither sustainable nor equitable. Young people who dedicate their time, expertise and leadership to advancing the interests of Fiji's youth deserve fair remuneration for their work. It is unreasonable rather to expect them to continue subsidizing the Council's operations from their own personal resources.

Accordingly, the NYCF recommends that Section 147 be amended to require the government to fund the NYCF Secretariat through their national budget. This would restore the previous funding arrangement, strengthen the institutional capacity of the Council and ensure that the government's principal consultative body on youth affairs is able to effectively fulfill its mandate in the interests of all young people in Fiji. This version is framed in a way that is suitable for a constitutional or legislative submission while clearly explaining the reasonable for proposed amendment.

Mr. Maharaj: Thank you Honourable Chairman and commissioners. My submission go on to talking about first of all on the reform of FICAC's Prosecutorial powers, my submission or the National Youth Council submission further elaborates that FICAC should not be having prosecutorial powers and it should be removed and it should act only as an investigative agency. Considering the immense budget that is allocated to FICAC, we believe that it is nowhere near performing the roles that it is supposed to be doing and the amount of prosecutions that should have taken place is not actually happening.

As such, we recommend that Section 115 be amended to remove FICAC's prosecutorial powers and limit its role to investigation, referral and anti-corruption enforcement support. Prosecutorial decisions should be transferred to the state-mandated prosecutors which is the Director of Public Prosecutions Office of the Director of Public Prosecutions. Further to the National Youth Council submission is the safeguards on emergency powers.

Emergency powers enshrined in the Constitution must be subject to strong constitutional safeguards. During states of emergency, the state may need special powers to protect public safety and we recognize that,

however, those powers must not be used unnecessarily to restrict democratic rights or silence criticism or suppress peaceful assembly and weaken media freedom. Even during an emergency, any limitation on rights must be lawful, necessary, proportionate and subject to oversight.

We recommend that Chapter 9 should be amended to strengthen safeguards so that emergency powers cannot be abused. Freedom of expression, media freedom, peaceful assembly, right to health, right to food and security should not be restricted in a state of emergency. On to Chapter 10, the removal of the immunity provisions.

We recognize that there is a growing call for the removal of the immunity provision and the National Youth Council also recommends the removal of the immunity provisions enshrined within the Constitution. A modern constitutional democracy must balance stability with accountability and victims should not be permanently denied the right to be heard. Immunity provisions weaken public confidence in justice and prevent national healing.

True reconciliation requires truth, accountability and institutional trust and young people need to trust the justice system that even though those who have committed coups in the country, they also can be brought to justice. So a constitution should not permanently close the door on justice. So we recommend that Chapter 10 should be amended to remove immunity provisions and in its entirety and allow accountability through lawful, fair and independent processes.

Further to Chapter 11, the reform of the constitutional amendment process. The current amendment process should be reviewed. A constitution should not be easy to change recklessly.

However, stability is important, right? It should not become impossible to amend as is the current amendment clauses within the constitution. If the people demand democratic reform, the constitution must provide a realistic and lawful pathway for that amendment. So the amendment process should protect the constitution from political abuse while still allowing democratic improvement.

We recommend to create a balanced amendment process that protects constitutional stability while allowing genuine reform through public

participation, parliamentary approval and democratic endorsement. This submission is further strengthened by the Supreme Court decision that was made very recently which read down the constitution allowing for more than 50 percent of referendum and we submit that that be written and enshrined in the constitution. And these submissions from the National Youth Council have come to an end and these are the submissions that we are making on from both affiliate bodies of the National Youth Council, the Provincial Youth Forum and the Youth Assemblies of Fiji coming together in front of you and collectively submitting these recommendations for the committees and for the commission's deliberations. Thank you sir.

Mr Valenitabua: Thank you very much Mr. Maharaj. Thank you ladies and gentlemen.

We have read your, we have heard your submissions, sorry. We've heard your submissions. 39 points have been raised and do you have any written copy, any hard copy which we can use or can we send soft copies?

Mr .Maharaj: We can send you a soft copy as we have been using soft copies, we are trying to move away from paper so.

Mr. Valenitabua: Saving the environment. Okay, just put your submissions together or is it in one document?

Mr .Maharaj: It's in one document.

Mr .Valenitabua: So send it to the commissioners or mine.

Send them to my private email. We'll give you my private email after this so that we can use them during our deliberations. Important points coming from the, from an important sector of our community from the youths looking to the future.

Thank you. Now I have time for the commissioners to pass comments or ask you questions for clarifications. I'll call on Dr. Gounder.

Dr. Gounder: Thank you Chair. Good morning members of the National Youth Council Forum. Thank you very much for your attendance this morning and for your submission.

We were really looking forward to the submission from the youth representatives because this constitution, if amended and adapted, will be for the future and the youth will be the custodian of this constitution in the future or the next generation will be the custodian of this constitution. So we value your submission this morning very much. I just have a few questions for clarification.

Shall I take that when you define youth, you are taking the UN definition of 16 to 24, are you expanding it to 35?

Mr. Maharaj: We are keeping the youth definition that is enshrined in the National Youth Policy of Fiji which is 15 to 35.

Dr. Gounder: 15 to 35, okay. Thank you.

That's clear. Second, did you make a budget submission this year for the national budget? You did get some money from the..

Mr. Maharaj: Yes, we did make a budget submission. However, for the past two, three years we've been repeatedly getting around 16,000 in the budget submission which we believe is nowhere near close to the expenses of the council.

And this year, in this year's budget, that 16,000 has been cut to 12 or 13,000.

Dr. Gounder: What did you ask for?

Mr. Maharaj: We did ask for, to my understanding, it was that the director and the secretary had asked for funding to have an office space within the Ministry of Youth and Sports as it was previously.

Dr .Gounder: Do you have an amount on top of your head now?

Mr .Maharaj: No, I do not at the moment.

Dr. Gounder: Okay. But because you are talking about amending section 147, so that's why my question is related to that particular point, just to understand the challenge that you are facing and whether that particular challenge could be addressed through budgetary processes, it could also be addressed through national development plan implementation

strategies, which I'm very, very, very much aware of. So, I'm just trying to understand the angle you're coming from.

So, you don't have any idea how much did you ask for, but...

Mr. Maharaj: No, not at the moment, but if I remember in the last time that we had reached with the secretary, it was somewhere around the three-figure number, around 150,000, but we only received 16,000.

Dr .Gounder: But this budget has been reduced to 12,000?

Mr .Maharaj: Yeah, 12 or 13,000.

Dr. Gounder1: Okay.

Thank you. So, thank you for that. Can I, while we take all your points on board, can I also recommend that you liaise with Ministry of Youth and Sports, because the national development plan has some strategies in place to ensure funding for your organization.

So, if you pursue that strategy, it might be a worthwhile strategy as well in the meantime. But we take your point, but I'm happy to help you and your team afterwards. You can take my contact and I can help you in that regard. You have also talked about civic education, which we have received from other submitters as well.

So, that's all for today. Thank you.

Mr. Kohli: Thank you.

Very interesting submission from your group. Very impressed. A few things I would like to address.

One of the gentlemen sitting on your left-hand side, I didn't get your name. Yes.

Mr. Severo: Sorry, my name is Severo Biukula.

I am a public relations officer for Provincial Youth Forum Fiji. Thank you. I'm a member of NYC, National Youth Council.

Mr. Kohli: Thank you. I think one of the things you touched on, and I think it's very relevant, is constitutional education. You see, this is the supreme law of Fiji.

It impacts on everyone's life in one way or the other. And you'd be surprised from our consultations we have read how little people know about this, how little they know about it. You go down China, read book.

Go to US, Fourth Amendment, Fifth Amendment, First Amendment, by heart, my right. Now, if police comes to you and says, I want you to come to the police station, most of us just go away as if it's going for a holiday. You don't have to go.

So, your rights are here if only reason. I think it should be taught in all schools as a compulsory subject or as a subject that you can choose. But it's a very, very important point you brought, and I take heed of that.

The other thing is that some of the frustrations you have vented to us today should really be in the local, in the legislation. For example, your Fijian Affairs Act, that had the village courts, that had the established GCC, and then it was taken away. It's 2023, it's established again.

So, a lot of these can come under Fiji Affairs Act, which is now Itoke Affairs Act. It doesn't have to go in constitution. I know where you're coming from.

You're trying to erase this because I think those people should hear you out. Now, my last question to you is, did you make a representation to the education bill that was consultation? You did? I see one gentleman shaking head there. You did? Yeah, thank you, because some of those things could be addressed there.

Like, one of the things that you talked about was punishment. Punishment, which is in line with the proportionate to the discipline offence, but on the same token, not to be inflicting harm. So, they used to have a procedure before.

You exhaust all that, then you come to corporal punishment. It used to be in the prison too, but it's no longer there. So, there is something that should be addressed to them.

We can't put all this in the constitution, you know what I'm saying? So, thank you very much for your very helpful submission. Thank you. Thank you.

Mr. Valenitabua: Thank you, Mr. Conway.

Mr. Beg: Through you, Chair. Thank you.

I'll just make it very quick. Thank you very much. It's good to understand the minds of the youth in your presentation.

I mean, I support my colleagues down the road. I think your comment about youth participation in empowerment, in making, being involved in the matters of the state, in trying to be seen in parliament, I think those are very, very good suggestions that we, as commissioners, will take on. But thank you very much.

I appreciate that.

Mr. Valenitabua: Yeah, thank you very much for the submissions that you have made. I'll just go over three points.

The GCC, your submissions in relation to the GCC, very future-looking submission. We were thinking that, or we have heard people say that the GCC is our cake. Now, with our youths coming in and saying that we should recognize the GCC in the constitution, very bold and very important, I should say, submission.

There have been widespread recommendations that we have the GCC be recognized or be in the constitution itself, so that it can be the advisory and the paramount forum to which Itaukeis can look to. But believe you me, most of the other races look to the GCC too. And you, as young people, and I'm sure you represent a diverse racial portion of the population of the country, you are also speaking on behalf of the other races in relation to the recognition of the GCC.

Very, very well put to us this morning. Appointment of the president, that has also been submitted to us. Did you say that the GCC was to appoint the president of the country? All right.

That is in addition to the submissions we have heard from around the country. Section 28, ownership of Itaukei land, ownership of qoliqoli and the mineral resources. We've heard submissions in relation to that.

Very forward thinking also. Like I said, I'm sure you are speaking on behalf of the youths of the diverse communities that we have here in Fiji. And we are glad to hear that.

And lastly, the protection of language, culture, heritage, and all of that. We have been, in our term of reference, tasked to include customary laws in the constitution. So your submission this morning in relation to the protection of language, culture, heritage, and the other things that you mentioned would all come under customary laws.

We have explained in the first island we visited in the local group, what was it? Fulaga. Fulaga. We have explained in Fulaga and also in Kabara, because they do a lot of handicraft, that their handicrafts, which you have also mentioned today, would be protected under customary laws.

So that is where all your submissions, that is where your submission in relation to the protection of language, culture, heritage, handicrafts, and so forth, will fall under the customary laws. So thank you very much for your forward-looking submissions this morning. You are looking at your future, you're looking at the future generation of this country, and how those, well, these things can be developed to help the country during the time when you become adults and you run this country.

All right? Thank you very much. Is there any other comment? No. Well, members of the Youth Council of Fiji, National Youth Council of Fiji, do you have anything else you want to add?

Mr. Maharaj: No, Mr. Chairman, just to thank the Commission for allowing us the time to be present.

I have made submissions on behalf of FCOs before, but the National Youth Council had not. And being the chair of its governance committee, we thank you and the good work that you are doing. Yes, we understand the importance of forward thinking and a forward-looking constitution.

And we represent a diverse group of people, including those who are along the racial lines as well. And we believe that the inclusion of GCC

is very important, because even those of diverse race are also part of and governed by the GCC as well. So, we believe that we, you know, young people need to start having a forward-looking perspective to things, instead of thinking that what has happened before, look forward.

So, thank you for allowing us the time. Naka.

Mr Valenitabua: Thank you very much.

We have a photo session. Usually, we usually have a photo session. Yes, Mr. Maharaj would know.

Thank you. You just come and stand behind us, please. You are still young and light, so you can come from there.

----------End of Session [8-7-2026] ----------

Itaukei Private Sector Executives (IPSE)

iTaukei Private Sector Executives
Date: 9-7-2026

Chair Mr Sevuloni: Thank you. I now call this consultation session to order. For your information gentlemen, this is a closed session.

We don't have any media reporters here. The lady who is with us this morning is our own Comms officer, so don't worry about the media. First of all, I welcome you all.

I was asked whether we could accommodate you yesterday. Fortunately, someone had dropped off from our schedule, so we were able to fit you in for 10 a.m. this morning. We welcome you to the CRC, or the Constitution Review Commission, and I note that Mr. Nabalarua, Mr. Dakuidreketi, and Mr. Waqabaca, you are here this morning.

Now, the Commission, as you know, is tasked with reviewing the 2013 Constitution. We have heard submissions from various ministries, from various associations, NGOs, even from schools, where students gave us their views in relation to what they think should be included in the review of the 2013 Constitution. Now, this morning, you will see five commissioners sitting before you.

They were initially seven. Now, this morning, we have five. A quick introduction.

On the right is Dr. John Fatiaki. I'm sure you all know him. And Mr. Conway Beg, I am Sevuloni Valenitabua, Mr Ami Kohli, and Dr Neelesh Gounder

I will not go through the process of introducing every minute thing. I believe that you know what you are here for, and what we are doing, and because of the time constraints that we have, I will now ask you to please make your submissions. I now hand over the mic and the floor to you, gentlemen.

Mr Nabalarua: Thank you, Chair and Commissioners of CRC, for giving us this rare opportunity to come and present to you this morning. I think the first thing is we would like to introduce ourselves. We are basically representing a group of Itaukei private sector executives.

We are putting together the submission that's before you. My name is Rokoseru Nabalarua. I am currently a group chief executive of Lyndhurst Group of Companies, employing about 1,000 people in Fiji, and also the Chairman of Fijian Holdings and EFL, and also in the board of BSP Bank.

I now hand over to our colleagues to introduce themselves before we go through what's before you.

Mr Dakuidreketi: Good morning, gentlemen. My name is Kenny Dakuidreketi.

I am just a property consultant. I do quite a lot of work with practically just about the big corporations here as a private consultant.

Mr Waqabaca: Good morning, Chair and Commissioners.

My name is Filimonu Waqabaca. I am currently the CEO of Fiji Development Bank, and also chairman of Investment Fiji. Thank you.

Mr Nabalarua: Again, as I've mentioned, we are representing a group of executives that are serving in the country in different capacities. They are the CEOs or chairmen of different private sector organizations. Unfortunately, because of their own commitment, they are not able to be with us today to come and present to you.

We, a group of Itaukei private sector executives, respectfully submit the two attached proposals for consideration by the Constitutional Review Commission. Both proposals arise from a shared experience of building and investing in Fiji, and from our conviction that a modern constitution must give this country the institutional architecture it needs to grow with discipline, transparency, and confidence beyond political cycles. The two submissions are complementary.

Together, they address two most persistent weaknesses in Fiji's development machinery. The absence of an independent, evidence-based framework for deciding which major infrastructure to build is on attachment one, and the absence of legislated guardrails around how much the state should borrow of what quality, and that's on attachment two. On attachment one, or submission one, an independent infrastructure council, a constitutionally recognized statute-backed body modelled on Australia's infrastructure Australia, that would produce and independently maintain a prioritized national infrastructure

pipeline staffed by professionals appointed on merit, insulated from political interference, and reviewed every five years.

Submission two, constitutional and legislated physical rules, a growth-orientated framework, constitutional anchoring of one, a growth in debt quality principles, two, a maximum budget deficit ceiling, and three, a minimum capital expenditure floor, operationalized from a physical responsibility act and monitored by an independent physical authority. We wish to make one point clear at the outset. These are not proposals against borrowing or against ambition.

As business leaders, we borrow every day to build businesses, employ Fijians, and grow the economy. What we ask of the state is what we ask ourselves, that borrowing be disciplined, quality, targeted, and productive purposes, and honest about the returns it must generate. The proposal seeks to give Fiji the institutions and rules under which borrowing to build the nation's future is welcome and protected, and borrowing that merely funds today's recurring expenditure is disciplined and disclosed.

We are grateful for the Commissioner's work, for the opportunity to contribute. We are grateful to appear before you today to present this submission and to work with any official in refining and drafting of the proposal. We wish the Commission every success in the important task ahead and look forward to the report to the President by the 31st of August.

And we will attach the two submissions, and I guess in the interest of time, there's quite a bit of detail. We will be happy to answer any questions, and also if you decide that we work with any group to be able to refine what we are proposing, we'll be very happy to do so. Thank you.

Chair Mr Sevuloni: Thank you very much, Mr Nabalarua, for that oral submission.

Mr Nabalarua: And our apologies for one of the attachments that's a bit fine-printed. Printing it this morning, I realized that it was, but we can enlarge them. I'll let Dr Gounder, an economist, to start with the comments

Dr Gounder: Thank you, Mr Nambularu, and good morning, gentlemen. I think we know, all of us know each other well, and I recognize the expertise sitting right in front of us in the background.

Therefore, I respect the submission and the focus of the submission. In my view, all of this makes perfect sense, given the infrastructure challenges we are facing at the moment and the financing for infrastructure challenges that we are facing. I have previously also recommended to the government the Infrastructure Council, which is what you are proposing here as well, an independent Infrastructure Council which exists in Australia as well.

In line, I think I've also proposed an independent productivity commission as well, which will go hand-in-hand with this. So I think this is an important suggestion, given the challenge we are facing. The second point on the debt one is also an excellent submission this afternoon.

This is something that has been missing so far in the submissions, and I think this specific submission will be important to our discussions going forward. If there is anything we need to include in the constitution, we will see. Even if we cannot include anything directly in the constitution, we would be happy to pass some of the recommendations to the appropriate ministries and agencies, because there is only so much we can do in the constitution to deal with these challenges.

But we have received some aspects of broad submission around putting a debt cap or something around that. We need to sit and discuss as a commission first before we make any conclusion. We have not made any conclusion as of now, but both the strong points are well received, and I understand where the submissions are coming from.

So thank you very much for the submissions. Thank you, Chair.

Mr Kohli

Thank you very much indeed for your presentation. I must admit that some of the things have gone over my head. I will be very honest with you, it is not my area of expertise.

I am learning from Dr Gounder about this. But I do agree on a broad spectrum view that borrowing etc. should be monitored in such a way.

I think that is what you are trying to say, but how to legislate it in the constitution itself is something we have to look at. Because this is a very serious thing that you are raising. A lot of people are not aware of this.

The ratio of borrowing to GDP, how it relates and all that, we hear about it. What I can say is thank you very much indeed, and I will be guided by Dr Gounder.

Dr Fatiaki: Gentlemen, thank you for the submission, a novel one.

I must confess we have not received anything along these lines. But I think fundamentally it addresses issues that concern all of us in respect of how this country spends its money and whether there can be constitutional provisions for mechanisms to ensure being the supreme law that there are guidelines. And I am trying to, like Dr Gounder suggested, operationalize in my mind how you would put that into the constitution.

Obviously we have constitutional officers' commissions that appoint particular entities, and likewise for the public service. I presume this would be in the, I haven't had the chance to read the Australian equivalent, but I presume this would be basically a body that would be obviously staffed by individuals from the private sector, presumably, as well as maybe from government, that removes some of the decision-making in terms of assessing programs, particularly infrastructure programs where you're expending large amounts of the public purse at a small-scale level. I can tell you dealing with island development, the amount of failed infrastructure projects, and people just walk away from it as if, oh, it was one million, it doesn't mean anything.

And I think, well, who's going to be responsible for this? But it comes from government, and that happens on a regular basis. I mean, I'm reflecting in the context of my role as advisor to the Council of Rotuma, you know, if we had 15, 500,000-plus projects in Rotuma in the last 10 years, six of them are sitting as scrap, literally. You know, oftentimes the intention was good, the outlay of infrastructure was there, but obviously not thought through.

And my concern is there's no accountability for it. We just basically write it off, you know, 1.2 here, 500,000 there, 580,000 there, and you see them scattered around. That is of concern on an ongoing basis.

I didn't expect the proposal vote to come to the Constitutional Review Commission. But, you know, having said that, this is important enough for us to spend a lot of time figuring it out, you know. Yes, we're here to

amend and review, but part of the amendment process means we can add.

So we can add things that are not in this current Constitution, and we just need, over the next two months, as we mull the submissions, to just maybe get advice as to how we might be able to incorporate something like this as a mechanism that will oversee, I won't say oversee the finance department, but essentially work hand in hand, would be the right word, with independent oversight that reigns in those situations where we don't want to follow, I don't want to use the word African third world countries, but we don't want to be in a situation of a debt trap where we find ourselves, we hand over to another few generations, you know, a debt that they can't manage. So I appreciate this. This is a novel submission.

We've not received anything like this. It requires you to think about it, but just off the bat, you know, I'm not an expert in this particular field, unless you're a great fan of that, but having said that, I can see the role it could play. I think it's an important one.

I hear all the time, read articles about the FNPF fund, for instance, and how that disappears, and, you know, the concerns about how indebted, for instance, the FNPF is getting in terms of the pensioners' money. But then at a government level, we need that, and I compliment you gentlemen and the iTaukei business people who put this together, because this is timely, and I have no doubt my colleague will be able to figure out ways that we might be able to address this at a constitutional level. Thank you.

Mr Beg: Through you, Chair, thank you very much for the very short but sharp and to the heart kind of presentation. I mean, I must admit it's a subject area beyond my comprehension, but, you know, in my tools that I deal with in development, I suppose the question that I probably would ask is, you know, public borrowing is a legitimate tool for our existence, you know, and maybe our fellow commissioner down there can probably correct me on this, but in your suggestion, you're recommending a Fiscal Responsibility Act, you know, and an Infrastructure Council Act. So, again, this is an operational versus constitutional.

I'm trying to get my mind around it, and, you know, you've left us with some indebt, if you like, but, yeah, I do take the commissioner's views as well as borrowing and debt and that ratio of that, but as a person that's

involved in infrastructure work in development, I can see some of the live experiences, and maybe perhaps could I ask the question if you could share any live experiences or something that you may want to share that can help me comprehend my understanding. Is that okay for you, Chair?

Mr Nabalarua: Thank you, Mr. Conway, Mr. Chairman. We will be very happy to work with whoever to look at, because we've already had a look at how the Australian set up, and even the Singapore in a very similar way, and we'll be very happy to look at their constitution and see how what we are proposing is ingrained into their constitution.

Being the supreme law of the land, and the importance of the two subjects that we are covering, if you look at those countries on how they develop their infrastructure and keeping, you know, their debt level at a point, and how they push through with developing the economy to grow, and I guess I'll give it to our colleagues, probably our former Secretary of Finance, to be able to elaborate more.

Mr Waqabaca: Thank you, Chairman, through you, and thank you, Commissioner, for that question. I suppose the starting point here would be some of the elements that are captured in the constitution are not being able to be enforced or implemented on the ground.

So therefore we need legislation to back it up so that it has teeth and will have traction, and that is why we are suggesting those two legislations to back up the two areas that are being submitted to the Commissioner, and we've identified in the attachments the countries that have these in their constitution, and also the legislation that is designed to ensure that these are being enforced, because the benefits that accrues to the people are bound to be realised if there is supporting legislation. And we could mention it in the constitution, but if there is no enforcing agency, it will not deliver the results we want. And as Dr Neelesh rightfully mentioned, these subjects have been discussed before, and I think maybe this is the right time to bring it and reflect it in our constitution, just to enforce discipline and continuity.

What we see, governments come, governments go, they bring their own infrastructure plans, and when someone comes in they change that plan even though it may be a good one, but it's the people who are paying for those infrastructures. So what we're asking for here is to ensure continuity, everyone agrees to an infrastructure development plan for the country, and whichever government comes into place must ensure

that there is continuity, they continue with that. And we're also raising the issue about debt, we are saying here that we should not be afraid of debt.

I'm sure most of us borrow to buy a house, to run a business, as long as that debt is directed towards productive outcomes, and in this case capital, we are suggesting more capital budget rather than operating a ratio, we're saying a floor, maybe a 70-30 balance rather than a 90 operating 10 infrastructure. So this is just to guide whichever government comes into place, ensure one, continuity, proper management of funds, and maybe see growth be the outcome. Because when growth happens, our debt, whatever level it is, it is just a ratio.

When growth happens, the ratio just falls. So it's either we cut debt, but if we cut debt, development may not happen. So why don't we go for growth? So any debt we borrow, direct it to growing sectors, growing industries, and then when growth comes about, debt will automatically fall.

Mr Nabalarua: Yeah, Mr. Chair, and probably if I can just add to that, I think the biggest benefit too of having this in the independence in multiple years, it will enable private sector to participate in this development. And one of the issues that a lot of private sector finds in trying to develop infrastructures in countries like Fiji is the lack of very clear roadmap and a system that's set up that's very independent and very robust.

And what you can see that, for example, in terms of building major roads infrastructure or power infrastructure, this type of setup will enable private sector overseas to come and invest in Fiji. Because they will just come and pick up the plans, or even businesses to set up anywhere in time, they will look at these plans and say, okay, we better start developing in this place, because this infrastructure will come there by this time. So it gives very clear uncertainty to private sector.

Mr Dakuidreketi: Yeah, gentlemen, if I just may add a little bit to that. Not only private sectors, but it's also the development partners. If they see a credible body populated by credible individuals who are known in the industry or known regionally, we're not suggesting here that this commission of members of this body will be just locals.

We can draw expertise from offshore given the experiences they have had, particularly engineering. We will be pretty short on the availability

onshore, so we can actually go wider, the diaspora, bring them in. The point that is emphasized here is that this has to be captured in the constitution.

It's understood that there will be an act that follows, that there will be an enabling act. If you don't have it in the constitution, anybody can change that act later, we don't want that, we'll throw it away, and you know how politicized our systems are and have been. And that is one of the things we are trying to avoid here, by capturing it in the constitution and having an enabling act underneath that, that actually gives emphasis to what we are trying to propose here.

Infrastructure is a big set pacer for the economy, and if we have an architecture that everyone can follow, so if a government comes, changes next year, we'll set it down and everybody knows where it is, and to Mr Nabalarua's point, people looking from outside trying to invest, they see where we are wanting to go. It's easier for them to figure out how they will enter, and where do they enter, at which point do they come in. And as I said, again, the development partners, World Bank, EU, and all those institutions will seek credibility in a system that we are all following that is apolitical.

Thank you.

Mr Beg: Thank you very much for that explanation. I suspect that what you're saying, you're quite right in that you're wanting to consider the constitutional framework that empowers the legislation.

Thank you, I appreciate it.

Dr Gounder: Thank you, Mr. Kenny, for that last point. I think that really hits the point.

Although we have a national infrastructure plan, which currently sits with the Ministry of Infrastructure, and my point about this initially was that the politicization of the infrastructure plans, I think your last point is really important, that we can move it away from the political processes, and an independent council could look after, could be the custodian of the infrastructure plan. I think that will sit well, better than the current system we have. We have also received a very strong submission from the Ministry of Strategic Planning regarding the continuity of policies and plans, so governments may change, as Mr. Waqabaca has highlighted.

So we can, that sits very well with the proposal that you have made today. I think that's something we can look at. I just have one more question, and I think this is also for the information of the Commission as well.

We have received a number of submissions regarding this debt issue, and I don't have to remind the Commission the expertise of Mr. Waqabaca, for example. He has spent almost his entire life in finance, etc., and I've always learned from Mr. Waqabaca. So if you look at the Financial Management Act, Section 59 to 64, for example, which I'm sure you're very familiar with, it talks about the debt management operations, etc., all of those things, and the frameworks.

So just to get some idea from an expert like you, do you think it's worthwhile to put the 70-30 requirement in the Act, or can we do it in the Constitution, which would be a better option? Given your experience as the Permanent Secretary and the Reserve Bank, you think?

Mr Waqabaca: Thank you, Dr Gounder. From my personal feeling, it would be better we reflect it on the Constitution. As you would have noted from our submissions there are also escape clauses here what causes to deviate from those plans like economic slowdown, natural disaster, external shocks. Those would be reasonable reasons to change the course of action. But at least if we start with a firm number of 70-30, which we have done before, as you may have known, we reduced it from 90-10 to 70-30, and there was more focus on capital projects. So since we have done it before, that can be the basis for us to set our target and reflect it in the Constitution.

But with those escape clauses clearly highlighted, that may cause deviations.

Dr Gounder: Thank you. That's very useful, I think.

Mr Beg: Thank you. I just have one more. If this Council is formed, how much protection would it have from being politicised? Because, I guess, the influence.

Mr Dakuidreketi: Well, I think our submission is suggesting that the Commission is formed. There's a membership there.
There shall be an independent body to be known as the Fiji Infrastructure Council, which shall provide independent evidence-based advice on the

nation's infrastructure needs and priorities, publish a national infrastructure priority list informed by a national infrastructure audit, conducted at least every five years, and whose members shall be appointed on the basis of merit, professional expertise and integrity, through a publicly advertised process with bipartisan parliamentary endorsement.

That's the idea. It's composition, reinforcement, funding by direct appropriation or whatever, independence and a five-yearly independent review of its mandate shall be prescribed by an expert parliament. Thank you.

Mr Beg: I mean, all the submissions are great. I was just trying to look at the word political capture. No influence is totally independent in that sense.

Mr Dakuidreketi: So, that's why I'm saying, if those members of that committee is agreed to by a bipartisan committee of parliament that's established for five years, so they basically, it's a body appointed by...

Mr Beg: I guess there's existing legislation and so on, but it allows the group no hindrance, you know, so we're not ...in that sense.

Mr Dakuidreketi: So, your World Bank will deal with that body, you know, and they will be talking about it. So, finance executes it, municipal infrastructure executes it, but there is actually a body that guards these things and makes sure that this is implemented according to their plans.

Mr Waqabaca: Chair, I think another guard would be the members of the public, because once we set this infrastructure plan and everyone is made aware of, and if there is a government that comes into place and tries to distort this plan, they will have to answer to the people, because the people would have seen the benefits through the years. So, I guess that will be another guard against any political influence and interference.

Dr Gounder: So, about the people as well, having the right people.

I think if you have the right people, they will themselves guard against any political, because they want to do a good job. They want to do something out there. My experience has been that, you know, if you have strong people as members, they will ensure that they remain focused on the job.

Mr Beg: I appreciate that. Thank you very much. Very compelling presentation.

Chair Mr Sevuloni: Thank you. Mr. Nabalarua Mr. Dakuidreketi, and Mr. Waqabaca, thank you very much for your submissions. You will note that we have an expert here also, in Dr. Neelesh Gounder.

We've got businessmen who are running their own businesses. So, your submission this morning will be well discussed by the Commission. Like Mr. Kohli, we are lawyers.

We usually take instructions only. So, we will be guided by Dr. Neelesh Gounder and my other two colleagues. It's a new, it's a novel submission, a new introduction to the provisions of the Constitution.

So, we will really look at it, because it deals with the economy, I think. With those few words, I thank you very much. This morning, we will surely, we will surely deliberate on this.

Mr Nabalarua: Vinaka again, Mr. Chairman and Commissioners, thank you very much for this very rare opportunity for us to be able to participate in this submission. We would like to also assure you, should you need some assistance, we will put together the resource that we have to help you out, in terms of framing whatever that you need, and will be available.

Chair Mr Sevuloni: Thank you. We will surely come back to you for advice. By the way, Mr Waqabaca, are you with FDB now? You're just across the road, eh? You will see us.

----------End of Session [9-7-2026] ----------

c/- Chairman of Fijian Holdings
Level 17 FHL Tower
Gordon Street
Suva

A SUBMISSION FROM ITAUKEI PRIVATE SECTOR EXECUTIVES

ADDRESSED TO The Chair and Commissioners
Fiji Constitution Review Commission
Suva, Fiji

9 July 2026

SUBMISSIONS TO THE CONSTITUTION REVIEW COMMISSION — TWO PROPOSALS FOR CONSTITUTIONAL REFORM

Chair and Honourable Commissioners,

We, a group of iTaukei private sector executives, respectfully submit the two attached proposals for the consideration of the Constitution Review Commission. Both proposals arise from our shared experience of building and investing in Fiji, and from our conviction that a modern Constitution must give this country the institutional architecture it needs to grow with discipline, transparency and confidence — beyond the political cycle.

The two submissions are complementary. Together they address the two most persistent weaknesses in Fiji's development machinery — the absence of an independent, evidence-based framework for deciding *which* major infrastructure to build (Submission 1), and the absence of legislated guardrails around *how much* the State should borrow and *of what quality* (Submission 2).

- **Submission 1 — An Independent Fiji Infrastructure Council.** A constitutionally recognised, statute-backed body (modelled on Australia's Infrastructure Australia) that would produce and independently maintain a prioritised National Infrastructure Pipeline, staffed by professionals appointed on merit, insulated from political interference, and reviewed every five years.
- **Submission 2 — Constitutional and Legislated Fiscal Rules: A Growth-Oriented Framework.** Constitutional anchoring of (i) a growth & debt-quality principle, (ii) a maximum budget deficit ceiling, and (iii) a minimum capital expenditure floor, operationalised through a Fiji Fiscal Responsibility Act and monitored by an independent fiscal authority.

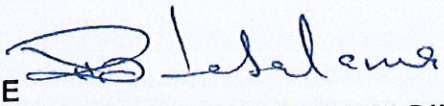
We wish to make one point clear at the outset. These are not proposals against borrowing or against ambition. As business leaders we borrow every day to build businesses, employ Fijians, and grow the economy. What we ask of the State is what we ask of ourselves: that borrowing be disciplined in quantity, targeted at productive purposes, and honest about the returns it must generate. The proposals seek to give Fiji the institutions and rules under which borrowing to build the nation's future is

welcomed and protected — and borrowing that merely funds today's recurrent expenditure is disciplined and disclosed.

We are grateful for the Commission's work and for the opportunity to contribute. We are grateful to appear before you today to present this submission and to work with any officials in refining the drafting of the proposals. We wish the Commission every success in its important task, and look forward to the report to the President by 31 August 2026.

Yours faithfully,

On Behalf of Selected iTaukei Private Sector Executives



SIGNATURE
POSITION : CHAIRMAN OF FIJIAN HOLDINGS LIMITED

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PHONE: 7907120
DATE : 09 JULY 2026

Enclosures

1. Encl. 1Submission on the Establishment of an Independent Fiji Infrastructure Council
2. Encl. 2Submission on Constitutional and Legislated Fiscal Rules — A Growth-Oriented Framework

EXECUTIVE SUMMARY

Establishing an Independent Fiji Infrastructure Council

A Submission to the Fiji Constitution Review Commission

Submitted by: Ekitikiti Tavke Private Sector Enterprises | Date: 8 May 2026 | Category: Institutional Reform

1. THE PROPOSAL

Establish an independent **Fiji Infrastructure Council (FIC)**, recognised in the Constitution and enacted under its own Act of Parliament, to conduct evidence-based assessment of national infrastructure needs and publish a rolling, prioritised **National Infrastructure Pipeline** — independently reviewed every five years and staffed by professionals appointed on merit. The model is drawn from *Infrastructure Australia*, established under the Infrastructure Australia Act 2008.

2. THE PROBLEM

- **No continuity.** Each new government produces a new National Development Plan; multi-year projects stall, are re-scoped, or are dropped.
- **Low lender confidence.** ADB, World Bank and other development partners lack visibility of a stable, government-endorsed national pipeline.
- **No basis for private-sector planning.** Investors, contractors and PPP proponents cannot plan around shifting political priorities.
- **Politicised, non-expert project selection.** Decisions are driven by the political cycle rather than economic, engineering and climate-resilience merit.

3. KEY DESIGN FEATURES

Feature	Design
Legal status	Independent statutory body; constitutionally recognised
Core function	National infrastructure audit + prioritised national pipeline
Evidence base	Cost–benefit and climate-resilience driven; data-led assessment
Governance	Commissioners appointed on merit via public advertisement
Funding	Ring-fenced from two sources: direct appropriation from the Consolidated Fund and development-partner grants (ADB, World Bank, DFAT, MFAT, JICA, EU) under transparent arrangements
Review	Independent review every 5 years, tabled in Parliament
Outputs	Annual Priority List + 5-yearly National Infrastructure Audit

4. INDEPENDENCE & MERIT-BASED APPOINTMENTS

- **Multi-disciplinary panel (5–7 Commissioners):** engineering, infrastructure economics, finance, climate resilience, public administration, private-sector delivery.
- **Publicly advertised, merit-based recruitment** assessed by an independent selection panel — retired Judge (Chair), Auditor-General, Fiji Institution of Engineers, private-sector chamber, academia / civil society.
- **Bipartisan endorsement** by a parliamentary committee (Government and Opposition) before formal appointment by the President.
- **Five-year staggered terms;** one permitted reappointment.
- **Removal only by Parliament** on the recommendation of an independent tribunal, on specified grounds — mirroring the protections afforded to judges.
- **Conflict-of-interest rules** and a post-employment cooling-off period for former Commissioners.
- **Ministerial direction limited to general matters only;** any direction must be in writing and tabled in Parliament.

EXECUTIVE SUMMARY — CONTINUED

5. OPERATIONAL STRUCTURE — HOW THE COUNCIL RUNS

The Commissioners are the *accountable authority*; the day-to-day work is done by a small professional secretariat led by a Chief Executive Officer. This mirrors Infrastructure Australia, which runs ~30–40 staff across five functional teams under a CEO appointed by (and answerable to) the Commissioners.

TIER 1 — COMMISSIONERS (5–7)
Set direction, sign off Priority List, accountable to Parliament. Chief Commissioner full-time; others part-time.

TIER 2 — CHIEF EXECUTIVE OFFICER
Appointed by the Commissioners (not the Minister) on a 5-year performance contract. Runs the office; reports to Commissioners.

Tier 3 — Professional Secretariat Team	Staff	Disciplines & role
Project Assessment & Advisory	6–8	Infrastructure economists, civil / transport engineers, cost–benefit specialists — appraise proposals against a published Assessment Framework.
Planning, Research & Climate	4–6	Sector planners, climate-resilience analysts, GIS analysts — deliver the 5-yearly National Infrastructure Audit and sector deep-dives.
Data, Digital & Publications	2–3	Data scientists, developers, communications — maintain the pipeline data platform and publish outputs.
Corporate Services	3–4	Finance, HR, procurement, legal, board secretariat — keep the agency compliant and well-run.

Advisory Panel: ~10–12 industry, academic and diaspora experts (Fiji Institution of Engineers, USP, private-sector chambers, Pacific diaspora, ADB / World Bank alumni). **Staffing & funding:** open merit recruitment (local + Pacific diaspora + international); secondments from ADB, World Bank, Infrastructure Australia and NZ Infrastructure Commission; competitive ring-fenced pay bands funded from a combination of direct appropriation and donor grants. Development partners actively welcome funding independent bodies like this — it is recognised as a good-governance feature and makes their own appraisal work easier and faster.

6. WHY CONSTITUTIONAL ANCHORING

- **Continuity** — no incoming government can dissolve the Council or shelve the pipeline.
- **Credibility** — lenders and investors gain confidence in a durable, protected pipeline.
- **Insulation** — appointments, funding and outputs are protected from political interference.

7. BENEFITS BY STAKEHOLDER

Stakeholder	Benefit

Government	Credible costed pipeline aligned to medium-term budget; stable forward work programme
Parliament	Independent annual priority report strengthens oversight of capital expenditure
Development partners (ADB, World Bank, EU, JICA, etc.)	Single transparent pipeline; faster disbursement; reduced duplication; a good-governance body worth co-funding through grants
Private sector	Plan investments, bids and PPPs years in advance from a published list; lower risk premiums
Citizens	Merit-based prioritisation; scarce funds directed to highest social, economic and climate-resilience return

8. SUGGESTED CONSTITUTIONAL PROVISION

DRAFTING OUTLINE

"There shall be an independent body to be known as the Fiji Infrastructure Council, which shall provide independent, evidence-based advice on the nation's infrastructure needs and priorities, publish a National Infrastructure Priority List informed by a National Infrastructure Audit conducted at least every five years, and whose members shall be appointed on the basis of merit, professional expertise and integrity through a publicly advertised process, with bipartisan parliamentary endorsement. Its composition, ring-fenced funding (by direct appropriation and development-partner grants), independence, and a five-yearly independent review of its mandate shall be prescribed by an Act of Parliament."

9. RECOMMENDATION

TO THE COMMISSION

The Commission is respectfully urged to recommend the constitutional establishment of the Fiji Infrastructure Council — a durable, professional, evidence-based institution to safeguard Fiji's infrastructure future across political cycles, continuity for government, confidence for lenders, clarity for investors, and value for every Fijian.

FISCAL RULES · EXECUTIVE SUMMARY

Submission to the Fiji Constitution Review Commission

Constitutional and Legislated Fiscal Rules — A Growth-Oriented Framework

Submitted by: Selected iTaukei Private Sector Executives · **Date:** 8 July 2026 · **Category:** Public Finance & Fiscal Governance Reform

1. The Core Proposition

CORE PROPOSITION This is **not an anti-debt submission**. It is a **pro-growth, pro-investment framework**. We propose that Fiji's new Constitution anchor three integrated pillars: (i) a growth & debt-quality principle, (ii) a maximum budget deficit ceiling, and (iii) a minimum capital expenditure floor — all operationalised through a *Fiji Fiscal Responsibility Act* and monitored by an independent fiscal authority.

2. The Problem

- The **2026–27 Budget** records a deficit of **–7.0% of GDP** ($1,045.5m) — more than the abandoned medium-term target of 4.8%.
- Debt projected to reach **84.8% of GDP** by July 2027, rising to **88.3%** by FY2028–29.
- Debt servicing (**~FJD 600m/yr**) already consumes **~70%** of the entire capital budget.
- Fiji's **OPEX:CAPEX mix** stands at approximately **82:18** against the Government's own 70:30 target — recurrent spending is crowding out productive investment.

Source: Ministry of Finance, 2026–2027 Budget Supplement.

3. Debt Is a Tool, Not a Sin

WHY THIS FRAMEWORK IS PRO-GROWTH Debt-to-GDP is a *ratio*: growing the economy reduces it just as effectively as cutting the numerator. What matters most is the **Blanchard condition** — that the growth rate of the economy (g) exceeds the real interest rate on debt (r). Fiji is currently failing on *both* sides of this equation: growth is **1.5%**, borrowing costs consume the capex budget, and debt is funding recurrent expenditure. Our proposals fix both sides — the deficit ceiling protects r, and the capex floor protects g.

The framework we advance is grounded in well-established international precedents — the EU's Maastricht deficit rule, India's *FRBM Act*, Brazil's *Lei de Responsabilidade Fiscal*, Switzerland's constitutional debt brake, and Kenya's constitutional 30% capex principle. Each demonstrates that durable, credible fiscal rules are achievable across jurisdictions of vastly different sizes and stages of development. Constitutional anchoring, operationalised through legislation and monitored independently, is the mechanism by which small open economies have converted policy intent into a *credible commitment* — the very foundation on which sovereign risk premiums fall, private capital is crowded in, and intergenerational equity is protected.

4. The Three Pillars

Pillar	What it does	Precedent
Growth & Debt-Quality Principle	Borrow to invest, not to consume; keep $r < g$	*Blanchard (2019); UK / Germany "golden rule"*
Deficit Ceiling (~3.0–4% of GDP)	Discipline in normal times; escape clauses for genuine crises	*EU Maastricht 3%, India FRBM, Brazil LRF, Swiss debt brake*
Capex Floor (~30% of expenditure)	Ring-fences productive investment against recurrent pressures	*Kenya Article 201 / PFM Act; Golden Rule*

5. Escape Clauses

The framework **explicitly provides** rather than removes crisis flexibility. Escape clauses may be activated only for declared *natural disasters, public health emergencies, severe economic downturns* or *major external shocks* — with parliamentary approval, published return-to-target plans, and independent monitoring. This mirrors the architecture used by Panama and Paraguay and recommended by the IMF as best practice.

6. Independent Fiscal Council

- Verifies annual compliance with both rules.
- Assesses the validity of any escape-clause invocation and its return-to-target plan.
- Reports tabled in Parliament; appointed on strong independence standards, or empowered from within the Office of the Auditor-General.

7. The Position of the Signatories

SIGNATORIES' POSITION *As business leaders we are* **unafraid of debt**. *We take on debt every day to build businesses, employ Fijians and grow the economy. What we ask of the State is what every well-run business demands of itself: borrowing that is disciplined in quantity, targeted at productive purposes, and honest about the returns it must generate.*

8. Suggested Constitutional Anchor

INDICATIVE DRAFTING
Public borrowing is a legitimate instrument of national development. Parliament shall enact a **Fiscal Responsibility Act** prescribing **(a)** a maximum annual fiscal deficit as % of GDP; **(b)** a minimum share of total expenditure on capital and development, over a rolling multi-year period; **(c)** a medium-term debt anchor; **(d)** the manner of compliance reporting and independent verification. Escape clauses apply only for declared disasters, emergencies, downturns or shocks.

CLOSING RECOMMENDATION **We respectfully urge the Commission to recommend the constitutional anchoring of the three-pillar framework. Anchored in this way, borrowing to build Fiji's future becomes a mark of ambition, not a cause for alarm.**

Yavusa, Naseuvou, Nasaqalau Village, Lakeba, Lau

Yavusa Nasaqalau,Lakeba
Date: 9-7-2026

Mr. Valenitabua: I note that you are appearing with the members from the village of Nasaqalau in Lakeba, Lau together with the members of the mataqali, heads of mataqali I believe are also here. Thank you. Thank you. We welcome you. Welcome to the Constitution Review Commission. The Constitution Review Commission is given the job of reviewing the 2013 Constitution. When I say review, it means that we can change the laws inside the Constitution. It does not mean that we bring in a new one. We are not removing the 2013 Constitution and then drawing up or writing up a new one. No, that is not what we are doing. What we are doing is we change the laws inside here. Some will be taken out, some will be added again, new ones, and we can also change the wordings or the words inside the Constitution so that it means something else.

I'm sure you understand that. So that is what our job is. There are five of us commissioners here this afternoon. If I can introduce them, on the left is Dr. Nilesh Gounder. With a doctor in front of his name, it does not mean that he is a medical doctor. He is a PhD holder, Doctor ni vuku. Next to him here is Mr. Ami Kohli, a lawyer from Labasa. I am also a lawyer. And on my right here is Mr. Conway Bag, an architect. And on the other side is Ms. Merewalesi Nailatikau. These are your five commissioners this morning. This afternoon, I'm sure. We are here to listen to the submissions that you have prepared. We have been given the written submissions and I believe that Mr. Tuiloma would address us in the summary of what this submission is. So, we are here to listen. We now give you the mic and the floor. Please tell us what you want to tell us.

Mr. Tuiloma : Very good afternoon to you, Mr. Chairman and honorable members of the commission. We know that you have had a long day, but somehow you still have reservations of energy to listen to us. And we thank you for that. I would just like to introduce the members of the Yavusa of Naseuvou from Nasaqalau very briefly.

Beside me on the right is the Turaga na Tui Nasaqalau, Roko Tomasi Tikomaimalea and with him are the mataqali, some of the mataqali leaders or chiefs, as well as some of the members of the Nasaqalau families who are able to be with us this afternoon. I won't be able to mention their names because of your time.

I know you are stressed with time as well. You need some rest at this stage. Actually, what we have tried to elaborate in our submission. The first point that we would like to request the commission, if we could be excused, if we are trying to tell you something which you already heard over days. I would just like to say that we would like to join those that have already stated that we earlier submitted to the CRC to hold the upcoming general election under a new constitution and not under the 2013 constitution.

And with that comes the request that we would, the Yavusa of Nasaqalau, would like to see that the election that has to be conducted must be done through representative, that they know, rather than the system that we are now under. And to facilitate that request, the Yavusa is requesting if there could be a transition period created within the law for an interim government made up of present MPs run and concerned into a new constitutional system for at least 18 months. Before a general election is called.

We know the only outstanding matter there would be a referendum as well as the passing of bills to ensure that the constitution, when promulgated, will be in effect. Apart from that, the Yavusa would also like to see that the rights and freedoms under the constitution must all be revised and appropriately placed and worded properly as we will refer to them in our later submission. And also the voting age or majority age to be put back to 21 instead of years. The Yavusa also prefer a bicameral legislature and not a unicameral.

And if you could adopt the usual 1970, 1990 and 1997 system on that. In addition, the Yavusa would like to introduce a new clause into the constitution especially with members of the parliament. The people at all times, it's the power of recall.

If they do petition parliament with one-fifth of the population, if they do petition parliament and the parliament will have to ensure that the members is recalled and another election be held. The public feels that they need to have their members replaced. So the power still remains with them.

And in that way perhaps our legislatures will have to work pretty hard in order to maintain their seats because they are being watched from outside as well. The rights of indigenous Fijians to self-determination

must also be a stand-alone right under the Bill of Rights in the constitution. Under the citizenship provisions, Fijian children born outside Fiji who are registered under the Vola ni Kawa Bula must have the right to enter and leave Fiji.

And we have also made the suggestions as to the word Fijian should only be reserved for the Fijian race. Only iTaukei reference to Fijians are to be reverted to Fijian. All iTaukei reference to Fijians under the constitution must be reverted back to Fijian.

And we have also come up with the meaning of the word Rotuman and Fijian and Indo-Fijian. Those are the names that should be adopted in the constitution itself. And we will try to put the definition of those names in there.

And I know we would like to take more time. You will definitely have time to read them through. But a person shall be regarded as a Fijian if and shall not be regarded unless his father and any of his earlier male progenitors in the male line is or was the child of parents, both of whom are or were indigenous inhabitants of Fiji.

These are the definitions under the 1970 as well as the later constitution, the 1990 as well as the 1997 constitution. It revolves around that, along those lines as well. A person shall be regarded as a Rotuman.

I would like to dwell into that because I don't know much about the Rotuman culture. Perhaps they look at the definition that we've tried to put up and for them to, whether they agree or not with that. And so is the Indo-Fijians as well.

Section 96 of the current constitution, if that could remain as is, it talks about the qualifications of the position of Attorney General. It's quite a high bar and for those that have to be appointed to that position have to hold very much to those requirements. And also the other experience that we've had that we would like to submit to the commission, if the Solicitor General can also, when there is a vacancy over time, if the Solicitor General can also be eligible to be the person to act on that position.

Next is the Deed of Session, which recognizes that Fijian land, seas and resources belongs to Fijians and Rotuman's, but some persons of which

have either been alienated, retained or inappropriately sold and for their rightful ownership and valuation determinations, a Deed of Session tribunal must be formed to decide on the validity, value and other matters regarding such claims, including validation of claims to title land, marine and fisheries ownership claims under the Native Land and Fisheries Commission by Fijians. Next is the GCC must be the body to appoint the President. Apart from that, we would like to request through you to the relevant departments that must ensure that the amendment to the current mineral royalty distribution policy, where only 5% of the returns are given as royalty to government, and 80-90% of that 5% is given to landowners.

The government retains the rest of that 5%, the mineral leaseholders retain 95% of the return. That review is long overdue and through you we would like to state if that message could also be channeled across to the appropriate department. If the current state service or the public service system under Chapter 6 could be repealed and be replaced with the 1970, 1990 and 1997 systems of apolitical public service systems.

The chapter on executive, if that could be repealed and the current be repealed and revert to the 1970, 1990 and 1997 constitutional framework. Amendments to the constitution under Chapter 11, if the constitution could be reviewed every 7 years and any amendments to the constitution must await that period. After public consultation, the amendment process should follow a simple majority for provisions that have little impact on Fijian lands, resources and their customs and traditions. We have also come up with a preamble. We feel that this preamble is much more, if the current preamble be replaced with this one. We feel that the constitution is for the people and the people should be highlighted at all times from the beginning till the end.

We feel that they would like to move with rather than for them to be highlighted at all times. And for that purpose, the preamble that the Yavusa is requesting could be considered. We the people of the Republic of Fiji acknowledge the blessings of our God to the people, their land, seas and airways.

Acknowledge that our lands, its vast ocean resources have been a cherished ancestral home for generations of the Fijian people. Recognizing the enduring connection between the Fijian people and this land, we celebrate and share their values of respect and referential fear

of God, honoring elders, ancestors and chiefs, nurturing a strong sense of community and fostering a harmonious relationship with our natural world, ownership of land, sea and resources including genetic resources and traditional knowledge, traditional cultural expressions to their unique culture, customs, tradition, language and intellectual property. Acknowledge that the deed of cession recognizes that Fijian lands, seas and resources belong to the Fijians or Rotuman's, but some portions of which had either been alienated, retained or inappropriately sold.

And for appropriate ownership and valuation determination, a deed of cession tribunal shall be formed to decide on the validity, value and other matters of such claims, including validations of claims to titles and land and fishery ownerships under the Native Land and Fisheries Commission by Fijians. We further acknowledge the unique history and heritage of Rotuma, a people with their own distinct culture and traditions, recognizing that Rotuma entered into a separate deed of cession. We affirm Rotuma's distinct identity and rights, emphasizing the need to ongoing dialogue to clarify and strengthen Rotuma's relationship with Fiji.

We affirm the importance of preserving Rotuman culture while embracing our shared identity as Fijians and Rotuman's, ensuring that their voice and perspectives are integral to the future of our nation. Recognizing that Fiji has become a vibrant tapestry woven from diverse backgrounds and experiences, we celebrate the contributions of all who have made this land their home. We commit ourselves to building a nation where the rights and dignity of every individual are held, respecting the foundational role of Fijian traditions and customs while embracing the diversity that defines Fiji today.

We aspire to a future built on mutual respect, understanding and shared prosperity, ensuring that our nation continues to evolve in a way that honors the past while embracing the opportunities of tomorrow. Recognizing that the descendants of those who chose to make their homes in these islands form our multiracial and multicultural society, affirming the contributions of all communities to the well-being of our society and the rich variety of their faiths, traditions, languages and cultures. Committing ourselves anew to living in harmony and unity, promoting the integration of all races and the economic and social advancement of all communities, respecting their rights, interests and strengthening our institutions of government.

Reaffirming our recognition of the human rights and fundamental freedoms of all races and groups, safeguarded by adherence to the rule of law and our respect for human dignity and the importance of the family. With God as our witness, give ourselves this constitution. Chapter 1, we want to submit if the current chapter 1 could be repealed and the current provision as it repeats what's stated in all other provisions about democracy and its values.

Equal citizenry is a philosophical concept that should never be forced as it attempts to eliminate especially the Fijian race, ethnicity and their values. It had to be replaced with Section 1, the state, and we submit if the Republic of Fiji with bracket Viti or Viji is a sovereign democratic state. The reason why we have tried to put Viti or Viji as brackets, we feel that we should not only be proud of the English name that we have.

We should also be proud of the real Fijian words that actually go behind that English translation of Fiji, which is Viti or Viji. Section 2, and for that section the constitution is the Supreme Law of Fiji and if any other law is inconsistent with the constitution, that other law shall to the extent of the inconsistency be void. Section 3, it's a suggestion that we are making especially that goes along with our proposal for a new section 3 and for the current section 3 to be shifted to section 4 of the constitution. And the new section 3 is for the election notwithstanding the provision of section 58 and 59 of the 218 constitution which is the reach and the election proclamation by the president. The referendum and same provisions of the act 2026 which is still, it's something that we just tried to put there for the purpose of continuity in the proposal that we are making. The reach of the first general election of members of the House of Representatives shall be issued within the period of 18 months from the date of coming into force of this constitution.

This is a direct leaf out from the 1990 constitution during the transition of the military coup to the constitution. The law that were actually used under the military coup system into the new constitution. Section 4 interpretation, change the wordings of section 3 interpretation provision the current section 4 be deleted which is the secular state.

As we have already stated in the preamble of the suggested constitution that we have outlined, the state should be left at that rather than for the constitution to stipulate that it's a secular state. It was a state that was founded under the values of Christianity and should remain as such and

we are also making that suggestion as we move along to the relevant provisions. The interpretation sections, section 3 or the section 4 of the constitution, we have already outlined that and we would like to highlight the B2, the development in the promotion of particular human rights that is balanced with the Fijian traditional society.

This is a point which the USA would like to always highlight that the human rights provisions that are now being ratified by the nation that has to be balanced with the Fijian traditional society values as well. And especially the last point, the government shall codify the traditional and cultural laws of the Fijian people to be part of the laws of Fiji to the extent of its consistency with the constitution and other laws. And any inconsistency of traditional customary law to this constitution or other laws is void to the extent of its inconsistency.

And we are referring to the section 5.3 which is below. In section 5.3 the USA is stating that if in the interpretation of provision of this constitution there is an apparent difference between the meaning of the English version of the provision and its meaning in Fijian, Rotuman or Hindu studies. The English version prevails, provided contextualization must be exhausted and conceded in their vernaculars, where result would be better achieved in the vernacular context than the vernacular context should supersede.

In the interpretation we have outlined those provisions. In the language we are saying that the English, Fijian, Rotuman and Hindu study languages have equal status in the state. This constitution is to be adopted in English but translated in Fijian, Rotuman and Hindu study versions are to be made available.

As I have already stated earlier in the interpretation, every person who transacts business with the department and offices of the state, a local authority, has the right to do so in English, Fijian, Rotuman and Hindu study either directly or through a competent interpreter. The Bose Levu Vakaturaga, section 6, Bose Levu Vakaturaga established under Fijian Affairs Act continues in existence and its membership functions, operations and procedures are prescribed under that Act. Bose Levu Vakaturaga, as in addition to the functions set out in the Fijian Affairs Act, the functions conferred upon it under this constitution, which is to actually appoint the President.

There is a chapter 2 that the USA would like to also make submission on for compact. It's very much the repetition of the compact that's already there but we have realigned it more to represent what we are saying and to be aligned more with the rights that we are also highlighting. The people of the Republic of Fiji recognize that within the framework of this constitution and the other laws of the state, the conduct of government must be based on the following principles.

The right of all individual communities and groups are fully respected. The ownership of Fijian and Rotuman land, seas and space, including their genetic resources, traditional knowledge, traditional cultural expressions and intellectual property, according to Fijian and Rotuman traditional customs and laws. The ownership of freehold land and the rights of landlords and tenants under leases of agricultural land are preserved to the extent of their consistency with this constitution.

Fiji is a country founded on Christian values and principles, recognized that all persons are free to exercise their right to practice their beliefs, religion and to retain their language, culture and traditions. The rights of the Fijian and Rotuman people include their right to their self-determination that also include governance through their separate administrative systems and the right to be consulted to give their prior informed consent to their ownership under Section B which we have already outlined. As citizens, the members of all communities enjoy equal rights including the right to make their permanent homes in the Fiji Islands.

Citizens can vote and be a candidate in free and fair elections of members of the House of Representatives held by secret ballots and on the basis of equal suffrage. The formation of a government that has the support of a majority in the House of Representatives depends on the number of seats received by a political party or coalition government from among competing parties, depending on their willingness to come together to form or support a government. A two party election would be our desire provided our people agree.

All communities in Fiji shall have programmes for equitable sharing of economic and communal power to ensure that all communities fully benefit from the nation's economic progress. The application of Compacts, the principles referred to in Section 7 are not justiciable except to the extent they are made subject to other provisions of this

constitution or of a law made under this constitution. In the interpretation of this constitution or law made under this constitution, consideration must be given to these principles when relevant.

Citizenship, which is Chapter 3, the retention of existing citizenship under Section 9 of this constitution, the coming into effect of this constitution does not affect the citizenship of a person who was a citizen immediately before it came into effect. A way in which citizenship is acquired is either through birth, registration or naturalization and Parliament must make laws for the acquisition of those citizenships under those modes. Citizenship by birth, every child born in Fiji, this follows the same provisions that we now have, it's only that there is an addition on B, neither parent is a citizen born in Fiji.

Provide a child born outside of Fiji to a father registered under the Vola ni Kawa Bula shall be a citizen of Fiji by birth. Section 11, infant found abandoned in Fiji. Section 12, citizenship by registration, a child born outside of Fiji after the commencement of this constitution may become a citizen by registration if at the date of the child's birth either or both parents were citizens born in Fiji, provided a child born outside of Fiji to a father registered under the Vola ni Kawa Bula shall be a citizen by birth, either parents were born in Fiji.

The reason why there is a suggestion on that is because especially at this time there is a lot of abuse by those that are obtaining citizenships through registrations or naturalizations that we are not aware of. They come from systems which are very highly developed and they can easily pass through our system of citizenship if we are not careful and the reason why we are inputting that is to put at least some sort of stagger to the transition that they would like to achieve with their citizenship of people that they would like to introduce into the country. A foreign child born in Fiji by a parent who was a citizen may become a citizen by registration provided all legal requirements for citizenship are satisfied.

A child who was under the age of 21 but more than 16 years when either parent become a citizen may become a citizen by registration provided they satisfy all legal requirements for citizenship and there are no conditions imposed on their parents or child. Four, it follows the same, five, the requirements for naturalization where they have to be continuously present for the five years of the ten years that they are in

the country in order for them to be eligible and there must be no break. And that's what sub section five is trying to say.

And the citizenship of those that a citizen of another country may be granted if under those three conditions the person was formerly a citizen of the state and he or she renounces the other citizenship provided the application has satisfied all the legal requirements imposed by law. That's the additional provision that we have tried to insert. An application for citizenship by registration made by an adult who is or has been married to a citizen born in Fiji may be granted if the applicant is lawfully present in Fiji for a total of five continuous years over ten years immediately before the application.

That's the only change that we would like to impose on the citizenship by registration. Citizenship by naturalization, sub section one, sub section two, we have only suggested after having been lawfully and faithfully, the insertion of the word other two, and faithfully present in Fiji for a total of five continuous years. I know that the standard for that will have to be put up by the immigration department but we would like to ensure that we have the right people with us to be part of our society.

People who are patriotic and faithfully present with us. Loss of citizenship, we are not suggesting any change. On the rights to enter and reside in Fiji, we are requesting if a new sub section D, a child born outside of Fiji who is registered under the Vola ni Kawa Bula or to a father registered under the Vola ni Kawa Bula must have the rights to enter and reside in Fiji.

The powers of parliament concerning citizenship, the Yavusa is of the view that this section should be deleted. Deprivation of citizenship, there is no change. Prevention of statelessness, we would like to see anything on that. On the Bill of Rights, Chapter 4 Bill of Rights, sub section 2 to 4 must be deleted because it repeats all the discovered others. Subsection 1 and rephrase subsection 5 and 8 as follows. This is for the application.

The rights and freedoms set out in this chapter apply according to their tenor and are subject only to limitations under the laws of general application committed by this chapter and to such derogations as are authorized under relevant chapter in the constitution. In considering a particular legislation, the court must interpret this chapter regarding

human rights contextually having regard to the content and consequences of legislation including its impact upon individuals, groups or communities, especially the traditional Fijian and Rotuman community. And that's the point we would like to highlight under the application sections and that's what we are also repeating all along.

For example in subsection 7. We feel that those are matters that need to be considered especially while trying to accede to or ratify human rights or other treaties and agreements. As far as right to personal liberty, we have only made those suggestions by making some deletions in the context that especially in F, 20F and also 23A. In any event, we feel that the seven days in which a person that has been detained, for them to be given some sort of, to give the families the ground for detention is a bit too long. We feel that 48 hours would be the appropriate time for that. Freedom from slavery, forced labour and human trafficking. We just like to add at sub section 2, especially with those children in boarding schools. They may be falling foul in the constitution if they are not able to be pushed to do some warning words and that be an exception to the forced labour and human treatment. If there is an argument on that, that could be an exception too. Freedom from cruel and degrading treatment and medical experimentation.

We feel that medical experimentation should be added and that should be also added to the sub section 3. Every person has the right to freedom from scientific or medical experimentation or treatment or procedures. And we feel that the deletion of those words without an order of the court, it must be without his or her informed consent rather than the order of the court. There can be times which the court can be, but we feel that that is not for us here in Fiji.

And if the child is not, or if the patient is not able to give informed consent without the informed consent of the parent or lawful guardian. 23. Freedom from unreasonable search and seizure.

If the word possession could be added, unreasonable search of his or her person, property or possession. We feel that the word possession is missing because it is not treated under the property and person. Rights of arrested and detained persons.

We know that the Director of Public Prosecutions have already come in to speak on that. We would like to just join the Director of Public

Prosecutions on this submission along those lines. Employment relations or freedom of assembly.
We are not suggesting any changes in there. Freedom of association. Employment relations.

Freedom of movement and residence. Freedom of religion, conscience and belief. Subsection 5. There must be an exception provided that all foreign financial contributions to any school must be approved by government. The reason why we are making this suggestion is the freedom of religion, conscience and belief. There are certain schools that can be funded from outside. We are not being vigilant in ensuring that those funders are not going to harm our society through some sort of push from their side.

For us, for children to learn things that may be harmful to the peace and tranquility of our nation. Subsection 7. A2. Promote peace tolerance to the extent that if necessary, the rights and freedoms set out in this section may be made subject to such limitations prescribed by law. To protect the rights and freedoms of other persons. And promote peace tolerance, national values and public safety, public order, public morality and public health. We feel that those are some of the points that needs to be also included.

Promote peace tolerance, national values and public safety and including others that have already been listed. Political rights. Subsection 3. Every citizen has reached the age of must be 21 years and they can follow through with all those requirements.
21 years instead of 18 years. We feel that 18 years children are still very much at school. And for them to be populated with politics at a very young age is not something that parents would like their children to be placed under.

Right to privacy. Subsection 2. We feel that a law should not limit or may override the limitation of the rights set out in subsection 1. Access to information. Subsection B. Institution or body. Information held by another person, institution or body. Every person has the right to access those information's. Because the information's are not only held by persons. They are mostly held by institutions or body. And we are well aware of that as well. Right to equality and freedom from discrimination. We feel that this provision should be left as is. Freedom from compulsory or arbitrary acquisition of property. Every person has the

right not to be deprived of his or her property by the state other than in accordance with the written law referred to in subsection 2. And no law may permit arbitrary acquisition or expropriation of any interest in any property.

And property or interest in property in this section also include intellectual property rights, traditional knowledge and traditional cultural expressions and genetic resources. We feel that those are matters that need to be also included as part of our properties. I know that there are certain constitutions in the world that include those aspects of especially developed nations like US and some other big countries. The rights of ownership and protection of iTaukei, Rotuman, and Banaban lands and resources. We feel that this provision needs to be amended further. The ownership of all, instead of iTaukei, native land, minerals and other resources including genetic resources should remain with the customary owners of that land.

And native land shall not be permanently alienated whether by sale, grant, transfer or exchange except to the state for public purpose. It must be for public purpose. Native land under this section means lands, minerals and other resources including genetic resources.

Native land include the land and seas with all its resources including from the high water marks to the territorial sea. Now visiting with the government for public access purpose only and not for business or research purpose. When native land and fisheries owners will have to be first consulted for their prior informed consent especially if those areas are subjected to business or research purpose.

We also feel that under subsection 2 to delete under section 27, subsection 3 after the word state include further expand with the following words for public purpose. And further native land under this section means land, minerals and other resources including genetic resources. Native land include the land and seas with all its resources as we have already stated above including from the high water mark to the territorial sea.

Now visiting with the government for public access purpose only and not for business or research purpose. When native land and fisheries owners will have to be first consulted for their prior informed consent. Sorry for repeating the same thing over and over and we are stating the

same thing also in subsection 5. Protection of ownership and interest in land where under this section we feel that this section should be deleted.

Rights of land owners to their fair share of royalties for extraction of mineral businesses or leases. Under subsection 1 fair share shall also include the percentage of business ownership or gross income after taxation from the businesses, lease and subleases. That's under subsection 1. Right to education, subsection 3. Conversational and contemporary Fijian, Rotuman and Indo-Fijian languages shall be taught as subject in all primary schools.

The word contemporary we submitted that should also be deleted. Conversational, the word there should be the original Fijian, Rotuman and Indo-Fijian languages shall be taught as subject in all primary schools rather than the contemporary ones. We should remain with the originals rather than the newly formed languages. Subsection 4 and 5 we submitted those be deleted. Right to economic participation, right to work and thus a minimum wage. Subsection 1, right to SDM, every person to work and to adjust a reasonable minimum wage.

Adjust a reasonable minimum wage. Subsection 2, in applying any right under this section, if the state or employer claims that it does not have the resources to implement the right, it is the responsibility of the state or employer to show that the resources are not available. Right to reasonable access to transportation, we have no suggestion on that. Right to housing and sanitation, also we have no suggestion. Right to adequate food and water, we have no suggestion on that as well. Right to social security schemes, that as well we don't have any.

Right to health, right towards the end of subsection 1 and to healthcare services including reproductive and mental health care. The word mental health be also included. Freedom from arbitrary evictions, we have nothing to say on that. Environmental rights, we also have nothing more to say on that. The rights of children, we feel and we submit that an F, subsection F be included. Accept where reasonable and acceptable measures are taken not to harm the child in any way or form, but to properly discipline the child at home or in school in case of inhuman treatment and punishment. We submit that these are the wordings that at least to the children still needs to be disciplined, but we must make sure that we put in measures to standardize what needs to be done, but

not to hurt them at all in any way or form. Because the best interest of a child are the primary consideration in every matter concerning the child. The rights of persons with disabilities, we have nothing to say on that. Limitation of rights under the state of emergency, we are only making suggestions on A. Any law enacted promulgated A may limit the right or freedom set out in this chapter. Only to the extent that international law, the limitation is necessary and required for emergency and all those. And those are the only few things that we have suggestion on. Enforcement, we really have nothing to add in the enforcement. The Human Rights and Anti-Discrimination Commission, the formation and the powers and duties, we feel that those are the roles that they should also play. Chapter 5, Parliament, we request for the adoption of the 1970, 1990 and the 1997 bicameral parliamentary model.

Chapter 6, Executive, request to grow more from the 1970, 1990 and 1997 model than the 2018. Judiciary, request to grow from those models except the 2013. Public Service Commission, request that the 1970, 1990 and 1997 public service system be adopted so that civil service system is apolitical and remains as such. Honourable Chairman, Honourable Members, with those words we now conclude our submission. Thank you.

Mr. Valenitabua: We note the submissions in relation to various provisions of the current constitution, the 2013 constitution and the suggested amendments that are to be made to them and also the additions which you and your group from Yavusa, from Yavusa Naseuvou have presented to us this afternoon. I have no comments at this point in time unless the other commissioners have comments which they would like to make in relation to the submissions. You, Mr. Kohli.

Mr. Kohli: Thank you for your submission. I'll just take you through a few pages that are numbered. So I'll just raise some of my concerns for you to consider. Number one, citizenship by naturalization. If you look at here I've introduced the word lawfully and faithfully. How do you decide what is faithfully? Something you look at. I'm not saying you give me an answer now. But what do you mean by faithfully decide?

Mr. Tuiloma: Lawfully, yes, we know everybody can abide with the laws. Faithfully is when it comes to participation in social events or community events. It's something of patriotic in nature. And it's not just you are just here or you remain in your house just because you wouldn't like to be shown in the

outside because you don't want to break any laws. You want to be only legally obedient all the time so that you don't break any.
But if a person goes out to the community and I think that's an added bonus that should be also considered by the immigration when they are assessing an applicant. Especially when they would like to be naturalized.

Mr. Kohli: Which is something you may consider, word faithfully. Number two, if you go to the next page, rights to enter and reside in Fiji. Former citizens, former wife or widow, foreign husband, child of a citizen who was born in Fiji, or child born outside of Fiji is registered in the Vola ni Kawa Bula or to a father registered in the Vola ni Kawa Bula. What about if you are a Rotuman? Where do they come under? Thank you.

Mr. Tuiloma: Thank you Commissioner Kohli. For Rotuman's, we've stated earlier on whatever applies to us also applies to the Rotuman's. The reason why we could not, because of the cultural, we really don't want to dwell into, but they should also be considered along the Fijian context. Because we are not very much aware of their cultural system. I think there is something good to think about here. I'm just, as I said to you, something that you might think about.

Mr. Kohli: Then I take you to page, page, oh sorry, sorry, sorry, sorry, sorry, sorry, sorry. Number 21. I'll take it to number 20. A person must not be deprived of personal liberty except with the consent of the person's parent or lawful guardian for the purpose of the person's education or welfare during any period ending not later than the date of his 21st birthday. You want to keep this 21? Thank you. Okay. Then I'll take you to number 21. 21. It says here, freedom from slavery, servitude, forced labor, and human trafficking.

Then it says D, morning works, afternoon and farm works required for boarding school students at secondary school to beautify schools. It's just the only purpose for beautifying schools, nothing else. Is it restrictive?

No, I'm just, I'm just, I'm sorry, I'm saying this may be not the real language, but you may want to think about it. I'm just taking you through. It's something that, you know, came up to our discussion because of, you know, these boarding schools. Parents, they are slowly coming up with those arguments.

Mr. Tuiloma: You know, they should not be, their child should not be forced to do this and that. No, that is okay. The question is only for beautifying schools you can do that.

Oh. I'm saying it should be more than that. Agriculture. It is, it's more for training purposes. So that, the beautify schools will have to be taken out. Yes. Then I take you to 24. I have noticed there, 24E, in case of juveniles to be held separately from persons who are saving, a sentence, in the case of a child to be kept separate from the adults unless that is not in the best interest of the child.

That protects the child, I totally agree. What about a person who has not been convicted? That takes away the adults. What about the adults who are taken to prison and they are presumed to be innocent? Will they stay with the convicted prisoners? At the moment, under the constitution, they are also kept separately, to my knowledge. They are not kept together with the convicted prisoners. So here, they have no right. Under the suggestion that we are doing? Now, what I'm saying is this. The way you've got here, only a child or juvenile will be kept separate from these saving prisoners. Before, there was a provision where people who were taken and put on remand were kept separate as well. They were not put together with the convicted prisoners. So why has adults been removed from there? Adults.

Mr. Tuiloma: That's for detention purposes.

Mr. Kohli: The constitution in 2013 had that. Anyway, we can have a look at that. See, I think there should be a provision for everybody, not only child. A person who is detained, that's not convicted. He's detained, so he should be kept separate from the saving prisoners.

Now, if I take you to... You see, if I take you to 38. If you look at 1, the ownership of all native land, minerals and other resources, it talks about it. Then it says here, the ownership of all... Number three, the ownership of all Rotuman land shall remain the customary owners of that land. And Rotuman land shall not be permanently alienated, whether by sale, transfer, exchange, except to the state for public purposes. Then you go back to native land under this section. Means, lands, minerals and other resources, including genetic resources.

Native land includes... Are you keeping the Rotuman land and native land the same, or are they different? The Rotuman land and native land are the same. The same, okay. Then last one.

The Rotuman land have got their own land rules as well. So it's very much the same. I think what you meant there was Rotuman land, not native land, because native land is up to them.

Mr. Tuiloma: We've shifted the requirements above to also cover that. But native land that we refer to...

Mr. Kohli: But if you go up to 4, it doesn't talk about native land. It talks about Rotuman land. You see what I'm trying to say? There you're not talking about Rotuman land, you're talking about native land.

Mr. Tuiloma: So just to make sure, I'm not quite sure what you're referring to. Then... But the gist of that Rotuman land is the components, the contents of those lands. We are not really referring to land. We are adding many means that are added to the land which are normally unspoken. And that is what we are trying to use.

Mr. Kohli: What I'm saying can cause a confusion if you refer to native land one place and then Rotuman land only. Either you add both of them together, anyway. Then under 40, conversational and original Fijian, Rotuman and Indo-Fijian languages. Now original Hindi language is not Indo-Fijian. It's separate. It's a spoken language.

I'll come to that later, I'll explain to you. And then you've got... I don't understand this. Paragraph 49.

Every child has a right to be registered, basic nutrition, family care, protected. Then it says, except where reasonable and acceptable measures are taken not to harm the child in any way or form, but to properly discipline a child at home and school in case of inhumane treatment and punishment. So you're allowing inhumane treatment and punishment? No, in case of inhumane treatment and punishment, we are trying to include an exception to that, provided those requirements are satisfied.

Can you read that again? Just have a look at it again. Maybe I'm not reading it correctly. I apologize. But have a look. Just read that again.

Forty... Forty-nine? Forty-nine. Fifty-three. Sorry, fifty-f. Sorry, thank you. Fifty-f. Fifty-f. Sorry, my apologies. Fifty-f. I think inhumane treatment should be taken away, and just the word punishment should be left there. Maybe you can look into that sometime, just to see whether I may be wrong. I'm not sure. That is all I have. Thank you very much indeed for your presentation.

Mr. Valenitabua: Thank you. Just take you back to a submission that was made by a student at General Ryan College, when we went there to head of consultations with students, year 13. And the submission was that these rights of children, they are in fact responsibilities of parents, the duty of care of parents, which in a way is correct.

It is the duty of the parent to register the child soon after birth, according to the birth dates and marriages, and basic nutrition, clothing. These are to be provided by the parents. Now, family care, protection and guidance, to be protected from abuse. How do you weigh those two, from duty of care of the child to right of the child?

Mr. Tuiloma : Thank you, Mr. Chairman. This is a very good question. Because right of the child comes to the CRC Convention, and that's where they were more or less picked up from and put it in. The duty of parents is something that we have forgotten to stipulate here also. The problem that we have, we are not localizing international duties and conventions. We are directly adopting them into our system, without localizing them.

And that's one of the requirements we would also like to highlight to be part of our submission. And that's where the problem comes in. You know, the conflicts that we have in our system, and our understanding of our parents' role is, you know, to do all those.

Whereas the child rights come with another angle, through the duties that they have. And all these laws will need to be domesticated. They need to come in alignment with our system. Without that, we'll always be going around in a circle, like what we are doing now. All these duties have not been domesticated. And something which I'm still asking our office to do, was to move into that. To ensure that we put in domestic laws, to ensure that we have a footing of all these duties in our laws here in Fiji. Because without that, direct application, there's a danger to that. Especially with the sovereignty of a nation.

We cannot allow international organizations to come in directly and question us on how we are. We should only be responsible to what we can cater for under our domestic laws. And that's the future we should always angle ourselves to that. With that question that you asked, Mr Chairman, it's a difficult question for me to answer. Because I don't really know how to manoeuvre the two laws to be consistent. On one hand, we have the duty of care of a parent, and on the other, the rights of a child.

Mr. Valenitabua : The rights of the child is under section 41 of the constitution. We were told that day, delete everything, section 41, take away the right of the child. And then bring this in as duty of care for the parents. Now that was a conclusion which was, I believe, reached because of the many problems that are being introduced by the rights of the child. It's being abused. You know, just reading this, this is coming from your submission.

We have heard from year 12 students that section 41 of the constitution in relation to the rights of the child should be deleted, removed completely. And we change this right here to be the duty of care. So it's something that we'll just have to think about.

Mr. Tuiloma: The reason why we have not suggested deletion is because we have to understand that this constitution had been around for some time. And there are mechanisms already in place. If we have to delete something, then there must be a foundation for them to land on. Because if we delete something without putting a footing in preparation for that system to land on, we'll end up in trouble also. Yes. These are all new rights.

The whole world is still searching. Some of them have not actually implemented them, the rights to health, environment. It comes up every year. But we have quickly adopted them into our constitution. And now when you look at the population, they are very much aware and they are now moving along with these rights. And if we have to take them out, we have to ensure that there's no left for our population to find some relief on. That is something that we...

Mr. Valenitabua: That is a problem that we have now. We have not domesticated most of these laws, right? Yeah, okay.

Mr. Kohli : Freedom, 22. Freedom from cruel and degrading treatment and medical experimentation. I have seen in subsection 3, every person has a right to freedom from scientific or medical experimentation or treatment or procedures. You have taken out without the order of the court by putting down without his or her informed consent. If he or she is incapable of giving informed consent without the informed consent of parent or local guardian. I've come across cases where they don't have parents, they don't have guardians. And they are roaming around the street with the drug related and we have to go to court to get an order of the court for him to be sent to St. Joseph's Mission. Where will they fit in? You know, if you take the order of the court, where would they fit in? Welfare officer struggles with this, they come to court for orders. Sometimes we struggle with our client's relative, they are not guardian, they are not parent, they don't want to know them. But they want help. So I think you should insert that order of the court as well.

Mr. Tuiloma : The context in which we were looking at it is more from the aspect where the system or the government goes to court to make, if there is no law in place, and policy, they go to court just to ensure that they make children abide with, or the population abide. It's something which, if we look at this COVID system that came into, something of that nature actually happened in a lot of countries as well.

Where the court became part and parcel of the government, issuing out orders, and that's how the system operates. That was the context in which we were looking at this year. So your argument is a very good argument, the way we are looking at it from our side is good, but domestication is something that's still missing.

So that we consider all these views, and ensure that this law, when we are putting it in place, we put message along those lines that we prevent the system from being abused, whether it's from our side or from...

Mr. Kohli : Some people didn't want to take injections, and they are forced upon by the government. I don't see where you are coming from, but I think you should address also this. Please, I request you not to have a look at it.

Ms. Nailatikau : Thank you. Thank you very much Mr. Tuiloma, and your esteemed fellow delegates today for your submission. I take it that my colleague who has a special interest in the Bill of Rights would have conveyed some of his

responses in relation to the very valid concern that you are raising around the importance of the family.

And I noticed that you included that in your preamble text. And some of the submissions that we've been receiving from faith-based organizations, including a young pastor who works with disadvantaged youth, spoke about the great volume of young people who fall by the wayside of the law, having come from incomplete family units. Who do not have the benefit of having a stable, supportive, resourced family life. And I believe, as is already contained in the Constitution, there are elements there that talk about a child's right to protection and care by their parents, whether or not their parents have been or are married. And I think that covers the element, or at least speaks to the element of the duty of care that I believe you are all very supportive of, and that Chair has also mentioned. So I think, I commend that aspect in terms of the recognition of the family.

And a lot of the submissions we've received also speak about the recognition of the family as a fundamental unit of well-being in a nation, in a society. With that, in addition to that, I also touch on your aspect about citizenship, pathways to citizenship, and ways in which we can maintain links, but also exercise caution in the submissions that you have provided. My question is in relation to loss of citizenship, and I was wondering, it's a two-pronged question, forgive me.

Firstly, in relation to the loss of citizenship, I was wondering what your views may be in relation to dual citizenship. As we've seen, you know, a tremendous amount of both Indigenous and non-Indigenous people of Fiji have gone abroad, still have very strong links, as we all know, to the country. So, I was wondering what your views would be on dual citizenship.

And secondly, in relation to some of the wording I was seeing in terms of having Fijian parentage, the parentage seems to be skewed towards paternal, towards the paternal side. As someone with maternal links to your province, I still very much consider myself connected there as well. I just wanted to ask what your views are, and particularly with, I know that Fiji has a very dear and treasured system that we call the vaso system, or the maternal link system.

I would just be interested to hear your thoughts along that line. It would be remiss of me not to raise it, so I thought to raise it to you.

Mr. Tuiloma: I'll address the paternal, why we have made those suggestions. I think these are very live questions that have been discussed right up to the GCC level. But as is, as of today, everything is still very much paternal, the linkage, and that was why we have made those suggestions. We are very much aware of the other side as well. But I think the customs, our customs and traditions tends to be skewed more towards that. Even, I thought we would have very much relaxed on certain aspects, but I still see it's still very much skewed towards the paternal. And until that time comes, we can make submissions that cover those points as well.

And the other question is, loss of citizenship, of dual citizenship. Dual citizenship is a very, it's a very good topic to discuss, both at national level as well. I for one feel that, the question that I always raise is, are we ready for dual citizenship? Especially with the numbers, I was very conscious of the numbers that we have. Because the more we open up our system, there is a danger of us being subdued by others who are much stronger financially. As well as through whatever means that they have to attain both citizenships. And I think it has come to a time where I think dual citizenship, we are now getting ready for that. And I think the system now has approved it. And now the, a lot of us are now holding dual citizenships. Unfortunately, I'm not one of those. I'm not one of those. But I think it's something that, especially the, from the financial, social side of context. Of having such a system in place, and the contribution that it can advance the nation.

And from our perspective, even the traditional cultural system, how much affected are we to having the system open up through that means. At the moment I have not, it's something which I know my family is exposed to it. And a lot of my family here are already in it. But we appreciate those that have advanced to that level. But perhaps we should make sure that we study the system very well on how, on those impacts. In order for us to make a substantive claim to whatever position that we are holding. At present I cannot really say whether I belong to this side or this side. I have no knowledge of the stats that are there. On those discussions and those issues as well. Thank you very much. Thank you.

Mr. Conway: Sorry Chair, through you. Thank you very much Mr. Tuiloma. And the villagers of Nasaqalau. I just, my commissioners have spoken a lot. I just

have one point. You know, you mentioned the point about transitional government in your presentation. I guess our terms of reference are very limited to what we can do. I'm sure the Chair will probably elaborate a little bit more on that. But yeah, I think that's not for us. I guess Parliament will need to convene and consider these. You're not the first one to bring this forward. This has been brought to us by numerous places throughout Fiji. So, the point is taken. I just wanted to stress that point. But thank you very much. I think some of the points around the Bill of Rights. You know, balancing it. And I think the points are well taken and considered. Especially the rights around forced labour. Like in the core of my days at boarding school. But it was all for a good cause. Thank you very much.

Mr. Valenitabua: Mr. Tuiloma. Vei kemudou na Turaga na marama ni Naseuvou. We thank you very much indeed for the submission that has been presented to us this morning. Particularly on the concentration to the various sections.

And the Bill of Rights. This is our expert in the Bill of Rights. And the Bill of Rights which we have been directed to. And the amendments which can possibly be made. So that is the end of our consultation. We will consider what has been presented to us during our deliberations. Thank you Very much.

----------End of Session [9-7-2026]----------

CONSTITUTIONAL SUBMISSION BY THE VILLAGE OF NASAQALAU, LAKEBA, LAU

MR. TOMASI TIKOIMALEYA

TURAGA BALE NA TUI NASAQALAU

Mataqali Dreketi, Mataqali Loma, Mataqali Nakabuta, Mataqali Nautuqumu

Wiliwili ni Lewe Ni Yavusa era duavata ena vakatutu oqo -

We want to state a few requests to the Chair and members of the CRC for kind considerations, before we make our submission proper. Generally our submission will cover the following:

1. We join all those that have earlier submitted beore the CRC; 'to hold the upcoming general election under the new constitution, and not under the 2013 constitution.'
2. To facilitate that, a transition period be created within the law, for an interim government made up of the present MPs run and transcend into the new constitutional system for 18 months, before a general election is called. The only outstanding matter left under the 2013 constitution that need to be satisfied is a referendum to be held on the 27th January, 2027, on the question whether our people would like a general election held under the old 2013 Constitution, or under the New Constitution.
3. Rights and Freedoms under the constitution must all be revised and appropriately placed and worded properly....as we will refer to later, in our submission.
4. Put the voting age or majority age back to 21 years and not 18 years – don't populate them with things that will denigrade their personal, or traditional and cultural values.
5. Fiji should have a bicameral legislature and not unicameral as is today – adopt the 1970 constitutional model concerning the bicameral Parliament or Legislature.
6. **<u>Section xxxxxxx.</u> Recall of members of Parliament**
   Any member of the Parliament may be removed from office by recall. A recall is initiated by a petition which shall identify the official sought to be recalled by name and seat, state the grounds for the recall, and be signed by at least twenty-five percent of the persons qualified to vote for the seat occupied by the member. A special recall election shall be held not later than sixty calendar days after the filing of the recall petition. A member of Parliament shall be removed from office with the approval of a majority of the persons voting in the election. A recall petition may not be filed against a member more than once per term or during the first year of a term in office.
7. The right of the indigenous fijians to self determination must also be a standalone right under the constitution.
8. Fijian children born outside Fiji who are registered under the Vola ni Kawa Bula must have the right to enter and leave Fiji.
9. The word Fijian should only be reserved for the Fijian race. All iTaukei reference to Fijians are to be reverted to Fijian. [All races should be proud of their race, as that is who they were born and came into the world with].

10. **Section xxxxxxx Meaning of "Fijian," Rotuman and "Indo-Fijian".**
    For the purposes of this Constitution –
    (a) a person shall be regarded as a Fijian if, and shall not be so regarded unless, his father or any of his earlier male progenitors in the male line is or was the child of parents both of whom are or were indigenous inhabitants of Fiji; and
    (b) a person shall be regarded as a Rotuman if, and shall not be so regarded unless, his father or mother or any of his earlier female and male progenitors in the female and male line is or was the child of parents both of whom are or were indigenous inhabitants of Rotuma; and
    (b) a person shall be regarded as an Indo Fijian if, and shall not be so regarded unless, his father or any of his earlier male progenitors in the male line is or was the child of parents both of whom are or were indigenous inhabitants of the sub-continent of India and came to Fiji through the Girimytians; Provided that, where the identity of the father of any person cannot be ascertained, the male progenitors of that person may instead be traced through that person's mother.

11. **The Deed of Cession recognises that Fijian lands, seas and resources belongs to the Fijians, or Rotumans, but some portions of which had either been alienated, retained or inappropriately sold, and for their rightful ownership and valuations determinations, a Deed of Session Tribunal MUST be formed to decide on the validity, value and other matters regarding such claims, including validations of title, land, marine and fisheries claims under the Native Land and Fisheries Commission, by Fijians.**
12. **The GCC to be the body to appoint the President.**
13. **The amendment to the current mineral royalty distribution policy where only five percent of the returns are given as royalty to the government, and 80-90% of that 5% is given to landowners, the government retains the rest of that 5% - the mineral leaseholders retain 95% of the return, is long overdue.**
14. Repeal the current and reverse Public Service System or civil service systems back to it's a-political or political free status similar to the 1970, 1990 and 1997 Constitutions.
15. The Executive - repeal the current and revert to the 1970, 1990, and the 1997 constitutional framework.
16. Amendments to the Const under CAP 11 - Constitution must be reviewed every 7 years, and any amendments to the constitution must await that period. After public consultation, the amendment process should follow simple majority for provisions that have little impact on Fijian lands and resources and their customs and traditions.

AN ACT

TO AMEND THE CONSTITUTION OF THE SOVEREIGN DEMOCRATIC REPUBLIC OF FIJI

ENACTED by the Parliament of Fiji -

"WE, THE PEOPLE OF THE REPUBLIC OF FIJI,

ACKNOWLEDGE THE BLESSINGS OF OUR GOD, TO THE PEOPLE, THEIR LAND, SEAS, AND AIRWAYS.

ACKNOWLEDGE that our lands with its vast ocean and resources have been a cherished ancestral home for generations of the Fijian people. Recognizing the enduring connection between the Fijian people and this land, we celebrate and share their values of respect and reverential fear of God, honoring elders, ancestors and chiefs, nurturing a strong sense of community, and fostering a harmonious relationship with our natural world, ownership of land, sea and resources, including genetic resources and traditional knowledge, traditional cultural expressions to their unique culture, customs, traditions, language, and intellectual property.

ACKNOWLEDGE, that the Deed of Cession recognises that Fijian lands, seas and resources belongs to the Fijians, or Rotumans, but some portions of which had either been alienated, retained or inappropriately sold, and for appropriate ownership and valuations determinations, a Deed of Session Tribunal shall be formed to decide on the validity, value and other matters of such claims, including validations of claims under the Native Land and Fisheries Commission by Fijians.

We further acknowledge the unique history and heritage of Rotuma, a people with their own distinct culture and traditions. Recognizing that Rotuma entered into a separate Deed of Cession, we affirm Rotuma's distinct identity and rights, emphasizing the need for ongoing dialogue to clarify and strengthen Rotuma's relationship with Fiji. We affirm the importance of preserving Rotuman culture while embracing our shared identity as Fijians and Rotumans, ensuring that their voice and perspectives are integral to the future of our nation.

Recognizing that Fiji has become a vibrant tapestry woven from diverse backgrounds and experiences, we celebrate the contributions of all who have made this land their home. We commit ourselves to building a nation where the rights and dignity of every individual are upheld, respecting the foundational role of Fijian traditions and customs while embracing the diversity that defines Fiji today. We aspire to a future built on mutual

respect, understanding, and shared prosperity, ensuring that our nation continues to evolve in a way that honors the past while embracing the opportunities of tomorrow.

RECOGNISING that the descendants of all those who chose to make their homes in these islands form our multiracial and multicultural society:

AFFIRMING the contributions of all communities to the well-being of our society, and the rich variety of their faiths, traditions, languages and cultures:

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

REAFFIRMING our recognition of the human rights and fundamental freedoms of all races and groups, safeguarded by adherence to the rule of law, and our respect for human dignity and the importance of the Family,

WITH GOD AS OUR WITNESS, GIVE OURSELVES THIS CONSTITUTION."

CHAPTER 1 STATE AND THE CONSTITUTION

SECTION 1 – REPEAL, the current provision as it repeats what stated in all other provisions about democracy and its values. Equal citizenry is a philosophical concept that should never be forced as it attempts to eliminate the Fijian race/ethnicity and their values.

Replace it with: SECTION 1 - THE STATE

1. The Republic of Fiji (Viti or Viji) is a sovereign democratic State.

SECTION 2 – CONSTITUTION IS THE SUPREME LAW OF THE STATE

2. Constitution is the supreme law of Fiji and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void.

SECTION 3 - ELECTION – AND MOVE THE CURRENT SECTION 3 (PRINCIPLES OF CONSTITUTION INTERPRETATION) TO BE SECTION 4

3. Notwithstanding the provision of Sections 58 and 59 of the 2013 Constitution, the Referendum and Saved Provisions Act, 2026, writs for the first general election of members of the House of Representatives shall be issued within the period of eighteen months from the date of coming into force of this Constitution.

SECTION 4 - INTERPRETATION OF THE CONSTITUTION – Change the wordings of the current s3 Interpretation provision – The current s4 be deleted - 'secular state'

4.In the interpretation of a provision of this Constitution -

(a) a construction that would promote the purpose or object underlying the provision, taking into account the spirit of this Constitution as a whole, is to be preferred to a construction that would not promote that purpose or object; and

(b) regard must be had to the context in which this Constitution was drafted and to the intention that constitutional interpretation take into account social and cultural developments and impacts, especially:

(i) developments in the understanding of the content of particular human rights and its impact on peace and tranquility in Fijian society; and

(ii) developments in the promotion of particular human rights that is balanced with the Fijian traditional society.

(c) The government shall codify the traditional and cultural laws of the Fijian people to be part of the laws of Fiji, to the extent of its consistencies with this constitution and other laws, and any inconsistency of traditional customary law to this consitution or other laws is void to the extent of its inconsistency, provided s5(3) have been exhausted.

SECTION 5 – LANGUAGES

5.-(1) The English, Fijian, Rotuman and Hindustani languages have equal status in the State.

(2) This Constitution is to be adopted in English but translations in Fijian, Rotuman and Hindustani are to be available.

(3) If, in the interpretation of a provision of this Constitution, there is an apparent difference between the meaning of the English version of the provision and its meaning in Fijian, Rotuman or Hindustani, the English version prevails, provided contextualisations must be exhausted and considered in their verneculars. Where result would be better achieved in the vernecular context, than the vernecular context supercede.

(4) Every person who transacts business with:

(a) a department;

(b) an office in a state service; or

(c) a local authority; has the right to do so in English, Fijian, Rotuman or Hindustani, either directly or through a competent interpreter.

SECTION 6 – BOSE LEVU VAKATURAGA (GREAT COUNCIL OF CHIEFS)

6. (1) The Bose Levu Vakaturaga established under the Fijian Affairs Act continues in existence and its membership, functions, operations and procedures are as prescribed under that Act.

(2) The Bose Levu Vakaturaga has, in addition to the functions set out in the Fijian Affairs Act, the functions conferred on it under this Constitution.

CHAPTER 2 COMPACT

Section 7. The people of the Republic of Fiji recognise that, within the framework of this Constitution and the other laws of the State, the conduct of government must be based on the following principles:

(a) the rights of all individuals, communities and groups are fully respected;

(b) the ownership of Fijian and Rotuman land, seas and space, including their genetic resources, traditional knowledge and traditional cultural expressions and intellectual property according to Fijian and Rotuman traditional customs and laws, the ownership of freehold land, and the rights of landlords and tenants under leases of agricultural land are preserved to the extent of their consistency with this constitution;

(c) Fiji a country founded on Christian values and principles recognise that all persons are free to exercise their right to practise their beliefs or religion and to retain their language, culture and traditions;

(d) the rights of the Fijian and Rotuman people include their right to their self determination, that also include governance through their separate administrative systems, and the right to be consulted to give their prior informed consent to their ownership under subsection (b);

(e) as citizens, the members of all communities enjoy equal rights, including the right to make their permanent homes in the Fiji Islands;

(f) the rights of a citizen include the right to form and join political parties; that is preferrably two, to take part in political campaigns, and to vote and to be a candidate in free and fair elections of members of the House of Representatives held by secret ballot and ultimately on the basis of equal suffrage;

(g) the formation of a government that has the support of a majority in the House of Representatives depends on the number of majority number of seats received by a political party, or a coalition government from among competing parties, depending on their willingness to come together to form or support a government;

(h) a two party election would be our desire, provided our people agree;

(h) in the formation of a government, and in that government's conduct of the affairs of the nation through the promotion of legislation or the implementation of administrative policies, full account is taken of the interests of all communities, and no laws shall be passed or be substantially amended through consequential bills to an annual budget bill;

(i) to the extent that the when multicultural parties are leading government, and interests of different communities are seen to conflict, all the interested parties negotiate in good faith and in the best interest of the people they represent, in an endeavour to reach agreement;

(j) in those negotiations, the paramountcy of Fijian or Rotuman interests as a protective principle continues to apply, so as to ensure that the interests of the Fijian and Rotuman communities are not subordinated to the interests of other minority communities;

(k) affirmative action and social justice programs to secure effective equality of access to opportunities, amenities or services for the Fijian and Rotuman people, as well as for other communities, for women as well as men, and for all disadvantaged citizens or groups, are based on an allocation of resources broadly acceptable to all communities;

(l) all communities in Fiji shall have programs for equitable sharing of economic and commercial power to ensure that all communities fully benefit from the nation's economic progress.

Application of Compact

8.- (1) The principles referred to in section 7 are non-justiciable, except to the extent that they are made the subject of other provisions of this Constitution or of a law made under this Constitution.

(2) In the interpretation of this Constitution or a law made under this constitution consideration must be given to these principles, when relevant.

CHAPTER 3 CITIZENSHIP

Retention of existing citizenship

9. Subject to this Constitution, the coming into effect of this Constitution does not affect the citizenship of a person who was a citizen immediately before it came into effect.

Way in which citizenship may be acquired

10. (1) Citizenship may be acquired by: (a) birth; (b) registration; or (c) naturalisation.

(2) Parliament may make law providing conditions for the acquisition of citizenship.

Citizenship by birth

10. Every child born in Fiji on or after the date of commencement of this Constitution becomes a citizen at the date of birth unless, at the date of birth:

(a) a parent of the child has the diplomatic immunity accorded to envoys of foreign sovereign powers accredited to Fiji;

(b) neither parent is a citizen born in Fiji; and

(c) provided, a child born outside of Fiji to a father registered under the Vola ni Kawa Bula, shall be a citizen of Fiji by birth.

Infant found abandoned in Fiji

11. An infant found abandoned in Fiji is deemed to have been born in Fiji, in the absence of proof.

Citizenship by registration

12. (1) A child born outside Fiji on or after the date of commencement of this Constitution may become a citizen by registration if, at the date of the child's birth, either or both parents were citizens born in Fiji, provided, a child born outside of Fiji to a father registered under the Vola ni Kawa Bula, shall be a citizen of Fiji by birth.

(2) A foreign child adopted by a citizen born in Fiji by a parent who was a citizen and born in Fiji, when the child was under the age of ~~18~~ 16 may become a citizen by registration, provided all legal requirements for citizenship are satisfied.

(3) A child who was under the age of 21, but, more than 16 years, when either parent became a citizen may become a citizen by registration, provided they satisfy all other legal requirements for citizenship, and there are no conditions imposed on either parent or child.

(4) An application for registration under subsection (1), (2) or (3) maybe made at any time during the child's lifetime and, if he or she is under the age of 21 at the date of the application, may be made on his or her behalf by a parent or guardian.

(5) An application for registration under subsection (1), (2) or (3) made by the child concerned after he or she has reached the age of 21 must not be granted unless he or she has been lawfully and continously present in Fiji for a total of 5 of the 10 years immediately before the application.

(6) An application for citizenship by registration made by an adult who is a citizen of another country ~~must~~ may be granted if:

(a) the person was formerly a citizen of the State; and

(b) he or she renounces the other citizenship;

(c) provided the application has satisfied all the legal requirements imposed by law.

(7) An application for citizenship by registration made by an adult who is or has been married to a citizen ~~must~~ born in Fiji may be granted if the applicant:

(a) has been lawfully present in Fiji for a total of 5 continuous years of the 10 years immediately before the application; and

(b) complies with such other conditions as the Parliament prescribes.

(8) If, in accordance with this Constitution, a person is required to renounce the citizenship of another country in order to become a citizen of the State but the law of that other country effectively prevents renunciation of that citizenship, the person is deemed to have renounced that citizenship if he or she declares, in a form prescribed by the Parliament, an intention not to exercise the entitlements of that citizenship.

Citizenship by naturalisation

13. (1) A person may become a citizen by naturalisation (Constitution (Amendment) Act 1997).

(2) A condition of naturalisation is that the person has been lawfully and faithfully present in Fiji for a total of 5 continuous years of the 10 years immediately before the application for naturalisation is made.

Loss of citizenship

14. (1) Subject to this section, a person forfeits citizenship if he or she voluntarily acquires the citizenship or nationality of another country.

(2) A citizen of the State who, while a minor, acquires the citizenship of another country forfeits his or her citizenship of the State at the age of 22 unless, after reaching the age of 21 and before reaching the age of 22, he or she renounces the other citizenship.

(3) An adult who involuntarily acquires the citizenship of another country does not forfeit his or her citizenship of the State unless he or she fails to renounce the other citizenship within 12 months of:

(a) becoming aware of it; or

(b) being required by the Minister to renounce it; whichever first occurs.

Renunciation of citizenship

15. A person may renounce his or her citizenship only if he or she:

(a) has reached the age of 21; and

(b) has been since birth a citizen of another country or has acquired the citizenship of another country by registration or naturalisation.

Rights to enter and reside in Fiji

16. The following persons may enter and reside in Fiji so long as they comply with conditions prescribed by the Parliament governing entry and residence:

(a) former citizens;

(b) a foreign wife or widow or foreign husband or widower of a citizen born in Fiji;

(c) a child of a citizen who was born in Fiji; or

(d) a child born outside of Fiji who is registered under the Vola ni Kawa Bula or to a father registered under the Vola ni Kawa Bula.

~~Powers of Parliament concerning citizenship~~

~~17. Subject to subsections 9(2) and 12(6), the Parliament may make laws:~~

~~(a) prescribing conditions upon which a person may become a citizen that are in addition to the conditions set out in this Constitution; and Constitution (Amendment) Act 1997, and 2013 Constitution~~

~~(b) relating to the making of applications for citizenship by registration or naturalisation.~~

~~Laws relating to calculation of periods in Fiji~~

~~18. For the purpose of calculating under this Constitution periods of lawful presence in Fiji, the Parliament may make laws specifying certain periods that are not to be taken into account.~~

Deprivation of citizenship

17. (1) Parliament may make laws depriving a person of citizenship in the following circumstances only:

(a) if citizenship was obtained by fraud, misrepresentation or the concealment of a material fact;

(b) if the person, in accordance with subsection ....., declared an intention not to exercise the entitlements of citizenship of another country but has, since making that declaration, exercised such an entitlement.

(2) A law made under subsection (1) must provide for the according of procedural fairness to the person concerned.

~~Prevention of statelessness~~

~~20. Despite anything i Constitution of 1990: (a) a person born in Fiji in the period that began on 28 September 1987 and ended on 24 July 1990 is taken to have become a citizen on the date of birth; (b) a person born outside Fiji in the period that began on 28 September 1987 and ended on 6 October 1987 is taken to have become a citizen on the date of birth if his or her father was a citizen on that date and was not himself born outside Fiji; and (c) a person born in Fiji in the period that began on 25 July 1990 and ended on the date of commencement of this Constitution is taken to have become a citizen on the date of birth if he or she would otherwise be stateless.~~

CHAPTER 4 BILL OF RIGHTS

Application

18. (1) This Chapter binds:

(a) the legislative, executive and judicial branches of government at all central, divisional and local; and

(b) all persons performing the functions of any public office.

Subsections 2 – 4 must be deleted – repeat all that is covered at subsection (1). Rephrase subsections 5 – 8 as follows:

(2) The rights and freedoms set out in this Chapter apply according to their tenor and are subject only to the limitations under laws of general application permitted by this Chapter and to such derogations as are authorised under Chapter XXXXXXX – (state of emergency)

(3) Laws made and administrative and judicial actions taken after the commencement of this Constitution are subject to the provisions of this Chapter.

(4) In considering the application of this Chapter to particular legislation, a court must interpret this Chapter contextually, having regard to the content and consequences of the

legislation, including its impact upon individuals, groups or communities, especially the traditional Fijian and Rotuman community.

(5) This Chapter applies to all laws in force at the commencement of this Constitution.

(6) To the extent that it is capable of doing so, this Chapter extends to things done or actions taken outside Fiji.

(7) In considering the application of this Chapter to any particular law and policies, courts must interpret this Chapter contextually, having regard to the content and consequences of the law or policy, including its impact upon individuals or groups of individuals, their peace and tranquility, including traditional Fijian villages and communities and their unique cultural set-ups.

Section 7 – Interpretation – Deleted – all covered under application above

Right to life

19. Every person has the right to life, and a person must not be arbitrarily deprived of life.

Right to personal liberty – elaborate and favour keeping but with amendments as suggested

20. 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 had been convicted;

b. for the purpose of executing an order of a court or tribunal;

c. for the purpose of executing an order of a court made to secure the fulfilment of an obligation imposed on the person by law;

d. for the purpose of bringing the person before a court in execution of an 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 lawful 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 21st 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 restricting and preventing the unlawful entry of the person into Fiji or of effecting the expulsion or deportation, extradition or other lawful removal of the person from Fiji.

2. Subsection (1)(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 wilfully refused to pay despite having the means to do so.

3. If a person is detained pursuant to a measure authorised under a state of emergency-

a. the person must, as soon as is reasonably practicable and in any event within ~~7 days~~ 48 hours after the start of the detention, be given a statement in writing, in a language that the person understands, specifying the grounds of the detention;

b. the person must be given the opportunity to communicate with, and to be visited by

i. his or her spouse, partner or next-of-kin;

ii. a legal practitioner;

iii. a religious counsellor or a social worker; and

iv. a medical practitioner;

c. the person must be given reasonable facilities to consult with a legal practitioner of his or her choice;

d. the detention must, within one month and thereafter at intervals of not more than one month, be reviewed by a court; and

e. at any review by a court, the person may appear in person or be represented by a legal practitioner.

4. At any review of the detention under subsection (3), the court may make such orders as to the continued detention of the person.

21. Freedom from slavery, servitude, forced labour and human trafficking

1. A person must not be held in slavery or servitude, or subjected to forced labour or human trafficking.

2. In this section, "forced labour" does not include-

a. labour required in consequence of a sentence or order of a court;

b. labour reasonably required of a person serving a term of imprisonment, whether or not required for the hygiene or maintenance of the prison; or

c. labour required of a member of a disciplined force as part of his or her duties; or

d. mornings works, afternoon and farm works required for boarding school students at secondary schools to beautify schools.

22. Freedom from cruel and degrading treatment and medical experimentation

1. 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.

2. Every person has the right to security of the person, which includes the right to be free from any form of violence from any source, at home, school, work or in any other place.

3. Every person has the right to freedom from scientific or medical experimentation or treatment or procedures ~~without an order of the court or~~ without his or her informed consent, or if he or she is incapable of giving informed consent, without the informed consent of parent or a lawful guardian.

23. Freedom from unreasonable search and seizure

1. Every person has the right to be secure against unreasonable search of his or her person, property or possession and against unreasonable seizure of his or her property or possession.

2. Search or seizure is not permissible otherwise than under the authority of the law.

24. Rights of arrested and detained persons

1. Every person who is arrested or detained has the right

a. to be informed promptly, in a language that he or she understands, of-

i. the reason for the arrest or detention and the nature of any charge that may be brought against that person;

ii. the right to remain silent; and

iii. the consequences of not remaining silent;

b. to remain silent;

c. to communicate 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 so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission;

d. not to be compelled to make any confession or admission that could be used in evidence against that person;

e. in case of juveniles, to be held separately from persons who are serving a sentence, and in the case of a child, to be kept separate from adults unless that is not in the best interests of the child;

f. to be brought before a court as soon as reasonably possible, but in any case not later than 48 hours after the time of arrest, or if that is not reasonably possible, as soon as possible thereafter;

g. at the first court appearance, to be charged or informed of the reasons for the detention to continue, or to be released;

h. to be released on reasonable terms and conditions, pending a charge or trial, unless the interests of justice otherwise require;

i. to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;

j. to conditions of detention that are consistent with human dignity, including at least the opportunity to exercise regularly and the provision, at State expense, of adequate accommodation, nutrition, and medical treatment; and

k. to communicate with, and be visited by,-

i. his or her spouse, partner or next-of-kin; and

ii. a religious counsellor or a social worker.

2. Whenever this section requires information to be given to a person, that information must be given simply and clearly in a language that the person understands.

3. A person who is deprived of liberty by being detained, held in custody or imprisoned under any law retains all the rights and freedoms set out in this Chapter, except to the extent that any particular right or freedom is incompatible with the fact of being so deprived of liberty.

25. Rights of accused persons

1. A person shall not be tried for -

a. any act or omission that was not an offence under either domestic or international law at the time it was committed or omitted; or

b. an offence in respect of an act or omission for which that person has previously been either acquitted or convicted.

2. Every person charged with an offence has the righta. to be presumed innocent until proven guilty according to law;

b. to be informed 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 defence, 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 own choice, and to be informed promptly of this right or, if he or she does not have sufficient means to engage a legal practitioner and the interests of justice so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission, and to be informed promptly of this right;

e. to be informed in advance of the evidence on which the prosecution intends to rely, and to have reasonable access to that evidence;

f. to a public trial before a court of law, unless the interests of justice otherwise require;

g. to have the trial begin and conclude without unreasonable delay;

h. to be present when being tried, unless

i. the court is satisfied that the person has been served with a summons or similar process requiring his or her attendance at the trial, and has chosen not to attend; or

ii. the conduct of the person 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. to be tried in a language that the person understands or, if that is not practicable, to have the proceedings interpreted in such a language at State expense;

j. to remain silent, not to testify during the proceedings, and not to be compelled to give self-incriminating evidence, and not to have adverse inference drawn from the exercise of any of these rights;

k. not to have unlawfully obtained evidence adduced against him or her unless the interests of justice require it to be admitted;

l. to call witnesses and present evidence, and to challenge evidence presented against him or her;

m. to a copy of the record of proceedings within a reasonable period of time and on payment of a reasonably prescribed fee;

n. to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time the offence was committed and the time of sentencing; and

o. of appeal to, or review by, a higher court.

3. Whenever this section requires information to be given to a person, that information must be given as simply and clearly as practicable, in a language that the person understands.

4. A law is not inconsistent with subsection (1)(b) to the extent that ita. authorises 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.

26. Access to courts or tribunals

1. Every person charged with an offence has the right to a fair trial before a court of law.

2. 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.

3. 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.

4. The hearings of courts (other than military courts) and tribunals established by law must be open to the public unless the interests of justice require otherwise.

5. Subsection (4) does not prevent-

a. the making of laws relating to the trials of children, 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 a person other than parties and their legal representatives if a law empowers it to do so in the interests of justice, public morality, the welfare of children, personal privacy, national security, public safety or public order.

6. 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.

7. 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.

8. To give effect to the rights referred to in subsections (6) and (7), 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 sign language.

9. 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.

10. The State, through law and other measures, must provide legal aid through the Legal Aid Commission to those who cannot afford to pursue justice on the strength of their own resources, if injustice would otherwise result.

11. If any fee is required to access a court or tribunal, it must be reasonable and must not impede access to justice.

12. In any proceedings, evidence obtained in a manner that infringes any right in this Chapter, or any other law, must be excluded unless the interests of justice require it to be admitted.

~~16. Executive and administrative justice~~

~~1. Subject to the provisions of this Constitution and such other limitations as may be prescribed by law-~~

~~a. every person has the right to executive or administrative action that is lawful, rational, proportionate, procedurally fair, and reasonably prompt;~~

~~b. every person who has been adversely affected by any executive or administrative action has the right to be given written reasons for the action; and~~

~~c. any executive or administrative action may be reviewed by a court, or if appropriate, another independent and impartial tribunal, in accordance with law.~~

~~2. The rights mentioned in subsection (1) shall not be exercised against any company registered under a law governing companies.~~

~~3. This section shall not have retrospective effect, and shall only apply to executive and administrative actions taken after the first sitting of the first Parliament elected under this Constitution.~~

27. Freedom of speech, expression and publication

1. Every person has the right to freedom of speech, expression, thought, opinion and publication, which includes

a. freedom to seek, receive and impart information, knowledge and ideas;

b. freedom of the press, including print, electronic and other media;

c. freedom of imagination and creativity; and

d. academic freedom and freedom of scientific research.

2. Freedom of speech, expression, thought, opinion and publication does not protecta. propaganda for war;

b. incitement to violence or insurrection against this Constitution; or

c. advocacy of hatred that

i. is based on any prohibited ground of discrimination listed or prescribed under section 26; and

ii. constitutes incitement to cause harm.

3. To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights and freedoms mentioned in subsection (1) in the interests of

a. national security, public safety, public order, public morality, public health or the orderly conduct of 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 rights 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 of individuals or respected offices or institutions in a manner likely to promote ill will between ethnic or religious groups or the oppression of, or discrimination against, any person or group of persons;

e. maintaining the authority and independence of the courts;

f. imposing restrictions on the holders of public offices;

g. regulating the technical administration of telecommunications; or

h. making provisions for the enforcement of media standards and providing for the regulation, registration and conduct of media organisations.

4. In this section, "hate speech" means an expression in whatever form that encourages, or has the effect of encouraging discrimination on a ground listed or prescribed under section 26.

28. Freedom of assembly

1. Every person has the right, peaceably and unarmed, to assemble, demonstrate, picket and to present petitions.

2. To the extent that it is necessary, a law may limit, or may authorise the limitation of, the right mentioned in subsection (1)-

a. in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;

b. for the purpose of protecting the rights and freedoms of others; or

c. for the purpose of imposing restrictions on the holders of public offices.

29. Freedom of association

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

2. A law may limit, or may authorise the limitation of, the right mentioned in subsection (1)-

a. in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;

b. for the purpose of protecting the rights and freedoms of others;

c. for the purpose of imposing restrictions on the holders of public offices;

d. for the purpose of regulating trade unions, or any federation, congress, council or affiliation of trade unions, or any federation, congress, council or affiliation of employers;
e. for the purposes of regulating collective bargaining processes, providing mechanisms for the resolution of employment disputes and grievances, and regulating strikes and lockouts; or

f. for the purpose of regulating essential services and industries, in the overall interests of the Fijian economy and the citizens of Fiji.

30. Employment relations

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

2. Every worker has the right to association and form or join a trade union, and participate in its activities and programmes.

3. Every employer has the right to form or join an employer's' organisation, and to participate in its activities and programmes.

4. Trade unions and employers have the right to bargain collectively.

5. A law may limit, or may authorise the limitation of, the rights mentioned in this section

a. in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;

b. for the purposes of protecting the rights and freedoms of others;

c. for the purposes of imposing restrictions on the holders of public offices;

d. for the purposes of regulating trade unions, or any federation, congress, council or affiliation of trade unions, or any federation, congress, council or affiliation of employers;
e. for the purposes of regulating collective bargaining processes, providing mechanisms for the resolution of employment disputes and grievances, and regulating strikes and lockouts; or

f. for the purposes of regulating essential services and industries, in the overall interests of the Fijian economy and the citizens of Fiji.

31. Freedom of movement and residence

1. Every person has the right to freedom of movement.

2. Every citizen has the right to apply for and be issued a passport or similar travel document, in accordance with any condition prescribed by written law.

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

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

5. 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 responsible for immigration on a ground prescribed by law.

6. 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 any child who had previously been unlawfully removed from another country, for the purpose of restoring the child to the lawful custody of his or her parent or lawful 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 country of the person's citizenship 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 or property owned or occupied by others.

7. To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights mentioned in this section -

a. in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;

b. for the purpose of protecting the rights and freedoms of others;

c. for the purpose of protecting the ecology of any area;

d. for the purpose of imposing a restriction on the person that is reasonably required to secure the fulfilment of an obligation imposed on the person by law; or

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

8. Section 9(3) and (4) apply to a person whose right to freedom of movement is restricted pursuant to a measure authorised under a state of emergency in the same way as they apply to a person detained pursuant to such a measure.

32. Freedom of religion, conscience and belief

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

2. Every person has the right, either individually or in community with others, in private or in public, to manifest and practise their religion or belief in worship, observance, practice or teaching.

3. Every person has the right not to be compelled to

a. act in any manner that is contrary to the person's religion or belief; or

b. take an oath, or take an oath in a manner, that-

i. is contrary to the person's religion or belief; or

ii. requires the person to express a belief that the person does not hold.

4. Every religious community or denomination, and every cultural or social community, has the right to establish, maintain and manage places of education whether or not it receives financial assistance from the State, provided that the educational institution maintains ~~any~~ standards prescribed by law.

5. In exercising its rights under subsection (4), a religious community or denomination has the right to provide religious instruction as part of any education that it provides, whether or not it receives financial assistance from the State for the provision of that education. Provided, that all foreign financial contributions to any school must be first approved by government.

6. Except with his or her consent or, in the case of a child, the consent of a parent or lawful 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.

7. To the extent that it is necessary, the rights and freedoms set out in this section may be made subject to such limitations prescribed by law-

a. to protect

i. the rights and freedoms of other persons; ~~or~~ and

ii. and promote peace, tolerance, national values and public safety, public order, public morality or public health; or

b. to prevent public nuisance.

33. Political rights

1. Every citizen has the freedom to make political choices, and the right to-

a. form or join a political party;

b. participate in the activities of, or recruit members for, a political party; and

c. campaign for a political party, candidate or cause.

2. Every citizen has the right to free, fair and regular elections for any elective institution or office established under this Constitution.

3. Every citizen who has reached the age of ~~18~~ 21 years has the right

a. to be registered as a voter;

b. to vote by secret ballot in any election or referendum under this Constitution;

c. to be a candidate for public office, or office within a political party of which the citizen is a member, subject to satisfying any qualifications for such an office; and

d. if elected, to hold office.

4. A law may limit, or may authorise the limitation of, the rights mentioned in this section

a. for the purpose of regulating the registration of voters, and prescribing persons who do not have or have ceased to have the right to be registered as a voter;

b. for the purpose of regulating the registration of political parties and prescribing persons who do not have the rights prescribed under subsection (1) and subsection (3)(c) and (d);

c. for the purpose of regulating persons who are not eligible to contest for a place in Parliament or in a public office, or an office within a political party; or

d. for the purpose of imposing restrictions on the holders of public offices (as defined in any such law) from the rights set out in this section.

34. Right to privacy

1. Every person has the right to personal privacy, which includes the right to

a. confidentiality of their personal information;

b. confidentiality of their communications; and

c. respect for their private and family life.

2. To the extent that it is necessary, a law may not limit, or may authorise the limitation of, the rights set out in subsection (1).

35. Access to information

1. Every person has the right of access to

a. information held by any public office; and

b. information held by another person, institution or body and required for the exercise or protection of any legal right.

2. Every person has the right to the correction or deletion of false or misleading information that affects that person.

3. To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1), and may regulate the procedure under which information held by a public office may be made available.

36. Right to equality and freedom from discrimination

1. Every person is equal before the law and has the right to equal protection, treatment and benefit of the law.

2. Equality includes the full and equal enjoyment of all rights and freedoms recognised in this Chapter or any other written law.

3. A person must not be unfairly discriminated against, directly or indirectly on the grounds of his or her-

a. actual or supposed personal characteristics or circumstances, including race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, disability, age, religion, conscience, marital status or pregnancy; 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.

4. A law or an administrative action taken under a law may not directly or indirectly impose a limitation or restriction on any person on a prohibited ground.

5. Every person has the right of access, membership or admission, without discrimination on a prohibited ground, to shops, hotels, lodging-houses, public restaurants, places of public entertainment, clubs, education institutions, public transportation services, taxis and public places.

6. The proprietor of a place or service referred to in subsection (5) must facilitate reasonable access for persons with disabilities to the extent prescribed by law.

7. Treating one person differently from another on any of the grounds prescribed under subsection (3) is discrimination, unless it can be established that the difference in treatment is not unfair in the circumstances.

8. A law, or an administrative action taken under a law, is not inconsistent with the rights mentioned in this section on the ground that it

a. appropriates revenues or other moneys for particular purposes;

b. imposes a retirement age on a person;

c. imposes a restriction on persons employed or engaged in a State service, or confers on them a privilege or advantage not imposed or conferred on other persons;

d. imposes restrictions on persons who are not citizens, or confers on them a privilege or advantage, not imposed or conferred on citizens;

e. makes provision with respect to adoption, marriage, devolution of property on death, and pension; f. excludes persons from holding certain public offices; or

g. to the extent necessary and without infringing the rights or freedoms set out in any other section of this Chapter, gives effect to the communal ownership of iTaukei, Rotuman and Banaban lands and access to marine resources, or the bestowing of iTaukei, Rotuman and Banaban chiefly title or rank.

37. Freedom from compulsory or arbitrary acquisition of property

1. Every person has the right not to be deprived of his/her property by the State other than in accordance with a written law referred to in subsection (2), and no law may permit arbitrary acquisition or expropriation of any interest in any property. Property or interest in property in this section also include intellectual property rights, traditional knowledge and traditional cultural expressions and genetic resources.

2. A written law may authorise compulsory acquisition of property

a. when necessary for a public purpose; and

b. on the basis that the owner will be promptly paid the agreed compensation for the property, or failing agreement, just and equitable compensation as determined by a court or tribunal, after considering all relevant factors, including

i. the public purpose for which the property is being acquired;

ii. the history of its acquisition by the owner;

iii. the market value of the property;

iv. the interests of any person affected by the acquisition; and

v. any hardship to the owner.

3. Nothing contained in, or done under the authority of, a law is inconsistent with this section to the extent that the law makes provision for the acquisition of property by way of -

a. taxation;

b. sequestration of bankrupt estates;

c. confiscation of the proceeds of crime;

d. penalty for breach of the law;

e. satisfaction of a mortgage, charge or lien; or

f. execution of a judgment of a court or tribunal.

38. Rights of ownership and protection of iTaukei, Rotuman and Banaban lands and resources

1. The ownership of all ~~iTaukei~~ native land, minerals and other resources, including genetic resources shall remain with the customary owners of that land and ~~iTaukei~~ native land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State ~~in accordance with section 27~~ for public purpose. Native land under this section means, lands, minerals and other resources, including genetic resources. Native land include the land and seas with all its resources, including from the high water mark to the territorial sea now vesting with government for public access purpose only, and not for business or research purpose, when native land and fisheries owners will have to be first consulted for their prior informed consent.

2. Any iTaukei land acquired by the State for a public purpose after the commencement of this Constitution ~~under section 27~~ or under any written law shall revert to the customary owners if the land is no longer required by the State.

3. The ownership of all Rotuman land shall remain with the customary owners of that land and Rotuman land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State ~~in accordance with section 27~~ for public purpose. Native land under this section means, lands, minerals and other resources, including genetic resources. Native land include the land and seas with all its resources, including from the high water mark to the territorial sea now vesting with government for public access purpose only and not for business or research purpose, when native land and fisheries owners will have to be first consulted for their prior informed consent.

4. Any Rotuman land acquired by the State for a public purpose after the commencement of this Constitution ~~under section 27~~ or under any written law shall revert to the customary owners if the land is no longer required by the State.

5. The ownership of all Banaban land shall remain with the customary owners of that land and Banaban land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State ~~in accordance with section 27~~ for public purpose. Native land under this section means, lands, minerals and other resources, including genetic resources. Native land include the land and seas with all its resources from the high water mark to the territorial sea now vesting with government for public access purpose and not for any business or research purpose, which native land and fisheries owners will have to be first consulted for their prior informed consent.

6. Any Banaban land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.

~~39. Protection of ownership and interests in land~~

~~1. All ownership of land, and all rights and interests in land leases and land tenancies that existed immediately before the commencement of this Constitution shall continue to exist under this Constitution.~~

~~2. No law shall be made to diminish or adversely affect the rights and interests in land leases and land tenancies, whether existing immediately before the commencement of this Constitution or made or issued after the commencement of this Constitution.~~

~~3. All land lessees and land tenants have the right not to have their land leases or land tenancies terminated other than in accordance with their land leases or land tenancies.~~

~~4. Parliament and Cabinet, through legislative and other measures, must ensure that all land leases and land tenancies provide a fair and equitable return to the landowners whilst protecting the rights of land lessees and land tenants, including security and protection of tenure of land leases and land tenancies and terms and conditions of land leases and land tenancies which must be just, fair and reasonable.~~

~~5. All land that existed as freehold land immediately before the commencement of this Constitution shall remain as freehold land even if it is sold or purchased, unless it is sold to the State or is acquired by the State for a public purpose under section 27.~~

~~6. For the purposes of this section-~~

~~• "land leases" or "land tenancies" includes sub-leases, sub-tenancies and tenancies-at-will, but shall not include leases, agreements or tenancies for any building, structure or dwelling, whether used for residential, commercial, industrial or for tourism purposes, and~~

~~shall not include any leases, agreements or tenancies for any fixture, equipment, plant or fittings on any land; and~~

~~• "land lessees" or "land tenants" includes sub-lessees, sub-tenants or tenants- at-will of land leases or land tenancies.~~

39. Right of landowners to fair share of royalties for extraction of minerals, businesses or leases

• Ownership of natural resources

1. All minerals in or under any land or water, are owned by the State, provided however, that the owners of any particular land (whether customary or freehold), or of any particular registered customary fishing rights shall be entitled to receive a fair share of royalties or other money paid to the State in respect of the grant by the State of rights to extract minerals from that land or the seabed in the area of those fishing rights. Fair share shall also include the percentage of business ownership or gross income after taxation from the businesses, lease and subleases.

2. A written law may determine the framework for calculating fair shares under subsection (1), taking into account all relevant factors, including the following

a. any benefit that the owners received or may receive as a result of mineral exploration or exploitation;

b. the risk of environmental damage;

c. any legal obligation of the State to contribute to a fund to meet the cost of preventing, repairing or compensating for any environmental damage;

d. the cost to the State of administering exploration or exploitation rights; and

e. the appropriate contribution to the general revenue of the State to be made by any person granted exploration or exploitation rights.

40. Right to education

1. Every person has the right to-

• Access to higher education

a. early childhood education;

b. primary and secondary education; and

c. further education.

2. The State must take reasonable measures within its available resources to achieve the progressive realisation of the right-

• Access to higher education

a. to free early childhood, primary, secondary and further education; and

• Free education

b. to education for persons who were unable to complete their primary and secondary education.

3. Conversational and contemporary ~~iTaukei~~ Fijian, Rotuman and Indo-Fijian ~~Hindi~~ languages shall be taught as ~~compulsory~~ subjects in all primary schools.

4. ~~The State may direct any educational institution to teach subjects pertaining to health, civic education and issues of national interest, and any educational institution must comply with any such directions made by the State.~~

~~5. In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.~~

41. Right to economic participation

1. Every person has the right to full and free participation in the economic life of the State, which includes the right to choose their own work, trade, occupation, profession or other means of livelihood.

• Right to choose occupation

2. The State must take reasonable measures within its available resources to achieve the progressive realisation of the rights recognised in subsection (1).

3. To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1).

42. Right to work and a just minimum wage

• Right to equal pay for work

• Right to reasonable standard of living

1. The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to work and to a just and reasonable minimum wage.

2. In applying any right under this section, if the State or employer claims that it does not have the resources to implement the right, it is the responsibility of the State or employer to show that the resources are not available.

43. Right to reasonable access to transportation

1. The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to have reasonable access to transportation.

2. In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.

• Right to shelter 44. Right to housing and sanitation

1. The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to accessible and adequate housing and sanitation.

2. In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.

45. Right to adequate food and water

1. The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to be free from hunger, to have adequate food of acceptable quality and to clean and safe water in adequate quantities.

2. In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.

46. Right to social security schemes

1. The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to social security schemes, whether private or public, for their support in times of need, including the right to such support from public resources if they are unable to support themselves and their dependents.

2. In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.

• Right to health care

47. Right to health

1. The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to health, and to the conditions and facilities necessary to good health, and to health care services, including reproductive and mental health care.

2. A person must not be denied emergency medical treatment.

3. In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.

48. Freedom from arbitrary evictions

1. Every person has the right to freedom from arbitrary evictions from his or her home or to have his or her home demolished, without an order of a court made after considering all the relevant circumstances.

2. No law may permit arbitrary evictions.

• Protection of environment

49. Environmental rights

1. Every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures.

2. To the extent that it is necessary, a law or an administrative action taken under a law may limit, or may authorise the limitation of, the rights set out in this section. • Rights of children

50. Rights of children

1. Every child has the right to be provided and to receive parental, guardianship, custodial duties of care.

a. to be registered at or soon after birth, and to have a name and nationality;

b. to basic nutrition, clothing, shelter, sanitation and health care;

c. to family care, protection and guidance, which includes the equal responsibility of the child's parents to provide for the childi. whether or not the parents are, or have ever been, married to each other; and ii. whether or not the parents are living together, have lived together, or are separated;

d. to be protected from abuse, neglect, harmful beliefs and cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour; and

• Limits on employment of children

e. not to be detained, except as a measure of last resort, and when detained, to be held-

• Privileges for juveniles in criminal process

i. only for such period of time as is necessary; and

ii. separate from adults, and in conditions that take account of the child's sex and age.

f. Except where reasonable and acceptable measures are taken not to harm the child in any way or form, but to properly discipline a child at home or in school, in case of inhumane treatment and punishment.

2. The best interests of a child are the primary consideration in every matter concerning the child.

• State support for the disabled

51. Rights of persons with disabilities

1. A person with any disability has the right

a. to reasonable access to all places, public transport and information;

b. to use sign language, Braille or other appropriate means of communication; and

c. to reasonable access to necessary materials, substances and devices relating to the person's disability.

2. A person with any disability has the right to reasonable adaptation of buildings, infrastructure, vehicles, working arrangements, rules, practices or procedures, to enable their full participation in society and the effective realisation of their rights.

3. To the extent that it is necessary, a law or an administrative action taken under a law may limit, or may authorise the limitation of, the rights set out in this section.

• Emergency provisions

52. Limitation of rights under states of emergency

1. Any law enacted or promulgated in consequence of a declaration of a state of emergency under this Constitution

a. may limit a right or freedom set out in this Chapter ~~(with the exception of the rights and freedoms set out in sections 8, 10, 11, 13, 14, 15, 16, 22 and 26)~~ only to the extent that-

• International law

i. the limitation is strictly necessary and required by the emergency; and

ii. the law is consistent with Fiji's obligations under international law applicable to a state of emergency; and

b. takes effect only when it has been published in the Gazette.

2. A person detained under a law contemplated in subsection (1) retains all the rights recognised in this Chapter, subject only to the limitations referred to in subsection (1).

53. Enforcement

1. 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. • Protection from false imprisonment

2. The right to make application to the High Court under subsection (1) is without prejudice to any other action with respect to the matter that the person concerned may have.

3. The High Court has original jurisdictiona. to hear and determine applications under subsection (1); and b. to determine questions that are referred to it under subsection (5), and may make such orders and give such directions as it considers appropriate.

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

5. 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.

6. 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 witha. 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 the Supreme Court, as the case may be.

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

8. If the 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.

9. A notice under subsection (8) is not required to be given to the Attorney-General if the Attorney-General or the State is a party to the proceedings.

10. 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).

• Human rights commission

54. Human Rights and Anti-Discrimination Commission

1. The Human Rights Commission established under the Human Rights Commission Decree 2009 continues in existence as the Human Rights and Anti-Discrimination Commission.

2. The Commission consists ofa. a chairperson, who must be a person who is or is qualified to be appointed as a judge; and b. 4 other members, appointed by the President on the advice of the Constitutional Offices Commission.

3. In advising the President as to the person to be appointed as chairperson or other members of the Commission, the Constitutional Offices Commission must have regard not only to their personal attributes but also to their knowledge or experience of the various aspects of matters likely to come before the Commission.

4. Subject to this Constitution, the Commission is responsible for

a. promoting the protection and observance of, and respect for, human rights in public and private institutions, and to develop a culture of human rights in Fiji;

b. the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit;

- Civil service recruitment

c. the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and

d. the total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament.

CAP 5 – PARLIAMENT – REQUEST FOR ADOPTION OF THE 1970, 1990 AND 1997 BICAMERAL PARLIAMENTARY MODEL

CAP 6 – EXECUTIVE – REQUEST TO DRAW MORE FROM THE 1970, 1990 AND 1997 MODEL THAN THE 2013.

CAP 7 - JUDICIARY – REQUEST TO DRAW FROM THE 1997, 1990 AND 1970 MODEL

CAP 8 – PUBLIC SERVICE COMMISSION – REQUEST THAT THE 1970, 1990, AND 1997 BE ADOPTED SO THAT THE CIVIL SERVICE SYSTEM IS APOLITICAL AND REMAINS AS SUCH.

Dialogue Fiji

Dialogue Fiji
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Sevuloni Valenitabua: ...and also, we might ask questions later on after you finish with your submissions. We have a lot of submissions; we have been around the country and we are just reaching out this week. Today is the second last day of submissions to be presented to us. Now with those few words, we only have one hour left, so I now open the floor to you. You may have the mic and give us your submissions. Thanks.

Nilesh Lal: Thank you very much Honourable Chair and members of the Commission. Very good afternoon. We appear before the Commission with a deep sense of responsibility, but also with serious reservations about the process through which this constitutional review is being conducted. We say at the outset that Fiji does need constitutional reform. The 2013 Constitution contains serious structural flaws which have contributed to the concentration of power and weakened independent institutions. But the legitimacy of constitutional reform does not come merely from the appointment of a Commission or from the holding of hearings.

It comes from a process that is transparent, participatory, deliberative and trusted by the people. On the test, the present process is deeply deficient. A constitution is not an ordinary law .It is the supreme legal and political compact or social contract that citizens have, ruled with the ruler. So it is a very important document. It defines the relationship between the citizens and the state.

It distributes public power, political power, protects rights and sets the rules by which political disagreement is managed. In divided societies like ours, the process by which a constitution is made is as important as the text itself. A flawed process can produce a constitution alright, but it will not produce constitutional legitimacy. Fiji knows this from painful experience. Since independence, Fiji has had four constitutions. And I think in this regard, we have become the laughingstock of the world.

And each of these constitutions have reflected the political conflicts and power struggles, power dynamics of their time. This recurring pattern has been, the recurring pattern that we've seen is that after every major power shift, the new regime that comes in, whether this has been through coups or elections, they've always treated constitutions as tools

of political reset rather than as enduring frameworks for national stability. So people begin to see constitution as a panacea to Fiji's political and social problems.

It is not. You can have the best constitution in the world in terms of what's in the text, but if the culture underpinning the constitution is not conducive, then you are not going to be making, I mean, that is not going to lead to any positive outcomes. Now, this is why the present review process should have been designed with extraordinary care.

Instead, it is rushed, opaque, and insufficiently deliberative. A five-month process is simply not adequate for a proper and democratic national review of Fiji's supreme law. International comparative experience suggests that comprehensive constitutional reform requires careful sequencing, civic education, public consultation, transparent analysis, drafting, public feedback on draft proposals, and the final political settlement, whether it is through parliamentary approval or through a referendum.

The benchmark for comprehensive constitutional reform is around 18 to 24 months. South Africa's process took around two years, Tunisia's process was about two and a half years, and Kenya's was about 19 months. Fiji's own Reeves Commission process took approximately two years, while the Gai process, and at that time it was being criticized for being rushed, it took approximately one year, about 11 months to be exact.

Now, this commission is therefore presiding over what is the shortest major constitutional review in Fiji's history. This is definitely not a badge of efficiency, but it's a warning sign, and it should be of a lot of concern to anybody that is serious about democratic reform in this country. For any constitutional engineering process in an ethnically divided society, there are certain desired objectives that must be deliberated upon and finalized right at the outset.

Dialogue Fiji has not seen this CRC do that. The question therefore is, what is the objective of this constitutional review? What exactly does it seek to remedy? What is the problem that it tries to solve? If the objective is to merely cure the democratic deficit in the making of the 2013 constitution, then this process fails to achieve it. A rushed, opaque, and poorly documented review process cannot cure the democratic

deficit of a constitution that itself was criticized for lacking popular approval.

It simply reproduces the same legitimacy problem in a different form. Constitutional engineering in ethnically divided societies aims to prevent conflict and secure democratic stability by structuring state institutions to accommodate, manage, or transcend ethnic differences. The ultimate goal is to foster political inclusion, ensure minority protection, and prevent the tyranny of the majority in deeply fragmented polities like ours.

There are a number of key objectives and strategies that are usually considered in such processes. First, power sharing or conventionalisms. This involves designing executive and state institutions in a way that includes representatives from all major ethnic groups.

This is often achieved through grand coalitions, proportional representation, mutual vetoes on vital cultural issues, and forms of segmented autonomy. Second, electoral engineering. This involves implementing voting systems such as list PR or list proportional representation that encourages politicians to appeal to voters outside their own ethnic group and increase the prospects of broader political inclusion.

A well-designed electoral system can incentivize moderation, inter-ethnic coalitions, and national political appeals. Third, decentralization of power. In Fiji's context, decentralization should not mean the creation of race-based or ethnically defined power structures.

That would risk entrenching the very divisions that constitutional reform should seek to manage and transcend. Instead, decentralization in the Fijian context should focus on strengthening elected local government, municipal councils, provincial-level democratic structures, and community-based decision-making. The objective should be to bring power closer to citizens, improve accountability and service delivery, deepen grassroots democracy, and ensure that communities have a meaningful say in decisions affecting their daily lives.

Fourth, minority rights and protections. This includes embedding an entrenched Bill of Rights, legal protections for minority communities,

and institutions that can enforce these protections against the state and against majoritarian abuse. Fifth, cross-cutting cleavages.

Constitutional design can structure institutions in ways that blame strict ethnic identities by encouraging national parties, cross-regional alliances, and political competition around shared civic issues such as the economy, health, education, poverty, infrastructure, and public services, rather than ethnic identity alone. These tools are used to build unified nation-states in societies where ethnic division can otherwise become politically destabilizing and also devastating, I would say. But they require careful constitutional design.

They require public education, genuine deliberation, and clarity of purpose. In Fiji's case, the CRC has not clearly explained whether it is seeking to improve ethnic accommodation, strengthen national unity, reduce executive dominance, enhance institutional independence, reform the electoral system, or merely remedy the lack of legitimacy surrounding the making of the 2013 constitution. That absence of clarity is a serious weakness.

A constitutional review cannot be everything and nothing at the same time. Before asking people what they want changed, the process should have helped the country understand the constitutional problem it is trying to solve. We are aware of the argument that this is not a comprehensive review, but merely an amendment review.

That argument is not correct. If this was only an amendment review, the terms of reference would clearly identify the specific provisions of the 2013 constitution that were to be examined. And the commission would consult the public only on those identified provisions.

So, your terms of reference would say, okay, you need to go and consult the public on how section 99 of the constitution should be amended. That would be an amendment review. Instead, and then I suppose two months would be sufficient to review one particular provision and get sufficient public input.

Instead, the commission is inviting submissions on the constitution as a whole. That is in substance a comprehensive review. It should therefore meet the standards of a comprehensive process.

The Ghai Commission, despite operating under an unelected military-backed regime, set a much higher standard for transparency and participatory constitution making than what we are seeing now. Public hearings were conducted across the country in 2012, and more than 7,000 submissions were received, and all of these were published on a central website run by the commission. The Ghai process is widely acclaimed, not merely in Fiji, but also internationally, as an example of how constitution making consultations should be conducted.

Open, participatory, well-documented, accessible to citizens, and grounded in genuine public engagement. That history is precisely why this process should have gone further, not backwards. If the central criticism of the 2013 constitution is that it lacked popular legitimacy and disregarded the participatory Ghai process, then the corrective process cannot itself be opaque, rushed, and fully documented.

At minimum, this commission should have had a dedicated website from the beginning of the process. Every public submission, unless confidentiality was specifically requested for valid reasons, of course the reasons had to be validated by the commission, every submission should have been published. Hearings should have been live-streamed.

In 2026, this is much cheaper and easier to do than it was in 2012. Transcripts should have been made available. Citizens should have been able to go to one central public repository and see what individuals, organizations, political parties, traditional institutions, religious bodies, unions, business groups, women's groups, youth organizations, and minority communities were actually telling the commission.

Instead, what we are hearing is snippets of consultations that have been made through the media, and the media can also be selectively reporting. Public consultation requires notification, two-way exchange, and meaningful participation, not merely the formal receipt of views behind closed doors. The absence of a central public record weakens the entire exercise.

How will the public know whether the commission has fully assessed the submissions? How will citizens know which views were dominant, which were marginal, which were organized? And which represented genuine community sentiment? Has the commission released statistics on the number of submissions received? The categories of submitters?

The geographic spread of participation? The gender and age profile of participants? Or the issues most frequently raised? Without such information, the process cannot be properly evaluated. There is a claim made that this review is going to reflect what the people want. The people of Fiji are not a homogeneous entity.

Without a proper methodology, how can you systematically determine what the people want? The people are not a homogeneous group. So for these reasons, Dialogue Fiji was reluctant to participate in this process despite receiving two invitations. We did not wish to legitimize a process that we consider flawed.

However, we have ultimately decided to make this submission because Fiji's constitutional future is too important to abandon. We participated while placing on record our serious concerns that the process as presently designed is unlikely to cure the democratic deficit that has long surrounded the 2013 Constitution. Having said that, Dialogue Fiji does not support reckless constitutional change. The 2013 Constitution contains progressive features which should be retained. It abolished ethnic communal roles and reserved ethnic seats. Established a single national electoral role.

Adopted the principle of one person, one vote, one will, which is highly prized in the democratic world. And introduced an open, least proportional representation system, which happens to be the most popular electoral system in the entire world. Around 40% of countries globally have a form of least PR.

Of all the democratic states in the world, around 51%, if I'm not mistaken, have a form of proportional representation. Countries that are able to make political settlement on electoral system, they are shifting towards proportional representation from cruelty or majoritarian system. So it is one of the most progressive, yet one of the most misunderstood elements of the Constitution.

The 2013 Constitution also enhanced common and equal citizenry, declaring that all citizens of Fiji are Fijians. By nationality, of course, and that all citizens enjoy equal status under the Constitution. It established Fiji as a secular state, separated religion and state, abolished the unelected Senate, and placed legislative authority in a fully elected single House of Parliament.

These provisions are foundational features of a modern, multi-ethnic, liberal democracy. The principal weakness of the 2013 Constitution is not that it is too modern. The problem is that it combines progressive citizen equality with excessive executive power. It recognizes equal citizenship, but leaves independent institutions too vulnerable to political capture. It creates a comprehensive Bill of Rights, but allows rights to be limited through broad and open-ended clauses. It establishes Parliament, but allows legislation to be rushed through without adequate deliberation.

It provides for independent offices, but gives the executive too much influence over their appointment and removal. The central task of constitutional reform should therefore be clear. Retain the modern democratic foundations of the 2013 Constitution, while correcting the structural concentration of power. If there are recommendations to remove these modern democratic foundations of the 2013 Constitution, which by the way, are universal foundational principles, then we cannot call this a reform. We will probably have to call it a degrade or devising of the Constitution. Because reform, the definition of reform is making something better, not degrading it or making it worse.

The first major reform should be to redesign the Constitutional Offices Commission. Under the current structure, the COC is dominated by government-aligned members. The Prime Minister, the Attorney General and two Prime Minister nominees. The Leader of the Opposition and one Opposition nominee. This creates a 4 to 2 government-aligned majority, allowing the executive to shape the leadership of key worst-off institutions. That is a fundamental design flow.

Institutions such as the Electoral Commission, the Human Rights and Anti-Discrimination Commission, the Auditor General and other constitutional offices must not depend on a body structurally controlled by the government of the day. Dialogue Fiji proposes that the COC be reconstituted as a genuinely independent and balanced appointments body. It should include equal number of nominees from the Prime Minister and the Leader of the Opposition.

But those nominees should not be current members of Parliament, political party office holders, recent candidates, failed candidates, ministerial advisors or persons who have held senior political office

within the previous five years. In addition, the Fiji Law Society should nominate one member through an open process conducted by its council and one member should be nominated collectively by the vice-chancellors of Fiji's three universities. That nominee should be a senior academic of recognized standing in law, governance, public administration, political science, human rights, development studies or a related field and should not be a current member of Parliament, political party office holder, recent candidate, ministerial advisor or a person who has held senior political office within the last five years.

This would ensure that the COC benefits not only from legal expertise but also from independent academic knowledge of governance, institutions and democratic accountability. The chairperson of the COC should not be the Prime Minister. The chairperson should be an eminent, independent person, perhaps a retired judge or senior legal practitioner of high standing, appointed by consensus between the Prime Minister and the Leader of the Opposition.

If they cannot agree within 21 days, the Fiji Law Society should provide a short list of three eligible persons from which the President appoints the chair. That would move the COC away from executive control and towards constitutional guardianship. The Public Service Commission should also be constitutionally strengthened as the guardian of a professional, merit-based and politically neutral public service.

The Prime Minister's agreement should not be required for the appointment or removal of Permanent Secretaries. Permanent Secretaries must save the state, not the political executive of the day. Second, Fiji should retain the open list proportional representation system but reduce the electoral threshold from 5% to 2%.

The current electoral system has major democratic strengths. It eliminates ethnic roles, gives equal value to each vote and ensures that every voter participates in the same national electoral process. The single national constituency also discourages narrow regional or ethnic or communal appeals, rewards parties that campaign on issues of national interest rather than sectional interest, and completely removes the possibility of gerrymandering through the manipulation of constituency boundaries.

These are important gains which should not be reversed. However, the democratic value of proportional representation is weakened when the electoral threshold is set too high. The current 5% threshold, although it is not excessive by international standards, if you look at other jurisdictions, some of them have as high as 10% election threshold, although it is not excessive by international standards, but in the case of Fiji, I think there is evidence to suggest that it has proven to be excessive for a small, diverse and politically fragmented society.

It suppresses smaller parties, discourages new political movements and artificially concentrates representation in larger parties. A 2% threshold would preserve proportionality while preventing excessive fragmentation. It would also allow a genuine multi-party system to thrive.

That being said, with the next elections due in around 7 months time, it would not be prudent at all. In fact, it would be very irresponsible for this commission to suggest a change to the electoral system at this point or for the next elections. Instead, the commission could make suggestions that this would apply for the second election after the new constitution or the amended constitution comes into effect. It should not apply to the next constitution. The campaign period has also started, so the game has already begun. You cannot be changing rules midway.

That would be scandalous in fact. If you look at what the international principles are, the Venice Commission Principles on Good Practices in Electoral Matters, it is the go-to document and it says that no major changes to the electoral system or electoral rules even should be made within 12 months of an election. It is going to create a very uneven electoral playing field.

It is going to seriously disadvantage players, electoral players. Political parties should be constitutionally encouraged but not compared as a condition of contesting elections to ensure meaningful gender balance in their candidate list. The constitution should require any system of public funding.

We have been saying for quite some time that there should be public funding given to political parties. So, this system of public funding for political parties should determine on this criteria whereby they need to have gender equality within the party. And this should include incentives

for parties. It should require parties to have at least 40% representation of either gender in their candidate list for them to be able to access this public funding. This would promote women's political participation without excluding parties from the democratic process. Placing this principle in the constitution would ensure that a future parliamentary majority cannot easily remove gender equality incentives through ordinary legislation.

Third, the size of cabinet should be constitutionally kept. Under Section 91, Subsection 1, the Prime Minister has sole authority to determine the size of cabinet. While the Ghai draft proposed a cabinet kept of 15 members.

Dialogue Fiji supports a constitutional kept of 15 ministers including the Prime Minister and Attorney General if the Attorney General is a cabinet minister. This would prevent executive blout and reduce the use of ministerial appointments as instruments of political re-order. The constitution should also require cabinet to reflect as far as practicable Fiji's gender, cultural, ethnic and regional diversity.

A government that represents a multi-ethnic country must be seen to draw leadership from the full breadth of the country. If the composition of parliament makes this impossible, the constitution should permit the Prime Minister to appoint up to 5 ministers from outside parliament. But only for the purpose of satisfying diversity, expertise or inclusion requirements.

Such ministers should be subject to parliamentary confirmation, should have the right to speak in parliament on matters within their portfolios. But they should not be given the privilege or the right to vote. They should also be bound by the same standards of accountability, assert declaration, conflict of interest rules and parliamentary questioning as elected ministers.

There should also be a constitutional term limit for the office of Prime Minister. No person should be permitted to serve as Prime Minister for more than two parliamentary terms, whether consecutive or non-consecutive. This would prevent excessive personalization of executive or political power, encourage leadership renewal and reduce the risk of one individual dominating the state over an extended period.

Fourth, the Bill of Rights should be retained but strengthened. The 2013 constitution has a comprehensive rights framework. But section 6, subsection 5 C allows rights to be limited by restrictions that are not expressly set out in the text, provided they are necessary and prescribed.

And this is why the rights that are contained in the current constitution are not really guaranteed as they can be limited by ordinary legislation. So this of course creates a very broad opening, too broad an opening for the state to limit rights. The constitution should codify instead a strict proportionality test.

Any limitation of a right must be reasonable and justifiable in an open and democratic society, based on human dignity, equality and freedom. The state must bear the burden of proof. It must show that the limitation pursues a legitimate objective.

Is rationally connected to that objective impairs the right as little as possible. So, the least required restriction. And that there are no less restrictive means available to achieve the same purpose.

The constitution should also recognize access to information as a directly enforceable constitutional right. Not merely as a right dependent on future legislation, as is the case now. Citizens cannot hold power to account if they cannot access information held by the state.

Fifth, judicial independence must be strengthened. Unlike under the 2013 constitution, the prime minister advises the president on the appointment of a chief justice and the president of the court of appeal after consulting only his attorney general. There is no requirement to consult the leader of the opposition.

This is in the record. The appointment of the chief justice should be made through an independent COC or a strengthened and independent judicial services commission. With public advertisement, transparent criteria, merit-based assessment and cross-party consultation.

The constitution should also close the dangerous loophole that currently exists relating to suspension of the chief justice. The 2013 constitution allows the prime minister to advise suspension pending a tribunal investigation, but does not specify a deadline for the tribunal to convene.

This creates the possibility of an indefinite suspension, which can operate as a removal in all but name.

The constitution should require that where the chief justice is suspended, the tribunal must be constituted and convened within seven days, and must complete its work within a prescribed period unless extended by the Supreme Court for exceptional reasons. Sixth, Fiji should retain a unicameral parliament. There is no democratic justification for restoring an unelected senate with low-making powers.

Law should be made by representatives directly elected by the people. In fact, this is a very important democratic principle that low-making should strictly remain the domain of elected representatives, not unelected entities. The 2013 constitution correctly abolished the unelected senate and established a fully elected single house of parliament.

If Fiji wishes to strengthen legislative scrutiny, the answer is not to create another chamber of unelected legislators. The answer is to strengthen parliamentary committees, improve public consultation on bills, resource the opposition, and create constitutional safeguards against arrest, low-making. The current four-year parliamentary term and election cycle should be retained.

A three-year term provides insufficient time for governments to develop and implement medium- to long-term policies, while a five-year term risks weakening democratic accountability by keeping voters too far away from the next opportunity to renew or withdraw their mandate. A four-year term strikes the appropriate balance between governmental stability and regular democratic accountability and remains the appropriate model for a parliamentary democracy such as Fiji. In fact, more and more democratic countries the world over that are exemplary liberal democracies are adopting four-year terms.

So that is what the shift is towards globally. The public accounts committee should be constitutionally recognized as a central instrument of parliamentary oversight and should be chaired by an opposition member of parliament, preferably the shadow minister for finance. Fiji's parliamentary practice traditionally provided for an opposition member of parliament to chair the public accounts

committee, but this was altered in 2016 to allow a government-backed bencher to chair the committee.

That change weakened the oversight function of parliament. The PEC examines how public money is spent, and its work should therefore be led by a member who is institutionally independent of the executive. Comparative commonwealth practice strongly supports opposition leadership of the PEC.

Restoring this principle would strengthen scrutiny of public expenditure, reinforce executive accountability, reduce executive impunity, I would say, and align Fiji's parliament with good parliamentary practice. The speaker should also be constitutionally protected as an independent guardian of parliament, not as an extension of the government majority. The speaker should be elected by a supermajority of parliament, perhaps two-third supermajority, and should be required to act with strict neutrality.

Seventh, the constitution should impose strict safeguards on the expedited passage of legislation. The current framework allows ordinary parliamentary majorities to bypass normal deliberation. The Ghai draft required a much higher supermajority.

In fact, it required two-thirds of members of parliament to agree before deliberation could be bypassed, before provision like the Standing Order 51 could be invoked. Now, Dialogue Fiji proposes that any use of agent procedures, including procedures similar to Standing Order 51, should require two-thirds parliamentary majority, except narrowly defined emergencies such as natural disasters, war, public health emergencies, or agent fiscal measures certified by an independent authority. Even then, the use of expedited procedures should be time-limited, justified in writing, and subject to post-enactment committee review.

Democratic lawmaking requires that citizens who will ultimately be subject to the law must have a meaningful opportunity to understand and influence the law. So that is a fundamental requirement of democratic governance. People that would be subject to that law need to have a hand in formulating that law.

And it is mechanisms like Standing Order 51 which totally frustrates them. The constitution should create a citizen's petition mechanism

adopted from the participatory spirit of the Ghai draft, which allowed constitutional amendments to be proposed by a petition signed by at least 1,000 citizens. And this should not just be restricted to constitutional amendments. It should be on any matter. So if 1,000 citizens sign a petition, report it to Parliament, the Parliament should become obliged to address that particular issue. And that is democracy at play.

Citizens should be able to petition Parliament to consider an issue of national importance or of importance to them locally, review an existing law, or initiate discussion on proposed legislation. Once a petition reaches a defined threshold, Parliament should be required to refer it to the relevant Standing Committee for public hearings in a report within a fixed period where it reaches a higher threshold. Parliament should be required to schedule a full debate.

This would not allow citizens to bypass Parliament or make laws directly, but it would ensure that Parliament cannot simply ignore issues that have significant public support or significant public interest. Finally, there are foundational values in the 2013 constitution which should be treated as sacrosanct or sacred. Fiji must remain a secular state.

In a multi-religious society, secularism is not hostility to religion. It is the only fair basis on which the state can treat all religions equally and protect freedom of conscience for every citizen. The constitution must also retain equal citizenry.

In fact, one of the foundational principles of democracy is equality. So if you don't have equality, you can't have democracy. There can be no return to constitutional arrangements that classify citizens into different political categories based on race or ethnicity.

The label Fijian is the common nationality of all citizens should be retained. Much of the debate around this issue confuses nationality with ethnicity. People just don't know the difference between nationality and ethnicity.

Ethnicity refers to ancestry, culture, language, customs and communal identity. Nationality refers to legal and political membership of the state. A person may be Itaukei by ethnicity and Fijian by nationality. A person

may be Indo-Fijian by ethnicity and Fijian by nationality. These are not contradictory identities. They operate at different levels.

So there is a very fundamental difference between nationality and ethnicity that needs to be understood by people. Also, replacing Fijian with Fiji Islander would be a downgrade. The proud name of our country is Fiji. We are the Republic of Fiji. We are not the Republic of Fiji Islands. The name of the country is not Fiji Islands.

Fiji carries dignity and authority. It reflects maturity as an independent nation, a proud nation. Colonial era naming, which was where Fiji Islands came from, often emphasized geography because territories were viewed as possessions or collections of islands.

So Fiji is not Fiji Islands. It refers to a collection of islands. Independent states, by contrast, increasingly adopt names that reflect nationhood rather than geography. Citizens of France are French. Citizens of India are Indian regardless of ethnicity. Citizens of Australia are Australian.

And citizens of Fiji should be Fijian. The common national identity does not erase indigenous identity. The iTaukei people remain the indigenous people of Fiji with their distinct culture, language, institutions and land rights.

But the state must have one equal civic identity for all its citizens. In conclusion, Dialogue Fiji urges the commission to recognize that Fiji's problem is not simply the text of the constitution. It is the system of power around it.

The 2013 constitution contains progressive and modern features, but it also embeds structural vulnerabilities that enable excessive concentration of power. Reform should therefore be principled, should be careful and it should be democratic in nature. Otherwise, as I've said, it can't be reformed in a democratic nation.

It should not become another episode in Fiji's long history of constitutional change driven by those who happen to be in power at that time. If this review is to have legitimacy, the commission must immediately improve the process. Although I suppose that it's rather too late for that, but I had publicly expressed that these are shortcomings in

the process, but unfortunately I didn't see any effort being made to address some of those concerns that were raised.

The commission should publish all submissions, release participation statistics, which it can still do, live stream future hearings if they do happen, issue thematic consultation papers, allow public comment on draft recommendations, and explain how competing views will be assessed. Without that transparency, the final report will struggle to command trust. Fiji does not need another constitution that one side celebrates and another side rejects, which will be the case if we do it through a process that is not truly participatory, that does not have the trust of everybody across the political divide, across the ethnic divide, which unfortunately has been the case until now.

We need a constitutional settlement that is modern, democratic, inclusive, rights protecting, and institutionally balanced. We need a constitution that limits power. Not one that merely transfers power from one political group to another. Above all, we need a constitution that belongs to the people of Fiji. Thank you very much. Thank you for your submission.

Mr. Valenitabua: Thank You Dialogue Fiji. Normally, we give time to the commissioners to comment or ask questions in relation to submissions which are presented to us by submitters. So, I will now ask the commissioners if they have any comments in relation to your submissions or any questions. Commissioners? Commissioner Nailatikau

Ms. Nailatikau: Thank you, Mr. Lal and colleagues of Dialogue Fiji. In the interest of time, I will do my best to keep things brief. Just a comment as well as a question. I would welcome your clarification and expansion on your thinking. I thank you for the entirety of your submission. I think it's important that cautionary voices and reservations be expressed transparently and directly, which is what you've done. The process is fundamental to the legitimacy of any outcome in a democratic society. And I see that as an expression of not only your care and concern, but your exercise of your right to express that to us.

You may be comforted to know that some of the items of action that you've mentioned in your closing around the publication of submissions and statistics is something that has been of great relevance to our discussions internally. And it's something that we have plans to progress

in alignment with our gazetted terms of reference, as you would have seen. So I thank you for raising that.

And it's certainly something that not only will be considered, but that we intend to progress on. My question relates to your submission relating to the single constituency or the open voting electoral system as it is. We've heard many submissions expressing the importance of having some form of local accountability between elected representatives and their constituents, for example, whatever those geographical or location boundaries might be.

And we're also hearing from you, correct, feel free to correct me about the importance of maintaining an openness in terms of national accountability versus smaller, narrower groupings of accountability, if I've heard you correctly. I just welcome your expansion in terms of the thought process around that, because by and large, a lot of the submissions have expressed a need for some form of local accountability. So just welcome your thoughts on that.

Mr. Lal : Thank you. Yes. So when electoral system design is done, it is important to note that there are always tradeoffs.

No electoral system is perfect. So what is desirable for an ethnically divided society? So when you're doing electoral engineering, that becomes the key consideration. What do you want? Do you want to have a unified citizenry or do you want to have an electoral system that rewards those that have very narrow appeals? So for instance, under constituency by system, if somebody knows that, okay, this particular area is dominated by one particular ethnic group, and I think it is the worst kept secret that people of Fiji always vote on ethnic lines.

So all that a candidate needs to do in order to win in that particular constituency is to have a very narrow ethnic appeal. So when you have an electoral system that rewards that kind of politics, you can never bring about a shift from race-based politics, which has been plaguing this country from independence, towards an ideology-based politics. And that is a shift that we need to bring about.

So whilst people might say that, okay, one of the drawbacks, one of the tradeoffs of the current system is that it weakens that MP to voters link, because it does not have local MPs. You look at what are the gains that

we get in terms of having a national constituency. The other major gain is gerrymandering, which is the manipulation of constitutional boundaries.

In a country where you have political capture of every institution, when you will have the incumbent party that would be appointing the constitutional services boundary, they will be drawing boundaries, constitutional boundaries. They can draw boundaries in such a way that will always benefit the incumbent party. In a society where you have people voting on ethnic lines, and you know how people are concentrated, how they have settled, you have an area that is perhaps dominated by iTaukei's or Indo-Fijians in another area, you draw boundaries in such a way that one group will always have advantages.

And so that's why gerrymandering is something that is always, the scope for that always needs to be minimized when you talk about electoral engineering. So there are so many advantages to having a single national constituency. The only drawback is that it weakens the MP to vote-tallying, and that is acceptable to some extent.

But the right remedy would be by establishing local structures, local government structures. So you have local government operating at that level, and then you have your parliament, which in fact has the major objective of making laws that apply to the nation, national policies, that is elected from a single national constituency. That would make sense. But it has to be complemented by local government structures, elected local governments. Not just for urban centers, municipal councils, but also for rural areas. I mean, if you look at how India has modernized their panchayat system, this is a very, very interesting case study.

In fact, I've written an article on that, how it can be used in Fiji as well. So the panchayat system is a traditional governance system, but they've modernized it. It is now democratic.

So the panchayat leaders are voted upon, and that system is working really well in India at the moment. So these are some of the reforms that should be considered. No, electoral engineering is one of the most technical areas of political science.

And when it comes to electoral system design, people need to understand and do a very systematic cost-benefit analysis of what are the pros and cons of that, of a particular element of an electoral system.

Ms. Nailatikau: Thank you, Mr. Lal. I'll give this time to my fellow commissioners.

Dr. Gounder: Thank you, Chair. Thank you, Mr. Lal and colleagues from Dialogue Fiji for your submission this afternoon. I just have three quick questions. For number 29, you talk about the 2% threshold reduction from current 5%. And I'm sure you do understand that's a 60% reduction. Okay. And then you talk about excessive fragmentation. Wouldn't the 2% actually lead to a fragmentation? I haven't talked about excessive fragmentation. Let me read it for you. Prevent excessive fragmentation. Let me read it to you.

Mr. Lal: Yes, it can create fragmentation. But in the case of Fiji, if you analyze the data from the last elections, you will see that it is not going to lead to a situation where it is going to create excessive fragmentation. The empirical data is very clear. It is definitely not going to lead to excessive fragmentation. But you are correct in pointing out that it will not necessarily prevent excessive fragmentation. But this proposal, as I mentioned, is very Fiji-specific. Thank you.

Dr. Gounder: You've answered that. Yeah. Okay. I can show you my data, which shows it will create fragmentation. Just for another day. The other point I want to get clarity on is you talk about larger parties and smaller parties. How are you defining large and small parties? Is there any definition you are using in this case to make your argument?

Mr. Lal: Well, in elections literature, it normally relates to the electoral share of parties. What if a party is not in parliament at the moment? How do you define whether the party outside parliament is a large or small party? Well, we know that from the electoral share. They might not be in parliament, but they will have a particular electoral share, which is the number of votes that they received in the last elections. What if it's a new party? Well, we won't be able to classify a new party until they are contested in an election. Yeah, but I haven't coined those phrases. They are extensively used in political science literature, and it is tied to the electoral share. That is the definition. Okay.

Dr. Gounder: Just one quick one. We take your point about the process. If we take everything that's in here, that you submitted today, would you be happy with the outcome, although you have disagreed with the process?

Mr. Lal: No.

Mr. Kohli: Thank you. Thank you, Mr. Rao. Very good submission. We are looking into it. Not that we agree with everything, but it's a very good submission, put it this way. My issue is paragraph 19.

You say, at minimum, the commission should have a dedicated website from the beginning. Then you carry on. In the last sentence, you say, public consultation requires notification, two-way exchange, and meaningful participation, not merely the formal receipt of views behind closed doors. One of the reasons why I've been appointed is because 2013 led consultation. Now, with my limited participation, we have moved out all the villages, has been open to everybody. Now, apart from two closed-door consultations, even today people can walk in. Nobody stopped. And I've personally gone on the radio. In Labasa, for example, I had sent a Viber text to about 300 people, and two people turned up. How do we go about fixing that?

Mr. Lal : Closed doors can also be used in a figurative sense in that particular context, because none of these proceedings are, for instance, live-streamed. So it's not open to people. It's very, very cheap, very, very easy to organize live-streaming.

It could have been organized of all the proceedings that were conducted. That being said, I think it will be very difficult for anybody to justify this process, especially since you've said, and you continue to, people continue to apply very lofty standards when criticizing the 2013 constitution's perceived lack of legitimacy, owing to the lack of consultation that had happened. Although the architects of the constitution insisted there were some consultations done, which happened over a course of three, four months. And then it was preceded by the very comprehensive Ghai consultation. But no legitimate constitution-making process in the world has had two months of consultations. And it would be very hard to suggest or justify otherwise.

Mr. Kohli : As far as your time limit is concerned, just to follow up on that, you look at other countries' population, their demography, how much time they require. In Fiji, why do we judge by 12 months, 24 months, 18 months, if you are able to do so in three months? What is the magic about having three months or 18 months or two years? You're comparing with other countries that have larger population, bigger demographic areas?

Mr. Lal : Well, the commission hasn't released any statistics, so we cannot assess what proportion of the population have you been able to reach. We don't have those stats.

Those stats should have been there, so we can't really. But I'm pretty certain that you've reached, in these last two months, only a very tiny proportion of the country's entire population. The Reeves Commission took two years, set a very high benchmark, high commission similarly. And I also acknowledge that it is no fault of this good commission that you've been given such a tight deadline that you need to operate under. That is not your fault at all. But there are certain things which was within the ability of the constitution to improve in the process, such as the level of transparency, such as ensuring that you hold consultations at places, I mean the spread of it, the geographical locations and all of that.

Because I went through your venue list, and most of them were predominantly Ithaca areas, villages and so forth. And so those clearly were considerations that were not done. And I think it would be good if we are being honest about it and we accept some of these shortcomings. Because I tell you, it would be very hard to justify some of these shortcomings that are there.

Mr. Kohli : Thank you very much indeed for highlighting that. Subsequently, when we make our report, final report, we'll obviously have all those things in there. How many places we visited, the statistics will be there.

Mr. Lal : However, we've learned from the media that the chair has said that that report won't be public. That it would be entirely the prerogative of the president to make it public or otherwise. So it's another flaw in the process. The whole process should have been mandated by legislation. If you look at the powers of the president, he does not have real executive powers, only qualified powers. And so that's another aspect there.

Mr. Valenitabua: Mr. Lal, we have heard you. We know that, I mean we can tell that you are not happy with the process by which this commission has undertaken its review. The review which was obligated was by His Excellency the President. We have the Commission of Inquiry Act. And also, we have the Terms of Reference which have been gazetted. And some directives also which have been gazetted in relation to how we

operate. We have tried our best to comply with the provisions and the Terms of Reference and the gazetted directives. Now we understand, we hear you about your complaints. For a start, we have not written any report yet. We have not assessed any submission yet. We are still collecting submissions to say now that we have not been receiving or we have not been releasing the contents of submissions and so forth. We cannot do so because we have not collated them yet for your information. And on top of that, we have been directed that whatever evidence we collect, and that includes submissions, is not to be released unless His Excellency allows us to. That was what I meant when I said that.

We are working according to directions here. You may be saying that, you know, we are not releasing submissions. We have not told you the process and so forth. We are not taking things as we think we should take, you know, out of our own volition. What we are doing is we are following instructions, we are following Terms of Reference, we are following gazetted directives, which have been gazetted and you might be able to read that in the gazette. Now, having said that, we are happy that you are here today and that you have come in and made submissions. And we have heard you and it's now printed here, we are going to be looking at it. Thank you for your concern about the Constitution of this country. We have heard from the youths of the country, the National Youth Council, that we need to see that the Constitution is forward-looking.

Constitution for today and Constitution for tomorrow for our young ones. Now, in paragraph six of your submission, page two, the last two sentences, you state that the question, therefore, is this. What is the objective of this constitutional review? And the second question is, what exactly does it seek to remedy? I am happy that you have answered your own question. If you look at paragraph 23 of your submission, you have stated the principal weakness of the 2013 Constitution is that it is not too modern. The problem is that it combines progressive citizen equality with excessive executive power. Executive power, excessive.

It recognizes equal citizenship, but leaves independent institutions too vulnerable to political capture. It creates a comprehensive bill of rights, but allows rights to be limited through broad and open-ended clauses, claw back clauses, they call it. It establishes parliament, but allows legislation to be rushed through with inadequate deliberation.

It provides for independent offices, but gives the executive too much influence over the appointment and removal. Thank you for answering your own questions, the two questions that you raised in paragraph six. That was the reason why the review was necessary.

We have heard from government ministries, including the ministers. We have heard from NGOs, big associations, human rights movement, the human rights and anti-discrimination. They gave us a very comprehensive paper, pointing out the drawbacks, the deficiencies in this constitution which you so champion. So, thank you very much for your submissions. We will take it into consideration and we will rely on the other, I mean we will also consider the other submissions that have been given to us. So, thank you very much. And do you have something else to say?

Mr. Lal : Yes, thank you chair. I don't think it is correct to say, to impute that I champion any constitution. I think that was very inappropriate as well.

Mr. Valenitabua: I'm just reading from what you have written down and what you have presented to us. It's not mine, it's not the commissioner's, it's yours.

Mr. Lal: But it is very inappropriate to impute agendas to some meetings before this commission. I have done a very objective review of the constitution. So we have also listed the key structural flaws in this constitution. Now the question that I have posed on page 2 is in response, I mean that is a follow on from the question that I have raised earlier in the paragraph. Which is that when a constitutional engineering process is done, right at the outset the desired objectives are finalized.

That has not happened. So, my questions there do not pertain to whatever is there in a subsequent paragraph. But rather whether the desired objectives of this particular attempt at constitutional engineering have been set right from the outset. Which should become the starting point. And that's how constitution making happens. And it is quite fundamental, especially in divided societies. But thank you so much for providing us a chance to present. And we wish you and your commission the very best in your deliberations.

----------End of Session [9-7-2026]----------

Submission to the Constitution Review Commission

By Dialogue Fiji

9 July 2026

A. The Defective Review Process

1. Dialogue Fiji appears before this Commission with a deep sense of responsibility, but also with serious reservations about the process through which this constitutional review is being conducted. We say at the outset that Fiji does need constitutional reform. The 2013 Constitution contains serious structural flaws which have contributed to the concentration of power, and weakened independent institutions. But the legitimacy of constitutional reform does not come merely from the appointment of a Commission or the holding of hearings. It comes from a process that is transparent, participatory, deliberative, and trusted by the people.

2. On that test, the present process is deeply deficient.

3. A Constitution is not an ordinary law. It is the supreme legal and political compact of the nation. It defines the relationship between citizens and the State, distributes public power, protects rights, and sets the rules by which political disagreement is managed. In divided societies, the process by which a Constitution is made is as important as the text itself. A flawed process can produce a constitution, but it will not produce constitutional legitimacy. Fiji knows this from painful experience. Since independence, Fiji has had four constitutions, each reflecting the political conflicts and power struggles of its time. The recurring pattern has been that new regimes, whether after coups or elections, have treated constitutions as tools of political reset rather than as enduring frameworks for national stability.

4. That is why the present review process should have been designed with extraordinary care. Instead, it is rushed, opaque and insufficiently deliberative. A five-month process is simply not adequate for a proper and democratic national review of Fiji's supreme law. International comparative experience suggests that comprehensive constitutional reform requires careful sequencing, civic education, public consultation, transparent analysis, drafting, public feedback on draft proposals, and final political settlement. The benchmark for comprehensive constitutional reform is around 18 to 24 months. South Africa's process took about two years, Tunisia's about two and a half years, and Kenya's about 19 months. Fiji's own Reeves process took approximately two years, while the Ghai process took approximately one year.

5. This Commission is therefore presiding over what is the shortest major constitutional review in Fiji's history. That is not a badge of efficiency... but rather a warning sign.

B. Constitutional Engineering and the Need for Clear Objectives

6. For any constitutional engineering process in an ethnically divided society, there are certain desired objectives that must be deliberated upon and finalised right at the

outset. Dialogue Fiji has not seen this CRC do that. The question, therefore, is this: what is the objective of this constitutional review? What exactly does it seek to remedy?

7. If the objective is merely to cure the democratic deficit in the making of the 2013 Constitution, then this process fails to achieve that. A rushed, opaque and poorly documented review process cannot cure the democratic deficit of a Constitution that itself was criticised for lacking popular approval. It simply reproduces the same legitimacy problem in a different form.

8. Constitutional engineering in ethnically divided societies aims to prevent conflict and secure democratic stability by structuring State institutions to accommodate, manage, or transcend ethnic differences. The ultimate goal is to foster political inclusion, ensure minority protection, and prevent the tyranny of the majority in deeply fragmented polities.

9. There are a number of key objectives and strategies that are usually considered in such processes.

10. First, power-sharing, or consociationalism. This involves designing executive and State institutions in a way that includes representatives from all major ethnic groups. This is often achieved through grand coalitions, proportional representation, mutual vetoes on vital cultural issues, and forms of segmented autonomy.

11. Second, electoral engineering. This involves implementing voting systems, such as list proportional representation, that encourage politicians to appeal to voters outside their own ethnic group and increase the prospects of broader political inclusion. A well-designed electoral system can incentivise moderation, inter-ethnic coalitions and national political appeals.

12. Third, decentralisation of power. In Fiji's context, decentralisation should not mean the creation of race-based or ethnically defined power structures. That would risk entrenching the very divisions that constitutional reform should seek to manage and transcend. Instead, decentralisation should focus on strengthening elected local government, municipal councils, provincial-level democratic structures, and community-based decision-making. The objective should be to bring power closer to citizens, improve accountability in service delivery, deepen grassroots democracy, and ensure that communities have a meaningful say in decisions affecting their daily lives.

13. Fourth, minority rights and protections. This includes embedding an entrenched Bill of Rights, legal protections for minority communities, and institutions that can enforce these protections against the State and against majoritarian abuse.

14. Fifth, cross-cutting cleavages. Constitutional design can structure institutions in ways that blur strict ethnic identities by encouraging national parties, cross-regional alliances and political competition around shared civic issues such as the economy, health, education, poverty, infrastructure and public services, rather than ethnic identity alone.

15. These tools are used to build unified nation-states in societies where ethnic division can otherwise become politically destabilising. But they require careful constitutional

design. They require public education, genuine deliberation and clarity of purpose. In Fiji's case, the CRC has not clearly explained whether it is seeking to improve ethnic accommodation, strengthen national unity, reduce executive dominance, enhance institutional independence, reform the electoral system, or merely remedy the lack of legitimacy surrounding the making of the 2013 Constitution.

C. Transparency, Participation and the Nature of the Review

16. That absence of clarity is a serious weakness. A constitutional review cannot be everything and nothing at the same time. Before asking people what they want changed, the process should have helped the country understand the constitutional problem it is trying to solve.

17. We are aware of the argument that this is not a comprehensive review, but merely an amendment review. That argument is not correct. If this was only an amendment review, the terms of reference would clearly identify the specific provisions of the 2013 Constitution that were to be examined, and the Commission would consult the public only on those identified provisions. Instead, the Commission is inviting submissions on the Constitution as a whole. That is, in substance, a comprehensive review. It should therefore meet the standards of a comprehensive process.

18. The Ghai Commission, despite operating under an unelected military-backed regime, set a much higher standard for transparency and participatory constitution-making than what we are seeing now. Public hearings were conducted across the country in 2012, and more than 7000 submissions were received and all of these were published on a central website run by the commission. The Ghai process is widely acclaimed, not merely in Fiji but internationally, as an example of how constitution-making consultations should be conducted: open, participatory, well-documented, accessible to citizens, and grounded in genuine public engagement. That history is precisely why this process should have gone further, not backwards. If the central criticism of the 2013 Constitution is that it lacked popular legitimacy and disregarded the participatory Ghai process, then the corrective process cannot itself be opaque, rushed and poorly documented.

19. At minimum, this Commission should have had a dedicated website from the beginning of the process. Every public submission, unless confidentiality was specifically requested for valid reasons, should have been published. Hearings should have been livestreamed- in 2026 this is much more cheaper and easier to do than it was in 2012. Transcripts should have been made available. Citizens should have been able to go to one central public repository and see what individuals, organisations, political parties, traditional institutions, religious bodies, unions, business groups, women's groups, youth organisations and minority communities were actually telling the Commission. Public consultation requires notification, two-way exchange and meaningful participation, not merely the formal receipt of views behind closed doors.

20. The absence of a central public record weakens the entire exercise. How will the public know whether the Commission has fairly assessed the submissions? How will citizens know which views were dominant, which were marginal, which were organised, and which represented genuine community sentiment? Has the Commission released statistics on the number of submissions received, the categories of submitters, the geographic spread of participation, the gender and age profile of participants, or the issues most frequently raised? Without such information, the process cannot be properly evaluated.

21. For these reasons, Dialogue Fiji was reluctant to participate in this process, despite receiving two invitations. We did not wish to legitimise a process that we consider flawed. However, we have ultimately decided to make this submission because Fiji's constitutional future is too important to abandon. We participate while placing on record our serious concern that the process, as presently designed, is unlikely to cure the democratic deficit that has long surrounded the 2013 Constitution.

D. Features of the 2013 Constitution That Must Be Retained

22. Having said that, Dialogue Fiji does not support reckless constitutional change. The 2013 Constitution contains progressive features which should be retained. It abolished ethnic communal rolls and reserved ethnic seats, established a single national electoral roll, adopted the principle of one person, one vote, one value, and introduced an open-list proportional representation system. It also entrenched common and equal citizenry, declaring that all citizens of Fiji are Fijians and that all citizens enjoy equal status under the Constitution. It established Fiji as a secular State, separated religion and State, abolished the unelected Senate, and placed legislative authority in a fully elected single House of Parliament. These provisions are foundational features of a modern, multi-ethnic, liberal democracy.

23. The principal weakness of the 2013 Constitution is not that it is too modern. The problem is that it combines progressive citizen equality with excessive executive power. It recognises equal citizenship, but leaves independent institutions too vulnerable to political capture. It creates a comprehensive Bill of Rights, but allows rights to be limited through broad and open-ended clauses. It establishes Parliament, but allows legislation to be rushed through with inadequate deliberation. It provides for independent offices, but gives the executive too much influence over their appointment and removal.

E. Correcting the Concentration of Executive Power

24. The central task of constitutional reform should therefore be clear: retain the modern democratic foundations of the 2013 Constitution, while correcting the structural concentration of power.

25. The first major reform should be to redesign the Constitutional Offices Commission. Under the current structure, the COC is dominated by government-aligned members: the Prime Minister, the Attorney-General, two Prime Ministerial nominees, the Leader

of the Opposition and one Opposition nominee. This creates a 4 to 2 government-aligned majority, allowing the executive to shape the leadership of key watchdog institutions. That is a fundamental design flaw. Institutions such as the Electoral Commission, the Human Rights and Anti-Discrimination Commission, the Auditor-General and other constitutional offices must not depend on a body structurally controlled by the government of the day.

26. Dialogue Fiji proposes that the COC be reconstituted as a genuinely independent and balanced appointments body. It should include equal numbers of nominees from the Prime Minister and the Leader of the Opposition, but those nominees should not be current Members of Parliament, political party office-holders, recent candidates, ministerial advisers, or persons who have held senior political office within the previous five years. In addition, the Fiji Law Society should nominate one member through an open process conducted by its Council, and one member should be nominated collectively by the Vice-Chancellors of Fiji's three universities. That nominee should be a senior academic of recognised standing in law, governance, public administration, political science, human rights, development studies or a related field, and should not be a current Member of Parliament, political party office-holder, recent candidate, ministerial adviser, or person who has held senior political office within the previous five years. This would ensure that the COC benefits not only from legal expertise, but also from independent academic knowledge of governance, institutions and democratic accountability.

27. The chairperson of the COC should not be the Prime Minister. The chairperson should be an eminent independent person, preferably a retired judge or senior legal practitioner of high standing, appointed by consensus between the Prime Minister and the Leader of the Opposition. If they cannot agree within 21 days, the Fiji Law Society should provide a shortlist of three eligible persons, from which the President appoints the chair. This would move the COC away from executive control and towards constitutional guardianship.

28. The Public Service Commission should also be constitutionally strengthened as the guardian of a professional, merit-based and politically neutral public service. The Prime Minister's agreement should not be required for the appointment or removal of Permanent Secretaries. Permanent Secretaries must serve the State, not the political executive of the day.

29. Second, Fiji should retain the open-list proportional representation system, but reduce the electoral threshold from 5 per cent to 2 per cent. The current electoral system has major democratic strengths. It eliminates ethnic rolls, gives equal value to each vote, and ensures that every voter participates in the same national electoral process. The single national constituency also discourages narrow regional or communal appeals, rewards parties that campaign on issues of national interest rather than sectional interests, and completely removes the possibility of gerrymandering through the manipulation of constituency boundaries. These are important gains which should not

be reversed. However, the democratic value of proportional representation is weakened when the electoral threshold is set too high. The current 5 per cent threshold is excessive for a small, diverse and politically fragmented society. It suppresses smaller parties, discourages new political movements, and artificially concentrates representation in larger parties. A 2 per cent threshold would preserve proportionality while preventing excessive fragmentation. It would also allow a genuine multiparty system to thrive.

30. Political parties should be constitutionally encouraged, but not compelled as a condition of contesting elections, to ensure meaningful gender balance in their candidate lists. The Constitution should require any system of public funding for political parties to include gender equality criteria, including incentives for parties that achieve at least 40 per cent representation of either gender in their candidate lists. This would promote women's political participation without excluding parties from the democratic process. Placing this principle in the Constitution would ensure that a future parliamentary majority cannot easily remove gender equality incentives through ordinary legislation.

31. Third, the size of Cabinet should be constitutionally capped. Under section 91(1), the Prime Minister has sole authority to determine the size of Cabinet, while the Ghai Draft proposed a Cabinet cap of 15 members. Dialogue Fiji supports a constitutional cap of 15 ministers, including the Prime Minister and Attorney-General if the Attorney-General is a Cabinet minister. This would prevent executive bloat and reduce the use of ministerial appointments as instruments of political reward.

32. The Constitution should also require Cabinet to reflect, as far as practicable, Fiji's gender, cultural, ethnic and regional diversity. A government that represents a multi-ethnic country must be seen to draw leadership from the full breadth of that country. If the composition of Parliament makes this impossible, the Constitution should permit the Prime Minister to appoint up to five ministers from outside Parliament, but only for the purpose of satisfying diversity, expertise or inclusion requirements. Such ministers should be subject to parliamentary confirmation, should have the right to speak in Parliament on matters within their portfolios, but should not vote. They should also be bound by the same standards of accountability, asset declaration, conflict of interest rules and parliamentary questioning as elected ministers.

33. There should also be a constitutional term limit for the office of Prime Minister. No person should be permitted to serve as Prime Minister for more than two parliamentary terms, whether consecutive or non-consecutive. This would prevent excessive personalisation of executive power, encourage leadership renewal, and reduce the risk of one individual dominating the State over an extended period.

F. Strengthening Rights, Judicial Independence, Accountability and Parliament

34. Fourth, the Bill of Rights should be retained but strengthened. The 2013 Constitution has a comprehensive rights framework, but section 6(5)(c) allows rights to be limited by

restrictions that are not expressly set out in the text, provided they are necessary and prescribed by law. This creates a broad opening for the State to limit rights. The Constitution should instead codify a strict proportionality test. Any limitation of a right must be reasonable and justifiable in an open and democratic society, based on human dignity, equality and freedom. The State must bear the burden of proof. It must show that the limitation pursues a legitimate objective, is rationally connected to that objective, impairs the right as little as possible, and that there are no less restrictive means available to achieve the same purpose.

35. The Constitution should also recognise access to information as a directly enforceable constitutional right, not merely as a right dependent on future legislation. Citizens cannot hold power to account if they cannot access information held by the State.

36. Fifth, judicial independence must be strengthened. Under the 2013 Constitution, the Prime Minister advises the President on the appointment of the Chief Justice and the President of the Court of Appeal after consulting only the Attorney-General. There is no requirement to consult the Leader of the Opposition. This is inadequate. The appointment of the Chief Justice should be made through an independent COC or a strengthened Judicial Service Commission, with public advertisement, transparent criteria, merit-based assessment and cross-party consultation.

37. The Constitution should also close the dangerous loophole relating to suspension of the Chief Justice. The 2013 Constitution permits the Prime Minister to advise suspension pending a tribunal investigation, but does not specify a deadline for the tribunal to convene. This creates the possibility of an indefinite suspension, which can operate as removal in all but name. The Constitution should require that where the Chief Justice is suspended, the tribunal must be constituted and convened within seven days, and must complete its work within a prescribed period unless extended by the Supreme Court for exceptional reasons.

38. Sixth, Fiji should retain a unicameral Parliament. There is no democratic justification for restoring an unelected Senate with law-making powers. Laws should be made by representatives directly elected by the people. The 2013 Constitution correctly abolished the unelected Senate and established a fully elected single House of Parliament. If Fiji wishes to strengthen legislative scrutiny, the answer is not to create another chamber of unelected legislators. The answer is to strengthen parliamentary committees, improve public consultation on Bills, resource the Opposition, and create constitutional safeguards against rushed law-making.

39. The current four-year parliamentary term and election cycle should be retained. A three-year term provides insufficient time for governments to develop and implement medium to long-term policies, while a five-year term risks weakening democratic accountability by keeping voters too far away from the next opportunity to renew or withdraw their mandate. A four-year term strikes the appropriate balance between governmental stability and regular democratic accountability, and remains the appropriate model for a parliamentary democracy such as Fiji.

40. The Public Accounts Committee should be constitutionally recognised as a central instrument of parliamentary oversight and should be chaired by an Opposition Member of Parliament, preferably the Shadow Minister for Finance. Fiji's parliamentary practice traditionally provided for an Opposition MP to chair the PAC, but this was altered in 2016 to allow a Government backbencher to chair the Committee. That change weakened the oversight function of Parliament. The PAC examines how public money is spent, and its work should therefore be led by a member who is institutionally independent of the executive. Comparative Commonwealth practice strongly supports Opposition leadership of the PAC. Restoring this principle would strengthen scrutiny of public expenditure, reinforce executive accountability, and align Fiji's Parliament with good parliamentary practice.

41. The Speaker should also be constitutionally protected as an independent guardian of Parliament, not as an extension of the Government majority. The Speaker should be elected by a supermajority of Parliament and should be required to act with strict neutrality.

42. Seventh, the Constitution should impose strict safeguards on the expedited passage of legislation. The current framework allows ordinary parliamentary majorities to bypass normal deliberation. The Ghai Draft required a much higher supermajority before deliberation could be bypassed. Dialogue Fiji proposes that any use of urgent procedures, including procedures similar to Standing Order 51, should require a two-thirds parliamentary majority, except in narrowly defined emergencies such as natural disasters, war, public health emergencies or urgent fiscal measures certified by an independent authority. Even then, the use of expedited procedures should be time-limited, justified in writing, and subject to post-enactment committee review. Democratic law-making requires that citizens who will be subject to the law must have a meaningful opportunity to understand and influence that law.

43. The Constitution should create a citizens' petition mechanism, adapted from the participatory spirit of the Ghai Draft, which allowed constitutional amendments to be proposed by a petition signed by at least 1,000 citizens. Citizens should be able to petition Parliament to consider an issue of national importance, review an existing law, or initiate discussion on proposed legislation. Once a petition reaches a defined threshold, Parliament should be required to refer it to the relevant standing committee for public hearings and a report within a fixed period; where it reaches a higher threshold, Parliament should be required to schedule a full debate. This would not allow citizens to bypass Parliament or make laws directly, but it would ensure that Parliament cannot simply ignore issues that have significant public support.

G. Foundational Values That Must Remain Sacrosanct

44. Finally, there are foundational values in the 2013 Constitution which should be treated as sacrosanct. Fiji must remain a secular State. In a multi-religious society, secularism is not hostility to religion. It is the only fair basis on which the State can treat all religions equally and protect freedom of conscience for every citizen. The Constitution

must also retain equal citizenry. There can be no return to constitutional arrangements that classify citizens into different political categories based on race or ethnicity.

45. The label "Fijian" as the common nationality of all citizens should be retained. Much of the debate around this issue confuses nationality with ethnicity. Ethnicity refers to ancestry, culture, language, customs and communal identity. Nationality refers to legal and political membership of the State. A person may be iTaukei by ethnicity and Fijian by nationality. A person may be Indo-Fijian by ethnicity and Fijian by nationality. These are not contradictory identities. They operate at different levels.

46. Replacing "Fijian" with "Fiji Islander" would be a downgrade. The proud name of our country is Fiji. We are not the Republic of the Fiji Islands. We are the Republic of Fiji. "Fiji" carries dignity and authority. It reflects maturity as an independent nation. Colonial-era naming often emphasised geography because territories were viewed as possessions or collections of islands. Independent states, by contrast, increasingly adopt names that reflect nationhood rather than geography. Citizens of France are French, citizens of India are Indian, citizens of Australia are Australian, and citizens of Fiji should be Fijian. That common national identity does not erase indigenous identity. The iTaukei people remain the indigenous people of Fiji, with their distinct culture, language, institutions and land rights. But the State must have one equal civic identity for all its citizens.

H. Conclusion

47. In conclusion, Dialogue Fiji urges the Commission to recognise that Fiji's problem is not simply the text of the Constitution. It is the system of power around it. The 2013 Constitution contains progressive and modern features, but it also embeds structural vulnerabilities that enable excessive concentration of power. Reform should therefore be careful, principled and democratic. It should not become another episode in Fiji's long history of constitutional change driven by those who temporarily hold power.

48. If this review is to have legitimacy, the Commission must immediately improve the process. It should publish all submissions, release participation statistics, livestream future hearings, issue thematic consultation papers, allow public comment on draft recommendations, and explain how competing views will be assessed. Without that transparency, the final report will struggle to command trust.

49. Fiji does not need another Constitution that one side celebrates and another side rejects. We need a constitutional settlement that is modern, democratic, inclusive, rights-protecting and institutionally balanced. We need a Constitution that limits power, not one that merely transfers power from one political group to another. Above all, we need a Constitution that belongs to the people of Fiji.

Fiji Disabled Person's Federation

Mr. Macanawai : In fact, the disability unit of the Ministry that supports the National Council for Persons with Disabilities of this opportunity, just yesterday, and then, so I'm actually the President of the Fijian Disabled People's Federation, and I also sit on the Council, but primarily having just learnt of this opportunity yesterday afternoon, and did not want to miss it, and I was expecting to also have representatives from the Council here, but it looks like they are not, so I guess it would be probably more appropriate representing the organizations of persons with disabilities in Fiji, as Fijian Disabled People's Federation is the umbrella body, and probably by, before representation as a member of the Council, probably can, also probably can be, but I did not have the assistance on their behalf. Thank you, sir.

Mr. Valenitabua: So, who are we? Is National Council for Persons with Disabilities, correct? The National Council for Persons with Disabilities is the statutory body that governs disability matters, organizations, and they informed us of this consultation, and so I came from home straight to here, I didn't come from the office, so I did ask the office if the Council is also here, or will also be coming, so I asked my wife if they are here but it looks like they are not. So I am, I am in terms of representation, it's probably fair to say it's just the Fiji Disabled People's Federation, which is a member of the National Council for Persons with Disabilities. Thank you.

Mr. Valenitabua: That clarifies your position, and also the name which we will be referring to in our report, considering the submitters, or when we list the submitters who came before us. So we will be referring to the Fiji Disabled Persons Federation, and you are a member of the National Council for Persons with Disabilities. Is that correct? Thank you. Please proceed.

Mr. Macanawai : Thank you Chair. Let me just open up my document. Honourable Chair, Honourable Members of the Committee, I want to first humbly request that following this oral presentation, that if we can be given the opportunity to then submit our written submission by next Friday if that's not too late. As I said, we only found out about this opportunity yesterday afternoon, and we had a draft, I saw a draft this morning but I don't think it was in a ready state to be shared with this Honourable Commission,

hence this request. That is right, Chair. I do also have the opportunity to thank this Commission for the letter that I saw that was sent to the National Council for Disabled Persons which I saw this morning, inviting the Council to provide some submission to this Commission, therefore acknowledging that and thanking for the opportunity.

I have personally been following submissions that have been made previously, and what I thought of doing when I found out yesterday afternoon of this opportunity and then talking to the Council Office this morning through that office, I took the opportunity to look at the current 2013 Constitution to see the current references that address issues pertaining to persons with disabilities. And I've noted there are about five references in the 2013 Constitution to disability, which I will be referring to some of them, and also then for the purpose of the work of this Honorable Commission is then maybe make some suggestions on how they can be improved or strengthened to better protect the rights and aspirations of future citizens with disabilities. I first note that in the Section 26 of the 2013 Constitution, on the right to equality and freedom from discrimination, on Subsection 3, that a person must not be fairly discriminated against directly or indirectly.

One of the grounds of that is disability, which we would like that to be considered in the revision or in your work Honourable Chair. Also Subsection 6 talks about the facilitation of reasonable access to persons with disabilities to proprietors of places and services that are identified in Subsection 5 to ensure that access are provided to persons with disabilities. We do like to see that as retained. We also acknowledge that there is a Section No. 42 that specifically address the rights of persons with disabilities. We also would like to see this retained and some parts of it strengthened and I'll come to that shortly.

Subsection 1 of this Section 42 of the 2013 Constitution says that any person with disability has the right to reasonable access to all places, public transport information including braille or sign language, or the appropriate means of communication. I note here that other rights that are in the 2013 Constitution, like rights to education, rights to work and decent work, have referred to, for example in education, it talks about primary, early childhood and secondary education. There isn't a reference to special education and I thought hard about requesting for that because but did not really want to request that inclusion because if that's in the Constitution it would probably take years to undo what

probably is maybe aspirational now but maybe different moving forward into the future.

So it's one where things like education, but this particular Section 42 talks about the rights of persons with disabilities where things like education and health and work can be considered here tends to a specificity of these particular areas that sometimes are still aspirational to persons with disabilities and are not given the opportunity to do so, to be at school, to have gainful employment, to enjoy health services that many take for granted. So we are wondering whether that is a consideration that this Commission can have on strengthening this particular Section 42. Also talks about the reasonable access to materials, substances and devices relating to persons with disability and then in part Subsection 2 talks about the person with disability has a right to reasonable adaptation of buildings, infrastructure, vehicles and work arrangements to enable their full participation.

I'm paraphrasing the particular clause in my apology for not reading the full text. Then in the third part it also talks about the law administrative action taken under the law may limit or authorize the limitation of the rights set in this section. Now that probably begs the question on even interpretation of that.

How the rights of persons with disabilities can then be overruled if you like by another administrative procedure. And then Part B of the 2013 Constitution, Section 163 if I'm correct, herein lies the definition of disability and this is probably one area that we would like to be amended. So the disability includes any physical, sensory or mental or psychological or other conditions or illness that is perceived by a significant sector of the community to have a significant adverse effect on the individual's ability to participate fully and effectively in society on an equal basis with others.

Now I would like to suggest for the consideration of this honorable commission if the definition of disability that is provided in the Rights of Persons with Disabilities Act of the 2018. Now this act came to being five years after the 2013 Constitution and also it came one year after Fiji ratified the Convention on the Rights of Persons with Disabilities. So Fiji is a state party if you like to the United Nations Convention on the Rights of Persons with Disabilities and a year after ratifying, ratification, this bill was discussed and then became the Rights of Persons with Disabilities Act 2018.

Now the definition that's in this act on persons with disabilities is probably a better version to be used in the Constitution and to replace what's in currently the 2013 Constitution which under part one of the Rights of Persons with Disabilities Act 2018 and interpretation, persons with disabilities include those with long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. I think of Fiji being a state party to the Convention on the Rights of Persons with Disabilities that international human rights treaty on disability having included that in the 2018 definition in the 2018 Rights of Persons with Disabilities Act, I think it's only appropriate that the amendment of the definition of the Constitution be made so that that version is made more current and in line with Fiji obligation as a state party to the Convention on the Rights of Persons with Disabilities. Excellencies, those are the few comments that I draw from the quick look at the Constitution to bring to this consultation.
I just would like to add a few other items. Having clarified my representation as President of the Fiji Disabled People's Federation, my apology I also didn't introduce myself properly. My name is Setariki Macanawai, President of the Fiji Disabled People's Federation.

The population of persons with disabilities in Fiji is according to the 2017 census is 14.3%. So it's quite significant in terms of population and not very far off from the World Health Organization estimate of 16% to be persons with disabilities of any given country. It was 15% initially and then I think a year or two ago WHO revised it upwards to 16% to demonstrate the growing number of people with disabilities globally. So the 14.3% of persons with disabilities of each population and probably if we take the current population we are looking at probably about 132,000 citizens, people with disabilities.

And I think I'm not sure if there has been an opportunity for an organization to voice the issue and if not then it is really my honor to be doing this on behalf of this 14.3%, 132,000 people with disabilities and whose aspirations, interests really should not be overlooked. And in the notion of nothing about us without us and what the Sustainable Development Goals often talk about is leaving one behind, then really we are humbly requesting that this commission give serious consideration to our issues and our plight. The request that I'm verbally sharing today, articulating today, which we will formally present in a written submission to be provided by the end of next week.

I'll close by just saying that the ratification of the Convention on the Rights of Persons with Disabilities by Fiji, the government of Fiji in 2017, four years after this 2030 constitution and then a year after that in 2018 the Rights of Persons with Disabilities Act which I already mentioned. And also not forgetting other submissions that we've made to the Electoral Commission, to the Employment Relations Act submission and also other opportunities including probably more at the policy level, the disability policy of the Fijian government through the Ministry of Women, Children and Social Protection. Opportunities for our country to pay sufficient attention, not just attention in terms of paying attention but how can they translate that attention in terms of resources, in terms also of attitudinal changes and the services that are inclusive in nature for persons with disabilities.

I'll close by saying, by making reference to the definition which I forgot to mention is currently in the 2023 constitution. It gives opportunity to communities to decide whether a person has a disability or not, if my understanding of that is correct. I think that is troublesome to persons with disabilities when we know that the prevailing attitude to disability at our community level in our society is largely negative.

I think if consideration can be given to the use, adoption of the Convention on the Rights of Persons with Disabilities, the definition is already shared and already captured in the 2018 Rights of Persons with Disabilities Act which Fiji ratified as a state party. I think it should be fitting that definition be made current and in line with international definition. Our members of the disability community, as I said 43% that I am hoping that I am doing justice in sharing their voice to this table.

I hope that our plea, our requests on us being given a seat at the table and in some cases transformation of the table to suit our needs so that we can participate fully, actively and meaningfully and also contribute to the well-being of our nation and also our community generally. Thank you very much Honourable chair and members of this commission for the opportunity given to me to share briefly our submission orally noting that we will be following this with a written submission in the coming week. Vinaka saka Vaka levu and God bless.

Mr. Valenitabua: We were in Rakiraki and a gentleman there who I must say was not challenged, he raised the point of excess. He spoke about the Rakiraki Town Council and also the owners of buildings in Rakiraki not providing access in relation to challenged persons who are on wheelchair.

And that was a concern that was raised similar to what you have raised today. So although the constitution contains provisions for the provision of those excess ramps or whatever they are called, there are some builders or some owners of buildings who have not taken that into consideration. We discussed it with Mr Conway Bag who is an architect and yes, although it is in the constitution, some of the planners, some of the owners of buildings still do not provide that means of access.

So you have raised a point here, we believe that we will maintain Section 42 in relation to that with improvements or strengthening. So that is a point which I wanted to raise. It has been raised before at the Commission. You have now confirmed it this morning to this Commission. I will now ask the other Commissioners if they have any comments or questions in relation to your submission. Thank you very much.

Mr. Conway : Thank you Mr. Macanawai for your submission this morning. I made note of a couple of things. You are quite right in the definitions of the constitution. Your proposal is quite taken. I looked at the Act and that has a more defined principle that you have submitted and I acknowledge that. Thank you. The other one was the understanding in the Bill of Rights that we have the right to education and all the other principles that impact Section 42 which is another person's with disabilities. I just wanted to clarify, are you saying that we need to include that in Section 42 or include it under Section 31? Thank you.

Mr. Macanawai: Can I respond now? Yes. Thank you sir. Yes. I thought about this special education and whether it has a room in Section 31. But in the way education is evolving, now we are talking about also inclusive education. So I wonder whether it would be more progressive that instead of putting special education in Section 31, it will come a time when probably education is already evolving to inclusive education now. We don't know what the future trend will be. But whether education can be included in Section 42 when you talk about the services. So having education mentioned in Section 42 when it's the Rights of Persons with Disabilities Act might give more clarity.

When we talk about education in Section 42, we are talking about the education of persons with disabilities. Whereas if special education is mentioned alongside early childhood, primary, secondary education, that might disadvantage us moving forward. When we want to innovate or remove, as in some cases, some special education, we will not

include special education. So my suggestion for your consideration, Honorable Commissioners, is that education, work, those kinds of rights be mentioned in the Rights of Persons with Disabilities Act of Section 42. Thank you, sir.

Mr. Conway: Thank you very much Mr. Mathewani, I think you've clarified that and made your point very clear about where we are moving forward. Your reference to don't leave anyone behind, don't look at us any differently, as you said that could be something. But I take your point, it's something that we will grapple with in the Commission, but very compelling arguments that you've put forward this morning. Your colleague, Mr. Nemani Rawalui, was the gentleman in Rakiraki who raised these matters with us, and his complaint was, I guess, that's entrenched in code and legislation, it's just enforcement that needs to be taken. But yeah, thank you so much, I really appreciate your input this morning. Vinaka.

Mr. Valenitabua : Mr. Macanawai, there is no more comment, no more questions, no more remarks from the Commissioners. We thank you again for your attendance before the Commission this morning, you have raised points in relation to the disabled persons of this country. We will surely deliberate on the submissions we have heard so far, and we thank you very much. We wish you well, and we'll be looking forward to receiving your submissions next week.

Mr. Macanawai: Vinaka. Thank you very much, Chair, members of the Commission, for the opportunity, and we will try to get in our written submissions. Vinaka.

----------End of Session [9-7-2026]----------

National Federation Party

National Federation Party
DATE :7-7-2026

Mr. Valenitabua: Thank you, I shall now call this consultation session to order. Mr. Biman Prasad and gentlemen and ladies of the National Federation Party, we welcome you to the Constitution Review Commission this afternoon. We appreciate your attendance this afternoon as we have been waiting for you.

The commission this afternoon is represented by commissioners. As you can see from where you are sitting, I will ask the commissioners to introduce themselves, starting from the far right. Please.

Mr. Conway: Thank you, Chair. My name is Mr Conway Begg Greetings, Mr. Prasad and members of the National Federation Party.

Ms.Nailatikau: My name is Mere Nailatikau, my background is in public policy and public diplomacy, and it's a pleasure to be here to benefit from your contributions today.

Dr. Fatiaki: Thank you. Honourable Piman Prasad and colleagues, friends from the National Federation Party, my name is John Charles Fidiaki, I'm a medical practitioner in Suva. Thank you.

Mr. Kholi: Good afternoon, all, my name is Ami Kohli, I'm a legal practitioner from Labasa.

Mr. Gounder: Good afternoon, Honourable Prasad and Honourable Singh, members of the National Federation Party, I'm Niles Gounder, and I look forward to your submission this afternoon. Thank you.

Mr Valenitabua -Yes, Honourable Prasad and the ladies and gentlemen of the National Federation Party, we are looking forward to hearing from you this afternoon. Taking on from there, would you like to introduce yourselves first before we start?

Mr .Prasad: Thank you, Mr. Chairman and members of the commission. Let me first of all apologize, we had to change the time.

I was with the Sugar Select Committee in the Western Division and we just arrived last night. With me is Honourable Agni Dev Singh, Minister for Employment, Productivity and Industrial Relations. Kamal Hair, General Secretary of the party, Kalisi Watuwara, the Assistant General Secretary of the party, Bimal Chaudhury, and Registrar of the party, Mr. Dilip Kumar.

And Avenai also one of our party administrators. Thank you very much. You want me to start now?

Mr. Valenitabua: Yes.

Mr. Prasad: Okay. So Chairman and respected members of the commission, we have a written submission as well. What I will try and do is to highlight and perhaps go through some of the key issues.

But let me begin by talking about the National Federation Party. And in particular I want to highlight the principal objectives of the party and why it is relevant to talk about that a little bit. And I want to read this.

First, to create, promote, foster and preserve a sense of national consciousness among the citizens of Fiji, irrespective of any distinction of community, religion, sex or race. To promote, preserve and safeguard the political, economic and social rights of the citizens of Fiji, irrespective of any distinction, again, of community, religion, race or sex. To promote and preserve and safeguard the political, economic and social rights of the citizens of Fiji, again, irrespective of any distinction of community, religion, race or sex.

And finally, to strive to bring about political, economic, social and cultural integration among the citizens of Fiji by pursuing the ideal of seeking unity in diversity and by creating an atmosphere of goodwill, understanding and mutual respect for the culture and religion of all classes of citizens. In our view, Honourable Chairman and members of the Commission, these objectives are timeless. They remain true today and relevant and are in the national interest.

We have given a little bit more background as to the contribution of the National Federation Party and some monumental permanent achievements, things like the establishment of the

National Provident Fund, the Agricultural Landlord and Tenants Act, negotiating the Denning Award, peaceful achievement of Fiji's independence, major role in the 1970 Constitution, Constitution Review Commission, Sir Paul Reeves-led Commission for the Review of the racist 1990 Constitution, and only party that has opposed every political upheaval and has not participated or benefited in any way from any post-coup regime or interim administration. And we are the only surviving political party that has an enduring and direct impact in Fiji's modern political and economic history. And since December 2022, as you know, we are part of the coalition government, which essentially helped to unseat the Fiji-first dictatorial government that was in place since 2014 until 2022.

I need not, Mr. Chairman, go into details of the upheavals in Fiji since May 1987. I think you and the commissioners are very well aware of it. But just to highlight, on the 10th of April, the most recent one, April 2009, the judgment of the Fiji Court of Appeal delivered on 9th April 2009, and reinforcing the 1997 Constitution as the supreme law of the land and a pathway to retaining parliamentary democracy by August 2009, was stressed by the military regime.

So, we wanted to highlight that the appeals court decision had ruled that a caretaker government led by someone else, other than the coup leader and interim prime minister, Mr Voreqe Bainimarama, and the post PM Laisenia Qarase, be appointed to facilitate. Constitution review, we can claim that NFP is the only political party in the country to have either witnessed or actively participated in the formulation of all the four constitutions in our post-independent history. We vigorously opposed the racist 1990 Constitution and vigorously opposed the 2013 Constitution, the Constitution which was forced upon us and on the people of Fiji through decree, both after the 87 and the 2006 upheaval.

You might ask, NFP participated in elections under this Constitution, and we did so with a very clear mandate and objective to change those constitutions in 1992, 1994, and our participation in 2014, we laid out very clearly in our manifesto that we will seek a change in the 2013 Constitution. So, participation in elections under imposed constitutions does not necessarily mean that our party supported this Constitution. I

want to raise this very important point, the review process itself, Mr. Chairman and members of the Commission.

We are of the firm view that the process must not be rushed, otherwise it could be levelled as a facade. In our view, realistically, and I have expressed this in other forums, that there is no way whatsoever that the next general elections can be held under the provisions of a new Constitution. The enactment of the past four constitutions, either through a great democratic process, or enforced through a decree and timelines for elections, and getting ready with all the consequential legislations, electoral changes, will take time.

And in the current context, as we know, elections must be held at the latest by the 6th of February 2027. And in our view, the timeline is strictly impractical, if we are looking at the work that would be involved. Under the 1970 Constitution, agreed and legislated before independence in October 1970, the first general election was held in 1972.

The 1990 Constitution, when it was changed in July 1997, through an Act of Parliament, the election was held in May 1999. Similarly, the 2013 Constitution was imposed upon the people of Fiji on 7th September 2013. General elections were held on 17th September 2014.

I'm highlighting this, Mr. Chairman and members of the Commission, to labour the point that having a new Constitution, and working meticulously through all the consequential legislations, changes to the electoral system, if we are going for constituencies, boundaries, etc., there is a lot of detailed work that is needed. So that's a very important point that we as a party would like to make. Then, the legitimacy of the 2013 Constitution, that has been very clearly articulated, and has been found by the Supreme Court to be a legally effective Constitution.

And on that basis, following the opinion of the Supreme Court to reduce approval requirements for changes, the FCRC has been tasked with recommending changes to the Constitution. The important point that we have to remember is that this Constitution was formulated and imposed upon the people of Fiji after repealing the Decrees 57 and 58 of 2012, which had

outlined the process that should be followed in formulating the 2013 Constitution. So the military government did not follow its own decree, and the process they laid down to actually do the 2013 Constitution.

And the commission that was formed, the Gai Commission, came out with a report. It was a good report, but that was traced, banned, and a constitution was formulated by a group of people. We believe that the Commission has a very, very important responsibility and role.

We can use the template of the 2013 Constitution, or make changes to it, and adopt a totally new approach. The National Federation Party firmly believes that the Commission adopts a hybrid approach. This means that the Commission takes into account submissions, incorporates desirable provisions, contain both in the 1997 Constitution and the 2013 Constitution into a totally new Constitution.

And the Commission should then present both a draft Constitution and a review report to His Excellency the President. Mr. Chairman, as I said before, members of the Commission, this involves quite a delicate amount of work, intricate, as well as requiring expert advice and input. The fact that the Commission is required to make changes to the 2013, recommend changes to the 2013 Constitution, does not prevent it in any way from drafting a new Constitution altogether.

Incorporating the 2013 Constitution or repealing it is the responsibility of Parliament. The 1997 Constitution Amendment Act actually resulted in the repeal of the 1990 Constitution. Therefore, it does not mean that the review prevents the formulation of a totally new legislation or Constitution and repeal of existing legislation.

Deficiencies in the 2013 Constitution and recommendations. We recommend that the preamble must be changed to reflect what the second half of the preamble of the 1997 Constitution which states. And I don't have to, Mr. Chairman, read all that.

You have the submission. Because the imposed 2013 Constitution did not reflect the proper way in which our people should be addressed, our history should be addressed. It

categorizes all those who have made Fiji their home and in the third paragraph in the preamble describes Indo-Fijians as descendants of indentured laborers from British India.

That is unnecessary. So, we recommend that the preamble in the 1997 Constitution be adopted instead of the preamble that's provided in the 2013 Constitution. The next important point, Mr. Chairman and members of the Commission, is and we have highlighted this.

I have particularly highlighted this in my contributions sitting in the opposition for eight years about the limitations to the Bill of Rights. And there are a number of derogations, limitations in the 2013 Constitution and Commissioner Coley would vouch for that. So, we recommend that the Commission incorporate the Bill of Rights in 1997 and 2013 Constitution and significantly remove or reduce the limitations to what would be unlawful and not a practice in genuine democracy.

I'm talking about the limitations. So, I think that's an important point. We also recommend the removal of the teaching of contemporary and conversational ethos in Hindi as prescribed in the 2013 Constitution to be replaced by formal Vosa vaka Viti.

We also recommend that right to access land, both for agriculture and residential, be clearly stipulated and lessees, leases and tenancies include tenants, sub-leases, sub-lessees and their residences, buildings, etc. This is, Mr. Chairman and Commissioners, important. Many citizens who live in informal squatter settlements which make time to develop by government in terms of provision of proper leases and services per rental to landowners on both native and freehold land.

And there may be, this will avoid possible takeovers, illegal activities, etc. All of them need protection until a permanent housing solution and plan is implemented by government. But this will be a long-term objective and therefore the sub-leases of those in informal settlements need protection.

Appointment to independent offices, Mr. Chairman and Commissioners. We have listed the offices. In the 2013 Constitution, unlike any other Constitution, the COC is a

thoroughly political body as provided for in the 2013 Constitution.

So you have the Prime Minister who is the Chair, the Attorney General and two nominees of the Prime Minister, they have four, the Leader of the Opposition and one other nominee. So essentially, if you are in government, if you are the Prime Minister, if you are the Attorney General, you have absolute leeway in making constitutional appointments. It was not the same in any other Constitution.

So we recommend that the provisions of the 1997 Constitution on the appointment of independent constitutional offices be adopted, strengthened, so as to make the appointments truly apolitical for the sake of accountability and transparency. Provision for ombudsman, this was present in the 1997 Constitution, a very important office. Sections 157 and up to 164 of the 1997 Constitution outlined very clearly the role and responsibilities of an ombudsman.

So, we also recommend that the new Constitution provides for an ombudsman and amongst his or her role, has the powers to investigate and recommend prosecution following a complaint from any person and act or omission of any public officer, employee, office or agency. When such act or omission appears to be illegal, unjust, improper and inefficient, ombudsman will serve as a judge. Ombudsman should be a person who shall have served as a judge, at least in the high court and must be appointed within three months of the government taking office under the new Constitution.

Very important position which was not provided for in the 2013 Constitution, which was in the 1997 Constitution. Code of Conduct and Accountability and Transparency Commission and Freedom of Information. We recommend provisions for the enactment of legislation to give effect to the Code of Conduct, Accountability, Transparency Commission and Freedom of Information.

Unfortunately, this was provided for in the 2013 Constitution. Between 2014 and 2022, it was brought into Parliament but never saw the light of the day. In the last three years, we have

brought that back in Parliament but this has not been adopted yet.

And we recommend that the Ombudsman shall chair the Accountability and Transparency Commission. FICAG, as you heard through many submissions, our recommendation is that FICAG should be removed from the Constitution and FICAC Decree Act be repealed or significantly amended to exclude its role as an investigating and prosecuting body to one that promotes public awareness about corruption. A forensic unit should be established within the Fiji Police Force which shall investigate cases of alleged corruption and white collar crimes to avoid duplication of resources and weaponization of an organization like FICAG.

Transitional provisions, Section 173 to be removed. This is provided for in the 2013 Constitution and it goes against the grain of good democratic principles and parliamentary democracy. No constitution, no good democratic constitution will have this kind of provision.

In fact, Section 173 prevents Parliament's role from changing the decrees wrongly enacted under Section 165. There are many draconian decrees still in force because Section 173 prevents Parliament from actually changing it. So, we recommend that Sections 165 and 173 be removed from the new Constitution and all decrees that have not reached the floor of Parliament in the last 12 years be scrutinized by Parliament before being either enacted or repealed.

We also submit that there is no need for a provision like Section 13 12 in the Constitution. And we know that the RFMF commander while presenting the institution's submission to the FCRC clearly outlined the military's role which is to respect or be subservient to civilian authority at all times. The role of the armed forces in the upheavals of our history cannot be ignored.

And the submission by the RFMF commander was very thoughtful where he talked about the respect for civilian authority but a constitution should not provide a legal basis for anyone in the future to interpret that and use that as a legal basis for any kind of military intervention. So, we recommend the removal of any reference to the RFMF as being responsible at all

times for the overall safety of Fiji and well-being of Fijians because it's a legal avenue for any future upheaval. The commander also talked about the immunity.

We are in full agreement with the rationale provided by the RFMF commander that given the Supreme Court's opinion of democratic deficit and in respect of the recognition of the 2013 Constitution to be legally effective, the immunity provisions as he suggested should be removed from the Constitution and we support his recommendation because I think it's very important for transparency and accountability. Entrenchment of group rights, we know about the infamous Bill No. 17 of 2021 that actually resulted in arrest of people like us who opposed this bill in the last previous parliament.

And this government, the coalition government repealed that bill when we came into government. Our recommendation is that we entrench the following legislation in conformity to Section 185 of the 1997 Constitution. The i taukei Affairs Act, the i taukei Development Fund Act, the i taukei Lands Act, i taukei Lands Trust Act, Agriculture Landlord and Tenants Act, Rotuma Act, Rotuma Lands Act and Banabans Lands or Settlement Act.

Amendments to these acts must require 66% of parliamentary majority. That's our recommendation, Mr. Chairman. New Constitution must make provisions to prevent degradation of the environment and cruelty against animals.

So, we recommend that the new Constitution has provisions for stringent laws against the degradation of the environment and cruelty against animals and promote animal welfare because this seems to be happening on a daily basis. And as a country, as people, as citizens, we need to take this head on. Conduct of political parties, we recommend the repeal of the decree and in place of that a code of conduct for political parties which must include holding of its annual general meeting within the calendar financial year.

Prohibition on those principal office holders of a political party wound up or deregistered for non-government, non-payment of debt from either contesting any type of election including general election and forming another political party. And we recommend immediate repeal of these decrees. Mr. Chairman

and respected commissioners, let me get into the electoral system because this is, in our view, a very, very important aspect of any constitution.

How members of parliament are elected, what is the objective, what will they represent and what would be the participation or what would be the structure of participation of not only the citizens but also those who are elected in response to how they save the community. Fiji has had the first pass the post system under 1970, under 1990 and the alternative vote system under the 1997 constitution. Under 2013 constitution, we have the Duhon system and a proportional representation.

In the local governments, as we know, Mr. Kohli would know this well, right from 1973 to the last election we had in 2005, there was common rule. Local government elections were based on common rule. Under the 1970 constitution, Fiji had 52-member house of representatives and it was a mix of both communal and national seats.

A 70-member house of representatives purely under communal voting under the 1990 constitution. 71-member house of representatives elected under both communal and open seats, departure from the 1990 constitution to a mix of communal and open seats in the 1997 constitution. And currently 55 members under the so-called common rule in the 2013 constitution, which in many ways doesn't do justice to votes of equal value because the calculations under the Duhon system takes it, deviates from the strict proportional representation.

For example, the Duhon system which has been widely portrayed as a common rule is a bit like Sudoku with voters selecting a number. There was no name or symbol on an A3 size ballot paper. This did not produce proportional representation as prescribed in the constitution.

And I'll give you some examples. At the end of the 2018 election, Fiji's first share of votes constituted 26.2 seats in a 51-member parliament. NFP's vote share constituted 3.95 seats.

In mathematical terms, 26.2 would be rounded off to 26 and 3.9 would be rounded to 4. But under the Duhon system, 26.2 increased to 27 while 3.95 was reduced to 3. So, it kind of

rendered meaningless the strict meaning of proportionality. You understand what I'm saying, you know? It wasn't strictly proportional. The St. Paul-Reeves-led Constitution Review Commission recommended a 70 member House of Representatives with 25 members to be elected on communal rule and 45 under open rule.

And it recommended that all communal constituencies be turned into open seats over a period of time, promoting more multiracial voting. But these recommendations, Mr. Chairman and the Commission, was 30 years ago. So based on experiences since our independence and with rapidly changing demographics, we recommend the following.

The new constitution make provision for a 70-member parliament to be elected under electoral system of mixed member proportional representation, MMP. This is a system in New Zealand. And we are recommending that the nation be divided into 25 constituencies and members elected on non-racial lines to be determined by the Constituency Boundaries Commission.

Elections for the 25 constituencies be held under the first-past-the-post system. And 45 members to be elected under a closed-list system strictly based on proportionality. So, in effect, there will be two ballot papers.

And two ballot papers are not unusual. Two ballot papers, one for the respective constituency and the other for the party vote of their choice. So, when people go to the polling booth, they get two ballot papers.

One, they vote for the party of their choice and one for the constituency member that they want to vote. So, you have both a constituency system and a proportional representation based on what the total party votes are and based on how many seats they get through constituency. And the threshold of eligibility of seats in parliament remain at 5%.

We recommend that it remain at 5% of the total valid vote cast in a general election. We are also saying that should a candidate, and this is a valid question that many people will ask, who contest a constituency also appears on the closed list. So, you

can have a person who is standing for the constituency, but also the party puts him on the list.

Let's say, for example, there is a woman candidate that you really want to be in parliament, or a youth candidate, or a minority candidate. The party decides to put him or her on both the list as well as the constituency. Let's say he or she wins the constituency, but is also on the list, eligible to be a member, then the next person on the list will come in, in place of, so you could have both.

And it's a very good system. So, we recommend that. And we also proposed, we are proposing this electoral system because we genuinely believe that given our changing demographics, changing thinking about getting more women, getting more youth into parliament, but also making sure that our minority communities are not left out, this system will be good for both the majority and the minority communities.

The system eliminates communal voting and guarantees the representation of minorities, either from one of the 25 constituencies or from the closed list. Let's say that no Rotuma candidate wins in a constituency. But if a party wants a Rotuma or a Banabanas candidate to be in parliament, especially larger parties, you put them on the top of the list.

And by all means, they will be becoming members as list MPs. The system eliminates communal voting but guarantees representation of minorities, either from one of the constituencies or from the closed list of parties. And as I said earlier, I know the examples I was giving, Mr. Chairman and Commissioners, that women representation, minority representation can be enhanced under the MMP system.

And given our multi-ethnic, multi-racial, multi-religious society, the MMP proportional representation makes a lot of sense and one that doesn't discriminate and helps in getting minority representation, women representation in parliament. The issue of power sharing, as provided for in the 1997 constitution, we feel that in a country like Fiji, there are provisions like that in places like Mauritius. You know, best losers get in.

If a minority group doesn't get into parliament at all, then they go and look at the best loser. The person, he or she not only gets into parliament but gets a position in cabinet. And that's like power sharing.

So, we recommend that parties that win 5% of seats in parliament, not votes, they win 5% of seats, have a right to be invited to cabinet. Parties with less than 5% of the seats may be invited, 5% seat threshold, may be invited to join cabinet by the Prime Minister. And portfolios given to such members will come from the share of the Prime Minister's party or the ruling party.

Land tenure, Mr. Chairman and members of the Commission, this has always been a generational issue. Major problem of expiring agricultural leases. We were out in the West talking about sugar.

Invariably, a lot of discussion was about land leases, renewal, rental mechanisms, etc., etc. And as a party, we know this very well. In 1966, the NFP negotiated the ALTO, a late leader, A.D. Patel.

Ten years later, another NFP leader, S.M. Koya, negotiated the ALTA, replacement or successor to ALTO. And there was a joint parliamentary committee, select committee on ALTA, after the formulation of the 1997 Constitution, under the then and now Prime Minister, Hon. Sitiveni Rabuka

And obviously, Parliament was dissolved in May, March 1999, so joint parliamentary select committee was no longer there. And under this proposal, under the proposal that we are recommending, a master lease concept. And in fact, in 2006, the then Prime Minister, Hon.Laisenia Qarase

Sitiveni Ligamamada Rabuka had already had some people in his office working on this, looking at how we can deal with and adopt a concept of master lease. So the concept of master lease was where government would lease the land from the ITLTB, the state and those freehold lands used for agriculture, at the rate of 10% UCB, that could be, that figure can change, it could be more now, or unimproved capital value of land, then lease that land. So government leases the land from ITLTB, from the state land, even freehold land, and sub-leases it to the tenants, and

possibly to help agriculture, and use it as an incentive, could be a lower UCB.

The then Prime Minister, Rabuka at that time, had proposed that apart from the 50-year lease, a tenant would be informed by TLTB during the 25th year of the lease, whether the landholding unit wanted the lease back or not. And I think it was a good thinking, because it gives certainty to tenants, and you know well in advance that after 25 years, you have to revert that land back to the landowners. So if the landowners did not require the land in the future, then the lease would be automatically extended by another 25 years, making it a term of 75 years.

So, we believe that a master lease concept should be something that the Commission should look at. If need be, take some additional expert advice on this. And if you see our recommendations, we've laid it out very clearly.

We're saying that government leases the land, sub-leases it. In one way, it can be very helpful, because sometimes there are two layers. You have the TLTB, you have the landowning unit, the Mataqali, the landowners, and then you have the tenants.

So sometimes there are issues between the tenants and the landowners, but the lease is from the ITLTB. So government can step in, lease the land, and government can also ensure that issues such as lease arrears, rates that the landowners would advocate from time to time, can be dealt with by the government. So we submit to the Commission to please have a careful look at that.

Other salient features of the 2013 Constitution, I know there is a lot of emotions and sentiments that have been expressed about the secular state and common name. So first, in our view, the name Fijian is not new. In fact, it was there long before this thing was legislated in the 2013 Constitution.

I mean, for years, our sports people, you know, late Josefa Levula, for example, a renowned track athlete, rugby union and rugby league star, was known internationally as the Flying Fijian, a few decades before our independence, actually, in 1970. National rugby team is now known as Flying Fijians. Vijay Singh,

professional golfer and one time number one in the world, was referred to as a Big Fijian.

So, Fijian has been a very widely used name, a common name for Fiji. We strongly support a secular state. Secular state doesn't, I think there is a lot of misconception about calling a country a secular state.

Secular state doesn't mean for a moment that different religions, different faiths will have issues. It's about respect and tolerance of all faiths or religions in a particular country. To me, secular state means that more than to have some kind of meaning that it's anti-religion or anti-faith, etc.

So we strongly support that and we put that in our recommendation very clearly. Again, I want to say that secularism is not in any way a sentiment against any religion or faith. In fact, it's about religious and racial tolerance.

And we fully support the new constitution recognizing Fiji as a secular state. So Mr. Chairman and members of the Commission, we've listed the summary of all our recommendations. I don't need to read that again, but I would be very happy, members of my team would be happy to answer any questions or clarifications that you may have with respect to the recommendations.

And we are also happy, after this, if the Commission feels that you need additional explanation, you need more details, particularly on Master Lee's concept. We have the literature; we have more things to provide the Commission to consider some of these things. So with that, Mr. Chairman, again, let me thank you and the Commission for the opportunity to make our presentation.

And we have provided the written submission that you can have a look at it later. Thank you, Honourable Prasad. Thank you very much for that oral submission.

Mr. Valenitabua: And we also acknowledge the receipt of your written submission, which we have just mentioned. We really appreciate that we've got the written submission and then supported by the oral submission. The oral submission is being recorded, that

will be typed in a copy form, and then we'll have that conceded together with the written one that you have sent us.

Thank you very much for that. Now, usually we give time for Commissioners to comment or ask questions in relation to submissions that are made to us from submitters. So I'm going to ask the Commissioners whether they have any comments or questions, which they would want to ask in order to clarify matters from the National Federation Party.

Ms. Nailatikau: Gentleman, and lady. Thank you, Chair, and thank you, members of the National Federation Party, for your submission today. I have a few questions, but in the interest of time, I'll also allow my fellow Commissioners to ask questions.

My question relates to the matter of the Code of Conduct that you have included in your written submission. We've also heard submissions more recently and throughout the consultation process about what happens when parties are wound up or deregistered while their candidates or members are in Parliament. You've spoken about what happens with political parties that may be wound up or deregistered in the lead-up to elections, for instance, but what might your views be relating to MPs or members of Parliament whose parties are deregistered or wound up while the parliamentary term is ongoing?

Mr.Biman: Well, thank you, Commissioner, for that question. With respect to parties which are deregistered, there is a provision in the 2013 Constitution that they become independent members of Parliament and they are then free to join another party. That's in the 2013 Constitution. What we were saying is that the Commission needs to look at in the future.

You know one party got deregistered. They split themselves into three groups. That party also left a debt behind.

I think some of the people who provided services to that party are left in the dark. And now the same people who are part of that have formed parties. Now we are saying that's not acceptable.

If you can't run a party, you can't look after your debt. You have no right to form another party and be a politician or so-called leader. That's what we are saying in our recommendation.

They should be actually discharged as a bankrupt because they owe money to people who provided services to the party. On the Code of Conduct, as I said, it's in the Constitution, Transparency Commission, Code of Conduct. In the last eight years, the previous government brought a bill into Parliament.

We didn't see the light of the day. Unfortunately, we in this term, we brought the bill back. It's still in the Parliament.

I can't give you a timeline when or if it is going to be enacted. But that's why we've made certain recommendations about including it as part of a transitional or saying in the new Constitution a timeline when this should be done for a new government under the new Constitution. In that way, they'll be bound by the Constitution to bring the law into Parliament within that timeframe and have it enacted.

Mr. Kohli. Thank you. Professor Prasad and Mr. Agni Deo, since you are both members of the Parliament, if I'm right, I want to ask you this question.

You have in your submission said that we should have elections under this Constitution as it is, right? You want the election to be held under this Constitution the way it is?

Mr. Biman: We as a party, we have already advocated very clearly that there are certain laws under this Constitution, particularly the electoral law, the political parties act. Some of the provisions are draconian. And we are saying that if we, as I said earlier, the timeline, because we had to go through the Supreme Court, we know the provisions that the Supreme Court has recommended, particularly the reduction from 75% majority to two-thirds majority and the referendum from 75% to a simple majority.

These are good decisions by the Supreme Court to enable a change because with the previous provision, you could never change a constitution. But what we are saying is that if we are going into the election under the 2013 Constitution, there is still time between now and when we have the election to change the

provisions in the Electoral Act and the Political Parties Act which restrict political activities. For example, the electoral law, the campaign laws, these are so prohibitive.

You know, you make one mistake, you know, you could be in the court, you know, you say something to somebody about voting for them, could be construed as vote by. These are draconian laws that were enacted by the previous government to keep the opposition at bay. You know, like the manifesto, the Political Party Act is another draconian piece of legislation.

So that can be changed under this Constitution and before the next election. And I'm told that the Attorney General's Office is working on bringing those changes to Parliament around August. My question, in fact, I didn't finish it and you answered part of it.

Mr. Kohli My question, in fact, was this. A suggestion came yesterday that we should defer elections, allow interim government to be there for 12 months till all this is sorted out and then have election. My question is, what do you say to that? Simple answer.

Mr. Prasad: There is no provision in the Constitution to defer elections. Simple. And that's why we are saying that if, and we believe that the timeline is too ambitious to have a new Constitution, to have new electoral arrangements in place, boundaries, looking at the population distribution.

These are very delicate, intricate, requires expert looking at this, appropriate data, statistics to be able to do this properly. And so we are saying that there is no provision in the 2013 Constitution. Supreme Court has said that this Constitution is legally valid.

They've made recommendations. So there is no provision in the Constitution for any attempt to defer the election.

Mr. Kohli: Following up from there, on one hand you wanted to be MMP, writing changes in the electoral system to accommodate everybody.

And on the other hand you are saying that you can't defer elections. My question is, given the time, can we do all this

together, like voter education, boundaries, etc. Can that all be done within the time frame?

Mr. Prasad: There is absolutely no contradiction in what I said when I said you have the election and the MMP.Ideally, we would like to have an election and the MMP if we are able. But as I said, the reality is that the timeline is too tight. Because the work that is required to get the MMP, the electoral boundaries, that's not... So there is no contradiction in the way you are saying that we want the election and we want the MMP.

We want the election and we want the MMP to be a part of the next Constitution, whenever that Constitution is put in place.

Mr. Kohli: I stand corrected by you. Thank you.

Mr. Valenitabua: Honourable Prasad, we have gone around the country and submissions from the grassroots people is that the electoral system in Fiji is too complex, too complicated for them. One recommendation was that we returned to the multi-constituency voting system or electoral system. That was one submission.

And secondly, that we have a simpler electoral system which is easily understood by the people. Now, you have taken us through the various electoral systems over the years, beginning from 1970 up to 2022. There is an introduction now onto the MMP electoral system.

How easy or how difficult would that be, if I may ask?

Mr. Prasad: Very good question, Chair. Two very straight answers. I agree with you that the current electoral system, the, as I pointed out, Sudoku paper, without any photos or numbers, yes, that confused a lot of people.

But we've had three elections on that. So there is a certain level of familiarity with the current system. The MMP system definitely would be a much better system, much simpler system, because people, voters will have two ballot papers.

You could, one would be for the constituencies, where they can have the photo, they can know the constituency like what you

used to have before. So, you get a ballot paper, you have a list of five or ten candidates, you know, Mr. Kohli, Dr. Nilesh Grounder, Biman Prasad, Avinai, Mere, and they all represent different parties. You vote for the individual you want.

Then, the second ballot paper would be just voting for the party and you could have a symbol. Symbol for the party, which used to be, which is the standard that many countries have, symbol of the party. So, you get two ballot papers.

One, you choose the candidate whom you want to vote. And the second ballot paper would be the party you want to vote. So you have a party vote, you have a constituency vote.

And we are recommending 25 constituencies and 45 list members. List members will come from the proportionality of the votes that a party gets. And we are saying that the threshold should be just 5% as it is.

So, yes, the MMP voting system, ballot paper, will be easier and people will become much more familiar. But, we also need time to make the transition. There has to be a lot of education about MMP, about going back.

I mean, we know, we voted on this system. But those who were born after 2006 or 2018 or 2014, or even before that, people who voted for the first time in 2014, have no idea about the constituencies, about party symbols, about having two ballot papers. So, you would require a bit of time, education.

But it will, chair, definitely will be a simpler system of voting than what we have now.

Mr. Valenitabua: Thank you, wonderful Prasad. I believe there is no more comments or questions from the commissioners this afternoon.

Mr. Prasad: I thought Dr. Gounder was going to ask some very difficult questions. He is keeping very quiet. Oh, he says over the Kava, yes.

Mr. Valenitabua: Anyway, thank you very much for your time, Honourable Prasad and Honourable Biman, and ladies and gentlemen of the National Federation Party. It's been a good afternoon. We have

been enlightened with other things, which we will deliberate on when we sit down for deliberations starting next week.

Thank you very much. An invitation for a photo shoot.

----------End of Session [7-7-2026]----------

NFP

NATIONAL FEDERATION PARTY

Together For Fiji's Future

Submission To The Fiji Constitution Review Commission On Fiji's New Constitution

Friday, July 10, 2026

All correspondence should be addressed to the General Secreatary

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1.0 Introduction

The National Federation Party (NFP) is the oldest political party in Fiji. The party was born over 6 decades ago in 1963 out of the struggle of the people of the then colonial Fiji for dignity and respect. The late A D Patel and his followers formally launched NFP as a multiracial party in 1963.

The principal objectives of the party have been, are and will remain as follows: -

- *To create, promote, foster and preserve a sense of national consciousness among the citizens of Fiji, irrespective of any distinction of community, religion, race or sex;*

- *To promote, preserve and safeguard the political, economic and social rights of the citizens of Fiji, irrespective of any distinction of community, religion, race or sex;*

- *To strive to bring about political, economic, social and cultural integration among the citizens of Fiji by pursuing the ideal of seeking "Unity in Diversity", and by creating an atmosphere of goodwill, understanding and mutual respect for the culture and religion of all classes of citizens;*

These objectives are timeless and remain as true today as they did when the party was founded. Throughout its political life, working

for the national interest the party has retained these objectives as its guiding principles.

Some of these monumental and permanent achievements which the NFP was instrumental in bringing to fruition are: -

- Establishment of Fiji National Provident Fund for the workers of Fiji;
- Establishment of Housing Authority for the ordinary and average working-class citizens of Fiji;

- Enactment of Agricultural Landlord & Tenant Ordinance (ALTO in 1966) and Agricultural Landlord & Tenant Act (ALTA) in 1976 to provide long term stability and security to cane growers and agricultural tenants on leased native, state and freehold land;

- Negotiating the Denning Award and lead the struggle for the departure of Colonial Sugar Refining Company (CSR), bringing prosperity to cane growers and Fiji's sugar industry for many decades and the sharing formula of proceeds as outlined the Award continues to be the basis of calculating cane payments even after 56 years, that ensure cane growers receive 70% share of the proceeds;

- Peaceful achievement of Fiji's Independence under the 1970 Constitution;

- Establishment of the Constitution Review Commission (Sir Paul Reeves led Commission) for the review of the racist and feudalistic 1990 Constitution;

- Successful promulgation of the universally acclaimed 1997 Constitution;

- Only party that has opposed every political upheaval and has not participated or benefited in any way from any post-coup regime or interim administration.

The NFP is the only surviving political party that has had a direct role and enduring impact in Fiji's modern political transition from colonial rule to independence and subsequently providing a robust people's voice in the first seventeen years of independence.

During this period the party also acted with great responsibility and sensitivity in managing the volatile and developing race relations in the country.

Since December 24, 2022, the party is part of the coalition government, which unseated from power the Fiji First government that had ruled Fiji dictatorially since the 5th December 2006 coup till 5th October 2014 and with an iron-fist from 6th October 2014 to 23rd December 2022 under parliamentary democracy.

2.0 Upheavals in Fiji since May 1987

While it is officially recognized that there have been 4 coups in Fiji, namely May 14 and September 25 – both in 1987, May 19, 2000, and 5 December 2006, the NFP submits that there has been usurpation of either the democratically elected government or the constitution on five occasions.

The second coup is recorded as having been executed on 25th September 1987, which trashed the Deuba Accord. The Deuba Accord was agreed to by the deposed NFP/FLP coalition government and the opposition Alliance party in talks mediated by the then Governor-General Ratu Sir Penaia Ganilau.

The military rejected the Accord. Members of the judiciary were sacked. And Fiji was declared a Republic on 7th October 1987.

Similarly, on 10th April 2009, the judgment of the Fiji Court of Appeal delivered on 9th April 2009, re-enforcing the 1997 Constitution as the supreme law of the land and a pathway to returning to parliamentary democracy by August 2009, was trashed by the military regime.

The Appeals Court had ruled that a caretaker government led by someone else other than coup leader and interim Prime Minister

Voreqe Bainimarama and deposed PM Laisenia Qarase be appointed to facilitate elections.

On 10th April, that judgment was trashed and the 1997 Constitution abrogated through a Decree. The interim PM/military commander was re-appointed under the Executive Authority of Fiji Decree. Most members of the judiciary were sacked.

Public Emergency Regulations and media censorship were enforced.

Therefore, if trashing of a political accord and events that followed is recorded as a coup, the trashing of the Appeal Court ruling, abrogation of the 1997 Constitution and establishment of a new legal order surely is Fiji's 5th coup.

3.0 Constitution Review

The NFP is the only political party in the country to have either witnessed or actively participated in the formulation of the four Constitutions in our pre or post independent history.

The party actively participated in the negotiations that led to the formulation of the 1970 Constitution and Fiji's Independence as well as the internationally acclaimed 1997 Constitution.

The NFP vigorously opposed the 1990 and 2013 Constitutions that were forced upon the people of Fiji through Decrees after the 1987 and 2006 upheavals respectively.

The party participated in two general elections in May 1992 and February 1994 under the racist and unjust 1990 Constitution to campaign for its change, resulting in the 1997 Constitution.

Similarly, the NFP has in the last three general elections held under the provisions of the 2013 Constitution, prescribed it in its election manifestoes and the vision document of the need to change the 2013 Constitution.

Participation in elections under constitutions that the party has opposed, does not in any way legitimise the supreme law forced upon the people. NFP opposed the1990 Constitution but participated in two elections under its provisions with the sole objective of seeking changes to the racist constitution.

The review process currently underway is born out of the Supreme Court of Fiji Opinion of August 2025 where the highly restrictive review provisions were read down.

The requirements of a 75% parliamentary majority to endorse changes was reduced to 66% and the requirement of 75% majority of total number of registered voters in a referendum on the changes was reduced to majority of those voting in a referendum.

This simply means that recommendations of this Commission, negotiated as part of a political process and tabled in parliament as Fiji's new constitution, will require a 66% majority of members of parliament and a majority of voters who participate in a referendum to endorse it.

4.0 Review process not to be rushed

The NFP is of the firm view that this process must not be rushed. Otherwise, it will be labeled a façade. Realistically, there is no way whatsoever that the next general elections can be held under the provisions of a new constitution.

And the enactment of the past four constitutions either through an agreed democratic process or enforced through a decree and timeline for elections after enforcement of consequential legislation are proof of why it is simply impossible.

In the current context, elections must be held at the latest by February 6th, 2027. And there is no way it can be held under new provisions and a new order.

It is vital that the Commission request His Excellency the President as the appointing authority and who issued the Terms of Reference, for more time instead of the current unrealistic timeline.

There are precedents because consequential legislation must be enacted to give effect to provisions of a constitution.

Under the 1970 Constitution, agreed and legislated before our Independence in October 1970, the first general elections for an independent Fiji were held in April 1972.

Under the imposed 1990 Constitution, promulgated in July 1990, elections were held in May 1992.

The 1997 Constitution (Amendment) Bill was passed in July 1997 and enacted that same month on the 25th. Yet elections were held in May 1999 due to enactment of consequential legislation to give effect to the constitution.

Similarly, the 2013 Constitution was imposed upon the people of Fiji on 7th September 2013. General elections were held on 17 September 2014.

Therefore, the next general elections should still be held under the provisions of the 2013 Constitution with government having the option of changing the Electoral Act in accordance with recommendations of the Multinational Observer Group following the 2014 elections as well as the concerns of political parties.

This Commission, therefore, must not rush the outcome of the review process in conformity to the current timeline because if it does, then the process loses credibility and legitimacy to determine what is right for Fiji.

5.0 Legitimacy of 2013 Constitution

The 2013 Constitution has been found by the Supreme Court to be the legally effective constitution. And on that basis, following the opinion of the Supreme Court to reduce approval requirements for changes, the FCRC has been tasked with recommending changes to the Constitution.

It must be remembered that this constitution was formulated and imposed upon the people of Fiji after repealing Decrees 57 and 58 of 2012 that outlined the process for a new constitution. The report and draft constitution of the Professor Yash Ghai chaired review commission was burnt.

The Ghai draft constitution was in accordance with Decrees 57 and 58. They were Fiji Constitutional Process (Constitution Commission) Decree No. 57, which outlined the limits to the work of the Commission and stipulates the timeline for the acceptance of the Constitution and its assent.

And the Fiji Constitutional Process (Constituent Assembly and Adoption of Constitution) Decree No. 58 set out the limitations on the Constituent Assembly that was to deliberate on the draft report prepared by the Commission.

The 2013 Constitution's formulation in no way followed the processes laid out in both the Decrees and the rest is history.

6.0 Commission's role

This Commission therefore has the responsibility of whether to use the 2013 Constitution as a template and make changes to it or to adopt a totally new approach.

We firmly believe the Commission adopt a hybrid approach. This means the Commission take into account submissions, and incorporate desirable provisions contained both in the 1997 and 2013 Constitutions into a totally new Constitution.

The Commission should present both a draft Constitution and a review report to His Excellency the President. This involves intricate work and requires expertise which the Commission must source and be provided with.

The fact that the Commission is required to recommend changes to the 2013 Constitution does not prevent it in any way from drafting a new constitution altogether.

Incorporating changes in the 2013 Constitution or repealing it is the responsibility of parliament. The 1997 Constitution (Amendment) Act resulted in the repeal of the 1990 Constitution which had provisions for review after 7 years.

Therefore, it does not mean that review prevents the formulation of a totally new legislation or constitution and repeal of existing legislation.

7.0 Deficiencies in 2013 Constitution and Recommendations

A. Preamble

While those who imposed the constitution in 2013 prided themselves in claiming it gave all Fijians common and equal citizenry, the Preamble of the constitution is an impediment to unity. It categorises all those who have made Fiji their home, and in the third paragraph describes Indo-Fijians as descendants of indentured labourers from British India.

We recommend the Preamble must be changed to reflect what the 2nd half of the Preamble of the 1997 Constitution which states: -

RECOGNISING that the descendants of all those who chose to make their homes in these islands form our multicultural society:
AFFIRMING the contributions of all communities to the well-being of that society, and the rich variety of their faiths, traditions, languages and cultures:
TAKING PRIDE in our common citizenship and in the development of our economy and political institutions:
COMMITTING ourselves anew to living in harmony and unity, promoting social justice and the economic and social advancement of all communities, respecting their rights and interests and strengthening our institutions of government:
REAFFIRMING our recognition of the human rights and fundamental freedoms of all individuals and groups, safeguarded by adherence to the rule of law, and our respect for human dignity and for the importance of the family,

B. Limitations to the Bill of Rights

The limitations to the Bill of Rights are totally unjustified. There are more limitations than rights. Of course a constitution imposed by a dictatorship will limit the rights and these have to be removed.

We recommend that the Commission incorporate the Bill of Rights in both 1997 and 2013 Constitutions and significantly reduce or remove the limitations to what would be unlawful in a genuine democracy so as to ensure the rights are free and unfettered.

We also recommend that in case of freedom of speech, the new Constitution recommend development of legislation governing use of all platforms of social media, not to impose restrictions, but disallow posting of vulgar and racist content, including personal attacks and promoting lies.

We recommend the removal of the teaching of contemporary and conversational I Taukei and Hindi in schools to be replaced by formal Vosa Vakaviti and Hindi.

We also recommend that right to access land both for agriculture and residential be clearly stipulated and lesees, leases and tenancies include tenants, sub-leases, sub-lesees, and their residences, buildings etc.

This is important because firstly, many citizens who live in informal squatter settlements which may take time to develop by government in terms of provision of proper leases and services, pay rental to landowners on both native and freehold lands.

There have been many cases of forcible takeovers of homes leaving the victims homeless. Similarly, in many agricultural areas, there are those who are sub-lesees or annual tenancy agreement.

All of them need protection until a permanent housing solution and plan is implemented by government but this will

be a long-term objective. Therefore the sub-lesees or those in informal settlements need protection.

C. Appointment to Independent Offices

All appointments to Independent Offices is done by the Constitutional Offices Commission (COC). However, the COC itself is a political body. The Chair of the COC is the Prime Minister.

The Attorney-General and 2 nominees of the PM comprise the government while the Leader of the Opposition and his/her nominee are also members.

The COC is makes key appointments for 10 positions namely:-

(a) the chairperson and the members of the Human Rights and Anti-Discrimination Commission;
(b) the chairperson and the members of the Electoral Commission;
(c) Supervisor of Elections;
(d) Secretary-General to Parliament;
(e) the chairperson and the members of the Public Service Commission;
(f) Commissioner of Police;
(g) Commissioner of the Fiji Corrections Service;
(h) Commander of the Republic of Fiji Military Forces;
(i) Auditor-General
(j) Governor of Reserve Bank of Fiji

The above 10 positions are extremely important. They must not be appointed by politicans. It defeats the very meaning of constitutional office when politicians sit on it.

We recommend that the provisions of the 1997 Constitution on the appointment of independent/constitutional offices be adopted and strengthened so as to make the appointments truly apolitical for the sake of accountability and transparency.

D. Provision for an Ombudsman

There is no provision for an Ombudsman under the 2013 Constitution, unlike the 1997 Constitution. Sections 157-164 of the 1997 Constitution outline the role responsibilities of an Ombudsman.

We recommend that the new Constitution provides for an Ombudsman who amongst his/her role, has the powers to investigate and recommend prosecution following a complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient.

The Ombudsman shall have served as a judge, at least in the High Court and must be appointed within 3 months of a government taking office under the new constitution.

E. Code of Conduct, Accountability and Transparency Commission & Freedom of Information

Governments elected under both the 1997 and 2013 Constitiutions have failed to bring legislation to the House of Representatives and Parliament respectively to enact these important legislation. These legislation are necessary to give true meaning to accountability, transparency, ethical conduct and good governance.

In April 2016, the then government tabled a Bill on Code of Conduct. Nothing happened and the Bill lapsed before the 2018 general elections. It was revived and the Justice, Law and Human Rights parliamentary committee received public submissions, scrutinised it and tabled its report in April 2019. But nothing happened and the report gathered dust.

It had to be revived after the 2022 elections but it seems unlikely to be legislated. Therefore, the new Constitution must stipulate a time frame.

We recommend provisions for the enactment of legislation to give effect to the Code of Conduct, Accountability and Transparency Commission, and Freedom of Information to

ensure a government formed under the new Constitution must within 12 months of taking office enact these legislation. Failure to do so shall require the Ombudsman to refer the matter to the Supreme Court for an opinion.

The Ombudsman shall chair the Accountability and Transparency Commission.

F. FICAC must be abolished or its current role changed

FICAC or Fiji Independent Commission Against Corruption has turned into a highly politicised body that has weaponised itself as an organisation of persecution.

This doesn't happen in a democracy. FICAC's prosecution and conviction rate is abysmal because more often than not, it investigates trivial matters and wastes its resources.

It is shameful that an anti-corruption body set up in 2007 and legislated in the 2013 Constitution is obsessed with investigating complaints of alleged non-compliance of Political Parties and Electoral Acts instead of pursuing corruption.

We recommend that FICAC be removed from the constitution and the FICAC Decree/Act be repealed or significantly amended to exlude its role as a an investigating and prosecuting body to one that promotes public awareness about coruption.

A forensic unit should be established within the Fiji Police Force shall investigate cases of alleged corruption and white collar crimes to avoid duplication of resources and weaponisation of an organisation like FICAC.

G. Transitional provisions and Section 173 to be removed

The transitional provisions contained in the 2013 Constitiution entrenched dictatorship in a parliamentary democracy. No constitutiuon should have those provisions. For example, all Decrees automaticaly became Acts without ratification or scrutinity by Parliament.

Further, Section 173 prevents parliament's role from changing the Decrees wrongly enacted under Section 165. This was at the height of dictoarship in the pretext of givinbg Fiji true democracy.

There are many draconian Decrees still in force, now dubiously called Acts without parliament scrutiny. These Decrees, promulgated for example after forceful termination of personnel prohibits the victims from seeking redress or justice. They disallow any Tribnunal or Court from accepting and hearing proceedings. This is unheard of in a democracy.

We recommend that Sections 165 amd 173 be removed from the new constitution. And al Decrees that have not reached the floor of parliament in the last twelve years, be scrutinised by parliament before being either enacted or repealed.

H. No need for a provision like Section 131(2)b in a Constitution

Section 131(2) of the 2013 Constitution that states "*It shall be the overall responsibility of the Republic of Fiji Military Forces to ensure at all times the security, defence and well-being of Fiji and all Fijians*", is a recipe for future upheavals.

This was imported from the 1990 Constitution as well as a submission by the RFMF to the Ghai Commission. This was not in the 1997 Constitution.

Recently, the RFMF Commander, while presenting the institution's submissuion to the FCRC clearly outlined the military's role, which is to respect or be be subservient to civilian authority at all times. The role of the armed forces in the upheavals of our history cannot be ignored.

The current RFMF Commander respects civilian authority. But a constitution should not provide a legal basis for the RFMF to enforce its authority.

We recommend the removal of any reference to the RFMF as being responsible at all times for the overall safety of Fiji and

well-being of Fijians because it is a legal avenue for any future upheaval.

I. Immunity must be removed

Chapter 10 of the 2013, which entrenches immunity for upheavals in 1987, 2000, 2006 and abrogation of the 1997 Constitution in 2009, sets a dangerous precedent. Because the Immunity also entreches Limitation of Liabilities for Prescribed Political Events Decree 2010.

And this Decree is an Act under the Constitution, under the transitional provisions of the constitution.

This Decree or Act gives blanket and irrevocable immunity to the armed forces for the upheaval of 2000, those responsible for the abrogation of the 1997 Constitution in May 2000, mutiny of November 2000, in respect of those who carried out the acts ordered by the then RFMF Commander.

It also grants the RFMF commander at the time immunity for his correspondence to government up to 2006.

The Decree/Act grants immunity for the December 2006 upheaval, the abrogation of the 1997 Constitution in April 2009 and continues in existence until the first day of parliament on 6th October 2014.

And immunity extends to all those who served in the military an d interim regimes from 5th December 2006 to 5th October 2014.

It also incorporates immunity from May 14 to 5th December 1987 for the coups of that year.

We are in full agreement with the rationale provided by the RFMF Commander that given the Supreme Court's opinion of "democratic deficit" in respect of recognition of the 2013 Constitution to be legally effective, the immunity provisions must be removed from the new constitution.

No longer should anyone grant him or herself immunity for usurping government or violating human rights.

This is important for transparency and accountability.

J. **Entrenchment of Group Rights**

Unlike the 1997 Constitution, group rights, expecially legislation pertaining to these, are not entrenched.

The infamous Bill No. 17 of 2021, that resulted in the arrest of some oppositiion politicians including two from our party at the height of Covid-19 as well as curfew, is a stark reminder of what may happen in future.

This government repealed the Act arising out of Bill No. 17 but we have to secure the future for both landowners and the tenant community.

We recommend the entrenchment of the followimg legislation in conformity to Section 185 of the 1997 Constitution namely: -
i-Taukei Affairs Act
i-Taukei Development Fund Act
i-Taukei Lands Act
i-Taukei Lands Trust Act
Agricultural Land and Tenant Act
Rotuma Act
Rotuma Lands Act
Banaban Lands or Settlement Act

Amendment to these Acts must require 66% of parliamentary majority.

K. **Stricter laws preventing Environment degradation and Cruelty against Animals**

The new constitution must make provisions to prevent degradation of the environment and cruelty against animals

or protecting animal welfare which are becoming a major issues. These canot be taken for granted any longer.

We recommend that the new constitution has provisions for stringent laws against the:

degradation of the environment

cruelty against animals and promote animal welfare

L. Conduct of political parties

The Political Parties (Registration, Conduct, Funding & Disclosires) Decree/Act was designed to throttle parties when the regime decided to draft and impose a new constitution after burning the Ghai draft that was done in accordance with the then Decrees 57 and 58.

The legislation has been used to punish political parties. It has to be repealed.

We recommend the repeal of the Decree and the following: -

A code of coduct for political parties which must include holding of its Annual General Meeting within the calendar financial year.

Prohibition on those principal office holders of a political party wound up or de-registered for non-payment of debt from either contesting any type of election including general election or forming another political party.

M. Electoral system - MMP

Fiji has had the First Past the Post under the 1970 and 1990 Constitutions, Alternative Vote under the 1997 Constitution and D'Hondt system under the 2013 Constituion as systems of voting in a general election. In the local government elections held from 1973 to 2005, it was common roll.

Under the 1970 Constitution, Fiji had a 52-Member House of Represenrtatives elected under both communal and

national seats, a 70-Member House of Represernatives purely under communal voting under the 1990 Constitution, a 71-Member House of Representatives elected under both communal and open seats and currently 55 Members under so-called common roll in the 2013 Constitution, which doesn't do justice to votes of equal vcalue because of calculations under the D'Hondt system.

The D'Hondt system, widely touted as a common roll, was like Sudoku, with voters selecting a number. There was no name or symbol on an A3 size ballot paper.

This did not produce proportional representation as prescribed in the constitution. For example, at the end of 2018 elections, Fiji First's share of votes constituted 26.2 seats in a 51-Member Parliament. NFP's vote share constituted 3.95 seats.

In mathematics 26.2 should become 26 and 3.95 should become 4. Not so under D'Hondt system. 26.2 increased to 27 while 3.95 was reduced to 3. It rendered meaningless the meaning of proportionality.

The Sir Paul Reeves led Constitution Review Commission, recommended a 70-Member House of Representatives with 25 Members to be elected on communal roll and 45 under Open roll. It also recommended that all communal constitutencies be turned into Open seats over time to promote multiracial voting.

These recommendations were 30 years ago.

Based on experiences since our Indepedence and with rapidly changing demographics we recommend the following:

The new Constitution make provision for a 70-Member Parliament to be elected under the electoral system of Mixed Member Proportional Representation (MMP).

The nation be divided into 25 Constituencies and Members elected on non-racial lines to be determined by the

Constituency Boundaries Commission. Elections for the 25 Constituenciues be held under the First Past the Post system.

45 Members to be elected under a Closed List System strictly based on proportionality.

That there be two ballot papers issued to voters – one for the respective constituency and the other for the party vote of their choice.

The threshold for eligibility of seats in parliament remain at 5% of the total valid votes cast in a general election.

Should a candidate, who contests a constiutuency, also appear on the closed list of his or her parrty and win the seat from the constituency and also qualify to be elected under the list in accordance with the ranking, another candidate on the list ranked just below him or her qualifies for election.

The NFP has proposed this electoral system because we genuinely believe given our changing demographics, the MMP benefits both the majority and minority communities.

The system also eliminates communal voting and guarantees representation of the minorities either from one of the 25 constituencies or from the closed list of parties.

The system will also ensure greater representation of women and youth in parliament without the imposition of preferred measures because parties will strategically rank miniroties, women and youth high on the closed list, which will also be witnessed by voters both during campaign after nominations and on polling day.

M(1). <u>Power sharing</u>

The 1997 Constitution mandated power-sharing in government. This is important in a multiracial nation like Fiji. The winner take all concept is not conducive to good governance.

We recommend that parties that win 5% of seats in parliament have a right to be invited to Cabinet. Parties with less than 5% threshold may be invited to join Cabinet by the Prime Minister and portfolios given to such Members will come from the share of portfolios from the PM's party.

N. Land tenure – Master Lease concept

The major problem of expiring agricultural land leases and finiding solutions for their problem has been a generational issue. Whenever solutions were found, it was done through negotiation and consensus on the part of the Opposition, representating tenants and the Government, representing the landowners namely the Crown and later State and the I-Taukei Land Trust Board as custodians of native land.

In 1966, the NFP, led by its founder leader Ambalal Dahyabhai Patel was the Opposition leader in the Legislative Council, negotiated the Agricultural Landlord and Tenant Ordinance or ALTO, providing for a lease tenure of 10 years.

Ten years later, the NFP, led by the then Opposition leader Siddiq Moidin Koya negotiated Agricultural Landlord and Tenant Act or ALTA that provided for a minimum tenure of 30 years.

Following the unanimous passage and adoption of the 1997 Constitution, a Joint Parliamentary Select Committee on ALTA was formed.

The same approach that resulted in both the NFP in Opposition, led by then Opposition leader Jai Ram Reddy and the SVT Government led by then and current Prime Minister Honourable Sitiveni Rabuka was being adopted to find an amicable solution to the issue of expiring leases.

Before the JPSC was dissolved in March 1999 due to the dissolution of the House of Representatives ahead of the May general elections that year, the NFP proposed the concept of a Master Lease.

Under this proposal, the Government would lease agricultural land from the I-TLTB, the State and those freehold lands used for agriculture at the rate of 10% UCV or Un-improved Capital Value of Land and then lease out the land to tenants at a UCV of 6%.

The tenure or duration of the leases was proposed to be 50 years.

PM Rabuka proposed that apart from a 50-year lease, a tenant would be informed by TLTB during the 25th year of the lease whether the landowning unit wanted or not.

If the landowning unit wanted the land for its use, a tenant would have 25 years to prepare to leave the land at the end of the lease.

If the landowners did not require the land in future, then the lease would be automatically extended by another 25 years making it a term of 75 years.

We still believe that the concept of Master lease is still highly relevant.

We recommend that:-

- **Government obtain all leases of I Taukei, State and Freehold agricultural land under a Master Lease and pay the landowners/landlords under a 10% UCV or Un-imporoved Capital Value as lease money.**
- **Government then lease out such land to tenants at a UCV rate of 6%.**
- **The tenure or duration of the lease be 50 years.**
- **If during the 25th year of lease the landowner/landlord wants the land for his/her or the mataqali and State's use, the tenant has 25 years to prepare to leave the land.**
- **If the land isn't required for future use, then the lease is automatically extended by another 25 years making the tenure 75 years.**

Salient features of the 2013 Constitution

There is a lot of emotion on the issue of both common and equal citizenry by adopting the common name or nationality of "Fijian" for all our citizens and recognition of Fiji as a "Secular State".

It is the manner in which it was legislated in the 2013 Constitution without any consultation. Had there been consultation and consensus building, we are certain there would have been no opposition to these noble concepts.

Be as it may, the name "Fijian" for all citizens and recognition of Fiji as a "Secular State" is extremely logical and the best way to enhance unity and progress in our multi-ethnic, multi-cultural and multi-religious nation.

For Fiji citizens to be called "Fijian" is not new. It was done long before being legislated in the 2013 Constitution.

Our first internationally recognised sportsman the late Josefa Levula, a renowned track athlete, rugby union and rugby league star, was known internationally as "The Flying Fijian" a few decades before our Indepedence in 1970.

Ou national rugby team is know as the "Flying Fijians" because of Levula.

Professional golfer Vijay Singh, who won 3 golf majors and at one stage became the number one ranked golfer in the world, is known as the "Big Fijian".

Recommendation

Therefore, there is absolutely no debate about why citizens of Fiji are not Fijians by nationality.

NFP totally supports "Fijian" as our common identity or nationality because it inculcates pride and patriotism. NFP's founder leader Ambalal Dahyabhai Patel (A D Patel) pointed

out as early as August 1964 that, "Won't it be better if we thought less of our race and more of our nationality?"

Similarly, there should be no debate about why Fiji should be recognised as a "Secular State". While it has been legislated in the 2013 Constitution, Fiji has always been a secular state since Independence.

We may have been compartmentalised during the colonial rule. We may have voted along ethincity in general elections. We may have and are continuing to display racist traits on social media platforms.

But overwhelmingly, we have lived and co-existed peacefully, except during the tumultous times of political upheavls.

We have public holidays for Easter, Christmas, Diwali, Prophet Muhammad's birthday. We observe Ram Navmi, Krishn Janamasti, Eid-ul-Fitr, Lent and other religious and cultural events. We have Tuesday prayers like Ramayan, Jumma on Fridays and Church on the weekends.

This is secularism. This is racial and religious tolerance.

We fully support the new constitution recognising Fiji as a Secular State

Summary of recommendations

- ✓ All Fiji citizens to be called Fijians as their nationality or common name
- ✓ Fiji to be recognised as a Secular State
- ✓ Preamble to be changed
- ✓ Bill of Rights limitations to be removed and strengthened
- ✓ Appointments to Independent offices not be politicised
- ✓ Provision for an Ombudsman
- ✓ Strict timeline for Code of Conduct and Accountablity and Transparency Commission
- ✓ FICAC to be abolished and its role changed
- ✓ Immunity to be removed

- ✓ Entrenchment of Group Rights
- ✓ Transitional provisions and Section 173 to be removed
- ✓ No need for Section131(2) in any Constitution
- ✓ Stricter laws protecting against environment degradation and cruelty against animals
- ✓ Conduct of political parties
- ✓ MMP system to be used in general elections and the threshold for eligibility for qualification of seats in parliament remain at 5% of total valid votes
- ✓ Solution to expiring land leases – Master Lease concept
- ✓ Commision not to rush work on constitutiuonal process

Conclusion

The NFP submits these recommendations in the national interest.

We believe these are pre-requistes to re-settling the moral compass of transparency, accountability and good governance by recomending and legislating a constitution that outlasts other four constitutons.

And the constitutional process must not be rushed or risks being a farce like the 2013 constitution.

Ultimately, the Report of the Commission will undergo scrutiny as part of the political and parliamentary process.

It will require intense negotiations, dialogue and consensus building to arrive at a constitution that is in that promotes the interest of all Fijians.

Great Council of Chiefs (Closing)

GCC Second Submission
Date:10-7-2026

Mr. Valenitabua: The chairman of the Great Council Chiefs, welcome you all to the level 9 of Suvavou House. Thank you for joining us this afternoon for another consultation session with the Constitution Review Commission. We were happy to receive another request for a second session with us and we have changed this second session to the closing session for consultations from the CRC.

You opened the consultation session on the 1st of April 2026 and today is the last day for the extended consultation period which the Constitution Review Commission has decided to take. And you being the last group of submitters to appear before us this afternoon, we will also be bringing this consultation to the end after this. We welcome you all.

We hope to hear more new submissions from the great Council of Chiefs at Paramount Forum for the Taukei people of the Republic of Fiji. Sitting before you this afternoon are five commissioners, six commissioners. I will ask each of them to introduce themselves despite the fact that I know that you would know most of us.

So, I would start on with, I would now re-invite Mr Conway Beg to start off the introductions this afternoon.

Mr. Beg: Thank you Chair. Chairman of the Great Council of Chiefs, Honourable members. Thank you for coming back in today. I look forward to your submission. Again, my name is Conway Beg and I'm an architect by profession. Hopefully I can contribute in this space. Thank you. Good afternoon gentlemen of the Great Council of Chiefs.

Ms. Nailatikau: My name is Merewalesi. My background is in public diplomacy and public policy and I look forward to your contributions this afternoon. Good afternoon, Chairman and gentlemen. My name is John Charles Fatiaki. I come from the village of Motusa, the island of Rotuma and I welcome you this afternoon. Thank you again for your presence. I'm a medical practitioner and a former Senator.

Mr. Kohli: Good afternoon, Chairman and members of the Great Council of Chiefs. I'm Ami Kohli. I'm from Labasa.

Dr. Gounder: Good afternoon Honourable Chairman of the Great Council of Chiefs and members of the Great Council of Chiefs. My name is Neelesh Gounder. I'm an academic at USP. I look forward to your submission this afternoon and it's great to have you back for the submission. Thank you.

Mr. Valenitabua: Good afternoon Honourable Chairman of the Great Council of Chiefs I'm Sevuloni Valenitabua, I'm from Nukui Rewa. I will not explain further. I'm sure you have been following where we were, we've been to Lau, Lomaiviti, Beqa, Ovalau, Vanualevu, Vitilevu, Sigatoka. Nadi, Ba and Yasawa and we pout Rewa Last and also Rotuma. So, without further ado I would invite the chairman great council of chief to start of this afternoon.

Mr. Seruvakula: Nisa bula, Honorable Chair, members of the Constitution Review Committee, and ladies and gentlemen, everyone in the room, please allow me on behalf of the Great Council of Chiefs to convey our sincere gratitude in granting us another opportunity, and of course, to deliver the final oral submission, perhaps what can only be described as a defining moment in our young nation's history. Mr. Chairman, to, if I may, set the scene and to understand why Fiji urgently requires a new autochthonous constitution, we must look honestly at our history trajectory. Since the signing of the Deal of Session of 1874, the Taukei people have journeyed from colonial governorship through the dawn of independence in 1970.

Our ancestors envisioned a nation where indigenous governance and modern democracy would work. Hand in hand to foster economic resilience, for self-reliance, rather. However, the political instability of the post-independence era, marked by successive coups, profoundly disrupt this momentum.

Instead of allowing the indigenous population to naturally transition into robust drivers of the national economy, these political disruptions fractured our social fabric and stalled our collective progress. The iTaukei, possesses vast natural resources. Yet historically, we have been restricted from evolving into significant wealth creators, commercial innovators, and global exporters.

The structural barriers of the 2013 constitution imposed without the genuine consultation or consent of the Vanua, exacerbated these historical setbacks. It was designed under a flawed philosophy of forced uniformity. By attempting to erase cultural distinctions and dismantle

traditional safeguards under the guise of equal civic citizenship, the current framework has actively disabled the economic potential of indigenous majority.

The suppression of economic agency. By rendering the term of fair share, vague regarding resource royalties, the current framework denies landowners an equitable stake in the commercial exploitation of their resources. Impediment to middle-class growth.

A community that cannot transition into a prosperous middle-class when its customary structures are legally marginalized and its people are treated as passive recipients of state benevolence, rather than active commercial parties. The erosion of institutional integrity. The decentralization of executive power and the removal of the great council of chiefs.

Constitutional status stripped the iTaukei of the protective legal architecture required to confidently leverage their assets to long-term wealth creation. True national stability cannot be achieved by keeping the largest segment of the population economically marginalized or structurally restricted from the fruits of commercial development. A vision for genuine unity, the constructive assurance.

The Bose Levu Vakaturaga Mr. Chairman, and ladies and gentlemen does not seek a new constitution to diminish the rights of any community in Fiji. On the contrary, we present a vision where indigenous recognition, equal civic citizenship coexists constructively. We offer the solemn and constructive assurance to this honorable commission and to all citizens of Fiji when indigenous people are provided with the correct constitutionalized platform, the proper legal safeguards and targeted institutional support to become genuine wealth creators utilizing their own resources. It will not divide this country. It will unite it. When the iTaukei thrive economically, transitioning from resource rich but cash pool and owners into exporters, entrepreneurs and a stable middle class, the entire national economy expands.

Economic security eliminates the anxieties that have historically fueled political instability. By recommending a return to a pluralistic framework such as the reinstatement of the chapter two compact of 1997 constitution, we are advocating for a national conscience, a new constitution that respects the indigenous foundation of Fiji while

guaranteeing the rights of all citizens will replace forced uniformity with genuine lasting harmony. We thank the commission for its dedication to this historic review and pray that your deliberations lay the bedrock for fairer, wealthier and truly united Fiji.

Mr. Chairman, the great council of chief having made the initial submission to this honorable commission on 30th of March of this year, hereby reaffirms its position as the apex body of the traditional iTaukei leadership. The council further underscores its role as the custodian of the customary supremacy inherent within the iTaukei governance structure. Our presence here today is not to repeat our initial presentation, but to add and compliment the voice of the people of Fiji and who have come forward to express their wish for a better constitution to guide the aspirations for a better prosperous Fiji.

In the exercise of this traditional authority, the great council of chief undertook a comprehensive process of awareness and consultation across the provinces of the provisional Bose Vanua's. And through these consultations, the council shared its initial submission for the understanding and endorsement of the Vanua. Chiefs who sit within the Bose Vanua ni Yasana are duly identified and registered as the rightful holders of the chiefly titles under the native lands and fisheries commission and have been traditionally installed by the respective Vanua.

These esteemed chiefs, Mr. Chairman, possess the inherent and customary rights to participate fully in the deliberation of the Bose Vanua. It was upon this platform that the Vanua came to appreciate the great council of chief's intent and the significance of its submission. The Vanua subsequently granted the endorsement and support evidence by the signatures thereby affirming their solidarity within the GCC submission, a copy of which will be submitted after our presentation, Mr. Chairman.

This endorsement forms the foundation of the submission which we're privileged, that we are privileged to present before this honorable commission. The significance of this endorsement extends beyond our procedural consultation. It reflects the conceded judgment of the heredity chiefs of the Vanua who have from time immemorial provided leadership, maintained social order, cohesion, safeguarded the welfare of their people and exercised stewardship over their customary lands

and social construct, the Wu Valley, Tokatoka, Mataqali, Yavusa, Koro, and the Vanua.

It was through the foresight and wisdom of these chiefs, of these chiefly leaders that Fiji sought the protection of the British crown under the deed of session. And it is through that same enduring institution of traditional leadership that the social, cultural, and economic advancement of the indigenous people continues to be guided today. The great council of chiefs therefore respectfully submits that the views presented before this honorable commission today are not merely those of the council itself, but are reaffirmed and supported by the recognized hereditary leadership of the Vanua throughout Fiji.

The great council of chief has deliberately followed this approach in recognition of effect. The chiefs are regarded as the supreme leaders of their communities, having been endowed during installation with both 'mana and sau'. The installation ceremonies itself signifies control of supremacy and leadership, solemnly affirming that the chief is entrusted to lead, to articulate the voice of the Vanua, and to make decisions for its welfare.

This investiture ensures that the chief governs not merely as an individual, but as a living embodiment of the Vanua's will for the advancement and collective benefit of the iTaukei people. Furthermore, during the great council of chief's awareness and consultation process across the 13 provinces, the 13 boss of Vanua's regarding its first submission, and in gathering the views of the Vanua on the great council of chief's proposal. Mr. Chairman, ladies and gentlemen, more than 307 chiefs attended the 13 provincial bose of Vanua.

Collectively, these chiefs represent 514,244 Itaukei people equivalent to 92.58% of Fiji's total Itaukei population, and 58.10% of Fiji's overall population. This broad representation underscores the legitimacy, inclusivity, and national significance of the great council of chief's submission. This further noted that this representation remains constant.

Irrespective of the decisions made by the itaukei people during national elections, in matters of tradition, chiefs are born into the chiefly titles and are deeply respected within the Vanua. Their authority is not contingent upon electoral process, but upon enduring cultural, spiritual

foundations of itaukei society. The written submission that will be filed after these oral presentations, sets out the recommendations of the great council of chiefs in full.

In this oral submission, I will summarize the main constitutional reforms we are asking the commission to consider. At the heart of the submission is one central principle. Fiji's constitution must protect equal citizenship for, while also recognizing the distinct identity, rights, institutions, land, language, and customary system of indigenous itaukei and Rotuman people.

True national unity cannot be built by erasing difference. It must be built through mutual respect, legal clarity, democratic accountability, and substantive equity. The submission therefore recommends a shift away from forced constitutional uniformity and towards a more honest and stable pluralism.

Mr. Chairman, honorable members of the commission, the great council of chiefs is the apex representative body of the indigenous people of Fiji, respectfully presents this final submission to complement our early submissions. I will briefly speak to the written submission on the issues we have highlighted. A copy of submission once again has been forwarded for the perusal of the honorable committee members.

Our position is clear. The great council of chiefs does not accept the legitimacy of the 2013 constitution and believes Fiji should ultimately move towards a new, genuinely consultative and autonomous constitution, one developed by the people. For the people.

Our submission is made in good faith. It is not intended to diminish the rights of any community, but to strengthen constitutional legitimacy, democratic governance, national unity, and respect for the rule of law, while ensuring proper recognition of the indigenous foundations of our nation. Mr. Chairman, ladies and gentlemen, I'll touch on education first.

The protection of indigenous language. We recommend that 'Navosa Vakaviti' be made a compulsory core subject in all primary schools. Unlike global languages with large international speaker bases, the itaukei language has no external homeland.

If it declines in Fiji, it declines everywhere. Conventional Fiji Hindi and other languages should remain available as elective subjects based on community demand and school capacity. On early childhood medium of instruction, from early childhood education to year three, the main medium of instruction should be the indigenous vernacular or mother tongue of the majority student cohort.

Early learning in the mother tongue supports literacy, numeracy, confidence, cognitive development, especially in rural and maritime schools. Affirmative action in education. We recommend constitutionally authorized affirmative action in education, including targeted scholarships, educational development funds, and support for Itaukei, Rotuman, rural, and maritime and other disadvantaged students.

On the ethnic disaggregated educational data, we recommend restoring ethnic disaggregated education data across national examinations. Fiji education management information systems, scholarship systems, and the Bureau of Statistics. Without proper data, the state cannot see where disadvantage lies and cannot fairly allocate resources.

Differential resourcing formula. Mr. Chairman, lady, and gentlemen, we recommend a differential resourcing formula for schools funding. A flat per student funding model favors large urban schools, and disadvantaged small, rural, and maritime schools, where costs are higher and infrastructure is weaker.

Funding should consider remoteness, low enrollment, poverty, utilities, access, transport, and school vulnerability. On constitutional legitimacy. Many indigenous communities believe the 2013 constitution was not created through a process that secured meaningful participation or consent from the vanua and its traditional institutions.

The committee is invited to consider whether Fiji's long-term constitutional stability would be better served by a constitutional framework that enjoys broad public support and explicit endorsement from both the wider population and the 'vanua'. We recommend that the, we recommend the restoration of the 1997 constitutional governance framework where appropriate. These, Mr. Chairman, includes reinstating the chapter two compact from 1997 constitution.

It would protect Itaukei, Rotuman land, customs, and cultural rights, while also affirming the equal rights of all citizens to democratic participation and protection under the law. On the recognition of the great council of chiefs. We, the great council of chiefs, historically played an important constitutional and advisory role in matters affecting indigenous affairs.

It's omission from the current constitution has weakened traditional governance and reduced indigenous participation in national decision-making. We further recommend that the Bose Levu Vakaturaga, great council of chiefs, be restored to constitutional status. Recent statutory recognition is important, but ordinary legislation can be changed by future governors.

Constitutional recognition will protect the dignity, continuity, and apex guardianship role of the great council of chiefs in relation to itaukei identity, land, custom, and traditional welfare. Consistent with international standards, including the UN declaration of human rights on the rights of indigenous people, or in short, UN DRIP, we recommend constitutional recognition of the GCC and other traditional institutions. On the constitutional recognition of the itaukei, of the indigenous people of this country, the great council of chiefs, Mr. Chairman, ladies and gentlemen, supports equal citizenship for every Fijian.

However, equality should not prevent explicit constitutional recognition of the itaukei as the original inhabitants and customary owners of the land and custodians of Fiji's traditional institutions. Equal citizenship and indigenous recognition can and should exist together. On the protection of customary land and natural resources, Mr. Chairman, the great council of chiefs submits that while customary land ownership is protected, the constitution provides insufficient recognition of customary authority and natural resources, including minerals, forests, rivers, coastal areas, and traditional fishing grounds.

Customary ownership should extend to the full range of resource traditionally belonging to the Vanua. Consistent with its understanding of the full extent of ownership prior to the execution of the deed of cession in 1874. We further propose that where the government acquires freehold land, and that land is no longer required for a public purpose, it should automatically revert to itaukei reserve land classification and not remain freehold, as it is the current practice under

section 29.5. This will ensure that such land is never again permanently alienated.

The great council of chiefs recommends strengthening section 30 of land owners' rights to royalty. The phrase fair share is too vague. We therefore recommend a clear constitutional minimum of no less than 20% of gross royalties of financial yields for land owners.

A mandatory 10 to 15% non-dilutable equity or partnership for land owning units in commercial extraction ventures. The great council of chiefs, Mr. Chairman, endures a fair and equitable royalty distribution framework based on the proportional share of gross income. Rather than a fixed royalty rate to better reflect fluctuations in market prices, now under these proposed arrangements, gross income would be allocated on the basis of a 60% to the developer for the risk they take to come to our country and invest.

20% of project capex, capex would be retained as a refundable environmental bond and held in escrow for the duration of the project, subject to satisfactory environmental compliances, compliance and rehabilitation obligations. Now the remaining 40% local share would be apportioned to 10% to the state and 30% to the Taukei Land Trust Board for distribution to the customary land owners through its established dividend distribution policy. This payment proposal must replace schedule three of the current royalty rates of the state-led leases and license amended regulations of 2026 that has just been shared lately.

Contrary to some thought that it is one of the best things in sliced bread, it is not. It's so outdated. We also recommend reinstating the substance of section 186 of 1997 constitution on customary law and traditional processes.

Mr. Chairman, parliament should be required to legislate for the structured application of customary law, including traditional dispute resolution, notwithstanding any other provisions of this constitution where the exercise of a right or freedom conferred by this constitution is inconsistent with recognized customary rights. The recognized customary rights shall prevail to the extent of the inconsistency. The balance of executive power.

Mr. Chairman, lady and gentlemen, the great council of chiefs is concerned about the concentration of executive authority, particularly in the office of the prime minister and the attorney general. Effective government must be accompanied by effective check and balances. We encourage reforms that strengthen parliamentary oversight, institutional independence and constitutional accountability.

Where the overextension of executive powers is used for creation and control of institutions such as FICAC, there is a tendency that vesting of power and the control of a single official may lead to abusive use of power to possibly render the machinations of such institutions as a political tool. A significant constitution distinction is that FICAC was not established by the 2013 constitution, but by a Fiji independent commission against corruption act of 2007. Consequently, the more compelling constitutional argument is not that FICAC's existence itself reflects executive overreach, but that the 2013 constitution framework facilitated or failed to impose adequate constraints on executive influence over key accountability institutions, including FICAC.

Mr. Chairman, lady and gentlemen, the great council of chiefs therefore call for the dissolution of FICAC. With the duties and functions divulged into an appropriate internal bureau housed within the appropriate division of government services such as the public service commission on indigenous representation and electoral reform, the current nationwide electoral system promotes equality, but may not always ensure adequate representation of indigenous communities, particularly those in rural and traditional areas which strongly recommend the abolishing the single national constituency model. The current system tends to favor heavily populated urban areas and weakens regional and maritime representation.

The submission proposes 60 parliaments based on large regional multi-member constituencies and dedicated maritime or isolated constituencies. Central, Western, Northern divisions would have regional representation while Lomaiviti, Kadavu, Lau and Rotuma would have specific seats. The 5% electoral threshold may be retained to prevent excessive fragmentation, but representation must better reflect Fiji's geography and communities.

And constitutional amendment. The great council of chiefs strongly support the introduction of a referendum mechanism alongside a more

reasonable parliamentary threshold to amend the 2013 constitution. The current requirement of a 75% parliamentary majority in a referendum Monday, is 75% of all registered voters has created near permanent deadlock, making a meaningful reform, almost impossible and rendering the constitution virtually unamendable.

While stability is essential, the constitution must also remain responsive to the evolving needs of the nation and afford genuine opportunities for review. The great council of chief's submission therefore recommends restoring the 1997 style framework where constitutionally amendments require a two thirds majority in both houses of parliament. With special protection for indigenous interests.

In particular, any amendment affecting token land, custom, traditional titles, the Bose levu Vakaturaga indigenous rights should require the support of the great council of chiefs appointed senators. To compliment this, the great council of chief advocates the national referenda on constitutional amendments should be decided by a civil majority or simple majority of 50 plus one set, 50% plus one rather. Ensuring both democratic legitimacy and practical flexibility for reform.

On indigenous self-determination and safeguards. Mr. Chairman, international law recognizes the right of indigenous people to maintain their own political, legal and cultural institutions. The great council of chiefs believes constitution should provide stronger recognition and rights and recognition of indigenous participation in decisions affecting traditional land, resource and customary governance.

We recommend constitutional mechanisms that ensure meaningful consultation and enhanced protection whenever legislation affects customary land, natural resources, traditional governance or other indigenous rights. On the rights of labor and democratic freedoms, we recommend narrowing the broad limitation costs in the 2013 Bill of Rights. Restrictions on rights such as freedom of assembly should only be allowed where they are reasonable and justifiable in a free democratic society.

The state should not be able to rely on vague grounds such as public order or national security without strict proportionality and sensitive evidence. We strongly recommend the deletion of section 20 sub part

five relating to employment relations. The constitution should genuinely protect the rights of workers to organize, bargain collectively and strike.

Labor rights should not be suspended merely because an industry is labor essential or because of broad economic interests. We also recommend removing the attorney general from the mercy commission. The office of the attorney general, Mr. Chairman is a political office holder and legal advisor to the government.

The power of mercy must be independent, impartial and free from political influence. The chair of the mercy commission should instead be an independent person appointed by the judicial service commission on public administration and separation of powers. Mr. Chairman, we recommend strengthening the neutrality of the public service.

The permanent secretaries should have independent authority over staffing, promotion, discipline and daily administration. The ministers should set policy and provide oversight. But they should not interfere in civil service personnel decisions.

This protects merit-based recruitment, reduce nepotism and favoritism and restores the boundary between political leadership and professional administration. We also recommend amending section 57. So, the trade unions, employee federations and civil society associations are not treated as public offices.

These are independent organizations, not state institutions. Their inclusion as public office weakens the freedom of association and undermines workers' representation. Mr. Chairman, ladies and gentlemen, on the Rotuma, we counsel the Rotuman people.

We have received as part of our arrangement within the great council of chiefs to represent the three representatives from Rotuma shared with us their views on that. And they did tell us that they will meet the commission in Rotuma. But if I may, please allow me to share with you the views of the support from the great council of chiefs on constitutional recognition.

On behalf of the great council of chiefs, Mr. Chairman, it is a profound honor to prevent, to present the formal submission on behalf of the Rotuma Island Council and the people of Rotuma, whose collective

aspirations have been meticulously gathered through extensive consultations across all seven districts and with the endorsement of the council of chiefs. This submission, of course, does not represent a pursuit of independence or cessation from the Republic of Fiji. Rather, it is advanced in the spirit of deep respect and enduring partnership to strengthen our constitutional relationship by restoring formal recognition of Rotuma's unique historical, legal, and cultural status within the state.

We believe that there needs the, we propose ladies, Mr. Chairman, lady and gentlemen, that in the new constitution, we have a dedicated constitutional chapter. The submission proposed a modest amendment to the preamble alongside the insertion of a dedicated constitutional chapter entitled Rotuma and the Rotuman people. In the 2013 constitution, you'll see Rotuma mentioned sporadically throughout the document, and it's of no little wonder Rotuma has been treated as another province of Fiji by the current government or in policies we're making.

Now, this framework seeks to formally recognize the Rotuma Isle Council as the principal representative institution of the people. Mandate meaningful consultation on all policies affecting the island. Safeguard customary land and marine resources from amendment without consent.

Restore guaranteed parliamentary representation. The connection to the great council of chiefs reflecting the interconnected traditional leadership of our nation, the three grand chiefs of Rotuma Island serve as esteemed members of the great council of chiefs. It is my distinct privilege to say to this honorable commission that the great council of chiefs of Fiji stands in complete solidarity with and formally support the submission presented by the Rotuma Island Council and the Rotuman people.

As we collectively seek to preserve our unique identity while contributing positively alongside the itaukei brothers and sisters to United Fiji. Mr. Chairman, of recent times, we have the great council of chiefs have been constantly asked by the media about the drug issues that's happening in the country, the crisis, and we've been asked time and time again is what is the great council of chiefs doing about it? The great council of chiefs have been involved in a dialogue with all levels of the leadership within

the Vanua in their efforts towards bringing the people together in the fight against drugs. But we've noticed that beyond that out towards our borders, there is a gap that exists that needs to be, that has to be able to be breached in order to prevent these drugs coming into the country.

So, we've come up with, we've occurred after consultation with relevant authorities, we've come up with the recommendation for a to be included in the constitution, a maritime powers act. Now Fiji does not currently have a single consolidated maritime powers act. Equivalent to what Australia had of 2013.

Instead, Fiji's maritime governance framework is spread across several statutes and institutions, particularly the maritime transport under the ministry of transport, maritime safety authority and MSAF and the ministry of transport, shipping and fisheries and the ministry of fisheries and transport, and the ministry of transport, the marine space under the ministry of foreign affairs, police act under the police, the customs act under customs. Now the gap in enforcement, the current maritime laws focus more on maritime safety, shipping regulations, fisheries, management and maritime administration, rather than a heavily centralized security enforcement model. For instance, the maritime, the marine space act of 1977, administered by the ministry of foreign affairs, depicted the different boundaries and jurisdictions of Fiji's maritime domain, but failed to address which law enforcement agencies exercise powers of providing security of enforcement over those boundaries.

Fiji's maritime legal structure is fragmented. We've heard that Turaga Bale Tui Nayau talking about challenges he's facing in the law group. And in a way it is not unified.

A radical body into specialized autonomous subfields, instead of a cohesive rule applying across the board, laws are governed by isolated regimes and it spreads across multiple agencies and ministries and they don't talk to each other, they are restricted accordingly by the laws that governs the performance of their duties. And this has created coordination challenges, overlapping and conflicting authorities, example, customs act versus police act, onboarding search and seizure, operational inefficiencies caused by working in silos.

The recommendation is to ensure that this framework operate in harmony, we submit that a comprehensive legislation, legislative

coordination act, such as the maritime powers act, is essential to seemingly integrate this distinct statutory and constitutional provisions.

This is essential to guide the efforts against illicit drug crisis that continues to consume our country and our young population. Lastly, Mr. Chairman, lady and gentlemen, I noticed that I slipped a piece of paper, it's not here with me, but I will talk through it and it's part of our submission.

The representation of women in parliament and in governing bodies. If I may, we look at the challenges we face today, it is the belief of the great council of chiefs that we are simply reaping what we sow. We have took our eyes off the ball in governing. If we look from the date of independence, even pre-independence, the number of women that represented in decision-making process is very minimal.

Fiji sits, currently sits 165 out of 181 in the least number of women represented in parliament. Women tend to socialize social issues better, education, health, welfare, families, while men tend to socialize in parliament, in governments, tend to socialize economy, development, et cetera. And if we look since independence, we look at the budget lines till to the present day, health and education sits at the bottom of the budget line or everything else above that.

So, it's of little wonder we're facing social challenges today. It's not to blame anyone in the running off, but we're not privy to what previous governments have done or no offense to authority, respect members of parliament, but it is to believe the council that we should have a proportionate representation. The recommendations you see in our submission is we are recommending a 40% representation of women in government and in municipal elections.

It's been, it's a given that going straight to parliament is a bit of a breach too fast in some cases, but we need to definitely need the municipal council so for representation of women, where women can showcase their abilities to the people of their leadership abilities that they can run that they can contribute effectively in decision-making process. So that's why the recommendation is to include it in the constitution, a 40% representation of women in decision-making in parliament. In conclusion, Mr. Chairman, members of the lady and gentlemen of the Constitution Review Commission, our submission seeks a constitution

that reflects both Fiji's democratic aspirations and its unique customary heritage.

We believe it is possible to uphold equal rights for all citizens while giving meaningful constitutional recognitions to the indigenous people, the Vanua, customary governance and the ownership and stewardship of traditional land and resources. A constitution built upon broad consultation, legitimacy and mutual respect will strengthen public confidence, promote reconciliation and provide a more enduring constitutional settlement for future generations. The great council of chiefs respectfully commends this submission to the Constitution Review Committee and thanks the committee for the opportunity to be heard.

On chapter 10, immunity. We were asked, it was not in our submission, the last and our first submission, Mr. Chairman, because we were having a discussion with other parts of government on the subject and that hasn't, we haven't concluded the discussion when our turn, it was the time to open the discussion. However, we've had some discussion amongst ourselves and on the immunity, we agree, we completely agree with the reviews of the RFMF.

The submission recommends repealing future immunity provisions. Now, Fiji must move forward fully equally towards full equality before the law. No person, public official, regardless where they sit in the social order or member of the security forces should receive immunity for future unlawful acts.

The great council of chief fully supports the removal of the immunity clause as it is written in the 2013 constitution. In place, we recommend a provision to allow those implicated to be summoned to a truth commission for truth telling. If they can justify to a truth commission that what the actions that they took was the only option left to safeguard the country that we left to the commission to decide.

However, if they struggle to do so or they fail to turn up, then they should be prosecuted accordingly. As I mentioned earlier at the last meeting, Mr. Chairman, you cannot live in the darkness and in the light at the same time. Just to round off, it's a Friday afternoon.

It's like asking God to come into my house and grace my house with his presence. And just as you're about to enter the door, and I said, Lord, by the way, just so you're aware, I've also got Lucifer in my bed yet and he's refusing to go anywhere. You can't have both.

You got to have, if you commit a crime, then you have to do the time. In conclusion, this submission asks the committee to consider a constitution that is democratic, culturally secure, socially just, and institutionally balanced. It seeks to protect all citizens equally while recognizing that indigenous identity.

Land, language, customary law, and traditional institution require specific constitutional protection. Our recommendation is not to divide Fiji, but to build a stronger Fiji by recognizing the truth of who we are. A diverse nation with different histories, different communities, yet shared responsibilities.

A constitution that protects those realities honestly will better serve national unity, stability, and future generations. We thank you for the opportunity, Mr. Chairman, lady, and gentlemen of the Constitutional Review Commission. Vinaka Vakalevu.

Mr. Valenitabua: Vinaka Vakalevu, Mr. Chairman of the GCC, of the Great Council of Chiefs. We have heard your oral submissions, and as you have stated, we will be anticipating receiving your additional written submissions for our deliberations, which starts next week on Monday. Okay.

What I've been hearing, it is comprehensive. There has been a slight change from the original. However, you must have heard from the members of the provincial councils or the particular councils or the provincial councils, and that has shown or has been reflected in the submissions this afternoon.

We are looking towards peace, prosperity, living together in diversity, and democracy. And your submission this afternoon are pointing towards those attributes for the population of Fiji. We will have to read it properly before we can come to further comments and further conclusions in relation to the submissions that have been submitted.

But I must thank you this afternoon for the submissions that we have heard. Now, as usual, the commissioners are usually given time at the

end of the submissions to ask questions or comment on what they have heard this afternoon, to comment on the oral submission that has been prepared, and we just want to create discussions for clarification's sake. So now I invite the commissioners, if they wish to, to pass comments and ask questions in relation to matters which they have heard have been presented to the commission this afternoon.

Commissioners? Dr. Fatiaki.

Dr. Fatiaki: Chairman and members of the GCC delegation, firstly, let me thank you all most sincerely for taking time out to come and reinforce the process that we're in by presenting yourselves for a second time. That acknowledges the seriousness with which you consider the work that we're doing, and for that, we are grateful.

And also, as the team leader for the constitutional commissioners that traveled to Rotuma, I want to acknowledge some of the comments submitted in this proposal from the GCC, and just thank you for that. We're aware about that, but thank you. Thank you, Chairman and members of the GCC.

Mr. Kohli: Just two observations. Since you're such an august and reverent body, I grew up where the chief was the chief for everybody in the Vanua, not only indigenous. I want some recognition of that.

That should be there, that chiefs are there for everybody, including the indigenous, the Rotuman's, whoever, living in the Vanualevu, number one. Number two, I may not have it right, but I'm just curious. Somewhere you've suggested there is a customary law and other laws, and if they are inconsistent, then the customary law should prevail.

Did I hear it correctly or misheard you?

Mr. Seruvakula: Honorable member, I think you heard it correctly. Then I have one issue, and this is 45 years ago when I started practicing. I found out that courts used to grapple with cases where somebody has been charged in a village, and they've taken a tabua and asked for forgiveness, and they've traditionally been forgiven.

So, when they came to court, they had to face up with a law that doesn't spare them. Court may recognize just for mitigation purposes, but would

not set them free by saying that now you're totally exonerated, you can go home because traditionally you have been forgiven. So how do you reconcile that?

Mr. Seruvakula: Honorable member, you are referring to social in cohesion. That is not a right. And we are talking about two systems with rights that are inherent and mostly confused. And that's where we come in.

Especially in terms of group rights that are practiced according to tradition and acknowledged by custom. So, I know your point, and I understand where there is a boundary between trying to solve a quarrel in court. But I think your example in both cases won't sit well.

So, we are very much talking about the rights and interest that disturbs the social cohesion of a particular group in general. So, I don't have an example in my head right now, but I think, let me come back to you on that. Thank you.

Mr. Kohli: Thank you.

Dr. Gounder: Thank you, Chair.

Ro Naulu: Mr. Chairman, if I can just add to what legal advisor has stated, that the GCC was invited to a legal conference in Nadi earlier this year that the Chairman and I went to, and this was an issue that we had discussed with them.

And in the reform that one of their consultants is working on, we had discussed at length how you look at customary laws with respect to some of the punishment, and where laws of the country has to come in and play a role. And even if there has been reconciliation, the laws of the government will have authority over customary laws. So, it's under discussion at the Ministry of Justice, but there has been some discussion on that, and they are aware that at the end of the day, it's the laws of the government that will have the authority over customary laws when it comes to certain issues of reconciliation that we've seen being used a lot lately. And that does not represent what the law of the world wishes to be.

Mr. Kohli: Thank you for that clarification. I must say that the courts are moving towards restorative justice, even in New Zealand, and I think they can

better utilize when people from province come, somebody is charged from their place, and that can be fully taken into consideration.

Dr. Gounder: So, thank you. Thank you, Chair and Honorable Chairman and members of the GCC. Thank you once again for your submission this afternoon.

I also recognize the Chairman of Tailevu Provincial Council, who accompanied us to almost all the villages that we went to in Tailevu and also for your submission. Sorry. When we met here the last time, I mentioned that non itaukei, we look at GCC, we could also consider the chiefs of GCC, our chiefs as well.

We had Niko Nawaikula here. I'm sure all of you know him. He's a former member of parliament, strong advocate of indigenous rights.

And a similar proposal to Mr. Nawaikula was made by a law student at USP. And I want the views of the members of the GCC here today, what they think of it. The two submissions recommended if the GCC could be truly a GCC of all the people in Fiji, and if it's possible to co-opt non-ethical case as members of GCC, not as a permanent member, but perhaps on a term basis.

That might give really a true GCC of everyone in Fiji. And Mr. Nawaikula also proposed that such a system may be useful in a bicameral parliamentary system. So I wanted to hear your views this afternoon.

What do you think of that suggestion? I mean, moving forward as a GCC in a multiracial country. And I submit this with due respect. We don't have a social system where we have chiefs, but strong community leaders can support the work of the GCC.

And something that you also mentioned, unity, national unity could also be announced perhaps through that system.

Mr. Seruvakula: Thank you, Dr. Gounder. Indeed, it's responsible of the government.

The government is responsible for the welfare of all its citizens. The great council of chiefs is for the indigenous interests. But as you quite rightly pointed out, those are responsible for the interests of other races that live in Fiji.

To be a member, there's always, there's a location or in the rules or procedures for the great council of chiefs. You may have heard Dr. Jairam Reddy. Brendan spoke at the great council of chiefs.

So, there are forums within the great council of chiefs where others can come into the subcommittee that we now have. We never had in the past. Now we have a subcommittee where we've had ministers who have come and asked, can we come and speak to them? There's going to listen to them.

Okay, what do you want to talk about this? I said, well, there are certain things that can be open for people to talk about in the great council of chiefs. That's a final decision making, but one they can talk to the subcommittee and that's where they can share the differences and the interest and share with them some of the concerns that they have. But the great council of chiefs from where I sit as the chair and we've had five meetings now, I can assure you, the views of the chiefs are quite broad.

They think of everybody to the point where even when there are resolutions about to be passed, there will be some quarters that'll say, hang on, that will have an impact on the other races in from where I'm in charge of. So, I want that to be taken into account or have another look at. We've had papers pushed back because it needs better clarity because it involves other races.

So, they did, but I think we all have a point where you were about the involvement of other, so to say that it can't happen. We've only been around for, we've been re-established for the last, since 2024 and in my first three years, I see my main responsibility is to establish a platform to launch from. So, we're still doing that.

And from there, what we're doing is setting a platform for a great council of chiefs to be progressive in such a way that it maintains its relevancy in the bigger scheme of things. So, it's early days yet, but like I said, it's not impossible, but that's something that will be pretty sure will probably change, you know, in days to come. I'll let Ro Naulu add to that, if you don't mind. Thank you. Thank you. Inaka.

Ro Naulu: You know, all the members of the great council of chiefs have to resign from politics to become a member of the great council of chiefs. So, we have politics and democracy on one side and you have tradition and the

BLV on the other side. So, in politics, what we have proposed, I think, and perhaps Nico as well, is a bicameral house where everybody who's Fijian can be represented. The BLV is tradition. And as you rightfully said, it's there for everybody. Government is there to look after all Fijians.

And the great council of chiefs is there to look after all the Taukei first and then look after everybody. Just as Rotuma council is, just as other races that have their own distinct groupings look after their own. And we've all come together in democracy in what is parliament.

And so, the great council of chiefs is traditional to look after specifically the Taukei from even before the deal of session was signed. But as time evolves, just as I hope, any new constitution will, as a living document will evolve as well. Who knows? It might happen.

But what we are working on within the great council of chiefs right now is to ensure that the Taukei sit right, that what we are planting today, we might not be able to see the fruits of, but if we can sit it right, maybe what we all want will happen two or three generations down. I don't know. It may be faster.

It may be slower. But if we set the scene right now, it will happen.

Mr. Seruvakula: Honorable member, if I can add, there are different layers of priorities occurring while we're trying to solve this problem.

Just as honorable member just alluded to in terms of politics on one side, democracy and the GCC on one side. And in our submission, we've raised the idea of bringing back the Senate. And in the Senate, as you would understand, and Dr. Fatiaki was a member of, there are representations from other than the chiefs.

So, I think that we will take care of this issue. But other than that, I think we should have patience because I don't think there's a time in our history where the Fijian people, the Taukei, the indigenous were given an opportunity to sort themselves out. There was always someone who was some other interest coming on top all the time, if you like, in history.

And the presentation today is about being aware of that, aware of the mix, but we are progressing. Thank you.

Ms. Nailatikau: Thank you, Chair. Many thanks to the gentlemen and ladies of the council for your submission. I apologize in advance for the inadequacy of my words. I look forward to receiving the benefit of your insight and your thoughts as well for the two questions I'd like to ask.

My first question is in relation to rights and the second is in relation to power. Having accompanied team members on consultations throughout the country, knowing the times that Fiji is experiencing, there are times of crises, of war, of economic cost of living pressure, rights often come under scrutiny, specifically the limitation of rights for the perceived benefit of a return to order of quelling dissatisfaction, for example. And one of the things we've heard throughout submissions is the limitation of rights, particularly of women and of children.

I was heartened to hear your thoughts about the representation of women in parliament and in decision-making. And at the same time, I also note that generations preceding mine and in my generation are generations of repair and of maintenance of cultural ties, of language as you so rightfully raise and of many other ways of life. And I worry that those who are most vulnerable and those who need the embrace of their culture all the more may feel turned away and dismissed. I would simply like to welcome your thinking around the aspects around the safety of children, young people and women in modern society in Fiji, whether it be now indigenous communities or the others or any community as we've been discussing today.

My second question is in relation to power. It's clear that many people place their aspirations and their hopes for custodianship, for wisdom in institutions like the Great Council of Chiefs. The institution looms large in people's consciousness, whatever their perspectives may be. I hear you speaking about the very dialogue-centered and consensus-centered ways in which you undertook consultations to make your submission, your complimentary submission today. And I wanted to understand what you might see as mechanisms for accountability or safeguarding of power as exercised by the Great Council of Chiefs. Those were my two questions.

Mr. Seruvakula: Thank you. I'm the chair and commissioner as well. We, as traditional leaders, we are facing problems with rights in our villages. We have cases in Tailevu Province where leaders who had been enforcing customary laws in their own villages have been issued restraining orders

in their own village because of rights. It's a principle to do. Therefore, we should strike a balance between the customary law and rights. This is a problem as operators of customary laws and traditional leadership. We go along with the notion that we are leaders for all the people in our districts.

We go to their celebrations, Diwali, eat festivals, everything. They respect us, we respect them. But the problem is, as you discussed, is rights. We face a problem because it is the rights versus the customs. So, one has got an upper hand over the other. So, it is a DVRO against another DVRO. That's our problem. That's the real situation on the ground. And we would like to suggest that the customary law overrides that in a customary setting where we respect customs. Thank you. Yes.

Ro Naulu: Thank you for the question. Let me touch on the issue of power. In the Great Council of Chiefs Hall, there is a statement that everybody entering the Great Council of Chiefs Hall will see. In Fijian, it says, 'Duavata tiko keda I Vau'.

'Vau' being the stream that holds us together. And so, in the discussions we have, you will see that everybody sits on the same level within the house itself. Didn't start out that way, but that's the way it is now.

And so, there's no higher chief, there's no lower chief, there's just chiefs who sit in the house. And so, one of the reasons why deliberations, they take time is because we allow for discussions to take place, whether it's individually, whether it's by confederations, whether it's people who went to the same school, who went to the same institution, to allow for the discussions to take place so that at the end of the day, we all reach, we come to a consensus on the way forward. So, there is not one chief who will say something and others will automatically follow.

That may have happened in the past, not with these Great Council of Chiefs. We all listen to each other. Views can be very strongly expressed, but at the end of the day, to reach a consensus, everybody has to understand why we are here.

We are heading this way or in that direction. We were a bit concerned at the beginning of the Great Council of Chiefs after they came back together again in 2023, 2024. And I've shared this with the chairman and some of the other members of the Great Council of Chiefs that, in a

sense, the 16 years that the Great Council of Chiefs was in the wilderness was probably a good thing because it allowed us to reflect what exactly is the Great Council of Chiefs all about? Is it serving a purpose? Does it still serve a purpose to this day? And so, we think it does.

With the understanding that a lot of the younger hit the key, don't fully comprehend what the Great Council of Chiefs is all about. So, going forward, this intergenerational vision that we have, we have to share what we're doing with the younger generations so that they're aware, whether it's in terms of the board appointments that we're gonna be making, whether it's in terms of the work that we're gonna be doing to resource people that we rely on to provide us with the technical input into any of the discussions that we have. It's all part of that linking to the younger generation to let them know that what we are discussing is gonna be something that will have an impact on their children and their grandchildren.

So, that's all part of it. But I can assure you that within the Great Council of Chiefs, a chief may come with very strong views on something, but at the end of the day, consensus has to be reached for us to move forward. And so, that, I think, is part of the accountability that I would say was not there in the previous Great Council of Chiefs before it was, before we ran into the wilderness.

Mr. Beg: Through you, Chair, may I? Chairman, thank you very much for your enlightening presentation from the initial one we had and the Honourable members. I'd just like to just touch on one point, which was the point that you brought up. I had the honors of travelling the Maritime, and I can say quite confidently that I went far and wide in the Maritime areas.

And you brought up this point about Maritime Powers Act, which is something that you alluded in your presentation around the drug enforcement, which is quite interesting. And I wonder whether we established in the constitution general principles, because there's existing laws already out there in, you know, with the police. You know, there's powers that the police, the internal waters, in feature, there's acts.

So generally, I think in your presentation, I just wanted you just to clarify what you had said there, if I may. So, around that point that you were bringing up about the Maritime powers and drug enforcement.

Mr. Seruvakula: Thank you, Honourable Member. Yeah, I spent some time with the, after listening to the Chiefs about the concerns on drug issue out in the islands, the Maritime part of the country. I, in order to better understand that, being the fact that I come from 'colo', I don't really understand the coast. I went and spoke with the Navy, thought to go to the experts and find out more from them.

What we found out was that, there's a lot of hard work that's been done out there, but they've all been done in silos. The gap that's been taken out there, that can be taken advantage of by the people who bring in drugs, is quite wide open. The Navy, for instance, who have, out of all the arms of government, from the police, customs, and you name it, they're the only ones who can go as far out as the EEZ.

But their powers are limited in what they can do out there. It's like a taxi ride to the coast, EEZ and back. What the Maritime power is all about is to bring, they have a setup that exists, that exists in their naval command center that was built by the Australians.

It's quite impressive. It's like, you know, one of those things, just NCI, you see in the movies. They've all laid up, but the people, or the arms of government couldn't go there, because their ex doesn't allow them to work together with the Navy, for them to go out and work out together.

So, they all, it's not because they don't want to, it's because they're guided by the laws that guides them in the performance of their duties. And bear in mind, these laws were there, that there were no drug issues like that. It's all about fisheries, transport, maritime, and those kinds of issues, nothing to do with drug, with law enforcement.

I think, I'm not sure if the commander of the RF may have touched on it, but that's one of the biggest concerns is the projection of power, of authority, law, law of authority to protect our borders. That's the reason why the need for maritime, to legislation, to force everyone to come together, and then together, they can then put their laws together, where they can all perform their duties, where they can then prosecute somebody. At the moment, it's only the police who can do that, or the

customs, but for them to travel with the Navy and go and do that, there are restrictions, there are constraints. Hope I've answered you.

Mr. Beg: And thank you very much, Chairman. I think that answers, I mean, we've heard a lot from the people throughout the maritime and the rural areas. And so, it's a very valid point. And it's an instrument that we need to consider in the constitution, how it's framed, and how we look at it, rather than prescriptive. We leave that to the lawmakers. But I understand the frustration there. So, thank you, sir. I appreciate that.

Mr. Valenitabua: Thank you. Just before I bring the consultation session to the end, this afternoon, just a few updates for the great consular chiefs, taken from what we have gathered from the consultations and submissions, which we have heard from our people. First of all, the most welcome one was the position taken by the RFMF. And that is in relation to the immunity clause. Everywhere we went, the submission was to remove the immunity clause. It was a difficult one.

And it was a big ask at one time. And even now, with the RFMF saying that they support the immunity clause to be removed, we still have to worry about the opinion from the Supreme Court. Now, we have had good submissions in relation to that opinion, which we will be deliberating on.

I won't tell you yet what those opinions are. But it appears to have opened up an excess avenue towards removal of the immunity clause.

Secondly, the TLTB has given us their submissions.

They are undertaking reforms in relation to the operations for the benefit of the landowners. You might have read that they are even looking at some of the freehold lands that were taken or stolen, maybe, in inverted commas. So, those are the reforms that are being looked at by the TLTB and which they have presented to this commission.

And we have them in writing. And we are hoping that we could put down a few provisions in the constitution which would assist in that regard. This follows submissions from the people around the country in relation to return of native lands and mineral resources to the iTaukei landowners.

There's talk about owning the space from the sky down to the deepest part of the earth for the ITaukei's to own that. It relates to ownership, not only about land, it's about Qoliqoli's too. So, that is something that has been brought up and the TLTB will be working on that together with the Ministry of Lands.

We also heard from the Minister, the Honorable Minister of Lands, Mr. Filimoni Vosarogo, and this is in relation to the mineral resources. First of all, mineral will not be, or will include water and all those things, gravel, precious metals will not be found, oil, if we find oil in Fiji, and so forth. Now, in relation to the return of ownership of mineral resources to the Itaukei owners of the land, we were given a presentation on philosophy on why the government thinks that mineral resources ownership should be retained by the Crown, or by the state, sorry, by the state. It's for safekeeping, generally, because we, they are concerned that with us, if ownership of mineral resources is returned to the Itaukei owners, then they might be abused or misused. However, that is from the Ministry of Lands, for your information.

The immunity, like I said, immunity is still on foot right now, it's still in the constitution.

We are going to be looking at how we can remove it legally. National Federation Party came to us this afternoon, just before you, in their submission, they have asked us to entrench a number of our legislations, legislations which affect ITaukei's, and I can read them to you now, although they are submissions from the National Federation Party. They have asked us to entrench, or they have suggested to us to entrench this, similar to the section 185 of the 1997 constitution.

These are the ITaukei Affairs Act, the ITaukei Development Fund Act, the ITaukei Lands Act, the ITaukei Lands Trust Act, the Agricultural Land and Tenant Act, the Rotuma Act, the Rotuma Lands Act, and the Bannerman Lands Over Settlement Act. So, the national, that is coming from the National Federation Party, they have suggested and recommended that to us, so that we can include it in the constitution, the amended one.

And then last but not least, customary laws.

Our initial term of reference, has tasked us to include customary laws into the constitution. So, if that is put in the constitution, it should open

up a lot of other avenues and other regulations and legislations in relation to our custom, including the village by-laws, which is in high demand from what we have heard all over Fiji. They are asking what is happening to the village by-laws.

I understand where we were at one time and what are the hindrance ones. So that is something that we may have to think about. There were other matters, but I think these are the main ones I can disclose to you this afternoon.

And with having said that, I'm sure we are all happy that we have met again this afternoon. We have listened to you, the chairman of the great council of chiefs, members, gentlemen and ladies of the great council of chiefs. And the commissioners also are happy that you have come to finish up the consultation sessions with us this afternoon. We are inviting, we'll be having a photo shoot. We will come down there and stand behind you.

----------End of Session [10-7-2026]----------

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GCC Final Submission to the Constitutional Review Commission

Introduction

The Great Council of Chiefs (GCC), as the apex representative body of the indigenous peoples of Fiji, respectfully submits this memorandum to the Constitutional Review Commission for its consideration during the current constitutional review process. This submission is made pursuant to the GCC's mandate to receive, consider and deliberate on constitutional matters affecting the indigenous peoples of Fiji, whose identity, culture, governance systems and customary rights remain inseparable from the *Vanua*. It is intended to supplement and expand upon the GCC's earlier submission to the Commission.

The matters raised reflect longstanding concerns expressed by traditional leaders, members of the *Vanua*, customary landowners and resource-owning communities regarding the constitutional arrangements established under the Constitution of the Republic of Fiji 2013. They are presented in good faith with the objective of contributing constructively to a constitutional framework that commands broad public confidence, respects democratic institutions, upholds the rule of law, and appropriately recognises the historical, cultural and customary foundations of Fiji's indigenous commission.

The GCC reiterates its longstanding position that it does not accept the legitimacy of the current Constitution. It maintains that every lawful effort should be directed towards a genuinely consultative constitutional process culminating in an autochthonous constitution—one created by the people of Fiji, for the people of Fiji.

This submission is organised around the principal constitutional issues identified by Chiefs and representatives of the *Vanua*. Each raises significant constitutional questions which, in the view of customary landowners, warrant careful consideration during the current review process.

1. Legitimacy of the Constitutional Foundation and the Absence of Genuine Indigenous Consent

The GCC's primary concern relates to the process through which the 2013 Constitution was adopted and the extent to which it reflected meaningful participation by the indigenous people of Fiji through their traditional institutions.

The views submitted to the GCC consistently indicate that the constitutional process following the events of 2006 did not adequately incorporate the perspectives of the *Vanua* or provide sufficient opportunity for traditional leaders to participate in determining the country's supreme law.

Particular concern has been expressed that the draft Constitution prepared under the leadership of Professor Yash Ghai was ultimately set aside. Instead, the Constitution presently in force emerged through a different

process which, in the view of many indigenous communities, did not receive the endorsement of the traditional institutions that historically represented the collective interests of the iTaukei people.

The Commission is therefore invited to consider whether the legitimacy and long-term stability of Fiji's constitutional order would be strengthened through the development of a constitutional framework founded upon broader national participation and one that receives the explicit endorsement of the *Vanua*, alongside the wider citizenry.

2. Recognition of Traditional Governance Institutions

The second issue concerns the constitutional status of Fiji's traditional governance institutions, particularly the Great Council of Chiefs.

Historically, the GCC performed an important constitutional and advisory role on matters affecting indigenous affairs and served as the principal institution linking traditional leadership with the governance of the State.

The current Constitution contains no express recognition of the GCC or any constitutional functions for the institution. Many customary landowners consider that this omission has weakened traditional governance structures and diminished the formal participation of indigenous leadership in national decision-making.

International instruments, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), recognise the right of indigenous peoples to maintain and strengthen their representative institutions. The GCC therefore submits that consideration should be given to constitutional mechanisms that recognise and protect traditional governance institutions while ensuring they operate consistently with democratic principles and the Constitution.

3. Recognition of the Political Status of the iTaukei People

The third issue concerns the constitutional recognition of the indigenous people of Fiji within the framework of equal citizenship.

While the Constitution adopts a common national identity by referring to all citizens collectively as "Fijians", the GCC submits that this approach provides insufficient constitutional recognition of the unique historical, political and customary status of the indigenous iTaukei people. The GCC maintains that the distinct relationship between the iTaukei and their traditional lands, arising from customary ownership, traditional law and long-established custom, warrants explicit constitutional recognition.

Accordingly, the GCC submits that the designation "Fijian" should, by reason of historical priority and the unique customary relationship with the land, be reserved for the indigenous iTaukei people.

The GCC further submits that equal citizenship is not inconsistent with constitutional recognition of indigenous status. Equality before the law can coexist with express recognition of the iTaukei as the original customary owners of the land and custodians of Fiji's traditional institutions.

The Commission is therefore invited to consider whether additional constitutional recognition of the iTaukei people's unique political, cultural and customary status would better safeguard indigenous identity while preserving equal rights for all citizens.

4. Recognition and Protection of Customary Ownership and Authority over Natural Resources

The fourth issue concerns the constitutional protection afforded to customary ownership and authority over natural resources.

While section 27 of the Constitution protects ownership of iTaukei land, customary landowners submit that the Constitution provides insufficient recognition of customary authority over the natural resources associated with those lands, including inland waters, forests, minerals, coastal areas, traditional fishing grounds and other resources that have historically formed part of the *Vanua*.

Concern has been expressed regarding the ownership and control of mineral resources. Although customary ownership of land is constitutionally protected, legislation such as the *Mining Act* vests ownership of minerals in the State. Many customary landowners consider that this creates an imbalance between State authority and customary proprietary interests.

The GCC submits that constitutional reform should examine whether customary ownership ought to extend beyond land itself to encompass the natural resources traditionally associated with customary ownership and stewardship.

The GCC further submits that the historical intention of the British Crown concerning customary land and resource ownership was reflected in colonial legislation enacted following the Deed of Cession in 1874. By way of example, section 9 of the *Pacific Islanders Protection Act 1875* demonstrates Parliament's intention to confer governmental authority (*imperium*) rather than proprietary ownership (*dominium*) over indigenous territories.

This distinction between sovereignty and ownership has long been recognised in British constitutional law and subsequently affirmed in Commonwealth jurisprudence. Accordingly, the acquisition of sovereignty through the Deed of Cession transferred governmental authority to the Crown while preserving customary proprietary rights over land and associated natural resources, except where those rights were lawfully extinguished.

The GCC therefore submits that customary ownership of natural resources is an inherent proprietary right that exists independently of State sovereignty and should receive explicit constitutional recognition.

Accordingly, the Constitution should recognise that ownership of all customary land and its natural incidents—including the seabed, sub-surface minerals, inland waters and airspace immediately above customary land—vests in the customary owners in accordance with customary law and the understanding of property that existed at the time of Cession. The GCC further submits that this reflects the understanding of customary owners at both Cession in 1874 and the restoration of self-government in 1970.

The GCC endorses a fair and equitable royalty distribution framework based on a proportional share of gross income, rather than a fixed royalty rate, to better reflect fluctuations in market prices. Under this proposed arrangement, gross income would be allocated on the basis of 60% to the developer and 40% to the State and landowners. From the developer's 60% share, 20% of project capex would be retained as a refundable environmental bond and held in escrow for the duration of the project, subject to satisfactory environmental compliance and rehabilitation obligations. The remaining 40% local share would be apportioned as 10% to the State and 30% to the iTaukei Land Trust Board (TLTB), for distribution to the customary landowners through its established dividend distribution policies. This payment proposal must replace Schedule 3 of the current royalty rates of the State Lands Leases and Licenses (Amended) Regulations of 2026.

The template illustrates how constitutional reform should move beyond protecting land alone to explicitly recognise customary authority over all natural resources historically tied to the Vanua. It highlights that while sovereignty was transferred to the Crown under the Deed of Cession, proprietary rights over land and resources remained with indigenous owners. This principle supports the GCC's position that ownership of minerals, waters, seabed, and airspace must vest in customary landowners. To ensure fairness, the template proposes a royalty framework based on gross income, allocating 60% to developers and 40% to the State and landowners, with safeguards such as an environmental bond and equitable distribution through the iTaukei Land Trust Board. In essence, the example demonstrates how constitutional recognition, and a fair economic model can restore balance between State authority and customary rights, affirming indigenous stewardship as a cornerstone of national development.

Gazette Supplement no 25 of 2026			**Schedule of Royalty Rates -Regulation 37 A**				**landowner**	**Government**	
	Natural Resource	100% value	**Developer 95%**		**5%**		**80% of 5%**	**20% 0f 5%**	
1	Sand & gravel	$208.00	$197.60		$10.40		$8.32	$2.08	
2	clay & soil	$130.00	$123.50		$6.50		$5.20	$1.30	
3	rock	$104.20	$98.99		$5.21		$4.17	$1.04	
4	top soil	$779.80	$740.81		$38.99		$31.19	$7.80	
5	river spall	$156.00	$148.20		$7.80		$6.24	$1.56	
6	Sand D&I dumpsite	$160	$152.00		$8		$6.40	$1.60	
				Our Proposal					
			The Developer's share				landowner	Government	
	Natural Resource	100% value		60%			30%	10%	
1	Sand & gravel	$208.00		$124.80			$62.40	$20.80	
2	clay & soil	$130.00		$78.00			$39.00	$13.00	
3	rock	$104.20		$5.21			$31.26	$10.42	
4	top soil	$779.80		$467.88			$233.94	$77.98	
5	river spall	$156.00		$93.60			$46.80	$15.60	
6	Sand D&I dumpsite	$160		$96			$48.00	$16.00	

Notwithstanding any other provision of this Constitution, where the exercise of a right or freedom conferred by this Constitution is inconsistent with a recognized customary right, the recognized customary right shall prevail to the extent of the inconsistency.

Reclassification of Government-Acquired Freehold Land

The GCC also proposes a constitutional amendment providing that any freehold land acquired by the State, whether by purchase, buy-back, exchange or any other lawful means, should automatically revert to iTaukei Reserve Land where it is no longer required for a public purpose.

While section 29(5) of the 2013 Constitution does not presently address the reclassification of freehold land, such a proposal would require both a constitutional amendment and corresponding amendments to land legislation.

The GCC proposes the following constitutional provision:

"Notwithstanding any other provision of this Constitution or any written law, where the State acquires freehold land by purchase, buy-back, exchange or any other lawful means, and that land is no longer required for a public purpose, the land shall be reclassified as iTaukei Reserve Land and thereafter held under native tenure. Such land shall not be capable of sale, transfer, exchange, mortgage or permanent alienation except as permitted under the laws governing iTaukei Reserve Land."

The purpose of this proposal is to ensure that land acquired by the State is ultimately restored to indigenous ownership under the iTaukei Reserve system and protected from future permanent alienation. The proposal seeks to strengthen the long-term protection of Fiji's indigenous land base while ensuring that land acquired for public purposes remains available for future generations of customary landowners.

5. Concentration of Executive Power

The fifth issue concerns the constitutional distribution of executive authority.

The GCC submits that the 2013 Constitution concentrates significant executive power in the offices of the Prime Minister and the Attorney-General.

Submissions received from the Provinces and the *Vanua* consistently advocate stronger checks and balances, enhanced parliamentary oversight and greater participation by independent constitutional institutions.

The Commission is therefore invited to consider reforms that strengthen accountability while ensuring that executive authority remains transparent, effective and subject to meaningful constitutional oversight.

Fiji Independent Commission Against Corruption (FICAC)

The GCC further submits that the Fiji Independent Commission Against Corruption (FICAC) illustrates the broader concern regarding executive influence over accountability institutions.

Although FICAC was established under the *Fiji Independent Commission Against Corruption Act 2007* rather than by the Constitution itself, the GCC submits that the constitutional framework failed to provide sufficient safeguards against executive influence over institutions intended to promote public accountability.

The GCC notes concerns expressed by many stakeholders that FICAC has, at times, been susceptible to political influence within a highly centralised executive system, creating the perception that it may be used as a political instrument rather than as an independent anti-corruption agency.

Accordingly, the GCC proposes that FICAC be dissolved as a standalone statutory body and that its investigative functions be transferred to a specialised bureau

6. Representation of Indigenous Communities within the Electoral System

The sixth issue concerns the electoral system established under the 2013 Constitution.

Earlier constitutional arrangements incorporated communal representation, enabling different communities, including indigenous Fijians, to elect representatives reflecting their particular interests.

However, the GCC submits that this model does not always provide adequate opportunities for indigenous communities—particularly those in rural and traditional settings—to have their collective interests effectively represented in Parliament.

The Commission is therefore invited to consider whether alternative electoral arrangements, or complementary representative mechanisms, could strengthen indigenous participation while preserving democratic equality, national unity and representative government.

7. Constitutional Amendment Procedures

The seventh issue concerns the procedures governing constitutional amendment.

The 2013 Constitution establishes particularly stringent amendment requirements intended "to promote constitutional stability". However, the GCC submits that these thresholds make meaningful constitutional reform extremely difficult, even where broad public consensus exists.

While constitutional stability is essential, the GCC submits that a constitution must also remain capable of responding to changing national circumstances and the evolving aspirations of indigenous people. An appropriate balance should therefore be maintained between constitutional permanence and constitutional adaptability.

The Commission is invited to consider whether the amendment procedures should be revised to preserve constitutional integrity while enabling future reforms supported by broad national consensus.

8. Recognition of the Right to Indigenous Self-Determination

The eighth issue concerns constitutional recognition of the right of indigenous peoples to self-determination, consistent with international human rights standards.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) affirms the right of indigenous peoples to maintain and strengthen their political, legal, economic, social and cultural institutions and to participate meaningfully in decisions affecting their communities.

Although the Constitution recognises customary land ownership and protects certain cultural rights, the GCC submits that greater constitutional recognition should be given to the participation of indigenous peoples in decisions affecting their traditional lands, natural resources and customary institutions.

The Commission is therefore invited to consider whether additional constitutional provisions could better reflect internationally recognised principles relating to indigenous peoples

9. Constitutional Safeguards for Indigenous Rights

The final issue concerns the absence of constitutional safeguards specifically designed to protect indigenous rights from future legislative change.

Previous constitutional arrangements included institutions, such as the Senate, which provided an additional level of scrutiny for legislation affecting indigenous interests. Many customary landowners consider that comparable constitutional safeguards are no longer available.

The concern extends beyond customary land ownership to encompass traditional governance institutions, *qoliqoli*, customary marine tenure, forests, rivers, sacred sites and other customary rights and interests that form an integral part of the *Vanua*.

The GCC therefore invites the Commission to consider constitutional entrenchment provisions or other institutional.

10. Maritime Powers Act (FIJI)

Fiji does not currently have a single consolidated "Maritime Powers Act" equivalent to Australia's Maritime Powers Act 2013. Instead, Fiji's maritime governance framework is spread across several statutes and institutions, particularly:

- The Maritime Transport Act 2013 (by MSAF under the Ministry of Transport),
- The Maritime Safety Authority of Fiji Act 2009 (by MSAF under the Ministry of Transport),
- Shipping and fisheries legislation (MOF and MOT),
- Marine Space Act 1977 (administered by MOFA) – Fiji national legislation for UNCLOS;
- Police Act (by Police to board, search, seizure and arrest);
- Customs Act (by FRCS to board, search, seizure and confiscate undeclared foreign substance or illicit drugs)

The current Fiji's maritime laws focus more on maritime safety, shipping regulations, fisheries managements and maritime administration rather than a heavily centralized security enforcement model. For an instance, the Marine Space Act 1977, administered by the Ministry of Foreign Affairs, depicted the different boundaries and jurisdiction of Fiji's maritime domain, but failed to address which law enforcement agencies exercises powers of providing security or enforcement over those boundaries.

Fiji's maritime legal structure is fragmented in a way that it is not unified, hierarchical body into specialized, autonomous sub-fields. Instead of cohesive rules applying across the board, laws are governed by isolated regimes as it spread across multiple agencies and ministries and this has created coordination challenges, overlapping and conflicting authority such as the Customs Act and the Police Act to board, search and seizure, and operational inefficiencies caused by working in silos.

To ensure these frameworks operate in harmony, we submit that a comprehensive legislative consolidation act is essential to seamlessly integrate these distinct statutory and constitutional provisions."

11. Rotuma Council and the People of Rotuma

It is a profound honor to present this formal submission on behalf of the Rotuma Island Council and the people of Rotuma, whose collective aspirations have been meticulously gathered through extensive consultations across all seven districts and with the endorsement of the Council of Chiefs.

This submission does not represent a pursuit of independence or secession from the Republic of Fiji. Rather, it is advanced in a spirit of deep respect and enduring partnership to strengthen our constitutional relationship by restoring formal recognition of Rotuma's unique historical, legal, and cultural status within the State.

The submission proposes a modest amendment to the Preamble alongside the insertion of a dedicated constitutional chapter entitled "Rotuma and the Rotuman People." This framework seeks to:

Formally recognize the Rotuma Island Council as the principal representative institution of the people.
Mandate meaningful consultation on all policies affecting the island.
Safeguard customary lands and marine resources from amendment without consent.
Restore guaranteed parliamentary representation.

Reflecting the interconnected traditional leadership of our nation, three Grand Chiefs of Rotuma Island serve as esteemed members of the Great Council of Chiefs (GCC).

It is my distinct privilege to state to this Honourable Commission that the GCC stands in complete solidarity with, and formally supports, the submission presented by the Rotuma Island Council and the Rotuman people as we collectively seek to preserve our unique identity while contributing positively alongside our iTaukei brothers and sisters to a unified Fiji.

12. Gender Quotas for Fiji's Parliament and Municipal Councils

The Great Council of Chiefs (GCC) presents this formal submission to the Constitution Review Commission of Fiji. As custodians of Fiji's heritage and governance, the GCC emphasizes that a progressive and resilient democracy must optimize its entire leadership pool. Currently, Fiji faces an acute underrepresentation of women in political life. Women hold just 9.1% of seats in the national Parliament (5 out of 55 members), placing Fiji 165th out of 181 countries globally and 139th in Political Empowerment on the Global Gender Index. Subnational and traditional spaces exhibit a similar systemic gap; for instance, women occupy a mere 7.15% of Provincial Council positions and hold zero leadership roles at that level.

To address these imbalances and simultaneously elevate the quality of national decision-making, the GCC proposes a dual-pronged constitutional reform strategy:

i **The introduction of legislated gender quotas** (30–40% minimum threshold) to dismantle entrenched structural, institutional, and cultural barriers.

ii **The introduction of a minimum educational qualification of a Bachelor's Degree** for all parliamentary and municipal candidates to ensure high-caliber, merit-based governance.

This submission synthesizes grassroots data and regional frameworks, drawing direct insights from the comprehensive assessment within **"CSO_Gender_Quota_Submission.docx"**.

2. Rationale and Justification

A. Overcoming Entrenched Structural Barriers to Women's Leadership

Formal legal equality has historically failed to translate into substantive representation. Research outlines multiple systemic obstacles faced by women in Fiji, including patriarchal social norms, gender stigmatization (which 69% of citizens state reduces a woman's electoral success), caregiving expectations, and male-dominated candidate selection processes. When more women run, more women win; the primary bottleneck is getting women onto the ballot. Implementing constitutional quotas does not lower the bar; rather, it corrects historical disadvantages and expands opportunities for qualified women whose talents have been systematically overlooked.

B. Harmonization with Regional and International Mandates

Fiji is legally and morally bound by voluntary ratifications and declarations. Transitioning to a constitutional quota fulfills obligations under:

- **CEDAW (Ratified 1995):** Article 7 mandates the elimination of discrimination in public life, while Article 4(1) explicitly recognizes temporary special measures, like quotas, as legitimate pathways to de facto equality.
- **Regional Frameworks:** The *Pacific Leaders Gender Equality Declaration*, the *Pacific Islands Forum Women Leaders Meeting (PIFWLM)*, and the *2050 Strategy for the Blue Pacific Continent* all bind Fiji to achieve gender-balanced decision-making.

C. Elevating Governance through Minimum Degree Qualifications

To complement equity with excellence, the GCC proposes that all aspiring political leaders possess a minimum of a recognized Bachelor's Degree. As modern statecraft, economic management, and legislative drafting grow increasingly complex, our leaders must possess the foundational analytical tools necessary to govern effectively. Pairing a gender quota with a high educational baseline ensures that both male and female leaders enter chambers strictly on a foundation of merit and capability, directly countering any false narratives that quotas diminish institutional standards.

3. Proposed Constitutional Amendments: Chapters & Clauses

To embed these reforms seamlessly into the supreme law of Fiji, the following specific adaptations must be made to the Constitution:

Constitutional Chapter & Clause	Proposed Amendment / Mechanism	Rationale & Justification
Chapter 2: Bill of Rights Section 26(7) (Right to Equality)	Insert explicit language protecting and authorizing legislated gender quotas and reserved seats in elected bodies.	Provides an unassailable constitutional foundation for temporary special measures, ensuring they cannot be legally challenged as discriminatory.
Chapter 3: Parliament Sections 53–56 (Electoral System)	Mandate that all registered political party lists must consist of at least 40% women candidates for national elections.	Aligns perfectly with Fiji's open party-list system, directly multiplying the number of women in the contest without disrupting voter choice.
Chapter 3: Parliament	Insert a new subsection requiring all nominated candidates to hold a	Establishes an objective, gender-neutral baseline of educational competence, ensuring highly

Constitutional Chapter & Clause	Proposed Amendment / Mechanism	Rationale & Justification
Section 55 (Qualifications of Candidates)	minimum of a recognized Bachelor's Degree.	professionalized legislative debate and policy formulation.
Chapter 7: Local Government (Municipal/Council Clauses)	Reserve one seat per ward or constituency for the highest-polling woman candidate not otherwise elected under the general tier.	Adapts successfully tested regional templates (e.g., Vanuatu's 2024 local governance models) to organically inject women's voices into local government without enlarging council sizes.
Chapter 7: Local Government (Municipal Candidate Rules)	Apply the minimum Bachelor's Degree requirement to municipal and township election candidates.	Enhances local administrative execution, ensuring municipal councils are equipped to manage public funds, infrastructure, and community assets prudently.

4. Enforcement and Implementation Framework

As detailed in **"CSO_Gender_Quota_Submission.docx"**, quotas succeed or fail entirely based on design and enforcement. The GCC recommends empowering the Electoral Commission with clear oversight capabilities:

- **Robust Sanctions:** The Electoral Commission must legally reject any political party candidate list that fails to meet the 40% female threshold or the minimum Bachelor's Degree validation criteria.
- **Financial Mechanisms:** Implement public funding penalties for non-compliant parties, alongside financial bonuses or incentives for parties that exceed a 40% gender parity distribution.

By implementing these dual reforms, the Great Council of Chiefs believes Fiji will reclaim its position of regional leadership. We will build a democracy that is truly representative of its population while simultaneously raising the standard of leadership to secure a prosperous, stable, and highly capable nation.

Conclusion

The Great Council of Chiefs, on behalf of customary landowners and resource-owning communities, respectfully submits these matters for the Constitutional Review Commission careful consideration.

Our submission seeks a constitution that reflects both Fiji's democratic aspirations and its unique customary heritage. We believe it is possible to uphold equal rights for all citizens while giving meaningful constitutional recognition to the indigenous people, the Vanua, customary governance, and the ownership and stewardship of traditional lands and resources.

A Constitution built upon broad consultation, legitimacy and mutual respect will strengthen public confidence, promote reconciliation, and provide a more enduring constitutional settlement for future generations. The Great Council of Chiefs respectfully commends this submission to the Constitutional Review Commission and thanks the Commission for the opportunity to be heard.

On Chapter 10 immunity, the submission recommends repealing future immunity provisions. Fiji must move toward full equality before the law. No person, public official, or member of the security forces should receive immunity for future unlawful acts. The GCC fully supports the removal of the immunity clause as it is written in the 2013 Constitution, in place recommend a provision to allow those implicated to be summoned to a Truth Commission for truth telling, refusing to do so should then result in prosecution.

In conclusion, this submission asks the Commission to consider a constitution that is democratic, culturally secure, socially just, and institutionally balanced. It seeks to protect all citizens equally, while recognizing that indigenous identity, land, language, customary law, and traditional institutions require specific constitutional protection. Our recommendation is not to divide Fiji, but to build a stronger Fiji by recognizing the truth of who we are: a diverse nation with different histories, different communities, and shared responsibilities. A Constitution that protects those realities honestly will better serve national unity, stability, and future generations.

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GCC Chair Speaking Notes

Submission to the Fiji Constitutional Review Commission

Opening

Honourable Chair, Members of the Constitution Review Commission, and all present, thank you for the opportunity to make this oral submission. The Great Council of Chiefs (GCC), having made its initial submission to this Honourable Commission on 30 March of this year, hereby reaffirms its position as the apex body of traditional iTaukei leadership. The Council further underscores its role as the custodian of the customary supremacy inherent within the iTaukei governance structure.

In the exercise of this traditional authority, the GCC undertook a comprehensive process of awareness and consultation across the thirteen Provincial Bose Vanua. Through these consultations, the Council presented its initial submission for the understanding and endorsement of the vanua. Chiefs who sit within the Bose Vanua ni Yasana are duly identified and registered as the rightful holders of chiefly titles under the Native Land and Fisheries Commission, and have been traditionally installed by their respective vanua. These esteemed chiefs possess the inherent and customary right to participate fully in the deliberations of the Bose Vanua. It was upon this platform that the vanua came to appreciate the GCC's intent and the significance of its submission. The vanua subsequently granted their endorsement and support, evidenced by their signatures, thereby affirming their solidarity with the GCC's submission. This endorsement forms the foundation of the submission which we are privileged to present before this Honourable Commission today.

The significance of this endorsement extends beyond procedural consultation. It reflects the considered judgment of the hereditary chiefs of the Vanua, who have, from time immemorial, provided leadership, maintained social order and cohesion, safeguarded the welfare of their people, and exercised stewardship over their customary lands and social construct (vuvale, tokatoka, mataqali, yavosa, koro, vanua). It was through the foresight and wisdom of these chiefly leaders that Fiji sought the protection of the British Crown under the Deed of Cession, and it is through that same enduring institution of traditional leadership that the social, cultural and economic advancement of the indigenous people continues to be guided today. The GCC therefore respectfully submits that the views presented before this Honourable Commission are not merely those of the Council itself, but are affirmed and supported by the recognised hereditary leadership of the Vanua throughout Fiji.

The GCC has deliberately followed this approach in recognition of the fact that chiefs are regarded as the supreme leaders of their communities, having been endowed during installation with both mana and sau. The installation ceremony itself signifies the conferral of supremacy and leadership, solemnly affirming that the chief is entrusted to lead, to articulate the voice of the Vanua, and to make decisions

for its welfare. This investiture ensures that the chief governs not merely as an individual, but as the living embodiment of the Vanua's will, for the advancement and collective benefit of the iTaukei people.

Furthermore, during the GCC's awareness and consultation process across thirteen Bose Vanua regarding its first submission, and in gathering the views of the Vanua on the GCC's proposals, more than **307** chiefs attended the thirteen Provincial Bose Vanua. Collectively, these chiefs represented **514,244** iTaukei people—equivalent to **92.58%** of Fiji's total iTaukei population and **58.10%** of Fiji's overall population. This broad representation underscores the legitimacy, inclusivity, and national significance of the GCC's submission. This further noted that this representation remains constant, irrespective of the decisions made by the iTaukei people during national elections. In matters of tradition, chiefs are born into their chiefly titles and are deeply respected within their vanua. Their authority is not contingent upon electoral processes but upon the enduring cultural and spiritual foundations of iTaukei society.

The written submission that will be filed after this oral presentation sets out the recommendations of the GCC in full. In this oral submission, I will summarise the main constitutional reforms we are asking the Commission to consider. At the heart of this submission is one central principle: Fiji's Constitution must protect equal citizenship for all, while also recognising the distinct identity, rights, institutions, land, language, and customary systems of the indigenous iTaukei and Rotuman peoples. True national unity cannot be built by erasing difference. It must be built through mutual respect, legal clarity, democratic accountability, and substantive equity. The submission therefore recommends a shift away from forced constitutional uniformity and toward a more honest and stable pluralism.

Chair and Honourable Members of the Commission, the Great Council of Chiefs (GCC), as the apex representative body of the indigenous people of Fiji, respectfully presents this final submission to complement our earlier submission. I will briefly speak to the written submission on the issues we have highlighted. A copy of the submission has been forwarded for the perusal of the honourable Committee members.

Our position is clear: the GCC does not accept the legitimacy of the 2013 Constitution and believes Fiji should ultimately move towards a new, genuinely consultative and autochthonous Constitution—one developed by the people, for the people. Our submission is made in good faith. It is not intended to diminish the rights of any community, but to strengthen constitutional legitimacy, democratic governance, national unity and respect for the rule of law while ensuring proper recognition of the indigenous foundations of our nation.

1. Education, Language, Data, and Equity

1.1 Protection of Indigenous Language

We recommend that Na Vosa Vakaviti be made a compulsory core subject in all primary schools. Unlike global languages with large international speaker bases, the iTaukei language has no external homeland. If it declines in Fiji, it declines everywhere.

Conversational Fiji Hindi and other languages should remain available as elective subjects based on community demand and school capacity.

1.2 Early Childhood Medium of Instruction

From Early Childhood Education to Year Three, the main medium of instruction should be the indigenous vernacular or mother tongue of the majority student cohort.

Early learning in the mother tongue supports literacy, numeracy, confidence, and cognitive development, especially in rural and maritime schools.

1.3 Affirmative Action in Education

We recommend constitutionally authorised affirmative action in education, including targeted scholarships, educational development funds, and support for iTaukei, Rotuman, rural, maritime, and other disadvantaged students.

1.4 Ethnic-Disaggregated Education Data

We recommend restoring ethnic-disaggregated education data across national examinations, FEMIS, scholarship systems, and the Bureau of Statistics.

Without proper data, the State cannot see where disadvantage lies, and cannot fairly allocate resources.

1.5 Differential Resourcing Formula

We recommend a Differential Resourcing Formula for school funding. A flat per-student funding model favours large urban schools and disadvantages small rural and maritime schools, where costs are higher and infrastructure is weaker.

Funding should consider remoteness, low enrolment, poverty, utilities, access, transport costs, and school vulnerability.

2. Constitutional Legitimacy

Many indigenous communities believe the 2013 Constitution was not created through a process that secured meaningful participation or consent from the Vanua and its traditional institutions.

The Commission is invited to consider whether Fiji's long-term constitutional stability would be better served by a constitutional framework that enjoys broad public support and explicit endorsement from both the wider population and the Vanua.

We recommend the restoration of the 1997 constitutional governance framework where appropriate. This includes reinstating the Chapter 2 Compact from the 1997 Constitution. The Compact should serve as Fiji's national conscience: a guiding framework that balances indigenous cultural security with equal civic citizenship for all communities. It would protect iTaukei and Rotuman land, custom, and cultural rights, while also affirming the equal rights of all citizens to democratic participation and protection under the law.

3. Recognition of the Great Council of Chiefs

The GCC historically played an important constitutional and advisory role in matters affecting indigenous affairs. Its omission from the current Constitution has weakened traditional governance and reduced indigenous participation in national decision-making. We further recommend that the Bose Levu Vakaturaga, or Great Council of Chiefs, be restored to constitutional status. Recent statutory recognition is important, but ordinary legislation can be changed by future governments. Constitutional recognition would protect the dignity, continuity, and apex guardianship role of the BLV in relation to iTaukei identity, land, custom, and traditional welfare.

Consistent with international standards, including the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), we recommend constitutional recognition of the GCC and other traditional institutions.

4. Constitutional Recognition of the iTaukei

The GCC supports equal citizenship for every Fijian.

However, equality should not prevent explicit constitutional recognition of the iTaukei as the original inhabitants/first nations people and customary owners of the land and custodians of Fiji's traditional institutions. Equal citizenship and indigenous recognition can, and should, exist together.

5. Identity, Citizenship, and the Preamble

We recommend that the Constitution remove the declaration that "we are all Fijians united by common and equal citizenry." Political citizenship should be separated from indigenous identity.

All citizens should be united by allegiance to the Republic of Fiji, but the term "Fijian" should be reserved for the indigenous iTaukei people, consistent with historical and constitutional usage. The common civic designation for all citizens should return to "Fiji Islander," while distinct categories such as iTaukei, Rotuman, Indo-Fijian, and Fiji Islander should be recognised for accurate data, policy planning, and cultural clarity.

We also recommend that the Preamble include the principle of equity, alongside equality and social justice. Equality gives every person the same formal legal status. Equity recognises that some communities, especially rural, maritime, indigenous, and historically disadvantaged communities, begin from very different social and economic positions. A Constitution that includes equity gives the State a clear mandate to correct structural disadvantage and promote real fairness.

6. Protection of Customary Lands and Natural Resources

The Great Council of Chiefs submits that while customary land ownership is protected, the Constitution provides insufficient recognition of customary authority over natural resources, including minerals, forests, rivers, coastal areas, and traditional fishing grounds (iqoliqoli).

Customary ownership should extend to the full range of resources traditionally belonging to the Vanua, consistent with its understanding of the full extent of ownership prior to the execution of the Deed of Cession of 1874.

We further propose that where Government acquires freehold land and that land is no longer required for a public purpose, it should automatically revert to iTaukei Reserve Land classification and not remain freehold as is the current practice under section 29(5). This will ensure that such land is never again permanently alienated.

The GCC recommends strengthening section 30 on landowners' rights to royalties. The phrase "fair share" is too vague. We therefore recommend:

The GCC endorses a fair and equitable royalty distribution framework based on a proportional share of gross income, rather than a fixed royalty rate, to better reflect fluctuations in market prices. Under this proposed arrangement, gross income would be allocated on the basis of 60% to the developer and 40% to the State and landowners. From the developer's 60% share, 20% of project capex would be retained as a refundable environmental bond and held in escrow for the duration of the project, subject to satisfactory environmental compliance and rehabilitation obligations. The remaining 40% local share would be apportioned as 10% to the State and 30% to the customary landowners through its established

dividend distribution policies. This payment proposal must replace Schedule 3 of the current royalty rates of the State Lands Leases and Licenses (Amended) Regulations of 2026.

We also recommend reinstating the substance of section 186 of the 1997 Constitution on customary law and traditional processes. Parliament should be required to legislate for the structured application of customary law, including traditional dispute resolution, while ensuring that such processes operate consistently with constitutional human rights.

Notwithstanding any other provision of this Constitution, where the exercise of a right or freedom conferred by this Constitution is inconsistent with a recognised customary right, the recognised customary right shall prevail to the extent of the inconsistency.

7. Balance of Executive Power

The GCC is concerned about the concentration of executive authority, particularly in the offices of the Prime Minister and Attorney-General. Effective government must be accompanied by effective checks and balances. The three independent arms of Governance -Parliament, Executive and Judiciary.

Where the overextension of executive powers is used for the creation and control of institutions such as FICAC, there is a tendency that vesting of power and control to a single Official may lead to abusive use of power to possibly render the machinations of such institution as a political tool.

A significant constitutional distinction is that FICAC was not established by the 2013 Constitution but by the Fiji Independent Commission Against Corruption Act 2007. Consequently, the more compelling constitutional argument is not that FICAC's existence itself reflects executive overreach, but that the 2013 constitutional framework facilitated, or failed to impose adequate constraints on, executive influence over key accountability institutions, including FICAC.

GCC therefore call for the dissolution of FICAC with its duties and functions divulged into an appropriate internal bureau housed within an appropriate division of government services such as the Public Services Commission.

8. Indigenous Representation and Electoral Reform

The current nationwide electoral system promotes equality but may not always ensure adequate representation of indigenous communities, particularly those in rural and traditional areas.

We recommend abolishing the single national constituency model. The current system tends to favour heavily populated urban areas and weakens regional and maritime representation.

The submission proposes a 60-seat Parliament based on large regional multi-member constituencies and dedicated maritime or isolated constituencies. Central, Western, and Northern Divisions would have regional representation, while Lomaiviti, Kadavu, Lau, and Rotuma would have specific seats.

The 5 percent electoral threshold may be retained to prevent excessive fragmentation, but representation must better reflect Fiji's geography and communities.

9. Constitutional Amendment

The Great Council of Chiefs (GCC) strongly supports the introduction of a referendum mechanism alongside a more reasonable parliamentary threshold to amend the 2013 Constitution. The current requirement of a 75 percent parliamentary majority and a referendum demanding 75 percent of all registered voters has created near-permanent deadlock, making meaningful reform almost impossible

and rendering the Constitution virtually unamendable. While stability is essential, a Constitution must also remain responsive to the evolving needs of the nation and afford genuine opportunities for review. The GCC submission therefore recommends restoring the 1997-style framework, where constitutional amendments require a two-thirds majority in both Houses of Parliament, with special protections for indigenous interests. In particular, any amendment affecting iTaukei land, custom, traditional titles, the Bose Levu Vakaturaga (BLV), or indigenous rights should require the support of GCC-appointed Senators. To complement this, the GCC advocates that national referenda on constitutional amendments should be decided by a simple majority—50 percent plus one—ensuring both democratic legitimacy and practical flexibility for reform.

10. Indigenous Self-Determination and Safeguards

International law recognises the right of indigenous peoples to maintain their own political, legal and cultural institutions. The GCC believes Fiji's Constitution should provide stronger recognition of indigenous participation in decisions affecting traditional lands, resources and customary governance.

We recommend constitutional mechanisms that ensure meaningful consultation and enhanced protection whenever legislation affects customary land, natural resources, traditional governance or other indigenous rights.

11. Rights, Labour, and Democratic Freedoms

We recommend narrowing the broad limitation clauses in the 2013 Bill of Rights. Restrictions on rights such as freedom of assembly should only be allowed where they are reasonable and justifiable in a free and democratic society.

The State should not be able to rely on vague grounds such as public order or national security without strict proportionality, necessity, and evidence.

We strongly recommend the deletion of section 20(5) relating to employment relations. The Constitution should genuinely protect the rights of workers to organise, bargain collectively, and strike. Labour rights should not be suspended merely because an industry is labelled essential or because of broad economic interests.

We also recommend removing the Attorney-General from the Mercy Commission. The Attorney-General is a political office holder and legal adviser to government. The power of mercy must be independent, impartial, and free from political influence. The Chair of the Mercy Commission should instead be an independent person appointed by the Judicial Service Commission.

12. Public Administration and Separation of Powers

We recommend strengthening the neutrality of the public service. Permanent Secretaries should have independent authority over staffing, promotions, discipline, and daily administration.

Ministers should set policy and provide oversight, but they should not interfere in civil service personnel decisions. This protects merit-based recruitment, reduces nepotism and favouritism, and restores the boundary between political leadership and professional administration.

We also recommend amending section 57 so that trade unions, employee federations, and civil society associations are not treated as public offices. These are independent organisations, not state institutions. Their inclusion as public offices weakens freedom of association and undermines workers' representation.

13. Rotuma Council and the Rotuman People

13.1 Constitutional Recognition

It is a profound honor to present this formal submission on behalf of the Rotuma Island Council and the people of Rotuma, whose collective aspirations have been meticulously gathered through extensive consultations across all seven districts and with the endorsement of the Council of Chiefs.

This submission does not represent a pursuit of independence or secession from the Republic of Fiji. Rather, it is advanced in a spirit of deep respect and enduring partnership to strengthen our constitutional relationship by restoring formal recognition of Rotuma's unique historical, legal, and cultural status within the State.

13.2 Dedicated Constitutional Chapter

The submission proposes a modest amendment to the Preamble alongside the insertion of a dedicated constitutional chapter entitled "Rotuma and the Rotuman People."

This framework seeks to:

- ✓ Formally recognize the Rotuma Island Council as the principal representative institution of the people.
- ✓ Mandate meaningful consultation on all policies affecting the island.
- ✓ Safeguard customary lands and marine resources from amendment without consent.
- ✓ Restore guaranteed parliamentary representation.

13.3 Connection to the Great Council of Chiefs

Reflecting the interconnected traditional leadership of our nation, three Grand Chiefs of Rotuma Island serve as esteemed members of the Great Council of Chiefs (GCC).

It is my distinct privilege to state to this Honourable Commission that the GCC stands in complete solidarity with, and formally supports, the submission presented by the Rotuma Island Council and the Rotuman people as we collectively seek to preserve our unique identity while contributing positively alongside our iTaukei brothers and sisters to a unified Fiji.

14. Maritime Powers Act

14.1 Current Fragmented Framework

Fiji does not currently have a single consolidated "Maritime Powers Act" equivalent to Australia's Maritime Powers Act 2013. Instead, Fiji's maritime governance framework is spread across several statutes and institutions, particularly:

- The Maritime Transport Act 2013 (by MSAF under the Ministry of Transport)
- The Maritime Safety Authority of Fiji Act 2009 (by MSAF under the Ministry of Transport)
- Shipping and fisheries legislation (MOF and MOT)
- The Marine Space Act 1977 (administered by MOFA) – Fiji national legislation for UNCLOS
- The Police Act (by Police to board, search, seizure and arrest)
- The Customs Act (by FRCS to board, search, seizure and confiscate undeclared foreign substance or illicit drugs)

14.2 Gaps in Enforcement

The current maritime laws focus more on maritime safety, shipping regulations, fisheries management, and maritime administration rather than a heavily centralized security enforcement model.

For instance, the Marine Space Act 1977, administered by the Ministry of Foreign Affairs, depicted the different boundaries and jurisdiction of Fiji's maritime domain, but failed to address which law enforcement agencies exercise powers of providing security or enforcement over those boundaries.

14.3 Coordination Challenges

Fiji's maritime legal structure is fragmented in a way that it is not unified, hierarchical body into specialized, autonomous sub-fields. Instead of cohesive rules applying across the board, laws are governed by isolated regimes as it spread across multiple agencies and ministries.

This has created:

- ✓ Coordination challenges
- ✓ Overlapping and conflicting authority (e.g., Customs Act vs Police Act on boarding, search, and seizure)
- ✓ Operational inefficiencies caused by working in silos

14.4 Recommendation

To ensure these frameworks operate in harmony, we submit that a comprehensive legislative consolidation act is essential to seamlessly integrate these distinct statutory and constitutional provisions.

15. Gender Quotas for Fiji's Parliament and Municipal Councils

A progressive, resilient, and true democracy cannot operate effectively while leaving a significant portion of its leadership pool behind.

Currently, Fiji faces a severe and systemic underrepresentation of women in political life. Women hold just 9.1% of seats in our national Parliament (5 out of 55 members), ranking us 165th globally.

In our subnational spaces, the gap is equally stark—women occupy only 7.15% of Provincial Council positions and hold zero leadership roles at that level.

To bridge this gap and simultaneously elevate national decision-making, the GCC proposes a dual-pronged constitutional reform strategy grounded in two pillars: Equity and Excellence.

Formal legal equality has not translated into real, substantive representation. Systemic obstacles—ranging from patriarchal social norms to male-dominated selection processes—continue to keep women off the ballot. The primary bottleneck is getting women onto the ballot.

Moreover, modern statecraft, economic management, and legislative drafting are complex. To complement equity with excellence, the GCC proposes an objective, gender-neutral baseline of educational competence. And thus, support and recommend that all aspiring parliamentary and municipal candidates possess a minimum of a recognized Bachelor's Degree.

Pairing a gender quota with a high educational requirement ensures that both male and female leaders enter our chambers strictly on a foundation of merit, capability, and professionalism. It completely refutes any narrative that quotas diminish institutional standards.

Quotas only succeed if they are strictly enforced. We recommend empowering the Electoral Commission to legally reject any political party list that fails to meet either the 40% female threshold or the Bachelor's Degree validation criteria. Compliance should be reinforced through robust public funding penalties for non-compliant parties, and incentives for those exceeding parity.

Commissioners, by weaving these dual reforms into the fabric of our Constitution, Fiji has a historic opportunity to reclaim its position of true regional leadership. We will build a democracy that is genuinely representative of its people, while simultaneously raising the standard of leadership to secure a prosperous, stable, and highly capable nation.

Conclusion

Honourable Members,

Our submission seeks a Constitution that reflects both Fiji's democratic aspirations and its unique customary heritage. We believe it is possible to uphold equal rights for all citizens while giving meaningful constitutional recognition to the indigenous people, the Vanua, customary governance, and the ownership and stewardship of traditional lands and resources.

A Constitution built upon broad consultation, legitimacy and mutual respect will strengthen public confidence, promote reconciliation, and provide a more enduring constitutional settlement for future generations. The Great Council of Chiefs respectfully commends this submission to the Constitutional Review Commission and thanks the Commission for the opportunity to be heard.

On Chapter 10 immunity, the submission recommends repealing future immunity provisions. Fiji must move toward full equality before the law. No person, public official, or member of the security forces should receive immunity for future unlawful acts. However, the submission also recognises the need for stability and proposes a transitional savings clause so that immunities already legally granted before the 2026 amendments are not retrospectively disturbed. This balances justice for the future with legal certainty from the past.

In conclusion, this submission asks the Commission to consider a Constitution that is democratic, culturally secure, socially just, and institutionally balanced. It seeks to protect all citizens equally, while recognising that indigenous identity, land, language, customary law, and traditional institutions require specific constitutional protection. Our recommendation is not to divide Fiji, but to build a stronger Fiji by recognising the truth of who we are: a diverse nation with different histories, different communities, and shared responsibilities. A Constitution that protects those realities honestly will better serve national unity, stability, and future generations.

George Speight

George Speight
Date:09/07/26

Mr. Valenitabua: This morning we have Mr. George Speight. Mr. Speight, we welcome you to the Commission. The commissioners sitting before you this morning, there are five of us, I will ask them to introduce them individually, beginning from my right, please.

Dr. Fatiaki: George, it's been a few years. I'm John Fatiaki, medical practitioner, Rotuma, and former senator. Thank you.

Mr. Conway: Thank you, Mr. Speight, welcome. My name is Conway Bey. Good to see you this morning.

Mr. Kohli: Thank you. Hi, good morning. My name is Ami Kohli from Labasa. I'm a legal practitioner.

Dr. Gounder: Good morning, Mr. Speight. I'm Neelesh Gounder. I'm an academic at USP, and I was doing an exam in the exam hall when the exam supervisor announced that Mr. Speight has taken over parliament, but we'll continue with the exam, and we peacefully finished the exam at five o'clock, and then went in to check the news, what had happened. But I look forward to your submission this morning. Thank you.

Mr. Valenitabua: George, I'm Sevuloni Valenitabua, chairperson of the commission. We welcome you this morning. Introductions completed. We are here, or this commission has been tasked to review the 2013 constitution. We have also been directed by, through our terms of reference, to go around the country, and receive, and correct, and record submissions from our people in respect of what they consider, or what they recommend to be included in the 2013 Constitution, and which parts of the law which are currently in the constitution be removed or changed. So that is what we are tasked, or that was what we are tasked to do, and we are doing now.

We've been around the country, ending up in Suva this week is the last week, and today is the second last day, and you are appearing before us. Without further ado, I now give you the mic and the floor to present your submissions to the Commission. Thank you very much, Mr. Chairman, for your welcome, as well as the rest of the members of the Commission.

Mr. Speight: Thank you, Mr. Chairman, for your welcome as well as the rest of the Commission. I'm very grateful to be received this morning, and I did not anticipate that one day I'd be sitting in front of a constitution review commission like this. My history and my story is perhaps well known to all of you, or most of you, and whilst this Commission is not here to review past events, or be it being alluded to by Dr. Gounder 26 years ago, I feel that there will be another time and another place and another mechanism whereby past events can be properly reviewed, discussed, and consultations taken and the voices of all concerned heard with a view to understanding and then finding a solution. But this little blue book here is, I suppose, the culmination that binds us all out of all the events that have taken place in the past.

It is the latest document which binds us all, and it has been accepted in different views. Mine is by duress and then adopted out of convenience. Now, I'm not here to go through every single clause that's in this document. That would take quite some time. But there is a necessity, I feel, that yes, every clause needs to be re-examined in the light of what's good for our country going forward and in the light of the principles of justice, fairness, and righteousness. I think that's the foundation of any good government. And the principle that those who govern must do so through the consent of the Government. And the way that consent is to be secured is through a process like this as a start. But there are conditions inside this document that, in my view, upon a casual reading from cover to cover, by the way, which we had lots of time to do in prison, it's very clear that this document is full of contradictions. The common man on the street, me included, never had any reason to be concerned or interested even in legal documents, let alone the Constitution. And I suppose the biggest challenge has been just understanding the totality of what a document like this is meant to do and meant to be in a country. But I think generally speaking, the average person understands that this book and those before it are meant to ensure good governance, to bring about the well-being and highest common good of every single citizen in the country.

That's the purpose that this book is supposed to bring. And it must have the confidence of the majority at least of those who are governed by this book. With the diversity of backgrounds of citizens of our nation, like most nations of the world, I think it's impossible to expect that there can be absolute unity as to what a book like this should say and how it is to be constructed, because it orders our daily lives right from the top. But I

think there's an understanding that if there is to be a democracy in our country as a start for governance and the foundation for how we are to be ordered in our daily lives, then at least the majority of the citizens of this country should be allowed to decide what goes into this book, nothing less. I think that principle is something that has been at the foundation of the discontent surrounding this document. The very fact that it did not come about as a result of consultation widespread and then secondly that the majority of the citizens of this nation agree that yes, this should be adopted.

Since my recent release out of my long holiday as a guest of the government, I've had to grapple with many, many developments that have taken place in society since the day that I was incarcerated by our brothers. And one of them has been technology, of course. These devices that you all hold and that we all use now and can't seem to be, can't seem to go without, have come to be a major part of our lives. And I've had quite a challenging time just trying to catch up and let alone master the technology that's come about and been launched into society, which is now freely available in our nation. But I'm grateful for the technology from the point of view that it's been a very, very useful tool for me to at least just try and catch up with what's been going on. In some respects, I never ever will catch up. It's just too much information to digest and too many voices.

But I think it provides an opportunity for everyone at least to have a say. And then how do you then gather or garner every single voice that should be heard? And in our nation, that's bordering on seven, eight, nine hundred thousand, at least registered voters on the roll. But as far as this process is concerned, the review of the Constitution, it's given me a chance to at least listen to and understand what the views are of those who have come forth. Because the minute after they've spoken, literally, thanks to our studious journalistic friends here, the rest of the nation knows what the thoughts are. And I appreciate that because it's so great. Don't even have to buy a Fiji Times or Fiji Sun anymore. No offense. They have their place.

But for me, there have been some views that I've tried to read all the views of all the submissions that have been broadcasted. And I've tried to ask myself, you know, what do I think about the ideas that have been presented? Time being of the essence, I can say generally about the things about this Constitution that have been commented on. First and

foremost, I wish to acknowledge the comments made by the commander of the RFMF and the stand which the RFMF has taken in relation to this document.

I totally concur with it. I agree with it. And that then presents a great challenge as far as the governance of our country is concerned here and going forward. And the great challenge is to correct and amend and come up with a solution that justifies the cry for justice and true equality. The views and comments made by Ro Naulu Mataitini; I concur. The views and comments made by my brother Jo Nata on this specific document, perhaps not on other matters to do with events 26 years ago, I concur. It is a lengthy process. The dismantling of this from a review perspective, line by line, clause by clause. But I will say one thing in my reading of this document. It's contentious. It is contradictory, very clearly. And easily the most contentious chapter is the chapter on immunity, easily by far.

And the reason is very simple. Any law, especially this one, or book of law, must have the confidence of everyone whose lives are governed by it. And I dare say that in my short time outside of prison, the support for this document, whilst enthusiastic as far as some of the clauses are concerned, like Bill of Rights, Chapter 2. But when it comes to the principle of what is fair in a society and what is fair in the governance of a country and what is fair in how we are all treated under the law, there is a very strong tide of discontent that I've encountered in my short stay outside in relation to this document.

Quite apart from the idea as to how it was introduced in the first place. But the content, now that's another great hurdle. And the hurdle lies in the hearts of every single person, a common man, right down to the lowest rung in society. And that rung is prison, by the way. And in prison there are rungs within rungs. In prison, it's a portrayal of our society. The structure of prison and one's journey through prison is also a portrayal of how society functions.

You may be familiar with the structure of the correction system. I'll talk a little bit about it because it reflects what this book should be doing. This law has no teeth if it were not for prisons and the judicial system and accountability of every citizen in relation to being a free moral agent within society bound to uphold the law. Perhaps not this one when I talk about fair law and law that's introduced by majority consent. In that

sense, this does not qualify. From that principle alone, all the other former constitutions do qualify in one degree or another. But this one doesn't. And that's the cry that comes from the lowest levels of society with those who have been taken to task for crimes committed. When you commit a crime, you do the time. If you're man enough and honest enough to confess to it, you're on the way to redemption. That is a Godly and Christian principle.

A very powerful verse in scripture actually summarizes this book. Proverbs 28:13, he who covers and hides his sin or attempts to do so one can say will not prosper. But he who confesses them and holds up to it will find mercy and shall be blessed.

Now that principle is understood by every person in our country whether they're educated or not because it's the principle of what is fair. One rule for all. Every organization in our country functions on that principle. The principle of recognizing when something is wrong and recognizing that it has to be fixed. If any progress is to be made, serious progress, whether it be in a family unit, whether it be in an organization, whether it be in any arm of Government, whether it be inside the editor's office of a newspaper company, the same principles apply. Whether it be on the grounds of the FIFA World Cup going on, you see this principle in play every single day.

The principle that if you do something wrong you're accountable and you must front up to be taken to task at last and then you must pay. So, I come from a system in prison of 24 years where like I say the rungs, you know within the rung. The big rung is the corrections department and all the prisons, 14 of them around Fiji. This thing's gone off. If you come in you are received at what they call receiving centers that is Korovou Prison generally, or Lautoka prison around the west, or Labasa prison up north and then from there you've just received your sentence and then you get classified and then from there they decide what your journey through the system is going to be.

Now if you have the distinction of being someone who's perhaps at the top of the criminal tree, yours truly perhaps you know uncontested for 24 years, I'm at the top hands down. You get special promotion straight to maximum security prison and maximum-security prison is deemed as the lowest rung of society in any nation because that's where the worst people go for crimes committed and we all believe and accept that is

absolutely acceptable and necessary in order to ensure a functioning society that is orderly and one that we can trust in. That is the job of the Government of the day is to enforce that on behalf of the citizenry at large. There is no way that anybody can be allowed to get away with crime and not be held accountable for it.

If that were the case and how governance is supposed to be or wants to be or needs to be as this document preaches, you're asking one for that confidence that is needed by those governed, you're asking it to be extinguished. In fact, you are legalizing its absolute you know deletion out of the memory of the country.

That's what this document asks every citizen to do because it provides the cover that we all know from the highest crime in our penal system and all those who aided and abetted it with respect. Now when I say this, I say all of this not out of malice, not out of anger, not out of a heart that seeks revenge, none of it. I'm merely trying to highlight in a common man's language and understanding why it has a lot of problems in our country. As I said in maximum, I have the distinction of being the criminal of all criminals, enemy of the state number one, all the labels of the last 24 years. No problem, I deserve it and I accepted it. And every single inmate that I met in my journey for some reason like I say you know before you hit a place like prison you really are not interested in the laws of the country. You don't read legal documents, you just don't ask yourself apart from the Commissioners, other people in this room.

It is not a common thing for a citizen to ask for a piece of legislation and then go study and read it. We just don't do stuff like that but when you land in prison man, I tell you there is a great interest in understanding the law especially if you're contesting your conviction but the general agreement in prison about this document is unfair. Unfair, straight up, common word, unfair. Not right. Why? It gives you all these rights yeah but it's just unfair because if I come in for something minor why should people get away with something major? It's just not fair. So, we have this black cloud hanging over our nation with regard to documents like this that are imposed and then which contain things which are unfair, grossly unfair and it's widely understood now because that's the common conversation that I've encountered especially me having gone through the same experience, executed a takeover unlawfully, granted, accepted.

Like I say you know if you want redemption you have to confess. That is a spiritual principle. If you want forgiveness you need to confess. That principle is not something that was invented by the human race. No, it's invented by the creator himself because that leads to salvation. It leads to rehabilitation.

It leads to new life and awakening, the awakening of hope and trust in a community and in a country. The process of confession. Without it well you can examine your own lives and examine your own homes when upheavals happen and when things go wrong whether it be between you and someone you love or you and someone else in the family. This document is testimony to the relationship, the most important relationship in a country, the relationship between those who govern and those who are governed. This document ruptures that relationship majorly, seriously and takes away the confidence of the citizenry in the machinery of governance because it perpetuates a principle that is not good which I say in the common man's language is unfair and wrong and so that engenders a spirit of disorder.

Translation of Mr. Speight's vernacular – Most do not care about the law and do not respect the structures of leadership in Government as well as the legal frameworks and their purpose in supporting peoples lives because those at the top do not respect the law and what is entrenched is instructing people to respect the law whereas those giving directives have broken the law.

And that is why this book is contradictory. You might even say hypocritical because there are clauses in here that say that even a duly elected government has no business and has no powers and even if a hundred percent of the citizenry said we want to change, you can't touch certain parts of this thing. Now is that the way to run a country? So, you try and run your organization the same way. You try and run a government the same way.

You're going to hit a wall one day and I'm here to propose that it's about time our nation saw itself in the true light of what is right and wrong. You don't need a huge education. You don't need many letters after your name to understand what I'm talking about. What is fair and just in a country, you must all work to achieve it. We've got a great deal of hurt in our country. I'm responsible for a large part of it. Like I say the principle of confession, it's spiritual. It requires a person to accept that he or she

will experience great discomfort through the process of confession but it's necessary if healing is to come and it's necessary if progress is to be made. But the first thing is recognizing that there's been a wrong that's been committed and this confirms by the very existence of the immunity chapter that those who wrote that, those who wrote this know that they committed a great wrong because they've gone to such great lengths to protect themselves from that orange uniform that I wore for many many years.

So then where does it bring us? Where are we? I'm very grateful that there was a change in government in 2022. When I say all these things, I do not say it with malice in my heart or a spirit seeking revenge on anybody. I just believe fervently that justice can be done in our country and that we must all put our minds together to find the solution to make it happen regardless of the discomfort that it will bring of those who are protected. Unfairly, but we have to do it.

We have to do it in a way that is mixed with mercy and that's always been father's principle because all of us need to die for the sins that we've committed. That is a law that we all understand but when we confess, my goodness, you know we receive back his children into the family and we are told, you know, do good, go and do bad no more. We understand that principle. If it's not for that principle, no one will confess. But we confess because we see that we shall receive mercy and it's good for the soul and it's good for a country to own up to the things that are enshrined and keep from the confession and the healing and the opportunity to heal all the broken relationships that have taken place.

Mr. Speight : That's why as long as this document is in force, as long as this document purports to be the law of the country, and yes out of convenience, it's been adopted, it prevents us from finally being healed as a country. The onus has always been on the person who committed wrong in any country under any law, especially this one, constitutional type laws. The onus is on the person who breaks the law to confess and to accept it and that is why I'm very grateful to the commander RFMF today. With respect, I just never expected that to come from the military. I just didn't, but my thank yous went up to heaven faster than the speed of light many times over, just thanking the Lord that here's a man and an institution that reflected on its own shortcomings and decided to confess and to accept the consequences. Now that's the ultimate state that a person can be in before progress, healing, and reconciliation can happen and

I'm very, very, very grateful, very grateful, and to all who support the principle of truth-telling with a view to finding a way forward for the healing and mending of relationships and the proper recompense to all the aggrieved parties.

I'm all for that, I'm all for that, and I believe we have the collective knowledge and know-how and desire in our nation for us to embark on that course full speed because the quicker we do it, the quicker we can really move. This is a stumbling block with the greatest of respect, but the intent behind this, my view, is self-preservation at all costs and that is not right, that is not right. We can't expect to have the total confidence of the governed if we govern under this and so the government's initiative to bring about and allow a review process, I fully support and I'm very, very grateful for, but like I said, had it not been for a change in government, I would not be sitting here. I'd still be in Max reflecting on the walls and the bars, praying silently whilst the years roll by, but here we are and I'm grateful for it, very, very grateful. So, I do believe that the process of review of this document is a very good one. There are many, many parts of it that can be retained in a new document and there are many parts of it that should be expunged completely, not the least of which is the contentious immunity chapter, which in principle is a recipe for disaster in the long run.

The Truth and Reconciliation Commission, I think, is a necessary arm of the process of moving forward in our nation. I have chosen not to appear before it. I have great respect for the process, and I support it totally, but I just feel that it does not have the teeth, neither the mandate to go all the way to actually fix things because of this problem. So, very simply, we fix this first and then truth and reconciliation can go all the way to where it should. If we don't fix this first, then truth and reconciliation, in my view, is premature. Like I said again and I'll repeat, that's not to say that there's not a lot of good things in it, that there aren't good things inside this document.

Yes, there are, but all the good has been easily outweighed by the bad and that's why it has to go in a nutshell. So, I'm grateful to be here. I'm grateful for the opportunity. I'm grateful to the good Lord in heaven and I'm grateful to the Government of the day that saw it fit to release me. I'm the last person in Fiji's history to be sentenced to death. That's not in this constitution, but it was in previous constitutions, that crimes of political crimes of the overthrow of government, whoever commits it should be

killed. I accepted it. I pled guilty to it and I was sentenced to death. Thank the Lord, the President of the day decided to exercise his powers and set aside death and put in life.

So, here I am in front of all of you and I'm grateful to be before my fellow citizens in this forum and to be sharing my thoughts on this very, very important document. With the greatest of respect, I'll also mention that I don't agree with the view tabled by members of the judiciary that the current legal order should not be disturbed whatsoever. For the reasons I've been talking about since I started here today. As a matter of fact, that view held recently tabled is just not good for anything, let alone Fiji. We must put forth our best endeavors to ensure that the judiciary complies with what is fair, what is just as a principle of governance, as opposed to what is convenient legally. Otherwise, it takes away confidence in the judiciary as well.

Mr. Speight

If you expect the common man who has the ultimate responsibility of deciding who is going to govern through the ballot box and that's everybody right down to that beggar that's lying on the pavement in front of BSP at Samabula every night. That tick determines who runs our lives for four years. If you expect everybody right down to that level, including me coming out of maximum-security prison after the time served for what's protected under here, to have confidence that we need to fix this. And sometimes I illustrate this thing when we think of our own families, you know. I come from a family of six. I'm number two. And like any siblings within a family, we all watch each other and how we get treated by Mom and Dad. And we're very conscious if someone is allowed to do something that we know none of us are allowed to do. Why? Children understand this principle. And yet we are expected it to go forward over the next 10, 20, 30, 40, 50 years as if nothing is wrong. Okay, it's enough time. It's enough.

Enough. No more of this pretending that things are okay. And so, for the third time, I'll say it again because from where I've been in my last two decades plus, the comments made by and the views presented by the commander of the RFMF is the starting point. That's exactly the place that where change will start. And I'm ready to support and to give my best efforts in making sure that we get this thing done. That we set a new foundation for our country going forward. And that we set a new document with respect to this one that brings every single citizen under the law and equal. No more finger pointing from the grassroots up to the

top. And this has been the way it has been ever since I hit prison, ever since this document was introduced. This document hit the corrections like a storm. For the very simple reason it was unfair. And you want to hear the voices of people who have been incarcerated talk about unfair.

Wow, yeah, it's really something. And then that goes. But like I said, when I came out just over a year ago, the record playing this song, this unfair song about our country is alive and well and strong out there in the community. I suppose it's because I served time for the same crime. And they asked me and I'm saying, I've just come out and relaxed.

Translation of vernacular - If it was for you, how about them? That's how I've been questioned at places I go to.

From all the races, by the way, all the races. Because that's one thing that we all have in common as humans, regardless of our ethnic backgrounds. We all have in common in our hearts, starting with our consciences, what is right and what is wrong. We all know. It is a common thread that keeps us together and makes society function. And that's why I say again, this document breaks that thread. And this is the first thing that we should fix. Before we can find the progress and move like what we all want. We all want Fiji to thrive. I won't talk specifically, but I'll mention it generally.

The idea of a common name. I understand the principle behind it. And I understand the reasoning behind it, but it's flawed. It makes people second guess something so special and so unique and God-given, your ethnic identity. Now, unless we fix the justice element, all of the different ethnic groups in our country can't live together very well, because it's an unfair society. That's number one. Number two, the Bill of Rights is great. It covers everybody. No problem.

But each ethnic group has its desire to continue with its uniqueness and it must be encouraged, but not at the expense of the greater group. So, there are things within each ethnic group's particular beliefs, way of doing things, that if it's not good for the greater good, then they must voluntarily just say this one. But there's another set of submissions that occurred here a couple of days ago, and that's by the TLTB with regard, and that's by Niko Nawaikula and all our itaukei brothers. Now, those voices have to be heard, and they have to be accommodated. And the process of hearing those voices and accommodating the issues brought

up must never and forever going forth be labeled as racist anymore, because they're not, with respect. When the Itaukei get up and say, please, this, this, this, this, this, you know, we want addressed. Please, it has been a common practice to label it all as racist. And I ask, in my own mind, no, that's not the case. No one should feel threatened. No one should feel agitated. No one should feel uncertain. Level heads will prevail, and those that push the agenda, that itaukei issues are not good for the future of this country and should not be addressed specifically.

I ask that they reconsider and work together with the itaukei community in determining certain things about itself that only it can determine. The detail of all of that has been submitted before you, I concur, with a great majority of the views that were tabled. But it leads to this whole thing about justice, it's all connected. Unless we fix the foundation, document and take care of correcting the perceptions that exist, the perception that there isn't fairness, and this document confirms the actuality of it, this has to be fixed, so that the conscience of the country can be cleansed, so that we can all move forward together. Then it lays the foundation for the addressing of all the contentious issues, a lot of which has been misrepresented. But then true and open dialogue can happen, honest dialogue, respectful dialogue, when we all understand, as we get up in the morning, yes, we really, really, really are equal citizens in this country, under the law, it starts from there.

Then we can address the specific issues of each group. There are some things that are universal that apply to all, and there are some things that just don't, and we have to accept the differences, especially as far as the itaukei is concerned, with the greatest of respect and all the love for all of our other ethnic groups, brothers and sisters in our country. Now, let me just touch on truth and reconciliation. Like I said before, I accept it, I'm all for it, but with the right framework, legal, social, financial, and with due regard for all that, like they say, stakeholders, this favorite word that I've come to learn since I came out. Everyone's got a stake in this thing, and so we should all be mindful for it. So, with those few words, I hope I haven't bored you this morning, but those are my views in general, like I say, the specifics of this, well, that's a long, long process, but the general, my general view of this, I've just expressed. I do have faith in the process that we can all find a better way, and a more relevant way, and a fairer way going forward. With those few words, Mr. Chairman and members of the Commission, I wrap up my comments this morning and thank you for your time.

Mr. Valenitabua: Thank you very much, Mr. Speight. Thank you very much for those thoughts and observations well put to us, and as usual, since you have given us your views and thoughts in relation to what the 2013 Constitution encompasses, and what a proper constitution should entail or encompass, I will ask the Commissioners if they have any comments which may raise discussions with you this afternoon.

So, commissioners, if there is anyone who might want to put a comment or ask a question which would raise discussions in relation to the review of the 2013 constitution, I now give you time. Dr. Fatiaki.

Dr. Fatiaki: Mr. Speight, may I first thank you. Thank you for those candid, frank, deep, and insightful reflections. Coming from you particularly, I think and I hope that the greater public will have the opportunity to hear your reflections as they come from a place grounded in a lived experience with, dare I suggest, a lot of wisdom that may help not necessarily just this commission, but individuals in this country, reflect on where we're at going forwards. You have obviously been keeping track of some of the consultations that have been held throughout the country, and I must confess that for me personally, it's been a learning experience.

Specific to some of the issues that you raised, or one particular issue that you raised, I'm sure some of my colleagues who are there will reflect on this, because it was first brought up I think in Vanua Levu in Dreketi at a village consultation, where a gentleman, no longer young, looked me in the eye and said, Mr. Chairman Commissioner, I was in the CRW unit in 2006, I think it was, and I came out of prison nine years ago after serving 15 years. He had a simple question for us, why did I serve and many others that were party to what I did as a soldier obeying orders, why did I serve and they didn't? I remember with my colleagues who were there, not really been able to answer it, and all I could do was say thank you for your service to the forces, but I didn't have an answer. I think today you encapsulate that because I was faced with the same question at two other places, in Naitasiri, and I think more recently as we were ending our consultations.

It wasn't directed straight at me that way, but if it were, again I would have no answer, and I think your comments reflect the sentiments of many people throughout the country, particularly in respect of what I think some people have called the elephant in the room. All I can say is

that as Commissioners, we appreciate your comments, we will reflect deeply, and I mean really reflect deeply, on those particular areas relating to this elephant in the room, so that maybe that gentleman who asked that question in, I think it was Macuata, Dreketi, Vanua Levu will have an answer one day. That's the best I can say in my literal capacity as a commissioner. We're about to enter the deliberation phase over the next couple of months. Again, I thank you. I thank you for the courage to front up here. I didn't realize you were part of the program until I got informed by our legal officers that you were coming to testify. We extended that invitation to others unnamed that chose not to testify, and for you to willingly come forward with your reflections that may help this process. I thank you. I have no more comments. Chair, through you.

Mr. Begg: Thank you very much. Mr. Speight, thank you for your comments this morning. I note you make reference to the commanders of the RFMF's submission. And acknowledge accepting of it. You talk about relief of the truth, and not going to the TRC. You made that clear.

I'm not going to talk about that, but I suspect that my point as a commissioner is to hear constitutionally how that might impact the next stage of this, and to put it in your better words, as you see it, relief of the truth. So maybe down someday as my fellow commissioner says that might pan out through the next stages of this. So constitutionally, how do you think we should or how would you recommend that?

Mr. Speight: It's not a difficult question, because I think truth-telling is a very strong desire that exists within the community at large, in light of all the events that have taken place. There is a general perception that there is more to what happened than what was seen. And it is correct. There is much, much more to what happened, but which is not known publicly. But I've always held the view that if truth-telling were to really occur one day, that it should occur within the right framework. Legal, social implications, the judicial implications, but at the foundation of it all should be a desire that justice has to be part of it, mixed with mercy, the mercy element. We waited long for it in prison to happen, the mercy element, and still waiting in some degree.

I won't elaborate on it now, but I really, really believe that that the Truth and Reconciliation Commission has to be given the resources and the legal powers to work in tandem with this Commission, the review of this document, because this document can't be finalized unless the Truth

and Reconciliation Commission is properly convened, resourced, and then, you know, like put to bed once and for all the question marks which exist in the minds of many. Once that is done, that lays the foundation for this, the foundation because the Truth and Reconciliation, you know, basically revolves around the participants of the perpetrators. As they say, George, you're a perpetrator, probably the worst of them all. So, I said, okay, you know, I accept that. But yeah, I'm not the only one. And so, with, like I say again, a great respect and gratitude for Commander's comments, you know, the military is a huge, huge part of this whole story.

And so, the truth-telling and the healing process, you know, is going to begin in those kinds of quarters, you know, with myself, the military, you know, I'm a civilian, I'm the only civilian that led a coup and went to jail for a time, you know, that's the way the law works. We accept it. We plead guilty. And hopefully we can find redemption back in society, let alone in front of God, to be able to make something of the rest of our lives. You know, it's going to be doubly hard. That's why, again, I just keep saying that Commander's comments and presentations, it's the start of what I see as the opportunity for our nation to really address this, take the bull by the horns, so to speak, going right back to 87, dismantling the whole thing and coming up, you know, with the acknowledgement of what took place by those who did it, the hurt that was caused, the issues that were behind it.

Those issues cannot be ignored. And once we come to grips with all of that and accept, you know, let all the voices that say it's this, it's this, it's this, it's this, you know, let's hear honestly and fairly from everyone. I mentioned Brother Jo Nata, you know, and he's given his views on 2000. You know, I don't concur with most of what he said, but I respect his right to say it and to, you know, that was his experience. We did not know each other before 2000. So, everyone takes themself to an event, you know, for their own reasons, but it's great to show respect to him, but he does not speak for me and neither does anyone else speak for me. And I would say the same for the military and everyone who's participated in coups for whatever reason.

They'll justify it the best way they know how, but is it the truth? And so we need to get down to it and understand the issues that why people participated in these things, you know, and then we can all agree or disagree, but we need to, we need to like work together, this forum, this

body, the truth and reconciliation body with all of the institutions that were involved in the people and come up with a solution while satisfying justice or in the process mixed with mercy. And I believe we can do it and we have to do it. I've been thinking long and hard in prison for 24 plus years about what that process might be. I have some ideas. Let the state be set for it to take place and then we can talk about solutions, much like, you know, structures of constitution and government and all that. These are all, you know, options that are out there, but before it, we need to take care of the foundation and that's where we need to start, which is why this is good.

Mr. Beg: Thank you very much, Mr. Speight. Appreciate your comments to my questions. Thank you.

Mr. Kohli: Thank you, Mr. Speight. First of all, we, one of our mandates is to try to fix the democratic deficit in 2013 constitution. We would like to come up with something that prevents course from taking place. Of course, that's very difficult. My question to you is that was 1997 constitution one of the factors in the 2000 coup?

Mr. Speight: Good question. Let me understand the question. You're asking me whether any part of the 1997 constitution caused me to involve myself in 2000. Is that basically what you're asking?

Mr. Kohli: That is the correct question.

Mr. Speight: Yes, okay. I'd say no, 95%. Yeah, I don't, the 1997 constitution is not a perfect constitution by any means.

Mr. Kohli: Can I ask you to address that 5%?

Mr. Speight: The immunity, which in the light of justice and righteousness and fairness issues, you could say it's the reverse. You know, the immunity is a 95% that I don't like, but in all fairness, you know, that's before my involvement in the events of 2000. I never gave much thought to the 97 Constitution. I was pretty much happy with it. You know, it's, it's the things that happened within the 365-day rule of, you know, the coalition government after 99, that I was not happy with, especially the bills that were taken.

Mr. Kohli: I can see your deep desire to tell the truth. You have obviously asked forgiveness and everything. What stage would you like to be set before you reveal the whole truth and nothing but the truth?

Mr. Speight: I'm not the only one that's going to reveal the truth. There's many, many people who have, you know, the truth and what took place, but like I said, if the design behind the process is healing, justice, and then moving forward, then I'm ready. So, I suppose it will take political will to make it happen. But the government of the day has to decide that we're going to go all the way in this process.

Now that's difficult, which again, I come back because, you know, why would you promote a process which is with the greatest of respect, you know, minister and Mr. Ditoka's view that no, we shouldn't do anything like that because it's just going to be uncomfortable for many, many people. Well, that's just not, this is not the way forward. Yeah. Progress is made when people accept the consequences of wrongs committed. I keep coming back to the Commander. He's willing to accept and man up and face up to the consequences of having the immunity removed. The institution is ready to accept. It's the process that we all must sit down and discuss and agree.

These will be the penalties. And at the end of it, we must see a big light that will then bring redemption to the whole country. But justice cannot be forgotten in the process. Justice must be seen to be done and it must be done for us to get back the confidence of those who are governed by the government. Because right now, the government is being governed by people who are protected. And that is wrong. It's just wrong. It's not right. They have no moral right to lecture the country about law and order. And I believe commander's conscience has been awakened for quite some time, but you know, 500 out of 100 for him for stepping up and saying, right, we're ready to accept the consequences.

How then can healing happen? How then can moving forward happen in the country? How then can relationships be met? How then can the confidence of the citizens of the country be restored? How then? Is there another way? We've tried that way. It hasn't worked. It never will work. It just won't work. Try it in your own family. It won't work. Try it in your own marriage. It won't work. To continue as if nothing happened. It just won't work. So that's what we face as a country. And the sooner we get together and face it head on with all of the difficulties that it entails and

all of the tears and the crying and the pain and the reparation to those who've been hurt, all that, yes, and justice to those who've been evading it, all that, but mixed with mercy, I believe we can do it. I really believe it.

Mr. Kohli: Thank you, Mr. Speight.

Mr. Valenitabua: Mr. Speight, you've heard comments and questions from the other commissioners. I believe I will make the final remark before we bring this session to a close. During our consultations around the country, an issue that was raised repeatedly from various places, the issue of ownership of mineral resources within lands or underneath lands. Now yesterday we had the Minister, the Honorable Minister for Lands and Mineral Resources make submissions before us in relation to the philosophy of having the government retain ownership of mineral resources. We heard the submissions, we understood it, and something which we will need to deliberate on very carefully in relation to the voice of the people and the voice of the government and the protection of mineral resources. We have heard the philosophy yesterday.

During our consultations around the country too, we have been bombarded with suggestions of the unfairness of the 2013 Constitution, not only in relation to the immunity provision, but also to various provisions in the Constitution. Now I note that when you started with your submission this morning, you stated that every provision needs to be reviewed because they are full of contradictions and unfairness. Now we heard you this morning and although you are saying that they are your views and your thoughts, I must say, you know, that they are similar to the philosophy of mineral ownership which was given us by the Minister yesterday. You're giving us reasons, the rationale of why this Constitution has to be reviewed due to the unfairness. We were at Nadaro village in Tailevu and one of the speakers there really raised the inequality before the law.

We are talking equality before the law in the Constitution. He directed that no, there's no equality because some people are not being taken to task for what they did in relation to the events or the past events which you know. So, with what we have heard this morning is going to give us a better line of thought or it's going to give us the necessity to really think hard about the immunity provisions, the immunity provision and the other provisions which have been submitted to us to be very unfair. And that is something we thank you about this morning. As you correctly

stated, the Commander of the Fiji Military Forces has come forward stating the military's stance. They have told us to remove the immunity clause. However, we still have a concern in relation to the judiciary. You are stating or you have stated that you don't agree with a view of the judiciary that current legal order not to be disturbed and you in your own words this is unfair. Now that is something we have to consider also. The current legal order as has been stated by the Supreme Court is they did not touch on that immunity clause.

Mr. Speight: Well, they reinforced it, they mentioned it specifically.

Mr. Valenitabua: Right, that's it. So, we will be as you know whatever a court say they become law. So, there is a piece of law that we will have to deal with. We have heard that the voice of the people we have to consider. Whatever the people think, whatever the people ask for, we should try to entertain it. So, this commission will be in a very precarious state in relation to these issues. But thank you very much for this morning. You have opened up thoughts which we will consider very very carefully when we sit down for deliberations which starts next week. We thank you very much indeed for coming here this morning and giving us those thoughts and those views. Now with those words I thank you again for turning up here this morning or we have gone to the afternoon now and we wish you well in your future endeavor which you have just started.

Mr. Speight: Well, I'm available if you need me for any further discussions.

Mr. Valenitabua: Thank you very much, thank you very much.

----------End of Session [9-7-2026]----------

Justice Daniel Fatiaki

Mr. Daniel Fatiaki
Date:10-7-2026

Mr. Valenitabua: We welcome you this morning. We know that we have received you at an earlier time with the Law Reform Group, and today we are receiving you again as an individual. We thank you very much for coming before us again, coming before the Constitution Review Commission, offering you assistance.

Although we are here to receive submissions, we know that the submissions from you would be very helpful to us and it will be an assistance to us. Now, we have introduced you, introduced us to you at an earlier occasion, but for the record, I wish to introduce the commissioners this morning who are sitting. On my far right is Mr. Conway Begg, and next to him is Ms. Merewalesi Nailatikau, and on my immediate right is Dr. John Fatiaki.

On my immediate left is Mr. Ami Kohli, very well known to you, sir, and on the far left is Dr. Nilesh Gounder and I am Mr. Valenitabua:. Now, I will not talk much on the introductions because you have appeared before us before, you know what we are here for, and I would rather that we now pass the mic and the floor to you, Judge Fatiaki, so that you could present to us your submissions and your advice, your recommendations, sir. Thank you very much.

Justice Fatiaki: Thank you very much, Mr. Chair, for your introductory remarks. I would like to acknowledge the commission members who are present today, and particularly I would like to thank the commission, yourself, Mr. Chairman, for the kind invitation and the time slot you have given to you. I am humbled by the thought that you think that I might be able to assist you in your enormous task and deliberations, but I am in retirement and I have been out of practice for quite a long time, as you are probably aware, and so I haven't really had very much to do with the 2013 Constitution.

In the time that it was passed, up till now, I've spent ten years of my life in Vanuatu since 2009, and then almost two years in Nauru thereafter. So, if I'm not entirely familiar with all the provisions, you'll please excuse me. I do have some thoughts that I can share, which I hope will be helpful.

And I am familiar with some of your members, no doubt. I've also realised that we have worked together in legal practice, usually on

different sides of the bench, but I'd like to take this opportunity to invite the commission members, if they think there are things that I can assist that I don't speak on, please feel free to ask me questions. I should do my very best to answer them.

I'm rather overwhelmed by your previous speakers and that I should be in the company of people such as George Spade is humbling, if not exciting. You have been entrusted with a significant responsibility as commissioners and you have extensive terms of reference to enquire into and examine the democratic deficits, that seems to be a catchphrase that emanated from the Supreme Court's opinion. Democratic deficits in the 2013 Constitution, including those that were highlighted by the Supreme Court in its opinion, you are asked to make recommendations relative to the reforms that will strengthen our constitutional framework.

Your task is not simply about changing words in a legal document. It is about ensuring that the amended Constitution reflects the aspirations of our people, protects fundamental rights and freedoms, promotes good governance, upholds the rule of law, safeguards judicial independence, strengthens democratic institutions and recognises the unique place of indigenous I taukei and Rotuman communities, including the protection of their lands and fishing rights and the role of their respective councils of chief. You are also asked to ensure that all communities, including marginalised groups, are heard and that Fiji's constitutional arrangements are consistent with ratified international conventions and human rights principles.

Public consultations are an essential part of Constitution making and I commend the Commission for undertaking such extensive Fiji-wide consultations. I have followed your sojourn through our country with much interest and I know that you have received many useful submissions from our rural communities and maritime zones. As I make my submissions today, I am guided by two simple principles.

Firstly, if it isn't broken, don't try to fix it. Constitutional reform should not be pursued for its own sake. This must not be a tick-in-the-box exercise.

The second principle is a little more complicated and it states that a government's legitimacy and moral authority to use the state's power is justified and lawful only when agreed or consented to by the people over which that power is exercised. On that basis alone, the validity of

the 2013 Constitution, which was unilaterally imposed on the people of Fiji by a military decree without prior consultations or approved and adopted by a people's referendum or by parliamentary ratification, must be considered at best doubtful. It is certainly the largest democratic deficit.

However, where provisions and institutions have served the nation well, they should be strengthened and preserved in your deliberations. Where weaknesses exist, they should be considered carefully and either improved or rejected. My submission this morning focuses on several areas which I believe deserve the Commission's careful consideration and recommendations.

Firstly, the preamble. That should be extended. It is very short.

Four miserable paragraphs, I think, or sentences. It should acknowledge Fiji's constitutional history as well as recognising the nation's Christian heritage while respecting other religions. Secondly, the Constitution should identify and reinforce a shared national identity that promotes unity while respecting Fiji's rich cultural and multi-ethnic diversity.

There has been much discussion in the news and on social media about the origins and proper use of the term Fijian since the GCC's submission to the Commission of Renewed Interest in it. Some claim it belongs to the indigenous I Taukei and others believe it should be the common name for all peoples in Fiji. Undoubtedly, the arguments for and against are sincerely held and robustly advanced.

As an indigenous native from the island of Rotuma, I have always referred to myself as a Rotuman. I also grew up knowing that the indigenous natives of Fiji are and were called Fijian, not I taukei or Kai Viti. I am proud of my Rotuman heritage and name and I have no particular desire to be called a Fijian.

Neither do I feel diminished or alienated by not being called by a name that I have long known belongs to another ethnic group in our multi-ethnic society, or in not having a common name with other ethnic groups in our multiracial country. Whatever might be its foreign origins or source, the term Fijian has been applied for generations to the indigenous community as its collective name, however inappropriate, unauthentic or inaccurate it might be. Of one thing I am sure, however, and that is that a common name or national identity cannot be

imposed, declared or dictated by legislative power, however well-intentioned or supreme.

Little respect is due, in my view, to a one-line declaration that we are all Fijians in a constitution that was unilaterally promulgated in a military decree without prior consultations or the agreement of the affected indigenous group. Thirdly, consideration should be given to provisions concerning dissolved political parties and whether existing arrangements adequately support democratic participation. In this regard, too, I too watched the manoeuvrings, read about the options and listened to the personal and reported utterances of the party-less MPs in Parliament after the unceremonious demise of the Fiji First Party.

I must confess that an electoral system that is so heavily biased towards political parties and so unfriendly to independence, which then allows MPs of a deregistered party to elect to become independents or by legitimising turncoats without a by-election or giving their voters a say, is a complete anathema to democratic principles. In my view, if a political party is dissolved, all seats in Parliament occupied by members of that party should be declared vacant and a by-election ordered to decide their replacements. Fourth, the qualifications of candidates for election to Parliament should promote integrity, competence and public confidence in elected representatives.

I don't necessarily agree with those who require the imposition of a minimum education requirement for people standing as candidates in an election. I think the strength of a democracy and the strength of our country is that all persons, however well-educated or uneducated they might be, have a right to be able to represent their communities and peoples of similar interests to themselves. We can't all be professors, we can't all be doctors, lawyers or even university graduates.

Many of us have come from families that never had university graduates and we see it every day in the papers and during university graduations the great enormous pride that families have when for the very first time after decades they have one person graduate from university. That's all well and good, but as I said, the unemployed, the marginalised, the handicapped, they too are all entitled to be represented by someone like them, someone they can identify with. However, in this regard, with regard to the qualification of candidates, I make two suggestions.

Firstly, each candidate should be required to provide a negative drug test certificate with their nomination form. I'm prompted to make that suggestion because of the enormous drug problem that is facing the country and I can't imagine that we would entertain our politicians appearing before parliament representing the people and being doped to the eyeballs on methamphetamines or marijuana, whichever preference they have. So, yes, I would require a negative drug test with their nomination forms.

Secondly, each candidate for election must provide a statutory declaration that he or she does not rely on the immunity provisions in Chapter 10 of the Constitution. I make no apologies for this latter suggestion, which is intended to break the laundry cycle of a coup maker removing an elected government, then ruling by decree, imposing a constitution, standing in an election and becoming prime minister while still immunised. That has to stop.

There can be no benefit for people who undertake treasonous activities and a person who undertakes treasonous activities and participates in a coup does not deserve the great privilege and honour it is to stand and represent people in a parliament. Thirdly, the judiciary should be strengthened by addressing delays in the trial of cases and in the delivery of judgements, by ensuring adequate judicial resources are provided and thereby reinforcing public confidence in the administration of justice. This is a topic that I might digress and discuss in a little bit more detail because I have personal experience of it.

The judiciary is the third arm of government, the other two being the legislature and the executive. It is considered the weakest arm. It controls neither the weapons nor the public purse.

Its standing is measured by the nature and quality of its judgements and judges and the level of persuasion that it can instil and the confidence it can get and that the public bestows on it for its complete independence and fearless upholding of the rule of law. In a funny sort of way, my history, like the history of this country, is inevitably and experimentally linked to coups. When the first coup happened in 1987, I was 34 years of age.

I was appearing before Justice Kersley in the Lautoka High Court at the time, on the 14th of May, doing a criminal trial. I was then still a

prosecutor in the public prosecutor's office. I saw a clerk come in and hand a piece of paper to His Honour, who then read it.

In his full regalia, he looked up at us and he said, there's been a coup. God save the Queen. He stood up and walked out.

We were left standing there gasping. I turned to my colleague, a defence lawyer, and said, What's a coup? Never come across this thing. Didn't know what it was.

Well, in 1987, at the tender age of 34, when no one should have to decide the kind of decisions that I had to make, the Chief Justice invited me onto the High Court bench. I discussed it with my family. When he first asked me, I said, well, I really have to think about it.

I can't just give an answer right now. I need to discuss it with my young family. Anyway, that discussion is many, many decades ago, and I think you know what happened.

I accepted the invitation and became a judge of the High Court in 1988. During that first coup, I was very proud to be part of the judiciary. It stood firm and it gave advice to the Governor-General to hold firm and not give in easily to the coup makers.

I think the end result of that was that Rabuka had to commit another coup to remove the Queen, and I suppose with her the Queen's judges, who had stood firm. We became a republic after that, and that's part of our history. Since then, there have been two other coups in 2000 and 2006, and I can say that unlike that 1987 coup where the judiciary came out relatively unscathed, the other two coups actually decimated the judiciary.

There was mass resignations and mass firings, and in the end, we ended up with a judiciary which was manned by Sri Lankans. I've never had the pleasure of appearing before any of them. But I understand and I've seen some of the work that they've produced, and it is not the same as what we'd be used to in the earlier days.

And that's not surprising. They come from a distant island that had no relation up to that point in time with Fiji. Even their boat people I don't think intended ever to come to Fiji.

They usually were happy to stop off in Australia. But yes, our entire judiciary was virtually Sri Lankan, and in terms of the judiciary, that was a dark period. Since then, we've begun to recover.

Our lower judiciary is now almost entirely local, and the quality has changed slightly, but it's getting better. And we have to give our people a chance to rise to the occasion and man this judiciary, the third arm of government. I ask this commission to do its very best to ensure that the appointment of judges and magistrates is apolitical, not involve interference.

I ask that any shadow of interference by the Attorney General or government bureaucracies should be removed from the appointing authority. In my time it was the Chairman of the Public Service Commission, the Chief Justice, and a member of the Law Society, the President of the Law Society. They were the members of the Appointing Judicial Services Commission.

I think a number of appointing authorities needs to be rationalized. There are just too many. I can hardly cope with it.

The Constitution seems to be full of all sorts of people, full of all sorts of new commissions. You have to wonder how this is the idea that I have about if it's not broke, don't try and fix it. And a lot of the fixings that went on and the creation of commissions were personal things.

They were lesser people's attempts to impose themselves on institutions and professions that they found themselves wanting and incapable of performing in. And so, their input was to actually attempt to destroy the future Law Society, for instance, make membership of the Law Society non-compulsory. And so, as a result the Law Society literally split up into those who were registered members and those who were unregistered members.

It was this wholly unbelievable situation to occur. And then you even had law conferences that government lawyers were forced to attend, called the Attorney General's Conference that none of the civil practitioners wanted to go to. And then you had the Law Society's convention that only the practicing lawyers attended and none of the government lawyers were actually allowed to.

It's just phenomenal the kind of hatred and stupidity that got imposed on legal professions. And that kind of thing needs to stop. At one time the profession policed itself.

I can't say that there was any better than the new arrangements. In fact, the new arrangements seem to be working quite well with an independent legal services commission. But again, there is a commission.

My plea is that anything to do with government and the Attorney General's office should be removed from all appointing authorities. And if we're really to be independent, that's where the independents start, by the removal of any say in the appointment of independent officers. Sixthly, the commission should review the provisions relating to the constitutional immunity, particularly those contained in Chapter 10, and consider whether they serve the long-term interests of justice, accountability, and national reconciliation.

A lot has already been said about it, and unfortunately, I feel the need to add my little bit to it. Chapter 10 covers what I call a multitude of sins, and protects a host of sinners with varying degrees of participation and involvement in the events and activities during and after the 5th of December 2006, the commencement date of the 2006 coup. I wonder why it needed to be so wide, so widely framed.

If you sneezed anywhere near a coup, you were immunized. It's just phenomenal. It's utterly unbelievable.

Words like participated directly or indirectly, were involved in or accepted an appointment of whatever nature, the kind of rubbish that lawyers write, to try and catch everything and anything at all, including tadpoles in a pool. That's the kind of language they use in this immunity thing. Surprisingly, and this is what I'm utterly gobsmacked about, including amongst the identified sinners is none other than the judiciary.

They're listed as protected by this immunity in Chapter 10, and I can't believe it. The judiciary is supposed to be the pinnacle of lawfulness, and why would they need protection under an immunity clause? But that deserves another commission, and another statement of how the judiciary ended up on the list of sinners. And I think those who were practicing law during my time when I was Chief Justice would realize that the judiciary became fractured as part of the 2006 coup.

Maybe it had its beginnings in the fractures during George Spake coup, but it burst out into the open certainly in 2006, and that is another dark period. And maybe that's what they mean when they say those people who were involved in couping the judiciary needed to be protected and immunized against that kind of illegality. Why? You have to ask, why would the judiciary involve itself in illegal treasonous activity? Why does it need immunity? The only reason why anyone needs immunity is because they did something wrong, and they don't want to be answerable and accountable for it.

Well, where's the public interest in that? What benefit do we get from all these immunized people? That's why I say all those people who take advantage of that immunity clause should never be allowed to stand for parliament and elections. No. Be that as it may, in light of the commander's, the Republic of Fiji Military Forces commander's recent call for the removal of Chapter 10, I humbly add my concurring voice to the growing cause.

I know it's not an easy task for you, because no other than the Supreme Court has said that this chapter is untouchable. All sorts of language like that, terrifying stuff. But like I tell everybody, the constitution is man-made.

What man puts, man can undo. The only thing you can't undo is the Ten Commandments, and that's not man-made. But otherwise, Chapter 10, like any other chapter, can be removed, and I urge you to recommend its removal.

Otherwise, this commission, strangely enough, will sit in the face of the commander's request that it be removed, in the face of George Spade's request, in the face of my request that it be removed. I think you'd be swimming against the tide. Needless to say, the continued existence of Chapter 10 in our constitution is a democratic deficit, and a cancerous blot which serves no useful purpose other than being a constant reminder to future generations of an unfortunate part of our past that is best reserved for our history books.

Our generations after us don't need to be told that all coup-makers from time immemorial are immunized forever. Seventhly, the provisions governing the disciplined forces, especially the Republic of Fiji militia forces, should clearly define their institutional role and ensure that civilian democratic governance remains paramount. The

unacceptable misunderstandings and confusion caused by the vague provisions of Section 131.2 of the 2013 Constitution can only be removed by the complete deletion of that paragraph.

It has no business in our constitution or in the Republic of Fiji militia forces. You sort of wonder to yourself, if the Republic of Fiji Military Forces have overall responsibility for the security, defence, and well-being of Fiji and all Fijians at all times, you sort of wonder to yourself, well, in the face of that, why do we even bother with a parliament that passes laws? Why do we even bother with a police force that has the primary duty to maintain law and order in this country? We have an institution that has an overarching responsibility to look after all our welfare, so why don't we just hand it all to them and say, take over, please? No. That provision must be deleted if we are ever to return to democratic government.

Eighthly, the constitutional status and independence of FICAC and the Directive of Public Prosecutions deserves careful consideration. There just seems to be so much hubra and hubris over these positions. FICAC and the DPP.

These things were unimaginable in my time. But some people say, well, you're partly to be responsible because you conducted the commission which drafted the report for FICAC and it eventually gave rise to FICAC. It was never intended to be used like that.

What happened was the last, well, the Bainimarama government, if you can call it that, weaponized FICAC and used it as an attack dog to go after people it didn't agree with. That was never its intention. Now, they have been removed, but old habits die hard.

These institutions need flushing out. There are still bad eggs hiding in there and the rot continues. I thought about whether or not I should make a submission that suggested that the DPP should continue to maintain its constitutional position as prosecutor of all matter's criminal and that FICAC should be subservient to the DPP in prosecutorial matters.

And in fact, its ability to prosecute might be something that should be taken away from FICAC and handed back to the DPP's office where it truly belongs and most familiar. FICAC can continue with its investigation and charging, but not with conducting the prosecutions.

Interests become too vested when you are investigator, prosecutor, and charging officer.

The conflict of interest is so obviously dangerous that those roles need to be separated. Finally, consideration might be given to the treatment of decrees and promulgations, including the legal framework. Before that, I encourage the commission to examine whether FICAC would benefit from the establishment or restoration of a senate as a reviewing chamber to strengthen legislative scrutiny and representation of the marginalized in our society.

Finally, consideration should be given to the treatment of decrees and promulgations, including the legal framework governing their status and transition within Fiji's constitutional order. After the 1987 coup, almost all military decrees and proclamations that had been unilaterally imposed were considered and ratified by Parliament as Acts of Parliament, or they were repealed. Since then, and after the later coups in 2000 and 2006, the contempt of familiarity set in, and all decrees and promulgations were constituted Acts by definition, however egregious, unfair, or immoral they might be.

In this latter regard, the notoriously egregious Decree No. 51 unilaterally decimated the solemn, irrevocable contracts of affected pensioners with the FNPF and substantially reduced their pensions and livelihood. Then, in a final act of official cruelty by adding salt to their gaping wounds, the military-led junta denied the affected pensioners their basic human right of access to the courts to seek redress.

Decree No. 51 remains on our statute books as an instance and indictment of what unchecked absolute power can do to the marginalised and powerless members of our society. I urge this Commission to recommend to His Excellency the immediate ex gratia payment by FNPL of 50% of each affected pensioner's entitlements without admission of liability.

The various submissions and issues raised by me are not merely legal questions. They are questions that need to be answered. They are questions about how we wish to be governed as a nation, about how we can protect our democracy, and how we can begin to rebuild confidence in our public institutions.

The Commission's report is due to be submitted to His Excellency by the end of August. It is a mammoth task and I do not envy you, but I

know that you will rise to that occasion. It will be subsequently considered by Cabinet and Parliament, and it will have a lasting significance and impact on future generations of our citizens.

A constitution must belong to all the people. It should unite rather than divide, protect rather than exclude, and provide a stable foundation for peace, justice, democracy, and prosperity for our country. I thank you once again for the opportunity to present my submissions.

I wish the Commission every success as it carries out this very important national responsibility. I thank you for your time. And I invite questions if you have any.

I usually tell everyone, and I think I've told you that before, it is a rare opportunity you have to question a Chief Justice.

Mr .Kohli I don't normally get opportunities like that, Judge. Having said that, on a serious note, when I was first appointed to this Commission, I was worried about certain things.

After hearing today, I'm more worried and more concerned. And as usual, having appeared before you on many, many occasions, I've been guided by you and I seek your guidance. My question is this.

You have said that we can remove Chapter 10, and the Supreme Court, whether you call it in its opinion or determination, has told us not to touch it. And wherever we have been going as Commission, my commissioners would agree, we have been saying that we cannot get rid of Chapter 10. So now, I seek your guidance, Judge.
Tell me, how can we legally remove Chapter 10?

Justice Fatiaki: Thank you for that question. As a great cricketer, you just bowled me out gruggly, but I shall try to bat it. Let me begin by saying that the Supreme Court's decision was an opinion.

Yes, I also heard the Supreme Court say what it said about its opinion and how it is binding on all other courts of the State. You are not a court, and the Supreme Court's opinion about its binding nature is taken from Section 98.6. Decisions of the Supreme Court are subject to subsection 7, binding on all other courts of the State. It doesn't say it's binding on Parliament.

It doesn't say it's binding on Cabinet. It doesn't say it's binding on all. It says all other courts.

So, let it bind the courts. You're not a court. It may sound radical.

Maybe it is. But at my age, in my present time, I can be radical. That's the first point.

Secondly, a Supreme Court opinion is what it is. It is an opinion. It doesn't say under Section, anyway, it's the section where Cabinet can ask for, yes, 91.5. Cabinet may seek an opinion from the Supreme Court on any matter concerning the interpretation or application of this Constitution.

I think Mr. Kohli, as a trained lawyer, you will appreciate that this is a very, very special provision. It is not your normal run of the mill. No one can access the Supreme Court like Cabinet.

No one can go directly to the Supreme Court and get a judgement. The Supreme Court is truly an appellate court. It is a final appellate court.

That is its standing within the court hierarchy structure. This section, 91.5, is an aberration. It is out of the normal.

It is not part of the normal structure. And, what's more, so not only is the Cabinet invoking an unusual, unknown provision, asking the Supreme Court for an opinion, not a judgement or a decision, an opinion. I don't know.

I'm not an Englishman. But I do know the difference between an opinion and a judgement or decision. I've been playing this game long enough to know the difference.

Opinions can actually be rejected. In other words, Cabinet could reject it because it's an opinion. What's more, Cabinet is not a court.

So, it's not bound either, according to this other section I've written. And finally, this is about the status of this judgement, this opinion of the Supreme Court. Subjection 3C of 98 states that in exercising its decision, its jurisdiction, to render an opinion, it is exercising an original jurisdiction, not an appellate jurisdiction, which is its normal jurisdiction.

It's exercising an original jurisdiction. Now, anyone who's practiced law knows that original jurisdictions belong in trial courts, in first instance courts. And they exercise original jurisdictions, which are then appealed to higher level appellate courts.

That's the way jurisdictions are. So, we have an exceptional request by Cabinet going direct to the Supreme Court, seeking its opinion. And the Supreme Court, in answering that request, exercising an original jurisdiction, not a final appellate jurisdiction, which is its normal.

And thirdly, the Constitution itself says that the Supreme Court's decisions are binding on all other courts. It doesn't even say decisions and opinions of the Supreme Court. It just says decisions.

It could have said, it could have included opinions in that provision. It didn't. It could have stopped and said, binding on all.

No. It extends to other courts only. Anyway, how do you get rid of it? Draft an amended Constitution that doesn't include it.

That's simple. And leave it in suspended animation where it belongs, frozen in time. That chapter belongs in legislation.

If Parliament decides to pass an immunity act to deal with it, let Parliament do that. You see, there's the beauty of being a member of a commission. You don't have to have all the answers.

Make the recommendation. It's courageous. It's timely.

It needs to be made. And let government and other people wrestle over this question.

Mr. Kohli: Thank you, Judge. My follow-on question to that is, the Supreme Court also has suggested that the threshold for amendment be reduced from three-quarters of the members of Parliament to two-thirds of the members of Parliament. And in the referendum, it used to be 75% of registered voters, registered voters, which has been brought down to a simple majority of people who actually tend to vote. Of course, there will be registered voters, but simple majority, meaning if 1,000 people tend to vote, 501 decide, take yes, it can be changed.

Hearing your advice today, that it's just an opinion, if, for example, a recommendation is made, there should be 50% of the registered voters

taking part in an exercise where they want to change the constitution. Nothing stops us from recommending that.

Justice Fatiaki: I am very, very tempted to be even more radical and say, I suggest this commission recommend the removal of the referendum requirement.

It never was part of our constitution. It never was part of our laws. Why do you feel the necessity to continue with it? Why? Because the 2013 constitution changes it? That's almost good enough reason to not follow it.

You see, I think the idea that you need parliaments, special majorities, not just ordinary majorities, special majorities, and then follow that with voters, special majorities, it's like a double whammy, you know, it's a ticking two boxes, two bases. I always understood that elected parliamentarians represented the people, but apparently when it comes to something like this, they don't. Because despite 75% or 60% saying that they agree to the constitution being amended, and carrying with them all their voters' voices, I assume, we still say, no, we want to hear from the voters.

Well, didn't you hear from the voters when they elected the parliamentarians? We elect you to represent us and be our voice. Well, they are their voice. Their voice did at 60%.

And then you say, well, we still also want to hear your voice. You, see? It's a double whammy, that's what I'm saying. Why do we need it? We've never needed it.

And I think maybe the commission needs to rethink the idea. I know, you know, that's like, remove the immunity, chief justice, former chief justice, remove the immunity, then he comes and says remove the referendum. Why not? Why not?

Mr. Kohli: The reason why I asked you that question, in a true democracy where people are truly reflecting the views of the people, you have opposition party and government.

We have here at the moment people crossing the floor. Parties deregistered. For whatever reason, you see, are they really truly representative of those people? That's the only worrying part, I'm sorry.

Justice Fatiaki: That's the reason I say, you deregister a party, every single person from that party vacates his seat automatically. You have a by-election and fill it. And the people have a voice again in who represents them.

You have this rather farcical situation where being elected on one platform, you're actually allowed, when the party deregistered, to choose whatever platform you want. It's like the voters, what are they? They're just nothing things? But see, that's why I make that recommendation also, that deregistered parties lose all their seats. None of this halfway house, take your choice, you know, 6 here, 18 there.

No, no, no. All gone. By-election.

Not the next person, by-election. Just like we used to have before. So, we understand it.

And yes, then they truly represent constituents and voters. It's a holistic thing. Everything works together to support each other.

But I think the referendum is at the tail end. It's a desperate measure, which basically concedes that we have an electoral system which is so corrupted that those people who get voted there don't represent anybody. And so, we still need the voters to give us their voice.

What an awful concession of an electoral system in a constitution. So, I do recommend, now that you've touched on it, that this commission seriously consider the benefits of the recommendations which were made by the commission, which I had the privilege of chairing, and which, unfortunately, I won't even use the expression. But you had that benefit anyway.

Mr .Valenitabua Yeah, Michel Conway?

Mr. Conway Thank you very much, Justice Fatiaki, for your compelling presentation. I listened attentively. I was very fascinated with the commentary around, or to use your words, your opinion, around the decrees, promulgations through an elected parliament or government and a non-elected parliament, and how that plays out.

And the view in the future to review the... Sorry. A little bit more about that. Sorry, it's the promulgation of the decrees, you're saying that.

You made the comment in 1987 that these arrangements were accepted and enacted in parliament. Then you go on to say that, I think you used the words, you criticised these decrees effectively, you know, and the point that I was trying to ask is, a democratic parliament should not permanently be bound by every decree that's made and how this needs to be reviewed. I just want to qualify that.

Is that what you were trying to say?

Mr. Fatiaki

Yes. I'm not used to people putting words in my mouth, I usually put it in theirs. But, yes.

Sorry about that. You see, when I grew up and studied law, I never collided with decrees and promulgations and proclamations. Those kinds of expressions were things that came out of Great Britain, you know.

It was royal proclamations and things like that. Parliament didn't do things like that. Parliament passed acts, legislation.

Now, in 1987, what they did was all the decrees and proclamations were put through the parliamentary process to determine whether or not it should continue and be given the status of acts of parliament or repealed and kicked out. Now, when I grew up studying law, I didn't think that decrees were law. I only understood that parliament passed laws.

And, in fact, the constitution says it. Only parliament can pass a law. So, in a decree which has been decreed by a Military junta, and proclamations which are proclaimed by a president at the beckoning of a Military junta, in my view, doesn't begin to become law unless and until the parliament has sat down, looked through it, considered it, and said, yes, we will give it an act of parliament.

We'll make it an act of parliament. Now, what's happened is, after 2000 and 2006, legal draftsmen and people generally became lazy, and this is where I said the contempt had set in because of the familiarity. And now, they use a one-liner in the definition section which says act, and they say it includes decree, promulgation, proclamation, this, that, everything that you want to call whatever.

Make it an act by definition. No parliamentary consideration. No, this is a one-liner.

You know, this decree 51 became an act. Really? Does anyone want to be associated with that decree? Including a government? They probably don't realize that by this definition, clause, they've made decree 51 an act. One of the most egregious, unfair, horrific blots of legislation that you will never find anywhere.

By one stroke of the pen, they made it an act of parliament. No consideration, no debate, no nothing. And all of these decrees had no input from the public, and yet, by a stroke of the pen, they've made acts of parliament and binds all of us.

Well, how ridiculous is that? And that's when I say the contempt has set in. They don't care anymore to think about these decrees before they make them acts of parliament. They don't care.

They just make them by definition. They don't even ask us what you think. And, you know, that's what's happened.

i call it contempt. I suspect it's by default. That's what's happened.

All of these things have become acts of parliament by default. Who is default now? And the politicians that we voted for, who represent nobody. Because they represent everybody, apparently.

Mr. Beg — Thank you very much, Justice Fatiaki. We appreciate the wonderful explanation. And thank you.

Ms. Nailatikau — Much gratitude to you for your time this morning. I note that you also encourage us to examine the reintroduction of the Senate.

The Senate was certainly an issue from the very first submission that we received and has consistently been raised. There are those who see it as an important addition of adding a layer of scrutiny and representation, particularly of Indigenous concerns and interests. There are others who see it as an erosion of democratic principles in the introduction of an unelected or appointed body to the legislation-making process.

Given the benefit of your experience, I'd like to invite you to perhaps propose for us what your considerations may be when considering the reintroduction of the Senate.

Justice Fatiaki

Well, the answer to that is simple, really. It's something that we've experienced before.

And it's only worked good for us, in my experience. But if you want to have a look at the original, talk about the House of Lords. I mean, that's what it is.

We call it Senate. They call it House of Lords. And they're the beginning of this whole thing.

So as far as the Senate is concerned, it's not a new animal. It is something that there's nothing undemocratic about it. I mean, it's an appointed body, appointed by the people that we vote for and that we've designated need to be on that body to represent minorities, disadvantages, marginalised and interests that don't get aired in parliamentary debates.

But, you know, the Senate I see as a fountain of wisdom. They usually have experienced wise people. And, you know, young exuberant politicians sometimes need a little bit of maturity added to their deliberations.

And if that comes from the Senate, that can only be positive. And if all the Senate does is say, hold back, stop, let's think this thing through. That in itself is a plus.

Because sometimes, you know, you can get legislation just pumped through at 100 miles an hour. Forget about Order 51. That's undemocratic.

Get rid of that. Not the Senate. Get rid of Order 51.

You know, where bills just go flying through, no debate, no nothing, no discussions, no public consults, no special committees, nothing. Just bang. That's undemocratic.

Mr. Valenitabua

Judge Fatiaki the commission members have taken that surgeon, that surgeon as you named it, around Fiji. We have heard from the people. We have heard that the immunity clause should be removed.

We have heard that the Senate should be reinstated. We have heard that the electoral system should be simplified and do away with the

current one, particularly the one national constituency. We have heard a lot of things.

Now, in relation to the immunity clause, we heard you this morning, sir. It is an eye-opener. We were concerned that the opinion of the Supreme Court might be a barrier to us in relation to removing the immunity provisions despite the submission from the RFMF.

Like I said, what you have told us this morning is an eye-opener. Now, there is a second aspect which I request that you enlighten us on. We have heard from the people all around Fiji, and they have wanted change, or they want change, like I have listed at the outset of what I am saying now.

What is the effect of the voice of the people when it is confronted with, say, an opinion of the Supreme Court? I understand what you have told us, but there are other aspects of this constitution which the people want removed. What is the effect of that legally? Please. Thank you.

Justice Fatiaki — Can I ask for a five-minute break? We will take a five-minute break. What I said is an eye-opener. There are not many people who are sitting all night.

This is what I have recorded, Chair. What do you say about the effect of the voice of the people when confronted by a Supreme Court opinion? I am tempted to break into Latin, and I know the policemen will understand what I am saying. Vox populi et suprema list. The safety of the people is the supreme law, and that must dictate the recommendations of this Commission.

Let us never forget the illegitimate, illegal origins of the document that you were called upon to review. Never forget that, and that will guide you. You see, I heard the Supreme Court say that the 2013 Constitution is our law, supreme law at present.

And it discussed the various principles that are well-known now to us coup-trained judges, which my colleague and friend, Professor Wadan Nassey, heartily disagrees with. But yes, there is an element of acquiescence, there is an element of acceptance, there is an element of participation. But the welfare of the people is the supreme law.

And if the people ask you to get rid of this provision for whatever reasons, then you have a duty to make that recommendation. And let

other greater minds than mine think it through about how it should be done. But like I said, never forget the illegal origins of this document.

I admire the efforts of our people, our government, and our country, and yourselves, in trying your very best to live within the document. Now, the Supreme Court itself found there was a democratic deficit in the amendment provisions, and felt entitled, as a result, to alter them. Now, you might equally feel that the same, from the people's core, you might feel the same to make the recommendation that it be removed, including, I might add, the voice of the commander, who stood most to lose by its removal.

But like I said, the vox populi may suprema list. The people's voice is the supreme law, not the Supreme Court opinion. The people's voice.

You went around the country listening to it. You heard it loud and clear. Make the recommendations.

Let it fall where it falls. Let others struggle with how to do it, how to change it. That is no longer not part of your function.

That's why you have skilled people, trained people, to come and do these things. And, I guess, writing a new constitution is probably easier than amending one. It's like building a house.

Mr. Beg will tell you. Renovations are the worst possible things that you can get involved with as an architect. It's a lot easier to draw a piece of paper and mark lines on the ground and go for it.

But when you have to tear down old walls and shore up old bones and joints, it's very, very hard. Perhaps the best illustration of that today is what's happening in New York. Renovating and converting an old office building into residential apartments.

It is collapsing around them. It resulted in the clearance of many streets and buildings. That's how dangerous this thing is.

Likewise, you are trying to amend what was once described as an unamendable constitution. You must be commended in your efforts. I don't know if I've answered your question.

I waffled a bit. That's the privilege of old age. We waffle until people tell us to stop.

Mr. Valenitabua: You have answered my question, sir. Thank you very much. Judge Fatiaki, there is no more comment, no more question from the commissioners.

And due to that, we will bring this consultation to an end. We thank you very, very much indeed for your time and advice and assistance to us this morning. You have been of great assistance and of great help.

As usual, we invite you and Mrs. Fatiaki to a photo shoot.

----------End Of Session [10-7-2026]----------

FORMER CHIEF JUSTICE DANIEL FATIAKI - SUBMISSION
LEVEL 9 10/07/26 - 11.45am - 1.09pm

Speech to the Constitution Review Commission

Honourable Chairperson, Members of the Constitution Review Commission (CRC) and members of the news media:

I would like to thank you for giving me a time slot and inviting me to make this submission to the Constitution Review Commission.

I appreciate very much the opportunity to contribute to this important national endeavour and I hope that your time will not be wasted.

The Commission has been entrusted with a significant responsibility under its Terms of Reference: to inquire into and examine the "*democratic deficits*" in the 2013 Constitution, including those highlighted by the Supreme Court's **Opinion** and to recommend reforms that will strengthen Fiji's constitutional framework.

Your task is not simply about changing words in a legal document. It is about ensuring that the amended Constitution:

- reflects the aspirations of all the people of Fiji,
- protects fundamental rights and freedoms,
- promotes good governance,
- upholds the rule of law,
- safeguards judicial independence,
- strengthens democratic institutions, and ;
- recognizes the unique place of indigenous iTaukei and Rotuman communities, including the protection of their lands and fishing rights, and the role of their respective Council of Chiefs.

The Commission has also been asked to ensure that all communities, including marginalized groups, are heard, and that Fiji's constitutional arrangements are consistent with ratified international Conventions and human rights principles.

Public consultations are an essential part of Constitution-making , and I commend the Commission for undertaking such extensive Fiji-wide consultations.

As I make my submission today, l am guided by two simple principles :

" ***If it isn't broken , don't try to fix it***"

Constitutional reform should **not** be pursued for its own sake. This must not be a '*tick the box*' exercise.

The second principle states that a Government's legitimacy and moral authority to use State power is justified and lawful only when agreed or consented to by the people over which that power is exercised. On that basis alone, the validity of the 2013 Constitution which was unilaterally imposed on the people of Fiji by a military Decree without prior consultations or approved and adopted by a people's referendum , or by parliamentary ratification must be considered, at best, doubtful. It is certainly a major "*democratic deficit*".

Where provisions and institutions have served the nation well, they should be strengthened and preserved.

Where weaknesses exist however, they should be considered carefully and thoughtfully, and either improved or rejected.

My submission focuses on several areas which I believe deserve the Commission's careful consideration and recommendations.

Firstly , the **Preamble** should be extended. It should acknowledge Fiji's constitutional history as well as recognizing the nation's Christian heritage whilst respecting other religions

Secondly , the Constitution should identify and reinforce a shared **national identity** that promotes unity while respecting Fiji's rich cultural and multi-ethnic diversity.

There has been much discussion in the news and on social media about the origins and proper use of the term: "***Fijian***", since the GCC's submission to the CRC renewed interest in it.

Some claim it belongs to the indigenous itaukei and others believe it should be the common name for all people's in Fiji. Undoubtedly, the arguments for and against are sincerely held and robustly advanced.

As an indigenous native from the island of Rotuma I have always referred to myself as a "Rotuman". I also grew up knowing that the indigenous natives of Fiji are/were called "Fijian" **not** 'itaukei' or 'kai Viti'.

I am proud of my Rotuman heritage and name and have no particular desire to be called a"*Fijian*".

Neither , do I feel diminished or alienated by not being called by a name that I have long known belongs to another ethnic group in our multi-ethnic society or, in not having a common name with other ethnic groups in our multi-racial country.

Whatever might be its foreign origins or source, the term '***Fijian***' has been applied for generations to the indigenous community as its collective name however inappropriate, unauthentic or inaccurate it might be .

Of one thing I am sure however, and that is, that a common name or national identity **cannot** be imposed , declared , or dictated by legislation however well-intentioned or supreme.

Little respect is due in my view , to a one line declaration : "***...that we are all Fijians...***" in a Constitution that was unilaterally promulgated in a Military Decree without prior public consultations or the agreement of the affected indigenous group.

Thirdly, consideration should be given to provisions concerning **dissolved political parties** and whether existing arrangements adequately support democratic participation.

In this regard , l too watched the manoeuvrings , read about the options , and listened to the personal and reported utterances of the party-less MPs in Parliament after the unceremonious demise of the Fiji First Party.

I must confess that for an electoral system that is so heavily biased towards political parties and so unfriendly to independants, and which then allows MPs of a de-registerd party to elect to become independants or by legitimising "***turncoats***" without a by-election or giving their voters a say , is a complete anathema to democratic principles.

In my view if a political party is dissolved , **ALL** seats in Parliament occupied by members of the party should

be declared vacant and a by-election ordered to decide the replacements.

Fourth, the **qualifications of candidates for election to Parliament** should promote integrity , competence, and public confidence in elected representatives.

In this regard l make two (2) suggestions. Firstly , each candidate should be required to provide a negative drug test certificate with their nomination form ; and secondly, each candidate for election must provide a statutory declaration that he/she does not rely on the immunity provisions in Chapter 10 of the Constitution.

I make no apologies for this latter suggestion which is intended to break the "*laundry cycle*" of a coup-maker removing an elected Government, then ruling by Decree , and later standing in am election and becoming Prime Minister while still immunised.

Fifth, the **Judiciary** should be strengthened by addressing delays in the trial of cases and in the delivery of judgments by ensuring adequate judicial resources are provided, and thereby reinforcing public confidence in the administration of justice.

The Judiciary is the 3rd arm of Government. It is considered the weakest arm in controlling neither the weapons or the coffers of the State. Its standing is measured by the nature and quality of its judgments and the the level of persuasion and confidence that the public bestows on it for its complete independence and fearless upholding of the "**Rule of Law**".

Sixthly, the Commission should review provisions relating to **constitutional immunity**, particularly those contained in Chapter 10, and consider whether they serve the long-term interests of justice, accountability, and national reconciliation.

Chapter10 covers a '*multitude of sins*' and a '*host of sinners*' with varying degrees of participation and involvement in the events and activities during , and after 5 December, the commencement date of the 2006 coup.

Surprisingly , included amongst the identified "*sinners*" is none other than the "***Judiciary***" ,which one might have expected to have no part or involvement with such an illegal treasonous activity. This raises interesting questions that remain to be answered.

Be that as it may , in light of the **RFMF** Commander's recent call for the removal of Chapter 10, I humbly add my concurring voice to the growing chorus.

Needless to say the continued existence of Chapter 10 in the Constitution is a "*democratic deficit*" and a cancerous blot which serves no useful purpose other than being a constant reminder to future generations of an unfortunate part of our past that is best reserved for our history books.

Seventhly , the provisions governing the **disciplined forces** especially the Republic of Fiji Military Forces, should clearly define their institutional role and ensure that civilian democratic governance remains paramount.

The unacceptable misunderstandings and confusion caused by the vague provisions of S.131(2) of the 2013 Constitution must be removed by its complete deletion.

Eighth, the constitutional status and independence of **FICAC**, the **Director of Public Prosecutions** deserve careful consideration to ensure these institutions remain impartial, independent, and accountable.

Ninth, I encourage the Commission to examine whether Fiji would benefit from the establishment or restoration of a **Senate** as a reviewing chamber to strengthen legislative scrutiny and representation.

Finally, consideration should be given to the treatment of **decrees and promulgations**, including the legal framework governing their status and transition within Fiji's constitutional order.

After the 1987 coup , all Military Decrees and Proclamations that had been unilaterally imposed, were considered and ratified as Acts of Parliament or repealed. Since then and after the later coups in 2000 and 2006 the contempt of familiarity set in and all Decrees and Promulgations were constituted "***Acts***" by definition however egregious, unfair or immoral it might be.

In this latter regard the notoriously egregious **Decree No.51** unilaterally decimated the solemn irrevocable contracts of affected pensioners with **FNPF** and substantially reduced their pensions and livelihood.

Then , in a final act of official cruelty by adding salt to their gaping wounds, the Military-led junta denied the affected pensioners their basic human right of access to the Courts to seek redress.

Decree No.51 remains on our statute books as an instance and indictment of what unchecked absolute power can do to the marginalised and powerless members of society.

I urge this Commission to recommend to H.E the immediate "***ex gratia***" payment by **FNPF** of 50% of each affected pensioner's entitlements without admission of liability.

The various submissions and issues raised are not merely legal questions. They are questions about how we wish to be governed as a nation, about how we can protect our democracy, and how we can begin to re-build confidence in our public institutions.

The Commission's Report is due to be submitted to His Excellency the President by the end of ~~March~~ August. It will be subsequently considered by Cabinet and Parliament, and will have a lasting significance and impact for the future generations of Fiji citizens.

A Constitution must belong to all the people. It should unite rather than divide, protect rather than exclude, and provide a stable foundation for peace, justice, democracy, and prosperity.

Thank you once again for the opportunity to present my submission. I wish the Commission every success as it carries out this important national responsibility.

Thank you.

Professor Shaista Shameem

Shaista Shamim
Date:10-7-2026

Dr. Fatiaki: In contact with this session are Mr. Ami Kohli, a lawyer from Labasa, Conway Beg, an architect, Neelesh Gounder from USP, and Merewalesi and I are physically present here at the Suvavou House. We welcome you. We are at the end of our long road of consultations which ends today.

And we have traveled widely throughout Fiji on that mandate that we have been given by His Excellency the President to review the 2030 Constitution. We've been guided by the terms of reference of His Excellency, which I understand has been gazetted. And likewise, the ruling and opinion of the Supreme Court that was last year issued.

And on that basis, we've had wide and meaningful, hopefully, consultations with all of Fiji. And we're at the end stage. So we look forward to listening to you and your team this morning. Thank you.

Prof. Shamim: Well, thank you so much, Acting Chair, for that warm welcome. And of course, it's much better and probably strategic to be able to address just the two of you.

I know this is a virtual, but I can see you very clearly in the AGS chambers. So, thank you for the welcome. And I want to introduce the legal section of the Office of the Vice-Chancellor.

The Manager Legal, Alisha Ali, you can see her on the screen, no doubt. We also have Ms. Natalie Raikadroga, who is also on the screen. And we have – she's a legal officer.

And we have our Sheikh, Ashraf Ali. Also, a very nice picture of him there on the banks of the river. Who is a still.

So, he's very much active. And he is our legal assistant. He's actually a final student, one of our top four students.

And he has assisted us with all the bills that we have made submissions to. And no doubt the Commission is aware of the fact that we have been making contributions to whatever bills the Attorney General's Office or the Law Reform Commission put forward for public consultation. And also, of course, the Parliamentary Select Committee as well.

So, we have been very active in the legal field recently. And that comes from our strategic plan, which is to be a think – well, one of the goals is to be the think tank and the critic and conscience of society. So we don't necessarily always follow everybody else's legal, social opinion or direction.

We have our own way of looking at things. We are very much influenced by the human values approach in education, as you might have heard. I say many a time, and I know that at NGA, you have been associated with the University of Fiji in your previous lives.

And you're quite aware of the origins of the University of Fiji as an entity of learning, but then it is a power of Fiji, which has human values at the pinnacle of its philosophy and educational strategies and goals and objectives. So, we are approaching this particular topic, which is, of course, of great significance nationally, as well as individually to each and every member of society, so that we are putting perhaps a slightly different perspective to what you might have heard in relation to constitutional development. I should also declare my interest here because I am a constitutional lawyer by profession.

I teach constitutional law at the University of Fiji, and I've done so for 10 years before I became the Vice-Chancellor. And I should also tell you that these submissions are made as though I am lecturing, although I don't like the word, talking to Law 205 students, that's the constitutional law students of the University of Fiji. And, by coincidence, I will be teaching Law 205 in the second semester.

So, when I was preparing for these submissions from the assistants on my very, very angle legal section, I was thinking of my students, because if I can explain anything to the students, then I can explain anything to anybody. I think that's really the fundamental communication strategy that we're using at the moment for a year. So we have slides which will be helpful perhaps for the Commission to look at as I go through my points.

And Alicia will be putting those slides up in a minute, and hopefully you'll be able to see them quickly. Next slide, please. Well, the very first slide, Honourable Members of the Commission, is the fundamental question of whether we need a Supreme Administrative Constitution at all.

This is something that I will be telling my Law 205 students as well, and asking them to give me a response as to whether we need a high law, or highest law, which is what a constitution is. And that means, basically, that these chambers will know this, and yourselves, those of you who are lawyers will also know that, that if you have a supreme and entrenched constitution, that all other laws in the country have to be compliant with it. And if any law is not, then the court can declare that particular law, that ordinary piece of legislation, to be inconsistent and invalid to the extent of inconsistency.

That is in the interpretation of sections of all the constitutions so far from 1970 onwards, and that's the fundamental methodology of constitutional interpretation. So our first question is, why do we need a supreme and entrenched constitution? Because if you look at the 1970, 1990, 1997 constitutions, as well as, of course, you know, what we've got at the moment, which is the 2013 constitution, there is one common theme, and that is, growth does nothing but instability. Therefore, we go back to what I consider to be the ground norm of constitutional development in Fiji, and that is the deed of section, particularly clause 4, and that has been referenced in one or two of the submissions, to the commission I've mentioned.

But also, something that not too many people know about, but is equally significant from a constitutional point of view, and that is law of sorcery's dispatch. 1875, which applied to Indian immigration to the colonies by not only the Indian government, but also the British government in India. Now, these two documents have been recently certified.

Sorry, this is my phone doing its AI business. Those two documents have been talked about over the two centuries of constitutional development in Fiji. I'm not going to do it at length now, but certainly if you want to hear more, you are most welcome to attend my first law talk class, which is on the 24th of July.

Now, if you talk about those constitutions that we are aware of, the 1970, 1990, 1997, and the 2013 constitution, other dates also come to mind. One of them is 1977, and you will know the history of 1977 because some people thought that might have been the first coup that took place in Fiji when the National Liberation Party had won elections but was not permitted to become government. Then we had 1987, we can forget that.

You all know about that as part of our genetic makeup. That was 2007 and 2009, and I put both dates there because 2007 was when the Fiji government was removed and 2009 was when the constitution was removed, so instability there in terms of both those years. So my question has been, what did these constitutions of ours do to alleviate any political crisis that we have? The answer, of course, is nothing.

The longest period of constitutional law that's had is the 2013 constitution. We've had that constitution in place for 13 years, and I suppose if we're talking about stability that we've talked about, perhaps longevity is the only thing about, the definition of stability. So the question, next slide please, is whether or not we need a supreme and entrenched constitution, and I think this is a very important philosophical point that has to be addressed.

It may not be in your terms of reference, but if you're looking at something like a constitution, which is a higher law, and that is not about specific law but it's about umbrella law, then you inevitably have to ask that question. And the answer, of course, is that what is the kind of constitution we need in order to bring about stability in every sense of the word, whether it's political stability, economic stability, foreign affairs stability, relationship with others stability, individual stability, communal stability, what kind of constitution do we need? That is the fundamental question that we need to ask, and it's a grunt form question. So I would say that instead, perhaps, since all these constitutions did nothing to alleviate any crisis, we should think about creating strong legislation.

You don't have to have a supreme and entrenched constitution. Australia doesn't. UK doesn't, and that's where our legal system comes from.

New Zealand doesn't. They have bills of rights that are very, very strong, Bill of Rights Act, in all those countries, but they don't have a supreme and entrenched. So, what is the reason for us to have one? We could have a strong electoral act, for example.

We just have the Electoral Commission. I don't know whether it may have delivered its conclusions, but we don't know too much about them. So, we've heard some research from Professor Wodanowski talk about it in the media, but we don't know the details, and there's lots of others.

So, make legislation, ordinary legislation, which is people's legislation, simply because it goes to Parliament, strong, instead of having a

supreme and entrenched constitution that's taken us, basically, for the discussion. In that strong legislation, if this is what the country thinks it could do, there is a way of making it even more robust by making mandatory references to international human rights instruments in all the relevant legislation. And this is what, in our submission source, different bills that we've addressed, like the Marine Spaces Bill, the Mining Act Bill, and all the other pieces of education, and all the other pieces of legislation that we've dealt with, we've ensured that they're complied, not always with the constitution, because some of those provisions are not in the constitution, but with international law.

And international law covers every single topic in the course of political fundamentalism. Because international law started with the Universal Declaration of Human Rights in 1948, and it's a long time since 1948. And what the international bodies, such as the Office of the High Commissioner for Human Rights, the UNILO, and other UN instruments and bodies, have done is fine-tune international law so that it keeps pace with modern times and modern issues and conditions.

So, this is something that we have to consider. Next slide, please. In particular, I'm not trying to, as you know, I'm in New Zealand right now, in a family emergency, but I will be trying to keep up with all the presentations to your honorable commission.

And many are quite interesting, and some are amusing, and some are innovative, novel, for example, but there's some that I'm disquieting. And the disquieting ones are those that impliedly try to bring back, in some shape or form, the 1990 constitution. And this is worrying me a little bit, because I think, if you look at the 1990 constitution, it violated every single international law that you could think of on the right to equality and non-discrimination.

And you need to go back, if you're a commission, constitutional commission, it's inevitable that you'll be compared. The AG's office will assist you, no doubt. And all the wonderfully bright people that you've got in the secretariat will assist you.

And looking at, like, chapter 3 of the 1990 constitution, also sections 31, 41, and 83 too, I suggest that you look at those, honorable chair of the commission, because if you find anything like that in any of the presentations that I've got before you, then those would be a violation of fundamental human rights to report. Some of those, in fact, would now

be defined as crimes of misdemeanor discrimination, as the 1990 constitution, definitely one that was a breach of international law, and indeed, persecution. And in 1990, Fiji had not yet ratified the Rome Statute, that's the one that developed the International Criminal Court, but we did ratify it fully, one of the earliest states in the world to do so, in 1999.

So, anything that happens now, in respect of any crime against humanity, discrimination, apartheid, or persecution of any shape or form, can be taken to the Rome Statute, through the Rome Statute procedures, to the International Criminal Court. Whether the International Office of the Prosecutor, or the International Criminal Court will actually take up that complaint is another thing, but those complaints can be taken, if it's any shape or form, resembling the 1990 constitution. And as we all know, the 1990 constitution was a product of the 1987 events, and then done away with in 1997 through a consultative process on the new constitution, the 1997 constitution.

So that's something I want to leave to the commissioners, because like everything else, anyone that's drafting legislation or doing any work in reforming the constitution, has to pay account to the responsibility that is bestowed to ensure that we do not have any new constitution that somehow brought us down to the fundamental just cautions norm, which is a national non-degradable norm in international law, to the right to equality. That is the cornerstone of our new constitution. Next slide please.

Now the Rome Statute, I mentioned that earlier, I've just mentioned it very briefly again, in terms of the rule against retrospectivity. As I said, at the time of 1990, the Rome Statute did not apply, because it didn't exist, but now of course it does, and features a signature into a red one first, so just see it. Now the Rome Statute therefore would not have applied to either 1987 or 1990 because of that, except for one thing, and that is, the rule against retrospectivity is overridden if there is, number one, an aggregate continuing crime for those that would have been in crime at the time they occurred, had it not been for state immunity.

So, state immunity was disgranted before 1987. State immunity was in a lot of 1997, just a little later on. It does not apply to earlier crimes, except if they are coming up again in the present circumstances.

So should there be anything in any new constitution that resembles one of those documents that might have gone to the International Criminal Court at the time, it can again be brought before the International Criminal Court. I also want to make a point that discrimination was always prohibited in religious constitutions, and in 1970, under Section 15, that is our fundamental law, non-discrimination. Of course it could not be in practice, but it has been there in the law, and being the highest law, the burden of compliance is rather more than just this ordinary law.

Now one of the things that we are not going to talk about is immunity. I know there has been a lot of discussion recently before the Commission about immunity in the 2013 constitution, even though there are amendments we can do on that. The problem though is that no one can talk about Section 173 at the moment, because currently it is sub judice, it is before the court, and it is before the Supreme Court just now, which is why I am not going to be talking about it, because it is our case, the University of Fiji's case.

It is an employment case, and it is before the Supreme Court, all the papers have been filed, and the Supreme Court will have its hearing in August, and it is about the validity or otherwise of Section 173. Therefore, the Commission would be wise to, for the moment, disregard any submissions on being energy proposers, or particularly Section 173 of the 2013 constitution. It would be sub judice, and it would attract a charge of contempt of court.

Next slide please. Now international law is extremely important for Fiji, because we are a member of the United Nations, and even if we weren't a member of the United Nations, we would be all mixed, because all the states, most of the states are not recognized in international law as a state, and are members of the United Nations, but also because of our role in peacekeeping. Therefore, it is, we are an obligation to respect all of the principles of international law that have been formulated through some mechanism of the United Nations.

And I have mentioned the words, the phrase, the letter phrase, the first one is hierarchical rule, which is constitutional, and international law goes beyond constitution. For example, the right to equality and non-discrimination is a jurisprudence norm, which just means that you are obliged to adhere to it, can't ignore it at all, and it has legal enforcement. So prohibition of racial discrimination is one of those jurisprudence that

we are obliged to, whether or not we have the constitutional or any of the laws.

And that means also, when it gets that category of international law, it means that any state, it has nothing to do with, you know, whether it's Fiji or somebody related to Fiji, any state, any independent state can prosecute on jurisprudence grounds. So if there is any racial discrimination, or any kind of gender discrimination, or anything at all that's practiced in a particular country, and it has the policy of disclosures, then any independent state can prosecute on behalf of the people of that state, of the state where the victims are. So, I want to reiterate that any attempt to reintroduce provisions of the 1990 constitution impolitely or expressly will trigger complaints regarding jurisprudence in other countries and the world.

There are two separate ways to do it, but it can be done both ways. Next slide, please. This is something now that I would want to reiterate.

Should there be any similarity between the 1990 constitution and the proposed constitution, or any intention to replicate in shape or form international law can be invoked. Hence, this is a point I was making right at the beginning, it is better not to have a supreme and entrenched constitution than to regurgitate the 1990 constitution. I think I'll leave that one for Julia.

Next slide, please. So how do we avoid scrutiny of international law and have a constitution? These are the principles now that I'm putting before the commission that must be within any constitution to avoid scrutiny of international law. These principles are general principles.

I'm not going through provisions of the constitution of 2013 or any other constitution to explain this provision works or that provision works. I think that kind of minutiae and detail is not necessary before a commission that looks at the general overriding principles of a constitution rather than the detail. Those are usually done by the secretariat or people experts from the AG's office.

And by the way, this is about the fifth time that I have appeared before a constitutional review commission. The first time was in 1997 and I have since then also done exactly the same presentation with slight changes because of the different circumstances throughout the decades that I

have been practicing as a constitutional teacher as well. So these are the principles.

There are a few of them. I think about five. Human values derived constitutional principle.

Human values, of course, comes from the University of Fiji. The first fundamental principle, the core value of any constitution is social contract. Social contract is somewhat a legal term.

The person who wrote it was John Locke and he was a lawyer by any means, but he was a social scientist operating during the age of the European United Nations. And what he said is that there is a contract, a social contract, that exists between the people and the state. The people agree not to take up arms to defend themselves, their right to defend themselves, and they give that responsibility over to the state.

And in return, the state promises contracts to protect them. That is the social contract. Now either side can breach the social contract and if that happens, it's just like any other contract in law, there is a breach of contract as its consequences.

Under the social contract principle, government is seen as a trustee of people's will. So power, government power, is strictly limited to concerns of the people. This is something governments tend to forget.

There is a distinction between representative government and responsible government. And any constitution would first of all decide whether we want a responsible government or a representative government. Choices are then assigned or allocated to either the people or to the people in power, depending on how you've decided which way you're going to go.

So that's a real fundamental principle as well. And if there is a breach, then it is considered to be not only a breach of social contract, but also a breach of trust. Now representation of social contract is usually defined by international human rights law and Bill of Rights.

So we have a Bill of Rights. We've had a Bill of Rights in every single constitution of ours, even the 1990 constitution has had a Bill of Rights. But each one has been limited according to international law.

So the 1970 constitution is limited according to the limitations in the 1948 Universal Declaration of Human Rights. And then it got more and more specific as time went on. Limitation in the 1990 constitution was by Chapter 3. And this is why the commission perhaps should look at that or ask your egos to look at it.

In every case, apart from 2, which is the right to be free from torture, and the right to religion, every single human right has a limitation on behalf of public interest. It's always public interest, not sectarian interest, not on behalf of one small community or a majority. There's no tyranny of majority in human rights law.

And so, the constitution itself, as the epitome or example of social contract, has to have a Bill of Rights in it with suitable limitations. And in all our constitutions, we've had limitations in public interest, public order, public health. I don't know if you understand that.

During COVID, public health rights were limited, public safety, and the rights and freedoms of others. So those limitations are there. The only two exceptions are, as I said, right and right to have your own religion, practice your own belief.

That is the first principle. That should be the core value of any new constitution. Next slide.

The second important principle is non-discrimination. And that means right and access to equality, or right to equality, and access to equality. Equality of everyone, every single person in the country.

And that category has been supplied not just in the 1997 constitution, which was broadened, but specifically so in the 2013 constitution. And that's something you need to look at, because it's the right of people to practice their own religion. It's the right of people to have an education.

It's the right for people to express themselves. All those freedoms are in every single category in section 36 of the 2013 constitution. And it's pretty robust.

But one of the things that does happen, because we are humans after all, is that we change those categories as time goes on. And sometimes you remove one, sometimes you add one. But in general, the right to equality should apply to everyone.

And the only difference is, for example, if you want to have the person who is visually challenged, and you want to drive a car, well, you can't say I have the right to drive a car, even though my friend is someone else. So the public safety element then kicks in. And you say, no, your right to equality in that respect is limited.

So there's a common sense approach to the right to equality, but it is a universal principle that also is just cultural. In other words, it is part of international law and cannot be derived. Minority and majority populations have equal status, unlike in the 1990 constitution.

Right to be free from discrimination in access to governance and resources owned or managed by the state. In other words, we all took on given resources. We all do.

That is the right to equality provision that we have to exercise, given some of the representations made to the provision earlier. And I'll put that in blue. No special privileges.

What for? There's no need. If everybody's equal, then there should be no special privileges at all. Next slide.

The next point is constitutional principle is democratic representation. Representation in the electoral system. The state electoral commission has come and gone, and we don't know what's in the report, but hopefully it will not conflict with the recommendations made by this particular commission on the constitution.

Democratic representation. Now, democracy is a really interesting word. It has its roots in Greece, Greek language, ancient Greek.

And basically, democracy in those days, you see, meant representational voice of the wealthy and men. So democracy's roots are both patriarchal and supporting the rich. In our view now, in the 21st century, we have to start looking at democracy not as one thing.

It is the spectrum. And I've said this before to political parties going into the first election in the constitution. You can have a libertarian democracy, which is like everything open to everybody at any point.

National referendum comes under the libertarian democracy principles. And then you can have totalitarian democracy as well. And while we may

say that we've had democratic governments in Fiji in the past, we can look at where they have fallen in that particular line of the spectrum.

The middle ground that everybody loves to claim, but actually is not the reality at all, is liberal democracy. And I think the constitution, you know, the commission should decide whether Fiji should have what kind of democracy we should have. Totalitarian democracy, libertarian democracy, or liberal democracy.

Because once you've decided that principle, it's only when you can decide on your electoral result. The question is, where do we all want to be constitutionally? It's not necessarily on the commission's decision. It's obviously the position as well.

And this is something that we can put to the people. So what kind of democracy do you really want? Do you want somebody who's going to be like a dictator within the democratic principles, or somebody who's just not going to do anything to be a laid-back kind of bloke? Or do you want something where you have a say, but ultimately you give responsibility to the government to do the right thing? That's really, I think, what people would want. But we want to call you up if you think you're doing something wrong.

That's really the ideal. Well, it's not ideal. It's something that we expect, but we don't get, so other people call it ideal.

It's not really. It is doable. So social contract means equal representation, whatever the mechanics of selection or election.

You can have one constituency, you can have many constituencies, you can have five votes for one person, you can have 20 different ways of fighting an election, whatever it is, doesn't matter. Absolutely does not matter. The bottom line is that you should have equal representation.

In other words, every person in the country should have a voice, and every person in the country should expect the parliamentarians to act in the public interest. Once you've sorted that out, then the electoral principle works itself out. Next one.

Separation of powers. This is something that's probably underrated. Because, you know, a small community, we all know who the judges are.

We know, we're related to the judges sometimes. We are in a situation where we are neighbors, we know. And how is it possible to ignore that fact? In a big society, in a huge, you know, lots of population, we can say, yeah, they will vote, we don't know.

We'll never get to see the judges; we'll never get to even see our parliamentarians. Here our parliamentarians are our cousin or our, you know, next, on the next neighborhood. But separation of powers is a constitutional principle that we need to ensure that any constitution is respected and set in stone.

It's there. It's in the 2013 constitution, actually it's a general one, I think, when we're under the state. It's 1F, I think.

I don't know about the constitution. We have to check it. But it's 1F.

And it says separation of powers there. Totally right at the beginning. Outside even of where the judiciary is spent or where the Bill of Rights are mentioned.

Separation of powers is one of the fundamentals. What does it mean? It means that the legislature has got its own job, executives have got its own job, and the judiciary has got its own job. And they should not interfere with each other.

That's basically what it means, separation of powers. So in separate things, courts, in particular, and I mention the courts right now, do not legislate or impliedly legislate, because legislative power belongs to the people. And when the courts are told, in the constitution or in any legislation or whatever, that you must not do this, then courts cannot do it.

It's very important to know. Because I do realize that this commission is also a creature of a court of opinion. Mandatory words in legislation must be strictly defined.

That's what separation of powers means. While after clauses may be written down by the courts, and they can, because sometimes they beg to get them written down, they cannot be removed. Because legislature is still the supreme authority.

It can't take power away from the people, from the elected representatives of the people, by people who are appointed. And that's

basically what it means. There's been a lot of debating in constitutional circles and constitutional law classes as to the limits of judicial authority and the limits of legislative authority and the limits of executive authority.

I think that's really important for the Constitutional Commission to try and see in terms of whether a new constitution will adequately protect that fundamental constitution. Next slide, please. Funding.

Now, normally I would not include this in any constitution or submission, because, you know, economic aspects are different from political aspects, which is what a legal aspect, which is what a constitution is. But I heard the submission from the Fiji Institute of Chartered Accounts yesterday, and the question that was asked, which is, you know, what I've got to do with what we're doing at the moment, and they said, well, because any fiscal policy has its impact on the politics. Finance and politics are closely related.

In particular, taxation. Next. Those of us on a high income get social responsibility tax, that's right.

And why aren't we tagging the economy, fiscal policies, and taxation to the public? Okay. Because there are several places in the Constitution of 2013 where it's possible. One of them is Section 39, and the other one is 32.

I am aware that there was a submission by the U.W.A. Trust Board, I think it was, TLTB, that Section 29.5, Subsection 5, must be removed from the next constitution. Well, if you look at it, it means the right to equality will also have to be removed, because it gives a vision for shared resources and taxing of resources as well. You can't have any benefit in a country without also having a social responsibility and a duty to share that with others who are not so advantaged.

And that's where taxation comes to be a constitutional issue, and it must be paid to sustainable economy and cash, and assets, including natural resources. You've got a lot of wealth you need to make. Next.

It's not rocket science. Next slide, please. Offences.

This goes beyond the principles now. Now we get to the offences against the constitutional people. Well, we have treason laws.

Domestic laws have treason. Crime Act 2009, Parts 10 to 12, not only in treason, but also discrimination, genocide, persecution, and all of that. So there are domestic laws, there are international laws for that.

And this is not something new. The Penal Code of 1945, in Chapters 7 and 8, also included those kinds of offences and what the penalties are. Before the Penal Code included treason, it was the death penalty.

That was since then. We know that the Human Rights Commission, our director, ensured that the death penalty was removed from our books. The military also removed it from their regulations.

So you don't need to go elsewhere for any crimes. Local laws are quite suitable. And in the case of immunity, well, there is always international law.

Next slide, please. Transition clauses. Transition clauses appear in every single constitution.

This is just to make life easy for the bureaucrats. So transition clauses should be minimized in the necessary, only way required for smooth transition from one document to another. From one constitution to another.

Next one. Amendment of the Constitution. Well, it is featured in the Second Reading.

It has been. It features Haya Sudo. And so it requires the highest majority for amendment.

It's a rather simple thing. To change the constitution, which explicitly it says is the perfect constitution, which I'm hoping this commission will come up with, which has radicalities, a cornerstone, separation of powers, all those fundamental things. For human values constitution, then it's not an easy thing to amend.

Because you're going to have to show why it means amendment. If it's a good constitution, then the reason for amendment should be even stronger. So it requires the highest majority.

Normally, we've had 10-year intervals in Fiji, because by coincidence or planned to be, if you look back over 1970 when it was changed in 1990,

then again 1997, then again 2007 and so on. We like the 10-year interval of life. So 10 years is fine.

That seems to be what people want. But it must be included in the constitution. Otherwise, you cannot have a constitution set in stone.

Now, the United States constitution was the original one from 17, whatever it was when they had it. Now, how they're dealing with it is amendment to each side. So for example, in the original constitution, slavery was allowed.

But of course, there's a time when non-people realize it's foolish that we should change things. They did it by way of amendments. And that's actually quite a good one.

So, there's a fundamental constitution which expresses its basic principles. The country's entire platform. This is us.

We want to be like this. And we're going to be like this forever. But we know that we're going to keep up with changes as well as time goes on, as people become modernized or people become amenable to changes and maybe more understanding of certain things, that you want to change it and make it a bit more relaxed.

So you have these amendments. So the American way is quite important. Next one.

Next slide, please. The final one, which I think I put it here, because this is an issue that may not have come up yet, but it's inevitable because there's been discussions about it. What is the role of the military? And a lot of controversy in all of that.

But I do agree that if you've got the armed forces, first of all, this National Service, which is something that we are bound to protect and defend the state, that young people should go through, which is something that we've already said in the university. But the constitutional role, not just of the young men, but of all the disciplined services. Because they're called disciplined services.

That's why they're disciplined. They're supposed to be disciplined. And that is they should be looking after the welfare of all the people, all the people in the country, equally.

And that's the responsibility, I'm sure, the RFMF already holds, and I think the commander said it. But it's not just the army. It should be the commissions and it should be the police.

That is the constitutional role of all the disciplined services. And that should be in the constitution, that they should be looking after the welfare. And they should also be the critic and conscience of society.

Now I say this because in the strategic plan of the University of Fiji, in the very first early part, it says the University of Fiji should be the critic and conscience of society. And we take that very seriously. Therefore we're not frightened of expressing our views.

As long as they have solid basis for those views, and we're not just expressing ourselves wildly, that we are seen as the critic and conscience of society. And I think that's an important role for the disciplined services there as well. Final slide.

Do we really have enough? Conclusion. So, number one point. No need for a supreme and entrenched constitution unless we follow all constitutional principles that I've outlined.

Do you agree? A couple of members. Two. Ordinary legislation can be sufficiently robust to deal with all matters of public interest with reference to international equal principles of rights and responsibilities in each case.

I should point out today that we're also making submissions to the endemic rights legislation for both legislation. And that will come out a bit later on. We haven't really done business today to make up all the submissions.

And there are some interesting issues that we will be bringing up. We need to look at all legislation with international law eyes. And I'm not sure that we've done that in that particular piece of legislation.

The third one. Any constitutions resembling the 1990 constitution which codifies and has codified the 1987 events and some proposed policies that were attempted to put in place between 2001 and 2007 in the inter-international state governments will remember can be subject to international legal mechanisms and penalties. And number four.

Five more. Human values approach to constitutionalism is the best way for any constitution for review commission to go. Thank you for your time.

Honourable members of the commission. If you have any questions, I'd be very pleased if I don't. If you have questions, please feel free to ask them.

Thank you.

Mr. Valenitabua: Thank you, Professor Shamim. For that, I might just ask my colleague Mere and my online colleagues if they'd like to make any comments. Mere.

Ms. Nailatikau: Thank you, Professor Shamim. I hope you can hear me clearly.

Sincere appreciation for your submission today. I think it's these types of submissions that also enrich our thinking in terms of being reflexive, also thinking about the ecosystem that a constitution, if it so exists, must exist within. And also drawing the line to other international examples, for instance.

It makes me think about how in many of the submissions, we're also of the understanding that no constitution is self-executing, that it must exist in a legislative environment in the countries where it does. And many of these submissions relate to often policy or legislation-related issues, which I believe your university is also contributing to. We did have the privilege of hearing from the Electoral Commission, as well as the Electoral Law Reform Commission, who shared their experiences in their process, in some of the thinking that they were undertaking relating to electoral systems.

And also from the Human Rights and Anti-Discrimination Commission, who touched on some of the important mechanisms that you mentioned as well. Please don't judge my questioning to be the only thing I'm thinking of. You've really given me a lot to think about this morning.

One of the things that you would have heard from the Republic of Fiji Military Forces submission was the desire for constitutional clarity on their role. And you've mentioned in your submission their role relating to the welfare of all of Fiji. Of course, not only their role, but other disciplined forces as well.

What would you say to concerns that we've been hearing in submissions that this is too broad a role and might offer an opening for interventions into democratic processes from either the military or disciplined forces? I would be interested to hear your thoughts on that, Professor Shamim. Thank you.

Prof. Shamim: Yes.

Thank you very much for a very important question. Of course, as I've said, I have to take responsibility for some of it. When I was in the Human Rights Commission, I just entered the doors of the commission in 1999.

And in May 2000, George Speight and his group entered Parliament. And my first question was to ring, because we've had a history of military groups in the past, and I, in one particular, which was not in the public interest, and that I think is clearly understood, I rang the camp, first of all, and I said, because I needed to know, as the director of the Human Rights Commission, how the commission would deal with this particular event. And I rang the military barracks, and I asked the officer, a gentleman by the name of Ulus, is the military behind this? And as a state officer myself, I had the right to ask that question.

And I was told, categorically, no. At that point in time, I watched the military take the role that it did, and I say plural, throughout that whole issue of the hostages in Parliament, how it dealt with everything, including Muaniweni. And, you know, I was very much involved in the rescue of people from Muaniweni, and the town would be violated during that whole period.

I was very interested to see what the military would do, because if the state is involved, and the military, of course, being the state, in any overthrow of a government, in that case the Labour government, then the response of the Human Rights Commission, who is responsible for all of the human rights of the human body, would be different if the military were not involved. And that made it very important for me to realize that in this particular instance, the welfare of all the people were of concern to the military, and that's what they did. Hence, I can only speak from experience, and that we relied on the military at that point in time to perhaps stop the carnage that might have happened overnight.

And I realized that the military, now I've included the police as a corrections leader, had the highest responsibility to protect us all, because no one else can. Under this social contract philosophy, we can't take up arms ourselves to defend ourselves. Who else is going to do it? Should there be an invasion from another country? Forbidden, I doubt that it will, but you never know.

Worst things will happen, as we know. History now, you look at Ukraine, you look at Iran, you look at Venezuela, you look at just about every country in the world that is conscious of what's going on in other places, aren't they? We can't take up arms because we don't have them to defend ourselves. Who do we look to? We look at people who do have institutions, who do have arms, and that's the military.

And the police are supposed to keep the order, peace and order, on the streets. They're not armed, but that's what their role is. Corrections, so that people go to prison, first of all, they're going to prison, not unfairly, but secondly also to ensure that those people who cause harm to society, violators of women and children, are not running a muck because it's easy to escape.

That's what is the definition of welfare, and they are paid to do it. My money, my funds, my taxes, go to support the military. I have a right to demand the military and the corrections and the police to defend, and protect me because I can't do it myself.

That's the answer to your question. The welfare of all the people, that's their responsibility, and they should not be permitted to abdicate that responsibility.

Ms. Nailatikau: Thank you, Professor Shamim.

Dr. Fatiaki: Thank you, Mere. Shaista, I'm going to bring the session to a close. I just have one request.

You alluded to the 1990 constitution being discussed or being brought up, and the prospects of that being incorporated into our constitution-making process. Our experience from most of the consultations we've received is where individuals have suggested that we replace the entire 2013 constitution. We asked them, with what? Invariably, almost to a T, it's the 1997 one that they bring up.

I can't offhand recall, certainly in the course of my consultations throughout the country, anyone suggesting that we bring back the 1990 constitution. I'm just interested. Maybe I missed the parts where there were consultations where people actually brought that, or maybe they were in the written ones.

We're in the process right now of collating most of the data, and we'll be deliberating from next week. But I'd be interested in that because, obviously, that would be of concern. I presume the 1997 came out to correct or to even the keel on that unsteady ship of the 1990 constitution.

So just a clarification, please.

Prof. Shamim: Yes, sure. Absolutely.

No, no. The new constitution should look like the 1990 constitution. Not at all.

But just in case you don't look at it, I suggest you look at the 1990 constitution. Of course, it already says 1997 constitution. Lots of issues with the 1990 constitution, you know, what we should be called, and all of that sort of thing.

As far as I'm concerned, if you want to talk about the naming part, I can dwell on that, but I think it's more as a judgment than anything else. But, actually, the 1990 constitution's provisions specifically mention some chapters. So if you would like to have your legal people look at those sections and the chapters, and if there's any shape or form I see, it looks like somebody's promoting that in their submissions to you, you will recognize as where it's coming from.

Dr. Fatiaki: Thank you. Thank you for that.

Prof. Shamim: Not the verification.

I don't think anybody would be foolish enough to think that we can have the 1990 constitution in the back, calling it the 1990 constitution. But if you look at the sentiment in there, and you look at things like the marine spaces, commercial use of marine spaces bill, and the mining bill, I don't know whether they changed it according to how you thought it should be, then you will see that coming through. This is what my, call it a sense or

call it just a long in the truth, if you like, or being there far too long and being through too many crisis and too many constitutions, that I have a sense that there is an element there that in all its innocence, the commission of constitutional commission may not perhaps recognize.

I'm shaking for it. We need to develop an antenna on that.

Dr. Fatiaki: Thank you very much, Shaista.

That clears that up. Look, thank you and your team very much for coming this morning. We appreciate it.

Prof. Shamim: You're on mute.

Dr. Fatiaki: Can you hear me, Shaista? Okay. I was saying thank you very much, you and your team, for coming this morning and making that presentation.

Prof. Shamim: Yes, I can now, thank you.

Dr. Fatiaki: We appreciate it very much. We're very much in the process of completing the collation of all the submissions that have been made this week, and we start our deliberations proper from next week. And we appreciate very much the constitutional law 206, and we might attend in person when you're here in Suva.

But it's good to catch up.

Prof. Shamim: I will invite you, Sarah. Very much so.

I would love that very much. Because, you see, there's a whole lot of things there that I'll be telling you, because that's a two-hour class. I only have one hour before you.

But, you know, there's a whole lot of things there that I think, once you've kind of looked at the references and so on, you will say, all right, well, this is our constitutional development from 1870 onwards or 1874 onwards, and what is it exactly that we're trying to do here? And this could be the one constitutional commission that brings the camel's back.

Dr. Fatiaki: Thank you very much. It's a pleasure to have you this morning and your team, and we look forward to catching up again.

Thank you.

Ms. Nailatikau: Thank you, Professor and team.

Prof. Shamim: Thank you. Good-bye, everyone.

----------End of Session [10-7-2026] ----------

The University of Fiji
(An Entity of Arya Pratinidhi Sabha of Fiji)

SUBMISSIONS TO THE CONSTITUTIONAL REVIEW COMMISSION

JULY 10 2026

Professor Shaista Shameem

Need for a Supreme and Entrenched Constitution?

- Preamble: Law 205 Constitutional Law, JDP SoL first lecture on 24th July. References to the Deed of Cession (clause 4) and Lord Salisbury's Despatch (clauses 17 and 20) there.
- Consider 1970, 1990, 1997 and, reportedly, 2013 Constitutions: common theme.
- Note 1977, 1987, 2007/9.
- What did the Constitutions do to alleviate crises?
- 2013 Constitution: 13 years.

Instead, create strong Legislation

- Bill of Rights Act eg UK, NZ, Aust.
- Electoral Act
- Others.
- Make mandatory references to international human rights instruments in all relevant legislation.

Disquieting Representations to CRC

- Call for provisions resembling the 1990 Constitution. Note Chapter III, and sections 31, 41 and 83 (2).
- Some of these would now be defined as crimes of ethnic discrimination and, indeed, persecution, pursuant to international law and the Rome Statute (ratified by Fiji in 1999) prohibitions.

Rome Statute

- Rule against retrospectivity.
- Does not apply to continuing crimes or those that would have been a crime at the time they occurred had it not been for state immunity.
- In Fiji discrimination was prohibited in the 1970 Constitution (s15).

International Law: Fiji a member of the UN

- Jus cogens and erga omnes obligations:
  - Hierarchy of rule and legal enforcement

  - Prohibition of racial discrimination, so:
    - ✓any state can prosecute.

    - ❖Any attempt to reintroduce provisions of the 1990 Constitution will trigger complaints regarding jus cogens/erga omnes, and the Rome Statute.

When can international law be considered?

Should there be any similarity between the 1990 Constitution and proposed Constitution, or an intention to replicate in shape or form, international law can be invoked.

Hence, it is better not to have a supreme and entrenched Constitution than to regurgitate the 1990 Constitution.

To avoid scrutiny of international law:

- The following human values-derived constitutional principles must apply:

(1) *Constitution as a social contract: John Locke.*

- Government as Trustee of people's will, so power is strictly limited. Breach of trust: breach of social contract.
- Representation of social contract: international human rights law/Bill of Rights- must be correctly applied.
- Exceptions in the public interest, not sectarian interest.

Non- discrimination means right/access to equality

(2) Equality of everyone- see categories in s 26 2013 Constitution.

- Minority and majority populations have equal status. Unlike in the 1990 Constitution.
- Right to be free from discrimination in access to governance, and resources owned or managed by the state.
- No special privileges

Representation in the Electoral System

(3) Democratic Representation

What is democracy? A spectrum.

Libertarian *Liberal* *Totalitarian*

_____Democracy_____

Where do we want to be constitutionally?

Social contract: Equal representation- whatever the mechanics of selection/election.

Separation of Powers

(4) Legislature, Executive and Judiciary

- Sacrosanct
  - Courts do not legislate or impliedly legislate
  - Legislative Power belongs to the people
  - Mandatory words in legislation to be strictly applied. While ouster clauses may be read down they cannot be removed: Legislature still supreme authority.

Fundng State Services

(5) Taxation

- Pegged to sustainable economy in cash and assets including in natural resources.

  - In association with the above, consider, sections 29 and 32 of the 2013 Constitution carefully.

Offences

Against the Constitution or people.

- Domestic criminal laws apply e.g. treason, discrimination, Crimes Act 2009 Parts 10-12.
- Penal Code 1945 (chapters VII and VIII).

Transition Clauses

Only where required for smooth transition.

Amendment of the Constitution

- As Fiji's highest law, requires higher majority.
- Ten year intervals is the norm in Fiji whether by design or by coincidence.

Constitutional Role of all Disciplined Services

Welfare of all the people

Critic and conscience of society

Conclusion

1. No need for a supreme and entrenched Constitution unless we follow all constitutional principles;
2. Ordinary legislation can be sufficiently robust to deal with all matters of public interest with reference to international legal principles of rights and responsibilities in each case;
3. Any constitution resembling the 1990 Constitution codifying the 1987 events and some proposed policy 2001-2007 can be subject to international legal mechanisms and penalties.
4. Human values approach to constitutionalism.

Ministry of Civil Service (MCC) and Public Service Commission (PSC)

PUBLIC SERVICE COMMISSION

LEVEL 3, CIVIC HOUSE
P.O.BOX 2211, GOVT BUILDINGS,
SUVA

PHONE: (679) - 8924323

MAKING A DIFFERENCE

Reference: PSC 3/1

Date: 14 July 2026

The Chairman
Constitution Review Commission
Suva

Dear Chairman

RE: SUBMISSION OF THE PUBLIC SERVICE COMMISSION TO THE CONSTITUTION REVIEW COMMISSION

I am pleased to forward the attached submission by the Public Service Commission (PSC) on matters relating to the constitutional governance of the Public Service. The submission has been considered and approved by the Honourable Prime Minister for transmission to the Constitutional Review Commission.

The Public Service Commission welcomes the opportunity to contribute to this important national exercise and commends the Constitutional Review Commission for undertaking a comprehensive review of Fiji's constitutional framework.

The attached submission outlines the Commission's recommendations to strengthen the governance, management and administration of the Public Service. In particular, it proposes reforms that reinforce the principles of merit, professionalism, accountability, political neutrality and good governance, while restoring clear institutional roles and responsibilities within Fiji's system of public administration.

The Commission trusts that these recommendations will assist the Constitutional Review Commission in its deliberations and contribute towards a constitutional framework that supports an efficient, independent and high-performing Public Service in the best interests of the people of Fiji.

Should the Constitutional Review Commission require any clarification or wish to discuss any aspect of the submission, the Public Service Commission would be pleased to assist.

Yours sincerely,

Luke Rokovada
Chairman Public Service Commission

Received 15/07/26.

PUBLIC SERVICE COMMISSION

LEVEL 3, CIVIC HOUSE
P.O.BOX 2211, GOVT. BUILDINGS,
SUVA

MAKING A DIFFERENCE

PHONE: (679) - 8924323

3 July 2026

Submission by the Public Service Commission on Constitutional Review – Public Service Governance

1.Introduction

The Public Service Commission (PSC) welcomes the opportunity to provide submissions to the Constitutional Review Commission regarding provisions of the Constitution relating to the governance, management and administration of the Public Service.

The Commission is of the view that the constitutional framework should clearly reinforce the principles of good governance, accountability, political neutrality, professionalism and merit-based administration. In this regard, a review of the existing provisions relating to the Public Service is both timely and necessary to ensure that Fiji's constitutional arrangements support an efficient, impartial and high-performing public service.

2. Review of Section 127 – Powers of Permanent Secretaries

The Commission recommends that Sections 127(1), (2), (3), (4), (5), (7) and (8) of the Constitution be reviewed.

These provisions currently confer extensive powers on Permanent Secretaries for the management and administration of their respective Ministries, many of which are exercisable with the agreement of the responsible Minister.

While Permanent Secretaries are accountable for the effective administration of government ministries, the constitutional requirement that certain management functions be exercised with the agreement of the Minister has, in practice, blurred the distinction between political oversight and administrative authority.

This arrangement has, in some instances, resulted in Ministers becoming involved in operational and administrative matters that properly fall within the responsibilities of Permanent Secretaries. Such involvement has the potential to:

- undermine the professional independence of Permanent Secretaries;
- weaken established lines of accountability;
- create uncertainty in administrative decision-making;
- reduce operational efficiency; and
- adversely affect the morale and effectiveness of senior public service leadership.

The Commission therefore recommends that the requirement for Permanent Secretaries to exercise administrative powers "with the agreement of the Minister" be removed from the Constitution.

Permanent Secretaries should remain fully accountable for the management, administration and performance of their Ministries, while Ministers should exercise their constitutional responsibility by providing policy direction, setting strategic priorities and ensuring political accountability to Cabinet and Parliament.

This clearer separation of responsibilities would be consistent with internationally recognised Westminster principles of public administration.

3. Restoration of the Constitutional Role of the Public Service Commission

The Commission further recommends that certain powers presently vested directly in Permanent Secretaries be restored to the Public Service Commission.

Historically, under both the 1970 Constitution and the 1997 Constitution, the Public Service Commission exercised constitutional oversight of appointments, discipline, promotions, transfers and other key human resource functions across the Public Service. These arrangements strengthened merit-based appointments, consistency of standards and institutional independence.

Reinstating appropriate constitutional authority to the Commission would:

- reinforce the independence and integrity of the Public Service;
- strengthen merit-based employment practices;
- promote consistency in human resource management across government;
- provide appropriate oversight over senior public service appointments; and
- enhance public confidence in the impartial administration of government.

4. Clarifying the Distinct Roles of Ministers and Permanent Secretaries

The Commission recommends that the Constitution more clearly define the respective responsibilities of Ministers and Permanent Secretaries.

Ministers should principally be responsible for:

- policy development;
- strategic direction;
- legislative programmes;
- Cabinet decisions;
- parliamentary accountability;
- national priorities; and
- political leadership.

Permanent Secretaries should be responsible for:

- implementation of Government policies;
- operational management of Ministries;
- financial management and resource stewardship;
- organisational leadership;
- human resource management; and
- delivery of public services.

Maintaining this distinction is fundamental to preserving a politically neutral, professional and performance-driven Public Service.

5. Realignment of Public Service Governance Arrangements

The Commission also recommends a review of the current governance arrangements whereby the Public Service Commission operates separately from the Ministry responsible for the Civil Service.

Consideration should be given to re-establishing a more integrated public service governance framework in which the Public Service Commission resumes its constitutional leadership role over public service management, while Ministries provide the necessary administrative and policy support.

This approach would more closely reflect the institutional arrangements that existed under previous constitutional and legislative frameworks and would promote greater consistency, accountability and strategic leadership across the Public Service.

6. Relocating Administrative Provisions from the Constitution to Legislation

The Commission recommends that many of the detailed administrative provisions currently contained in the Constitution, including those relating to the powers and functions of Permanent Secretaries be removed from the Constitution and incorporated into the Public Service Act.

Administrative powers are more appropriately contained within ordinary legislation rather than constitutional text.

Unlike constitutional provisions, legislation can be reviewed and amended by Parliament as administrative practices evolve and government priorities change. This provides greater flexibility while preserving constitutional stability.

Accordingly, the Public Service Act should carefully prescribe the powers, responsibilities and accountabilities of Permanent Secretaries, together with the governance arrangements for the Public Service.

7. Pacific Public Service Commission Collaboration

Furthermore, Fiji's Public Service Commission is part of a strong and well-established network of Public Service Commissions and equivalent constitutional bodies across the Pacific region. More than ten of the sixteen Pacific Island countries plus Australia and New Zealand maintain Public Service Commissions or comparable institutions with constitutional or legislative responsibility for safeguarding merit-based appointments, promoting integrity and ensuring professionalism and political neutrality within the public service. Fiji's Public Service Commission is widely recognised within this regional network for its leadership, contribution to public sector reform and commitment to strengthening good governance.

This regional standing was further demonstrated in 2025 when Fiji successfully hosted the Pacific Public Service Fono, bringing together delegates from all sixteen Pacific Island countries as well as Australia and New Zealand. The Fono provided a valuable platform for dialogue, collaboration and the exchange of innovative public sector practices across the region. Fiji's leadership in convening this important regional forum was widely acknowledged and reinforced its reputation as a leader in public sector governance and reform within the Pacific.

A particular highlight of the Fono was the introduction of the Fiji Learning Institute for Public Service (FLIPS), which attracted significant interest and commendation from participating countries. FLIPS is recognised as an innovative initiative with the potential to evolve into a regional centre of excellence for public service learning, leadership development and professional capacity building for Pacific public servants. This initiative reflects Fiji's commitment to investing in the future capability of the public service, not only nationally but across the wider Pacific region.

Through regular collaboration, knowledge sharing, benchmarking of best practices and capacity-building initiatives, the Pacific Public Service Commissions continue to work collectively to strengthen public administration across the region as a collective. This collaboration is facilitated and supported by the Public Service Fale, based in New Zealand, which coordinates regional engagements and provides technical resources to promote institutional development and cooperation amongst Pacific Public Service Commissions.

The consistency of the constitutional roles and responsibilities undertaken by these independent Commissions across the Pacific further reinforces the importance of preserving and strengthening the constitutional mandate of the Fiji Public Service Commission. The Commission therefore respectfully submits that the proposed constitutional amendments are not only consistent with Fiji's governance needs but are also aligned with recognised regional principles and established Pacific practice in ensuring an independent, professional, merit-based and accountable public service.

8. Conclusion

The Commission considers that the proposed reforms would strengthen Fiji's system of public administration by restoring clear institutional accountability, reinforcing the constitutional independence of the Public Service Commission and re-establishing the proper separation between political leadership and administrative management.

These reforms would also align Fiji's public service governance arrangements more closely with established principles, promote professionalism and merit within the Public Service and enhance the effective delivery of government services to the people of Fiji.

The Public Service Commission respectfully submits these recommendations for the consideration of the Constitutional Review Commission.

Yours sincerely

Luke Rokovada
Chairman Public Service Commission

People's First Party (PFP)

PEOPLE FIRST

09/07/2026

The Chairperson
Constitution Review committee
Suva

Re: Invitation For Submission before Constitution Review Committee

People First Party acknowledges your invitation to appear before the Constitution Review Commission and to make submissions on the review of the 2013 Constitution. The Board of Governor have given careful consideration to the invitation and have consulted extensively before arriving at our position.

The People First Party is founded on enduring democratic values and principles. We believe in the supremacy of the 2013 Constitution, the rule of law, democracy, equality of all citizens, accountable and transparent government, respect for human rights and institutions that operate independently and within the limits prescribed by law. We believe that governments derive their legitimacy from adherence to the Constitution and that no person or institution is above the law. These principles are fundamental to maintaining public confidence in our democracy and ensuring that Fiji continues to develop as a nation founded upon justice, equality and respect for all its people.

It is through these principles that we have considered the work of the Constitution Review Commission.

Constitutions may, from time to time, require amendment to reflect the aspirations of the people and the evolving needs of the nation. However, any amendment to the supreme law must itself be undertaken strictly in accordance with the procedures prescribed by that supreme law. Constitutionalism demands no less.

The People First Party is firmly of the view that the present process departs from the constitutional framework established by the 2013 Constitution for its amendment. The Constitution expressly provides the mechanism by which it may be amended. Those requirements were deliberately included to safeguard the stability of the Constitution, preserve democratic legitimacy and ensure that constitutional change commands broad national support. Those safeguards should not be circumvented or rendered ineffective through alternative processes.

It is our considered position that constitutional reform cannot be pursued by first departing from the Constitution itself. Respect for the rule of law requires that the Constitution be amended only in the manner that the Constitution prescribes. To do otherwise would undermine the principle of constitutional supremacy and weaken public confidence in the integrity of our democratic institutions.

PEOPLE FIRST

The People First Party also notes that the Constitution Review Commission was established through a process in which the Opposition was neither consulted nor involved. While we acknowledge the Commission's invitation, our participation in these circumstances could reasonably be interpreted as legitimising or endorsing a process that we believe is inconsistent with the constitutional framework governing constitutional amendment. We are therefore unable, in good conscience and consistent with our principles, to participate in the Commission's proceedings.

Our position is also one of consistency and integrity. The People First Party has consistently maintained its position regarding the constitutional amendment process, including representing these views within Parliament. It would therefore be inconsistent with our stated commitment to constitutionalism and the rule of law to participate in a review process founded upon a methodology that we believe does not comply with the constitutional requirements for amendment.

The People First Party further believes that the Government's immediate priority should remain the welfare of the people of Fiji. At a time when many sectors continue to face significant economic and social challenges, public resources should be directed towards improving essential services, supporting economic growth, creating employment opportunities and addressing the everyday concerns of ordinary Fijians. Constitutional reform, if pursued, must be undertaken lawfully, transparently and at the appropriate time through the proper constitutional processes.

Notwithstanding our decision not to participate before the Commission, we reaffirm our longstanding support for the preservation of Fiji as a secular State, the retention of common and equal citizenry for all Fijians and the continuation of the current electoral system that upholds equality of every citizen's vote. These remain important constitutional principles that the People First Party has consistently advocated.

Finally, the People First Party firmly believes that the proper forum for considering any proposal to amend the Constitution is the Parliament of the Republic of Fiji. Parliament is the constitutionally established institution entrusted by the people with debating legislation, scrutinising proposed constitutional amendments and determining whether the constitutional thresholds for amendment have been satisfied. It is through Parliament and in strict compliance with the amendment procedures prescribed by the Constitution itself, that any proposal to amend the Constitution should property be considered. That is the lawful, transparent and genuinely democratic process contemplated by the Constitution and it is one that the People First Party will continue to uphold.

PEOPLE FIRST

Accordingly, as per the resolution of Board of Governors, the party respectfully declines the invitation to participate in the proceedings of the Constitution Review Commission and submit this statement to formally record the reasons for our position.

Yours Sincerely

.....

Ema Damila
General Secretary
People First

Lau Provincial

LAU PROVINCIAL COUNCIL

Tubou, Lakeba/Vanuabalavu/Moala/Yatu Lau Arcade, Suva

LAU PROVINCIAL COUNCIL

3rd Floor, Yatu Lau Arcade, Suva
Phone: 3316801
Email: lauprovince@gmail.com

Ref: **Date: 05/06/26**

The Chairman

Fiji Constitution Review Commission

Suvavou House

SUVA

Dear Chairman,

RE: LODGEMENT OF THE SUBMISSION OF THE VANUA O LAU

On behalf of the Vanua o Lau, and under the traditional authority of the Gone Turaga Bale na Tui Nayau, Sau ni Vanua ko Lau, Tui Lau - Ratu Tevita Lutunauga Kapaiwai Uluilakeba Mara - I have the honour to lodge with the Commission the enclosed submission of the Province of Lau, together with a one-page summary.

The submission was formally tabled before, and endorsed by, the Bose Vanua o Lau at Studio 6, Suva, on Monday, 13 July 2026. It bears the signatures of the Gone Turaga Bale na Tui Nayau, the Masi ni Vanua ko Lau, and the leadership of the Lau Provincial Council, and is presented as the settled and collective word of the whole Vanua - its chiefs, its council, and its people.

The Vanua o Lau is sincerely grateful to you and to the Commission for the patience and respect shown to us in receiving this submission beyond the closing date, so that it could first pass through the proper processes of the Vanua. We do not take that courtesy lightly.

The submission addresses fourteen areas of constitutional concern, together with a proposed preamble for the revised Constitution. Should the Commission wish to hear further from the Province on any part of it, our delegation - led by the chiefs of Lau - remains at the Commission's service and can make itself available at short notice.

We thank you and your fellow Commissioners for your work, and wish you well in the great task before you.

Yours faithfully,

.....
J. T. Kalounivalu
ROKO TUI LAU
For and on behalf of the Vanua o Lau

Encl: (1) Submission of the Vanua o Lau (signed); (2) One-page summary.

SUBMISSION TO THE

FIJI CONSTITUTION REVIEW COMMISSION

FROM THE PROVINCE OF LAU

Under the Traditional Leadership of

Gone Turaga Bale na Tui Nayau, Sau ni Vanua ko Lau, Tui Lau

Ratu Tevita Lutunauga Kapaiwai Uluilakeba Mara

and his Masi ni Vanua ko Lau

Presented by:

The Vanua o Lau

July 2026

PREAMBLE

The Province of Lau, through its Provincial Council and under the august traditional authority of the Gone Turaga Bale na Tui Nayau, Sau ni Vanua ko Lau, Tui Lau - Ratu Tevita Lutunauga Kapaiwai Uluilakeba Mara - and his Masi ni Vanua ko Lau, respectfully submits this document to the Fiji Constitution Review Commission.

Lau holds a unique and distinguished place in the story of this nation. It was in Lakeba - the seat of the Tui Nayau and the heart of Lau - that Christian missionaries were first received in 1835 by the paramount chief of the day, marking the beginning of a transformation that would reshape the spiritual, social, and political life of Fiji. It was the chiefs and people of Fiji who, by their own sovereign will, ceded these islands to the British Crown by the Deed of Cession of 10 October 1874 - an instrument that bears, among the signatures of the high chiefs, that of the Tui Lau of the day, Ratu Enele Ma'afu, who signed on behalf of the Turaga Tui Nayau and his people of Lau. And it was a son of Lau - Ratu Sir Kamisese Mara, then Turaga Tui Nayau - who, as Fiji's first Prime Minister, received the constitutional instruments of independence in 1970, under a framework that honoured the covenant between the Vanua, the Church, and the State.

The Province of Lau therefore approaches this review not merely as a matter of legal reform, but as a matter of ancestral obligation - an obligation to the generations who have gone before and those who will come after. This review is an undertaking of the highest national consequence: it is the opportunity to set the foundations of our nation right again - to restore its moral compass, and to lay a constitutional foundation upon which inclusivity, unity, and shared prosperity may be built for every citizen of Fiji. We urge the Commission to approach its mandate with the solemnity that this moment demands.

The Province of Lau acknowledges the advisory opinion of the Supreme Court of Fiji delivered in 2025, which affirmed that the 2013 Constitution remains the supreme law of Fiji while clarifying the pathway by which it may lawfully be amended. These submissions are made within, and in full respect of, that lawful process of review and reform.

Our submissions address fourteen areas of particular concern. They are offered in a spirit of unity, inclusion, and enduring love for Fiji - our island home.

SUBMISSION 1

Restoring the Powers and Dignity of the Great Council of Chiefs (GCC)

The Province of Lau firmly supports the call, made by the GCC and others, to restore appropriate authority and constitutional recognition to the Great Council of Chiefs.

The Great Council of Chiefs is not a relic of the past. It is the living institutional expression of the covenant made in 1874, when the paramount chiefs of Fiji - exercising their sovereign

authority over the Vanua - ceded these islands to Queen Victoria in an act of considered statesmanship. That covenant, and the role of the chiefs within it, was honoured in every constitution Fiji has known prior to the 2013 Constitution. Its removal was an act of constitutional erasure that this review must address.

The Province of Lau recommends the following:

- The GCC be restored as a constitutional body with clearly defined powers, including the authority to appoint or confirm the President and Vice-President of the Republic, as provided under section 90 of the 1997 Constitution.
- The reformed GCC must be explicitly apolitical. It must not serve as an instrument of any political party or government of the day.
- While rooted in iTaukei tradition and serving primarily as the apex body of indigenous Fijian leadership, the GCC in its reformed character should reflect a broad custodianship - one that, by safeguarding the Vanua, ultimately looks after all citizens of Fiji regardless of race or religion.
- The new GCC should represent a decisive break from past failures. Its composition, deliberative processes, and accountability mechanisms should be modernised while retaining the inviolable principle of chiefly authority and customary legitimacy.

SUBMISSION 2

Restoring the Authority and Dignity of the Office of the President, and the Office of Vice-President

The Province of Lau submits that the Office of the President must be restored to the constitutional standing it held under the 1997 Constitution - as a substantive Head of State, appointed through the Great Council of Chiefs, exercising real constitutional authority as Commander-in-Chief of the Republic of Fiji Military Forces, and supported by a Vice-President.

Under the 1997 Constitution, the executive authority of the State was vested in the President (section 85); the President was the Commander-in-Chief of the military forces (section 87); the President and Vice-President were appointed by the Bose Levu Vakaturaga - the Great Council of Chiefs - following consultation with the Prime Minister (section 90); and the Republic of Fiji Military Forces were expressly made subject to the control of the responsible Minister (section 112). Taken together, these provisions placed the Presidency above partisan politics, anchored its legitimacy in the chiefly institutions of the Vanua, and located the military within a clear and accountable chain of civilian constitutional authority.

The 2013 Constitution dismantled this architecture. While section 81(3) retains for the President the title of Commander-in-Chief, the title is ceremonial in substance: section 82

requires the President to act only on the advice of Cabinet or a Minister, and section 131 vests effective authority over the Republic of Fiji Military Forces in a Commander appointed on the advice of the Constitutional Offices Commission - a body dominated by the Prime Minister and the Attorney-General. Unlike the 1997 Constitution, the 2013 Constitution contains no provision subjecting the military to ministerial control, and section 131(2) confers upon the military itself the elastic and dangerous mandate to ensure "at all times the security, defence and well-being of Fiji and all Fijians" - a provision that has been invoked to assert a self-appointed guardianship over the political life of the nation. The Office of Vice-President was abolished altogether.

The Province of Lau states its position on section 131(2) with respect, but without equivocation: the provision must be removed from the Constitution altogether. In no comparable constitutional democracy is a nation's military granted, in the constitution itself, an open-ended responsibility for the "well-being" of the nation and its people. In the democracies of the Commonwealth and beyond, the armed forces are established and their functions defined by ordinary legislation, under the control of a responsible Minister and the oversight of Parliament - they defend the nation; they do not superintend it. A constitutional clause that invites the military to judge for itself when the "well-being" of the nation requires its intervention is not a security provision. It is a standing charter for extra-constitutional action, and Fiji's own history has shown where such reasoning leads. The guardianship of the Constitution belongs to the people, the Parliament, and the courts - never to the barrel of a gun. Removing this provision takes nothing of honour from the Republic of Fiji Military Forces; it restores the RFMF to the noble and clearly bounded role in which its service to the nation, at home and in peacekeeping abroad, has earned genuine distinction.

The Province of Lau recommends that the Commission:

- Restore the President as the substantive Head of State in whom the executive authority of the State is vested, exercising defined constitutional powers - including appropriate reserve powers - as under the 1997 Constitution.
- Restore the appointment of the President by the Great Council of Chiefs, following consultation with the Prime Minister, so that the Head of State stands above party politics and draws legitimacy from the enduring institutions of the Vanua as well as the State.
- Re-establish the Office of Vice-President, appointed in the same manner, to ensure continuity, stability, and dignity in the highest offices of the land.
- Restore the President as Commander-in-Chief of the Republic of Fiji Military Forces in substance and not merely in name, with the Commander of the RFMF constitutionally accountable to the President as Commander-in-Chief, within a clear framework of civilian and parliamentary oversight.

- Repeal section 131(2) of the 2013 Constitution in its entirety, removing from the Constitution the RFMF's self-standing mandate over the "security, defence and well-being of Fiji and all Fijians." The functions of the RFMF should instead be defined by an Act of Parliament, confined to the defence of Fiji, the protection of its territorial integrity, and such duties in aid of the civil power as are prescribed by law - so that no provision of the Constitution may ever again be read as licensing extra-constitutional intervention in the government of the nation.
- Restore an express provision, in the manner of section 112 of the 1997 Constitution, placing the Republic of Fiji Military Forces under the control of a responsible Minister answerable to Parliament.

SUBMISSION 3

Indigenous Fijian and Rotuman Rights

The Province of Lau affirms its staunch support for the explicit and robust constitutional protection of the rights, interests, and concerns of the indigenous iTaukei people and the people of Rotuma.

Previous constitutions of Fiji recognised that indigenous Fijians occupy a position of special historical, cultural, and proprietary significance in this land. These protections were not discriminatory - they were an acknowledgement of historical truth and an act of constitutional justice. Their weakening or removal in 2013 left the Vanua exposed and its people diminished in their own homeland.

We call upon the Review Commission to:

- Restore explicit constitutional protections for the rights of iTaukei and Rotuman peoples as previously enshrined.
- Ensure that indigenous land rights, customary rights, and resource rights are afforded the highest order of constitutional protection.
- Provide that no future Parliament may diminish these rights without the consent of the communities concerned, expressed through appropriate consultative mechanisms including the GCC.

SUBMISSION 4

The Definition of the Term 'Fijian'

The Province of Lau raises its deepest concern regarding the unilateral redefinition of the term 'Fijian' imposed by the 2013 Constitution. That constitution, adopted without meaningful consultation with the iTaukei people or the Great Council of Chiefs, took from

indigenous Fijians the name by which they had been known for generations, and assigned it as a common civic identity for all citizens of the Republic.

This was not merely a matter of nomenclature. It was an act of cultural dispossession. The term 'Fijian' carries within it the history, the ancestral identity, and the living culture of the iTaukei people. To strip that term from them - without their knowledge or consent - was a profound injustice.

We note that before 2013, the term 'Fiji Islander' served as a widely accepted and unifying common name for all citizens of Fiji, regardless of ethnicity. Each community retained its own distinct ethnic identity - iTaukei, Indo-Fijian, Part-European, Chinese, Rotuman, and others - which is the very diversity and beauty of this nation.

The Province of Lau submits that:

- The question of whether the term 'Fijian' should be exclusively reserved for the indigenous iTaukei people must be put back to the people of Fiji - through proper, meaningful, and unhurried consultation.
- The Great Council of Chiefs must be central to that consultative process, and its endorsement should be a prerequisite to any final determination.
- In the interim, the Province of Lau holds that the restoration of 'Fiji Islander' as the common civic name for all citizens - while preserving 'Fijian' for the indigenous people - is a fair, dignified, and workable solution.

SUBMISSION 5

Electoral System Reform

The Province of Lau supports the proposal to move away from the current single-national-constituency electoral system and to explore a return to a multi-constituency system.

The current system, in which all of Fiji constitutes a single electoral constituency, has demonstrably failed to produce a parliament that is truly representative of the nation's geographic and demographic diversity. Remote island provinces such as Lau, with smaller voter populations, find their voices diluted and their specific concerns marginalised in a system that rewards population concentration and well-resourced national campaigns.

The Province of Lau recommends that the Review Commission:

- Restore a multi-constituency electoral system that ensures every province and region of Fiji has meaningful representation in Parliament.

- Consider appropriate mechanisms to ensure that the people of Lau and other remote or smaller provinces are not disadvantaged by geographic isolation in exercising their democratic rights.
- Explore electoral models from comparable island nations that have successfully balanced proportional representation with geographic representation.

Candidacy Requirements and the Fijian Diaspora

The Province of Lau urges the Review Commission to fundamentally rethink who may stand for election in Fiji. A multi-constituency system is only as strong as the pool of candidates it draws upon. The nation needs the very best of its people to step forward and lead - and current eligibility rules are shutting many of those people out.

In a multi-constituency system, the Province of Lau submits that any person should be eligible to stand for election in a constituency provided they can demonstrate sufficient and genuine connection to that constituency - whether through heritage, birth, or longstanding affiliation. This principle honours the organic ties that bind citizens to place without erecting arbitrary bureaucratic barriers against those whose lives have taken them beyond our shores.

The Province of Lau is particularly concerned about the position of the Fijian diaspora. Hundreds of thousands of Fijians live and work abroad - driven by the realities of international mobility, professional opportunity, and global interconnection. These are not disloyal citizens. They are, in many cases, among the most capable, educated, and experienced people Fiji has produced, and they remain fiercely loyal to this land. The remittances they send home - now exceeding one billion Fijian dollars annually - sustain families and communities across the nation and constitute one of the largest sources of foreign exchange in the economy. Fiji cannot afford to treat these citizens as second-class participants in its democracy.

The Province of Lau therefore calls for the removal of the following unduly restrictive requirements that currently bar many qualified citizens from standing for election:

- The requirement that a citizen must have resided in Fiji for a continuous period of two years immediately prior to nomination should be removed. This rule disproportionately penalises those who have been engaged in meaningful professional, academic, or service-related work abroad - precisely the experience Fiji needs at the helm of government.
- The requirement to renounce dual citizenship as a condition of standing for election should be abolished, particularly for indigenous Fijians who are registered in the Vola ni Kawa Bula (VKB). Registration in the VKB is the most definitive and irreducible expression of iTaukei identity. No administrative requirement related to a foreign

passport should be permitted to override that fundamental ancestral connection or bar an iTaukei citizen from serving their people.

- Diaspora Fijians - including iTaukei, Indo-Fijian, and other communities living abroad - have accumulated extraordinary experience in international institutions, foreign governments, global business, medicine, law, academia, and the military. Fiji urgently needs this depth of experience and expertise to meet the challenges of the twenty-first century. These citizens should be welcomed back into public life, not excluded from it.

Disclosure Requirements

The Province of Lau further calls for a thorough and balanced review of the disclosure requirements currently imposed on candidates and elected officials. While the Province firmly supports transparency and accountability in public life - both as a principle and as a practical safeguard against corruption - the current disclosure regime has in some respects become an instrument of deterrence rather than accountability.

Requirements that are excessively burdensome, intrusive into the lives of family members, or that expose candidates to undue legal risk from inadvertent non-disclosure discourage public service among precisely those citizens who have the most to offer. The Review Commission should consider how disclosure obligations can be calibrated to achieve genuine accountability without becoming a barrier to candidacy for well-qualified individuals - particularly those who have built careers and assets across multiple jurisdictions through legitimate international endeavour.

SUBMISSION 6

The Role of Christianity and Religion in the Constitution

The Province of Lau calls for explicit constitutional acknowledgement of the role of Christianity in the life of Fiji and of its people.

The acceptance of Christianity by the paramount chiefs and people of Fiji was not imposed. It was an act of sovereign and spiritual will. It began in 1835, when the then Turaga Tui Nayau - paramount chief of Lau - received Christian missionaries at Lakeba and gave them the freedom to proclaim the Gospel. From that moment, the light of Christianity spread outward from Lau across the archipelago, and in the generations that followed, Fiji was transformed.

This is not merely religious history. It is national history. Christianity predates the modern Fijian state by nearly four decades. It is woven into the culture, language, values, and identity of the iTaukei people, and into the moral fabric of the nation as a whole. Indeed, the preamble to the 1997 Constitution itself recorded the conversion of the indigenous

inhabitants of these islands to Christianity and its enduring influence, alongside the contribution of other faiths, to the spiritual life of Fiji.

Fiji Day as a National Day of Prayer. The Province of Lau further submits that Fiji Day, the tenth day of October, should be observed as a National Day of Prayer and Thanksgiving. Providence has joined upon this single date the two defining covenants of our nationhood: the Deed of Cession of 10 October 1874, by which the paramount chiefs entrusted these islands in faith to a higher protection, and the Independence of 10 October 1970, by which the nation received back its sovereignty in peace and unity. It is fitting that a day already set apart to remember these covenants should also be a day on which the nation pauses - in its churches, temples, mosques, homes, and villages - to give thanks to God for the gift of this land, to pray for its leaders and people, and to renew the bonds of unity between all its communities. A National Day of Prayer would take nothing from any citizen; it would call every citizen, each according to their own faith and conscience, to the shared work of gratitude, reflection, and reconciliation.

The Province of Lau submits that:

- The Constitution should explicitly acknowledge, in its preamble and founding provisions, the Christian foundations of the Fijian state and the centrality of Christianity to the history and identity of its people.
- The current formulation of the "Secular State" provision in section 4 of the 2013 Constitution should be reviewed, so that the Constitution speaks truthfully of the nation's Christian heritage rather than treating faith as a matter foreign to the life of the State.
- Fiji Day, 10 October, be designated a National Day of Prayer and Thanksgiving - commemorating the Cession of 1874 and the Independence of 1970 - on which all citizens are invited, each according to their own faith and conscience, to give thanks for the nation, to pray for its leaders and people, and to renew the unity of all its communities.
- This acknowledgement must be made with full and genuine respect for the rights of all religious communities in Fiji - and of those of no faith - to practise and profess their beliefs freely, without discrimination, and with the freedom of religion guaranteed as a fundamental right of all citizens. The acknowledgement of our Christian heritage is an act of historical truth and national identity; it is not, and must never become, an instrument of exclusion.

SUBMISSION 7

Land, Resources, and Customary Rights

The Province of Lau strongly endorses the strengthening of constitutional protections for iTaukei proprietary and customary rights, particularly with respect to land and marine natural resources.

iTaukei land is not simply an economic asset. It is the physical and spiritual inheritance of the Vanua - the foundation upon which identity, culture, and community are built. Previous constitutions of Fiji protected this understanding. The Province of Lau calls for its full restoration.

We further submit the following additional recommendations:

- The lease formulae governing the use of iTaukei land must be comprehensively reviewed to ensure that landowners receive fair and equitable compensation that genuinely reflects the value of their lands and resources.
- Mechanisms for periodic review of lease terms should be constitutionally or legislatively mandated to prevent long-term exploitation of landowners operating under outdated or inequitable arrangements.
- Special-purpose vehicles and joint-venture partnerships between landowners and leaseholders should be encouraged and facilitated, including revenue-sharing arrangements under which leaseholders share a fair and agreed portion of the income derived from the land with the landowning units.
- The rights of iTaukei communities over their customary fishing grounds (qoliqoli), maritime resources, and other natural endowments should receive constitutional protection equivalent to that afforded to land rights.
- The governance and accountability mechanisms of the iTaukei Land Trust Board (TLTB) should be strengthened to ensure that it faithfully serves the interests of landowners.

SUBMISSION 8

Review of the Bill of Rights (Chapter 2 of the 2013 Constitution)

The Province of Lau submits that a thorough and principled review of the Bill of Rights in Chapter 2 of the 2013 Constitution is warranted and overdue. We affirm without reservation our commitment to the protection of fundamental rights and freedoms for all citizens of Fiji. Our concern is that the 2013 Bill of Rights, in its present form, promises more than it delivers.

The defect lies principally in the limitation clauses. Nearly every substantive right in Chapter 2 is accompanied by broad qualifications permitting limitation by law on expansive and loosely defined grounds. In practice, these provisions allow the rights they accompany to be hollowed out by ordinary legislation and executive action. A right that may be limited whenever Parliament or the executive considers it convenient is not a constitutional guarantee; it is a discretion dressed in the language of one.

The Province of Lau accordingly recommends that the Commission:

- Review every limitation clause in Chapter 2 and replace the current open-ended formulations with a single, general limitation provision requiring that any limitation of a right be prescribed by law, pursue a legitimate purpose, and be demonstrably reasonable, necessary, and proportionate in a free and democratic society - the standard applied in comparable constitutional democracies and under the 1997 Constitution.
- Ensure that the courts retain full jurisdiction to review any law or conduct limiting a protected right, and that no provision of the Constitution places any law, decree, or act of the executive beyond judicial scrutiny.
- Review the socio-economic rights provisions of Chapter 2, which are presently qualified by reference to the availability of State resources in terms that risk rendering them unenforceable in practice, and consider how these rights can be given genuine and progressive effect.
- Examine the interaction between the Bill of Rights and the immunity provisions of Chapter 10, and consider whether blanket and perpetual immunities - placed beyond amendment or judicial review - are compatible with the equal protection of the law promised to every citizen.
- Conduct this review in a spirit of genuine inclusion - giving voice not only to legal experts and political parties, but to the Vanua, the Church, the provinces, NGOs, and the communities of Fiji whose daily lives are shaped by these foundational provisions.

SUBMISSION 9

Independence of the Judiciary and Institutional Accountability

The Province of Lau calls for thorough constitutional reform to restore the integrity and genuine independence of the judicial branch and all state institutions.

A fundamental principle of democratic governance is the separation of powers - the independence of the legislature, the executive, and the judiciary from one another. This principle was deeply undermined in Fiji during the period of the previous government. The

compromise of the judicial system - through appointments, removals, and political interference - inflicted lasting damage on public trust in the rule of law.

The Province of Lau recommends that the Constitution:

- Enshrine the full independence of the judiciary with robust protections against executive interference in the appointment, tenure, and removal of judicial officers.
- Provide clear separation of powers between the legislature, the executive, and the judiciary, with each arm of the state constrained to its proper constitutional role.
- Establish a transparent, independent, and merit-based process for judicial appointments, insulated from political patronage.
- Provide for the accountability of all three branches of government to the Constitution and to the people of Fiji, rather than to one another.

SUBMISSION 10

Rebalancing Executive Power: The Offices of the Prime Minister and the Attorney-General

The Province of Lau submits that one of the gravest structural defects of the 2013 Constitution is the extraordinary concentration of appointment and gatekeeping power in just two offices: the Prime Minister and the Attorney-General. This concentration is not incidental. It runs as a design principle through the entire document, and it must be dismantled if the independence of Fiji's institutions is ever to be more than a phrase.

The Commission need look no further than the text of the 2013 Constitution itself:

- The Chief Justice and the President of the Court of Appeal are appointed by the President on the advice of the Prime Minister, who is required only to consult the Attorney-General (section 106(1)). The two most senior judicial offices in the land are, in substance, in the gift of the head of government.
- All other judges are appointed on the recommendation of the Judicial Services Commission - but only following consultation with the Attorney-General (section 106(2)); and the appointed members of the Judicial Services Commission itself are selected following consultation with the Attorney-General (section 104). A political officeholder, and a practising litigant before the courts on behalf of the State, thus sits at the gateway of every judicial appointment in Fiji.
- The Director of Public Prosecutions - whose independence from politics is the first condition of impartial criminal justice - is likewise appointed following consultation with the Attorney-General (section 117), as are the Commissioner and Deputy Commissioner of the Fiji Independent Commission Against Corruption (section 115).

- The Mercy Commission, which advises on the prerogative of mercy, is chaired by the Attorney-General (section 119).
- The Constitutional Offices Commission - which advises on the appointment of the Commander of the Republic of Fiji Military Forces (section 131(4)), the Commissioner of Police, the Supervisor of Elections, and other key constitutional offices - is chaired by the Prime Minister, includes the Attorney-General as a permanent member, and is structured so that appointees of the government of the day form a majority (section 132). The offices meant to check the executive are appointed by a body the executive controls.
- Beyond the Constitution, ordinary legislation compounded the problem: for a decade, the Attorney-General also served as the Minister responsible for elections and the electoral machinery - placing the referee's whistle in the hand of a player on the field.

No democracy can remain healthy when the judiciary, the prosecution service, the anti-corruption commission, the military command, the police, and the electoral machinery all pass through the hands of the same two officeholders. Whatever the intentions of any particular government, the architecture itself is an invitation to abuse - and Fiji's recent history records that the invitation was accepted.

The Province of Lau recommends that the Commission:

- Remove the Attorney-General entirely from the processes of appointing judges, the Director of Public Prosecutions, the FICAC Commissioner, and the members of the Judicial Services Commission. The Attorney-General is the government's chief legal adviser and its principal litigant; that office must have no role in choosing the judges and prosecutors before whom the State appears.
- Reconstitute the Constitutional Offices Commission with a balanced membership - including genuinely independent members and equal representation of government and opposition - so that no government of the day commands a majority over the appointment of the offices designed to hold it to account.
- Provide that the Mercy Commission be chaired by an independent person of judicial standing, not by a serving member of Cabinet.
- Entrench in the Constitution the principle that responsibility for the administration of elections must rest with an independent Electoral Commission answerable to Parliament, and may never be assigned to a minister who is a candidate or partisan in those elections.
- Adopt as a general drafting principle for the revised Constitution that no single officeholder may combine political office with gatekeeping authority over judicial, prosecutorial, electoral, or integrity institutions.

SUBMISSION 11

Institutional Integrity: Reform of FICAC and Anti-Corruption Bodies

The Province of Lau calls for meaningful reform of the Fiji Independent Commission Against Corruption (FICAC) to ensure it operates as a truly independent, effective, and procedurally fair institution.

Anti-corruption bodies derive their legitimacy - and their effectiveness - from their independence. An institution whose leadership is appointed following consultation with a member of the executive, and which combines within itself the powers to investigate, to charge, and to prosecute, concentrates precisely the kind of unchecked authority that anti-corruption institutions exist to prevent. The events of recent years surrounding FICAC have demonstrated, painfully and publicly, the consequences of this flawed design.

The Province of Lau submits that the surest safeguard is the separation of the investigative and prosecutorial functions. This is the settled practice of the most respected anti-corruption frameworks in the world. In New South Wales, the Independent Commission Against Corruption investigates and reports, but has no power to prosecute; briefs of evidence are referred to the Director of Public Prosecutions, who decides independently whether charges should be laid. In Hong Kong, whose ICAC served as the very model for Fiji's commission, no prosecution may be commenced by the ICAC except with the consent of a separate prosecuting authority, the Department of Justice. In Singapore, the Corrupt Practices Investigation Bureau investigates, but decisions to prosecute rest with the Public Prosecutor. In Botswana, the Directorate on Corruption and Economic Crime likewise refers its cases to the Directorate of Public Prosecutions. The lesson of these jurisdictions is uniform: the body that investigates should not be the body that decides who stands trial.

The Province of Lau recommends that:

- FICAC be confined to investigative functions only. Its prosecutorial powers should be removed, and all decisions to charge and prosecute corruption offences should rest exclusively with the Office of the Director of Public Prosecutions, whose constitutional independence must itself be strengthened as set out in Submission 10.
- The FICAC Act be comprehensively reviewed and reformed to remove any line of accountability from FICAC to the Attorney-General or any other member of the executive branch.
- FICAC be made directly accountable to Parliament, reporting to a dedicated parliamentary committee in a manner that ensures transparency while preserving operational independence.

- The Commissioner of FICAC be a person of the highest legal standing - equivalent in standing and qualifications to a Judge of the High Court - with extensive experience in the law, public administration, or anti-corruption practice.
- The appointment of the Commissioner be made through an independent, merit-based, and publicly accountable process, free from executive involvement or consultation.

SUBMISSION 12

The Rights of Children and the Recognition of Lawful Parental and School Discipline

The Province of Lau affirms, as its first and governing principle, that the rights, dignity, safety, and wellbeing of children are paramount. Nothing in this submission seeks to diminish the constitutional protection of children from abuse, neglect, violence, or exploitation. Those protections must remain absolute, fully intact, and vigorously enforced.

Within that framework, the Province of Lau submits that the Constitution and the law should recognise the legitimate role of parents, guardians, and teachers in the disciplinary formation of children. Fijian families, schools, churches, and communities have long understood that measured disciplinary correction - administered with restraint, with love, and strictly for the purpose of guidance and formation - is an act of care and of duty. It is the means by which respect, responsibility, and moral character have been passed from one generation to the next. The concern of our communities is that the law, as it presently stands, has left parents and teachers uncertain of their lawful authority to discipline at all, and that this uncertainty has contributed to a weakening of respect and moral formation among young people.

The Province of Lau does not advocate, and expressly rejects, any blanket or unrestrained licence for physical punishment. What we seek is narrow, defined, and disciplined: legal recognition of reasonable and proportionate correction, confined strictly to disciplinary purposes, and hedged with clear statutory safeguards.

The Province of Lau recommends that:

- Section 41 of the 2013 Constitution be reviewed to recognise the right and responsibility of parents, guardians, and teachers to administer reasonable and proportionate discipline to children in their care, strictly and exclusively for disciplinary and formative purposes.
- Any such recognition be given effect through a clear statutory code that defines the strict limits of permissible correction; that prohibits absolutely any correction administered in anger, or that causes injury, or that humiliates or degrades a child; and that draws an unmistakable legal line between lawful discipline and abuse, with meaningful accountability wherever that line is crossed.

- The constitutional rights of children to protection from abuse, neglect, violence, and exploitation remain fully intact and enforceable, and be strengthened wherever necessary.
- The framing of any reform in this area be developed with careful regard to Fiji's international obligations, including under the Convention on the Rights of the Child, so that Fiji's position is principled, defensible, and clearly understood as a framework of responsible discipline - never of harm.

SUBMISSION 13

Customary Law, Village By-Laws, and the Rights and Responsibilities Framework

The Province of Lau submits that the recognition and restoration of customary law within Fiji's constitutional framework is both necessary and achievable, provided it is grounded in the right philosophical and legal foundation. That foundation is the framework of Rights and Responsibilities.

The iTaukei worldview has always understood rights and responsibilities as inseparable. The Vanua is not merely a set of entitlements - it is a living covenant of mutual obligation between people, chiefs, land, and God. A constitutional framework that speaks the language of rights and responsibilities therefore resonates authentically with customary tradition, rather than imposing a foreign construct upon it. This framing also provides a universally recognised and defensible basis for reintegrating customary law into the modern legal order.

Within this framework, the Province of Lau further calls for the restoration of the legal standing of village governance, including village by-laws. The capacity of villages to order their communal life - through the traditional authority of the Turaga ni Koro, the village council, and the Vanua - was progressively eroded under the previous government, and proposals to give village by-laws proper legal recognition were shelved and abandoned. The result is a vacuum of lawful authority at the very level of society where Fijian community life is actually lived. Village communities should once again be empowered to make and enforce by-laws for the good order, cleanliness, safety, and harmony of village life, under a clear statutory framework such as the iTaukei Affairs Act.

The Province of Lau is equally mindful - and states plainly - that restored customary authority must operate within the Constitution, never alongside or above it. Village by-laws and customary mechanisms must be consistent with the Bill of Rights; they must not be capable of imposing punishments, restricting freedom of movement, conscience, or worship, or discriminating against any person in a manner the Constitution forbids; and any person affected by their application must retain full recourse to the courts. Recognition on

these terms strengthens both the Vanua and the Constitution; recognition without these safeguards would ultimately discredit the very customary institutions it seeks to restore.

Equally, any restoration of customary law must be accompanied by an explicit and sincere commitment to gender equity. Customary arrangements that have historically excluded women - from land rights, chiefly deliberations, and community decision-making - must be reviewed and reformed as part of this process. This is not merely a matter of meeting Fiji's international obligations under CEDAW or the Constitution's equality provisions; it is a matter of internal justice. A restored customary framework that fails to honour the full standing of women will not endure, and will rightly attract significant opposition from women's communities, civil society, and regional bodies.

The Province of Lau therefore recommends that the Review Commission:

- Adopt a Rights and Responsibilities framework as the operative constitutional lens through which customary law is recognised, interpreted, and given effect - anchoring it within both the iTaukei worldview and the universally accepted language of modern constitutionalism.
- Restore legal recognition to village governance and village by-laws under a clear statutory framework, expressly subject to the Constitution and the Bill of Rights, with full rights of appeal and review preserved to the courts.
- Require that any restoration of customary law be accompanied by explicit provisions ensuring the full and equal inclusion of women in customary rights, land entitlements, and community governance structures.
- Engage the Great Council of Chiefs, women's representatives, provincial councils, and communities in a structured consultative process to identify precisely which customary mechanisms require adjustment before constitutional recognition is conferred.
- Ensure that the reintegration of customary law does not create a parallel system operating beyond constitutional scrutiny, but rather a complementary system consistent with the fundamental rights of all citizens of Fiji.

SUBMISSION 14

Restoration of the Senate and Upper House of Parliament

The Province of Lau calls for the restoration of a bicameral Parliament through the re-establishment of a Senate, or Upper House, as existed under both the 1970 Independence Constitution and the 1997 Constitution.

The abolition of the Senate under the 2013 Constitution removed a vital constitutional safeguard. The Senate served as a deliberative chamber of review - a body capable of tempering the excesses of simple majority rule, protecting the rights of minorities and the Vanua, and ensuring that legislation passed by the Lower House received the scrutiny it deserved before becoming law. Its absence has left a structural gap in Fiji's parliamentary architecture that has been felt ever since.

The Province of Lau recommends that the restored Senate be constituted to reflect a genuine balance of institutional authority, customary legitimacy, and democratic accountability. Its composition should include nominees drawn from three sources:

- The Great Council of Chiefs - as the constitutional guardian of the Vanua and the indigenous rights of the iTaukei people, the GCC should nominate Senators whose role is to ensure that the interests of the Vanua are protected and that no legislation is passed that undermines customary rights without the informed consent of the chiefly institutions.
- The Prime Minister's Office - the Government of the day should retain the ability to nominate Senators who bring expertise, experience, and policy continuity to the Upper House, ensuring the Senate remains connected to the elected executive arm of government.
- The Leader of the Opposition - to give the Senate genuine cross-party legitimacy, the Leader of the Opposition should nominate Senators who represent the views of those not in government. This ensures the Upper House functions as an independent chamber of review rather than a rubber stamp for the ruling party.

The Province of Lau believes that this tripartite composition - Vanua, Government, and Opposition - reflects the same constitutional wisdom that guided the architects of the 1970 and 1997 constitutions. It creates a Senate capable of acting as a genuine constitutional check, rather than a body captured by any single political or institutional interest. The restoration of this chamber is not a step backward - it is a return to the proven structural integrity that underpinned Fiji's most stable constitutional arrangements.

CONCLUSION

The Province of Lau presents these submissions with humility, with conviction, and with deep love for Fiji. We do so in the tradition of our forebears - chiefs and people who, in this very island chain, made decisions of historic consequence with wisdom, courage, and faith.

The constitutional review now underway is an opportunity of generational significance. It is nothing less than the chance to set the foundations of our nation right again - to restore the moral compass by which Fiji has always found its way, and to lay a constitutional foundation for genuine inclusivity, enduring unity, and shared prosperity. Fiji has the

opportunity to craft a foundational document that is truly of, by, and for all its people - one that honours the covenant of 1874, reflects the spiritual inheritance of 1835, affirms the independence gained in 1970, and charts a future worthy of this blessed land.

We urge the Commission to listen not only to the voices of the cities and the parliament buildings, but to the voices of the provinces, the villages, the churches, and the Vanua. It is there, in the quiet places of this archipelago, that the truest heart of Fiji beats.

Presented to the Fiji Constitution Review Commission by the Vanua o Lau:

Gone Turaga Bale na Tui Nayau, Sau ni Vanua ko Lau, Tui Lau

Ratu Tevita Lutunauga Kapaiwai Uluilakeba Mara

Masi ni Vanua ko Lau

Roko Josefa Cinavilakeba
Sau kei Totoya

Sakaraia Saubalavu
Tui Cicia

Roko Irivi Draunidalo
Tui Moala

Joji Tabua Waqarua
Tui Oneata

Roko Lorima Niumataiwalu
Tui Matuku

Ului Waqalevu
Ramasi

For Ratu Enele Cama Colavanua
Sau kei Mualevu

for Saimoni Tagilesu
Tui Vulaga

Lepani Pulea

Ravunisa

Filipe Raturaga

Tui Ono

Josaia Matavura

Liuliu ni Bose Vanua ko Kabara

Chairman – Lau Provincial Council
Akapusi Tuifagalele

Roko Tui Lau
Jioji Tupou Kalounivalu

Date: 13th of July, 2026

Place: Lau Conference Centre, Suva.

APPENDIX: PROPOSED PREAMBLE TO THE REVISED CONSTITUTION OF FIJI

The Province of Lau offers the following as a proposed Preamble to the revised Constitution of Fiji. It is submitted in the spirit of contribution, not prescription. The Commission and the people of Fiji must ultimately author their own founding words. But we offer these words as an expression of what we believe lies at the heart of this nation - its history, its faith, its diversity, and its aspirations.

—•—

WE, THE PEOPLE OF FIJI -

GATHERED on these islands of the South Pacific, shaped by wind and sea and ancient ancestry, bound together by the providence of God and the passage of history;

ACKNOWLEDGING that the indigenous iTaukei people and the people of Rotuma are the indigenous owners of this land and sea, that their connection to the Vanua is sacred, ancestral, and beyond price, and that any constitutional order worthy of this nation must honour that truth;

HONOURING the covenant made in 1874, when the paramount chiefs of Fiji, in an act of sovereign wisdom, placed these islands under the protection of the British Crown - a covenant whose obligations of honour endure, and whose spirit this Constitution is bound to uphold;

GIVING thanks for the acceptance of Christianity by our forebears, beginning at Lakeba in 1835, when the paramount chiefs of Fiji welcomed the Gospel to these shores, and recognising the transforming influence of the Christian faith on the life, values, and identity of this nation;

AFFIRMING that Fiji is, and shall remain, a nation whose foundations are Christian, while honouring the right of every citizen - of every faith and of none - to follow the path of their own conscience freely and without fear;

WELCOMING all communities of Fiji - iTaukei, Indo-Fijian, Rotuman, Part-European, Chinese, and all others who have made these islands their home - as equal participants in this nation's story, each with a distinct heritage to be honoured, and a shared future to be built together;

REMEMBERING that the independence achieved in 1970 was the fruit of unity, of inter-communal trust, and of the vision of leaders who placed Fiji above faction - and that every generation of this nation must nurture and defend that unity;

COMMITTED to a constitutional order that balances rights with responsibilities - recognising that no right exists without its corresponding duty, that the freedom of each citizen is made possible by the faithfulness of all, and that the well-being of the community can never be separated from the dignity of the individual;

RESOLVED that the institutions of this State - the Parliament, the Presidency, the Judiciary, the Great Council of Chiefs, and all who hold public office - shall serve the people of Fiji and not themselves, and shall be accountable to this Constitution above all other authority;

DETERMINED to protect the most vulnerable among us - the poor, the young, the elderly, those who dwell on the outer islands and in the remote valleys, and all whose voices have too often gone unheard in the halls of power;

ASPIRING to hand to our children and their children a Fiji more just, more prosperous, more united, and more true to itself than the one we have inherited - a Fiji at peace within itself and at ease among the nations of the world;

DO HEREBY ADOPT AND GIVE TO OURSELVES THIS CONSTITUTION, as the supreme law of our land and the living expression of our will as one people - many peoples, one nation, one Fiji.

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