

# I

## The Goals of Constitution-making

## INTRODUCTION

1.1 The people of the Fiji Islands have unfinished constitutional business. The 1990 Constitution was promulgated to restore parliamentary government after the 1987 military *coups*. While its provisions reflected the immediate concerns of the Fijian people, there had been no opportunity for meaningful discussions with the leaders of the Indo-Fijian community.

1.2 Accordingly, the 1990 Constitution is not a product of consensus among the citizens of Fiji as a whole about a long-term basis for the structure of the country's government. Nor does it meet their widely-shared desire for a system of government that takes proper account of Fiji's multi-ethnic character. Instead, it has created an air of uncertainty which has affected the ability of every community to work for the economic and social benefit of all. This in turn affects Fiji's ability to attract overseas investment and compete successfully in the international economy.

1.3 By providing for its review before the end of seven years after the date of its promulgation, that is, before 25 July 1997, the authors of the 1990 Constitution themselves acknowledged its interim nature. By 1993, the Government was beginning to consider how the review should be undertaken. A Joint Parliamentary Committee was set up to make recommendations on the matter. As a result of the agreement reached within the Joint Committee, both Houses of Parliament in September 1993 unanimously resolved that a Commission of Inquiry should be set up to review the Constitution, with the Terms of Reference contained in the resolution.

### THE COMMISSION AND ITS TERMS OF REFERENCE

1.4 By Commission dated 15 March 1995, His Excellency the President appointed The Right Reverend Sir Paul Reeves as Chairman of the Commission and Mr Tomasi Rayalu Vakatora and Dr Brij Vilash Lal to be its other members. By Commission dated 19 May 1995, His Excellency appointed Mrs Alison Quentin-Baxter and Mr Jon Apted as Counsel assisting the Commission and Mr Walter Gibson Rigamoto as its Secretary.

1.5 The Commission was initially required to submit its report to the President not later than 30 June 1996. By Commission dated 11 July 1996, His Excellency

extended this date to 30 September 1996. The full texts of the President's Commissions, including our Terms of Reference, are reproduced in Appendix B.

1.6 The members of the Commission first assembled in Suva at the beginning of June 1995. To assist us in pinpointing our task and in explaining it to the public, we adopted the following Mission Statement based on our Terms of Reference:

The mission of the Constitution Review Commission, appointed in accordance with section 77 and 161 of the Constitution of the Sovereign Democratic Republic of Fiji, is to review the Constitution and produce a report by 30 June 1996, recommending constitutional arrangements which will meet the present and future needs of the people of Fiji, and promote racial harmony, national unity and the economic and social advancement of all communities.

These arrangements must :

- take into account internationally recognised principles and standards of individual and group rights;
- guarantee full protection and promotion of the rights, interests and concerns of the indigenous Fijian and Rotuman people;
- have full regard for the rights, interests and concerns of all ethnic groups in Fiji.

In achieving its mission the Commission will have

- scrutinised the Constitution;
- facilitated the widest possible debate on the terms of the Constitution;
- inquired into, and ascertained, the variety of views and opinions among Fiji citizens on how the provisions of the Constitution can be improved to meet the needs of Fiji as a multi-ethnic and multicultural society.

## THE PURPOSE AND STRUCTURE OF THIS REPORT

1.7 The Commission has now completed its inquiry. The purpose of this report is to help the people of Fiji think anew about the way their country should be governed. The Constitution contains the machinery for this purpose. The nature of that machinery, and the way its component parts mesh together, have profound consequences for the interaction among Fiji's various ethnic communities.

1.8 In Part I, the Goals of Constitution-making, the Commission analyses some of the factors that have contributed to the perception that the different ethnic communities in Fiji have conflicting aspirations and interests. We seek to show that all communities have, in reality, a common interest in putting in place constitutional arrangements that bring them together, rather than pull them apart. In response to the directions in our Terms of Reference, we identify the important values which the Constitution should promote. We also describe the way in which the Commission went about its task.

1.9 In Part II, Review of the 1990 Constitution, the Commission sets out its findings on the provisions of the 1990 Constitution and its recommendations for new constitutional arrangements when those are required. The recommendations are included in bold type in the chapters where they are made. For ease of reference they are reproduced together in Appendix A. We have grouped the provisions of the Constitution dealt with in each chapter in a way that is intended to bring out clearly the main themes and issues. The chapters do not necessarily follow the order in which the various topics are dealt with in the Constitution.

## THE COMMISSION'S APPROACH

1.10 In concluding this introduction, we should like to make two points. First we wish to emphasize that our recommendations took account of all available sources of information: the large number of submissions we received from the citizens of Fiji; the papers prepared for our use and the written and oral information supplied by departments, statutory bodies and other government agencies; the comparative material we gathered in the course of visits to other countries; and our own reading and careful study of the text of the Constitution. No one source has been preferred to any other.

1.11 Secondly, we wish to stress that the Commission's report should be considered as a whole. We have described Fiji's main institutions of government as a web. Its interwoven threads support one another. Parliament is at the centre of the web, because the arrangements for electing members of Parliament are basic to the identity and character of the Government. The Constitution also establishes the judicial branch of government and provides for other institutions and offices. Every part of the Constitution makes an essential contribution to the framework within which the Government and Parliament must operate. We urge that the recommended constitutional arrangements be seen in their totality. The entire report, large as it is, needs to be read and digested.

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