TABLE OF CONTENTS

LET	TER OF PRESENTATION	xix
1	INTRODUCTION	1
	The Commission and its terms of reference	1
	The purpose and structure of this report	2
	The Commission's approach	3
2	STRENGTHENING THE CONSTITUTIONAL FOUNDATIONS	4
	Opportunity for a change of direction	4
	The driving forces of Fiji's constitutional machinery	5
	The paramountcy of Fijian interests	6
	Communal representation	6
	Political parties	7
	Majority government	8
	The gulf between expectation and reality	9
	The constitutional machinery under strain	11
	The 1990 remedy	13
	Testing the assumptions behind the 1990 Constitution	14
	The goal of permanent Fijian political unity	15
	Keeping a Fijian government in office	15
	Re-assessing the objectives of all communities	16
	The broad agreement about the advantages of multi-ethnic governments	17
	Future constitutional directions	18
	Multi-ethnic government	18
	The governmental system	19
	The importance of political parties	19
	Incentives for cooperation	20
	Multi-party participation in the parliamentary process	20
	Individual and group rights	20
	The implications of multi-ethnic government	21
3	THE CONSTITUTION: ITS PURPOSES AND UNDERLYING VALUES	24
	Why countries have a constitution	24
	To make a fresh start	24
	To set out the conditions on which the people agree to be governed	24
	To control the actions of governments	25
	To guarantee the rights of individuals and groups	25
	Individual rights	25
	Group rights	25
	To promote important values	26
	The values referred to in our Terms of Reference	26
	Sovereignty, democracy and the rule of law	26
	The separation of powers	27
	Other values	27
	To act as an enduring basis for government	27
	To foster shared loyalty to the country and a sense of common purpose	28
	The Constitution in its wider setting	28

	The legal system and political culture	28
	The people of Fiji	29
	The criteria in the Commission's Terms of Reference	31
	Fiji's communities	32
	Promoting racial harmony and national unity	33
	Promoting the economic and social advancement of all communities	35
	The low level of private investment	35
	The need for enhanced international competitiveness	39
	•	39
	Bearing in mind internationally recognised principles and standards of	•
	individual and group rights	39
	The political rights of individuals and groups	41
	Rights, interests and concerns	48
	Guaranteeing full protection and promotion of the rights, interests	
	and concerns of the indigenous Fijian and Rotuman people	49
	Having full regard for the rights, interests and concerns of all other	
	ethnic communities	52
	Reconciling the interests of different communities	54
	The equal rights of all citizens	55
	The equal rights of an entrens	رر
4	HOW THE COMMISSION WENT ABOUT ITS TASK	58
4	Plan of work	50
	Meetings with the President, the Prime Minister and the Leader of the Opposition	58
	Meeting with the Joint Parliamentary Committee	58
	Public hearings	58
	Submissions	59
	Public debate	59
	Research papers	60
	Country visits	61
	Meetings with high officers of state	63
	Requests for written information	63
	Scrutinising the Constitution	63
		63
	Writing the report	
	The Commission's staff	63
	NIAMONIAL VICENTRALIAN OLLARS COLLA	
5	NATIONAL IDENTITY AND SHARED GOALS	64
	The name and characteristics of the state	64
	The languages of the Fiji Islands	67
	Expressing important values	71
	The Preamble	73
	A Compact among the people of the Fiji Islands	76
	Interpreting the Constitution	84
	1 5	
6	THE RIGHT TO BE OR BECOME A FUI CITIZEN	87
-	The significance of citizenship	87
	Including rules about citizenship in the Constitution	88
	The international standards affecting the rules about citizenship	88
	The framework for citizenship rules	91
	A brief history of Fiji's citizenship laws	92

	Reviewing the 1990 provisions	93
	Retention of existing citizenship	93
	Manner in which Fiji citizenship may be acquired	94
	Persons born in Fiji after the effective date	94
	Persons born outside Fiji after the effective date	94
	The avoidance of multiple citizenships	97
	A right to resume the citizenship of Fiji	98
	Concern about the loss of citizenship by indigenous Fijians	99
	Foreign spouses of Fiji citizens	101
	Other persons who should be entitled to citizenship by registration	103
	Adopted children	103
	Natural children of a Fiji citizen	103
	The acquisition of citizenship by naturalisation	105
	The link between immigration and naturalisation	106
	Matters incidental to registration or naturalisation as a citizen	108
	Deprivation of citizenship	110
	Transitional provisions	111
	Hanstronai provisions	111
7	THE BILL OF RIGHTS	115
,	The origins and significance of the Bill of Rights	115
	The purpose and effect of the Bill of Rights	116
	Should the Bill of Rights apply to the actions of private	110
	persons?	117
	What rights and freedoms should be included in the Bill	117
	of Rights?	118
	Who should be protected by the Bill of Rights?	119
	The limitation of rights and freedoms	120
	Limitations reasonably justifiable in a democratic society	120
	Proposed approach	121
	The interpretation of the Bill of Rights The application of the Bill of Rights to all existing law.	123
	The application of the Bill of Rights to all existing law The role of the Courts	123 124
	A Human Rights Commission	
	<u> </u>	125
	Rewriting the Bill of Rights	127
	The right to life	131
	The death penalty	131
	Death as a result of the use of force	133
	The right to personal liberty	135
	Imprisonment for debt	135
	Arrest or detention of a person suspected of being about	107
	to commit a crime	136
	Arrest or detention to enforce restrictions on freedom of	100
	movement	137
	Deprivation of liberty in time of emergency	137
	Law to be reasonably justifiable in a democratic society	137
	Rights of persons arrested or detained	137
	Right to be told of reasons for arrest or detention	138
	Right to legal advice	138
	Dight to legal aid	120

Right to contact with family and other persons	140
Right to be brought before a court	140
Right to test the legality of arrest or detention	140
Right to release pending trial	141
The right of silence	142
Treatment of arrested persons and detainees	142
Freedom from slavery and forced labour	146
Freedom from inhuman treatment	147
The right not to be deprived of property	148
The taking of land	149
Hardship to the owner of property	151
Preserving the national heritage	151
Extraction of minerals	152
Other matters	153
The right to freedom from unreasonable searches and seizures	155
The right to reasonable privacy of personal and family life	157
The right to a fair trial	159
Provisions applying to the trial of civil and criminal cases	159
Equality before the law and fair trial	159
Public hearings	160
Right to interpreter	161
Provisions applying to the trial of criminal cases	162
Presumption of innocence	162
Standard of proof	162
Unlawfully obtained evidence	162
Pleading guilty	163
Information about the nature of the offence	163
Access to witness statements	164
Right to legal representation and legal aid	164
Examination of witnesses	164
Right of appeal	165
Trial in the presence of the defendant	165
Retrospective punishment	165
Double jeopardy	165
Person pardoned may not be tried	166
Privilege against self-incrimination	166
Treatment of children	166
The right to freedom of religion, conscience, thought and belief	170
Education and religious instruction	171
The taking of oaths	172
Limitation of the right to religious freedom	173
The right to establish and maintain institutions of education or training	174
Duty not to discriminate	174
Limitation of the right	175
The right to freedom of expression	176
Freedom to seek ideas or information	.177
Form of expression	177
Freedom of the press	177
Public officers	178

Preventing ill-will between communities	178
The right to freedom of peaceful assembly	181
Limitation of the right	181
Prior restraints on freedom of assembly	182
Need for review of the law	183
Public officers	183
The right to freedom of association	184
The right to organise and bargain collectively	186
The international standards	187
Constitutional recognition of labour rights	188
A right to strike?	189
A right not to join a trade union?	189
A right to federate and confederate?	189
Limiting the right to organise and bargain collectively	190
Interference with the conduct by trade unions of	
their own affairs	190
Public servants	190
Members of the armed forces and the police	191
The new rights to be an additional protection	191
The right to freedom of movement	192
Freedom to enter, reside and not to be expelled	193
Limitation of those freedoms	193
Freedom to move freely and to leave	194
Limitation of those freedoms	194
Restricting the freedoms of individuals	194
Restricting the freedoms of members of a class	195
New ground of restricting freedom	195
Determination that person is a member of a restricted class	196
Classes based on prohibited grounds of discrimination	196
Non-citizens	196
Court orders and other legal obligations	197
Public officers	198
The right to equality under the law and freedom from discrimination	201
Equality under the law	201
Meaning of "discrimination"	201
Application of the right	202
Prohibited grounds of discrimination	202
Public facilities	204
Limitation of the right	205
The standard test	205
Discrimination in limiting other rights	206
Qualifications for office	207
Discretions in relation to legal proceedings	208
Protecting group rights	208
Pre-1966 law	209
New prohibited grounds of discrimination	209
Other limitations	209
Appropriations	210
Non-citizens	210

	Personal law	210
	Suggested redraft	211
	Enforcement of the Bill of Rights	216
	Jurisdiction of High Court	217
	References from lower courts	218
	Attorney-General to have standing	219
	Standing of interest groups and class actions	219
	Drafting questions	221
3	ETHNIC AND SOCIAL JUSTICE	222
	The 1990 provisions	223
	The perceptions of injustice among communities and groups	225
	Indigenous Fijians and Rotumans	225
	Indo-Fijians	227
	General voters	229
	Women	229
	The justification for social justice and affirmative action programmes	230
	Ethnic and social justice and freedom from discrimination	232
	The international standards	232
	National constitutions	234
	The need for new constitutional provisions in Fiji	235
	Subsection (1): Duty to establish programmes	237
	Programmes to be reasonable and necessary	237
	Global budgeting	238 238
	Limitation of the right to freedom from discrimination	239
	Achieving effective equality of access The objectives of the programme	239
	Service of the Republic of the Fiji Islands	240
	Subsection (2): Need to fulfil conditions	241
	Subsection (3): Authorisation by Act	241
	Goals and means of achieving them	241
	Performance indicators	241
	Selection criteria	242
	Subsection (4): No discrimination in selecting participants	243
	Subsection (5): Monitoring and reporting	243
	Subsection (6): Sunset clause	244
	Subsection (7): Existing rights not affected	244
	Equality of access to the service of the Republic of the Fiji Islands	244
	Redressing imbalances	246
	Support from civil society	248
9	MAKING LAW AND POLICY: THE INSTITUTIONS OF GOVERNMENT	253
	Linkages and wider implications	253
	The Bose Levu Vakaturaga	256
	Need for greater recognition in the Constitution	256
	Membership	256
	Procedure	258
	Functions	259
	Duty to act independently	260

Not a substitute for the Senate	261
An Indo-Fijian Council	263
The President	263
The President's role and functions	264
Head of State	264
Commander-in-Chief	264
The role of the President under a parliamentary system of	
government	264
The symbolic value of the office of President	265
The President as the personification of the state	265
Choosing a President	267
Ethnicity	267
Qualifications for office	267
Selection	268
Removal	270
Incidental matters	271
The President's Council	271
The Prime Minister and Cabinet	275
The goal of multi-ethnic government	275
The role of political parties	276
A government of national unity?	277
Promoting multi-ethnic government	279
Choosing a Prime Minister	280
Negotiations about the formation of a government	280
The Opposition	282
The nature of the Opposition	282
The Leader of the Opposition	283
The role of the Opposition in relation to that of Government	284
A bicameral Parliament	286
The Bose Lawa	290
The objectives	290
Number of seats	290
A mixture of open and reserved seats	291
The 1990 system	291
A return to "national" seats?	29 1
A move to "open" seats	292
Retention of some "reserved" seats	293
The recognition of communities and groups for representation	000
purposes	293
The allocation of reserved seats among communities	294
Reserved seats and the international standards	294
The composition of the Bose Lawa	295
Constituencies for elections to the Bose Lawa	296
Voting system	297
The Bose e Cake	298
The representation of provinces	298
Appointed members	299

10	ELECTING THE MEMBERS OF PARLIAMENT	304
	The choice of voting system	304
	The main kinds of system	304
	Plurality systems	305
	Majority systems	305
	Proportional systems	307
	The criteria for choosing a voting system in ethnically divided societies	308
	Identifying and ranking the criteria	309
	Evaluation of voting systems	310
	Encouragement of multi-ethnic government	310
	Recognition of the role of political parties	310
	Incentives for moderation and cooperation across ethnic lines	311
	The ability of AV to provide incentives for moderation and	-
	cooperation	312
	A multiplicity of parties	313
	Heterogeneous constituencies	313
	The nature of the incentives	315
	Effective representation of constituents	318
	The ability of the AV system to represent constituents effectively	318
	Effective voter participation	319
	The ability of the AV system to secure effective voter participation	319
	Effective representation of minority and special interest groups	322
	The ability of AV to represent minority and special interest groups	322
	Fairness between political parties	322
	The ability of AV to achieve fairness between political parties	323
	Effective government	323
	The ability of AV to promote effective government	323
	Effective opposition	326
	The ability of AV to promote effective opposition	326
	Proven workability	326
	AV as a proven system	326
	Legitimacy	327
	The legitimacy of elections under AV	327
	The determination of constituency boundaries	330
	Constituencies for the election of members of the Bose Lawa	330
	Reserved seat constituencies	331
	Open seat constituencies	331
	Constituencies for the election of members of the Bose e Cake	331
	Constituency Boundaries Commission	332
	Functions and powers	332
	Constitution and membership	332
	The names of constituencies	333
	The right to vote	336
	Registration as a voter	337
	Disqualification from being registered as a voter	337
	Constituency rolls	339
	The right to be entered on a roll for a reserved seat constituency	339
	Facilitation of registration as a voter	342
	Evergise of the right to vote	347

	Disquatification from voting	343
	Eligibility to be a candidate	346
	The timing and conduct of elections	349
	The term of Parliament	349
	The effect of dissolution	350
	The timetable for elections	350
	The Electoral Commission	352
	The Supervisor of Elections	353
	Challenges to the validity of elections or membership of Parliament	356
	Election petition	356
	Determination of questions of membership of Parliament	357
	Circumstances in which a member's seat should become vacant	358
11	THE FUNCTIONING OF PARLIAMENT	365
	Sessions, meetings and sittings of Parliament	365
	The presiding officers	368
	The Speaker	368
	Election of the Speaker	368
	When the office becomes vacant	368
	The Deputy Speaker	368
	The President and Vice-President of the Bose e Cake	369
	Voting by the presiding officer	369
	Procedure and administration	372
	Quorum	372
	Procedure	372
	Parliamentary salaries, allowances and benefits	372
	The Secretary-General and staff of Parliament	374
	The legislative power	376
	Vesting of the legislative power	376
	Exercise of the legislative power	376
	The roles of the Bose Lawa and the Bose e Cake	377
	The power to initiate Bills	377
	The power to amend or reject Bills passed by the Bose Lawa	378
	Ordinary Bills	379
	Urgent Bills	380
	Other Bills	380
	Sector Standing Committees	382
	The nature of sector Standing Committees	382
	New sector Standing Committees of the Bose Lawa	383
	Functions of sector Standing Committees	383
	The scrutiny function	383
	The legislative function	384
	Committee proceedings and reports	385
	Membership of sector Standing Committees	385
	Role of Ministers	386
	Standing Joint Committee of the Bose Lawa and the	001
	Bose e Cake? Servicing sector Standing Committees	386 386
	Nervicing sector Nianging L'ammiffées	4Xh

EXECUTIVE GOVERNMENT	389
The nature of the constitutional rules	389
The executive authority of the Republic	390
Basic principles	390
Content of executive authority	391
Appointing the members of the Cabinet	393
Composition of the Cabinet	393
The Attorney-General	394
The appointment of the Prime Minister	397
The appointment of other Ministers	400
Cabinet secrecy	400
Tenure of office of other Ministers	401
Responsibilities of Ministers	401
Confidence motions and dissolutions	402
The non-political executive	408
The Departments	408
The Police Force	411
The Republic of Fiji Military Forces	413
The independent officers	416
The Solicitor-General	417
The Director of Public Prosecutions	419
Constitution of other offices	421
THE ADMINISTRATION OF JUSTICE	425
The judicial power	425
	426
	426
	426
<u>-</u>	427
Other courts	428
The independence of the courts	429
Judicial oath	429
The protection of judicial salaries	429
	430
	430
Jurisdiction of the courts	431
Jurisdiction of the High Court	432
-	432
	433
	434
**	434
• •	. 434
	437
•	438
-	438
	439
	441
-	442
Masters of the High Court	442
	The nature of the constitutional rules The executive authority of the Republic Basic principles Content of executive authority Appointing the members of the Cabinet Composition of the Cabinet The Attorney-General The appointment of the Prime Minister The appointment of other Ministers Cabinet secrecy Tenure of office of other Ministers Responsibilities of Ministers Confidence motions and dissolutions The non-political executive The Departments The Police Force The Republic of Fiji Military Forces The independent officers The Solicitor-General The Director of Public Prosecutions Constitution of other offices THE ADMINISTRATION OF JUSTICE The judicial power The High Court The Court of Appeal The Supreme Court The Magistrates' Courts Other courts The independence of the courts Judicial oath The protection of judicial salaries Judicial office not to be equated with other "public office" Other measures enhancing judicial independence Jurisdiction of the High Court Original jurisdiction Jurisdiction in constitutional questions Appellate and supervisory jurisdiction Jurisdiction of the Supreme Court Contempt of court Rights of appeal Appeals to the High Court and Court of Appeal Appeals to the Supreme Court Composition of the High Court

	Composition of the Court of Appeal	442
	Composition of the Supreme Court	444
	The qualifications of judges	445
	The appointment of judges	446
	A Judicial Service Commission	447
	Composition of the Judicial Service Commission	447
		450
	The appointment of the judges of the superior courts	451
		451
		452
	Ethnic and gender balance	453
		456
		456
	Disciplinary control or removal of judicial officers	459
		459
	Judges of the superior courts	459
	* · · · · · · · · · · · · · · · · · · ·	459
	Removal of a judge	460
	Judicial training and study opportunities	461
	The administration of the courts	462
	The prerogative of mercy	465
	t8	
14	EFFICIENT AND POLITICALLY NEUTRAL STATE SERVICES	467
	Role of state services	467
	Efficient and politically neutral state services	467
	Efficiency, economy and effectiveness	468
	Constitutional requirements	469
	Representation of ethnic communities	470
	New constitutional provision	472
	Localisation	473
	Independent service commissions	475
	Appointment and tenure of service commissioners	477
	Appointment	477
	Tenure	479
	Performance of chairperson's functions	479
	Acting members	479
	Qualifications and disqualification for appointment to service commissions	
	Post-membership disqualification	483
	Public Service Commission	485
	Composition	485
	Functions	486
	Requirements for consultation or concurrence	487
	Exceptions	489
	Ambassadors and foreign service officers and others serving overseas	491
	Delegation	493
	Statutory functions	494
	Appeals	495
	Disciplined Services Commission	499
	Police Force	499

	Prisons Service	499
	Composition	500
	Functions of the Disciplined Services Commission	500
15	ETHICAL AND ACCOUNTABLE GOVERNMENT	503
	Concept of accountability	503
	Need for special measures	504
	Ethical government	505
	Submissions	505
	Existing laws	505
	Codes of conduct for important officeholders	506
	Integrity Code	508
	Constitutional offices to secure ethical and accountable government	512
	The Ombudsman	512 512
	Constitutional provisions	512
	Purpose of Ombudsmen	514
	Immunity from review Title of office	514
	Functions	514 514
	Action	515
	Action Administrative functions	515
	Persons who may lodge complaints	515
	Other investigations	517
	Ombudsman's Remedies	518
	Offices subject to investigation	519
	Exempt offices and authorities	520
	Ombudsman's discretions	523
	Other prohibited inquiries	525
	Information	525
	Disclosure of information	526
	Procedure in respect of investigations	526
	Annual reports	527
	Additional functions and size	527
	Appointment of Ombudsman	528
	Qualification and disqualifications for appointment	529
	The Auditor-General	537
	Functions	537
	Audit of state-owned companies	539
	Independence	540
	Access to records, etc	540
	Reporting	540
	Appointment of Auditor-General	541
	Acting appointments	541
	Measures to secure independence	543
	Constitutional officeholders	543
	Appointment	543
	Constitutional Offices Commission	544
	Appointing functions	544
	Disciplinary control	545

	Removal	545
	Tenure in office	547
	Delegation	549
	Guaranteed remuneration	549
	Guarantee of resources	550
	Independence of Constitutional Commissions and Tribunals	553
	Official information	555
	Submissions	555
	Existing Law	555
	Principles	556
16	PUBLIC REVENUE AND EXPENDITURE	561
	Submissions	561
	Accrual accounting	561
	Public revenue and expenditure	564
	Public revenue	565
	Public expenditure	565
	Guarantees	567
	Annual budgets and appropriations	568
	Supplementary appropriations	570
	The Consolidated Fund	571
	Charges on Consolidated Fund	574
	Powers and procedure in respect of appropriations and other money bills	575
	Procedure for supplementary appropriations	579
	Authorisation of expenditure in advance of appropriation	580
	Contingencies Fund	581
17	PROTECTED RIGHTS OF COMMUNITIES AND GROUPS	582
	Group rights and equality under the law	583
	Rights in respect of land and chiefly titles	584
	Fijian land	584
	Fijian chiefly titles	584
	Functions of the Native Lands Commission under the 1990 Constitution	584
	Recognition of Fijian title to land	585
	The Native Lands Commission	585
	The Native Land Trust Act	587
	Rotuman land and chiefly titles	590
	Banaban land	591
	The Agricultural Landlord and Tenant Act	591
	The consideration of land issues	592
	Fishing rights	596
	Minerals	597
	The governance of communities	600
	Indigenous Fijians	600
	Fijian Development Fund Act	601
	Rotumans The Benchus community	601
	The Banaban community The effect of making laws for communities	602 603
	The international standards concerning the governance of groups	604 604

	The Beattle Commission recommendation	608	
	The customary law	610	
	The international standards concerning the application		
	of customary law	610	
	Draft constitutional provisions	614	
	The administration of justice	615	
		615	
	Fijian courts		
	Improving the accessibility of the Magistrates' Courts	617	
	Traditional methods of dispute settlement	618	
	Courts in Rotuma	622	
	Courts for the Banaban community	623	
	The future relationship between Rotuma and Fiji	624	
18	LOCAL GOVERNMENT	627	
	Principle of local government	627	
	The 1990 Constitution and local government	627	
	Submissions	628	
	A federal state?	628	
	Express constitutional recognition of local government?	629	
	Reserved council seats?	631	
	Advisory councils	632	
	Review of local government	632	
19	EMERGENCY POWERS	634	
	Emergency powers under the 1990 Constitution	634	
	A new approach to emergency powers	636	
	The source of emergency powers	637	
	The common law	637	
	The Constitution or statute	638	
	Sector emergency legislation	639	
	The constitutional safeguards	640	
	The Bill of Rights	640	
	The international standards	641	
	,		
	Constitutional provisions permitting derogations	642	
	The nature of the emergency	642	
	The grant of necessary powers by Parliament	643	
	Parliamentary supervision of the exercise of emergency powers	643	
	Permitted derogations	645	
	Other international obligations	648	
20	THE CONSTITUTION AS SUPREME LAW: ITS ALTERATION OR REVIEW		
	ALTERATION OF THE ENTRENCHED LEGISLATION	654	
	Supreme law	654	
	Alteration of the Constitution	655	
	Reasons for entrenchment	655	
	Types of special procedures	655	
	Power of Parliament	656	
	Meaning of 'alteration'	657	

	Special form of alteration	658		
	Special majority	659		
	Proposed procedure for altering the Constitution			
	Veto power of the Bose Levu Vakaturaga	662		
Revi	665			
Sect	666			
Entre	667			
	Alteration of Acts specified in subsection 78(1)	667		
	Definition of 'alteration'	668		
	Form of alteration	669		
	Other legislation affecting Fijian interests	669		
	Agricultural Landlord and Tenant Act	670		
Appendix A	Recommendations	673		
Appendix B	Commissions	754		
Appendix C	Public hearings	759		
Appendix D	Submissions	760		
Appendix E	Research papers	780		
Appendix F	Overseas consultations	782		
Appendix G	Local Private Consultations	785		
Appendix H	Written responses	786		
Appendix I	Tables	790		