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GOVERNMENT OF THE REPUBLIC OF FIJI DECREE NO. 22

CONSTITUTION OF THE SOVEREIGN DEMOCRATIC
REPUBLIC OF FIJI (PROMULGATION) DECREE 1990

WHEREAS by Order in Council made the 20th day of September 1970 Her Majesty the Queen established a Constitution for Fiji (the 1970 Constitution);

AND WHEREAS events in 1987 in Fiji led to the abrogation of the 1970 Constitution;

AND WHEREAS Fiji was declared a Republic on the 7th day of October, 1987 and the first President of the Republic of Fiji was appointed under Section 4 of the Appointment of Head of State and Dissolution of Fiji Military Government Decree, on the 5th day of December, 1987 who, until a Parliament is convened in accordance with a Constitution yet to be adopted-

- (i) shall have the power to appoint the Prime Minister by Decree;
- (ii) shall have the power to make laws for the peace, order and good government of Fiji by Decree, acting in accordance with the advice of the Prime Minister and the Cabinet; and
- (iii) shall exercise the executive authority of Fiji which is hereby vested in him;

save as otherwise provided, that executive authority may be exercised in accordance with the advice of the Cabinet or by any Minister authorised by the Cabinet;

AND WHEREAS the first President of the Republic of Fiji had appointed Ratu Sir Kamisese Kapawai Tuimacilai Mara, G.C.M.G.; K.B.E.; Kt SJ as the first Prime Minister of the Republic of Fiji under the Appointment of Prime Minister Decree;

AND WHEREAS on the advice of and in consultation with the first Prime Minister of the Republic of Fiji the President had appointed Ministers and the Attorney-General who with the first Prime Minister constitute the Cabinet and whereas the Cabinet, the

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Prime Minister and the President constitute the Interim Government of the Republic of Fiji;

AND WHEREAS the Interim Government was set the objectives to determine and implement financial policies to ensure that the national economy returns to the economic position it enjoyed prior to the events of 1987 and to ensure that a new Constitution that will safeguard the interests of the indigenous Fijian people while at the same time protecting the rights and interests of other communities in Fiji;

AND WHEREAS the events of 1987 were occasioned by a widespread belief that the 1970 Constitution was inadequate to give protection to the interests of the indigenous Fijian people, their values, traditions, customs, way of life and economic well being;

AND WHEREAS attempts to reach a consensus among all the people of Fiji as to the method whereby the said interests are to be protected have been protracted and difficult;

AND WHEREAS it is desired that Fiji should return to parliamentary democracy according to a Constitution sufficient to protect the said interests and the interests of all the people of Fiji;

AND WHEREAS it is desired that full consultations with the people of Fiji is carried out to ensure that the views and voice of all the community, organisation and race in Fiji is heard and considered;

AND WHEREAS a Draft Constitution was prepared by the Interim Government and publicised in September, 1988 for public information and comment as the Interim Government was duty bound to formulate a new Constitution for Fiji before the end of its term in office;

AND WHEREAS to ensure that full consultations with all the communities and interests in Fiji the Interim Government constituted the Fiji Constitution Inquiry and Advisory Committee which was given the following Terms of Reference:-

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- (i) To scrutinize and consider the extent to which the Draft Constitution submitted by Cabinet meets the present and future constitutional needs of the people of Fiji, having regard in particular to the failure of the 1970 Constitution to provide adequate and full protection of the rights, interests and concerns of the indigenous Fijian people; and having regard to all the circumstances prevailing in Fiji.
- (ii) To facilitate the possible debate throughout Fiji on the terms of the Draft Constitution and to inquire into and ascertain the variety of views and opinions that may exist in Fiji as to the provisions of the Draft Constitution.
- (iii) To invite and to receive to the extent that is necessarily practicable, representations from the people of Fiji as to the provisions of the Draft Constitution, and to determine the degree of acceptability among the people of Fiji to the provisions of the Draft Constitution.
- (iv) To report fully to Cabinet on all the above and in particular to report upon the degree of acceptability of the terms of the Draft Constitution found by the Committee among the people of Fiji and where the Committee considers appropriate to recommend amendments or additions to the Draft Constitution likely in its view to achieve the objects of the Draft Constitution or its general acceptability.

AND WHEREAS the Fiji Constitution Inquiry and Advisory Committee conducted thirty-two public hearings in fourteen urban and rural centres in Fiji receiving one hundred and seventy-five oral submissions from individuals and one hundred and seventy-four oral submissions from groups representing various political, religious, social indigenous and trade union interests, and receiving a total of two

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hundred and nine written submissions, one hundred and four of which from individuals and one hundred and five from groups and organisations representing political parties, trade unions, provincial councils, religious groups, social and cultural groups;

AND WHEREAS the Fiji Constitution Inquiry and Advisory Committee having deliberated and having considered the submissions received by it made its recommendations in its report dated the 30th day of August, 1989 to His Excellency the President of the Republic of Fiji;

AND WHEREAS the report of the Fiji Constitution Inquiry and Advisory Committee was considered by the Interim Government and particularly the Cabinet on the 21st and 28th day of September 1989;

AND WHEREAS the Draft Constitution incorporating the amendments agreed to by the Interim Government and particularly the Cabinet was submitted to the BOSE LEVU VAKATURAGA (Great Council of Chiefs) for its deliberation and consideration on the 14th to the 16th day of March 1989 and 21st to the 25th day of June 1990;

AND WHEREAS THE BOSE LEVU VAKATURAGA at its meeting on the 21st to the 25th day of June 1990 accepted the Draft Constitution which was submitted for its deliberation by the Interim Government bearing in mind that-

- (a) the events of 1987 have demonstrated a continuing need for the Constitution of Fiji to take account of its different racial communities;
- (b) there is a need to provide a balanced and fair degree of protection for all, and a society in which all can live in harmony and tolerant understanding; and
- (c) that in a changing and evolving society attitudes and perceptions may change, and there exist special needs in Fiji which require special provision:

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NOW THEREFORE, IN EXERCISE OF THE POWERS VESTED IN ME AS PRESIDENT OF THE SOVEREIGN DEMOCRATIC REPUBLIC OF FIJI, AND ACTING IN ACCORDANCE WITH THE ADVICE OF THE PRIME MINISTER AND THE CABINET OF THE INTERIM GOVERNMENT OF THE REPUBLIC OF FIJI, I HEREBY DECREE AS FOLLOWS -

Short title

1. This Decree may be cited as the Constitution of the Sovereign Democratic Republic of Fiji (Promulgation) Decree 1990.

Promulgation of the Constitution of the Sovereign Democratic Republic of Fiji

2(1) There shall be for Fiji a Constitution which shall be as set out in the Schedule to this Decree.

(2) The Constitution set out in the Schedule to this Decree shall come into force on the 25th day of July 1990 (the appointed day) except as otherwise provided for under this Decree.

(3) Wherever it may hereafter be necessary for the Constitution to be printed it shall be lawful for the Government Printer to omit all parts of this Decree apart from the Schedule and the Constitution as so printed shall have the force of law notwithstanding the omission.

Continuance of governance of Fiji

3. For the continuance of the governance of Fiji the provisions of Sections 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of this Decree shall apply.

Election

4. Notwithstanding the provision of Section 79 of the Constitution and section 2(2) of this Decree, 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 the Constitution.

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Office of the President

5(1) The President shall in accordance with the provision of Section 4 of the Appointment of Head of State and Dissolution of Fiji Military Government Decree continue to hold the office of President until a Parliament of Fiji is convened in accordance with the Constitution.

(2) The President shall continue to exercise the executive authority of Fiji and all the powers that are vested in him under the Appointment of Head of State and Dissolution of Fiji Military Government Decree until a Parliament is convened in accordance with the Constitution.

Office of the Prime Minister and Cabinet

6(1) The Prime Minister appointed under the Appointment of Prime Minister Decree shall continue to hold the office of Prime Minister until a Parliament of Fiji is convened in accordance with the Constitution.

(2) The Prime Minister and Cabinet shall continue to exercise all the authority and power vested in the Prime Minister and the Cabinet under the Appointment of Head of State and Dissolution of Fiji Military Government Decree until a Prime Minister is appointed and a Cabinet is constituted in accordance with the Constitution.

Head of State and Executive Authority of Fiji Decree 1988

7. The provisions of Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Head of State and Executive Authority of Fiji Decree 1988 shall continue to be in force until Parliament is convened in accordance with the provisions of the Constitution:

Provided that if any other provision of that Decree is inconsistent with the provisions of the Constitution, that provision shall to the extent of the inconsistency, be deemed repealed.

Existing Laws

8(1) All existing laws shall have effect on and after the appointed day as if they had been made in pursuance of the Constitution and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution and this Decree.

(2) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this Section) or is otherwise prescribed or provided for immediately before the appointed day by or under the existing laws that prescription or provision shall, as from that day, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Decree) as if it had been made under the Constitution by Parliament or, as the case may require, by the other authority or person.

(3) The President may, by Order published in the Gazette make such amendments to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Decree or otherwise for giving effect or enabling effect to be given to those provisions.

(4) An order made under this Section may be amended or revoked by Parliament or, in relation to any existing law affected thereby, by any other authority having power to amend, repeal or revoke that existing law.

(5) It is hereby declared, for the avoidance of doubt, that save as otherwise provided either expressly or by necessary implication, nothing in this Decree shall be construed as affecting the continued operation of any existing law.

(6) The provisions of this Section shall be without prejudice to any powers conferred by this Decree or any other law upon any person or authority to make provision for any matter, including the amendments or repeal of any existing law.

Public Officers

9(1) Every person who immediately before the appointed day holds or is acting in a public office shall, as from the appointed day, hold or act in that office or the corresponding public office established by the Constitution as if he had been appointed to do so in accordance with the provisions of the Constitution and shall be deemed to have taken any oaths required upon such appointment by any existing law:

Provided that any person who under any existing law would have been required to vacate his office at the expiration of any period or on the attainment of any age shall vacate his office under the Constitution upon the expiration of that period or upon the attainment of that age.

(2) The provision of this Section shall be without prejudice to any powers conferred by or under the Constitution upon any person or authority to make provision for the abolition of offices and for the removal from office of persons holding or acting in any office.

Finance

10. Notwithstanding the provisions of Chapter XI of the Constitution the Finance Decree 1988 shall continue to be in force until a Parliament of Fiji is convened in accordance with the Constitution.

Legal Proceedings

11(1) All proceedings commenced or pending immediately before the appointed day before the High Court, the Court of Appeal or the Supreme Court established by the Judicature Decree 1988 may continue on and after that day before the High Court, the Court of Appeal or the Supreme Court as the case may be, established by the Constitution.

(2) Any decision given before the appointed day by the High Court or the Court of Appeal established by the Judicature Decree 1988 shall, for the purposes of its enforcement or of any appeal therefrom, have effect on and after that day as if it were a decision

of the High Court or the Court of Appeal, as the case may be, established by the Constitution.

Magistrate's Courts and Magistrates

12(1) Any person who immediately before the appointed day is a person appointed to hold a Magistrate's Court of the first, second, or third class magistrate respectively, (which offices are hereby constituted and established), and accordingly as from the appointed day -

- (a) the jurisdiction and powers under any existing law of persons appointed to hold magistrate's courts of the first, second or third class, or of magistrate's courts of such classes, shall vest in the offices of first, second or third class magistrate respectively, as constituted and established as aforesaid:

Provided that a person who holds or is acting in the office of Chief Magistrate immediately before that day shall have and exercise all the powers and jurisdiction conferred upon a first class magistrate by the provision of this subsection;

- (b) references to persons holding the office of first, second or third class magistrate, or the magistrate's courts of the first, second or third class, in any existing law, or in any instrument, document or legal proceedings, subsisting or continuing upon the appointed day, shall be construed as references to first, second or third class magistrate's respectively.

(2) The terms of service which apply immediately before the appointed day to a person appointed to hold a magistrate's court of the first, second or third class shall apply to such person in respect of his tenure of the office of first, second or third class magistrate by virtue of the provisions of the preceding subsection.

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Transitional provision relating to Commissions

13(1) Any person who immediately before the appointed day holds or is acting in any office to which this subsection applies shall, as from the appointed day, hold or act in the corresponding office established by the Constitution as if he had been appointed to do so in accordance with the provisions of the Constitution:

Provided that any such person who under the provisions of the existing laws would have been required to vacate his office on the expiration of any period or at any other time specified in the instrument by which he was appointed shall vacate his office at the expiration of that period or at that time.

(2) A person shall become and continue to be the holder of the corresponding office by virtue of the preceding subsection, and may be re-appointed under the Constitution to that office at any time, notwithstanding that circumstances exist on the appointed day and continue to exist thereafter that under the Constitution would cause him to be disqualified for appointment to that office if the office to which that office corresponds was held by that person on the 5th day of December, 1987 and the like circumstances existed on that date.

(3) Subsection (1) of this Section applies to the office of appointed member of the Judicial and Legal Services Commission established by the Fiji Service Commissions Decree 1988 and to the office of any member of the Public Service Commission or the Police Service Commission established by that Decree.

(4) Any power that immediately before the appointed day, is vested in a Commission established by the Fiji Service Commissions Decree 1988 and that under that Decree is then delegated to some other person or authority shall be deemed to have been delegated to that person or authority on the appointed day in accordance with the provisions of the Constitution; and any proceedings commenced or pending before any such Commission immediately before the appointed day may be carried on before the corresponding Commission established by Chapter IX of the Constitution.

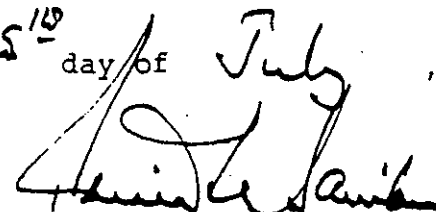
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Repeal of certain Decrees

14. The following Decrees are deemed repealed on the appointed day:

- (i) Judicature Decree 1988;
- (ii) Fiji Service Commissions Decree 1988;
- (iii) Public Service Decree 1988; and
- (iv) Protection of Fundamental Rights and Freedoms of the Individual Decree 1988.

MADE at Suva the 25th day of July, 1990.



PENAIA K. GANILAU
President of the Sovereign Democratic
Republic of Fiji and
Commander-in-Chief of the Armed Forces

CONSTITUTION OF THE SOVEREIGN DEMOCRATIC

REPUBLIC OF FIJI

WHEREAS on 10 October 1874, Cakobau, styled Tui Viti and Vunivalu, and other High Chiefs by the solemn agreement known as the Deed of Cession, ceded Fiji to Her Most Gracious Majesty Queen Victoria;

AND WHEREAS in November 1879, by the Deed of Rotuma Cession, the Chiefs of Rotuma similarly ceded Rotuma to Her Most Gracious Majesty Queen Victoria;

AND WHEREAS by Order in Council made the 20th day of September 1970 Her Majesty Queen Elizabeth II on the advice of the Privy Council established a Constitution for Fiji (the 1970 Constitution);

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AND WHEREAS events in 1987 in Fiji led to the abrogation of the 1970 Constitution;

AND WHEREAS those events were occasioned by a widespread belief that the 1970 Constitution was inadequate to give protection to the interests of the indigenous Fijians, their values, traditions, customs, way of life and economic well-being;

AND WHEREAS the people of Fiji have expressed the desire to have a new Constitution for the advancement of their beliefs, rights and freedoms and accept that it is desirable that the 1970 Constitution be replaced so that the will of the people may be truly set forth and their hopes, aspirations and goals be achieved and thereby enshrined;

AND WHEREAS they re-confirm that Fiji is a democratic society in which all peoples may to the full extent of their capacity play some part in the institutions of the national life and thereby develop and maintain due deference and respect for each other and the rule of law;

AND WHEREAS they affirm and respect that Christianity has played and continues to play a prominent role in the lives of the indigenous Fijians and the enduring contribution it has had, but also accepting the rights of other religious groups to practise their own religion;

AND WHEREAS they re-affirm that the indigenous people of Fiji are endowed with their lands and other resources and the right to govern themselves for their advancement and welfare;

AND WHEREAS they re-assert their recognition that all peoples of Fiji in respecting the rights of others to live in harmony are entitled to due deference to their customs and traditional way of life;

AND WHEREAS they reiterate their recognition that people and institutions remain free only when and for so long as freedom is founded upon respect for the spiritual and moral values of each other and a mutual observance of the rule of law;

NOW THEREFORE to achieve those ends the following provisions shall take effect as the Constitution of Fiji:-

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SCHEDULE TO THE CONSTITUTION OF THE SOVEREIGN
DEMOCRATIC REPUBLIC OF FIJI (PROMULGATION)
DECREE 1990

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CHAPTER 1

THE STATE AND THE CONSTITUTION

The State

1. Fiji shall be a Sovereign Democratic Republic.

Constitution is supreme law

2. This 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.

Bose Levu Vakaturaga

3. This Constitution recognises the Bose Levu Vakaturaga.

CHAPTER II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental rights and freedoms of the individual

4. Whereas every person in Fiji is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, sex, place of origin, political opinions, colour, religion or creed, but subject to respect for the rights and freedoms of others and for the public interest to each and all of the following, namely -

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, of expression and of assembly and association; and
- (c) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

Protection of right to life

5.-(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable -

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

Protection of right to personal liberty

6.-(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say -

- (a) in consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether in Fiji or elsewhere, in respect

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- of a criminal offence of which he has been convicted;
- (b) in execution of the order of a court punishing him for contempt of that court or of another court or tribunal;
 - (c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;
 - (d) for the purpose of bringing him before a court in execution of the order of a court;
 - (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;
 - (f) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
 - (g) for the purpose of preventing the spread of an infectious or contagious disease;
 - (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
 - (i) for the purpose of preventing the unlawful entry of that person into Fiji, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Fiji; or
 - (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Fiji or prohibiting him from being within such

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an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Fiji in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained -

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released, shall be afforded reasonable facilities to consult a legal representative of his own choice and shall be brought without undue delay before a court.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in subsection (3)(b) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions,

including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person, or from any other person or authority on whose behalf that other person was acting.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Fiji during that period.

Protection from slavery and forced labour

7.-(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section the expression "forced labour" does not include -

- (a) any labour required in consequence of the sentence or order of a court;
- (b) labour required of any person while he is lawfully detained which, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
- (c) any labour required of a member of a disciplined Force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air Force, any labour that

that person is required by law to perform in place of such service;

- (d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or
- (e) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

Protection from inhuman treatment

8. No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

Protection from deprivation of property

9.-(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except under the authority of a law that -

- (a) requires the acquiring authority to give reasonable notice of the intention to take possession of, or acquire the interest in or right over, the property to any person owning the property or having any other interest or right therein that would be affected by such taking of possession or acquisition;
- (b) requires the acquiring authority to apply to the High Court for an order authorising such taking of possession or acquisition or to apply thereto within thirty days of such taking of possession for such an order as aforesaid;

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- (c) requires the High Court not to grant such an order unless it is satisfied that the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning or utilisation of any property in such a manner as to promote the public benefit;
- (d) requires the acquiring authority to pay damages in respect of such taking of possession prior to an application to the High Court when such an order is not granted and requires the prompt payment of adequate compensation for the taking of possession or acquisition where such an order is granted;
- (e) requires the acquiring authority, if no agreement as to the amount and manner of payment of compensation has been concluded with any claimant to compensation within thirty days of the grant of the order referred to in paragraph (b) of this subsection, to apply to the High Court for the determination of those matters in relation to that claimant (including, where necessary, any question as to his entitlement to compensation); and
- (f) requires the acquiring authority to pay the costs reasonably incurred by any other party in connection with the proceedings before the High Court for any of the aforesaid purposes, including any appeal (not made unreasonably or frivolously) from any decision of that Court or the Fiji Court of Appeal given for those purposes.

(2) Nothing contained or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question authorises the taking of possession of property compulsorily during a period of public emergency or in

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the event of any other emergency or calamity that threatens the life or well-being of the community and makes provision that -

- (a) requires the acquiring authority promptly to inform any person owning the property of the taking of possession;
 - (b) enables any such person to notify the acquiring authority that he objects to the compulsory possession of the property by that authority;
 - (c) requires the acquiring authority, in the case of any such notification, to apply within thirty days thereafter to an independent and impartial tribunal, appointed by the Chief Justice from among persons who are qualified to practise as barristers and solicitors in Fiji, for a determination of the authority's entitlement to compulsory possession of the property;
 - (d) requires the tribunal to order the acquiring authority to return the possession of the property unless the tribunal is satisfied that its possession by that authority is reasonably justifiable, in the circumstances of the situation existing, for the purpose of dealing with that situation;
 - (e) requires the prompt payment of adequate compensation for the taking of possession; and
 - (f) enables application to be made by any claimant to compensation to the tribunal for the determination of the amount and manner of payment of compensation in relation to that claimant (including, where necessary, any question as to his entitlement to compensation).
- (3) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has

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received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Fiji.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the preceding subsection to the extent that the law in question authorises -

(a) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or

(b) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section -

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property -

(i) in satisfaction of any tax, duty, rate, cess or due;

(ii) by way of penalty for breach of the law, or forfeiture in consequence of a breach of the law;

(iii) as an incident of a grant, lease, tenancy, mortgage, charge, bill of sale, pledge, contract, permission or licence;

(iv) in the execution of judgments or order of a court;

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- (v) by reason of its being in a dangerous state or injurious to the health of human beings, animals, trees or plants;
- (vi) in consequence of any law with respect to the limitation of actions or acquisitive prescription; or
- (vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out), except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(b) to the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including an interest in or right over property), that is to say -

- (i) enemy property;
- (ii) property of a person who has died or is unable, by reason of legal incapacity, to administer it himself, for the purpose of its administration for the benefit of

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the persons entitled to the beneficial interest therein;

- (iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
- (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.
- (v) property of national, archaeological, palaeontological, historical, cultural, architectural or scenic value for the purpose of its preservation.

(6) Subject to the provisions of the next following subsection nothing in this section shall affect the making or operation of any law so far as it provides for the vesting in the State of the ownership of underground water or unextracted minerals.

(7) Where any law makes provision for the vesting in the State of the ownership of unextracted minerals as defined under subsection (11) of this section, then notwithstanding the provision of that or any other law, any royalties or proceeds received by the State in respect of any minerals extracted from any land or from the seabed over which there exists

any registered customary fishing rights, shall from the date of the commencement of this Constitution become payable to the owner of the surface of that land or the beneficiary of the registered customary fishing rights as the case may be, subject to the right of the State to retain such proportion of any such royalties

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or proceeds as may be approved by the Cabinet from time to time, and to retain in addition the cost of administration by the State of any mineral exploration and extractions.

(8) For the avoidance of doubt, it is hereby declared that nothing in the preceding subsection shall affect or alter any rights or interests granted or exercised by the State prior to the commencement of this Constitution.

(9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over property where that property, interest or right is held by a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided from public funds.

(10) For the purposes of subsections (1) and (2) of this section "acquiring authority" means the person or authority intending to take possession of, or acquire the right or interest in, the property compulsorily or who has taken possession of, or acquired the interest or right in, the property compulsorily, as the context may require.

(11) For the purposes of subsection (7) of this section -

"minerals" means any substance including petroleum resources, gas, geothermal heat and energy and any substance defined as minerals or petroleum under the Mining Act and the Petroleum (Exploration and Exploitation) Act or any other enactment;

"owner" in relation to "freehold lands" means a person other than a mortgagee not in possession who is for the time being entitled to dispose of the fee simple of the land whether in possession or in reversion and, in relation to "native lands" means the Trustee established by law of the mataqali or other division or subdivision of the natives having the customary right to occupy and use any native lands.

Protection for privacy of home and
other property

10.-(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit;
- (b) for the purpose of protecting the rights or freedoms of other persons;
- (c) that authorises an officer or agent of the Government, or of a local authority, or of a body corporate established by law for public purposes, to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority, or body corporate, as the case may be; or
- (d) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or the entry upon any premises by such order,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

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Provisions to secure protection of law

11.-**(1)** If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be given a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence -

- (a)** shall be presumed to be innocent until he is proved or has pleaded guilty;
- (b)** shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence;
- (c)** shall be given adequate time and facilities for the preparation of his defence;
- (d)** shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice or, where so prescribed, by a legal representative provided at the public expense;
- (e)** shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before any court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that court on the same conditions as those applying to witnesses called by the prosecution; and
- (f)** shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the

proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been granted a pardon, by competent authority, for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority the case shall be given a fair hearing within a reasonable time.

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(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in the preceding subsection shall prevent the court or other authority from excluding from the proceedings (except the announcement of the decision of the court or other authority) persons other than the parties thereto and their legal representatives to such extent as the court or other authority -

(a) may by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(b) may by law be empowered or required to do so in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of -

(a) subsection (2)(a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) subsection (2)(e) of this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

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(c) subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined Force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that Force so, however, that any court so trying such a member and convicting him shall, in sentencing him to any punishment, take into account any punishment awarded him under that disciplinary law.

(12) For the purposes of subsection (2) of this section a person who has been served with a summons or other process requiring him to appear at the time and place appointed for his trial and who does not so appear shall be deemed to have consented to the trial taking place in his absence.

Protection of freedom of conscience

12.--(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains.

(3) No religious community shall be prevented from providing religious instruction for persons of that community in the course of any education provided by that community, whether or not that community is in receipt of any Government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such course of education.

(4) Except with his own consent (or, if he is a person who has not attained the age of eighteen

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years, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion which is not his own.

(5) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the rights or freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion; or
- (c) with respect to standards or qualifications to be required in relation to places of education including any instruction (not being religious instruction) given at such places,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(7) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

Protection of freedom of expression

13.-(1) Except with his own consent, no person shall

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be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the reputations, rights or freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television;
- (c) for the imposition of restrictions upon public officers; or
- (d) for the purpose of protecting the reputation, the dignity and esteem of institutions and values of the Fijian people, in particular the Bose Levu Vakaturaga and the traditional Fijian system and titles or the reputation, dignity and esteem of institutions and values of other races in Fiji, in particular their traditional systems,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of assembly and association

14.-(1) Except with his own consent, no person shall

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be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the rights or freedoms of other persons; or
- (c) for the imposition of restrictions upon public officers,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of movement

15.-(1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Fiji, the right to reside in any part of Fiji, the right to enter Fiji, the right to leave Fiji and immunity from expulsion from Fiji.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) for imposing restrictions on the movement or residence within Fiji of any person or on any person's right to leave Fiji that are reasonably required in the

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interests of defence, public safety or public order;

- (b) for imposing restrictions on the movement or residence within Fiji or on the right to leave Fiji of persons generally or any class of persons in the interests of defence, public safety, public order, public morality or public health, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;
- (c) for imposing restrictions, by order of a court, on the movement or residence within Fiji of any person or on any person's right to leave Fiji either in consequence of his having been found guilty of a criminal offence or for the purpose of ensuring that he appears before a court at a later date for trial for such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Fiji;
- (d) for imposing restrictions on the movement or residence within Fiji of any person who is not a citizen of Fiji or for excluding or expelling any such person from Fiji;
- (e) for imposing restrictions on the acquisition or use by any person of any property in Fiji;
- (f) for imposing restrictions on the movement or residence within Fiji or on the right to leave Fiji of any public officer;
- (g) for the removal of a person from Fiji to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in

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execution of the sentence of a court in respect of a criminal offence of which he has been convicted; or

- (h) for imposing restrictions on the right of any person to leave Fiji that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in paragraph (a) of the preceding subsection so requests at any time during the period of that restriction not earlier than three months after the order imposing that restriction was made or three months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons who are qualified to practise as barristers and solicitors in Fiji.

(5) On any review by a tribunal in pursuance of the preceding subsection of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

Protection from discrimination on the grounds of race, etc.

16.-(1) Subject to the provisions of this Constitution -

- (a) no law shall make any provision that is discriminatory either of itself or in its effect; and

(b) no person shall be treated in discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(2) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, sex, place of origin, political opinions, colour, religion 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.

(3) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1)(a) of this section to the extent that the law in question makes provision -

- (a) for the appropriation of revenues or other funds of Fiji;
- (b) with respect to persons who are not citizens of Fiji;
- (c) for the application, in the case of persons of any such description as is mentioned in the preceding subsection (or of persons connected with such persons) of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description;
- (d) for the application of customary law with respect to any matter in the case of persons who, under that law, are subject to that law;
- (e) whereby persons of any such description as is mentioned in the last foregoing

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subsection may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society;

(f) for standards or qualifications (not being standards or qualifications specifically relating to race, sex, place of origin, political opinions, colour, religion or creed) to be required of any person who is appointed to, or to act in, any public office, any office in the service of a local authority or any office in a body corporate established by any law for public purposes; or

(g) for authorising the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Fiji during that period.

(4) Subsection (1)(b) of this section shall not apply to -

(a) anything that is expressly or by necessary implication authorised to be done by any provision of law that is referred to in the preceding subsection; or

(b) the exercise of any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section -

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- (a) if the law in question was in force immediately before 23rd September 1966 and has continued in force at all times since that day; or
- (b) to the extent that it repeals and re-enacts any provision which has been contained in any written law at all times since immediately before that day.
- (6) Nothing contained in or done under the authority of any regulations made under section 6 of the Fijian Affairs Act, shall be held to be inconsistent with or in contravention of this section to the extent that the regulation in question makes provision for the peace, order, welfare and good government of Fijians.
- (7) Subject to the provisions of the next following subsection, no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating houses or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.
- (8) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (2) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 10, 12, 13, 14 and 15 of this Constitution, being such a restriction as is authorised by section 10(2), section 12(5), section 13(2), section 14(2) or section 15(3)(a) or (b), as the case may be.
- (9) Nothing contained in or done under the authority of Chapter III of this Constitution shall be held to be inconsistent with or in contravention of this section.

Protection of persons detained under
emergency laws

17.-(1) Where a person is detained by virtue of a law

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that authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Fiji during that period, the following provisions shall apply, that is to say -

- (a) he shall, as soon as reasonably practicable and in any case not more than seven days after the commencement of his detention, be furnished with a statement in writing, in a language that he understands, specifying in detail the grounds upon which he is detained;
- (b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;
- (c) not more than one month after the commencement of his detention and thereafter, during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons qualified to practise as barristers and solicitors in Fiji;
- (d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal; and
- (e) at the hearing of his case by the tribunal he shall be permitted to appear in person or by a legal representative of his own choice.

(2) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the

necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1)(d) or (e) of this section shall be construed as entitling a person to legal representation at public expense.

Affirmative actions

18. Nothing contained in section 16 of this Constitution shall preclude the enactment of any law or any programme or activity that has as its object and purpose the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, sex, place of origin, political opinions, colour, religion or creed.

Enforcement of protective provisions

19.--(1) If any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction -

- (a) to hear and determine any application made in pursuance of the preceding subsection;
- (b) to determine any question which is referred to it in pursuance of the next following subsection,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of this Chapter:

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Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of this Chapter, the person presiding in that court may, and shall, if any party to the proceedings so requests, refer the question to the High Court unless, in his judgment, which shall be final, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the High Court in pursuance of the last foregoing subsection, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Fiji Court of Appeal or to the Supreme Court, in accordance with the decision of the Fiji Court of Appeal or, as the case may be, of the Supreme Court.

(5) No appeal shall lie from any determination by the High Court that an application made in pursuance of subsection (1) of this section is merely frivolous or vexatious.

(6) The High Court shall have such powers in addition to those conferred by this section as may be prescribed for the purpose of enabling that court more effectively to exercise the jurisdiction conferred on it by this section.

(7) 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 may be brought and references shall be made to the High Court).

Interpretation of Chapter II and savings

20.-(1) In this Chapter, unless the context otherwise requires -

"contravention", in relation to any requirement includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means any court of law having jurisdiction in Fiji, but excepting, save in sections 5 and 7 of this Constitution, a court established by a disciplinary law;

"criminal offence" means a criminal offence under the law of Fiji;

"legal representative" means a person lawfully in or entitled to be in Fiji and entitled to practise in Fiji as a barrister and solicitor;

"member", in relation to a disciplined Force, includes any person who, under the law regulating the discipline of that Force, is subject to that discipline.

(2) Nothing contained in sections 13, 14 or 15 of this Constitution shall be construed as precluding the inclusion in the terms and conditions of service of public officers of reasonable requirements as to their communication or association with other persons or as to their movements or residence.

(3) In relation to any person who is a member of a disciplined Force of Fiji, nothing contained in or done under the authority of the disciplinary law of that Force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 5, 7 and 8.

(4) In relation to any person who is a member of a disciplined Force that is not a disciplined Force of Fiji and who is present in Fiji in pursuance of arrangements made between the Government of Fiji and another Government or an international organisation, nothing contained in or done under the authority of the disciplinary law of that Force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

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(5) No measures taken in relation to a person who is a member of a disciplined Force of a country with which Fiji is at war and no law, to the extent that it authorises the taking of any such measures, shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(6) In this Chapter "period of public emergency" means any period during which -

- (a) Fiji is engaged in any war; or
- (b) there is in force a Proclamation of Emergency issued by the President under section 163 of this Constitution.

CHAPTER III

FIJIAN AND ROTUMAN INTERESTS

Protection and Enhancement of Fijian and Rotuman Interests

21.--(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 the 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 or other special facilities provided by Government;
- (b) when any permit or licence for the

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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 the 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.

CHAPTER IV

CITIZENSHIP

Persons who are citizens on 6 October, 1987

22. Any person who was a citizen of Fiji on 6 October, 1987 shall remain a citizen of Fiji on the commencement of this Constitution.

Manner in which Fiji citizenship may be acquired

23. Citizenship of Fiji may be acquired by -
- (a) birth;
 - (b) descent;
 - (c) naturalisation; or
 - (d) registration.

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Persons born in Fiji after 6 October, 1987

24. Every person born in Fiji after 6 October, 1987 shall become a citizen of Fiji at the date of his birth if at the time of his birth his father or mother is a citizen of Fiji.

Persons born outside Fiji after 6 October, 1987

25. A person born outside Fiji after 6 October, 1987 shall become a citizen of Fiji at the date of his birth if at that date his father is a citizen of Fiji.

Citizenship by registration

26.--(1) Subject to the provisions of section 28 of this Constitution, a person to whom the provisions of this section apply may be registered as a citizen of Fiji, if the Prime Minister is satisfied that -

- (a) he is a person of good character;
- (b) he has shown a clear intention of his desire to be domiciled in Fiji; and
- (c) he has taken the Oath of Allegiance prescribed in Schedule 1 to this Constitution and such other Oath as may be prescribed.

(2) The provisions of this section shall apply to -

- (a) any woman who is or has been married to a citizen of Fiji; or
- (b) every person of full age or capacity born outside Fiji any of whose grandparents is a citizen of Fiji:

Provided that the right to be registered as a citizen of Fiji under this section shall be subject to such exceptions or qualifications as may be prescribed in the interest of national security or public policy.

(3) Notwithstanding anything contained in subsections (1) and (2) of this section, a foreign

child adopted by a citizen of Fiji in accordance with procedure approved by any law in force in Fiji may by application by such citizen be registered as a citizen of Fiji.

Citizenship by naturalisation

27.--(1) Subject to the provisions of section 28 of this Constitution, any person who is qualified in accordance with the provisions of this section may apply to the Prime Minister for the grant of a certificate of naturalisation.

(2) No person shall be qualified to apply for the grant of a certificate of naturalisation, unless he satisfies the Prime Minister that -

- (a) he is a person of full age and capacity;
- (b) he is a person of good character;
- (c) he has shown a clear intention of his desire to be domiciled in Fiji;
- (d) he has been assimilated into the way of life of the people of Fiji;
- (e) he is a person who has made or is capable of making useful contribution to the advancement, progress and well-being of Fiji;
- (f) he has taken the Oath of Allegiance prescribed in Schedule 1 to this Constitution and such other Oath as may be prescribed; and
- (g) he has, immediately preceding the date of his application either -
 - (i) resided in Fiji for a continuous period of five years; or
 - (ii) resided in Fiji continuously for a period of 12 months, and during the period of ten years immediately preceding his application has resided in Fiji

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for an aggregate of not less than five years.

Avoidance of dual citizenship

28.-(1) Subject to the other provisions of this section a person shall forfeit forthwith his Fiji citizenship if he acquires or retains the citizenship or nationality of a country other than Fiji.

(2) Any registration of a person as a citizen of Fiji or the grant of a certificate of naturalisation to a person who is a citizen of a country other than Fiji at the time of such registration or grant shall be conditional upon effective renunciation of the citizenship or nationality of that other country within a period of not more than 12 months from the date of such registration or grant.

(3) A citizen of Fiji by birth shall not forfeit his Fiji citizenship if, within twelve months of the commencement of this Constitution or within twelve months after he attains the age of 21 years (whichever is the later) he renounces the citizenship or nationality of any other country which he may possess.

Power of Parliament

29. Parliament may make provision -

- (a) for depriving of his citizenship of Fiji any person who is a citizen of Fiji otherwise than by birth or registration;
- (b) for the renunciation by any person of his citizenship of Fiji;
- (c) for depriving of his citizenship of Fiji any citizen of Fiji who has attained the age of 22 years and who, being a citizen of some other country, has not, within such period as may be prescribed, renounced his citizenship of that other country or, if the law of that other country does not permit him to renounce

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his citizenship of that other country, made such declaration as may be prescribed.

Interpretation

30.--(1) Any reference in this Chapter to the father of a person shall, in relation to a person born out of wedlock, be construed as a reference to the mother of that person.

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death.

CHAPTER V

THE PRESIDENT

Establishment of office of President

31. There shall be 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.

The President's Council

32.--(1) There shall be a President's Council to be convened at the invitation of the President to advise him on any matters of national importance.

(2) The Council shall be composed of the

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President as Chairman and such members, being citizens of Fiji, that the President may appoint in his own deliberate judgment.

Acting President

33.--(1) For the purpose of appointing an Acting President, the Bose Levu Vakaturaga shall from time to time after a resolution to that effect designate two persons, in order of priority, who are persons qualified and eligible to perform the functions of the office of the President whenever the holder of that office is for any reason unable to perform the functions of his office.

(2) Whenever the President is to be absent from Fiji or is for any reason unable to perform the functions of his office, the functions of the office of the President shall be performed by the person first in the rank of priority as decided by the Bose Levu Vakaturaga in accordance with the preceding subsection:

Provided that if for any reason the person first in the rank of priority is unable to perform the functions of the office of the President, the person second in the rank of priority shall act and perform the functions of the office of the President as if he were the person first in the rank of priority.

(3) Whenever the President is to be absent from Fiji or is for any reason unable to perform the functions of his office and, neither of the persons designated by the Bose Levu Vakaturaga in accordance with subsection (1) of this section is able to perform the functions of the office of the President, the person holding the office of President of the Senate shall act and perform the functions of the office of President.

(4) For the purpose of subsection (2) of this section a State warrant shall be conclusive evidence to the fact that the appointment of the persons named therein have been made by the Bose Levu Vakaturaga.

(5) A person shall not act or perform the

functions of the office of President unless he has taken the Oath of Allegiance and the Oath of Office as prescribed in Schedule 1 to this Constitution.

Oaths to be taken by President

34. A person appointed to the office of President or appointed to perform the functions of that office under the preceding section shall, before entering upon the duties of that office, take and subscribe the Oath of Allegiance and the Oath of Office as prescribed by Schedule 1 to this Constitution, such Oaths being administered by the Chief Justice or such other judge of the High Court as may be designated by the Chief Justice.

Removal of the President for misconduct

35.-(1) The Prime Minister, acting on the information available to him, shall request the Chief Justice to appoint a Tribunal for the purpose of investigating allegations of gross misconduct by the President.

(2) The Tribunal to be appointed by the Chief Justice in accordance with the preceding subsection shall consist of one or more persons selected from among persons who hold or have held or are qualified to hold high judicial office in Fiji or who hold or have held high judicial office in any other country as may be prescribed by the Chief

Justice and the Tribunal shall inquire into the matter and shall report its findings to the Chief Justice stating the opinion of the Tribunal on whether or not the President has been guilty of gross misconduct in the performance of the functions of his office.

(3) The Chief Justice, on receipt of the report of the Tribunal shall submit the report to the Prime Minister together with his recommendations thereon and the Prime Minister shall submit the report to the Chairman of the Bose Levu Vakaturaga for the decision of the Bose Levu Vakaturaga.

(4) Until such time as the Bose Levu Vakaturaga resolves that the President has not been guilty of gross misconduct, the President shall be deemed to be unable to perform the functions of his

office and those functions shall be performed by the person referred to in subsection (2) or (3) of section 33 of this Constitution as the case may be.

(5) If the Bose Levu Vakaturaga, having considered the report of the Tribunal passes a resolution supported by three-quarters of all the members thereof that the President has been guilty of gross misconduct in the performance of the functions of his office, the President shall cease to hold office forthwith and the person appointed under subsection (4) of this section to act as President shall continue to perform the functions of the office of President until a new President is appointed by the Bose Levu Vakaturaga.

Procedure for investigation by tribunal

36.-(1) A tribunal appointed under section 35 of this Constitution shall conduct its investigation in private and shall conduct such investigation in accordance with procedures that the Tribunal considers appropriate under the circumstances.

(2) Without prejudice to the generality of the preceding subsection, the tribunal may by summons require any person to appear before it to give evidence on any matter relevant to its investigation, and may direct any person so summoned to give evidence on oath and may administer an oath accordingly, or instead of so directing, may require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined.

Removal of the President for incapacity

37.-(1) The Prime Minister, acting on the information available to him, shall request the Chief Justice to appoint a Medical Board for the purpose of investigating the mental or physical capacity of the President to perform the functions of his office.

(2) The Medical Board to be appointed by the Chief Justice in accordance with the preceding subsection shall consist of not less than three persons who are qualified as Medical practitioners under the law of Fiji or under the law of any other

country as may be prescribed by the Chief Justice, and the Board shall inquire into the matter and shall report its findings to the Chief Justice stating the opinion of the Board on whether or not the President is, by reason of any infirmity of body or mind, incapable of performing the functions of his office.

(3) The Chief Justice, on receipt of the report of the Medical Board shall submit the report to the Prime Minister together with his recommendations thereon and the Prime Minister shall submit the report to the Chairman of the Bose Levu Vakaturaga for the decision of the Bose Levu Vakaturaga.

(4) -- Until such time as the Bose Levu Vakaturaga resolves that the President is not by reason of infirmity of body or mind, incapable of performing the functions of his office, the President shall be deemed to be unable to perform the functions of his office and those functions shall be performed by the person referred to in subsection (2) or (3) of section 33 of this Constitution as the case may be.

(5) If the Bose Levu Vakaturaga, having considered the report of the Medical Board passes a resolution supported by three-quarters of all the members thereof that the President is, by reason of infirmity of body or mind, incapable of performing the functions of his office, the President shall cease to hold office forthwith and the person appointed under subsection (4) of this section to act as President shall continue to perform the functions of the office of President until a new President is appointed by the Bose Levu Vakaturaga.

Supplementary and Ancillary Provision

38.--(1) Subject to the next following subsection, the Bose Levu Vakaturaga may make provision for such supplementary and ancillary matters as may appear necessary or expedient in consequence of any of the functions conferred upon it by this Chapter including (without prejudice to the generality of the foregoing) provision for the procedure to be observed in selecting persons for appointment to the office of President, and for nominating the persons eligible to perform the functions of that office.

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(2) Parliament may make, or provide for the making of, provision for such supplementary and ancillary matters as may appear necessary or expedient in consequence of the provisions of this Chapter including (without prejudice to the generality of the foregoing) provision -

- (a) for the salary, allowances and benefits, financial and otherwise (including personal accident insurance, pensions or retirement benefits) of the President or any person appointed to perform the functions of his office;
- (b) for the powers and privileges of the members of any tribunal or Medical Board appointed under sections 35 and 37 of this Constitution and their staff or other persons or authorities with respect to any investigation or report by such tribunal or Medical Board;
- (c) for the definition and trial of offences connected with any of the provisions of this Chapter, including offences connected with the summoning and examination of persons by a tribunal under section 36 of this Constitution;
- (d) for the rights and privileges of any person summoned to give evidence by a tribunal under section 36 of this Constitution.

CHAPTER VI

PARLIAMENT

PART 1

COMPOSITION OF PARLIAMENT

Establishment of Parliament

39. There shall be a Parliament for Fiji which

consist of a President, a House of Representatives and a Senate.

PART 2

THE HOUSE OF REPRESENTATIVES

Members of the House of Representatives

40. The House of Representatives shall consist of persons elected in accordance with the provisions of this Constitution and, subject thereto, in such manner as may be prescribed.

Number and method of election
of members

41.-(1)- There shall be seventy members of the House of Representatives, and they shall be elected to represent constituencies.

(2) For the purpose of electing the members of the House, voters shall be registered on one of four separate rolls, that is to say -

- (a) a roll of voters who are Fijians;
- (b) a roll of voters who are Indians;
- (c) a roll of voters who are Rotumans; and
- (d) a roll of voters who are neither Fijians, Indians nor Rotumans.

(3) Thirty-seven members of the House shall be elected from among persons who are registered on the roll of voters who are Fijians.

(4) Twenty-seven members of the House shall be elected from among persons who are registered on the roll of voters who are Indians.

(5) One member of the House shall be elected from amongst persons who are registered on the roll of voters who are Rotumans.

(6) Five members of the House shall be elected from among persons who are registered on the

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roll of voters who are neither Fijians, Indians nor Rotumans.

Disqualification for election as a member

42.-(1) No person shall be qualified to be elected as a member of the House of Representatives who -

- (a) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a power or state outside Fiji;
- (b) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Fiji or in any state outside Fiji;
- (c) is, under any law in force in Fiji, adjudged or otherwise declared to be of unsound mind;
- (d) is under sentence of death imposed on him by a court in Fiji or in any State outside Fiji, or is under sentence of imprisonment (by whatever name called) for a term exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;
- (e) is disqualified for membership of the House under any law in force in Fiji relating to offences connected with elections;
- (f) subject to any exceptions prescribed by Parliament, holds or is acting in any public office.

(2) For the purposes of paragraph (d) of the preceding subsection -

- (a) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of

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imprisonment for the aggregate period of those terms; and

(b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

(3) No person shall be qualified to stand for election as a member of the House of Representatives referred to in section 41(3) of this Constitution in any constituency unless his name is registered or is eligible to be registered in the Vola ni Kawa Bula:

Provided that a person's registration or eligibility for registration in the Vola ni Kawa Bula shall be confirmed or determined as the case may be by the Native Lands Commission whose confirmation or decision shall be final and conclusive.

(4) For the purpose of election of members of the House of Representatives referred to in section 41(3) of this Constitution a Fijian may elect to stand as a candidate in either a constituency referred to in section 48(2)(a) or in a constituency referred to in section 48(2)(b) of this Constitution:

Provided that his eligibility to stand as a candidate for:

(a) a constituency referred to in section 48(2)(a) shall be dependent on him being registered or on his eligibility to be registered in the Vola ni Kawa Bula of the Province for which he is a candidate and such registration shall be confirmed or determined as the case may be by the Native Lands Commission whose confirmation or decision shall be final and conclusive; and

(b) a constituency referred to in section 48(2)(b) shall be dependent on the candidate being a resident in that constituency.

(5) No person shall stand as a candidate for

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election as a member of the House of Representatives in more than one constituency in any particular general election or any particular elections to fill any vacancies arising in the House.

Vacation of seats of members

43.-(1) A member of the House of Representatives shall vacate his seat therein -

- (a) upon a dissolution of Parliament;
- (b) if he ceases to be a citizen of Fiji;
- (c) if he is absent from two consecutive meetings of the House without having obtained from the Speaker (or, if the office of Speaker is vacant or he is for any reason unable to perform the functions of his office, the Deputy Speaker) before the termination of any of those meetings permission to be or to remain absent from that meeting;
- (d) if any circumstances arise that, if he were not a member of the House, would cause him to be disqualified for election thereto by virtue of paragraphs (a), (b), (c), (e) or (f) of subsection (1) of the preceding section.
- (e) if he ceases to be a member of the political group or party in the House whose symbol he used for the purpose of his election to be a member of the House.

(2) A member of the House may resign his seat therein by writing under his hand addressed to the Speaker and the seat shall become vacant when the writing is received by the Speaker or, if the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office, by the Deputy Speaker or such other person as may be specified in the rules of procedure of the House.

(3) For the purposes of paragraph (c) of subsection (1) of this section, "meeting" means the

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sittings of the House commencing when it first meets after being summoned at any time or after an adjournment sine die and terminating when it is adjourned sine die or at the conclusion of a session of Parliament.

Vacation of seat on sentence

44.-(1) Subject to the provisions of this section, if a member of the House of Representatives is sentenced by a court in Fiji or in any State outside Fiji to death or to imprisonment (by whatever name called) for a term exceeding twelve months he shall forthwith cease to perform his functions as a member of the House and his seat in the House shall become vacant at the expiration of a period of thirty days thereafter:

Provided that the Speaker (or, if the office of Speaker is vacant or he is for any reason unable to perform the functions of his office, the Deputy Speaker) may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be granted without the approval of the House signified by resolution.

(2) If at any time before the member vacates his seat he receives a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than twelve months or a punishment other than imprisonment is substituted, his seat in the House shall not become vacant under the provisions of this section, and he may again perform his functions as a member of the House.

(3) Paragraphs (a) and (b) of section 42(2) of this Constitution shall apply for the purposes of this section as they apply for the purposes of paragraph (d) of section 42(1).

Speaker and Deputy Speaker

45.-(1) The House of Representatives shall at its first sitting after any general election elect a Speaker and a Deputy Speaker from persons who are not

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members of the House, but who are qualified to be members of the House.

(2) A person elected to the office of Speaker or Deputy Speaker shall before entering upon the duties of that office, take and subscribe the Oath of Allegiance as prescribed by Schedule 1 to this Constitution, such Oath being administered by the Secretary-General to Parliament.

(3) The office of the Speaker or the Deputy Speaker shall become vacant if the House passes a resolution supported by the votes of not less than two-thirds of all the members thereof requiring his removal from office, or in the case of the Deputy Speaker, if he is elected as Speaker.

(4) A person holding the office of Speaker or Deputy Speaker may resign his office by writing under his hand addressed to the House and the office shall become vacant when the writing is received by the Secretary-General to Parliament.

(5) The office of the Speaker shall also become vacant when the House first sits after any general election, and the office of Deputy Speaker shall also become vacant upon a dissolution of Parliament.

(6) If the office of Speaker or Deputy Speaker becomes vacant under subsection (3) or (4) of this section the House shall, unless Parliament is sooner dissolved, elect a person in accordance with the provisions of subsection (1) of this section to fill the vacancy at its next sitting after the occurrence of the vacancy or, in the case of the Deputy Speaker, as soon as practicable thereafter.

(7) No business shall be transacted in the House (other than the election of a Speaker) at any time when the office of Speaker is vacant.

Determination of questions of membership

46.-(1) The High Court shall have jurisdiction to hear and determine any question whether -

(a) any person has been validly elected as a

member of the House of Representatives;

(b) any member of the House has vacated his seat or is required, under the provisions of section 44 of this Constitution, to cease to perform his functions as member of the House.

(2) An application for the determination of any question under the preceding subsection may be made by any person registered as a voter for the purpose of electing members of the House or by the Attorney-General; and, if any such application is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(3) A determination by the High Court in proceedings under this section shall not be subject to an appeal.

(4) In the exercise of his functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

Constituency Boundaries Commission

47.-(1) There shall be a Constituency Boundaries Commission consisting of a Chairman and two other members appointed by the President acting in accordance with the advice of the Prime Minister.

(2) A person shall not be qualified to be appointed as a member of the Commission if he is, or has at any time during the twelve months preceding his appointment been -

(a) a member of the House of Representatives, a member of the Senate, or an elected member of any local authority;

(b) nominated with his consent as a candidate for election as a member of the House of Representatives or any local authority; or

(c) the holder of an office (not being an

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office the functions of which relate only to a part of Fiji) in any political organisation that sponsors or otherwise supports or has during the said period of twelve months sponsored or otherwise supported a candidate for election as a member of the House of Representatives;

(3) Subject to the provisions of the next following subsection, a member of the Constituency Boundaries Commission shall vacate his office -

- (a) at the expiration of twelve months from the date of his appointment; or
- (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(4) The provisions of section 130 of this Constitution shall apply to a member of the Constituency Boundaries Commission as they apply to the appointed member of the Public Service Commission except that subsection (7)(b) shall apply as if for the words "in accordance with the advice of the Prime Minister" there were substituted the words "in his own deliberate judgment".

Constituencies

48.-(1) Subject to the provisions of this section, the boundaries of constituencies for the purpose of the election of members of the House of Representatives shall be such as may be prescribed by order made by the Constituency Boundaries Commission.

(2) Fiji shall -

- (a) for the purpose of electing thirty-two of the members of the House of Representatives referred to in section 41(3) of this Constitution, comprise the following fourteen constituencies, the boundaries of which shall, subject to the prescription of boundaries of the constituencies referred to in the next

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following paragraph, be in accordance with the provincial boundaries constituted and prescribed under the Fijian Affairs Act, and each constituency shall return the following number of members:

<u>Province</u>	<u>Number of Constituency</u>
Ba	3
Bua	2
Cakaudrove	3
Kadavu	2
Lau	3
Lomaiviti	2
Macuata	2
Nadroga/Navosa	2
Naitasiri	2
Namosi	2
Ra	2
Rewa	2
Serua	2
Tailevu	3

- (b) for the purpose of the election of the other five members of the House of Representatives referred to in section 41(3) of this Constitution, there shall be five urban constituencies each returning one member.
- (c) for the purpose of electing the members of the House of Representatives referred to in section 41(4), be divided into twenty-seven constituencies each returning one member.
- (d) for the purpose of electing the member of the House of Representatives referred to in section 41(5), comprise one constituency returning one member.
- (e) for the purpose of electing the member of the House of Representatives referred to in section 41(6), be divided into

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five constituencies each returning one member.

(3) When the Constituency Boundaries Commission prescribes the boundaries of the constituencies or, following a review of those boundaries, prescribes new boundaries for any constituencies, it shall do so in such a manner that -

- (a) the constituencies referred to in paragraph (b) of the preceding subsection contain as nearly equal numbers of adult inhabitants who are Fijians;
- (b) the constituencies referred to in paragraph (c) of the preceding subsection contain as nearly equal numbers of adult inhabitants who are Indians and;
- (c) the constituencies referred to in paragraph (e) of the preceding subsection contain as nearly equal numbers of adult inhabitants who are neither Fijians, Indians nor Rotumans,

as appears to the Commission to be reasonably practicable:

Provided that the Commission may depart from the foregoing principles to such extent as it considers expedient in order to take account of geographical features, the boundaries of existing administrative and recognised traditional areas, means of communication and density and mobility of populations:

And provided further that in exercising its functions in relation to the constituencies referred to in paragraph (a) of the preceding subsection, the Commission shall act in consultation with the Provincial Council established under the Fijian Affairs Act.

(4) The boundaries of the constituencies shall be prescribed by the Commission as soon as

practicable after the commencement of this Constitution; and thereafter the Commission may review the boundaries of the constituencies whenever it considers this to be desirable and shall do so not later than five years after it first prescribed those boundaries or, as the case may be, last reviewed them.

(5) Every order made by the Commission under this section shall be published in the Gazette and shall take effect for the purpose of elections to the House of Representatives subsequent to the next dissolution of Parliament after it was made.

(6) In subsection (3) of this section "adult" means of or over the age of twenty-one years.

Qualifications and disqualifications for registration as a voter

49.-(1) Subject to the provisions of subsection (2) and (3) of this section, a person shall be qualified to be registered on one of the rolls referred to in paragraphs (a), (b), (c) and (d) of section 41(2) of this Constitution if, and shall not be so qualified unless, he is a citizen of Fiji, normally resident in Fiji and has attained the age of twenty-one years.

(2) For the purpose of this section a person shall be presumed to be normally resident in Fiji -

(a) if he has been in continuous residence in Fiji in the twenty-four months immediately preceding a general election or an election to fill any vacancy arising in the House of Representatives; or

(b) if, where in the twenty-four months immediately preceding a general election or an election to fill a vacancy arising in the House, a person has been resident outside of Fiji, he can demonstrate to the satisfaction of the Supervisor of Elections that any residence outside of Fiji during the said twenty-four months period has been by reason of -

(i) the service of the State either in a civil or military capacity;

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- (ii) service in any international organisation of which Fiji is a member;
- (iii) duties outside of Fiji assigned to him by his employer who carries on business in Fiji; or
- (iv) his attendance at any course of instruction or training.

(3) No person shall be qualified to be so registered who -

- (a) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a power or State outside Fiji;
- (b) is under sentence of death imposed on him by a court in Fiji or in any State outside Fiji, or is under a sentence of imprisonment (by whatever name called) for a term exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;
- (c) is, under any law in force in Fiji adjudged or otherwise declared to be of unsound mind; or
- (d) is disqualified for registration as a voter under any law in force in Fiji relating to offences connected with elections.

(4) No person shall be qualified to be registered as a voter in any constituency referred to in section 48 of this Constitution unless he has resided in that constituency for a period of twenty-four months.

(5) No person shall be entitled to be registered as a voter in more than one constituency.

(6) No person shall be entitled to be

registered as a voter on the roll of voters referred to in section 41(2)(a) of this Constitution unless his name is registered or eligible to be registered in the Vola ni Kawa Bula:

Provided that a person's registration or eligibility for registration in the Vola ni Kawa Bula shall be confirmed or determined as the case may be by the Native Lands Commission whose confirmation or decision shall be final and conclusive.

(7) The allocation of persons qualified to be registered on any roll to any particular constituency for the purpose of being registered as voters in that constituency shall be made in such manner as may be further prescribed.

(8) Paragraphs (a) and (b) of section 42(2) of this Constitution shall apply for the purposes of subsection 3(b) of this section as they apply for the purposes of paragraph (d) of section 42(1) of this Constitution.

Right to vote at elections

50.-(1) Any person who is registered as a voter in any constituency shall be entitled to vote in such manner as may be prescribed at any election for the constituency unless -

- (a) on the date appointed for polling he is under such a sentence of death or serving such a sentence of imprisonment as is referred to in paragraph (b) of section 49(3) of this Constitution or (except insofar as may be otherwise prescribed) he is for any other reason unable to attend in person at the place and time appointed for polling; or
- (b) he is prohibited from so voting by any law in force in Fiji because he holds or is acting in any office the functions of which involve any responsibility for, or in connection with, the conduct of that election or because he has been convicted of any offence connected with elections.

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(2) No person shall vote at any election for any constituency who is not registered as a voter in that constituency.

(3) Any person who is registered as a voter in an urban constituency shall not vote in a provincial constituency.

Electoral Commission

51.-(1) There shall be an Electoral Commission consisting of a Chairman appointed by the President acting in his own deliberate judgment and not less than two nor more than four other members appointed by the President acting in accordance with the advice of the Prime Minister.

(2) A person shall not be qualified to be appointed as a member of the Commission if he is a member of the House of Representatives, a member of the Senate, an elected member of any local authority, a candidate for election as a member of the House of Representatives or of a local authority nominated as such with his consent.

(3) Subject to the provisions of the next following subsection, a member of the Commission shall vacate his office -

(a) at the expiration of five years from the date of his appointment; or

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(4) The provisions of section 130 of this Constitution shall apply to a member of the Electoral Commission as they apply to members of the Public Service Commission except that subsection (7)(b) shall apply as if for the words "in accordance with the advice of the Prime Minister" there were substituted the words "in his own deliberate judgment".

Supervisor of Elections

52.-(1) There shall be a Supervisor of Elections whose office shall be a public office.

(2) Power to make appointments to the office of Supervisor of Elections shall vest in the Judicial and Legal Services Commission:

Provided that the Commission shall not select for appointment, to hold that office a person who is not a citizen of Fiji and is not a public officer unless the Prime Minister has agreed that such a person may be so selected.

(3) A person shall not be qualified to hold or act in the office of Supervisor of Elections unless he is qualified to practise as a barrister and solicitor in Fiji.

(4) Without prejudice to the provisions of the next following section, in the exercise of his functions under this Constitution the Supervisor of Elections shall not be subject to the direction or control of any other person or authority.

Functions of Electoral Commission and Supervisor of Elections

53.-(1) The Electoral Commission shall have general responsibility for, and shall supervise, the registration of voters for the election of members of the House of Representatives and the conduct of elections of such members and the Commission shall have such powers and other functions relating to such registration and such elections as may be prescribed.

(2) The Supervisor of Elections shall have such powers and other functions relating to such registration and elections as may be prescribed; and he shall keep the Electoral Commission fully informed concerning the exercise of his functions and shall have the right to attend meetings of the Commission, and he shall comply with any directions that the Commission may give to him concerning the exercise of his functions:

Provided that the question whether the Supervisor of Elections has acted in accordance with the directions of the Electoral Commission shall not be enquired into in any court of law.

(3) In the exercise of its functions or his

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function under subsection (1) or (2) of this section, the Electoral Commission or the Supervisor of Elections as the case may be shall, where necessary, act in consultation with the Native Lands Commission.

(4) Every proposed bill and every proposed regulation or other instrument having the force of law relating to the registration of voters for the election of members of the House of Representatives or to the election of such members shall be referred to the Electoral Commission and to the Supervisor of Elections at such time as shall give them sufficient opportunity to make comments thereon before the bill is introduced in the House or, as the case may be, the regulation or other instrument is made.

(5) The Electoral Commission shall make an annual report to the President and the House of Representatives in respect of matters coming under its supervision and control.

PART 3

THE SENATE

Members of the Senate

54. The Senate shall consist of thirty four members appointed by the President in accordance with section 55 of this Constitution.

Composition of the Senate and Qualifications for Membership

55.--(1) Membership of the Senate shall consist of -

- (a) twenty-four Fijians who shall be appointed by the President on the advice of the Bose Levu Vakaturaga;
- (b) one Rotuman who shall be appointed by the President on the advice of the Rotuma Island Council, and
- (c) nine members who shall be appointed by

the President in his own deliberate judgment from other communities:

Provided that the President shall in appointing the members from other communities take into consideration the special interests of the minority communities.

(2) For the purpose of nominating members of the Senate such nominations shall be subject to the provisions for disqualification as a member of the House of Representatives as set out in section 42 of this Constitution.

Tenure of Seats of Members

56.--(1) Subject to the provisions of this section, the term of office of a member of the Senate shall be four years, and his tenure thereof shall not be affected by a dissolution of Parliament:

Provided that the term of office of a member appointed to fill a vacancy occurring because a person has vacated his seat in the Senate for a reason other than the expiration of his term of office shall be the unexpired portion of the term of office of that person.

(2) Of the members of the Senate first appointed, the term of office shall be two years for -

(a) twelve of those appointed by the President acting in accordance with the advice of the Bose Levu Vakaturaga, who shall be designated by the President, acting in the same manner at the time of their appointment; and

(b) four of those appointed by the President in his own deliberate judgment, who shall be designated by the President acting in the same manner at the time of their appointment.

(3) For the purpose of reckoning the date on which the term of office of a member of the Senate expires -

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- (a) the term of office of the members first appointed shall be deemed to have begun on the date of their appointment which shall be not later than the date when the results are declared after the first general election after the commencement of this Constitution; and
 - (b) the term of office of a member appointed to fill a vacancy occurring by reason of the expiration of the term of office of a member shall be deemed to have begun immediately after the expiration of that term.
- (4) A member of the Senate shall vacate his seat therein -
- (a) upon the expiration of his term of office;
 - (b) if he ceases to be a citizen of Fiji;
 - (c) if he is absent from two consecutive meetings of the House without having obtained from the President of the Senate (or, if the office of President is vacant or he is for any reason unable to perform the functions of his office, the Vice President) before the termination of any of those meetings, permission to be or to remain absent from that meeting;
 - (d) if any circumstances arise that, if he were not a member of the Senate, would cause him to be disqualified for appointment as such by virtue of paragraphs (a), (b), (c), (e) or (f) of subsection (1) of section 42 of this Constitution or by virtue of his becoming a member of the House of Representatives.
- (5) A member of the Senate may resign his seat therein by writing under his hand addressed to the President of the Senate and the seat shall become

vacant when the writing is received by the President or; if the office of President is vacant or the President is for any reason unable to perform the function of his office by the Vice-President or such other person as may be specified in the rules of procedure of the Senate.

Vacation of Seat on Sentence

57.-(1) Subject to the provisions of this section if a member of the Senate is sentenced by a court in Fiji or in any State outside Fiji to death or to imprisonment (by whatever name called) for a term exceeding twelve months he shall forthwith cease to perform his functions as a member of the Senate and his seat in the Senate shall become vacant at the expiration of a period of thirty days thereafter:

Provided that the President of the Senate (or, if the office of President is vacant or he is for any reason unable to perform the functions of his office, the Vice-President) may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be granted without the approval of the Senate signified by resolution.

(2) If at any time before the member vacates his seat he receives a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than twelve months or a punishment other than imprisonment is substituted, his seat in the Senate shall not become vacant under the provisions of this section, and he may again perform his functions as a member of the Senate.

(3) Paragraphs (a) and (b) of section 42(2) of this Constitution shall apply for the purpose of this section as they apply for the purposes of paragraph (d) of section 42(1).

Filling of Vacancies in the Senate

58. Whenever a member of the Senate vacates his seat therein this vacancy shall be filled as soon as

practicable by an appointment under the paragraph of section 55(1) of this Constitution under which that member was appointed.

President and Vice-President of the Senate

59.--(1) The Senate shall at its first sitting after the commencement of this Constitution elect from among its members a President and a Vice-President; and whenever the office of President becomes vacant the Senate shall elect one of its members to fill the vacancy at its next sitting after the occurrence of the vacancy or as soon as practicable thereafter.

(2) The office of the President or Vice-President shall become vacant -

- (a) if he ceases to be a member of the Senate;
- (b) if under the provision of section 57 of this Constitution, he is required to cease to perform his functions as a member of the Senate;
- (c) if he becomes a Minister or an Assistant Minister;
- (d) if the Senate passes a resolution supported by the votes of not less than two-thirds of all the members thereof requiring his removal from office; or
- (e) in the case of the Vice-President, if he is elected as President.

(3) A person holding the office of President or Vice-President may resign his office by writing under his hand addressed to the Senate and the office shall become vacant when the writing is received by the Secretary-General to Parliament.

Determination of questions of membership

60.--(1) The High Court shall have jurisdiction to hear and determine any questions whether -

- (a) any person, has been validly appointed as a member of the Senate;
- (b) any member of the Senate has vacated his seat or is required, under the provisions of section 57 of this Constitution, to cease to perform his functions as a member of the Senate.

(2) An application for the determination of any question under the preceding subsection may be made by any person registered as a voter for the purpose of electing members of the House of Representatives or by the Attorney-General; and, if any such application is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(3) A determination by the High Court in proceedings under this section shall not be subject to an appeal.

PART 4

POWERS AND PROCEDURE

Power to make laws

61. Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Fiji.

Mode of exercise of legislative power

62.--(1) The power of Parliament to make laws shall be exercised by bills passed by both Houses of Parliament (or, in the cases mentioned in Sections 72, 73, 74 and 75 of this Constitution, by the House of Representatives) and assented to by the President.

(2) A bill may originate either in the House of Representatives or in the Senate. Private bills may be initiated in the Senate and, if passed by a majority of all members in the Senate, shall be presented to the House of Representatives as a public bill.

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(3) When a bill has been passed by the House of Representatives it shall be sent to the Senate, and it shall be presented to the President for assent -

(a) when it has been passed by the Senate and agreement has been reached between the two Houses on any amendments made to it by the Senate; or

(b) when it is required to be so presented under sections 72, 73, 74 or 75 of this Constitution,

and any such bill shall bear a certificate of the Secretary-General to Parliament that it has been passed by the House of Representatives and the Senate and such certificate shall be conclusive for all purposes and shall not be questioned in any court of law.

(4) When a bill is presented to the President for assent in pursuance of the preceding subsection he shall signify his assent.

(5) When the President assents to a bill that has been so presented to him the bill shall become law and the President shall thereupon cause it to be published in the Gazette as a law.

(6) No law made by Parliament shall come into operation until it has been published in the Gazette but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

(7) All laws made by Parliament shall be styled "Acts of Parliament" and the words of enactment shall be "Enacted by the Parliament of Fiji".

Regulation of procedure in each House

63.-(1) Subject to the provisions of this Constitution, each House of Parliament may regulate its own procedure and may make rules for that purpose, including, in particular, the orderly conduct of its own proceedings.

(2) Each House of Parliament may act

notwithstanding any vacancy in its membership (including in the case of the House of Representatives any vacancy not filled when the House first meets after a general election) and the presence or participation of any person not entitled to be present at or participate in the proceedings of the House shall not invalidate those proceedings.

(3) Parliament may, for the purpose of the orderly and effective discharge of the business of each House, make provision for the powers, privileges and immunities of each House and the committees and members thereof.

Independent Parliamentary Emoluments
and Benefits Committee

64.-(1) There shall be an Independent Parliamentary Emoluments and Benefits Committee which shall consist of a Chairman and not less than two nor more than four other members who shall be appointed by the Speaker.

(2) The Committee shall be responsible for reviewing from time to time, at intervals determined by it, the salaries, allowances and benefits, financial or otherwise, (including personal accident insurance, pensions or retirement benefits) of the following persons -

- (i) the Prime Minister;
- (ii) Ministers;
- (iii) Assistant Ministers;
- (iv) the Speaker;
- (v) the Deputy Speaker;
- (vi) the President of the Senate;
- (vii) the Vice-President of the Senate; and
- (viii) Members of Parliament

and for making recommendations thereon.

Oath of Allegiance

65. No member of either House of Parliament shall take part in the proceedings of the House other than the election of the Speaker or President of the House or proceedings necessary for the purposes of this section, until he has made and subscribed before the House the Oath of Allegiance.

Official language

66. The official language of Parliament shall be English, but any member of either House may address the Chair in the House of which he is a member in Fijian or Hindustani.

Presiding

67.--(1) The Speaker or in his absence the Deputy Speaker or in their absence a member of the House of Representatives (not being a Minister or Assistant Minister) elected by the House for the sitting or sittings shall preside at any sitting of the House.

(2) The President or in his absence the Vice-President or in their absence a member of the Senate (not being a Minister or Assistant Minister) elected by the Senate for the sitting or sittings shall preside at any sitting of the Senate.

Quorum

68.--(1) If at any sitting of either House of Parliament a quorum of the House is not present and any member of the House who is present objects on that account to the transaction of business and, after such interval as may be prescribed by the rules of procedure of the House, the person presiding at the sitting ascertains that a quorum is still not present, he shall adjourn the House.

- (2) For the purposes of this section -
- (a) a quorum of the House of Representatives shall consist of twenty-four members in addition to the person presiding; and
 - (b) a quorum of the Senate shall consist of twelve members in addition to the person presiding.

Voting

69.--(1) Save as otherwise provided in this Constitution, all questions proposed for decision in either House of Parliament shall be determined by a majority of the votes of the members of the House present and voting.

(2) A person presiding in either House of Parliament shall not vote upon any question before the House that fails to be determined by a majority of the members of the House present and voting but he may vote in respect of any questions before the House when the votes cast are equally divided, in which case he shall exercise a casting vote.

Right of Attorney-General to attend either House

70. The Attorney-General shall be entitled to attend and take part in any proceedings of either House of Parliament notwithstanding that he is not a member of that House and whether or not he is then a member of the other House, but he shall not cast a vote in any proceedings of either House which he attends by virtue of the provisions of this section and shall not be regarded as a member of that House for the purposes of any provision of this Constitution other than sections 63(3) and 66.

Restrictions with regard to certain financial measures

71. Except upon the recommendation of the Cabinet signified by a Minister -

(1) the House of Representatives shall not -

(a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes -

(i) the imposition of taxation or the alteration of taxation otherwise than by reduction;

(ii) the imposition of any charge upon the Consolidated Fund or any other public fund of Fiji or the alteration of any such charge otherwise than by reduction;

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(iii) the payment, issue or withdrawal from the Consolidated Fund or any other public fund of Fiji of any moneys not charged thereon or any increase in the amount of such payment, issue or withdrawal; or

(iv) the composition or remission of any debt to the Government;

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

(2) the Senate shall not -

(a) proceed upon any amendment to a bill that, in the opinion of the person presiding, is an amendment that makes provision for any of the following purposes -

(i) the imposition, repeal or alteration of taxation;

(ii) the imposition, repeal or alteration of any charge upon the Consolidated Fund or any other public fund of Fiji;

(iii) the payment, issue or withdrawal from the Consolidated Fund or any other public fund of Fiji of any moneys not charged thereon or any alteration in the amount of such payment, issue or withdrawal;

- (iv) the composition or remission of any debt to the Government;
- (b) proceed upon any amendment to any provision contained in the bill that, in the opinion of the person presiding, is a provision for any of those purposes;
- (c) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, is that provision should be made for any of those purposes.

Limitation on powers of the Senate with respect to appropriation bills

72.--(1) If a bill that has been passed by the House of Representatives and certified by the Speaker under the next following subsection as an appropriation bill is not passed by the Senate without amendment by the end of the day after the day on which it was sent to the Senate, the bill shall, unless the House of Representatives otherwise resolves, be presented to the President for assent.

(2) When a bill that in the opinion of the Speaker is an appropriation bill is sent to the Senate from the House of Representatives it shall bear a certificate of the Speaker that it is an appropriation bill.

Limitation on powers of the Senate with respect to other money bills

73.--(1) Subject to the next following section, if a bill that has been passed by the House of Representatives and certified by the Speaker under the next following subsection as a money bill other than an appropriation bill, having been sent to the Senate at least twenty-one days before the end of the session, is not passed by the Senate without amendment within twenty-one days after the bill was sent to the Senate,

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the Bill shall, unless the House of Representatives otherwise resolves, be presented to the President for assent.

(2) When a bill that in the opinion of the Speaker is a money bill other than an appropriation bill is sent to the Senate from the House of Representatives it shall bear a certificate of the Speaker that it is a money bill other than an appropriation bill.

(3) In this section "money bill" means a bill that contains only provisions dealing with all or any of the following matters, that is to say -

- (a) the imposition, repeal, remission, alteration or regulation of taxation;
- (b) the imposition of charges on the Consolidated Fund or any other public fund of Fiji or the alteration or repeal of any such charges;
- (c) the grant of money to the State or to any other person or authority or the alteration or revocation of any such grant;
- (d) the appropriation, receipt, custody, investment, issue or audit of accounts of public money;
- (e) the raising or guarantee of any loan or the repayment thereof, or the establishment, alteration, administration or abolition of any sinking fund provided in connection with any such loan; or
- (f) subordinate matters incidental to any of the matters aforesaid:

Provided that the expressions "taxation", "public money" and "loan" do not include any taxation, money or loan raised by local authorities or other local bodies.

Limitation on powers of the Senate
with respect to urgent bills

74.--(1) If the President, acting in accordance with the advice of the Prime Minister, by writing under his hand certifies to the President of the Senate that the enactment of a bill that has been passed by the House of Representatives is a matter of urgency and the bill, having been sent to the Senate at least seven days before the end of the session, is not passed by the Senate within seven days after it is so sent or is passed by the Senate with any amendment to which the House of Representatives does not agree within seven days after the bill was sent to the Senate, the bill (with such amendments, if any, as may have been agreed to by both Houses) shall, unless the House of Representatives otherwise resolves, be presented to the President for assent.

(2) This section does not apply to any bill for the purposes mentioned in sections 77 or 78 of this Constitution.

Limitation on powers of the Senate
with respect to other bills

75.--(1) This section applies to any bill other than -

- (a) a bill certified under sections 72(2), 73(2) or 74(1) of this Constitution; or
- (b) a bill for the purposes mentioned in section 77 or 78 of this Constitution.

(2) If any bill to which this section applies is passed by the House of Representatives in two successive sessions (whether or not Parliament is dissolved between those sessions) and, having been sent to the Senate in each of those sessions at least one month before the end of the session, is rejected by the Senate in each of those sessions, that bill shall, on its rejection for the second time by the Senate, unless the House of Representatives otherwise resolves, be presented to the President for assent:

Provided that the foregoing provisions of this subsection shall not have effect unless at least six

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months have elapsed between the date on which the bill is passed by the House of Representatives in the first session and the date on which it is passed by that House in the second session.

(3) For the purposes of this section, a bill shall be deemed to be rejected by the Senate if it is not passed by the Senate without amendment, or it is passed by the Senate with any amendment which is not agreed to by the House of Representatives.

(4) For the purposes of this section, a bill that is sent to the Senate in any session shall be deemed to be the same bill as a former bill sent to the Senate in the preceding session if, when it is sent to the Senate, it is identical with the former bill or contains only such alterations as are certified by the Speaker to be necessary owing to the time that has elapsed since the date of the former bill or to represent any amendments which have been made by the Senate in the former bill in the preceding session and agreed to by the House of Representatives.

(5) The House of Representatives may, if it thinks fit, on the passage through that House of a bill that is deemed to be the same bill as a former bill sent to the Senate in the preceding session, suggest any amendments without inserting the amendments in the bill, and any such amendments shall be considered by the Senate and, if agreed to by the Senate, shall be treated as amendments made by the Senate and agreed to by the House of Representatives; but the exercise of this power by the House of Representatives shall not affect the operation of this section in the event of the rejection of the bill by the Senate.

(6) There shall be inserted in any bill that is presented to the President for assent in pursuance of this section any amendments to it that are certified by the Speaker to have been made or recommended by the Senate in the second session and agreed to by the House of Representatives.

Functions of Speaker

76.-(1) When a bill is presented to the President for assent in pursuance of the provisions of sections

72(1), 73(1), 74(1) and 75 of this Constitution, as the case may be, it shall bear a certificate of the Speaker that those provisions have been complied with.

(2) Whenever the office of Speaker is vacant or the Speaker is for any reason unable to perform any function conferred upon him by this section or by sections 72(1), 73(1), 74(1) and 75 of this Constitution, that function may be performed by the Deputy Speaker.

(3) A certificate given by the Speaker or Deputy Speaker under this section shall be conclusive for all purposes and shall not be questioned in any court of law.

Alteration of Constitution

77.--(1) Subject to the provisions of this section, Parliament may alter this Constitution.

(2) This Constitution may be altered only by an Act of Parliament that is expressed to be an Act of Parliament to alter this Constitution.

(3) A bill for an Act of Parliament under this section that alters any of the following provisions of this Constitution, that is to say -

- (a) this section;
- (b) Chapters I, III, IV;
- (c) Sections 31, 33, 35, 36, 37, 38, 39, 40, 41, 51, 52, 53, 55, 56, 61, 62, 78, 79, 80, 82, 88 and 96;
- (d) Chapters IX and X (including schedule 2);
- (e) Sections 146 and 148;
- (f) Chapter XII to the extent that it relates to any of the provisions specified in the preceding paragraphs; and
- (g) Chapters XIII and XV

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shall not be passed by either House of Parliament unless it is supported at the final voting thereon in the House by the votes of not less than two-thirds of all members of each House and in the case of Chapter XV of the Constitution the votes of not less than two-thirds of all members shall include the votes of not less than eighteen of the twenty-four of the members of the Senate referred to in paragraph (a) of section 55(1) of this Constitution.

(4) A bill for an Act of Parliament under this section that alters Chapter II or Chapter VIII of this Constitution shall not be passed by either House of Parliament unless it is supported at the final voting thereon in the House by the votes of not less than two-thirds of all members of the House.

(5) A bill for an Act of Parliament under this section that does not alter any of the provisions specified in the preceding subsections shall not be passed by either House of Parliament unless it is supported at the final voting thereon in the House by a majority of votes of all the members of the House.

(6) Notwithstanding anything in the foregoing provisions of this section, Parliament shall not have power to alter sections 41, 47 or 48 of this Constitution until three months after a copy has been laid before each House of Parliament of a report of a Commission appointed by the President at any time after the first general election of members of the House of Representatives held after this Constitution comes into force for the purpose of making recommendations as to the most appropriate method of electing members to, and representing the people of Fiji in, the House of Representatives; and, if Parliament subsequently makes any alteration to section 41, 47, or 48 of this Constitution, subsection (3)(c) of this section shall, as from the time the bill making that alteration becomes law, have effect as if sections 41, 47 and 48 were specified therein.

(7) Without prejudice to the provisions of subsection (2) of this section, a bill for an Act of Parliament that alters this subsection or paragraph (a) of section 55(1) or section 78(1) of this Constitution shall not be passed by the Senate unless it is supported at the final voting thereon in the

Senate by not less than eighteen of the members of the Senate referred to in paragraph (a) of the said section 55(1).

- (8) In this section -
- (a) references to this Constitution or to any particular provision thereof include references to any other law in so far as that law alters the Constitution or, as the case may be, that provision; and
- (b) references to altering this Constitution or any particular provision thereof include references -
- (i) to repealing it, with or without re-enactment thereof or the making of different provision in lieu thereof;
- (ii) to modifying it, whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise;
- (iii) to suspending its operation for any period, or terminating any such suspension; and
- (iv) to making any other provision that is repugnant to or otherwise inconsistent with it.

Alteration of certain laws

78.-(1) A bill for an Act of Parliament that alters any of the provisions of the following laws, that is to say -

- (a) the Fijian Affairs Act;
- (b) the Fijian Development Fund Act;
- (c) the Native Lands Act;
- (d) the Native Land Trust Act;
- (e) the Rotuma Act;
- (f) the Rotuma Lands Act;
- (g) the Banaban Land Act; and
- (h) the Banaban Settlement Act,

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or which affects Fijian land, customs or customary rights other than by altering the foregoing laws, shall not be passed by either House of Parliament unless it is supported at the final voting thereon in the House by a majority of votes of all the members of each House including the votes of not less than eighteen of the twenty-four nominees of the Bose Levu Vakaturaga in the Senate.

(2) A bill for an Act of Parliament that alters any of the provisions of the Agricultural Landlord and Tenant Act shall not be passed in either House unless it is supported by the votes of not less than two-thirds of all the members of each House including the votes of not less than eighteen of the twenty-four of the members of the Senate referred to in paragraph (a) of section 55(1) of this Constitution.

(3) Any of the laws referred to in the preceding subsection may be altered only by an Act of Parliament that is expressed to be an Act of Parliament to alter that law.

(4) Subsection (1) of this section (except for the reference therein to the final voting) shall apply to a resolution of either House of Parliament that by virtue of any Act of Parliament alters any provision referred to in that subsection as that subsection applies to a bill for an Act of Parliament that alters any such provision.

(5) In this section -

(a) references to the provisions of any law include references to any other law, whether made before or after the commencement of this Constitution, insofar as that law alters those provisions; and

(b) references to altering the provisions of any law include references -

(i) to repealing it with or without re-enactment thereof or the making of different provision in lieu thereof;

- (ii) to modifying it, whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise;
- (iii) to suspending its operation for any period, or terminating any such suspension; and
- (iv) to making any other provision that is repugnant to or otherwise inconsistent with it.

PART 5

SESSIONS, PROROGATION AND DISSOLUTION

Sessions of Parliament

79.--(1) Each session of Parliament shall be held at such place and commence at such time as the President may by proclamation appoint.

(2) The time appointed for the commencement of any session of Parliament shall be such that a period exceeding six months does not intervene between the end of one session and the first sitting of Parliament in the next session.

(3) Writs for a general election of members of the House of Representatives shall be issued within seven days of the date of any dissolution of Parliament and a date shall be prescribed for polling not later than 30 days after the issue of the writs.

(4) A session of Parliament shall be appointed to commence within thirty days of the date prescribed for polling at any general election.

(5) The President may exercise his powers under subsection (1) of this section in his own deliberate judgment if he receives a request in writing for the summoning of a session of Parliament from not less than one-quarter of the members of the House of Representatives and he considers that the Government no longer commands the confidence of a

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majority of the members of that House or that it is necessary for the two Houses of Parliament to consider without delay a matter of public importance.

(6) Subject to the provisions of subsection (1) of this section, the sittings of each House of Parliament shall be held at such time and place as that House may, by its rules of procedure or otherwise, determine.

Prorogation and dissolution of Parliament

80.-(1) The President, acting in accordance with the advice of the Prime Minister, may at any time prorogue or dissolve Parliament:

Provided that -

- (a) if the House of Representatives passes a resolution that it has no confidence in the Government and the Prime Minister does not within three days either resign from his office or advise the President to dissolve Parliament within seven days or at such later time as the President, acting in his own deliberate judgment, may consider reasonable, the President, acting in his own deliberate judgment, may dissolve Parliament;
- (b) if the office of Prime Minister is vacant and the President considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of a majority of the members of the House of Representatives, the President, acting in his own deliberate judgment, may dissolve Parliament.

(2) Parliament, unless sooner dissolved, shall continue for five years from the date of the first sitting of Parliament after any general election of members of the House of Representatives and shall then stand dissolved.

(3) At any time when Fiji is at war Parliament may from time to time extend the period of

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five years specified in the preceding subsection by not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than four years.

(4) At any time when there is in force a Proclamation of Emergency issued by the President under section 163 of this Constitution, Parliament may from time to time extend the period of five years specified in subsection (2) of this section by not more than six months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than one year.

(5) If, after a dissolution and before the holding of the next following general election of members of the House of Representatives, the Prime Minister advises the President that, owing to the existence of a state of war or of a state of emergency in Fiji or any part thereof, it is necessary to recall Parliament, the President shall summon the Parliament that has been dissolved to meet.

(6) Unless the life of Parliament is extended under subsection (3) or subsection (4) of this section, the general election of members of the House of Representatives shall proceed notwithstanding the summoning of Parliament under the preceding subsection and the Parliament that has been recalled shall, if not sooner dissolved, again stand dissolved on the day before the day prescribed for polling at that election.

PART 6

PARLIAMENTARY STAFF

Secretary-General to Parliament and staff

81.--(1) There shall be a Secretary-General to Parliament, a Secretary to the House of Representatives and a Secretary to the Senate.

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(2) The offices of the Secretary-General to Parliament, the Secretary to the House of Representatives and the Secretary to the Senate and of the members of their staffs shall be public offices.

(3) Nothing in this section shall be construed as preventing the appointment of one person to the offices of Secretary-General to Parliament or Secretary to the House of Representatives or Secretary to the Senate or the appointment of one person to any office on the staff of the Secretary to the House of Representatives and any office on the staff of the Secretary to the Senate.

(4) The Secretary-General to Parliament or the Secretary to the House of Representatives or a member of his staff shall not perform the functions of any other public office other than an office referred to in subsection (3) of this section without the concurrence of the Speaker; and the Secretary to the Senate or a member of his staff shall not perform the functions of any public office other than an office referred to in that subsection without the concurrence of the President of the Senate.

CHAPTER VII

THE EXECUTIVE

Executive Authority of Fiji

82.- (1) The executive authority of Fiji is vested in the President and exercisable by him or by the Cabinet or any Minister authorised by Cabinet.

(2) Nothing in this section shall preclude persons or authorities other than the President from exercising such functions as may be conferred upon them by any law.

Ministers

83.- (1) There shall be a Prime Minister, an Attorney-General, a Minister responsible for defence and security and such other offices of Minister of the

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Government as may be established by the President, acting in accordance with the advice of the Prime Minister.

(2) The President, acting in his own deliberate judgment, shall appoint as Prime Minister the Fijian member of the House of Representatives who appears to him best able to command the support of the majority of the members of that House:

Provided that if occasion arises for making an appointment between a dissolution of Parliament and the next following general election of members of the House of Representatives the persons who were members of that House immediately before the dissolution shall be regarded for the purposes of this subsection as continuing to be members thereof.

(3) The Attorney-General and Ministers other than the Prime Minister shall be appointed by the President acting in accordance with the advice of the Prime Minister from either House:

Provided that -

(a) a person shall not be qualified to be appointed as Attorney-General unless he is entitled to practise as a barrister and solicitor in Fiji;

(b) a person who has vacated office as a Minister under subsection (4) or, paragraph (a) or (b) of subsection (5) of the next following section shall not be reappointed as a Minister before the next dissolution of Parliament unless at the time of his appointment he is a member of either House of Parliament.

(4) Notwithstanding the provision of the preceding subsection, if the person holding the office of Attorney-General is for any reason unable to perform the functions of his office, those functions may be performed by such other person, being a person entitled to practise as a barrister and solicitor in Fiji (whether or not he is a member of either House of Parliament), as the President acting in accordance with the advice of the Prime Minister, may direct.

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Tenure of office of Ministers

84.-(1) If a resolution of no confidence in the Government is passed by the House of Representatives and the Prime Minister does not within three days resign from his office the President shall remove the Prime Minister from office unless, in pursuance of section 80 of this Constitution, Parliament has been or is to be dissolved in consequence of such resolution.

(2) If at any time between the holding of a general election and the first sitting of the House of Representatives thereafter the President, acting in his own deliberate judgment, considers that, in consequence of changes in the membership of the House resulting from that general election, the Prime Minister will not be able to command the support of a majority of the members of the House, the President may remove the Prime Minister from office.

(3) The office of Prime Minister shall also become vacant -

(a) if he ceases to be a member of the House of Representatives otherwise than by reason of a dissolution of Parliament;

(b) if, at the first sitting of the House of Representatives after any general election of members thereof, he is not a member of the House.

(4) If a Minister (other than the Prime Minister) -

(a) was a member of the House of Representatives immediately before a dissolution of Parliament and is not elected as a member of the House at the next following general election of members thereof; or

(b) was a member of the Senate at the date of his appointment as a Minister,

he shall vacate his office as a Minister upon the appointment of any person to the office of Prime

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Minister whether or not that appointment is made after a general election.

(5) The office of a Minister (other than the Prime Minister) shall also become vacant -

- (a) if he ceases to be a member of the House of Representatives otherwise than by reason of a dissolution of Parliament;
- (b) if, in the case of a Minister who is a member of the Senate, he ceases to be such a member;
- (c) if the President, acting in accordance with the advice of the Prime Minister, so directs;
- (d) if the Prime Minister resigns from office after the passage by the House of a resolution of no confidence in the Government or is removed from office in pursuance of the provisions of subsection (1) or (2) of this section.

Cabinet

85.-(1) There shall be a Cabinet for Fiji consisting of the Prime Minister, the Attorney-General, the Minister responsible for defence and security and such of the other Ministers as the Prime Minister may from time to time designate.

(2) The functions of the Cabinet shall be to advise the President in matters of the government of Fiji and the Cabinet shall be collectively responsible to Parliament for any advice given to the President by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.

(3) The provisions of the preceding subsection shall not apply in relation to -

- (a) the appointment and removal from office of Ministers and Assistant Ministers, the assigning of responsibility to any Minister under the next following

section, or the authorisation of another Minister to perform the functions of the Prime Minister during illness or absence;

- (b) the dissolution of Parliament; or
- (c) the matters referred to in section 99 of this Constitution (which relate to the prerogative of mercy).

Assignments of responsibilities to Ministers

86.--(1) The President, acting in accordance with the advice of the Prime Minister may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for the conduct (subject to the provisions of this Constitution and any other law) of any business of the Government, including responsibility for the administration of any department of the Government.

(2) Without prejudice to the assignment of any responsibility to him under the preceding subsection, the Attorney-General shall be the principal legal adviser to the Government.

Performance of Prime Minister's functions during illness or absence

87.--(1) Whenever the Prime Minister is unable, by reason of illness or absence from Fiji or for any other reason, to perform the functions conferred on him by this Constitution, the President may, by directions in writing, authorise some other Minister, who shall be a Fijian, to perform those functions (other than the functions conferred by this section) and that Minister may perform those functions until his authority is revoked by the President.

(2) The powers of the President under this section shall be exercised by him in accordance with the advice of the Prime Minister:

Provided that if the President, acting in his own deliberate judgment, considers that it is impracticable to obtain the advice of the Prime Minister owing to the Prime Minister's illness or

absence or for any other cause, the President may exercise those powers without that advice and in his own deliberate judgment.

Exercise of President's functions

88.-(1) In the exercise of his functions under this Constitution or any other law, the President shall act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet except in cases where he is required by this Constitution to act in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet or in his own deliberate judgment.

(2) Where the President is required by this Constitution to exercise any function after consultation with any person or authority other than the Cabinet, he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(3) Where the President is required by this Constitution to act in accordance with the advice of, or after consultation with, any person or authority, the question whether he has in any matter so acted shall not be called in question in any court of law.

President to be kept informed

89. The Prime Minister shall keep the President fully informed concerning the general conduct of the government of Fiji and shall furnish the President with such information as he may request with respect to any particular matter relating to the government of Fiji.

Assistant Ministers.

90.-(1) The President acting in accordance with the advice of the Prime Minister may appoint Assistant Ministers.

(2) The provisions of sections 83(3) and 84(4) and (5) of this Constitution shall apply in relation to Assistant Ministers as they apply in relation to Ministers other than the Prime Minister.

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Oaths to be taken by Ministers

91. A Minister or an Assistant Minister shall not enter upon the duties of his office unless he has taken and subscribed the Oath of Allegiance and such Oath for the due execution of his office as is prescribed by schedule 1 to this Constitution.

Direction, etc of government departments

92. Where any Minister has been charged with responsibility for the administration of any department of the Government he shall exercise general direction and control over that department and, subject to such direction and control, any department in the charge of a Minister (including the office of the Prime Minister or any other Minister) shall be under the supervision of a Permanent Secretary or of some other supervising officer whose office shall be a public office:

Provided that -

- (a) any such department may be under the joint supervision of two or more supervising officers; and
- (b) different parts of any such department may respectively be under the supervision of different supervising officers.

Secretary to the Cabinet

93.--(1) There shall be a Secretary to the Cabinet whose office shall be a public office.

(2) The Secretary to the Cabinet shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister for arranging the business for, and keeping the minutes of, the Cabinet or any committee thereof and for conveying the decisions of the Cabinet or any committee thereof to the appropriate person or authority, and shall have such other functions as the Prime Minister may direct.

Republic of Fiji Military Forces

94.--(1) There shall be a military Force to be called the Republic of Fiji Military Forces.

(2) The Republic of Fiji Military Forces shall be under the command of a Commander who shall be appointed by the President acting in accordance with the advice of the Prime Minister for a term of five years, but shall be eligible for reappointment.

(3) 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 its peoples.

Commissioner of Police

95.--(1) There shall be a Commissioner of Police whose office shall be a public office and who shall be appointed by the Police Services Commission on the advice of the Prime Minister for a term of five years.

(2) The Police Force shall be under the command of the Commissioner of Police.

(3) The Prime Minister, or such other Minister as may be authorised in that behalf by the Prime Minister, may give to the Commissioner of Police such general directions of policy with respect to the maintenance of public safety and public order as he may consider necessary and the Commissioner shall comply with such directions or cause them to be complied with.

(4) Nothing in this section shall be construed as precluding the assignment to a Minister of responsibility under section 86(1) of this Constitution for the organisation, maintenance and administration of the Police Force, but the Commissioner of Police shall be responsible for determining the use and controlling the operations of the Force and, except as provided in the preceding subsection, the Commissioner shall not, in the exercise of his responsibilities and powers with respect to the use and operational control of the Force, be subject to the direction or control of any person or authority.

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Director of Public Prosecutions

96.-(1) There shall be a Director of Public Prosecutions whose office shall be a public office.

(2) Power to make appointments to the office of Director of Public Prosecutions shall vest in the Judicial and Legal Services Commission:

Provided that the Commission shall not select a person for appointment to hold that office unless the Prime Minister has agreed that such person may be so selected.

(3) A person shall not be qualified to hold or act in the office of Director of Public Prosecutions unless he is qualified for appointment as a judge of the High Court.

(4) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do -

- (a) to institute and undertake criminal proceedings before any court of law (not being a court established by a disciplinary law);
- (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(5) The powers of the Director of Public Prosecutions under the preceding subsection may be exercised by him in person or through other persons acting in accordance with his general or specific instructions.

(6) The powers conferred upon the Director of Public Prosecutions by paragraphs (b) and (c) of

subsection (4) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(7) In the exercise of the powers conferred upon him by this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

(8) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purposes of any such proceedings to any other court, shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public Prosecutions by paragraph (c) of subsection (4) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved except at the instance of such a person.

Leader of the Opposition

97.--(1) There shall be a Leader of the Opposition who shall be appointed by the President.

(2) Whenever the President has occasion to appoint a Leader of the Opposition he shall appoint -

- (a) if there is one opposition party whose numerical strength in the House of Representatives is greater than the strength of any other opposition party, the member of the House who is the leader in the House of that party; or
- (b) if there is no such party, the member of the House whose appointment would, in

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the judgment of the President, be most acceptable to the leaders in the House of the opposition parties:

Provided that, if occasion arises for making an appointment between a dissolution of Parliament and the next following general election of members of the House of Representatives, the persons who were members of that House immediately before the dissolution shall be regarded for the purposes of this subsection as continuing to be members thereof.

(3) If the President considers that the Leader of the Opposition is no longer the person who, if the office of Leader of the Opposition were vacant, should be appointed thereto under the preceding subsection, the President may remove the Leader of the Opposition from office.

(4) The office of Leader of the Opposition shall also become vacant -

(a) if he ceases to be a member of the House of Representatives otherwise than by reason of a dissolution of Parliament; or

(b) if, at the first sitting of the House of Representatives after any general election, he is not a member of the House.

(5) During any period in which the office of Leader of the Opposition is vacant by reason that there is no such opposition party as is referred to in paragraph (a) of subsection (2) of this section and the President is of the opinion that no member of the House would be acceptable to the leaders of the opposition parties for the purposes of paragraph (b) of subsection (2) of this section or by reason that there are no opposition parties for the purposes of this section, the operation of any provision of this Constitution shall -

(a) to the extent that it requires the President to act in accordance with the advice of the Leader of Opposition have effect as if it required the President

to act in his own deliberate judgment;
or

(b) to the extent that it requires the President, the Prime Minister or any Commission to consult the Leader of the Opposition,

be suspended.

(6) For the purposes of this section "opposition party" means a group of members of the House of Representatives in opposition to the Government, whose number includes a leader who commands their support.

(7) In the exercise of his functions under this section the President shall act in his own deliberate judgment.

Constitution of offices

98. Subject to the provisions of this Constitution and of any other law, the President may constitute offices for Fiji, make appointments to any such office and terminate any such appointment.

Prerogative of Mercy

99.--(1) The President may -

- (a) grant to any person convicted of any offence under the law of Fiji a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence;
- (c) substitute a less severe form of punishment for any punishment imposed on any person for such an offence; or
- (d) remit the whole or part of any punishment imposed on any person for such an offence or of any penalty or forfeiture otherwise due to the State on

account of such an offence.

(2) There shall be a Commission on the Prerogative of Mercy (hereinafter in this section referred to as "the Commission") consisting of a chairman and not less than two other members appointed by the President, acting in his own deliberate judgment.

(3) A member of the Commission shall vacate his seat on the Commission -

(a) at the expiration of the term of his appointment (if any) specified in the instrument of his appointment; or

(b) if his appointment is revoked by the resident, acting in his own deliberate judgment.

(4) In the exercise of the powers conferred upon him by subsection (1) of this section, the President shall act in accordance with the advice of the Commission.

(5) The validity of the transaction of business by the Commission shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.

(6) Whenever any person has been sentenced to death (otherwise than by a court martial) for an offence, a report on the case by the judge who presided at the trial (or, if a report cannot be obtained from that judge, a report on the case by the Chief Justice), together with such other information derived from the record of the case or elsewhere as may be required by or furnished to the Commission shall be taken into consideration at a meeting of the Commission, which shall then advise the President whether or not to exercise his powers under subsection (1) of this section in that case.

(7) A Minister having responsibility for any matters relating to the treatment of offenders may consult the Commission with respect to such matters.

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CHAPTER VIII

THE JUDICATURE

PART I

THE APPLICATION OF LAWS

Customary laws and decision of the Native
Lands Commission

100.--(1) Parliament shall make provision for the application of laws, including customary laws.

(2) In exercising its powers under the preceding subsection, Parliament shall have particular regard to the customs, traditions, usages, values and aspirations of the Fijian people.

(3) Until such time as an Act of Parliament otherwise provides, Fijian customary law shall have effect as part of the laws of Fiji:

Provided that this subsection shall not apply in respect of any custom, tradition, usage or values that is, and to the extent that it is, inconsistent with a provision of this Constitution or a statute, or repugnant to the general principles of humanity.

(4) For the purpose of this Constitution the opinion or decision of the Native Lands Commission on

- (a) matters relating to and concerning Fijian customs, traditions and usages or the existence, extent, or application of customary laws; and
- (b) disputes as to the headship of any division or sub-division of the Fijian people having the customary right to occupy and use any native lands,

shall be final and conclusive and shall not be challenged in a court of law.

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PART 2

THE COURTS

Establishment of Courts

101.-(1) There shall be for Fiji a High Court, a Fiji Court of Appeal, a Supreme Court, which shall be the final appellate court, and such other courts as may be established by law.

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

(3) Every court shall in the exercise of its judicial functions be independent of the executive or any other authority.

PART 3

THE JUDICIARY

Composition of High Court

102. The judges of the High Court shall be the Chief Justice and not more than eight puisne judges or such other number as Parliament may prescribe.

Appointment of judges of High Court

103.-(1) The Chief Justice shall be appointed by the President acting on the advice of the Cabinet.

(2) The puisne judges of the High Court shall be appointed by the President acting after consultation with the Judicial and Legal Services Commission.

(3) A person shall not be qualified to be appointed as a judge of the High Court unless -

(a) he holds, or has held, high judicial office in Fiji or in any other country that may be prescribed by Parliament; or

(b) he is qualified to practise as a barrister or solicitor in such court or a court of equivalent jurisdiction and has been so qualified for not less than five years.

(4) In computing, for the purposes of the preceding subsection, the period during which any person has been qualified to practise as a barrister or solicitor, any period during which he has held judicial office after becoming so qualified shall be included.

Acting appointments

104.--(1) At any time when the office of Chief Justice is vacant or the Chief Justice is absent or is unable to perform the functions of his office due to any other cause, the President shall after consultation with the Prime Minister appoint a Justice of Appeal or a judge of the High Court to act as Chief Justice.

(2) At any time when the office of a judge of the High Court is vacant or a judge is absent or is unable to perform the functions of his office due to any other cause, the President shall after consultation with the Judicial and Legal Services Commission appoint a person qualified for appointment as a judge of the High Court to act as a judge.

(3) An appointment made under this section shall continue in force until the holder of such office resumes his functions or in the case of an appointment made under the preceding subsection, until the appointment is revoked by the President acting in accordance with the advice of the Chief Justice:

Provided that a person whose appointment has been revoked may continue to act as such for so long thereafter as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

(4) An appointment made under this section shall not be called in question on the ground that the holder of the office was not able to perform the functions of that office.

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Retiring age

105.--(1) A judge of the High Court other than the Chief Justice shall hold office until he attains the age of sixty-five, unless he sooner resigns or is removed from office in accordance with this Constitution:

Provided that a person who has attained the retiring age may continue in office so long thereafter as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that retiring age.

(2) The retiring age under this section shall not apply to any person who is appointed by the President to be a temporary judge of the High Court in accordance with section 104(2) of this Constitution.

Composition of Fiji Court of Appeal

106.--(1) The judges of the Fiji Court of Appeal shall be -

- (a) a Judge, other than the Chief Justice, who shall be President of the Fiji Court of Appeal;
- (b) such Justices of Appeal as may be appointed by the President after consultation with the Judicial and Legal Services Commission; and
- (c) the puisne judges of the High Court.

(2) No person shall be appointed a Justice of Appeal unless he is qualified for appointment as a judge of the High Court nor shall a person be so appointed after he has attained the age of seventy-five years.

(3) A Justice of Appeal may be appointed for one or more sessions of the Court or for a term of not less than three years.

Composition of Supreme Court

107.--(1) The Judges of the Supreme Court shall be -

- (a) the Chief Justice who shall be the President of the Supreme Court;
- (b) such Justices of the Supreme Court as the President may appoint after consultation with the Judicial and Legal Services Commission; and
- (c) the Justices of Appeal.

(2) No person shall be appointed a Justice of the Supreme Court unless he is qualified for appointment as a Judge of the High Court nor shall a person be so appointed after he has attained the age of seventy-five years.

(3) A Justice of the Supreme Court may be appointed for one or more sessions of the Court or appointed for a term not exceeding three years.

(4) In any sitting of the Supreme Court in pursuance of its appellate, advisory or other jurisdiction the Court shall be composed of not less than three members whose decision shall be by a majority.

Oaths to be taken by judge

108. No judge shall enter upon the duties of his office until he has taken and subscribed the Oath of Allegiance and such Oath of his office as is prescribed by schedule 1 to this Constitution:

Provided that no person shall be required to take either such Oath if he shall have taken such Oath within Fiji on any previous occasion.

Removal of judge for cause

109.- (1) A judge may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

(2) A judge shall be removed from office by the President in pursuance of the next following subsection.

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(3) If the President considers that the question of removing a Judge from office for inability as aforesaid or misbehaviour ought to be investigated, then -

- (a) the President shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the President from among persons who hold or have held high judicial office in Fiji or in any other country as may be prescribed by the President;
- (b) that tribunal shall enquire into the matter and report on the facts thereof to the President and advise the President whether that judge should be removed from office, and
- (c) if the tribunal so advises, the President shall remove the judge from office.

(4) If the question of removing a judge from office has been referred to a tribunal under the preceding subsection, the President may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that the judge ought not to be removed from office.

Remuneration etc. of judges

110. The remuneration and other terms and conditions of a judge shall not be altered to his disadvantage after his appointment.

PART 4

JURISDICTION

Original jurisdiction of High Court

111.-(1) The High Court shall have unlimited original jurisdiction to hear and determine any civil or

criminal proceedings under any law and such other jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2) The High Court shall have jurisdiction to hear and determine appeals in both civil and criminal matters from courts subordinate to it as may be conferred on it by this Constitution or any other law.

Jurisdiction of High Court under existing laws

112. The jurisdiction of the High Court shall include the jurisdiction and powers which were vested in the Supreme Court under the laws existing prior to December 5, 1987 and any reference in the laws in force prior to that day to the Supreme Court shall be construed as a reference to the High Court established by this Constitution.

Original jurisdiction of High Court in constitutional questions

113.-(1) Subject to the provisions of sections 42(3), 49(6), 53(2), 88(3), 100(4) and 139(1) of this Constitution, if any person alleges that any provision in this Constitution (other than Chapter II) has been contravened and that his interests are being or are likely to be affected by such contravention, then, without prejudice to any other cause of action with respect to the same matter which is lawfully available, that person may apply to the High Court for a declaration and for relief under this section.

(2) The High Court shall have jurisdiction, in any application made by any person in pursuance of the preceding subsection or in any other proceedings lawfully brought before the Court, to determine whether any provision of this Constitution (other than Chapter II) has been contravened and to make a declaration accordingly:

Provided that the High Court shall not make a declaration in pursuance of the jurisdiction conferred by this subsection unless it is satisfied that the interests of the persons by whom the application under the preceding subsection is made or, in the case of

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other proceedings before the Court, a party to those proceedings, are being or are likely to be affected.

(3) Where the High Court makes a declaration in pursuance of the preceding subsection, it may grant to the person or persons on whose behalf the application under subsection (1) of this section was made such remedy, being a remedy available against any person in any proceedings in the High Court under any law for the time being in force in Fiji, as the Court considers appropriate.

(4) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by this section (including rules with respect to the time within which applications shall be made under subsection (1) of this section.)

High Court and subordinate courts

114.--(1) The High Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate court and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such court.

(2) Where any question as to the interpretation of any provision of this Constitution (other than Chapter II) arises in any subordinate court and the court is of opinion that the question involves a substantial question of law the court shall refer the question to the High Court.

(3) Where any question is referred to the High Court in pursuance of the preceding subsection, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if the decision is the subject of appeal to the Fiji Court of Appeal or the Supreme Court of Fiji, in accordance with the decision of the Fiji Court of Appeal or the Supreme Court of Fiji, as the case may be.

Appeals to Fiji Court of Appeal

115.--(1) An appeal to the Fiji Court of Appeal shall

lie from decisions of the High Court in the following cases, that is to say -

- (a) as of right from final decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution;
- (b) as of right from final decisions given in exercise of the original jurisdiction conferred on the High Court by section 19 and 111 of this Constitution;
- (c) as of right from final decisions given in exercise of jurisdiction conferred on the High Court in pursuance of section 9(1) of this Constitution; and
- (d) in such other cases as may be prescribed.

(2) In this section the reference to final decisions of the High Court do not include any determination thereof that any application made thereto is merely frivolous or vexatious.

(3) Subject to special leave of the Supreme Court of Fiji, an appeal shall lie from any decision of the Fiji Court of Appeal made in pursuance of subsection (1) of this section.

Jurisdiction of Fiji Court of Appeal with respect to existing laws

116. The jurisdiction of the Fiji Court of Appeal shall include the jurisdiction and powers vested in the Court of Appeal under the laws existing prior to December 5, 1987 and any reference in the laws existing on that date to "the Court of Appeal" or "Fiji Court of Appeal" shall be construed as a reference to the Fiji Court of Appeal established by this Constitution.

Appeals to Supreme Court

117.-(1) An appeal shall lie from decisions of the Fiji Court of Appeal to the Supreme Court in the following cases, that is to say -

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- (a) from final decisions in any appeal to the Fiji Court of Appeal on any constitutional questions;
- (b) from final decisions in any civil proceedings where the matter in dispute is of the value of 20,000 dollars or upwards or where the appeal involves, directly or indirectly, a claim to or a question respecting property or a right of the value of 20,000 dollars or upwards; and
- (c) in such other cases as may be prescribed by law.

(2) An appeal shall lie from decisions of the Fiji Court of Appeal to the Supreme Court with the leave of that court in the following cases, that is to say -

- (a) from decisions in any civil proceedings where in the opinion of the court the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to the Supreme Court; and
- (b) in such other cases as may be prescribed by law.

(3) Nothing in this section shall affect the right of the Supreme Court to grant special leave to appeal from the decision of any court in any civil or criminal matter.

Supreme Court as final appellate court

118.- (1) Exclusive jurisdiction is vested in the Supreme Court to determine finally any appeal from a final decision or order of the Fiji Court of Appeal and in any such determination the Supreme Court shall have power to review, modify, reverse or affirm such decision or orders and make such other order (including an order for a new trial or award of costs) as the Court may consider necessary in the interests of justice.

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(2) Any decision of the Supreme Court shall to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all courts in Fiji.

(3) The Supreme Court shall have power, subject to this Constitution, or any other law or rules of court made in pursuance of the next following section to review any judgment, pronouncement or any order made by it.

Practice and procedure of Supreme Court

119. The practice and procedure for appeals shall be as provided by this Constitution or by or under any law or rules of court as the President of the Court may prescribe.

Advisory jurisdiction of Supreme Court

120. The President may in the public interest refer to the Supreme Court for its opinion any question as to the effect of any provision of this Constitution which has arisen or appears likely to arise, and the Supreme Court shall pronounce in open court its opinion on any question so referred to it.

Contempt of court

121. The superior courts shall have power to punish persons for contempt in accordance with the law.

PART 5

FIJIAN COURTS

Fijian Courts

122.-(1) There shall be Fijian courts having such jurisdiction and powers as may be prescribed by Parliament.

(2) Parliament shall make provision for the presiding officers of Fijian courts and the qualifications for and the tenure of appointment.

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CHAPTER IX

SERVICE COMMISSIONS AND THE PUBLIC SERVICE

Judicial and Legal Services Commission

123.--(1) There shall be a Judicial and Legal Services Commission which shall consist of -

- (a) the Chief Justice, who shall be Chairman;
- (b) the Chairman of the Public Service Commission; and
- (c) two other members (in this section referred to as "the appointed member") appointed by the President after consultation with the Chairman of the Commission.

(2) A person shall not be qualified to be appointed as the appointed member unless he is qualified to be a judge of the High Court.

(3) A person shall not be qualified to be appointed as the appointed member if he is, or has at any time during the three years immediately preceding his appointment been -

- (a) a member of the House of Representatives or the Senate or an elected member of any local authority; or
- (b) a public officer (other than a Justice of Appeal), or a local government officer.

(4) The appointed member shall not, within the period of three years commencing with the day on which he last held or acted in the office of appointed member be eligible for appointment to or to act in any public office.

(5) Subject to the provisions of section 130 of this Constitution, the appointed member shall vacate his office -

- (a) at the expiration of three years from the date of his appointment; or

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(a) if the name of any such office is changed, or any such office is abolished, the provisions of this section and that schedule shall have effect accordingly;

(b) this section shall also apply to such other offices, being offices that in the opinion of the Judicial and Legal Services Commission are offices similar to those specified in schedule 2 to this Constitution, as may be prescribed by the Commission, acting with the concurrence of the Prime Minister.

(3) Subject to the next following subsection, in selecting candidates for entry into the public service the Judicial and Legal Services Commission shall -

(a) give preference, other things being equal, to citizens who, in its opinion, are suitably qualified and shall not select persons who are not citizens of Fiji except to the extent that the Prime Minister has agreed that such persons may be selected; and

(b) ensure that, so far as possible, each community in Fiji receives fair treatment in the number and distribution of offices to which candidates of that community are appointed on entry.

(4) In the exercise of its powers to make appointments under this section and notwithstanding any provision contained in Chapter II of this Constitution, the Judicial and Legal Services Commission shall ensure, subject to the provision of subsection (5) hereunder, that each level of offices, appointments to which are within the functions of the Judicial and Legal Services Commission shall comprise not less than fifty percent of Fijians and Rotumans and not less than forty per cent of the members of other communities.

(5) Where due to circumstances beyond its control, the Judicial and Legal Services Commission cannot comply with the provisions of the preceding

subsection, the Commission, with the concurrence of the Prime Minister and notwithstanding the provisions of the immediately preceding subsection, shall appoint other suitably qualified persons.

Appointments, etc, of principal representatives of Fiji abroad and appointment on transfer of certain other officers

125.--(1) Power to make appointments to the offices of ambassador or other principal representative of Fiji in any other country or accredited to any international organisation and to remove persons holding or acting in such offices shall vest in the President, acting in accordance with the advice of the Prime Minister:

Provided that before advising the President to appoint to or to act in any such office a person who holds or is acting in some other public office the Prime Minister shall consult the Public Service Commission.

(2) The powers conferred by the preceding subsection shall not be construed as including any power to remove from the public service or any power conferred by any law to require or permit the retirement from the public service of a person who is the holder of an office referred to in that subsection and whose service therein may be taken into account for the purpose of computing his pension under any law relating to the grant of pensions in respect of his service in the public service; and any such power in relation to such a person or to a person who has ceased to be such a person by reason of his removal from office and who has not been appointed to some other public office shall, subject to the provisions of the next following subsection, vest in the Public Service Commission.

(3) Where a person -

(a) has been removed from his office under subsection (1) of this section but has not been removed from the public service and his service in that office may be taken into account for the purpose mentioned in the preceding subsection; and

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(b) he is not appointed, within such time as the Public Service Commission considers to be reasonable, to some other public office -

(i) that, in the opinion of the Commission, is a comparable office, and

(ii) that is an office service in which, in the circumstances of his appointment thereto, may be taken into account as aforesaid,

that person shall be deemed to have retired from the public service on such date as the Public Service Commission may specify for the purposes of any law relating to the grant of pensions in respect of his service in the public service, and he shall be eligible for the grant of a pension thereunder notwithstanding that he may not have attained any qualifying age specified therein or that he may not have completed any qualifying period of service specified therein:

Provided that where a person such as is mentioned in paragraph (a) of this subsection accepts, within such time as the Public Service Commission considers to be reasonable, appointment to some other public office that is not such an office as is mentioned in paragraph (b)(i) of this subsection, he may elect that the provisions of this subsection shall not apply to him.

(4) The power to make appointments to any office to which this subsection applies on transfer from another such office carrying the same salary shall vest in the Prime Minister or such other Minister as the Prime Minister may designate by directions in writing.

(5) The Minister in whom the power referred to in the preceding subsection is for the time being vested may, subject to such conditions and in respect of such offices as he thinks fit, delegate that power by directions in writing to any public officer.

(6) The offices to which subsection (4) of this section applies are -

(a) such public offices (other than those referred to in subsection (1) of this section) the holders of which are required to reside outside Fiji for the proper discharge of their functions; and

(b) such public offices in the department responsible for the foreign affairs of Fiji,

as may be prescribed by the Prime Minister.

Public Service Commission

126.--(1) There shall be a Public Service Commission which shall consist of a Chairman and not less than three nor more than five other members appointed by the President on the advice of the Prime Minister.

(2) A person shall not be qualified to be appointed as a member of the Public Service Commission if he is, or has at any time during the three years immediately preceding his appointment been -

(a) a member of the House of Representatives or the Senate or an elected member of any local authority;

(b) nominated with his consent as a candidate for election as a member of the House of Representatives or of any local authority; or

(c) the holder of an office (not being an office the functions of which relate only to a part of Fiji) in any political organisation that sponsors or otherwise supports or has during the said period of three years sponsored or otherwise supported a candidate for election to the House of Representatives.

(4) A person shall not be qualified to be appointed as a member of the Public Service Commission if he is a member of the Police Service Commission:

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Provided that a person shall not be disqualified for appointment as the Chairman of the Public Service Commission if he is the Chairman of the Police Service Commission.

(5) A member of the Public Service Commission shall not, within the period of 12 months commencing with the day on which he last held or acted in the office of member of the Commission, be eligible for appointment to or to act in any public office.

(6) Subject to the provisions of section 130 of this Constitution, a member of the Public Service Commission shall vacate his office -

- (a) at the expiration of three years from the date of his appointment; or
- (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(7) Whenever the office of Chairman of the Public Service Commission is vacant or the Chairman is for any reason unable to perform the functions of his office, those functions shall be performed by such one of the other members of the Commission as the President may appoint.

(8) If at any time there are less than three members of the Public Service Commission besides the Chairman or if any such member is acting as Chairman or is for any reason unable to perform the functions of his office, the President may appoint a person qualified for appointment as a member of the Commission to act as a member, and any person so appointed shall, subject to subsection (6)(b) of this section, continue to act until his appointment is revoked by the President.

(9) The functions of the President under this section shall be exercised by him in accordance with the advice of the Prime Minister.

Appointment, etc., of public officers

127.--(1) Subject to the provisions of this

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Constitution, power to make appointments to public offices (including power to confirm appointments) and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Public Service Commission.

(2) No appeal shall lie against decisions of the Public Service Commission with respect to matters concerning appointments, promotions and transfers.

(3) Except in relation to any office referred to in subsection (5) or (6) of this section, the Public Service Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this section by directions in writing to any member of the Commission or, subject to any limitations that Parliament may prescribe, to any public officer or class of public officer.

(4) The provisions of this section shall not apply in relation to -

- (a) the office of any judge of the High Court, the Fiji Court of Appeal or the Supreme Court of Fiji;
- (b) except for the purpose of making appointments thereto or to act therein, the office of Auditor-General;
- (c) the office of Ombudsman;
- (d) any office appointments to which are within the functions of the Judicial and Legal Services Commission;
- (e) any office referred to in section 125(1) of this Constitution;
- (f) the office of any member of the Police Force, the Republic of Fiji Military Forces or of any naval or air Force; or
- (g) any office or class of office in the public service prescribed by regulations made by the Public Service Commission with the concurrence of the Prime Minister as being an office or class of office to which this section does not apply.

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(5) Before making any appointment to hold or act in the office of Auditor-General or to an Agricultural Tribunal, the Public Service Commission shall consult the Prime Minister.

(6) The Public Service Commission shall not make any appointment to hold or act in the office of Secretary to the Cabinet or of a Permanent Secretary or of any other supervising officer within the meaning of section 92 of this Constitution unless the Prime Minister concurs in the appointment.

(7) Before making any appointment to hold or act in any office on the staff of the Ombudsman, the Public Service Commission shall consult the Ombudsman.

(8) The Public Service Commission shall not exercise any of its powers in relation to any office on the personal staff of the President or in relation to any person holding or acting in any such office without the concurrence of the President.

(9) Before exercising any of its powers in relation to the offices of the Secretary-General to Parliament or the Secretary to the House of Representatives or of any member of his staff or in relation to any person holding or acting in any such office, the Public Service Commission shall consult the Speaker; and before exercising any of its powers in relation to the office of the Secretary to the Senate or of any member of his staff or in relation to any person holding or acting in any such office, the Public Service Commission shall consult the President of the Senate.

(10) Subject to the next following subsection, in selecting candidates for entry into the public service the Public Service Commission shall -

- (a) give preference, other things being equal, to citizens who, in its opinion, are suitably qualified and shall not select persons who are not citizens of Fiji except to the extent that the Prime Minister has agreed that such persons may be selected; and

(b) ensure that, so far as possible, each community in Fiji receives fair treatment in the number and distribution of offices to which candidates of that community are appointed on entry.

(11) In the exercise of its powers under this section and notwithstanding any provision contained in Chapter II of this Constitution, the Public Service Commission, subject to the provision of subsection (12) hereunder, shall ensure that each level of each department in the public service shall comprise not less than fifty percent Fijians and Rotumans and not less than forty per cent of the members of other communities.

(12) Where due to circumstances beyond its control the Public Service Commission cannot comply with the provisions of the preceding subsection, the Commission, with the concurrence of the Prime Minister and notwithstanding the immediately preceding subsection, shall appoint other suitably qualified persons.

Police Service Commission

128.-(1) There shall be a Police Service Commission which shall consist of a Chairman and two other members appointed by the President.

(2) The Chairman and at least one other member shall be Fijians.

(3) A person shall not be qualified to be appointed by the President as a member of the Police Service Commission if he is, or has at any time during the three years immediately preceding his appointment, been -

(a) a member of the House of Representatives or the Senate or an elected member of any local authority;

(b) nominated with his consent as a candidate for election as a member of the House of Representatives or of any local authority or as a candidate for selection by the Bose Levu Vakaturaga or the Council of

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Rotuma for appointment by the President as a member of the Senate;

- (c) a public officer or a local government officer; or
- (d) the holder of an office (not being an office the functions of which relate only to a part of Fiji) in any political organisation that sponsors or otherwise supports or has during the said period of three years sponsored or otherwise supported a candidate for election to the House of Representatives.

(4) A person shall not be qualified to be appointed as a member of the Police Service Commission if he is a member of the Public Service Commission:

Provided that a person shall not be disqualified for appointment as the Chairman of the Police Service Commission if he is the Chairman of the Public Service Commission.

(5) Subject to the provisions of section 130 of this Constitution, a member of the Police Service Commission shall vacate his office -

- (a) at the expiration of three years from the date of his appointment; or
- (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(6) Whenever the office of Chairman of the Police Service Commission is vacant or the Chairman is for any reason unable to perform the functions of his office, those functions shall be performed by such one of the other Fijian members of the Commission as the President may appoint.

(7) If the office of a member of the Police Service Commission other than the Chairman is vacant or if any such member is acting as Chairman or is for any reason unable to perform the functions of his

office, the President may appoint a person qualified for appointment as a member of the Commission to act as a member, and any person so appointed shall, subject to subsection (4)(b) of this section, continue to act until his appointment is revoked by the President.

(8) The functions of the President under this section shall be exercised by him in accordance with the advice of the Prime Minister.

Appointment, etc., of members of the Police Force

129.--(1) Power to make appointments to offices in the Police Force above the rank of Senior Inspector (including power to confirm appointments) and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Service Commission:

Provided that before making any appointment to hold or act in the office of Commissioner of Police or Deputy Commissioner of Police the Police Service Commission shall consult the Prime Minister.

(2) Power to make appointments to offices in the Police Force of or below the rank of Senior Inspector (including power to confirm appointments) and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Commissioner of Police:

Provided that the Commissioner of Police shall not remove such a person from office or reduce him in rank unless the Police Service Commission concurs in the removal or reduction.

(3) The Police Service Commission may, subject to such conditions as it thinks fit; delegate by directions in writing -

(a) any of its powers under this section to any member of the Commission; or

(b) to such extent as the Prime Minister may prescribe by directions in writing, any of its powers under subsection (1) of this section to the Commissioner of Police.

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(4) The Police Service Commission or the Commissioner of Police shall not select for appointment to hold any office in the Police Force a person who is not a citizen of Fiji and is not a public officer unless the Prime Minister has agreed that such a person may be so selected.

(5) If provision is made by or under any law altering the ranks into which the Police Force is divided, the Police Service Commission may by order specify some other rank in the Police Force as being equivalent to the rank of Senior Inspector as it existed before such alteration, and the references in subsections (1) and (2) of this section to the rank of Senior Inspector shall then be construed as if they were references to the rank for the time being so specified.

Removal from office of members of Commissions

130.-(1) A person holding an office to which this section applies (in this section referred to as "a Commissioner") may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(2) A Commissioner shall be removed from office by the President if the question of his removal from that office has been referred to a tribunal appointed under the next following subsection and the tribunal has advised the President that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(3) If the President considers that the question of removing a Commissioner ought to be investigated, then -

- (a) the President shall appoint a tribunal in accordance with the provisions of subsection (6) of this section; and
- (b) that tribunal shall enquire into the matter and report on the facts thereof to the President and advise the President

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whether the Commissioner ought to be removed under this section.

(4) If the question of removing a Commissioner has been referred to a tribunal under this section, the President may suspend the Commissioner from performing the functions of his office, and any such suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal advises the President that the Commissioner should not be removed.

(5) The offices to which this section applies are those of appointed member of the Judicial and Legal Services Commission, member of the Public Service Commission and member of the Police Service Commission.

(6) A tribunal appointed under this section shall consist of a Chairman and two other members, and

(a) in the case of a tribunal to investigate the removal of the appointed member of the Judicial and Legal Services Commission, all members of the tribunal shall be persons who hold or have held high judicial office in Fiji or in any other country that may be prescribed by Parliament; and

(b) in any other case, the Chairman and one other member shall be persons who hold or have held such office.

(7) Except as provided in subsection (2) of this section, the functions of President under this section shall be exercised by him -

(a) in relation to the appointed member of the Judicial and Legal Services Commission, in accordance with the advice of the Chief Justice; and

(b) in relation to a member of the Public Service Commission or the Police Service Commission, in accordance with the advice of the Prime Minister.

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Tenure of office of Supervisor of Elections,
Director of Public Prosecutions and Auditor-General

131.-(1) Subject to the provisions of this section, a person holding or acting in an office to which this section applies shall vacate that office on attaining the age of fifty-five years:

Provided that the President, acting after consultation with the Prime Minister and the Public Service Commission, may permit an Auditor-General to continue in office for a period not exceeding six months after he has attained that age.

(2) The appropriate Commission may reappoint a person to hold or act in an office to which this section applies after he has vacated that office in accordance with the preceding subsection for such period as it thinks fit.

(3) Any person holding an office to which this section applies may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(4) Any such person shall be removed from office by the appropriate Commission if the question of his removal from that office has been referred to a tribunal appointed under the next following subsection and the tribunal has advised the Commission that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(5) If the appropriate Commission considers that the question of removing any such person ought to be investigated then -

(a) the Commission shall appoint a tribunal which shall consist of a Chairman and not less than two other members, being persons who hold or have held high judicial office in Fiji or any other country as may be prescribed by Parliament; and

(b) that tribunal shall enquire into the matter and report on the facts thereof to the Commission and advise the Commission whether he ought to be removed under this section.

(6) If the question of removing any such person has been referred to a tribunal under this section, the appropriate Commission may suspend him from performing the functions of his office, and any such suspension may at any time be revoked by the Commission and shall in any case cease to have effect if the tribunal advises the Commission that he should not be removed.

(7) Any person appointed to act in an office to which this section applies shall, subject to the provisions of subsection (1) of this section, continue to act until his appointment is revoked by the appropriate Commission.

(8) The offices to which this section applies are those of Supervisor of Elections, Director of Public Prosecutions and Auditor-General.

(9) In this section "the appropriate Commission" means -

(a) in relation to the office of Supervisor of Elections or Director of Public Prosecutions, the Judicial and Legal Services Commission; and

(b) in relation to the office of Auditor-General, the Public Service Commission.

(10) Except as provided in subsection (3) of this section, the functions of any Commission under this section shall be exercised by it after consultation with the Prime Minister.

Pensions laws and protection of pension rights

132.--(1) The law to be applied with respect to any pensions benefits that were granted to any person before 10 October, 1970 shall be the law that was in force at the date on which those benefits were granted

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or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which the preceding subsection applies) shall -

- (a) insofar as those benefits are wholly in respect of a period of service as a public officer that commenced before 10 October, 1970, be the law that was in force immediately before that date; and
- (b) insofar as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after 9 October, 1970, be the law in force on the date on which that period of service commenced,

or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits (except so far as they are a charge on some other fund and have been duly paid out of that fund to the person or authority to whom payment is due) shall be a charge on the Consolidated Fund.

(5) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependents or personal representatives of such persons in respect of such service, and references to service as a public officer do not include references to service in any naval, military or air Force.

(6) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law

regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

Power of Commissions in relation to pensions, etc.

133.--(1) Where under any law any person or authority has a discretion -

(a) to decide whether or not any pensions benefits shall be granted; or

(b) to withhold, reduce in amount or suspend any such benefits that have been granted,

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the appropriate Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the appropriate Commission concurs in his being granted benefits of a smaller amount.

(3) The appropriate Commission shall not concur under subsection (1) or subsection (2) of this section in action taken on the ground that any person who holds or has held the office of any judge of the High Court or the Fiji Court of Appeal, or the Supreme Court, Supervisor of Elections, Director of Public Prosecutions, Ombudsman or Auditor-General has been guilty of misbehaviour unless he has been removed from office by reason of such misbehaviour.

(4) In this section "the appropriate Commission" means -

(a) in the case of benefits for which any person may be eligible in respect of the

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service in the public service of a person who, immediately before he ceased to be a public officer, was subject to the disciplinary control of the Judicial and Legal Services Commission, that Commission;

- (b) in the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before he ceased to be a public officer, was a member of the Police Force, the Police Service Commission; and
- (c) in any other case, the Public Service Commission.

(5) Any person who is entitled to the payment of any pensions benefits and who is ordinarily resident outside Fiji may, within a reasonable time after he has received that payment, remit the whole of it (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Fiji:

Provided that nothing in this subsection shall be construed as preventing -

- (a) the attachment, by order of a court, of any payment or part of any payment to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party to the extent to which such attachment is permitted by the law with respect to pensions benefits that applies in the case of that person; or
 - (b) the imposition of reasonable restrictions as to the manner in which any payment is to be remitted.
- (6) In this section "pensions benefits" has the same meaning as in the preceding section.

CHAPTER X

THE OMBUDSMAN

Office of Ombudsman

134.-(1) There shall be an Ombudsman, whose office shall be a public office.

(2) The Ombudsman shall be appointed by the President, acting on the advice of the Prime Minister, and in consultation with the Leader of the Opposition and such other persons, if any, as appear to the President, acting in his own deliberate judgment, to be leaders of parties in the House of Representatives.

(3) A person shall not be qualified to be appointed as Ombudsman if he is a member of the House of Representatives, a member of the Senate, a member of any local authority, a candidate for election as a member of the House of Representatives or a local authority nominated as such with his consent or a local government officer.

(4) The Ombudsman shall not perform the functions of any other public office, and shall not, without the approval of the Prime Minister in each particular case, hold any other office of emolument other than the office of Ombudsman or engage in any occupation for reward outside the duties of his office.

(5) Subject to the provisions of the next following subsection, the Ombudsman shall vacate his office -

(a) at the expiration of four years from the date of his appointment; or

(b) if any circumstances arise that, if he were not the holder of that office, would cause him to be disqualified for appointment as such.

(6) The provisions of subsections (1) to (6) of section 130 of this Constitution shall apply to the office of Ombudsman as they apply to the office of appointed member of the Judicial and Legal Services

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Commission; and, except as provided in subsection (2) of that section, the functions of the President under those subsections shall be exercised by him in relation to the Ombudsman in his own deliberate judgment.

Investigations by Ombudsman

135.--(1) Subject to the provisions of this section, the Ombudsman may investigate any action taken by any officer or authority to which this section applies in the exercise of administrative functions of that officer or authority, in any case in which -

- (a) a complaint is made under this section alleging that a person or body of persons has suffered injustice in consequence of that action;
- (b) he is invited to do so by any Minister or any member of the House of Representatives or the Senate; or
- (c) he considers it desirable to do so of his own motion.

(2) This section applies to the following officers and authorities -

- (a) any department of the Government or officer of such a department;
- (b) the Police Force or any member thereof;
- (c) the Fiji Prisons Service or any other service maintained and controlled by the Government or any officer or authority of any such service;
- (d) any authority empowered to determine the person with whom any contract or class of contract is to be entered into by or on behalf of the Government or any such officer or authority;
- (e) local government bodies;
- (f) rural local authorities;

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- (g) statutory bodies not covered by the Ombudsman Act; and
- (h) such other officers or authorities as may be prescribed by Parliament:

Provided that it shall not apply in relation to any of the following officers and authorities -

- (i) the President or his personal staff;
 - (ii) any Commission established by this Constitution or the staff of any such Commission;
 - (iii) any other person or authority in so far as that person or authority exercises power to make appointments to offices in the public service, disciplinary control over or power to remove persons holding or acting in such offices, power to grant, withhold, reduce in amount or suspend pensions benefits in respect of service as public officers or powers in respect of similar matters affecting public officers;
 - (iv) the Director of Public Prosecutions or any person acting in accordance with his instructions;
 - (v) Bose Levu Vakaturaga;
 - (vi) Native Lands Commission;
 - (vii) Native Fisheries Commission;
 - (viii) Native Land Trust Board;
 - (ix) Rotuma Island Council;
 - (x) Banaban Island Council.
- (3) A complaint under this section may be made by any individual, or by any body of persons whether incorporated or not, not being -

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- (a) a department or authority of the Government or any authority or body constituted for purposes of the public service or local government; or
- (b) any other authority or body whose members are appointed by the President or by a Minister or whose revenues consist wholly or mainly of moneys provided from public funds.

(4) Where any person by whom a complaint might have been made under the preceding subsection has died or is for any reason unable to act for himself, the complaint may be made by his personal representatives or by a member of his family or other individual suitable to represent him; but except as aforesaid a complaint shall not be entertained unless made by the person aggrieved himself.

(5) The Ombudsman shall not conduct an investigation in respect of any complaint under this section unless the person aggrieved is resident in Fiji (or, if he is dead, was so resident at the time of his death) or the complaint relates to action taken in relation to him while he was present in Fiji or in relation to rights or obligations that accrued or arose in Fiji.

(6) The Ombudsman shall not conduct an investigation under this section in respect of any complaint under this section insofar as it relates to any of the following matters, that is to say -

- (a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any law in force in Fiji; or
- (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law:

Provided that -

- (i) the Ombudsman may conduct such an investigation notwithstanding that

the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to avail himself or to have availed himself of that right or remedy; and

(ii) nothing in this subsection shall preclude the Ombudsman from conducting any investigation as to whether any of the provisions of Chapter II of this Constitution has been contravened.

(7) The Ombudsman shall not conduct an investigation in respect of any complaint made under this section in respect of any action if he is given notice in writing by the Prime Minister that the action was taken by a Minister or Assistant Minister in person in the exercise of his own deliberate judgment.

(8) The Ombudsman shall not conduct an investigation in respect of any complaint made under this section where it appears to him -

- (a) that the complaint is merely frivolous or vexatious;
- (b) that the subject matter of the complaint is trivial;
- (c) that the person aggrieved has not sufficient interest in the subject matter of the complaint; or
- (d) that the making of the complaint has, without reasonable cause, been delayed for more than twelve months.

(9) The Ombudsman shall not conduct an investigation under this section in respect of any matter if he is given notice by the Prime Minister that the investigation of that matter would not be in the interests of the security of Fiji.

(10) In this section "action" includes failure to act.

Procedure in respect of investigations

136.--(1) Where the Ombudsman proposes to conduct an investigation under the preceding section, he shall afford to the principal officer of any department or authority concerned, and to any other person who is alleged to have taken or authorised the action in question, an opportunity to comment on any allegations made to the Ombudsman in respect thereof.

(2) Every such investigation shall be conducted in private but except as provided in this Constitution or as prescribed under section 140 of this Constitution the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case; and without prejudice to the generality of the foregoing provision the Ombudsman may obtain information from such persons and in such manner, and make such enquiries, as he thinks fit, and may determine whether any person may be represented, by a barrister and solicitor or otherwise, in the investigation.

Disclosure of information, etc

137.--(1) For the purposes of an investigation under section 135 of this Constitution the Ombudsman may require any Minister, officer or member of any department or authority concerned or any other person who is in his opinion able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For the purposes of any such investigation the Ombudsman shall have the same powers as the High Court in respect of the attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of the production of documents.

(3) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the public service imposed by any law in force in Fiji or any rule of law shall apply to the disclosure of information for the purposes of any such investigation; and the State shall not be entitled in

relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(4) No person shall be required or authorised by virtue of this section to furnish any information or answer any question or produce any document relating to proceedings of the Cabinet or any committee thereof; and for the purposes of this subsection a certificate issued by the Secretary to the Cabinet with the approval of the Prime Minister and certifying that any information, question or document so relates shall be conclusive.

(5) The Attorney-General may give notice to the Ombudsman, with respect to any document or information specified in the notice, or any class of documents or information so specified, that in his opinion the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest in relation to defence, external relations or internal security; and where such a notice is given nothing in this section shall be construed as authorising or requiring the Ombudsman or any member of his staff to communicate to any person for any purpose any document or information specified in the notice, or any document or information of a class so specified.

(6) Subject to subsection (3) of this section, no person shall be compelled for the purposes of an investigation under section 135 of this Constitution to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before the High Court.

Proceedings after investigation

138.-(1) The provisions of this section shall apply in every case where, after making an investigation, the Ombudsman is of opinion that the action that was the subject matter of investigation was -

- (a) contrary to law;
- (b) based wholly or partly on a mistake of law or fact;

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- (c) unreasonably delayed; or
- (d) otherwise unjust or manifestly unreasonable.

(2) If in any case to which this section applies the Ombudsman is of opinion -

- (a) that the matter should be given further consideration;
- (b) that the omission should be rectified;
- (c) that the decision should be cancelled, reversed or varied;
- (d) that any practice on which the act, omission, decision or recommendation was based should be altered;
- (e) that any law on which the act, omission, decision or recommendation was based should be reconsidered;
- (f) that reasons should have been given for the decision; or
- (g) that any other steps should be taken,

the Ombudsman shall report his opinion, and his reasons therefor, to the principal officer of any department or authority concerned, and may make such recommendations as he thinks fit; he may request that officer to notify him, within a specified time, of the steps (if any) that it is proposed to take to give effect to his recommendations; and he shall also send a copy of his report and recommendations to the Prime Minister and to any Minister concerned.

(3) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, if he thinks fit, after considering the comments (if any) made by or on behalf of any department, authority, body or person affected, may thereafter make such further report on the matter as he thinks fit to the House of Representatives and the Senate.

Discharge of functions of Ombudsman

139.-(1) In the discharge of his functions, the Ombudsman shall not be subject to the direction or control of any other person or authority and no proceedings of the Ombudsman shall be called in question in any court of law.

(2) In determining whether to initiate, continue or discontinue an investigation under section 135 of this Constitution the Ombudsman shall act in accordance with his own discretion; and any question whether a complaint is duly made for the purposes of that section shall be determined by the Ombudsman.

(3) The Ombudsman shall make an annual report to the President concerning the discharge of his functions, which shall be laid before the House of Representatives and the Senate.

Supplementary and ancillary provision

140.-(1) Parliament may make, or provide for the making of, provision for such supplementary and ancillary matters as may appear necessary or expedient in consequence of any of the provisions of this Chapter, including (without prejudice to the generality of the foregoing power) provision -

- (a) for the procedure to be observed by the Ombudsman in performing his functions;
- (b) for the manner in which complaints under section 135 of this Constitution may be made (which may include provisions permitting such complaints to be transmitted to the Ombudsman through the intermediary of a member of the House of Representatives or the Senate);
- (c) for the payment of fees in respect of any complaint or investigation;
- (d) for the powers, protection and privileges of the Ombudsman and his staff or of other persons or authorities with respect to any investigation or report by the Ombudsman, including the

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privilege of communications to and from the Ombudsman and his staff; and

- (e) the definition and trial of offences connected with the functions of the Ombudsman and his staff and the imposition of penalties for such offences.

CHAPTER XI

FINANCE

Consolidated Fund

141. All revenues or other moneys raised or received for the purposes of the Government (not being revenues or other moneys that are payable by or under any law into some other fund established for a specific purpose or that may be or under any law be retained by the authority that received them for the purposes of defraying the expenses of that authority) shall be paid into and form one Consolidated Fund.

Withdrawals from Consolidated Fund or other public funds

142.--(1) No moneys shall be withdrawn from the Consolidated Fund except -

- (a) to meet expenditure that is charged upon the Fund by this Constitution or by any other law in force in Fiji; or
- (b) where the issue of those moneys has been authorised by an Appropriation Act, by a supplementary estimate approved by resolution of the House of Representatives or in such manner and subject to such conditions as may be prescribed in pursuance of section 144 of this Constitution.

(2) No moneys shall be withdrawn from any public fund of Fiji other than the Consolidated Fund unless the issue of those moneys has been authorised by or under a law.

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(3) No moneys shall be withdrawn from the Consolidated Fund except in the manner prescribed.

(4) The deposit of any moneys forming part of the Consolidated Fund with a bank or with the Crown Agents for Oversea Governments and Administrations or the investment of any such moneys in securities in which, under the law for the time being in force in Fiji, trustees are authorised to invest, or the making of advances to such extent and in such circumstances as may be prescribed shall not be regarded as a withdrawal of those moneys from the Fund for the purposes of this section.

Authorisation of expenditure

143.-(1) The Minister responsible for finance shall cause to be prepared and laid before the House of Representatives and the Senate before the commencement of each financial year estimates of the revenues and expenditure of Fiji for that year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund by this Constitution or any other law) shall be included in a bill to be known as an appropriation bill which shall be introduced into the House of Representatives to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the said bill.

(3) If in any financial year it is found -

(a) that the amount appropriated by the Appropriation Act for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Appropriation Act; or

(b) that any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by the

Appropriation Act or for a purpose for which no amount has been appropriated by the Appropriation Act,

a supplementary estimate showing the sums required or spent shall be laid before the House of Representatives and a motion or motions seeking approval of such supplementary expenditure shall be introduced into the House.

(4) Where in respect of any financial year any supplementary estimates have been laid before the House in accordance with the provisions of the preceding subsection and approved by resolution of the House, a supplementary appropriation bill shall, as soon as practicable after the end of that year, be introduced into the House to provide for the appropriation for the purposes in question of the sums included in such estimates that have been expended for that year.

Authorisation of expenditure in advance of appropriation

144. If the Appropriation Act in respect of any financial year has not come into operation by the beginning of that financial year, the Minister responsible for finance may, to such extent and subject to such conditions as may be prescribed, authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the Appropriation Act, whichever is the earlier.

Contingencies Fund

145.--(1) Parliament may make provision for the establishment of a Contingencies Fund and for authorising the Minister responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the

Contingencies Fund, a supplementary estimate shall be laid before the House of Representatives, and a motion shall be introduced therein as soon as possible for the purpose of replacing the amount so advanced.

Remuneration of certain officers

146.--(1) There shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed.

(2) The salaries and any allowances payable to the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.

(3) The salary payable to the holder of any office to which this section applies and his terms of office, other than allowances which, under the law for the time being in force relating to pensions, are not taken into account in computing pensions, shall not be altered to his disadvantage after his appointment.

(4) Where a person's salary or terms of office depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3) of this section, be deemed to be more advantageous to him than any others for which he might have opted.

(5) This section applies to the offices of President, judge of the High Court, the Fiji Court of Appeal or the Supreme Court, member of the Constituency Boundaries Commission, member of the Electoral Commission, appointed member of the Judicial and Legal Services Commission, member of the Public Service Commission, member of the Police Service Commission, Supervisor of Elections, Director of Public Prosecutions, Ombudsman and Auditor-General.

Public debt

147.--(1) There shall be charged on the Consolidated Fund all debt charges for which Fiji is liable.

(2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of loans on the security of the revenues of Fiji or the Consolidated

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Fund and the service and redemption of debt thereby created.

Auditor-General

148.--(1) There shall be an Auditor-General whose office shall be a public office.

(2) The public accounts of Fiji and of all courts of law and all authorities and officers of the Government shall be audited and reported on by the Auditor-General and for that purpose the Auditor-General or any person authorised by him in that behalf shall have access to all records, books, vouchers, documents, cash, stamps, securities, stores or other government property in the possession of any officer:

Provided that, if it is so prescribed in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be prescribed.

(3) The Auditor-General shall submit his reports to the Minister responsible for finance, who shall cause them to be laid before each House of Parliament.

(4) In the exercise of his functions under this Constitution the Auditor-General shall not be subject to the direction or control of any other person or authority.

CHAPTER XII

MISCELLANEOUS

Interpretation

149.--(1) In this Constitution, unless the context otherwise requires -

"Bose Levu Vakaturaga" means the Great Council of Chiefs established under Section 3 of the Fijian Affairs Act;

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"disciplinary law" means a law regulating the discipline of any disciplined Force;

"disciplined Force" means -

- (a) a naval, military or air Force;
- (b) the Republic of Fiji Military Forces;
- (c) the Police Force;
- (d) the Fiji Prisons Service;
- (e) a fire or forest guard service established by any law in force in Fiji;

"Fiji" means the territories which immediately before 10th October 1970 constituted the Colony of Fiji and includes any other territories declared by Parliament to form part of Fiji;

"financial year" means the period of twelve months ending on 31st December in any year or such other day as may be prescribed by Parliament;

"the Gazette" means the Fiji Gazette or the Fiji Republic Gazette published by the order of Government and includes supplements thereto and any extraordinary Gazette so published;

"the Government" means the Government of Fiji;

"high judicial office" means the office of judge of a court having unlimited jurisdiction in civil and criminal matters or a court having jurisdiction in appeals from any such court;

"House of Parliament" means the House of Representatives or the Senate, as the context may require;

"judge" means a judge of the High Court, a Justice of Appeal and a Justice of the Supreme Court;

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"local authority" means the Council of Rotuma, a city council, town council, township board or Provincial Council and includes any other similar body prescribed by Parliament;

"local government officer" means a person holding or acting in any office of emolument in the service of a local authority but does not include a person holding or acting in the office of a member of any such authority;

"oath" includes affirmation;

"Oath of Allegiance" means such Oath of Allegiance as is prescribed in schedule 1 to this Constitution;

"Parliament" means the Parliament established by this Constitution;

"the Police Force" means the Fiji Police Force and includes any other Police Force established in accordance with such provision as may be prescribed by Parliament;

"the President" means the President and Commander-in-Chief of Fiji;

"prescribed" means prescribed in a law:

Provided that -

- (a) in relation to anything that may be prescribed only by Parliament, it means prescribed in an Act of Parliament; and
- (b) in relation to anything that may be prescribed only by some other specified person or authority, it means prescribed in an order made by that other person or authority;

"public office" means subject to the provisions

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of the next following section, an office of emolument in the public service;

"public officer" means a person holding or acting in any public office;

"the public service" means the service of the State, whether in a civil or military capacity, in respect of the government of Fiji;

"session" means, in relation to Parliament, the sittings of Parliament commencing when it first meets after this Constitution comes into force or after the prorogation or dissolution of Parliament at any time and terminating when Parliament is prorogued or is dissolved without having been prorogued;

"sitting" means, in relation to the House of Representatives, a period during which the House is sitting continuously without adjournment, and includes any period during which the House is in committee;

"the Speaker" means, the Speaker of the House of Representatives;

"State" means the Republic of Fiji;

"subordinate court" means any court of law established for Fiji other than the High Court, Fiji Court of Appeal, Supreme Court or a court established by a disciplinary law;

"Vola ni Kawa Bula" means the register of native land-owning units recording the names of the persons comprising the proprietary unit in respect of any native land in accordance with sections 9(1) and 10(2) of the Native Lands Act and kept in accordance with section 10(1) of the same Act.

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(2) Save as otherwise provided in this Constitution the Interpretation Act shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of Parliament.

References to public office, etc.

150.- In this Constitution the expression "public office" shall be construed -

- (a) as including the office of any judge of the High Court, the Fiji Court of Appeal or the Supreme Court, and the office of member of any other court of law in Fiji, unless the context otherwise requires;
- (b) as not including -
 - (i) the office of any Minister or Assistant Minister, Leader of the Opposition, Speaker, Deputy Speaker or member of the House of Representatives or President, Vice-President or Member of the Senate;
 - (ii) the office of the Commander of the Fiji Military Forces;
 - (iii) the office of member of any Commission established by this Constitution; or
 - (iv) except insofar as may be otherwise prescribed, the office of member of any council, board, panel, committee or other similar body (whether incorporated or not) established by or under any law.

(2) For the purposes of this Constitution a person shall not be considered as holding a public office or a local government office, as the case may be, by reason only that he is in receipt of a pension or other like allowance in respect of service under the State or under a local authority.

Appointments to certain offices for terms of years

151.--(1) It shall be lawful for a suitably qualified person to be appointed to hold any office to which this section applies for such term, not being less than four years and not expiring after the day on which he would attain the retiring age applicable to that office, as may be specified in the instrument of appointment, and the provisions of this Constitution shall have effect in relation to any person so appointed as if he would attain the retiring age applicable to that office on the day on which the specified term expires.

(2) This section applies to the office of any judge of the High Court, Supervisor of Elections, Director of Public Prosecutions and Auditor-General.

(3) In this section "retiring age" means, in relation to any office, the age upon the attainment of which a person holding that office is required by the provisions of this Constitution to vacate that office.

Powers of appointment and acting appointments

152.--(1) Any reference in this Constitution to power to make appointments to any public office shall be construed as including a reference to power to make appointments on promotion and transfer to that office and to power to appoint a person to act in that office during any period during which it is vacant or the holder thereof is unable to perform the functions of that office.

(2) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office.

(3) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

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Reappointments and concurrent appointments

153.--(1) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(2) Where a power is conferred by this Constitution upon any person to make an appointment to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

Removal from office

154.--(1) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed:

Provided that -

- (a) nothing in this subsection shall be construed as conferring on any person or authority power to require any judge of the High Court, the Fiji Court of Appeal or the Supreme Court, the Ombudsman, the Supervisor of Elections, the Director of Public Prosecutions or the Auditor-General to retire from the public service; and
- (b) any power conferred by any law to permit a person to retire from the public service, shall in the case of any officer mentioned in the preceding

paragraph or an officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Commission that, if that officer had retired, would be the appropriate Commission in relation to the pensions benefits of that officer under section 133(4) of this Constitution.

(2) Any provision in this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.

Resignations

155. Any person who has been appointed to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed; and the resignation shall take effect, and the office shall accordingly become vacant -

- (a) at such time or on such date (if any) as may be specified in writing; or
- (b) when the writing is received by the person or authority to whom it is addressed or by such other person as may be authorised by that person or authority to receive it,

whichever is the later.

Meaning of "Fijian", "Rotuman" and "Indian"

156. 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 male progenitors in the male line is or was the child of parents both of whom are or

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were indigenous inhabitants of Fiji and his name is registered or eligible to be registered in the Vola ni Kawa Bula and include persons who are registered or eligible to be registered in the Vola ni Kawa Bula by virtue of custom, tradition and practice:

Provided that a person's registration or eligibility for registration on the Vola ni Kawa Bula shall be confirmed or determined as the case may be by the Native Lands Commission whose confirmation or decision shall be final and conclusive.

- (b) a person shall be regarded as a Rotuman if, and shall not be so regarded unless, he is of Rotuman descent, whether through his male progenitors or female progenitors; the eligibility of a person under this subsection shall be determined or confirmed, as the case may be, by the Council of Rotuma;
- (c) a person shall be regarded as an Indian 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:

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.

Performance of functions of Commissions and tribunals

157.-(1) Any Commission established by this Constitution may by regulations make provision for regulating and facilitating the performance by the Commission of its functions under this Constitution.

(2) Any decision of any such Commission shall require the concurrence of a majority of all the

members thereof and, subject as aforesaid, the Commission may act notwithstanding the absence of any member:

Provided that if in any particular case a vote of all the members is taken to decide the question and the votes cast are equally divided the Chairman shall have and shall exercise a casting vote.

(3) Subject to the provisions of this section, any such Commission may regulate its own procedure.

(4) In the exercise of its functions under this Constitution, no such Commission shall be subject to the direction or control of any other person or authority, except where otherwise provided by this Constitution.

(5) In addition to the functions conferred upon it by or under this Constitution any such Commission shall have such powers and other functions (if any) as may be prescribed.

(6) The validity of the transaction of business of any such Commission shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.

(7) The provisions of subsections (1), (2), (3) and (4) of this section shall apply in relation to a tribunal established for the purposes of section 15(4), 17(1), 35, 37, 109(3), 130(3) and 131(5) of this Constitution as they apply in relation to a Commission established by this Constitution, and any such tribunal shall have the same powers as the High Court in respect of the attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of the production of documents.

Saving for jurisdiction of courts

158. No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court

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of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law or should not perform those functions.

Power to amend and revoke instruments, etc

159. Where any power is conferred by this Constitution to make any proclamation, order, regulation or rule, or to give any direction, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such proclamation, order, regulation, rule or direction.

Consultation

160. Where any person or authority other than the President is directed by this Constitution to exercise any function after consultation with any other person or authority, that person or authority shall not be obliged to exercise that function in accordance with the advice of that other person or authority.

Review of the Constitution

161. This Constitution shall be reviewed after a period of time but before the end of seven years after the promulgation of this Constitution. Thereafter, the Constitution shall be reviewed every ten years.

CHAPTER XIII

SPECIAL POWERS AGAINST SUBVERSION AND EMERGENCY POWERS

Special Acts of Parliament

162.--(1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside Fiji -

- (a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property;

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- (b) to excite disaffection against the President or the Government;
- (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence;
- (d) to procure the alteration, otherwise than by lawful means, of anything by law established; or
- (e) which is prejudicial to the security of Fiji,

any provision of that law designed to stop or prevent that action shall be valid notwithstanding that it is inconsistent with any of the provisions of Chapter II, or would, apart from this section, be outside the legislative power of Parliament.

(2) A law containing such recital as is mentioned in subsection (1), shall if not sooner repealed, cease to have effect if a resolution is passed by Parliament annulling such law, but without prejudice to anything previously done by virtue thereof or to the power of Parliament to make a new law under this section.

Emergency Powers

163.--(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 -

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- (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 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 before the expiration of that period.

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CHAPTER XIV

IMMUNITY PROVISIONS

Immunity of Members of the Republic of Fiji Military Forces (including the Naval Division), the Police Force and the Fiji Prison Services and others

164.-(1) The leader of the military coup d'etat which took place in Fiji on fourteenth of May, 1987 and on twenty-fifth of September, 1987 shall be immune from criminal and civil responsibility in respect of the commission of any offence under the Penal Code or the breach of any law of Fiji and in respect of any damage or injury to property or person resulting either directly or indirectly from the two military coup d'etat and no court shall entertain any action or make any decision or order, or grant any remedy or relief in any proceedings instituted against him in relation thereto.

(2) All members of the Republic of Fiji Military Forces (including the Naval Division), the Fiji Police Force and the Prisons Services who during the two military coup d'etat referred to in subsection (1) of this section and up to the fifth of December, 1987, had shown allegiance to the coup leader and obediently carried out instructions and orders of the Fiji Military Government established by the coup leader, shall be immune from criminal and civil responsibility in respect of the commission of any offence under the Penal Code or the breach of any law of Fiji and in respect of any damage or injury to property or person resulting either directly or indirectly from the two military coup d'etat and no court shall entertain any action or make any decision or order, or grant any remedy or relief in any proceedings instituted against any member aforesaid in relation thereto.

(3) Any person who during the two military coup d'etat referred to in subsection (1) of this section and up to the fifth of December, 1987, acted under the direction of a member of the Republic of Fiji Military Forces (including the Naval Division), the Fiji Police Force and the Fiji Prison Services shall be immune from criminal and civil responsibility

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in respect of the commission of any offence under the Penal Code or the breach of any law of Fiji and in respect of any damage or injury to property or person resulting either directly or indirectly from so acting and no court shall entertain any action or make any decision or order, or grant any remedy or relief in any proceedings instituted against that person in relation thereto.

(4) For the avoidance of doubt -

(a) No court shall entertain any action or make any decision or order, or grant any remedy or relief in any proceedings whether criminal or civil instituted against any member of the Republic of Fiji Military Forces (including the Naval Division), the Fiji Police Force and the Fiji Prison Services or against any person acting under the direction of any member of such Forces and Services in respect of damage or injury to property or person arising either directly or indirectly from the two military coup d'etat up to fifth December 1987.

(b) No compensation shall be payable by the State to any person in respect of any damage or injury to his property or person caused by or consequent upon any conduct for which immunity has been granted under this section.

(5) This section shall not be reviewed or amended by Parliament.

CHAPTER XV

TRANSITIONAL PROVISIONS

Existing Officers

165.--(1) Every person who immediately before the commencement of this Constitution, holds or acts in a public office shall continue to hold or act in the

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like office as if he had been appointed thereto in accordance with the provisions of this Constitution.

(2) Nothing in subsection (1) of this section shall affect the qualifications or disqualifications prescribed by this Constitution or any other law for appointment of persons to any public office.

Succession to Property

166.-(1) Subject to this section, all property which before the commencement of this Constitution was vested in Her Majesty in right of the Government of Fiji or in the Fiji Military Government shall vest in the State.

(2) All land in Fiji which before the commencement of this Constitution was vested in Her Majesty in right of the Government of Fiji or in the Fiji Military Government shall vest in the State.

(3) Any property which before the commencement of this Constitution was liable to escheat to Her Majesty in right of the Government of Fiji or in the Fiji Military Government shall be liable to escheat to the State.

Rights, liabilities and Obligations

167.-(1) All rights, liabilities and obligations of Her Majesty in right of the Government of Fiji or of the Fiji Military Government shall after the commencement of this Constitution, be rights, liabilities and obligations of the State.

(2) In this section, rights, liabilities and obligations include prerogative rights and rights, liabilities and obligations arising from contract or otherwise, other than rights to which section 166 applies.

Existing Laws

168. Subject to this section, all existing laws shall continue in force on and after the commencement of this Constitution and all laws which have not been brought into force by the date of the commencement of

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this Constitution may, subject as aforesaid, be brought into force on or after its commencement, but all such laws shall, subject to this section, be construed as from the commencement of this Constitution with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution.

SCHEDULE 1

OATHS AND AFFIRMATIONS

OATH OR AFFIRMATION OF ALLEGIANCE

I, _____, do swear [solemnly, sincerely and truly declare and affirm] that I will be faithful and bear true allegiance to the people and the Republic of Fiji, according to law. So help me God. [To be omitted in affirmation.]

OATH OR AFFIRMATION FOR THE DUE EXECUTION OF THE OFFICE OF PRESIDENT

I, _____, do swear [or solemnly affirm] that I will well and truly the people and the Republic of Fiji, in the office of President. So help me God. [To be omitted in affirmation.]

OATH OR AFFIRMATION FOR THE DUE EXECUTION OF THE OFFICE OF PRIME MINISTER, ATTORNEY-GENERAL, OR OTHER MINISTER OR ASSISTANT MINISTER

I, _____, being appointed _____ Prime Minister/Attorney-General/Minister/Assistant Minister, do swear [or solemnly affirm] that I will to the best of my judgment, at all times when so required, freely give my counsel and advice to the President (or any

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other person for the time being lawfully performing the functions of that office) for the good management of the public affairs of Fiji, and I do further swear [or solemnly affirm] that I will not on any account, at any time whatsoever, disclose the counsel, advice, opinion or vote of any particular Minister and that I will not, except with the authority of the Cabinet and to such extent as may be required for the good management of the affairs of Fiji, directly or indirectly reveal the business or proceedings of the Cabinet or the nature or contents of any documents communicated to me as the Prime Minister/Attorney-General/Minister/Assistant Minister or any matter coming to my knowledge in my capacity as such and that in all things I will be a true and faithful Prime Minister/Attorney-General/Minister/Assistant Minister. So help me God. [To be omitted in affirmation.]

JUDICIAL OATH OR AFFIRMATION

I, _____, do swear [or solemnly affirm] that I will well and truly serve Fiji and the people of Fiji, in the office of Chief Justice/judge of the High Court/Justice of Appeal/Justice of the Supreme Court; I will in all things uphold the Constitution and the law and I will do right to all manner of people after the laws and usages of Fiji without fear or favour, affection or ill will. So help me God. [To be omitted in affirmation.]

SCHEDULE 2

OFFICES TO WHICH SECTION 124 APPLIES

Central Agricultural Tribunal

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Chief Registrar of the High Court
Deputy Registrar of the High Court
Assistant Registrar of the High Court
Chief Magistrate
First Class Magistrate
Second Class Magistrate
Third Class Magistrate
Solicitor-General
First Parliamentary Counsel
Deputy Solicitor-General
Second Parliamentary Counsel
State Solicitor
Chief Legal Officer
Principal Legal Officer
Public Legal Adviser
Senior Legal Officer
Legal Officer
Registrar of Magistrates' Courts
Senior Court Officer
Court Officer
Administrator General
Registrar General
Registrar of Titles
Assistant Public Trustee
Senior Assistant Registrar
Assistant Registrar