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## I. FIJI AT A GLANCE

### The land

1. Fiji lies in the heart of the Pacific Ocean midway between the Equator and the South Pole, and between longitudes 175 and 178 West and latitudes 15 and 22 South. Fiji's Exclusive Economic Zone contains approximately 330 islands, of which about one third are inhabited. It covers about 1.3 million square kilometres of the South Pacific Ocean, and Fiji's total land area is 18,333 square metres. There are two major islands - Viti Levu, which is 10,429 square kilometres, and Vanua Levu, which is 5,556 square kilometres. Other main islands are Taveuni (470 km<sup>2</sup>), Kadavu (411 km<sup>2</sup>), Gau (140 km<sup>2</sup>) and Koro (104 km<sup>2</sup>).

2. Approximately eighty six per cent (86%) of the land is owned by indigenous Fijians in trust while 2 per cent is State land and 8 per cent is freehold land. Only 16 per cent of Fiji's land mass is suitable for agriculture and are found mainly along the coastal plains, river deltas and valleys. There are two cities and both located on the main island of Viti Levu.

### Climate

3. Fiji enjoys a tropical South Sea maritime climate with no great extremes of heat or cold. The islands lie in an area occasionally traversed by tropical cyclones, which are mostly confined between the months of November to April. On average, some 10 to 12 cyclones per decade affect some parts of Fiji, and 2 or 3 cyclones can be very severe. At all seasons the predominant winds over Fiji are the Trade Winds from the east to the south-east. On the western and eastern sides of Viti Levu and Vanua Levu, however, daytime breezes blow in across the coast.

4. In general, the winds over Fiji are light to moderate, the most persistent being the period July-December. Temperature averages 22 degrees Celsius (72 degrees Fahrenheit) for the cooler months (May to October), while for the warmer months (November to April) temperatures are higher with heavy downpours. Although rainfall is highly variable, the average rainfall increases steadily inland from coastal areas. It usually increases between December and April, especially over the larger islands but during May and October it is often deficient, particularly in the dry zone on the western and northern sides of the main islands.

**Size:** 332 islands (approximately one third of which are inhabited)

(a) Total area: 18,333 km<sup>2</sup>  
(Viti Levu - 10,429 km<sup>2</sup>, Vanua Levu - 5,556 km<sup>2</sup>)

(b) Sea area (000 km<sup>2</sup>): 1,290

**Capital:** Suva

**International Airport:** Nadi

**Population: 2001 (latest record):** 815, 013

- Fijians ( 53 per cent)
- Indians ( 40 per cent)
- Others ( 7 per cent)

**Urban population as a percentage of total:**

- Fijians: 21.8
- Indians: 20.5

**Rural population as a percentage of total:**

- Fijians: 30.9
- Indians: 20.1

**Rural population as a percentage of total:** 52.9

**Number of inhabitants per km<sup>2</sup>:** 44km<sup>2</sup>

**Religious affiliation as a percentage of population:**

- Christians: 58 per cent
- Hindus: 34 per cent
- Muslims: 7 per cent
- Others: 1 per cent

**Life expectancy at birth:** 66.6

- Males: 64.5
- Females: 68.7
- Fijians: 68.1
- Indians: 69.0

**Total fertility rate:** 2.49

- Fijians: 3.16
- Indians: 1.71

**Infant mortality:** 20.5 / 1,000 live births

- Males: 21.2 /1,000
- Females: 19.8 /1,000

**Percentage of population under 15:** 31.8 per cent

**Percentage of population 65 and over:** 4.2 per cent

**Percentage of population aged between 15 and 64 years:** 64 per cent

### **Languages:**

There are three official languages in Fiji. English, which was introduced by the former British colonial rulers, Fijian, spoken by ethnic Fijians and Hindi, the main language spoken by Indo-Fijians.

5. Some Fijian dialects differ markedly from the official Bau standard, and would be considered separate languages if they had a codified grammar or a literary tradition. Rotuman (language) are spoken by the people from the island of Rotuma and it is more Polynesian than Fijian.

6. Even though Hindi is the usual language spoken by all the Indo Fijians, Urdu is also taught in Muslim schools. Among the Indo-Fijian community, there is a small Gujarati-speaking community, and a few older Indo-Fijians still speak Telugu and Tamil, with smaller numbers of Bihari, Bengali, and others.

7. There are also languages spoken by minority groups like the Chinese, and other Pacific Island Groups who have their own languages.

8. English is the lingua franca, but Fijian and Hindi (and Urdu for Muslim schools) are also taught in schools as part of the school curriculum.

### **Religion:**

9. Fiji is a multiracial, multi-religious and multicultural country where most religions of the world are represented. More than half of Fiji's population are Christians (58 per cent), Hindus (34 per cent), Muslim (7 per cent), others (1 per cent).

**Time zone:** 12 hours ahead of Greenwich Mean Time.

## **II. HISTORICAL BACKGROUND**

10. Archaeological evidence shows that Fiji was first settled about 3,500 years ago. The original inhabitants are now called "Lapita people" after a distinctive type of fine pottery they produced, remnants of which have been found in practically all the islands of the Pacific, east of New Guinea, though not in eastern Polynesia.

11. Linguistic evidence suggests that they came from northern or central Vanuatu or possibly the eastern Solomons. Before long they had moved further on, colonizing Rotuma to the north, and Tonga and Samoa to the east. From there, vast distances were crossed to complete the settlement of the Pacific to Hawaii in the north, Rapanui (Easter Island) in the east and Aotearoa (New Zealand) in the south. Unlike the islands of Polynesia which reveal a continuous and steadily evolving culture from initial occupation.

12. Fiji appears to have undergone at least two periods of rapid culture change in prehistoric times. This may have been due to the arrival of fresh waves of immigrants, presumably from the west. Prehistorians have noted that a massive twelfth century volcanic eruption in southern Vanuatu coincides with the disappearance there of a certain pottery style and its sudden emergence in Fiji.

### **Fijian legend and traditional society**

13. Prior to western contact, Fiji's population of about 140,000 people was divided into tribes or clans with no central authority. Traditionally Fijian society was controlled by a chiefly caste endowed with great personal mana from genealogical affinity with the gods. Priests reinforced the legitimacy of powerful chiefly mana through religious ceremonies. Acknowledgement of their lineage from the deities ensured the fertility of the land and prosperity of the people. This supernatural endowment made the political power of the chiefs sacrosanct.

14. Theoretically, everyone knew his place in society and commoners could not enter the established hierarchy, although within the chiefly ranks themselves, prominent men often fought for titled status in an uncertain succession and involved their descent groups in frequent fratricidal warfare.

15. The chiefs were also the economic directors of Fijian society. They made the decisions, delegated authority and controlled the distribution of farm as well as material produce through elaborate ceremonies in which all the people had an enjoyable role. The arrival of European traders and beachcombers in the early nineteenth century brought new weaponry and luxury items to tempt the aristocracy. The islands quickly acquired a reputation for cannibalism and inter-tribal warfare intensified by the European presence. Guns became precious items of exchange for sandalwood and bech-de-mer as coastal tribes fought the more isolated interior tribes for their more saleable resources.

16. There were several strong native confederations in Fiji each headed by a titled chief. Cakobau, a man of fierce ambition emerged as the leader of Bau, a small but important strategic island off the coast of Viti Levu. Cakobau was an avid warrior and tactician and used his power base to extract tribute from outlying areas. His wealth and power were challenged by other Fijian chiefs, but he was strengthened with valuable weapons stock obtained through his dealings with traders.

17. Cakobau's greatest rival for chiefly power in Fiji was Henele Ma'afu, a Tongan of high rank who came to Fiji as a young man like many Tongan warriors in search of glory and reputation in battle. Ma'afu made important alliances in the eastern half of the group and expanded his authority through warfare, using the propagation of his Wesleyan Methodism to legitimize blatant conquests. Ma'afu was supported by King George Tupou I (Taufa'hau) of Tonga until American and British pressure checked his ambitions for Fiji. Tupou was forced to abandon his tributaries, but Ma'afu was successful in securing the Governorship of Lau, a copra-rich group of islands which he made his home. Ma'afu gained great influence among Fijian high chiefs, although he was a detested outsider.

18. Although successful, Cakobau was continually manipulated by the Europeans with whom he dealt. Plagued by debt, he participated in several governmental schemes devised by the white settlers for their own benefit. Eventually, he succumbed to pressure to cede Fiji to Britain. Although reluctant to do so, Cakobau believed the islands were too weak to resist Western domination. He stated that if matters remained as they were, Fiji would have been like a piece of driftwood on the sea, which would be picked up by the first passer-by.

19. Ma'afu shared Cakobau's growing anxiety about the motives of the European settlers, and after discussing the matter with British Commissioners, he joined other chiefs in signing the cession papers, advocated originally by his rival, Cakobau. These Fijian chiefs who had spent their lives in violent warfare knew their authority would depend on the potency of their new role in the Council of Chiefs, a body formalized by the Governor Sir Arthur Gordon who promised that the Fijian people would be governed, as far as possible, within traditional practices. Governor Gordon believed that "*native races had been shamefully exploited in other parts of the British colonial empire*". A protective labour policy ensured Fijians did not have to engage in labour for the empire. A solution was found in the example set by other British colonies in Africa and the Caribbean: Indian indentured labourers.

### **The Indentured Labourers**

20. The first Indians arrived in Fiji in the Leonidas on May 14, 1879. Recruitment ceased in 1916. The Indians provided the answer to Fiji's diminishing supply of labour. From 1879 until 1919, 87 shiploads of Indians travelled to Fiji to work out their five years of indentured slavery. Conditions on the cane plantations were miserable. Once the five years of servitude were over, the Indians were given a certificate of residence and only after another five years would they become eligible for a paid ticket back to India. The Indians were allowed to take on lease on limited extent of land from indigenous Fijians where they grew sugarcane or vegetables whilst others became hawkers and set up small shops.

21. Life was hard for the Indians even after their period of indentured labour was over, but many Indians used their traditional skills to make a living. Of the 60,000 Indian labourers brought to Fiji, about 40 per cent returned to India after their indentures expired.<sup>1</sup>

### **Colonial policy of separation**

22. The colonial Government instituted a policy of physical separation of the Indian and Fijian population to avoid possible conflict from Fijian resentment of the influx of new migrants. Restrictions on areas of Indian settlement were in place until the 1920s.

23. The colonial administration encouraged the separate economic development of Fiji's different communities. Fijians were discouraged from engaging in commercial agricultural production, while the colonialists relied upon Indian labourers. The colonial administration tried to reconcile the conflicting objectives of protecting indigenous Fijian interests, and promoting development with foreign capital and labour. The result was a profound ethnic divide that continues to cause problems to Fiji's political life. Indentured workers from India enabled the segregation of Fijians from the plantation economy. While many Indians eventually became commercial farmers, businessmen, and professionals, most Fijians remained subsistence cultivators in village communities.

## **The Twentieth Century**

24. The twentieth century brought about important economic changes in Fiji as well as the maturation of its political system. Fiji developed a major sugar industry and established productive copra milling, tourism and secondary industries. As the country now diversifies into small-scale industries, the economy is strengthened and revenues provide for expanded public works, infrastructure, health medical services and education.

25. The country's central position in the region has been strengthened by recent developments in sea and air communications and transport. Today, Fiji plays a major role in regional affairs and is recognized as the focal point of the South Pacific.

## **Fiji a Democratic State**

26. Fiji is a sovereign democratic State. A British colony from cession in 1874 to 1970 when it gained independence, Fiji became a Republic in 1987 following two coups d'état. The 1987 military takeover of Parliament was led by Lieutenant-Colonel Sitiveni Rabuka one month after the election of Fiji's first ever multi-racial Government. After the takeover, negotiations began between indigenous Fijian leaders to form a new and more acceptable Government; however, in November of the same year, Rabuka intervened again and appointed himself as Prime Minister.

27. In 1990, Rabuka's Government introduced a new Constitution which was alleged to be a racist document as it entrenched indigenous Fijian dominance of Parliament. However, it did provide for measures of democracy to be restored, and elections were subsequently held in 1992 and 1994. At the same time, and to his credit, Prime Minister Rabuka set up a three-member commission to review the 1990 Constitution, and conduct consultations across the country.

28. The Constitutional Review Commission submitted its report in 1996, and a new Constitution, based on the Commission's recommendations, was enacted in 1997, with unanimous support in Parliament. This Constitution introduced a strong Bill of Rights. It instituted a more equitable voting system and a requirement for power sharing between the major political parties. The 1997 Constitution has been described by international lawyers as one of the most advanced constitutions in the world.

29. However, in the first general election under the new Constitution, held in 1999, both Rabuka's party and the main opposition party experienced a dramatic decline in their support. This led to the emergence of new political leaders and the election of Fiji's first Indo-Fijian Prime Minister, Mahendra Chaudhry, as the head of a multi-ethnic coalition. Mr. Chaudhry, was appointed as the fourth Prime Minister of Fiji. The Government was overthrown one year after its election.



### **Attempted Coup d'état on May 2000**

30. On 19 May 2000, a civilian coup attempt took place with the backing of a few soldiers from the Counter Revolutionary Warfare Unit (CRWU) of the Republic of Fiji Military Forces (RFMF) who stormed the Parliament and took Prime Minister Mahendra Chaudhry and his Cabinet as hostage. The President declared a state of emergency and purported to prorogue Parliament for six months pursuant to section 59 (2) of the Constitution.

31. On 29 May, the Commander of RFMF abrogated the Constitution and assumed executive authority. The President, Ratu Sir Kamisese Mara, was asked to step aside. The Vice-President, Tui Vuda Ratu Josefa Iloilo, was appointed as the Interim President. An interim administration comprising of 20 Ministers and 8 Assistant Ministers was appointed and Laisenia Qarase was appointed as the Interim Prime Minister.

32. A three-day meeting of the Great Council of Chiefs (GCC) took place on 8, 9 and 13 March 2001. GCC appointed Ratu Josefa Iloilo as President and Bau Chief Ratu Jope Seniloli as Vice-President. Tui Vuda Ratu Josefa Iloilo was sworn in as Fiji's third President and Commander-in-Chief of the armed forces on 15 March 2001.

### **Caretaker Government and August 2001 Elections**

33. Even before the Interim Government had been installed, court action was underway to challenge its legitimacy. The action was brought by an Indo-Fijian farmer, named Chandrika Prasad, who had fled his land for fear of being attacked by indigenous Fijian looters.

34. Prasad filed his case against the State in the High Court on 4 July 2000. He sought declarations that the 1997 Constitution remained in force and that the pre-coup Government led by Mahendra Chaudhry was still the lawful Government of Fiji. The High Court decided the case in November 2000, and found in favour of Prasad. It held that the Constitution had not been abrogated, but only temporarily suspended, and made orders for the re-instatement of the Chaudhry Government. The State appealed, taking the case up to the Court of Appeal, but in March 2001 the Court of Appeal confirmed the High Court's decision.

35. The Interim government called a general election for August and September 2001. The Qarase Party, the Soqosoqo ni Duavata ni Lewenivanua (SDL) won majority of the seats and returned as the elected Prime Minister.

### **Post-coup legal development**

36. Dozens of people were charged, tried or sentenced for human rights-related crimes and other offences linked to the 2000 coup and army mutiny.

37. Among prominent indigenous leaders charged in 2003 for their role in the coup were Vice-President Ratu Jope Seniloli, Cabinet Minister Isireli Leweniqila, and Deputy Speaker of Parliament Ratu Rakuita Vakalalabure. A provincial leader, Ratu Inoke Takiveikata, was charged with inciting a post-coup mutiny at the military headquarters.

38. George Speight, the Fijian coup leader was sentenced to death but then had his sentence commuted to life in prison. The President, Ratu Josefa Iloilo, signed a decree commuting the death sentence given to Speight to life. The commutation came after Speight pleaded guilty in the High court to treason at the start of his trial Suva.

39. In June, 2004 former politician Timoci Silatolu and journalist Jo Nata were sentenced to life imprisonment for treason in connection with their role in the coup. Others responsible for crimes committed during the coup effectively continued to enjoy impunity.

40. The people who were involved in the attacks of the Indians at Muaniweni Settlement during the 2000 coup de'tat were all charged. However In February, 2004 a magistrate acquitted nine indigenous villagers from the Muaniweni area. They had been charged in connection with some of the most violent and well-documented racist attacks against Indo-Fijian families during the coup. They were reportedly acquitted for lack of evidence following earlier allegations of witness intimidation. Ten indigenous Fijian coup suspects were acquitted on human rights grounds because a military prosecution witness failed to appear in court.

### III. THE PEOPLE

41. The population of Fiji is divided between native [Fijians](#), Rotumans (1.2 percent) that make up 53 percent of the total population, and [Indo-Fijians](#) make up 40 percent.

Fiji Islands Bureau of Statistics - Key Statistics : March 2005  
POPULATION

#### 2.4 ESTIMATED POPULATION BY ETHNIC ORIGIN, SEX AND AGE AS AT 31ST DECEMBER 2001[p]

Age Group [Years]	Fijian			Indian			Others			Total			% of Total
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	
Total	219,668	213,823	433,491	166,266	160,987	327,253	29,026	25,243	54,269	414,960	400,053	815,013	100.0
0-1	5,488	5,130	10,618	2,380	2,293	4,673	508	431	939	8,376	7,854	16,230	2.0
1-2	5,693	5,269	10,962	3,001	2,689	5,690	524	420	944	9,218	8,378	17,596	2.2
2-3	5,331	5,014	10,345	2,601	2,481	5,082	476	434	910	8,408	7,929	16,337	2.0
3-4	5,340	5,034	10,374	2,573	2,419	4,992	463	395	858	8,376	7,848	16,224	2.0
4-5	5,217	4,931	10,148	2,698	2,608	5,306	498	438	936	8,413	7,977	16,390	2.0
5-9	26,167	24,575	50,742	16,221	15,376	31,597	2,687	2,534	5,221	45,075	42,485	87,560	10.7
10-14	25,339	23,712	49,051	17,656	16,850	34,506	2,607	2,371	4,978	45,602	42,933	88,535	10.9
15-19	23,035	21,803	44,838	18,010	16,893	34,903	2,478	2,423	4,901	43,523	41,119	84,642	10.4
20-24	19,810	19,364	39,174	16,754	15,074	31,828	2,618	2,308	4,926	39,182	36,746	75,928	9.3
25-29	17,034	16,957	33,991	14,394	13,060	27,454	2,550	2,317	4,867	33,978	32,334	66,312	8.1
30-34	15,528	15,463	30,991	13,279	12,348	25,627	2,527	2,175	4,702	31,334	29,986	61,320	7.5
35-39	14,268	13,933	28,201	12,736	12,215	24,951	2,321	1,967	4,288	29,325	28,115	57,440	7.0
40-44	12,455	12,082	24,537	11,716	11,422	23,138	2,110	1,629	3,739	26,281	25,133	51,414	6.3
45-49	10,290	10,020	20,310	9,806	9,872	19,678	1,831	1,417	3,248	21,927	21,309	43,236	5.3
50-54	8,265	8,171	16,436	7,653	7,888	15,541	1,565	1,187	2,752	17,483	17,246	34,729	4.3
55-59	6,590	6,676	13,266	5,489	5,979	11,468	1,174	901	2,075	13,253	13,556	26,809	3.3
60-64	5,120	5,323	10,443	3,791	4,311	8,102	787	648	1,435	9,698	10,282	19,980	2.5
65-69	3,671	3,995	7,666	2,440	2,935	5,375	514	449	963	6,625	7,379	14,004	1.7
70-74	2,411	2,810	5,221	1,515	1,924	3,439	380	335	715	4,306	5,069	9,375	1.2
75+	2,616	3,561	6,177	1,553	2,350	3,903	408	464	872	4,577	6,375	10,952	1.3

*Source: Bureau of Statistics.*

**Indigenous Fijians**

42. Indigenous Fijians are the largest ethnic group in Fiji and currently make up 53 per cent of the population. The community, however, is far from homogeneous. It comprises a number of distinct ethno-linguistic groupings divided into numerous communities, groups and clans. Uneven development between rural and urban areas, and central and remote islands, has also led to large economic disparities within the indigenous community. Periodically, indigenous Fijians from different regions have asserted claims for greater autonomy on the basis of these separate histories and economic conditions. These conditions have proved to be quite challenging for those indigenous political leaders appealing for ethnic solidarity.

43. There is a perception that as a group indigenous Fijians are the poorest in the country. In many areas, including educational performance, and representation in commercial and certain economic sectors of the economy, indigenous Fijians are underrepresented.

**Indo-Fijians**

44. Indo-Fijians constitute the second largest ethnic community. Like the indigenous community, the Indo-Fijian community is far from uniform. The first Indians to arrive in Fiji came under the indenture system. Following the indenture period, many remained as tenant cane farmers, while those who could afford it left farming and became wage labourers, ran small businesses or trained to become professionals. During the inter-war years, a new monied class of Gujarati Indians in search of economic opportunities arrived in Fiji. By the 1960s, the Gujarati Indians had come to rival Europeans for dominance of the economy. Indo-Fijians currently living in Fiji tend to identify themselves as part of the Gujarati community or as individuals whose families arrived during the indenture period; in some cases, the two groups have little regard for each other. Religion plays an additional role in the divisions within the Indo-Fijian community. While the majority of Indo-Fijians are Hindus, the community also includes Christians and Muslims. The numerical dominance of people of Indian Hindu origins has been a source of some tension. There have been periodic claims for separate political representation by Muslims of colonial Indian origin.

**The Banaban community**

45. The Banaban community owns Rabi Island, off the coast of Vanua Levu, where most of its members live. Banabans are originally from Ocean Island (Banaba) in the British Gilbert and Ellice Islands colony. They first arrived as settlers (1,003 of them) in December 1945. The British Phosphate Commission, with funds from the Banaban Trust Fund, purchased Rabi from the British colonial Government in Fiji, for the resettlement of Banabans. In the period from 1945 to 1995, the population of Rabi grew from 1,003 to over 5,000.

46. The plight of Banabans in Fiji has its roots in one of the worst instances of colonial exploitation in the South Pacific. Phosphate was discovered on Banaba in 1900. The Pacific Islands Company (PIC), which discovered the phosphate, persuaded the British Government to annex Banaba. It acquired land for mining of phosphate at extremely low prices in 1912. It also set up the Banaban Trust Fund into which it deposited royalties for use by the Banaban community. In 1916 Banaba/Ocean Island was made part of the Gilbert and Ellice Islands colony

without consultation or the consent of its people. In 1920, the Australian, British and New Zealand Governments acquired the interests of PIC in Banaba; thereafter the phosphate industry was run on a commercial basis by the British Phosphate Commission. Over time, it increased its mining area, destroying the subsistence base for the community, and paid extremely low rates of compensation.

47. In 1947, a statement of intention was signed between a team of British officials and Banaban leaders, declaring that the Banabans would live on Rabi in the Fiji Islands. As a result of this statement, the Banaban Settlement Ordinance of 1945 was formulated, providing for the administration of Rabi through the Rabi Island Council. Banabans on Rabi became subject to Fijian tax and were entitled to the services provided by the Fijian Government. The British Phosphate Commission extended its lease over the remaining land. The Ordinance also established the Banaban Trust Fund Board which was replaced by the Banaban Settlement Act when Fiji became independent.

48. Failure to reach agreement on compensation led the Banaban community to initiate legal action against the British Phosphate Commission and the British Government. The courts decided that the British Government had been guilty of moral negligence. This ruling compelled the British Government and the Phosphate Commission to negotiate a settlement. The Banabans were offered F\$ 10 million, which was placed in trust and regulated by the Banaban Settlement Act, which is entrenched under Fiji's 1997 Constitution.

49. Because of its access to its own developmental funds, this minority community was largely excluded from the mainstream developmental process. Since the 1980s all indicators for the social well-being of the community have shown a serious decline.

### **The Chinese community**

50. The Chinese presence in Fiji dates back to the mid-eighteenth century when people from China travelled to the region in pursuit of *bêche-de-mer* (sea cucumber) and sandalwood, much valued commodities in China. The number of Chinese in Fiji increased after World War I. New settlers provided labour for the booming banana export industry in the 1920s and 1930s. Many of them went on to produce bananas and other products on leased lands. The 1930s and 1940s saw another Chinese migration to Fiji. For the first time, many Chinese began applying for citizenship. The community gradually increased from the end of World War II. However, Fiji's independence had left many Chinese with a feeling of uncertainty, and between 1968 and 1974 nearly 20 per cent of them left Fiji.

51. Chinese began to enter the commercial sector, mainly as independent traders, as early as the 1940s. By the mid-1970s, the community was firmly established in retailing and other industries. Equally, members of the community have done well in paid employment. In 1996, over 40 per cent of its economically active members were employed as legislators, professionals, senior officials and technicians. This compared with 15 per cent for indigenous Fijians and 22 per cent for Indo-Fijians.

52. These achievements reflect the educational attainment of Chinese students in relation to the indigenous Fijian and Indo-Fijian populations. For example, 18.5 per cent of Chinese adults had attained post-secondary qualifications in 1996, compared with 6.5 per cent for Indo-Fijians

and less than 5 per cent for indigenous Fijians. This reflects the importance attached by Chinese families to higher education.

53. Despite its general economic success, the Chinese community has remained politically marginal. This has been one of the reasons behind its extremely high emigration rates. But since the early 1990s, an estimated 2,500 Chinese have come to Fiji. On the whole, the status of the community is different from that of the other smaller communities. Its success in education and business has opened opportunities for emigration. Although the Chinese community's political representation is marginal at best, the community enjoys a higher income and runs its own educational and cultural institutions. Its comparatively better economic position domestically, and a higher rate of emigration, have acted as safety valves during periods of political turbulence. If the energies and resources of this once vibrant community are to be harnessed for Fijian society as a whole, the Constitution and policies need to promote their sense of belonging as equal citizens.

### **The Rotuman community**

54. Rotuma is a remote island approximately 500 km north of Viti Levu Island. Rotuma was officially ceded to Britain in 1881 after religious "wars" broke out between two different groups: Roman Catholics and Wesleyan Methodists. This led Rotumans' chiefs to ask Britain to annex the island. However, Britain decided in 1881 that Rotuma would be administered through the Colonial Office in Fiji. Because of limited economic and educational opportunities, Rotumans sought education and employment on Viti Levu from the early colonial period. In 1981, the total population of Rotumans was 8,078; of these only 2,578, or 32 per cent, were living on Rotuma Island compared with 3,235, or 56 per cent in 1966. The proportion of the community living outside of Rotuma has been steadily increasing.

55. The patterns of migration have changed, however. In the 1930s, Rotumans mostly left Rotuma to work in the gold mines. Recently, Rotumans have left their island to take up tertiary education in Viti Levu and for highly skilled occupations. In 1996, over 30 per cent of Rotumans were engaged in legislative, professional and technical occupations - a considerably higher rate than Indo-Fijians and indigenous Fijians. Significantly, a higher percentage of Rotuman students complete post-secondary education than indigenous Fijians. Yet, Rotumans feel that successive Governments have neglected their community. They cite erratic shipping to the island, poor infrastructure and the subsequent lack of economic and educational opportunities, some of which are due to the island's marginal influence over the national decision-making process.

56. The 1997 Constitution provides several mechanisms through which the community can broaden its political influence. It guarantees Rotumans a seat in Parliament and provides for the appointment of a Rotuman senator. Additionally, the open seats provide opportunities for the community on the mainland to influence election outcomes. Moreover, the Rotuma Act and the Rotuman Lands Act are entrenched in the Constitution. Finally, the Constitution's social justice provisions provide a basis for enhancing the social and economic well-being of the most disadvantaged within the community, especially those on the island of Rotuma.

### **The European and part-European communities**

57. Fiji's European and part-European communities trace their origin to the early 1800s when settlers began to establish a commercial presence. Following colonization, their numbers grew as trading opportunities expanded. Throughout the colonial period, the European and part-European communities enjoyed a relatively privileged position through their dominance of commerce and colonial administration. They also had enjoyed direct representation in the colonial legislature.

58. Under the 1970 Constitution, the European community was guaranteed a level of political representation that was disproportionately larger than its population. Since then, the Europeans have largely supported the Alliance Party, and its elected members were well represented in the Cabinet at senior levels. Europeans received reduced representation under the 1990 Constitution, raising their concerns about their identity and sense of belonging.

59. Overall, the European community continues to have the highest income. Just under 50 per cent of the economically active European and part-European population are in high-wage legislative, professional and technical occupations. Europeans' emigration rates are the highest of all the minority communities, following similar trends in the Chinese and Indo-Fijian communities.

### **The Melanesian communities**

60. The Melanesian communities, comprised of the descendants of the Solomon Islands and Ni-Vanuatu, were brought into Fiji effectively as slave labour in the early nineteenth century. Most of their descendants live in relatively closed communities in Suva, Lautoka and Levuka, over 60 per cent of all households belonging to these communities live below the official poverty line. Only a tiny number are either in higher-paying occupations, or have professional or higher education qualifications.

### Recent Emigration of skilled professionals

61. The recent emigration of skilled professionals has severely affected the nation. Figures from the Bureau of Statistics are tabulated below:

#### FIJI CITIZENS EMIGRATED BY OCCUPATION, 1997 – August 2004

OCCUPATION	1997	1998	1999	2000	2001	2002	2003	2004
Professional, Technical and Related Workers	502	578	658	823	977	802	795	414
Administrative and Managerial Workers	230	290	258	371	398	368	384	269
Clerical, Supervisors and Related Workers	349	464	425	479	544	521	518	309
Sales Workers	137	116	139	140	151	127	134	118
Service Workers	94	95	115	109	119	128	119	93
Agriculture, Animal Husbandry Forest Workers & Fishermen	74	112	98	102	111	90	85	66
Production Workers, Transport, Equipment Operators & Laborers	486	476	451	469	554	489	570	409
Workers Not Classifiable	2621	2698	2693	2782	3462	2955	3166	2188
<b>TOTAL</b>	<b>4493</b>	<b>4829</b>	<b>4837</b>	<b>5275</b>	<b>6316</b>	<b>5480</b>	<b>5771</b>	<b>3866</b>

  

NET MIGRATION	2003	JAN – JUN 2004
Fijian	-1, 603	-205
Indian	-7, 160	-908
Others	-2, 373	1, 492
<b>Total</b>	<b>-11, 136</b>	<b>379</b>

(Source: Bureau of Statistics, 2002, 2005)

## IV. THE LAND

### Land administration

62. Fiji's land tenure system has its roots in the Deed of Cession which provides:

“That the absolute proprietorship not shown to be now alienated so as to become bona fide the property of Europeans or other foreigners or now in the actual use or occupation of some Chief or tribe or not actually required for the probable future support of some Chief or Tribe shall be whereby declared to be vested in Her Majesty, heirs and successors.”



63. Under the Deed of Cession, the Crown was the absolute owner or *ultimus haeres* of all lands in Fiji, except private freehold lands and native land which is defined as land in actual use or occupation by chiefs and their subjects, together with land which the chiefs and their subjects may actually require from time to time for their probable future use and support. The Lands Commission, established soon after cession, determined the ownership of land which has largely remained until today. The Lands Commission determined claims by Europeans and other foreigners who had acquired land prior to cession in a bona fide manner. The Lands Commission also recognized the protection of native forms of tenure systems<sup>2</sup> - the *mataqali* was recognized as the main landowning unit in Fijian society.

64. Only 8 per cent (415,000 acres) of all land in Fiji is private freehold, 2 per cent is held by the State (still referred to as Crown Land) and the remaining 90 per cent being native land. This is in contrast to many other countries where the indigenous owners were dispossessed through colonization.

65. Native land is owned in trust by the Native Lands Trust Board (NLTB) established in 1940 under the *Native Land Trust Act*. Native land is inalienable by sale. NLTB administers land that is not required for occupation by the members of a *mataqali* and in effect has power to lease the land without the consent of the *mataqali*. Some of the excess land has historically been used for growing sugar cane and other crops, commonly by descendants of indentured Indians. More recently coastal land has been used for tourism schemes.

66. In April 2002, amendments to the *Native Land Act* and *Native Land Trust Act* were passed by Parliament. These facilitate the transfer of State land to the Native Land Trust Board in trust for landless Fijians to be given land which was unclaimed at cession and landowning units called *Yavusa* to take back the land of smaller landowning units, *mataqali* whose members were extinct at cession. These two pieces of legislation for the transfer of *State Schedule A* and *State Schedule B* lands to the Native Land Trust Board were introduced by the SVT Government of Sitiveni Rabuka (February 1999 and were before the Joint Parliamentary Committee Stage in May 1999 when general elections were held) and had also been placed before Parliament by the coalition Government of Mahendra Chaudhry in October 1999 and were also before a Joint Parliamentary Committee when the coup attempt occurred.

67. *State Schedule A* land is land which belonged to extinct *mataqali* and were controlled and administered by the State. When the *Native Lands Ordinance* was enacted in 1880, the Crown had already provided for the situation where a *mataqali* became extinct. This was contained in section 13 of that Ordinance which provided that:

“If any *mataqali* should cease to exist by the extinction of its members the land shall fall to the Crown as *ultimus haeres* (ultimate heirs) to be allotted to the *Qali* of which it was part, or other divisions of people which may apply for the same, or retained by the Crown or dealt with on such terms as the Governor may deem expedient.”

The Lands Commission established that there were lands that were vacant at Cession and to which no valid claim had been made. From the outset after Cession, the British Colonial Administration, on behalf of the British Crown, adopted a sympathetic approach. Fijians

were assured that “their lands were theirs and would never be taken from them”. The Crown laid no claim to this category of land, but for administration purposes, control of *Schedule B* land was vested in the Crown, as there was no other body, at that time, to look after the interests of the native landowners.

68. The transfer facilitates the full and speedy compliance of the State with its obligation under section 18 (1) of the *Native Land Trust Act*. That section provides that “If the President is satisfied that the land belonging to any *mataqali* is insufficient for the use, maintenance or support of its members, it shall be lawful for the President, by proclamation, to set aside such Crown land or land acquired for or on behalf of Fijians by purchase, as in his opinion may be required for the use, maintenance or support of such *mataqali*. Any area so set aside shall be deemed to be a native reserve.” The processing of all claims to extinct *mataqali* lands or vacant lands from landless Fijians or those with insufficient lands, for maintenance and support, can then be done in one central location, i.e. NLTB and not, as hitherto, in both NLTB and the Ministry of Lands.

69. With the enactment in 1940 of the *Native Land Trust Act* (Cap. 134), and the establishment of the Native Land Trust Board, it would have been reasonable for the crown to have transferred to NLTB control over *State Schedule A* and *State Schedule B* land. This was not done, creating an anomaly in land administration that is now addressed by the transfer. These lands are to be allotted by NLTB for the benefit of Fijians who do not have sufficient lands for their maintenance and support, and to Fijians who are landless. According to records in the Native Lands Commission, some 223 *tokatoka* and *mataqali* in seven provinces in Fiji do not own lands. The details are as follows:

#### Details of mataqali which do not own land

Province	No. of unit		Male	Female	Total
	Tokatoka/Mataqali				
Cakaudrove	1		3	0	3
Macuata	10		124	100	224
Lomaiviti	98		1 290	1 190	2 480
Rewa	1		3	11	14
Nadroga	12		117	121	238
Ba	59		872	784	1 656
Ra	42		454	451	905
<b>Total</b>	<b>223</b>		<b>2 863</b>	<b>2 657</b>	<b>5 520</b>

70. Ownership of native land is retained by the native landholders, and the agricultural land is administered under the *Agricultural Landlord and Tenant Act* (ALTA) of 1976. There are a few native leases for agricultural purposes that have 999-year terms. State land is governed by the *Crown Lands Act*, and administered by the Lands and Surveys Department of the Ministry of Lands. However “native land” is not owned by indigenous Fijians in the context as that of a freehold interest in contemporary society, it is merely held in a group trust, meaning the ordinary

Fijian cannot sell it or use it as security for a loan. It is not owned at an individual level and can never be considered as personal property as there is no individual title to it.<sup>3</sup>

71. In Fiji, as in other societies the world over, land holds a special place. There is a sense of belonging and interconnectedness between the Fijian and the land (*Vanua*). In the Fijian language, *Taukei* which is how Fijians refer to themselves and *Kai Vanua* means literally “land people” and “owner”. Like many other indigenous groups, Fijians view the land with sacredness and spirituality. Philosophically and spiritually, there is a deep-rooted belief in stewardship of the land. It is accepted that the present generation has a responsibility in respect of the land that relates to the spirit of their forefathers along with the expectations of their descendants, in addition to the needs of the present generation.

72. Some 420,000 hectares of native land are leased out to 24,700 tenants for agriculture, commerce and industry.

Province	Freehold land	State administrated land	Native land	Native land leased	% of native land leased	Total
Ba	10,323	34,525	203,505	77,706	38%	248,354
Bua	17,725	286	117,086	33,144	28%	135,097
Cakaudrove	50,512	4,483	216,454	22,711	10%	271,449
Kadavu	1,717	51.05	45,328	2,188	5%	47,096
Lau	4,490	315.65	44,933	1,133	3%	49,738
Lomaiviti	5,583	678	29,903	2,551	9%	36,164
Macuata	12,595	4,054	178,230	67,475	38%	194,880
Nadroga/Navosa	6,205	3,752	206,578	45,236	22%	216,536
Naitisiri	7,343	4,290	144,414	21,000	15%	156,047
Namosi	386	11,241	52,894	3,945	7%	64,521
Ra	5,815	2,145	98,682	29,289	30%	106,642
Rewa	2,661	344	21,380	1,483	7%	24,385
Serua	12,297	98.62	45,303	28,553	63%	57,699
Tailevu	4,437	1,364	86,434	23,059	27%	92,234

*Source:* Native Land Trust Board cited on <http://www.nltb.com.fj>

*Note:* Native Land leased does not include timber concessions which make up an area of approximately 304,000 hectares. The data was last updated in 2004.

73. The agricultural land was held on a 30-year lease under ALTA with rental set at 6 per cent of unimproved capital value. Some 13,140 agricultural leases began expiring in 1997; the majority of such leases (3,459) expired between 1999 and 2000. Under the 1999 Coalition Government led by Mahendra Chaudhry, ALTA became very controversial as some indigenous owners sought the return of their land. The Government offered compensation of \$28,000 to

farmers whose leases had expired and who did not wish to be resettled. This sum was controversial as it represented in many cases significantly more in dollar terms than the accumulated total received by landowners over the last 30 of 50 years of the lease.<sup>4</sup>

74. Native land has also been made available for major hotels and businesses that create a source of income for thousands of people. Landowners have also benefited from leasing out the land. Rental payments now amount to more than \$12 million per year and this is expected to increase in the years to come.

75. The uncertainty over the current contest for land results in an unsettled and volatile political situation, tenure insecurity, environmental insecurity and resultant institutional insecurity. This uncertainty together with other issues led to the unsuccessful coup attempt led by George Speight on 19 May 2000. The push by Mahendra Chaudhry's coalition Government for the retention of ALTA in opposition to the desire of many indigenous landowners advised by NLTB for more equitable and flexible lease arrangements under the *Native Land Trust Act* (NLTA) was a catalyst for the events leading up to the coup. In the run-up to the coup, there was much inflammatory and uninformed diatribe. The Government naively pushed for a tenant-driven solution while landowners saw ALTA as a threat to their ownership. Such is their legitimate right and it is their legal prerogative to repossess the land. The landowners saw the Chaudhry government as attempting to challenge their rights and autocratically strive for a continuance of the pro-tenant (i.e. pro-Indian) status quo.<sup>5</sup>

76. The current impasse over the agricultural leases under the *Agricultural Landlord and Tenant Act* (ALTA) for sugar cane, Fiji's second largest export earner, whose farmers are mainly Indian Fijians, requires the balancing of the needs of the Fijian Landowning Units whose lands are currently leased for sugar cane production and the needs of the tenants leasing native land and whose leases will expire between 1997 and 2024.

77. The Government has formed a Sugar Industry ALTA Task Force comprised of industry stakeholders, including the Native Land Trust Board, the Sugar Cane Growers Council, the Fiji Sugar Corporation. The main aim and focus of this Task Force is to discuss and find an amicable solution to the ALTA/NLTA legislation impasse.

78. A Sugar Industry ALTA Task Force Sub-Committee was also formed to carry out the following tasks:

- To facilitate a speedy preparation of lease titles;
- To issue sugar cane contracts in a timely manner;
- To formulate FAS application forms;
- To create awareness and educate landowners and ex-ALTA tenants on the Farming Assistance Scheme and Resettlement Programmes.

79. The Government is committed to ensuring that the solution that is developed is one that is acceptable, fair and just to both the landowners and the tenants.

80. To this end, in October 2001 the Department held three consultation meetings with stakeholders, such as NLTB, FAB, *Roko Tuis*, Regional Development, MASLR, Youth and Sports, and Fiji Sugar Corporation, on divisional basis, with the aim of discussing and developing a system whereby the Fijian Affairs Board/*Roko Tuis* could take the leading role in organizing Provincial Task Forces with a proactive approach to dealing with the expiry of ALTA leases and to increasing awareness of the Farming Assistance Scheme and Resettlement Programmes among our rural communities. These in turn will reduce the uncertainties that currently exist in our farming community.

81. The *Land Conservation and Improvement Act (LCIA)* provides for the establishment of the Land Conservation Board, whose main function is to exercise general supervision over Fiji's land and water resources. The Act is a very important legislation that is fundamental to Fiji's commitment to global and regional support for the sustainable use of its land and water resources. Fiji is committed to the sustainable use of its land and water resources and is a signatory to the various international agreements and conventions like the *Rio Declaration* or *Agenda 21*, the *United Nations Framework Convention on Climate Change*, and the *United Nations Convention on Biological Diversity*. MASLR is the focal point for the United Nations to combat desertification/land degradation in Fiji. The commitment of the Ministry of Land and Mineral Resources to the affirmative action and sustainable uses of Fiji's land and water resources is reflected in its participatory land-use planning programme which is based on old Tikina or District boundaries. This is to enhance the full support and involvement of the landowning units in the planning, decision-making and sustainable uses of their resources to optimize benefits. The analysis of various biophysical and socio-economic data is a prerequisite for a successfully formulated participatory land-use plan. The focus of the programme is the development of the Tikina of Nagonenicolo Participatory Land-Use Plan as a pilot project.

## V. GENERAL POLITICAL STRUCTURE

### A. The Legislature

#### Constitution

82. The *Constitution Amendment Act of 1997*, amending the 1990 Constitution, came into force on 25 July 1998. The adoption of the new Constitution in October 1997 led to Fiji's readmission as a member of the Commonwealth and the restoration of full relations with many trading and diplomatic partners, after its exclusion following the two coups d'état of 1987. The 1997 Constitution places great emphasis on fundamental rights, freedoms and representation, and is in conformity with the major United Nations instruments relating to land rights, customs, traditions and cultural inheritance.

#### Constitutional documents since independence from the United Kingdom

83. Since independence from the United Kingdom in 1970, Fiji has had three Constitutions. Our first Constitutional Documents are contained as a schedule of the *Independence Order 1970* made by the Queen in Council on 30 September 1970, after the enactment of the *Fiji Independence Act 1970* on 23 July 1970 by the United Kingdom Parliament. In pluralist

societies, such as Fiji, the Constitution is of more than usual importance, for during the formative period of the nation, it provides a broad framework for the development of mutual relations among the various communal groups and, more importantly, it indicates the thinking and attitudes of the majority indigenous community (who believe that they have an inherent right to political dominance) towards the other communities and the inherent problems of communalism and nation-building.<sup>6</sup> This was written when Fijians at the 1966 census comprised 42.4 per cent of the population, less at that date than Fiji Indians.

84. At that time and to this day, Fiji Indians have a predominant share of economic and commercial power; there was a fear that if granted equal political rights, they would take over the country. This fear was recognized by the British colonial rulers who introduced the divisive system of communal representation and communal electoral rolls. Then as it is today, different communities are represented by their own kind.

85. An important feature of the 1970 Constitution is that it provides entrenchment provisions for matters affecting Fijian land and customs from Parliamentary action. Under section 68 of the 1970 Constitution, the nine Acts or Statutes which govern native land and institutions<sup>7</sup> cannot be amended unless supported by a three-fourths majority in the House of Representatives and, if the amendment affected Fijian land, customs or customary rights, by at least six of the eight senators nominated by the Bose Levu Vakaturaga.

86. The 1970 Constitution was abrogated in a bloodless coup d'état on 14 May 1987 led by then Lieutenant Colonel Sitiveni Rabuka.

87. Our second Constitution was promulgated on 25 July 1990 by decree of the first President of the Republic of Fiji, Ratu Sir Penaia Ganilau. The 1990 Constitution was promulgated to restore parliamentary government after the 1987 military coup.<sup>8</sup> This Constitution provided for its review before the end of seven years after the date of its promulgation, and in 1995 a three-member Fiji Constitution Review Commission (FCRC) was appointed by the President. It was chaired by Sir Paul Reeves, former Governor-General of New Zealand and Anglican Archbishop with former Speaker of the Fiji Parliament, Mr. Tomasi Vakatora, an Indigenous Fijian, and Australian national University academic Dr. Brij Lal, an Indo-Fijian, to be its other members.

### **The Fiji Constitution Review Commission**

88. The terms of reference of FCRC required a review “with a view to promoting racial harmony and national unity and the economic and social advancement of all communities”, and one which bears in mind international human rights standards. On 6 September 1996, FCRC presented to His Excellency the President, its report titled “*Fiji Islands: Towards a United Future*”. FCRC recommended the retention of a 70-member House of Representatives, but with 45 seats opened for all races. It also recommended 12 Fijian communal seats, 10 for Indians, 2 for general voters and 1 for Rotumans.

89. However, a 25-member Joint Parliamentary Select Committee (JPSC) was appointed by the Prime Minister on 10 September 1996 to consider and deliberate upon the report of FCRC.

Of the 694 recommendations of the report, JPSC adopted 577, amended 40 and totally rejected/made redundant 77.

### **Parliament**

90. Fiji's Parliament largely follows the procedure and customs of the British Westminster system. All three constitutions provide for two Houses of Parliament - an elected House of Representatives and an appointed Senate.<sup>9</sup> The current composition of the elected members of the House of Representatives is dictated by the ethnic composition and distribution of the population. In this respect the Constituency Boundaries Commission, established under section 75 of the 1997 Constitution, determines the boundaries of constituencies for the election of members to communal seats and open seats.<sup>10</sup>

91. The President appoints the 32 Senators. The Senate has no power to initiate or veto legislation; it only has the power to debate and delay it. Fourteen indigenous Fijians are appointed on the advice of the Great Council of Chiefs, nine on the advice of the Prime Minister, eight on the advice of the leader of the Opposition and one from Rotuma appointed on the advice of the Rotuma Island Council.

### **Parliament under the 1970 Constitution**

92. Under the 1970 Constitution, there were 52 elected members broken down as follows: 12 Fijians; 12 Indians; 3 general electors (elected from Fijian, Indian and general elector rolls, respectively) and 10 Fiji, 10 Indian and 5 general elector members (elected from the national rolls).

93. The Senate comprised 22 members, 8 nominated by the *Bose Levu Vakaturaga*, 1 by the Council of Rotuma, 7 by the Prime Minister and 6 by the leader of the Opposition.

### **Parliament under the 1990 Constitution**

94. The number of the elected members of the House of Representatives under the 1990 Constitution increased by one. There were 72 members, with the following composition: 37 Fijians (of whom 32 were elected from rural provincial constituencies and 5 from urban centres), 27 Indians, 1 Rotuman and 5 from other ethnic groups. The Senate consisted of 34 members of whom, 24 were nominated by the *Bose Levu Vakaturaga*, 1 by the Council of Rotuma and 9 by the President in his own deliberate judgement. In fact, these 9 were from other ethnic groups.

### **Parliament under the 1997 Constitution**

95. The House of Representatives comprises 71 members - 25 are selected on open rolls, and 46 are elected on communal (ethnic) rolls. The candidates for the 25 open seats can come from any ethnic group. The candidates for the 46 communal seats are distributed as follows: Fijians 23, Indians 19, Rotumans 1 and others or general voters 3 seats. The Upper House or the Senate consists of members of whom 14 are appointed by the President on the advice of the Bose

Levu Vakaturaga, 9 by the President on the advice of the Prime Minister, 8 by the President on the advice of the leader of the Opposition and 1 by the President on the advice of the Council of Rotuma.

## **B. The Judiciary**

96. The judiciary is independent of the Government in its judicial functions, which are not subject to ministerial or Cabinet direction or control. The Constitution guarantees the independence of the judiciary by placing the appointment of judges in the hands of the President after consultation with the independent Judicial and Legal Services Commission. Members of the judiciary cannot be removed except under a complicated system of checks and balances.

97. The judiciary operate in the courts at various levels in the hierarchy. Fiji's highest court is the Supreme Court established by the Constitution, while the lowest court is the Magistrates Court from which appeal can be had to the High Court. From the High Court, one can appeal to the Court of Appeal, and thence to the Supreme Court.

98. The Magistrates Courts exercise both limited civil and criminal jurisdiction within the limits of the Division in which they are situated. Their jurisdiction also extends to territorial waters adjacent to the Division. The distribution of business between Magistrates Courts within a Division is subject to the direction of the Chief Justice. At the present time, there is a Chief Magistrate and 14 resident magistrates centred in the main towns.

99. In 1991, the Small Claims Tribunal Decree was enacted by legislation to transfer the resolution of small claims from the Magistrates Courts to the newly created Small Claims Tribunals. Under the Decree the Tribunals are divisions of the Magistrates Courts. The Tribunals have jurisdiction in respect of any claim not exceeding \$2,000 in value and such other jurisdiction as conferred on them by any other law.

100. The 1997 Constitution grants to the High Court original jurisdiction to hear and determine any question relating to the protection of fundamental rights and freedoms of individuals guaranteed in chapter IV, of the Bill of Rights. It has unlimited original jurisdiction to hear and determine any civil or criminal proceedings. It also has unlimited powers to hear and determine appeals in both criminal and civil matters from courts subordinate to it. The Fiji Court of Appeal, however, hears appeals generally from any person convicted of any offence from the High Court. The final appellate court is the Supreme Court which, under the Constitution, determines any appeal from a final decision or order of the Fiji Court of Appeal. It also has powers to review, modify, reverse or affirm such decisions or other orders, as it sees necessary in the interest of justice.

## **C. The Executive**

### **Executive Authority**

101. Under the 1997 Constitution, the executive authority of the State is vested in the President who is the Head of State, and who also symbolizes the unity of the State. As President he is also the Commander-in-Chief of the armed forces. The President is appointed by the *Bose Levu Vakaturaga* (The Great Council of Chiefs) after consultation by the Council with the Prime



Minister. The term of office for the President is five years. He is eligible for reappointment for one further term of five years, but is not eligible for reappointment after that. The President is assisted by Cabinet with the Prime Minister as Head of Government. The President, in his own deliberate judgement, appoints as Prime Minister the member of the House of Representatives who appears to him best able to command majority support in the House.

102. The 1997 Constitution provides for power-sharing by making it compulsory for any party which has eight or more seats in Parliament to be part of the Cabinet in proportion to their numbers in the House.

### **Cabinet**

103. The Cabinet is made up of the Prime Minister and other ministers, including the Attorney-General. Government policies are made by the Cabinet, and special subcommittees coordinate and plan details of government activities. In addition, the Cabinet also advises the President on matters of government and is responsible to Parliament for any advice given to the President. The Cabinet decisions are put into effect by individual ministers and each minister is allowed considerable discretionary powers in the ordinary affairs of a department. These departments are staffed by a career public service, whose members do not relinquish their jobs on a change of government. The new public sector reform aims to bring about a change in the quality of service provided by the public service.

### **Government Departments**

104. About 17 ministries or government departments conduct the affairs of the Government, and the minister who heads a department is responsible to Parliament for its activities. These departments are staffed by a career public service, whose members do not relinquish their positions on a change of government. The Public Service Commission (PSC) has made good progress with the civil service reforms where corporate planning has been the major drive in the clarification of departmental objectives and outputs. From early this year, PSC has delegated its constitutional and statutory powers to Permanent Secretaries and Heads of Departments who have signed Performance Agreements for their respective Departmental accountabilities. PSC, in consultation with ministries and staff associations, is also devising a new Performance Management System that will link wage and salary increases to public sector performance and productivity.

105. The country has a well-developed system of local government. City and town councils fall under the general supervision of the Ministry of Housing, Urban Development and Environment. Suva and Lautoka have city councils, while Nadi, Ba, Tavua, Sigatoka, Rakiraki, Labasa, Nausori, Levuka, Savusavu and Lami have town councils. Municipal councils have the power to levy rates in order to fund operating and capital developments. The Government helps local bodies with technical services, town planning, grants and loans. Each municipal council is headed by a mayor and elected councillors.

### **Fijian Administration**

106. The system of colonial government established in Fiji after cession was an attempt to incorporate native chiefs into governmental positions. In contrast to French and other Pacific colonies in the late nineteenth century where indigenous political institutions were simply bypassed, in Fiji a serious attempt was made to keep the spirit of indigenous institutions alive. Sir Arthur Gordon, the first governor and John B. Thurston the second governor genuinely sympathized with the Fijian people and sought to identify and preserve those features of traditional society and organization which they considered to be valuable. The Council of Chiefs was the most crucial element in the native administration they created. The work of the council in codifying and revising Fijian customs provided the foundation for the retention of village life in Fiji, the continuation of chiefly authority in internal Fijian affairs and the preservation of a distinct Fijian culture and economy despite external change in the country.

### **Bose Levu Vakaturaga (The Great Council of Chiefs)**

107. The *Bose Levu Vakaturaga* (BLV), or the Great Council of Chiefs, is the highest assembly of the traditional chiefs of Fiji, with a small number of specially qualified commoners, who meet at least once a year to discuss matters of concern to the Fijian people.

108. The Great Council of Chiefs is a constitutional body in the [Republic of the Fiji Islands](#), established under Section 116 of the [1997 Constitution](#). It actually predates the Constitution by many years, having been established by the [British](#) colonial rulers as an advisory body in [1876](#), two years after Britain had annexed Fiji. The Constitution merely formalizes and codifies functions that the Council had long performed. It has continued in existence without interruption, although its composition and functions have varied over the years.

109. According to the Constitution, the Great Council of Chiefs has two major powers:

- It functions as an [electoral college](#) to elect the [President](#) and [Vice-President](#) of Fiji, for a five-year term. In certain circumstances prescribed by the Constitution, it may remove the President or Vice-President from office, in the case of felony, incompetence, negligence, or being unable to carry out their constitutional duties.
- It chooses 14 of the 32 members of the [Senate](#). (Although Senators are ceremonially appointed by the President, his role is a mere formality: the Constitution obligates him to accept and appoint the 14 nominees chosen by the Council, as well as 18 Senators nominated by other institutions ([Prime Minister](#) 9, [Leader of the Opposition](#) 8, [Council of Rotuma](#) 1). Filling nearly half of the seats in the Senate, the nominees of the Great Council of Chiefs have an effective veto if they vote as a block, as they are almost certain to be joined by enough of the other Senators to muster a majority. They do not always vote as a block, however: Fiji's chiefs are a very diverse body. In practice, the Great Council of Chiefs delegates its prerogative of choosing Senators to Fiji's fourteen [provincial councils](#), with each [province](#) choosing one Senator.

110. In addition to these constitutionally mandated functions, the Great Council of Chiefs has other roles that may from time to time be prescribed by law. In addition, it is considered almost compulsory for the government to consult and secure the approval of the Council before making major changes to the Constitution, although nothing in the Constitution requires it to do so.

## MINISTRY OF FIJIAN AFFAIRS

111. The Ministry of Fijian Affairs facilitates the link between the Government, the Fijian Affairs Board (FAB) and the Great Council of Chiefs (GCC) and other related institutions in policy formulation, legislative assistance, budgetary provisions and implementation of programmes aimed at attaining greater well-being and good government of the indigenous Fijians. It has various Departments that include the following:

(a) Native Lands and Fisheries Commission - Ascertains and determines lands which are rightful and hereditary property of Fijians in accordance with the provisions of the *Native Lands Act* (Cap 133), Fijian customs and usage, and the provisions of the Fisheries Act (Cap 158);

(b) Fijian Education Unit (FEU) - Ensures that funds provided for Fijian education are used in such manner as to enhance the opportunities available to Fijians to attain tertiary and professional qualifications. FEU also provides funds for textbooks for both primary and secondary schools;

(c) Institute of Fijian Language and Culture - Ensures the production of the Fijian Monolingual Dictionary research documentation, consultation with interests groups and presentation to various forums for endorsement. It also researches and documents all aspects of the indigenous culture through audio and video media and written publications;

(d) Centre for Appropriate Technology and Development - Provides short- and long-term technical and vocational training courses, seminars and workshops for rural participants;

(e) Statutory Authorities - Fijian Affairs Board and the Native Lands Trust Board.

112. Fiji is divided into 14 provinces which are themselves composed of still smaller administrative units, the basic one of which is the village (*koro*). At the head of a village is the *turaga-ni-koro*, elected or appointed by the villagers. Several *koros* form a *tikina*, and administrative sub-unit of a province, while a province (*yasana*) consists of a number of *tikinas*. Each province is governed by a council with an executive head (*roko tui*) whose appointment has to be approved by the Fijian Affairs Board, which must also approve all rates and by-laws applied by the provincial council. The Fijian Affairs Board is regarded as the guardian of the Fijian administrative system and many other aspects of Fijian custom. This system of local government is exclusively Fijian.

## VI. THE ECONOMY

113. Fiji's economy has performed very well since 2001 due to appropriate fiscal and monetary policies. In the last four years, the economy has grown at an average rate of 3.5 percent. Last year's GDP growth estimated at 4.1 percent.\* Growth was broad-based across all sections, with

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\* Growth for 2003 and 2004 is still estimated at 3.0 percent and 4.1 percent, unchanged from April 2005. The Fiji Islands Bureau of Statistics is expected to release provisional GDP for 2003 and 2004 in late 2005.

resilient growth in visitor arrivals and strong domestic demand providing the impetus to growth. However, a growth of less than 2 percent is projected for 2005 and 2006, reflecting the impact of loss of preferential trade arrangements in the Garment and Sugar industries.

114. Tourism, agriculture, garment, construction and mining have remained the back bone of Fiji's productive sector. Tourism has been a dominant industry over the years. A new record was established in 2004, as visitor arrivals exceeded a little over 500,000. The introduction of low cost carriers and intensive marketing efforts by key industry players contributed towards this success.

115. The sugar industry recorded an unexpected upturn in production in 2004, as output surpassed 2003 levels. However, the industry still faces several challenges. These include the ongoing non-renewal of land leases, deterioration in sugarcane quality and quantity from the effects of drought, mill inefficiencies and the loss of preferential sugar prices from the EU. Nonetheless, reforms of the sugar industry are being implemented and it is hoped that the restructure will address these challenges.

116. The garment industry has been a successful industry, surpassing sugar as the biggest export earner since 1997. In 2004, garment accounted for 22 percent of domestic exports. However, the industry now faces increasing international competition, particularly with the expiry of the US preferential trade arrangements on January 1, 2005 and stiff competition from Asian competitors. A drop in production of close to 40 percent on an annual basis is anticipated this year from the closure of the largest garment factory.

117. The construction sector is gaining momentum since 2002, mainly driven by tourism related projects in the private sector. Led by the rise in construction activities, investment levels improved marginally and were estimated to have been slightly above 16 percent of GDP in 2004. This was complemented by the good growth experienced in other partial indicators of investment, such as import of investment goods, lending for investment purposes and domestic cement sales.

118. Gold output rose, due largely to better quality ore extracted at the mine. This, coupled with strong international gold prices, has resulted in an increase in export earning in 2004. However, this year the mining industry faces some major challenges and output is expected to fall dramatically. Nonetheless, the mine has undertaken a major organisational restructure to revive output to desirable levels.

119. Domestic demand remained strong during 2001 to 2004, reflecting upbeat consumer confidence. Retail sales recorded a healthy growth over the years, as net Value Added Tax (VAT) collections reached record levels. The buoyancy in consumption was also supported by growing remittances from abroad, increased currency in circulation and higher lending to the wholesale & retail trade industry, as well as to households. Imports of consumption goods remained fairly high over the review period.

### **Financial Sector**

120. In line with the favourable performance in the real sector over the last 4 years, the outturn in the financial sector has also been positive. This is reflected largely in the increased level of

financial intermediation between financial institutions, businesses and households and subsequently the notable increase in monetary and credit aggregates during this period.

121. The accommodative monetary policy stance of the Reserve Bank since 2001 contributed to the downward trend in interest rates and supported the recovery of the economy. Interest rates are currently hovering at historical lows and together with competition amongst financial institutions, has been a major factor influencing the demand for funds in the economy. Total assets in the financial system have been growing consistently since 2000 and the outturn in prudential indicators such as asset quality and capital adequacy has generally been positive.

122. Exchange rate movements have been stable over the past 4 years, supported by a peg to the currencies of our five major trading partners (Australian dollar, New Zealand dollar, US dollar, Eurozone Euro and the Japanese yen).

123. In 2003, the operations of the Fiji National Provident Fund (FNPF), the largest financial institution in Fiji by assets came under the supervisory ambit of the Reserve Bank. The move resulted in the central bank now effectively supervising around 92 percent of the financial system.

### **Labour Market**

124. Labour market conditions have generally improved from depressed levels experienced in 2000. Partial indicators for employment, including job advertisements, have generally trended upwards from 2001 to 2003, propped up by consecutive good growth in these years. For 2004, in particular, new taxpayer registrations were at record levels. Survey results also suggested that employers' recruitment intentions were also higher on an annual basis. Notably, growth in employment last year was broad-based and accompanied by a slowdown in emigration levels, particularly in the high skills categories. So far this year, labour market conditions are firm, however, partial indicators point to a slowdown in the employment situation.

### **Inflation**

125. Fiji continues to enjoy low and stable rates of inflation. The country's inflation rate averaged around 2.9 percent between 2001 and 2004. In 2004, inflation was 3.3 percent, relatively lower than the previous year given that the impact of the higher VAT rate in 2003 fell out of calculation. So far this year, inflation has ranged between 1.3 - 3.5 percent as the effects of current high oil prices have been partially offset by weaker prices of domestically produced goods and services. The year-end inflation rate is projected to be between 3 - 4 percent.

### **Foreign Reserves**

126. Foreign reserves have remained at comfortable levels in the past years. In 2004, foreign reserves were around \$1,046m, equivalent to around 4.7 months of imports of goods and non-factor services or 7.1 months of imports of goods only. During the year, foreign reserves have fallen, mainly on account of higher payments for oil imports and large capital investment items. Nevertheless, at the end of September 2005, foreign reserves remained adequate at \$940m,

sufficient to cover 3.9 months of imports of goods and non-factor services or 5.3 months of imports of goods only.

### The economy - key financial indicators

<b>GROSS DOMESTIC PRODUCT</b>		<b>2000</b>	<b>2001</b>	<b>2002</b>
Gross Domestic Product (current prices) per capita		3764.0	3926.0	4168.0
Gross Domestic Product (constant prices) per capita		3221.6	3288.2	3383.8
Gross Domestic Product (current prices) ( <b>FJD million</b> )		3049.1	3199.5	3442.9
Gross Domestic Product (constant 1995 prices) ( <b>FJD million</b> )		2609.5	2679.9	2795.0
<b>LABOUR MARKET</b>		<b>Male</b>	<b>Female</b>	
Legislators, Senior Officials and Managers		3,497	714	
Professionals		7,591	7,988	
Technicians and Associates		6,606	2,734	
Clerks		6,790	8,117	
Service Workers and Shop and Market Sales Workers		9,730	4,945	
Skilled Agricultural and Fishery Workers		890	23	
Craft and Related Workers		10,914	1,589	
Plant and Machinery Operators and Assemblers		9,942	8,065	
Elementary Occupations		13,623	4,212	
Armed Forces		3,131	32	
<b>Consumer Price Index</b>	<b>Annual Average Inflation Rate</b>	<b>All Items</b>		
1994	0.6	100.8		
1995	2.2	103.0		
1996	3.1	106.1		
1997	3.4	109.7		
1998	5.7	116.0		

1999	2.0	118.3		
2000	1.1	119.6		
2001	4.3	124.7		
2002	0.8	125.6		
2003	4.2	130.9		
2004	2.8	134.6		
<b>Government Finance</b>				
	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
<b>(\$ million)</b>				
Total revenue and grants	833.4 (r)	973.2	1,001.9	1,106.6
Total expenditure (excluding loan repayments)	1,053.3 (r)	1,136.2	1,065.1	1,231.8
Net headline balance	-219.9 (r)	-163.0	-63.2	-125.2

Balance of Payments (FJD million)	Annual				Quarterly	
	2004					
	2000	2001	2002	2003[p]	Q1	Q2
	<b>Fiji's Current Account Summary</b>					
Balance on Goods	-394.6	-425.3	-586.4	-802.7	-255	-261.3
Exports (FOB)	1,170.90	1,133.20	1,112.30	1,156.80	227.8	252.8
Imports (FOB)	1,565.50	1,558.50	1,698.70	1,959.50	482.8	514.1
Balances on Services	339.8	383.8	567.5	882.7	138.1	133.9
Exports of services	1,008.90	1,023.10	1,174.90	1,439.40	290.4	315.6
Imports of services	669.1	639.3	607.4	556.7	152.3	181.7
Balance on Income	-128.1	-198.6	-163.2	-170.8	-57.4	-62.2
Income from non-residents	123	48.8	34	43.7	15.3	17.5
Income to non-residents	251.1	247.4	197.2	214.5	72.7	79.7
Balance on Current Transfers	213.6	276.2	312.6	347.4	49.1	113.9
Inflow of current transfers	268.2	336.9	370.1	432.3	71.1	132.5
Outflow of current transfers	54.6	60.7	57.5	84.9	22	18.6
Balance on Current Account	30.7	36.1	130.5	256.6	-125.2	-75.7

	<b>Fiji's Capital Account Summary</b>					
Balance on Capital Account	-33.8	-11	-4.4	18.4	3.3	6.2
Capital transfers inflow	18.1	34.8	30.3	60.8	14.5	15.4
Capital transfers outflow	51.9	45.8	34.7	42.4	11.2	9.2
	<b>Fiji's Financial Account Summary</b>					
Balance on Financial Account	18.2	103.1	123.4	14.6	-13.4	23.7
Fiji Investment Abroad	45.8	52.1	67.5	102.7	15.9	35.7
Direct investment	-4.8	-6	-3.8	-7.1	0.2	-0.1
Portfolio investment	27.4	-9.1	-2.5	-8	47.2	20.5
Other investment	23.2	67.2	73.8	117.8	-31.5	15.3
Foreign Investment in Fiji	71.8	20.8	-32.5	-88.4	-33.4	18.3
Direct investment	76.2	98.4	39.3	43.2	-27.3	19.2
Portfolio investment	9.6	12.1	4.9	2.2	3.4	2.4
Other investment	-14	-89.7	-76.7	-133.8	-9.5	-3.3
Reserve assets	-99.4	30.2	88.4	0.3	4.1	-30.3
	<b>Net Errors and Omissions</b>					
Net Errors and Omissions	-15.1	-128.2	-249.5	-289.6	135.3	45.8

<b>Money and Credit</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
(\$ million)				
Narrow money	620.9	711.9	899.9	1,018.0
Quasi-money	846.0	870.5	1,080.5	1,167.7
Domestic Credit	1,332.2	1,391.7	1,662.8	1,871.2
<b>Exchange Rates (annual average per FJ \$)</b>				
US \$	0.43760	0.4741	0.5605	0.5977
Pound stg.	0.30440	0.3186	0.3387	0.3215
<b>Interest Rates (per cent p.a.)</b>				
Lending Rate	8.19	7.89	7.39	7.03
Savings Deposit Rate	0.78	0.57	0.45	0.36
Time Deposit Rate	2.43	2.17	1.70	1.77
91-day RBF Note Rate (at book value)	1.25	1.25	1.19	1.75
<b>Foreign Exchange Reserves</b>				



Gross Foreign Exchange Reserves (\$m)	994.4	902.1	943.6	1045.6
Months of Imports (goods and non-factor services)	5.1	4.4	4.2	4.7
<b>Foreign Debt Outstanding (end of period)</b>				
<b>Total (\$m)</b>	520.0	501.0	466.9	462.6
<b>Debt Service Ratio (%)</b>	2.0	1.9	1.7	1.4

Source: Fiji Islands Bureau of Statistics & Reserve Bank of Fiji

## VII. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

### A. The law in Fiji - nature and composition

#### Legal history

127. Up to the middle of the nineteenth century, Fiji, like other countries in the South Pacific region, was never a united political entity, either as a whole or even in a significant part of the country. At that time, many separate communities, although of similar racial origin, inhabited Fiji which was never unified politically. These separate communities were ruled by their individual leaders or chiefs, and were regulated partly by their customs and practices which had become well established, and partly by orders and commands of their leaders. As the nineteenth century advanced, leaders of exceptional prowess and intelligence managed to assert their dominance so effectively over large parts of the country that they could claim that these areas were under their governance. To exert their control over such extended areas, those dominant or paramount leaders could no longer rely upon the customs and practices of individual communities, nor upon the goodwill of individual chiefs and verbal arrangements made with individual chiefs. Accordingly, most dominant chiefs followed the suggestions of their European advisors and issued written constitutions and laws to apply throughout their extended kingdoms.

128. Written Constitutions and laws were issued in 1867 by Ratu Seru Cakobau, paramount chief of Bau and parts of Viti Levu, and also by the paramount chiefs of Bua, Cakaudrove and Lau. In 1871 Cakobau issued a more ambitious Constitution, which purported to be for all the Fiji Islands, while the Tui Lau and Tui Nayau promulgated a rival written constitution for the chiefdom of Lau in the eastern islands. In 1873 Cakobau enacted a further written constitution for the whole country, as short lived as its predecessor, coming to an end when the country was ceded to Great Britain as a colony on 10 October 1874.

129. While a British colony, constituent laws for the Fiji Islands were enacted in Letter Patent, Orders in Council and Royal Instructions issued by the British Crown. Changes were issued by appropriate amendments to the Letters Patent, Orders in Council and Royal Instructions issued by the British Crown. Local legislations were enacted by the Governor and were referred to as "ordinances". When it became obvious that the colony was to achieve self-governance or independence, Britain established constituent laws to increase the extent of self-governance.

Written constitutions were enacted in 1963 and 1966 by British Orders in Council to provide increasing self-government.

130. The Fiji Independence Order was issued by the Queen in Council in 1970, the written constitution (1970 Constitution) had been drafted in London by British officials after extensive discussions with local leaders and brought into force by the Order in Council made by the Queen. Existing laws were not rejected outright upon independence. Instead, they were “saved”, a transitional step to avoid a vacuum pending the creation of “local” laws by the new legislature.

Saved laws included:

- (a) Legislation in force in England at a particular date;
- (b) Common law and equity;
- (c) “Colonial” legislation, i.e. ordinances enacted by the Governor-General before independence.

131. A successful military coup was staged in 1987, a drastic method of revocation of the 1970 Constitution. The military government abrogated the Constitution and then enacted decrees to govern. In 1990 a written Constitution was brought into force by decree of the President on the advice of the Cabinet. In 1997 this was replaced by a Constitution enacted by the Parliament of Fiji which came into force on 17 July 1998.

132. Section 195 (2) (d) of the *1997 Constitution Amendment Act* continues in force all written laws in force as if enacted or made under or pursuant to that Act. Section 195 (3) provides that English laws are to be construed with such modifications as are necessary to bring them into conformity with the Constitution. By virtue of the Supreme Court Ordinances 1975, existing laws included:

The statutes of general application which were in force in England at the date when the colony obtained a local legislature, that is to say, on the second day of January 1875 ... subject to the provisions of section 37 of this Ordinance ... (**sect. 35**);

All imperial laws extended to the colony by this or any future ordinance shall be in force therein so far only as circumstances of the colony and its inhabitants and the limits of the Colonial jurisdiction permit, and subject to any existing or future ordinances of the colonial legislature and for the purpose of facilitating the application of the said laws, it shall be lawful for the court to construe the same with such verbal alteration not affecting the substance as may be necessary to render the same applicable to the matter before the court ... (**sect. 37**).

133. Statutes of general application have been defined by the Supreme Court<sup>11</sup> as being

“... used to distinguish public statutes not necessarily binding upon all the population, for example, the Companies Act or the Friendly Societies Act on the one hand and the public statutes which on the other hand are binding upon

everyone, for example the Offences Against the Person Act or similar legislation”. A related question arises as to who bears the burden of proof in relation to the applicability of these Acts of “general application”.

The Supreme Court held<sup>12</sup> that there is a general presumption in favour of general applicability, which throws the burden proof on to the party disputing. As for how these statutes of general application rank in relation to other types of law, it is clear that imperial legislation is inferior to the Constitution.

### Sources of law

134. The law in the Republic of Fiji today consists of:

(a) Acts passed by the Parliament acting within the scope of its powers under the Constitution, together with delegated or subordinate legislation made under such Acts;

(b) Decrees promulgated by the Interim Government between 1987 and 1990;

(c) The Fijian common law, which developed from the English common law and is interpreted and enunciated by the Courts;

(d) Subsidiary legislation made by ministers, local government bodies and statutory authorities.

135. As mentioned earlier, Fiji was the subject of two military coups in 1987. In this period, three sources of law existed: (a) decrees issued by the Governor-General during the period of emergency from 14 May to September 1987; (b) decrees issued by the head of the interim military government; and (c) decrees issued by the President of the Republic of Fiji.

136. In *State v. Afasio Mua and Ors*,<sup>13</sup> the Chief Justice held that all statutes in force before the advent of the military government and the declaration of the Republic continued in full force, except as specifically repealed or amended by subsequent decrees.

### Customary law

137. The *Native Lands Act* Cap 133 makes express provision for the customs or customary law to determine the basis of rights to customary land, that is, land owned in accordance with custom, by the courts or tribunals authorized to make such determinations. Section 3 provides that “**Native lands shall be held by native Fijians according to native custom as evidenced by usage and tradition**”. Other situations where the courts have applied customary law in Fiji without express statutory authorization are indirect or interstitial applications, that is, where custom or customary law is taken into account as a factor within the scope of existing law. For example, where the court is provided a statutory discretion, a custom or customary law may often be a relevant factor to take into consideration when exercising that discretion. The Supreme Court so held in *R. v. Vodo Vuli*.<sup>14</sup>

### **Common law and equity**

138. The principles of common law and equity were introduced, together with English Statutes of general application, in all countries of the South Pacific which were under the control of Britain or of the British Colonies of Australia and New Zealand during their period of dependency. The *Supreme Court Ordinance 1875*, which is still in force, having been continued by the 1997 Constitution, provides:

The common law, the rules of equity and the statutes of general application which were in force in England at the date when the colony obtained a local Legislature, that is to say, on the second day of January 1875 shall be in force within the colony (sect. 35);

All imperial laws extended to the colony by this or any future ordinance shall be in force therein so far only as the circumstances of the Colony and its inhabitants and the limits of the colonial jurisdiction permit, and subject to any existing or future Ordinances of the Colonial Legislature ... (sect. 37).

139. The *Supreme Court Ordinance of 1875*, however, does not make explicit whether the cut-off date (the date on which common law and equity is introduced, from which it follows that changes to the common law and equity that occur in England or elsewhere are not binding) provided by section 35 refers only to English statutes of general application or whether it also applies to common law and equity. This has been interpreted by the courts in the Fiji Islands<sup>15</sup> as providing a cut-off date for both statutes of general application and common law and equity. This would seem to mean that any subsequent changes made to the common law and equity after the cut-off date would not be binding on the country, though no doubt very persuasive.

140. As for the status of common law and equity in relation to other types of law, it is obvious that they are subordinate to the Constitution and may be changed or abolished by clear terms in the Constitution. The Constitution being the supreme law to the extent that the principles of common law and equity conflict with the terms of the Constitution, they must be held to be modified or abolished. There being nothing in the *Supreme Court Ordinance 1875* to indicate a change from that relationship in England that clear words in legislation or subsidiary legislation could change or abolish the common law and equity, the principles of common law and equity in Fiji are subordinate to legislation and subsidiary legislation and may be modified or abolished by clear terms in them.

### **The Attorney-General**

141. The Attorney-General is the Government's principal adviser on the law, and represents the State in all civil cases. The Attorney-General holds a ministerial post. Since independence from the United Kingdom, the Attorney-General also holds the portfolio of the Ministry of Justice. It is the Director of Public Prosecutions who has responsibility for enforcing the criminal law. The Office of the Director of Public Prosecutions is a constitutional independent office; however, for administrative purposes, it comes under the Ministry of Justice. The Director of Public Prosecutions is concerned with instituting and prosecuting certain types of criminal proceedings,

but must exercise an independent discretion and must not be influenced by government colleagues.

142. The Minister for Justice is concerned with the administration of the courts, prisons and legal registries in the Fiji Islands. Prison policy and the administration of custodial centres are functions of the Prisons Department of the Ministry of Justice. The Prisons Department is headed by the Commissioner of Prisons who is appointed by the Judicial and Legal Service Commission. The Minister appoints to each prison establishment a board of visitors representing the local community who need to satisfy themselves as to the state of prison premises, administration and treatment of inmates. They are required to report to the Minister any abuse or matters of concern which come to their attention. Prisons are subject to inspection by Magistrates appointed by the Minister to whom he reports directly. All reports, including those which are critical, are taken very seriously by both ministers and the Commissioner of Prisons.

143. Responsibility for the treatment of offenders under 18 is shared between the Ministry of Social Welfare and the Ministry of Justice.

144. As provided in the Constitution, the Commission on the Prerogative of Mercy, which is chaired by the Attorney-General with two members from the community, is responsible for advising the President on whether there are exceptional grounds for exercising the prerogative of mercy to pardon a convicted person or to remit all or part of a penalty imposed by a court.

### **The Criminal law**

145. The initial decision to begin criminal proceedings normally lies with the police, once they have brought a criminal charge. Certain “small” crimes are prosecuted by police prosecutors while others are the responsibility of the Director of Public Prosecutions. A private person may institute criminal proceedings in a few cases though this is extremely rare in practice.

### **Criminal proceedings - trial**

146. Criminal trials take the form of a contest between the prosecution and the defence. Since the Constitution provides for the presumption of the innocence of an accused person until guilt has been proved, the prosecution is not granted any advantage, apparent or real, over the defence. A defendant (or accused person) has the constitutional right to a legal adviser and may be assisted by legal aid from public funds through the Legal Aid Commission. If remanded in custody, the person may be visited by a legal adviser to ensure a properly prepared defence.

147. The prosecution, except for minor charges, is required either automatically or on request to disclose to the defence all evidence against the accused on which the prosecution propose to rely. In addition, the prosecution must disclose any other material which is relevant to the issues in the case.

148. Criminal trials normally take place in open court, and the rules of evidence (concerned with the proof of facts) are rigorously applied. If evidence is improperly admitted, a conviction can be quashed on appeal. During the trial the defendant has the right to hear and cross-examine witnesses for the prosecution, normally through a lawyer; to call his or her own witnesses who, if they will not attend voluntarily, may be legally compelled to attend; and to address the court in

person or through a lawyer, the defence having the right to the last speech at the trial. The defendant cannot be questioned without consenting to be sworn as a witness in his or her own defence. When he or she does testify, cross-examination about character or other conduct may be made only in exceptional circumstances; generally the prosecution may not introduce such evidence.

### **The Civil law**

149. The main subdivisions of the civil law of the Fiji Islands are: family law, the law of property, the law of contract and the law of torts (covering injuries suffered by one person at the hands of another, irrespective of any contact between them and including concepts such as negligence, defamation and trespass). Other branches of the civil law include administrative law (particularly concerned with the use of executive power), commercial law and industrial law.

### **Civil proceedings**

150. Civil proceedings are instituted by the aggrieved person; no preliminary inquiry on the authenticity of the grievance is required. Actions in the High Court are usually begun by a writ of summons served on the defendant by the plaintiff, stating the nature of the claim. A defendant intending to contest the claim informs the court. Documents setting out the precise question in dispute (the pleadings) are then delivered to the court.

151. Civil proceedings, as a private matter, can usually be abandoned or ended by compromise at any time. Judgements in civil cases are enforceable through the authority of the court. Most are for sums of money and may be enforced, in cases of default, by seizure of the debtor's goods or by a court order requiring an employer to make periodic payments to the court by deduction from the debtor's wages. Other judgements can take the form of an injunction restraining someone from performing an illegal act. Refusal to obey a judgement may result in imprisonment for contempt of court. Arrest under an order of committal may be effected only on a warrant. Normally the court orders the costs of an action to be paid by the party losing it.

## **B. Fundamental Human Rights under the law**

152. Under the Constitution the possession of rights and freedoms is an inherent part of being a member of our society. They can only be restricted by a democratic decision of Parliament. The role of Parliament, therefore, is not to confer rights but to consider whether they need to be restricted, balancing the needs of society against those of the individual. The following paragraphs set out the mechanisms and legal safeguards through which human rights in the Fiji Islands are protected.

### **Constitutional protection of human rights**

#### **1970 Constitution**

153. The provisions for the protection of fundamental rights and freedoms of the Independence Constitution of 1970 follow the style of the Universal Declaration of Human Rights and of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1953,<sup>16</sup>

and express both the rights and freedoms and the exceptions to them in very detailed terms. Section 3 provides that every person whatever his race, place of origin, political opinions, colour, creed or sex, subject to the rights of others and public interest, is entitled to life, liberty, security of person, protection of the law, freedom of conscience, religion, assembly and association and protection of privacy and from deprivation of property without compensation. Other fundamental rights and freedoms protected are freedom from torture or inhuman or degrading punishment or other treatment; protection from slavery and forced labour; freedom of expression; freedom of movement; and protection of persons detained under emergency laws.

154. Section 15 of the 1970 Constitution specifically dealt with the prohibition of a law or any public authority from discriminating against an individual on the basis of race, place or origin, political opinions, colour or creed. Interestingly “sex” was excluded from the list of grounds on which discrimination is prohibited while it was a prohibited ground in terms of access to other political rights - life, liberty, security of person, protection of the law, freedom of conscience, religion, assembly and association and protection of privacy and from deprivation of property without compensation.

155. Section 15 (2) defines the term “discriminatory” to mean preferential treatment. However, this prohibition could be overridden in these areas: appropriation of revenues; a law with respect to marriage, divorce, and adoption; in public emergency measures or in circumstances where it is reasonably justifiable in a democratic society.

156. Under section 17, an aggrieved person who believes that any of the provisions of chapter II have been contravened by government action could apply to the Supreme Court for redress as it had original jurisdiction to hear such matters. However, section 17 (6) notes that the Supreme Court can abandon an appeal, if the aggrieved person’s action is found to be frivolous or vexations. There were few challenges to the fundamental rights and freedoms provision of the 1970 Constitution. As for the inclusion in the introductory section<sup>17</sup> stating that “whereas” the people of the country are entitled to certain rights, “therefore” the provisions are designed to protect those rights and freedoms, the Supreme Court in *Fiji Waterside Workers Union v. Reginam*,<sup>18</sup> held that the introductory provision was enacting, and so added a limitation to the fundamental freedom of expression in respect of the “public interest” which was not contained in the specific section protecting freedom of expression.

157. The court in *R. v. Butadroka*<sup>19</sup> held that the constitutional rights of freedom of expression, assembly and association are not infringed by statutory ban on racially inflammatory statements. Other case law concerning the fundamental rights and freedoms provisions include *Veitata v. R.*<sup>20</sup> concerned the right to independent and unbiased court as provided in section 10 (1); *Sundarjee Bros. v. Coulter*<sup>21</sup> concerned the right to freedom of movement prescribed in section 14; *Fiji Waterside Workers Union v. Reginam*<sup>22</sup> also concerned the right to freedom of assembly and association as provided in section 13, as well as the right to freedom of expression provided in section 12.

### 1990 Constitution

158. The 1990 Constitution continued the prohibition on discrimination established by the 1970 Constitution. The prohibited grounds were race, colour and place of origin. For the first time in Fiji, “sex” became a prohibited ground of discrimination, except in the following cases:

- (a) States of emergency;
- (b) Appropriation of taxes;
- (c) Appointment to public offices;
- (d) Exercise of judicial authority;
- (e) Laws in force before 23 September 1966;
- (f) Fijian regulations made under section 6 of the Fijian Affairs Act for the peace, order, welfare and good government of Fijians.

159. Section 18 precluded the equality provision of any law if its objective was to improve the conditions of disadvantaged individuals or groups, including those that are disadvantaged, inter alia, on the basis of race. Similarly, the fundamental rights provisions of the 1990 Constitution were rarely subject to litigation in a court of law. Section 156 of the 1990 Constitution attempted a rather cursory definition of the terms “Fijian”, “Rotuman” and “Indian”.

160. The court system under the 1990 Constitution was restructured to make the Supreme Court the final appellate court. In addition to this formal court restructuring, section 122 of the 1990 Constitution provided for the establishment of Fijian courts having such jurisdiction and powers as Parliament may provide. However, this was not implemented.

### **1997 Constitution**

161. The rights protected by the Bill of Rights chapter of the 1997 Constitution are:

- Personal liberty;
- Freedom from servitude and forced labour;
- Freedom from cruel or degrading treatment;
- Freedom from unreasonable searches and seizure;
- Arrested or detained persons;
- Rights of charged persons;
- Access to courts or tribunals;
- Freedom of expression;
- Freedom of assembly;



- Freedom of association;
- Labour relations;
- Freedom of movement;
- Religion and belief;
- Secret ballot;
- Privacy;
- Equality;
- Education;
- Protection against compulsory acquisition of property.

162. The equality provision in section 38 further expanded the prohibited grounds of discrimination to include ethnic origin and primary language (or mother tongue) in addition to race, ethnic origin, colour and place of origin. Therefore, today, discrimination on the grounds of race, ethnic origin, colour and place of origin is unlawful under the Constitution.

### **Exceptions to the right to equality under the 1997 Constitution**

163. Whereas section 38 (2) enumerates the grounds on which discrimination is unlawful, there are exceptions to this right, i.e. where discrimination would not be unlawful, which are found in four subsections of section 38: s38 (2)(b); s38 (6); s38 (7) and s38 (9). Significantly, section 38 (9) provides for measures for the good governance of Fijians and Rotumans.

164. Section 38 (9) sanctions laws or administrative actions which limit the right to equality for the purpose of providing for the application of the customs of Fijians or Rotumans or of the Banaban community:

(a) To the holding, use or transmission of, or to the distribution of the produce of, land or fishing rights;

(b) To the entitlement of any person to any chiefly title or rank;

(c) To imposing a restriction on the alienation of land or fishing rights held in temporary alienation of that land or those rights without the consent of the owners.

165. To the extent permitted by subsection (10), a law, or an administrative action taken under a law, may limit a right or freedom set out in this section for the purpose of providing for the governance of Fijians or Rotumans or of the Banaban community and of other persons living as members of a Fijian, Rotuman or Banaban community (emphasis added). Some commentators

since the events of 19 May 2000 have described as sinister the inclusion of this exact provision in the Fundamental Rights and Freedoms Decree of 2000 promulgated by the Interim Military Government when in fact it was not a totally new provision, but a carbon copy of the provision in the Bill of Rights of the 1997 Constitution.

166. Section 38 (10) provides:

“A limitation referred to in subsection (9) is valid only if it:

(i) accords to every person to whom it applies the right to equality before the law without discrimination other than on the ground of race or ethnic origin; and

(ii) does not infringe a right or freedom set out in any other section of this chapter.” (Chapter IV - Bill of Rights).

167. It should be appreciated that Fiji has a written Constitution that echoes in its own words the spirit of the Convention on the Rights of the Child. Because racial discrimination is prohibited by the Constitution, no legislation or policy can co-exist with the prohibition, it being both the national policy and legislation on the Convention irrespective of the political party in power and so long as the particular Constitution provisions continue to be in force.

168. Insofar as Fiji’s accession to the Convention is clearly subject to the reservations and declarations already mentioned, the comprehensive fundamental rights guaranteed to the individual of any race by the Constitution must be read together with the reservations. Thus purely and simply, in the Fiji context the electoral, land and educational laws and systems of the country cannot be regarded as racially discriminatory or as having the effect of perpetuating racial discrimination. The Constitution itself contains provisions for the enforcement by the High Court of Fiji of the fundamental rights conferred upon the individual. The individual himself is given very firm stand to bring an action based even on a mere likely violation of any of the rights. Other legislation prohibiting discrimination includes:

- (a) *Human Rights Commission Act No. 10 of 1999;*
- (b) *Ombudsman Act;*
- (c) *Public Order Act;*
- (d) *Penal Code;*
- (e) *Immigration Act;*
- (f) *Education Act.*

#### **The Human Rights Commission Act**

169. Under the Human Rights Commission Act discrimination is generally unlawful in employment, education, membership of employees’ and employers’ organizations and the

provision of professional training and accreditation, goods, facilities, services, premises, housing and accommodation. The Act also makes unlawful “indirect discrimination” - that is a requirement or condition which is imposed equally on all racial groups, but which can be met by a much smaller proportion of people of one group compared with the proportion of people not of that group. The Act provides for enforcement through conciliation by the Commission or civil proceedings against persons or organizations.

### **Public Order Act 1969**

170. This enactment is aimed at the maintenance of public order. It also makes it an offence to “incite hatred or contempt of any class of person” or “hatred of any race or community”.

### **Penal Code**

171. The offence of sedition is defined in the Penal Code to include “... the issue or circulation of a seditious publication ... (appearing to have the object of promoting feelings of hostility between different or races of the community) ...”.

### **Ombudsman Act 1998**

172. This enactment regulates the operations of the Ombudsman, which office is provided for in the 1997 Constitution (chapter IX of the 1970 Constitution and chapter X of the 1990 Constitution). The Ombudsman is authorized to investigate any action alleged or appearing to be in contravention of the fundamental rights and freedoms guaranteed to the individual under the Constitution. He may remedy any such complaint by recommending that further consideration be given regarding the subject of the complaint by those complained against or that the omission be rectified or the decision cancelled, reversed or varied or that that pertinent law be reconsidered.\

## **C. The Fiji Human Rights Commission**

173. The Fiji Human Rights Commission was established in accordance with section 42 of the *1997 Constitution* which tasks the Commission with educating the public about human rights and making recommendations to the Government about matters affecting compliance with human rights and other functions as Parliament decides.

174. Protection against racial discrimination is further addressed in the *Human Rights Commission Act* No. 10 of 1999,<sup>23</sup> which prohibits, inter alia, racial discrimination in certain areas of public life in section 17 (2).

175. The Commission is tasked with educating the public about human rights, investigating and resolving complaints of unfair discrimination as prohibited under its principal Act (No. 10 of 1999), and investigating allegations of violations of the Bill of Rights (chap. 4) of the 1997 Constitution. This makes discrimination unlawful in the following areas:

- (a) Employment;

- (b) Education;
- (c) Vocational training;
- (d) Professional partnerships;
- (e) Trade or vocational accreditation;
- (f) Membership of trade unions and employers' unions;
- (g) Housing and accommodation;
- (h) Provision of goods and services, including loans and insurance;
- (i) Access to public places.

176. The establishment and continued existence of the independent Commission is an indication of Fiji's commitment to the protection of international principles of human rights.

#### **F. The Office of the Ombudsman**

177. The Office of the Ombudsman has been established to investigate complaints against public officers alleging maladministration. The details of this function are contained in the report to the International Convention on the Elimination of all Forms of Racial Discrimination. The 1997 Constitution Amendment Act contains a number of new provisions relating to the Ombudsman, aimed at increasing the jurisdiction of the Ombudsman to include complaints against the Native Land Trust Board and the Banaban and Rotuma Island Councils, previously excluded under the 1990 Constitution. The 1997 Constitution also ensures that the Ombudsman, unlike the President, is appointed by the Constitutional Offices Commission, as provided under the 1990 Constitution and that the Ombudsman must retire upon reaching the age of 65 years. The Office of the Ombudsman is also affected by the freedom of information provision and the Code of Conduct provisions of the 1997 Constitution. In 1998, the Ombudsman's Act came into force, setting out how the Ombudsman is to conduct his investigations, granted him and his staff immunity and empowered the competent Minister to make regulations.

#### **G. The Ministry of Foreign Affairs and External Trade**

178. The Ministry of Foreign Affairs and External Trade is responsible for the ratification of treaties on behalf of the Government of Fiji and coordinates the preparation and presentation of Fiji's various periodic reports to the United Nations human rights treaty bodies.

## Notes

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- <sup>1</sup> Gillion, K.L., 1962. Fiji's Indian Migrants: A History to the End of Indenture in 1920. Melbourne: Oxford University Press, p. 190.
- <sup>2</sup> Boydell, S. (2000) Coups, Constitutions and Confusion in Fiji, Land Tenure Centre Newsletter 80 (Fall 2000): 2.
- <sup>3</sup> Ibid., 4.
- <sup>4</sup> Ibid., 4.
- <sup>5</sup> Ibid., 5.
- <sup>6</sup> Vasil, R.K. (1972), "Communalism and Constitution making in Fiji", in Pacific Affairs 45 (1 & 2): 21-41.
- <sup>7</sup> The Fijian Affairs Act; the Fijian Development Fund Act; the native Lands Act; the Rotuma Act; the Rotuma Lands Act; the Agricultural Landlord and Tenant Act; the Banaban Land Act; and the Banaban Settlement Act.
- <sup>8</sup> Reeves, P., Lal, B. and Vakatora, T. (1996), Towards a United Future: Report of the Fiji Constitution Review Commission. Suva: Fiji Government, Parliamentary Paper No. 34, 1996. Page 1.
- <sup>9</sup> Section 30 of the 1970 Constitution; section 39 of the 1990 Constitution; and section 45 of the 1997 Constitution.
- <sup>10</sup> This body existed under section 47 of the 1990 Constitution.
- <sup>11</sup> Indian Printing and Publishing Company v. Police (1932) 3 FLR 142.
- <sup>12</sup> Mohammad Isaac v. Abdul Kadir (1962) 9 FLR 152.
- <sup>13</sup> High Court of Fiji, judgement of 9 June 1988 (unreported).
- <sup>14</sup> Rev Cas 6/1981 (unreported) (14 August 1981).
- <sup>15</sup> E.g. Victor Jivan Raju v. Reginam (1977) 23 FLR 1, p. 5.
- <sup>16</sup> Ratified by the United Kingdom in 1969.
- <sup>17</sup> See appendix 1, 1970 Constitution.
- <sup>18</sup> (1977) 23 FLR 196.
- <sup>19</sup> Supreme Court, 9 August 1977 (unreported).
- <sup>20</sup> (1977) 23 FLR 294.
- <sup>21</sup> (1987) 33 FLR 74.
- <sup>22</sup> (1977) 23 FLR 196.
- <sup>23</sup> See appendix 10.
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