

## LOCAL GOVERNMENT

18.1 In earlier chapters, we have been concerned largely with reviewing and making recommendations on how government institutions and the exercise of political and administrative power at the national level might be improved. In this chapter, we deal with government at the local level.

18.2 We use the term 'local government' in a broad sense. It is a convenient way of addressing the submissions which, in various ways, proposed reform in the way government power is exercised in particular areas, whether by locally elected or appointed bodies or by departments of the national government.

### PRINCIPLE OF LOCAL GOVERNMENT

18.3 The Commission recognises the almost universal desire of human beings to organise themselves into small units so that they can collectively control matters that affect their daily lives. From time immemorial, Fijians have organised themselves into villages in which they have run their affairs as a community and have endeavoured to reach collective decisions for the common good. The same desire underlies the concept of local government. A local form of government allows the people of an area, linked by a community of interest or a common dependence on services or amenities, to identify themselves as an integrated community and thereby manage their common interests and dependence in an orderly and meaningful way.

### THE 1990 CONSTITUTION AND LOCAL GOVERNMENT

18.4 At present, the Constitution does not establish or require the establishment of any local government body or area, although it does contain some limited recognition of existing local government institutions. Through its entrenchment of the Fijian Affairs Act (Cap. 120), the Rotuma Act (Cap. 122) and the Banaban Settlement Act (Cap. 123), the Constitution indirectly guarantees the existence of the various councils established by or under those Acts. The Fijian village, tikina and provincial councils, the Council of Rotuma and the Council of Leaders on Rabi Island are all local government institutions in the sense described above. Another reference is found in section 135, which gives the Ombudsman jurisdiction to investigate the administrative action of local government bodies and rural local authorities. Other provisions also disqualify members and employees of defined

local authorities from appointment to various independent constitutional commissions.

## SUBMISSIONS

18.5 The submissions addressed four matters. A few sought to change Fiji's system of government to a federal system. Another group addressed the system of municipal councils which exists under the Local Government Act (Cap. 125). Some of these sought a constitutional guarantee of the existence of local government and its autonomy from the national government. Others considered that indigenous Fijians were under-represented on the councils and sought a constitutional reservation of seats for their community. Finally, a number of submissions sought to give a constitutional and democratic basis to advisory councils which are informal bodies consulted by the Government's district administration about local activities of the national government. The advisory councils are not established or recognised by statute, and members are selected and informally appointed by the district administration.

## A FEDERAL STATE?

18.6 A small number of submissions sought to have Fiji's system of government changed from the existing unitary system to a federation comprising either the existing Fijian provinces, or the traditional '*vanua*', which were loosely organised prior to Cession, or the Divisions which exist for the national government's administrative convenience.

18.7 In a federal system, a country is divided into smaller units usually called 'states' for the purposes of government. Each unit has its own government with its own elected legislature and executive. It may also have its own system of courts. Law-making, taxation and administrative powers are divided by the country's constitution between the federal government and the governments of the component states. Each usually enjoys quite significant powers and in almost all cases, the state governments enjoy a large measure of autonomy. State powers usually cannot be intruded upon nor withdrawn by the federal government without a constitutional amendment. In federal systems, the powers enjoyed by the federal government are treated as having been granted to it by the states. This reflects the fact that in most cases the states were independent prior to the federation, which was usually created by a constitution agreed to by the states. Therefore, unless a power has been specifically granted to the federal government by the states under the federal constitution, it usually is considered to remain with the states. This division of powers is supervised by the country's courts with

jurisdiction in constitutional matters.

18.8 In contrast, under a unitary system of Government, local governments are created, and their powers are granted by laws made at the national level. To varying degrees, the national government also retains supervisory control over the local governments.

18.9 The Commission believes that there is no need to create a federal system in Fiji. It is true that historically the country was formed as a single country from various areas which previously were independent centres of power. However, it has existed and prospered as a unitary state for over 100 years. The relatively small number of submissions seeking a change from the unitary system shows that few people believe that any such change is necessary.

## RECOMMENDATION

**657. The Republic of the Fiji Islands should continue to be a unitary state.**

## EXPRESS CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENT?

18.10 We have referred to the lack of any direct recognition of local government in the 1990 Constitution. The Commission received submissions from officers of various municipal councils seeking a constitutional provision that will recognise or mandate the existence of local government in Fiji. They also proposed that the Constitution should guarantee local government bodies, in particular municipal councils, more autonomy from the central government.

18.11 Municipalities and their councils exist under the Local Government Act (Cap. 125). The Act, which was passed shortly after independence, consolidated and amended the various colonial ordinances which governed towns and townships. On the initiative of local people, an area may be declared by the responsible Minister to be a city, a town or a district. Each of these is classified as a 'municipality' under the Act and is entitled to equal application of the provisions of the Act.

18.12 In this context, a district is a municipality of any size, which is not a city or a town. It bears no necessary relationship to the very large districts into which

Fiji is divided for the national government's administrative purposes. The provision for district municipalities allows those in rural areas who wish to constitute themselves into a local government area to do so.

18.13 With the status of municipality comes the opportunity to elect a council democratically. Once an area is declared a city or town, a council must be elected within 6 months, and for a district, within 2 years. In all cases, the Electoral Commission is charged with responsibility for prescribing the number of councillors and deciding on wards. Voting in municipal elections is done on a different basis, and according to different qualifications, from those for Parliamentary elections.

18.14 The Act grants municipal councils the general power to promote the welfare and convenience of the people of the municipality and to preserve their amenities. It empowers them to make by-laws for these purposes. In general, councils control matters such as health and sanitation, building and planning, business licensing, and the streets, parks and markets within their municipalities. In order to meet the costs of government, municipal councils are authorised to impose rates on land within their boundaries and may impose fees and charges for services. However, they may not impose personal or other taxes.

18.15 Under the Act, the councils are subject to a great deal of supervision from the national government. Ministerial approval is required to make or amend by-laws, or impose or revise fees and charges, and otherwise to spend or raise money. The Act also gives the Minister power to investigate the affairs of any council and to dissolve the council in specified circumstances.

18.16 Some of the submissions which we received on local government expressed dissatisfaction with the level of ministerial approval required under the Local Government Act. They stated that the existing audit requirements and the Minister's powers to investigate and dismiss councils provide sufficient supervisory control over them, and all other aspects of ministerial control should be abolished. It was believed that the autonomy which the submissions seek would best be achieved by constitutional provisions recognising the principle of local government in Fiji and by appropriately providing for their autonomy. These submissions referred the Commission to the "International Declaration of Local Self Government" made by the International Union of Local Authorities.

18.17 While the Commission supports the principle of local government, we do not favour any constitutional recognition of local government nor any provision

guaranteeing them autonomy from the national government.

18.18 Our own focus has been on the Constitution as a national document concerned with the interests of Fiji citizens as a whole, with distributing powers among the branches of the national government and placing certain restrictions on their exercise. Insofar as we have recommended any provision which deals with local government institutions, we have done so either because this has been necessary in defining the qualifications for, and powers of, national institutions, or for protective reasons. In the latter case, we have done so only in respect of those which have a long history of constitutional recognition.

18.19 Municipalities already have a firm statutory basis and we know of no threat to their continued existence. The Commission received proposals on this matter exclusively from local government officials. We also note that in spite of the fact that the Local Government Act (Cap. 125) allows district municipalities to be established in rural areas, none have been established there. This indicates to us that autonomous local government is not, at present, a major concern of the people of the Fiji Islands.

18.20 Local government should not be addressed in the Constitution, without a comprehensive review of the status and powers of municipalities and the other different types of local government bodies that exist for various purposes in Fiji. Such a review would need to be wide-ranging. In Chapter 17, we indicate that increasingly, people other than "Fijians" as defined in the Fijian Affairs Act, are living in Fijian villages. Many regulations under that Act set building and sanitation standards which should apply not only to "Fijians" but to other inhabitants. We have proposed a review of that Act to address this problem, among others.

### **Reserved council seats?**

18.21 The Commission received submissions from indigenous Fijians seeking reserved seats for their community on the various town and city councils. Some submissions were made on the basis that Fijians were under-represented in proportion to the number eligible to vote in the municipality. Other submissions sought a guaranteed minimum number of seats, regardless of the proportion of eligible voters. Prior to the introduction of the Local Government Act in 1972, town council seats were elected on an ethnic basis.

18.22 In Chapter 9 we have set out our views about the reservation of Parliamentary seats for ethnic communities. In particular, we stressed the necessity

of moving away from ethnicity as a basis for political organisation. For the same reasons, we do not favour a provision reserving any council seats for ethnic communities.

18.23 To the extent that any group or party might perceive itself to be unfairly represented on any council, the Commission believes that this situation can best be remedied by proper organisation and campaigning, and by ensuring that its supporters register and turn out to vote.

## RECOMMENDATIONS

- 658. The Constitution should not expressly recognise local government or guarantee local government autonomy.**
- 659. No seats on municipal councils should be reserved for any community or group.**

## ADVISORY COUNCILS

18.24 The Commission received submissions that advisory councils should become elected bodies with a statutory or constitutional basis. We have already expressed our opinion that the Constitution should not expressly provide for local government bodies. The principle would apply equally to advisory councils.

18.25 However, because of the important role advisory councils have in the Government's provision of development and other services in rural areas, we believe that, in principle, the proposal for elected councils having a statutory basis merits further examination by the Government.

## RECOMMENDATION

- 660. The Constitution should not provide for advisory councils.**

## REVIEW OF LOCAL GOVERNMENT

18.26 In considering the submissions about local government, the Commission concluded that there should be a broad and comprehensive review of local government in Fiji.

18.27 As we have already noted, the system of rural local government provided for under the Local Government Act apparently has never been utilised. At the same time, we received submissions for elected district advisory councillors. The identification of workable, democratic means of organising rural dwellers both

for the purpose of local self-government and for the purpose of representing their interests in the local activities of the national government should be included in the Terms of Reference for the review. The review should be carried out by an independent and broadly representative body. We envisage that the review, in light of modern needs, will re-examine the organisation, functions and powers of all the existing types of local government bodies presently provided for by law. It should also examine the operation of those which exist without a statutory basis. It should do so with a view to streamlining functions and powers so that unnecessary duplication, division and cost are avoided.

18.28 Such a review should also look at the extent to which local government needs to be supervised by central government. Given that the Local Government Act was passed shortly after independence, its provisions may reflect a degree of caution that is no longer appropriate.

18.29 It is desirable to maintain a uniform electoral system for all government elections. By 'electoral system' we mean the qualifications for voters, as well as the system by which votes are counted and translated into seats. Uniformity avoids voter confusion and makes the administration of elections easier and less costly. In many neighbouring countries, the same qualifications and rolls are used for both national and municipal elections. In view of our own recommendations for changes in Parliamentary elections, any review should include consideration of this issue.

## RECOMMENDATION

- 661. The Government should commission a broad and comprehensive review of all local government arrangements in Fiji to be carried out by an independent and broadly representative body. The review should, in light of modern needs, re-examine the organisation, functions and powers of all the existing local government bodies provided by law. The Terms of Reference should include a review of the Local Government Act (Cap. 125). Ministerial supervisory powers over local government and electoral arrangements should also be re-examined. It should also include a review of the operation of those bodies which exist without a statutory basis. The reviewing body, among other things, should be required to inquire into appropriate democratic systems of local government for rural areas.**