

STRENGTHENING THE CONSTITUTIONAL FOUNDATIONS

2.1 Under its Terms of Reference, the Commission is required to recommend constitutional arrangements that will promote racial harmony and national unity and the economic and social advancement of all communities. The arrangements must guarantee full protection of the rights of the indigenous Fijian and Rotuman people, promote their interests and take account of their concerns. As well, they must have full regard for the rights, interests and concerns of all other ethnic groups. They are also to take into account individual and group rights as recognised in the international standards.

OPPORTUNITY FOR A CHANGE OF DIRECTION

2.2 Already the people of Fiji are in substantial agreement about these broad objectives. Parliament's unanimous approval of our Terms of Reference was a significant first step. The objectives were also endorsed specifically or implicitly by most submissions to the Commission. There are, of course, different views about what these objectives entail, whether all of them are compatible, and how the Constitution can best help achieve them. The arguments, however, are essentially about means, not ends. For that reason, the Commission is convinced that all Fiji's citizens, irrespective of ethnicity, are capable of working together in reaching common ground about what their Constitution should provide.

2.3 In the Commission's view, Fiji's constitutional problems have not been caused by any insurmountable difficulty in achieving the mutual respect, trust and cooperation among ethnic communities necessary to join together in governing a multi-ethnic and multicultural country. When members of different ethnic groups come together in most areas of the nation's life, they are able to cooperate effectively. This can be seen in the workplace and the countryside, and increasingly in commerce and a wide range of cultural and sporting activities. People of different communities respect each other's cultural and religious traditions while enjoying the values and interests they have in common. There is genuine appreciation of the rich variety that the different ethnic groups bring to the life of Fiji. The members of other ethnic communities also respect the special place of Fijians and Rotumans as the indigenous people.

2.4 Only the country's constitutional arrangements seem to make people's individual ethnicity a barrier to effective cooperation. The Commission sees its review of the 1990 Constitution as the first step in giving the people of Fiji the opportunity to change direction, freeing themselves gradually but decisively from the constraints they have historically faced in governing their country.

2.5 In the remainder of this chapter, the Commission looks at the nature of the constraints imposed by the architecture of the 1990 Constitution and makes proposals about its future structure. Chapter 3 deals with the broader implications of the Constitution for the economic and social life of Fiji. We conclude that there is good reason for all communities in Fiji to re-think their approach to their constitutional arrangements.

THE DRIVING FORCES OF FIJI'S CONSTITUTIONAL MACHINERY

2.6 In the Commission's view, Fiji's constitutional problems reflect four features of the country's constitutional arrangements. Two were understandable responses to Fiji's multi-ethnic society: the principle that Fijian interests should be paramount and the communal system of representation in Parliament. Two reflected the Westminster system of government that Fiji inherited: the role of political parties and the principle that a government must command the support of a majority in Parliament.

2.7 Each was a feature of the 1970 Constitution under which Fiji became independent. Hopes were high for the gradual evolution of multiracial government, but these hopes were thwarted mainly by the interaction of the four features just mentioned. Their combination produced an impetus which pulled the country apart instead of bringing it together. All four remain features of the 1990 Constitution and their interaction is still potentially divisive and destructive.

2.8 The Commission believes that, unless the systemic nature of Fiji's constitutional problems is understood, there is little hope of devising constitutional arrangements which will not continue to give rise to the same problems. We will therefore look briefly at how the 1970 Constitution came to combine Fijian political paramountcy, communal representation, political parties and majority government. In the following sections we will look at the consequences of the interaction of these driving forces under both the 1970 Constitution and the 1990 Constitution which replaced it.

The paramountcy of Fijian interests

2.9 Throughout this century the colonial government enunciated the principle that the interests of Fijians must always remain paramount. In part, the assertion of this principle reflected genuine concern for the position of the indigenous Fijians in their own country. In part it served the interests of the colonisers themselves, especially in responding to Indo-Fijian pressure for elected representation on the Legislative Council. The principle that Fijian interests were paramount was widely accepted and became part of the political culture.

2.10 In the early 1960s, in the situation created by the British Government's commitment to a global policy of decolonisation, the paramountcy of Fijian interests became the main focus of the negotiations leading up to independence. In the new situation, Fijians saw the principle that their *interests* should always be paramount as requiring Fijian *political paramountcy*. In justification, they pointed out that other communities already dominated the economy; it was only fair that Fijians should predominate in government.

2.11 The Indo-Fijian leaders argued that Fijian interests, such as the place of the Bose Levu Vakaturaga and Fijian rights to their land, could be adequately protected in specially entrenched provisions of the independence Constitution. In due course a number of tangible Fijian interests were protected in this way (by requiring special majorities in the Senate for the amendment of the legislation dealing with native land and the Fijian administration). But this approach could not satisfy the less tangible interests and aspirations of Fijians. To a large extent these coincided or were compatible with the interests of Rotumans, the other Pacific Islanders in Fiji, and the European, part-European and Chinese communities. If it were possible to ensure that a political party representing Fijians and these other groups had the necessary majority in the legislature to be able to form the government, the interests of Fijians would be assured through their political paramountcy.

Communal representation

2.12 From the very beginning, the electoral system in Fiji has been communal. The seats have always been allocated among the various ethnic communities. This arrangement grew out of the colonial power's view that, in ethnically divided societies, the separate representation of different communities was natural and desirable. In part this reflected its own interests. In part it reflected the view that different races should be kept apart as far as possible.

2.13 There are two possible ways of electing the members of Parliament to fill each community's seats. One is by voting on communal rolls so that only the voters in each community elect the members belonging to that community. The other is by voting on a national roll. This allows the members belonging to each community to be elected by all voters. The theory behind such "cross-voting" is that all communities are represented by the communal members they have helped to elect, even though some of them will be of a different ethnicity to their own.

2.14 At independence in 1970, Fiji retained the mixture of the two systems of communal representation which had been introduced in 1966. This had been an attempted compromise between the Fijian desire for communal representation based on communal rolls and the Indo-Fijian commitment to a "common roll". Elections on a common roll basis would have meant that seats would not have been reserved for particular communities. Candidates would have been eligible for election regardless of their ethnicity.

2.15 The commitment of Indo-Fijian leaders to a common roll goes back to the late 1920s when they first pressed for elected representation on the basis of equal and universal franchise. The attachment to the common roll was ideological. Later, A D Patel, a tireless advocate of the common roll, argued with foresight not recognised at the time that communal representation would make success in politics depend on responding to communal interests and prejudices, and so make compromises difficult.

2.16 To Fijians and others, a common roll was simply a device to enable Indo-Fijians to obtain political power. As the number of Indo-Fijians in the population increased to eventually outnumber indigenous Fijians, the latter regarded the proposal for a common roll as a means of keeping them out of government. They saw people registered on a common roll as likely to continue voting on communal lines and forecast racial conflict if the two main communities pitted candidates against each other in an electoral contest.

2.17 Communal representation has remained the distinguishing feature of Fiji's constitutional arrangements. It has provided assured representation for each community and has seemed to protect the interests of indigenous Fijians, as well as those of smaller communities. We consider later whether its benefits are outweighed by its disadvantages.

Political parties

2.18 By 1959 it had become clear that Fiji's former leisurely progress towards a more representative Legislative Council would have to be accelerated. The

colonial power made rapid moves to give Fiji increasingly large instalments of self-government. By 1966, two distinct political groupings had emerged. The Federation Party (as it then was) had developed from a loose federation of cane growers' associations and represented mainly Indo-Fijians. The Governor, Sir Derek Jakeway, had urged the formation of a multiracial party, on the lines of the Alliance in Malaysia, as an umbrella organisation for the other smaller political groupings outside the Federation.

2.19 With this encouragement, the Alliance in Fiji eventually brought together a coalition consisting of the Fijian Association, which remained the dominant partner, the General Electors' Association and the Indian Alliance. Each retained its status as a separate ethnic party. It won the general election in 1966 and, with the concurrence of the Federation Party, took Fiji into independence.

Majority government

2.20 Under the Westminster system, the Prime Minister is the leader of the party or combination of parties that can command majority support in a Lower House. The Cabinet is drawn exclusively from that coalition or party. Through its direction of the departments and other government agencies, the Government of the day has the effective control of policy. Because of its majority in Parliament, it can secure the passage of its budget and other legislation. If the party in power is defeated in a general election, the control of government passes to the winning party.

2.21 The Indo-Fijian leaders had accepted the principle of parity of representation in the legislature with indigenous Fijians, although the 1946 census had shown that Indo-Fijians outnumbered Fijians in the total population. Other communities accepted the principle of parity, if only reluctantly. However, during the negotiations leading to independence, no final agreement could be reached on the method by which seats in the House of Representatives were to be filled.

2.22 As an "interim solution", the 1970 Constitution provided that, in a House of 52 members, 22 should be Fijian, 22 Indian and 8 should be allocated to those who were not classified as either Fijians or Indians - usually referred to as "general voters". In 1970 this group comprised mainly Europeans, part-Europeans and Chinese. Of the 22 Fijian and Indian members, 12 were to be elected by voting on the communal roll and 10 by cross-voting on a national roll. 3 general voter members were to be elected on the communal roll and 5 on the national roll.

THE GULF BETWEEN EXPECTATION AND REALITY

2.23 In the negotiations leading to independence, the paramountcy of Fijian interests had been recognised by all communities as a guiding policy principle. In terms of population numbers, the agreed allocation of communal seats had favoured Fijians at the expense of Indo-Fijians, and the small number of general electors at the expense of both. The independence Constitution was based on the need for the Prime Minister and Cabinet to command the confidence of the majority in the House of Representatives. The Alliance Government already had that confidence and continued in office after independence. It looked as if Fijians, with general elector and some Indo-Fijian support, would be able to carry on in government indefinitely if they remained politically united.

2.24 Events were to show, however, that, underlying the general acceptance of the principle that Fijian interests were paramount, there was a fundamental difference between perceptions of the two main communities about its application in practice. Indigenous Fijians had originally seen the principle as protective of their land, culture and way of life, based on chiefly leadership and a communal society. However, that society had come under increasing strain as it ceased to be wholly dependent on subsistence activities and adapted to the modern money economy. Fijians had an increasing sense that they were losing ground. In education, participation in the higher levels of government administration and private sector commercial activity, and in their income levels and general standard of living, they were out-performed, at least numerically, by other communities.

2.25 Fijian leaders saw "political paramountcy" as essential to redressing this imbalance. They took the view that only if they retained political control could they design and implement policies for improving the educational achievement and promoting the economic advancement of indigenous Fijians, enabling them to play an equal part in Fiji's modern economy. They believed that this goal, and the idea that it was to be attained by keeping a predominantly Fijian government in office, had been accepted by the other ethnic communities.

2.26 Indo-Fijians, on the other hand, had accepted more as a necessary political accommodation the 1970 interim constitutional arrangements for the distribution of seats in the House of Representatives which enabled a party representing mainly Fijians and general voters to remain in government for the time being. They continued to see the paramountcy of Fijian interests in its original protective role, assuring indigenous Fijians that there would be no interference with their land, their culture or their separate system of administration. Without being unsympathetic to Fijian aspirations for an improved social and economic status,

they did not see the paramountcy of Fijian interests as involving an ongoing commitment to secure the re-election of a predominantly Fijian government. Elections were keenly contested by both Government and Opposition parties. If the democratic process provided for in the Constitution gave them the opportunity, Indo-Fijian political leaders saw no reason why they should not join other groups, including some Fijians, in voting in a government in which they could participate.

2.27 At the beginning, hopes were high for the development of multiracial politics. In the 1972 election, both the Alliance and the National Federation Party (NFP) (as the Federation Party had become) won all the Fijian and Indian communal seats respectively, but the Alliance, with the support of the 24% of Indo-Fijian voters who had supported Alliance candidates for communal seats, won 7 of the 10 Indian national constituencies. The NFP won 3 of the 10 Fijian national constituencies.

2.28 It soon became apparent that each of the parties was affected by an element of disunity, within its own ranks or among its original supporters. From the beginning, there had been a certain number of floating voters in the Fijian community. When the main Fijian party seemed to be safely in power, they were willing to support other Fijian parties. When doubt arose about whether a Fijian government could remain in office, a majority of Fijians again gave the main Fijian party their support.

2.29 That tendency was demonstrated in 1977. At the general election in April of that year, the Fijian Nationalist Party (FNP), committed to promoting the exclusive interests of Fijians, was able to split the Fijian support for the Alliance. The FNP won a Fijian communal seat. Another went to an independent. As a result, the NFP won 26 seats in the House of Representatives, and the Alliance won 24.

2.30 It seemed that the NFP was in a position to form a government, but divisions over the party's leadership and, perhaps, diffidence about taking office, led to delay. By the time the party had confirmed its support for a leader, the Governor-General, acting in his own deliberate judgment, had already reappointed the leader of the Alliance party, Ratu Sir Kamisese Mara. He explained that he had taken this step because the people of Fiji had not given a clear mandate to either of the political parties. The Alliance Government subsequently put and failed to win a confidence motion in the House of Representatives. In the general election that followed, it was returned to power with a strong majority.

2.31 A decade later, the Fiji Labour Party (FLP), which had been formed in March 1985 as a multi-ethnic party under the leadership of Dr Timoci Bavadra, joined in a coalition with the NFP to contest the 1987 election. The outcome was that the coalition won 28 seats and the Alliance won 24. Dr Bavadra was sworn in as Prime Minister on 13 April. The coalition Members of Parliament included 7 Fijians and 2 part-Europeans, elected to national Fijian or general voter seats, and 19 members who were Indo-Fijians.

2.32 The fall of the Alliance Government provoked a strong reaction among its supporters. By late April the Taukei Movement had been formed with the apparent intention of destabilising the Government. Parliament met on 12 May, and on 14 May it was interrupted by armed soldiers. The first of the two 1987 military *coups* had occurred. No doubt many factors contributed to this violent sequel to the Alliance Government's defeat and the other events that followed the first *coup*. It is not the Commission's task to identify all of them. Nor does it wish to be seen as simplistic in any conclusions it draws.

THE CONSTITUTIONAL MACHINERY UNDER STRAIN

2.33 In Fiji's ethnically mixed society, communal seats have provided assured representation for each community. The cost has been the serious obstacles placed in the way of multi-ethnic government under the Westminster parliamentary system that Fiji inherited. The fault, we believe, does not lie in the Westminster system itself. It has shown its robustness in adapting to new political climates, specially in the Pacific region. The problems lie in trying to combine the Westminster system with exclusively or mainly communal representation.

2.34 As events in Fiji demonstrated, this sets off the following chain reaction. First, to get elected, candidates must appeal mainly to the hopes and concerns of their own ethnic community. There is little reason for either candidates or voters to concern themselves with the problems of other communities, or to take the view that the serious problems of one community are national problems which all communities have an interest in solving.

2.35 Secondly, the pull exerted by the communal voting system made people feel that members of their community elected by all voters to represent national constituencies were not really legitimate representatives of their own community. That is why the cross-voting system under the 1970 Constitution could not make any impact on the identification of party interests with those of a particular community. To a certain extent, it induced moderation. To get elected, a candidate for a national seat had to appeal to the voters of other communities. But, if the

appeal was successful, the member thus elected was often seen as not being a legitimate representative of the community to which he or she belonged.

2.36 Thirdly, in an ethnically divided society, political parties naturally tend to centre on the community whose interests they were formed to promote. The stress on communal voting means that the parties which make the greatest effort to appeal to other communities are seen as compromising the interests of their own. New parties appealing exclusively to a single ethnic community emerge to fill the perceived gap. In response, parties which were originally committed to multiracialism are sooner or later driven back to promoting mainly or only the perceived interests of the ethnic community from which, historically, they have derived their greatest support. This tendency particularly affects a government party, caught as it is between the duty to govern for the good of the whole country and its desire to secure re-election by its own community.

2.37 From this follows the fourth and most serious problem - the role of ethnic parties in forming a majority government. Because the political parties, responding to the communal system of representation, have drawn their support mainly from one community, government by one party is essentially ethnic government. The defeat in a general election of the governing party by another ethnic party, or by a coalition supported mainly if not exclusively by another ethnic group, means that government is seen as passing from one ethnic community to another.

2.38 At this point the chain of events takes us back to the question of Fijian political paramountcy. If political power passes from Fijians to other communities, Fijians are deprived of the political paramountcy that they see as safeguarding their interests. Because they have put so much weight on political paramountcy, their willingness to accept the outcome is in question. There were hints of this when, in 1977, the NFP won more seats than the Alliance. A decade later, in 1987, a large number of Fijians demonstrated decisively that they were not prepared to accept what they saw as an Indo-Fijian government.

2.39 As explained above, many Fijians thought that Indo-Fijians had tacitly accepted the maintenance of Fijian political paramountcy. They therefore saw it as a breach of faith that an Indo-Fijian party should join with a new multiracial party and overthrow the Fijian-dominated Alliance Government. Indo-Fijians, on the other hand, saw no inconsistency with their recognition of the principle that Fijian interests, as they understood them, would remain paramount. They would not be affected by a change of government. There was no reason why they should not join with the FLP in seeking to become the government.

2.40 The outcome of the 1987 general election was entirely consistent with the nature of the 1970 constitutional arrangements. Political alignments are necessarily in the hands of individual elected members and the voters who support them. The possibility that a government elected with majority support in the Lower House may be defeated by a vote of no confidence rests on this reality. So also do general elections. Otherwise there would be no point in holding them.

2.41 No constitution based on democratic principles can guarantee that a particular party will always remain in office. Nor can it guarantee that the party which wins a majority will always be one representing a particular ethnic community. The essence of a democratic system is the ability of elections to change the government. This is the most important way of making a government responsive and accountable to the people it serves. Over time, not only voter preferences but also the dynamics of policies and personalities lead to changes in the composition and fortunes of political parties. This process of change, which is both natural and inevitable, has been evident in Fiji.

2.42 Naturally, all political parties appeal to voters to unite in supporting their election or re-election. Under a communal system of voting, such an appeal is almost always directed to a particular ethnic community. Even so, the experience in Fiji, as in other ethnically divided societies, is that no ethnic community is likely to remain united indefinitely behind one party. A spread of political opinion within an ethnic community should be seen as a strength, not a weakness. If parties cease to be based mainly on ethnicity, elections will no longer be contests between communities.

THE 1990 REMEDY

2.43 The provisions of the 1990 Constitution show clearly what Fijians believed to be the remedy for the situation in which they had found themselves. There were significant departures from the 1970 Constitution. The size of the House of Representatives was increased to 70. There was no longer parity of representation between Fijians and Indo-Fijians.

2.44 The 37 seats for Fijians gave them an overall majority. Indo-Fijians had only 27 seats. Rotumans, formerly treated as part of the Fijian community, were given a separate seat. The number of seats for general voters was reduced to 5. Pacific Island voters were transferred from the Fijian roll to the general voters' roll. The Prime Minister was required to be a Fijian. All seats were to be filled by voting on communal rolls. There was no longer any provision for cross-voting. No ethnic community could affect the selection of members to represent any community but its own.

Testing the assumptions behind the 1990 Constitution

2.45 The 1990 Constitution was a drastic response to what had been seen as a drastic situation. The Commission will evaluate its provisions against the criteria in its Terms of Reference in the later chapters of its report. In this chapter it is concerned with their overall effect.

2.46 The underlying assumption was that, if Fijians had more than half the seats in the House of Representatives, they would be able to maintain their hold on political power. An indigenous Fijian party winning all or most of the 37 Fijian seats would have the necessary majority to form a government. If there was more than one Fijian party, there was a good chance that they would be able to come together for that purpose. Rotumans and the general voters were likely to maintain their support. A high degree of Fijian unity was still the cornerstone. The real implications of 1977 and 1987 had not yet been fully absorbed.

2.47 In fact, Fijian voters, like the members of other communities in Fiji, want to be able to make a choice among the parties which seek to represent them. What is more, parties representing the same ethnic community may not necessarily wish to join in forming a government. Their policies and values may be too different.

2.48 Following the 1992 election, the largest Fijian party, the Soqosoqo ni Vakavulewa ni Taukei (SVT), formed the government, in coalition with the General Voters Party, the Rotuman member and one independent member. Five Fijian Nationalists were in opposition, along with the NFP and the FLP. The budget crisis in 1993 led to a split in both the SVT and the GVP. The government was defeated on what it chose to regard as a confidence issue. After the ensuing general election in 1994, the SVT has continued to govern with the support of the GVP. The new Fijian Association Party and General Electors Association moved to the Opposition benches.

2.49 Even with the benefit of the disproportionate representation of Fijians under the 1990 Constitution, no Fijian party has been able to govern without the support of independent members and members of another party. Nor have the parties within the governing coalition maintained their own unity in all circumstances. That has been illustrated not only by the defeat of the SVT-led coalition government in 1993 but also by more recent political crises when the Government's majority has been in issue.

2.50 As we show in the following paragraphs, the political developments since 1992 suggest three things. First, the goal of permanent Fijian political unity is

unrealistic and the efforts to pursue it have a high cost for Fijians themselves. Secondly, in the absence of unity, even a constitution as heavily weighted in favour of Fijians as the 1990 Constitution may not prevent a minority of Fijians from joining with an Indo-Fijian party or parties to form a government. Thirdly, trying to keep a predominantly Fijian government in office in perpetuity may not be the best way of securing the paramountcy of Fijian interests. We develop each of these propositions in turn.

The goal of permanent Fijian political unity

2.51 The goal of permanent Fijian political unity puts strains on the Fijian community. In the past, the members of that community lived in villages, isolated from other communities and dependent on the subsistence economy. But the very success of the efforts to bring indigenous Fijians into both government and the mainstream of the money economy has created a divergence of interests across occupations and regions. It is difficult, if not impossible, for one party to accommodate the new multiplicity of interests.

2.52 The drive for unity has also put a strain on traditional institutions. Although the provincial councils and the Bose Levu Vakaturaga have long been involved in politics, in the sense of having an abiding concern for the well-being of Fijians and the nation as a whole, they are now identified with a particular political party. Some Fijians expressed concern about this development which they saw as detracting from the chiefly role in providing leadership to all Fijians irrespective of political affiliation.

2.53 The emphasis on Fijian unity also means that Fijians are not free to vote out a Fijian government if it does not deliver what they expect. Those expectations go beyond fulfilment of the government's election promises to improve the conditions of life for Fijians. The submissions showed that standards of integrity, efficiency and effectiveness are as important to Fijians as they are to other communities. The idea that a Fijian government must be maintained in office at all costs has grave consequences for political accountability. It requires setting aside the normal democratic controls on a government's performance in office. That is bad for the Fijian community as well as for the country as a whole.

Keeping a Fijian government in office

2.54 As mentioned, the parity of representation for Fijians and Indo-Fijians under the 1970 Constitution meant that Indo-Fijians, in proportion to their number in the population, were already under-represented. Most would not accept the even more disproportionate weighting in favour of Fijians in the 1990 Constitution.

2.55 That Constitution also removed the 1970 provision for cross-voting. Under what is now an exclusively communal voting system, no Indo-Fijian can cast a vote for a Fijian candidate. The object was to remove any Indo-Fijian influence on the selection of Fijian members. That had been seen as contributing to the election of Fijians who were not members of the Alliance. The effect has been further to alienate Indo-Fijians who have been deprived of any say in the composition of the government.

2.56 The increased number of Fijian seats under the 1990 Constitution was designed to keep a Fijian-dominated government in office. Even so, in the absence of unity among Fijian voters for the understandable reasons already described, no Fijian party has been able to govern alone without support from independents and general voters.

2.57 The 1970 Constitution had already made it impossible for Indo-Fijian voters to defeat a Fijian government on their own. The 1990 Constitution was presumably intended to prevent the recurrence of 1987. It made it more difficult for a coalition dominated numerically by Indo-Fijians but supported by members of other communities, including some Fijians, to become the government again.

2.58 However, in the absence of united Fijian support for a single party, the election of government which is not predominantly Fijian remains a possibility. No constitution can keep a Fijian government in office permanently unless the weighting for Fijians in the House of Representatives is even more extreme than it is now, or the House consists exclusively of Fijian members. Both solutions were put forward in submissions. Obviously, neither would meet the criteria in the Commission's Terms of Reference. Nor, of course, would they be acceptable to Indo-Fijians or to the international community.

RE-ASSESSING THE OBJECTIVES OF ALL COMMUNITIES

2.59 As has been seen, with the encouragement of the colonial government, Fijians came to believe that the paramountcy of their interests could be secured only by political paramountcy. This has led them to emphasise their representation in Parliament. Other communities have also seen this as the main issue. Because, under the Westminster system, the composition of the government flows from the number of seats the various parties have in Parliament, and parties have remained ethnic in character, everything seemed to rest on the allocation of the seats in Parliament among the ethnic communities.

2.60 We firmly believe that, in designing Fiji's future constitutional arrangements, the composition of the Lower House of Parliament should be seen

as a means to an end, not an end in itself. The first question is what kind of executive government people want to have. All communities need to focus on what they consider to be the desirable ethnic composition and other attributes of the Cabinet. If they can agree about that, the next question will be: what electoral arrangements are most likely to produce the kind of executive government that people want?

THE BROAD AGREEMENT ABOUT THE ADVANTAGES OF MULTI-ETHNIC GOVERNMENTS

2.61 The nature of the political executive was a matter on which the submissions revealed a striking degree of unanimity. There was wide support for the idea that all ethnic communities should have the opportunity to play a part in the Cabinet. The measure of agreement on this point presented a sharp contrast to the wide range of views about the desirable size and composition of Parliament's Lower House and the method of electing its members. Even so, almost all submissions stated that voters should be able to cast votes for at least some candidates belonging to communities other than their own.

2.62 Many submissions contained detailed arguments about the desirability of finding a way to achieve multi-ethnic governments. Among them were the submissions of all parliamentary political parties. Without wishing to suggest that we are giving these submissions undue weight, in comparison with the other submissions on the same matter, we think it is worth summarising them, to show that there is common ground even at the political level.

2.63 In its written submission the Soqosoqo ni Vakavulewa ni Taukei said that multiracial leadership of government could be achieved through a coalition of political partners if the parties so desired. In its oral presentation, the party noted that there was no constitutional provision preventing the National Federation Party and the Fiji Labour Party, as the two political parties representing the Indo-Fijian community, from entering into negotiations with other political parties with the object of forming a coalition government.

2.64 The joint NFP/FLP submission proposed power-sharing in the Cabinet by a constitutional provision which would provide for the representation of all parties which had won more than 20% of the seats in Parliament. Each party would have a number of Cabinet members proportionate to the number of its members in the House, with provision for the inclusion of representatives of minority groups if their party did not achieve the threshold.

2.65 The Fijian Association proposed that the Constitution should provide a mechanism for the Prime Minister to invite some members of other political parties to participate in the formation of government. This would mean that, without upsetting the balance of ethnic representation in Parliament, high quality members would be eligible to serve in the Cabinet irrespective of their ethnicity or party allegiance.

2.66 The General Voters Party thought the constitution should require the Prime Minister to appoint representatives of all ethnic groups to Cabinet. A multi-ethnic Cabinet would send a powerful signal of stability and confidence to outsiders thinking of investing in Fiji and promote a sense of participation and solidarity with government among all ethnic groups.

2.67 The General Electors Association suggested that the Prime Minister should be constitutionally bound to nominate ministers by drawing 44% from Taukei and Rotuman members, 44% from Indian members and 12% from the General Electors.

2.68 Although the detail of these approaches is different, they provide a firm basis for concentrating on how Fiji's Constitution could best encourage the formation of multi-ethnic governments.

FUTURE CONSTITUTIONAL DIRECTIONS

Multi-ethnic government

2.69 In the Commission's view, progress towards the sharing of executive power among all ethnic communities is the only solution to Fiji's constitutional problems. Constitutional arrangements which will encourage the emergence of multi-ethnic governments should be the primary goal. In Chapter 3 we show how progress towards this goal will promote racial harmony, national unity, the economic and social advancement of all communities and achieve consistency with the international human rights standards, the important values referred to in our Terms of Reference.

2.70 We also look there at how the goal of multi-ethnic government relates to the need for Fiji's constitutional arrangements to guarantee full protection of the rights of the indigenous Fijian and Rotuman people, promote their interests and take account of their concerns, as well as take account of the rights, interests and concerns of all other ethnic groups. All ethnic communities must be satisfied that their rights and interests will be adequately protected.

2.71 In reviewing the 1990 Constitution, the Commission makes detailed recommendations about constitutional arrangements for this purpose. In this section we sketch the main features of the supporting structure.

The governmental system

2.72 A first question is the nature of the governmental system. One or two submissions suggested that a separately elected President, whose position did not depend on the support of a majority in Parliament, would be free to invite members of all communities to serve in the Cabinet. That is the system in the United States.

2.73 Most submissions assumed that Fiji would retain its present parliamentary system, under which the Prime Minister must be able to command the support of a majority of the members of the Lower House. Some thought that the Westminster system was so deeply embedded in the political culture that it would be hard to move away from it, even if people wanted to. In fact there was no groundswell in that direction. The Commission therefore took as its starting point the general expectation that the Constitution should continue to be based on the Westminster system of parliamentary government.

The importance of political parties

2.74 Although there was strong support for a "government of national unity", meaning a government drawn from all political parties, there was little detailed analysis of how it could be achieved and made to work. Some saw such a government as based on a conscious decision to put party aside, under arrangements similar to those which had been a key feature of the move to democratic government in South Africa. As we show later, that experiment met a clear need at the time, but a government of national unity has not been retained as part of the country's permanent constitutional arrangements.

2.75 The Commission believes that, in Fiji, the party system is deeply embedded in the political culture. Power-sharing should be achieved through the voluntary cooperation of political parties, or increased support for a genuinely multi-ethnic party. The question is how such developments might be encouraged. As has been seen, the present identification of party with ethnicity and the difficulty of making political appeals across ethnic dividing lines are natural consequences of the communal system of representation that has always been used in Fiji. In these circumstances, government by the majority party is likely to remain ethnic government.

Incentives for cooperation

2.76 The Commission believes that multi-ethnic coalitions are not a realistic prospect unless there are strong incentives within the electoral system for cooperation between what, for the time being, will continue to be mainly ethnic parties. Even if some parties seek to become multiracial, their survival will similarly depend on such incentives. Fiji's constitutional history demonstrates that it is not possible for political parties to escape the pressures to act communally as long as members of Parliament are elected on an exclusively communal basis. That is why the idea of multiracial governments, frequently raised over the years and now a widely shared vision of how Fiji should be governed, has so far come to nothing.

2.77 To break down the barriers which force ethnic parties to take a narrow, communal view of their best interests, the people of Fiji must move gradually but decisively away from the communal system of representation. They must adopt electoral arrangements which encourage parties to seek the support of other communities as well as their own.

Multi-party participation in the parliamentary process

2.78 A system which encourages power-sharing among ethnically-based parties at the executive level needs to provide further reassurance to all communities by enabling their members in Parliament to influence executive decision-making. Backbench members of all parties should have the opportunity to take part in sector standing committees which cover every aspect of the government's responsibilities. These Committees should have the power to make an input into the content of all legislation. They should also have the power to monitor the administration of legislative programmes and government policies.

Individual and group rights

2.79 At the same time, there must be other strong constitutional controls over the powers of government in all areas, including the protection of individual human rights and the rights of groups. The protection of all rights to, and in, land and the important role of the Bose Levu Vakaturaga should continue to be the subject of express constitutional provisions. Similarly, the Government should be bound to propose to Parliament, and to implement, legislation authorising social justice and affirmative action programmes for the Fijian and Rotuman communities as well as for other disadvantaged communities and groups.

2.80 In these ways, indigenous Fijians can be assured that their interests are safeguarded even though they may be sharing government with other ethnic

communities. Their interests too, will be effectively protected. In Chapter 3 we discuss further the nature of Fijian interests, both tangible and intangible, along with the interests of other communities.

THE IMPLICATIONS OF MULTI-ETHNIC GOVERNMENT

2.81 By definition, multi-ethnic government excludes government solely or predominantly by any one ethnic group. This means that all communities must be willing to forego the idea of governing alone. The first step, therefore, is for all communities to decide whether they agree that multi-ethnic government is in their best interests as well as in the best interests of the whole nation.

2.82 The country's constitutional arrangements should be based on the principle that the interests of all communities must be recognised and protected. All communities should be invited to reaffirm their earlier recognition of the principle that Fijian interests are paramount, on the understanding that it does not justify any relegation of their own interests. If they are given such an assurance, indigenous Fijians should be willing to re-examine the assumption that the paramourcy of their interests requires political paramourcy.

2.83 We have already shown that political paramourcy cannot be guaranteed by a constitution. Although the 1990 Constitution is weighted in favour of Fijians, it does not regulate the distribution of political power among parties. For that reason it does not ensure that Fijians will always be able to form an exclusively or predominantly Fijian government. No constitution can do that unless it abandons all claim to be democratic.

2.84 The Commission considers that the principle of the paramourcy of Fijian interests should be allowed to resume its protective function, but with a wider field of application. It should be seen as securing Fijian participation in a multi-ethnic government, along with members of other communities. It should also back the commitment of all communities to the establishment of programmes for ethnic and social justice for Fijians and all other communities, based on a distribution of resources broadly acceptable to all.

2.85 In Chapter 3 we put forward more detailed proposals for explicitly recognising in the Constitution the principle that the interests of Fijians are paramount, in a way that is compatible with the need to respect the rights and interests of all communities. The object will be to avoid any subordination of Fijian interests to those of other communities. At first sight, that may not seem to be a powerful method of protecting Fijian interests. In fact, it will give Fijians a

better assurance than they have now that they will always be able to play a major part in the government of their country.

2.86 Fijian participation in a multi-ethnic government will rest on one of two possibilities. Fijians may join in a multi-ethnic party which commands wide support in all communities and can win a parliamentary majority. Alternatively, there may be an agreement for a coalition between a Fijian political party (or parties) and a party (or parties) supported by other ethnic communities.

2.87 Some people might think that Fijians should have weighted representation in Parliament to improve their political leverage in any negotiations for the formation of a multi-ethnic government. That would be counter-productive as well as undemocratic. As already explained, the Commission considers that multi-ethnic coalitions or parties must be firmly based on strong electoral incentives to seek voter support across the ethnic divide. These incentives will give Fijians the assurance that parties representing other communities will not be able successfully to pursue the interests of their own community at the expense of Fijian interests.

2.88 The best guarantee of the interests of all ethnic communities is a Constitution that gives all political parties a strong inducement not to espouse policies that favour the interests of one community over the interests of others. Instead, it should encourage them to see the important interests of each community as national interests which have to be met through a concerted effort by all.

RECOMMENDATIONS

1. **The primary goal of Fiji's constitutional arrangements should be to encourage the emergence of multi-ethnic governments.**
2. **The Constitution should continue to be based on the Westminster system of parliamentary government.**
3. **Power-sharing should be achieved through the voluntary cooperation of political parties, or increased support for a genuinely multi-ethnic party.**
4. **The people of Fiji should move gradually but decisively away from the communal system of representation. They should adopt electoral arrangements which encourage parties to seek the support of other communities as well as their own.**
5. **Backbench members of all parties should have the opportunity to take part in sector standing committees which monitor every aspect of the government's responsibilities.**

6. **The Constitution should**
 - (a) **recognise the important role of the Bose Levu Vakaturaga;**
 - (b) **protect individual human rights and the rights of groups, including rights to and in land;**
 - (c) **require social justice and affirmative action programmes for the Fijian and Rotuman communities as well as for other disadvantaged communities and groups.**

7. **The Constitution should be based on the principle that the interests of all communities must be recognised and protected. It should explicitly recognise the protective function of the principle that the interests of the indigenous Fijians are paramount, on the understanding that it does not involve the relegation of the interests of other communities.**