

# **FRAMEWORK FOR TALANOA ON CONSTITUTIONAL CHANGES**

Bi-Partisan Talanoa  
Subcommittee

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## FRAMEWORK FOR TALANOA ON CONSTITUTIONAL CHANGES:

Based on the discussion at the meeting of June 30<sup>th</sup> 2003, it is proposed that our Bi-Partisan Talanoa Sub-Committee focuses on three crucial areas with respect to the proposed constitutional amendments as identified by the SVT, Labour Coalition and the present SDL Governments. These crucial areas are namely,

- (1) Our common understanding<sup>1</sup> of the “unconcealed” underlying **purpose** or **intention**<sup>2</sup> (**UPI**), taking into account the **spirit**, the **context**, the **content**, and the **promotion** (**SCCP**), of a particular proposed change;
- (2) Our common understanding of the ‘non-controversial areas’, based on the knowledge that we are moving toward a consensus on the “given” **UPI** with respect to the **SCCP**, of a particular proposed change; and
- (3) Our common understanding of the ‘controversial areas’, based on the knowledge that we still have differences and need to talk more about the “given” **UPI** in regard to the **SCCP**, of a particular proposed change.

In this proposed framework, which can provide the background for our moral judgement, it is vitally important to begin with (1) and to share and establish our basic understanding of the “unconcealed” purpose and intention of each particular proposed amendment before we can move forward to address areas (2) and (3) as stated above. The next logical question is whether or not one feels that he/she can and ought to support the **SCCP** given with the **UPI** of a particular proposed change. This will help us to make the qualitative ‘non-controversial/controversial’ distinction, based on our personal judgement about whether we are moving toward a possible consensus (i.e. non-controversial) or we are not moving toward a point of convergence (i.e. controversial) and need to talk more about the “given” **UPI** and its **SCCP**, with respect to a particular proposed amendment.

Footnotes:

1. For the dialogic meaning in ‘understanding’, see Halapua, S., *Peace, Conflict, and Development: Walking the Knife-edged Pathways in Multiculturalism*, Ratu Mara Friendship Foundation Lecture, May 2003.
2. This is based on the meaning in *talanoa* as face-to-face story telling (*tala*) without concealment (*noa*) of one’s intention and purpose. See Halapua, S., *ibid*.

**FRAMEWORK FOR TALANOA ON CONSTITUTIONAL CHANGES  
COMMON UNDERSTANDING OF THE BILLS TO AMEND THE CONSTITUTION**

Clause	SECTION	Common Understanding of UPI taking into account the SCCP of a proposed Amendment	Common Understanding of the "non controversial areas"	Common Understanding of the "controversial areas"
<b>1</b>	<i>Short title and definition</i>			
	<b>PC</b> (present constitution)			
	<b>SDL</b> (1) This Act may be cited as the Constitution (Amendment) Act 2002. (2) In this Act "Constitution" means the Constitution Amendment Act 1997.	* Provides a short title and defines 'Constitution'.		
	<b>FLP COALITION</b> (1) This Act may be cited as the Constitution (Amendment) Act 2000. (3) In this Act "Constitution" means the Constitution Amendment Act 1997.	** Provides a short title and defines 'Constitution'.		
	<b>SVT VERSION</b> (1) This Act may be cited as the Constitution (Amendment) Act 1999. (2) In this Act "Constitution" means the Constitution Amendment Act 1997.	***Provides a short title and defines 'Constitution'.		
<b>2</b>	<i>Citizenship by registration</i> Section 12 (3)			
	<b>PC</b> <b>12 (3)</b> A child who was under the age of 21 when either parent became a citizen may become a citizen by registration.			

	<b>SDL</b> Section 12 of the Constitution is amended in subsection (3) by - (a) deleting "was" and substituting "is"; and (b) deleting "became" and substituting " becomes".	*	Corrects section 12 (3) in respect of citizenship by registration to refer to a child's present or future status rather than past status.		
	<b>FLP COALITION</b> Section 12 of the Constitution is amended in subsection (3) by – (a) deleting "was" and substituting "is"; and (b) deleting "became" and substituting "becomes".	**	Corrects section 12 (3) in respect of citizenship by registration to refer to a child's present or future status rather than past status.		
	<b>SVT VERSION</b>				
<b>3</b>	<i>Rights of charged persons</i> Section <b>28</b> - (1)(k)				
	<b>PC</b> 28. -(1) Every person charged with an offence has the right:(k) not to be tried again for an offence of which he or she has been previously been convicted or acquitted; and				
	<b>SDL</b> Section 28(1) of the Constitution is amended in paragraph (k) by adding after "acquitted"- ",except on an order of a superior court in the course of appeal or review proceedings relating to a conviction".	*	Amends section 28(1)(k) so as to allow a superior court to order a retrial in appeal or review proceedings relating to a conviction, as is normal practice.		
	<b>FLP COALITION</b> Section 28(1) of the Constitution is amended in paragraph (k) by adding after "acquitted"- "except on an order of a superior court in the course of appeal or review proceedings relating to a conviction".	**	Amends section 28(1)(k) so as to allow a superior court to order a retrial in appeal or review proceedings relating to a conviction, as is normal practice.		

	<b>SVT VERSION</b> Section 28(1) of the Constitution is amended in paragraph (k) by adding after "acquitted", except on an order of a superior court in the course"- of appeal or review proceedings relating to a conviction or acquittal".	*** Amends section 28(1)(k) so as to allow a superior court to order a retrial in appeal or review proceedings relating to a conviction, as is normal practice.		
4	<i>Equality</i> Section 38 (7)			
	<b>PC</b> Section 38 (7)			
	<b>SDL</b> Section 38 of the Constitution is amended in subsection (7) by - (a) deleting "or" at the end of paragraph (d); (b) adding after paragraph (e) the following new paragraphs- "(f) declares marriage to be the voluntary union of one man to one woman to the exclusion of all others; or (g) provides for the prosecution of unnatural offences, or indecent practices."	* Amends section 38(7) to make it clear that a law which declares marriage to be the voluntary union of one man and one woman is not inconsistent with section 38. It also makes it clear that laws relating to unnatural offences indecent assaults or indecent practices do not breach section 38. The effect of this clause is that the inclusion of the phrase "sexual orientation" in section 38(2)(a) does not itself invalidate the relevant provisions of the Marriage Act or the Penal Code. They are left for Parliament to decide on in the future.		
	<b>FLP COALITION</b> Section 38 of the Constitution is amended in subsection (7) by – (a) deleting "or" at the end of paragraph (d); (b) adding after paragraph (e) the following new paragraphs- "(f) declares marriage to be the voluntary union of one man to one woman to the exclusion of all others; or (g) provides for the prosecution of unnatural offences, indecent assaults or indecent practices."	** Amends section 38(7) to make it clear that a law which declares marriage to be the voluntary union of one man and one woman is not inconsistent with section 38. It also makes it clear that laws relating to unnatural offences indecent assaults or indecent practices do not breach section 38. The effect of this clause is that the inclusion of the phrase "sexual orientation" in section 38(2)(a) does not itself invalidate the relevant provisions of the Marriage Act or the Penal Code. They are left for Parliament to decide on in the future.		

	<p style="text-align: center;"><b>SVT VERSION</b></p> <p>Section 38 of the Constitution is amended in subsection (7) by -</p> <p>(a) deleting "or" at the end of paragraph (d);</p> <p>(b) adding after paragraph (e) the following new paragraphs-</p> <p>"(f) declares marriage to be the voluntary union of one man to one woman to the exclusion of all others; or</p> <p>(g) provides for the prosecution of unnatural offences, indecent assaults or indecent practices."</p>	<p>***</p> <p>Amends section 38(7) to make it clear that a law which declares marriage to be the voluntary union of one man and one woman is not inconsistent with section 38. It also makes it clear that laws relating to unnatural offences indecent assaults or indecent practices do not breach section 38. The effect of this clause is that the inclusion of the phrase "sexual orientation" in section 38(2)(a) does not itself invalidate the relevant provisions of the Marriage Act or the Penal Code. They are left for Parliament to decide on in the future.</p>		
5	<p><i>Social justice and affirmative action</i> Section <b>44</b> (1)</p>			
	<p style="text-align: center;"><b>PC</b></p> <p>44 -(1) The Parliament must make provisions for programs designed to achieve for all groups or categories of persons who are disadvantaged effective equality of access to: (a) education and training; (b) land and housing; and (c ) participation in commerce and in all levels and branches of service of the State.</p>			
	<p style="text-align: center;"><b>SDL</b></p> <p>Section 44 of the Constitution is amended in subsection (1) by-</p> <p>(a) deleting "and" at the end of paragraph (b);</p> <p>(b) replacing paragraph ( c ) by –</p> <p>"(c ) participation in commerce; and</p> <p>(d) participation in all levels and branches of service of the State."</p>	<p>*</p> <p>Amends section 44(1) to make it clear that there are 4 areas in which social justice programmes apply i.e.. education and training, land and housing, commerce and the public service.</p>		

	<p align="center"><b>FLP COALITION</b></p> <p>Section 44 of the Constitution is amended in subsection (1) by-</p> <p>(a) deleting "and" at the end of paragraph (b);</p> <p>(b) replacing paragraph (c) by –</p> <p>"(c) participation in commerce; and</p> <p>(d) participation in all levels and branches of service of the State."</p>	<p align="center">**</p> <p>Amends section 44(1) to make it clear that there are 4 areas in which social justice programmes apply i.e.. education and training, land and housing, commerce and the public service.</p>		
	<b>SVT VERSION</b>			
<b>6</b>	<i>Passage of Bills</i> Section 47 (6)			
	<p align="center"><b>PC</b></p> <p>(6) If: (a) the House of Representatives passes a Bill in 2 successive sessions;</p>			
	<p align="center"><b>SDL</b></p> <p>Section 47 of the Constitution is amended in subsection (6) by deleting the word "sessions" in paragraph (a) and substituting "meetings".</p>	<p align="center">*</p> <p>Amends section 47(6)(a) which enables the House of Representatives to pass again a Bill which has been sent back to it by the Senate. The requirement for a 6 months delay between the 2 session in which the Bill is passed is too onerous as a session means a year's meetings. The appropriate requirement is for 6 months delay between 2 meetings.</p>		
	<p align="center"><b>FLP COALITION</b></p> <p>Section 47 of the Constitution is amended in subsection (6) by deleting the word "sessions" in paragraph (a) and substituting "meetings".</p>	<p align="center">**</p> <p>Amends section 47(6)(a) which enables the House of Representatives to pass again a Bill which has been sent back to it by the Senate. The requirement for a 6 months delay between the 2 session in which the Bill is passed is too onerous as a session means a year's meetings. The appropriate requirement is for 6 months delay between 2 meetings.</p>		

	<b>SVT VERSION</b>			
<b>7</b>	<i>Voting and other matters</i> Section <b>54</b>			
	<b>PC</b> <b>54.</b> - (1) The election of a member for each constituency is conducted under the preferential system of voting known as the alternative vote.			
	<b>SDL</b> <u>Section 54 of the Constitution is amended by deleting "preferential system of voting known as the alternative vote" and substituting "plurality system of voting known as first-past-the-post".</u>	*	Amends section 54 to change the voting system.	
	<b>FLP COALITION</b>			
	<b>SVT VERSION</b>			
<b>8</b>	<i>Compulsory voting</i> Section <b>56</b>			
	<b>PC</b> <b>56.</b> Every person registered as a voter whose right to registration has not ceased must, as prescribed by the Parliament and subject to such exceptions as the Parliament prescribes, vote in every election in the constituencies in respect of which he or she is enrolled.			
	<b>SDL</b> <u>The constitution is amended by repealing section 56.</u>	*	Repeals section 56 as a consequence to section 54.	
	<b>FLP COALITION</b>			
	<b>SVT VERSION</b>			



9	<i>Proceedings of the Parliament</i> Section 74			
	<p style="text-align: center;"><b>PC</b></p> <p><b>74.-</b> (3) The House of Representatives must, under its rules and orders, establish not less than 5 sector standing committees with the functions of scrutinizing Government administration and examining Bills and subordinate legislation and such other functions as are specified from time to time in the rules and orders of the House. (4) Ministers are not eligible for election to sector standing committees of the House of Representatives.</p>			
	<p style="text-align: center;"><b>SDL</b></p> <p>Section 74 of the Constitution is amended- (a) in subsection (3) by deleting "less" and substituting "fewer"; (b) in subsection (4) by deleting "election" and substituting "appointment".</p>	* Amends section 74(4) which relates to sector committees, in 2 minor respects. Members of committees are appointed not elected.		
	<p style="text-align: center;"><b>FLP COALITION</b></p> <p>Section 74 of the Constitution is amended- (a) in subsection (3) by deleting "less" and substituting "fewer"; (b) in subsection (4) by deleting "election" and substituting "appointment".</p>	** Amends section 74(4) which relates to sector committees, in 2 minor respects. Members of committees are appointed not elected.		
10	<i>Speaker and Deputy Speaker</i> Section 80 (7)			
	<p style="text-align: center;"><b>PC</b></p> <p><b>80 -</b> (7) The Office of Deputy Speaker becomes vacant if the Deputy Speaker:</p>			
	<p style="text-align: center;"><b>SDL</b></p> <p>Section 80 of the Constitution is amended in subsection (7) by inserting after "vacant" the words "upon dissolution or expiry of the House of the Representatives or".</p>	* Amends section 80 to make it clear that the Deputy Speaker's term of office (unlike the Speaker's) expires on dissolution or expiry of the House		

	<b>FLP COALITION</b> Section 80 of the Constitution is amended in subsection (7) by inserting after "vacant" the words "upon dissolution or expiry of the House of the Representatives or".	** Amends section 80 to make it clear that the Deputy Speaker's term of office (unlike the Speaker's) expires on dissolution or expiry of the House of Representatives.		
	<b>SVT VERSION</b>			
<b>11</b>	<i>President and Vice -President of the Senate</i> Section <b>81</b> (6) (b) (ii)			
	<b>PC</b> <b>81-(6)</b> The office of President of Senate does not become vacant on the expiry of the term of the Senate but becomes vacant: (b) if, before that day, the President of the Senate (ii) with the consent of the of the President of the Senate, becomes the holder of another public office;			
	<b>SDL</b> Section 81 of the Constitution is amended in subsection (6) by deleting the words "with the consent of the President of the Senate," from paragraph (b) (ii) and substituting "with his or her consent".	* Clarifies section 81(6)(b)(ii) as to whose consent is in question in relation to holding other public office.		
	<b>FLP COALITION</b> Section 81 of the Constitution is amended in subsection (6) by deleting the words "with the consent of the President of the Senate," from paragraph (b) (ii) and substituting "with his or her consent".	** Clarifies section 81(6)(b)(ii) as to whose consent is in question in relation to holding other public office.		
	<b>SVT VERSION</b>			

12	<i>President acts on advice.</i> Section 96 (1)		
	<p style="text-align: center;"><b>PC</b></p> <p>96-(1) Subject to subsection (2), in the exercise of his or her powers and executive authority, the President acts only on the advice of the Cabinet or a Minister or some other body or authority prescribed by this Constitution for a particular purpose as the body or authority on whose advice the President acts in that case.</p>		
	<p style="text-align: center;"><b>SDL</b></p> <p>Section 96 of the Constitution is amended in subsection (1) -  (a) by inserting after "authority" the words "under this or any other written law"; and  (b) by inserting after "Constitution" the words "or that other written law".</p>	<p>*</p> <p>Amends section 96(1) to make it clear that the requirement for the President to act only on the advice of Cabinet or a Minister or a prescribed body (unless expressly empowered by the Constitution to not in his or her own judgement) applies to all statutory functions of the President.</p>	
	<p style="text-align: center;"><b>FLP COALITION</b></p> <p>Section 96 of the Constitution is amended in subsection (1) -  (a) by inserting after "authority" the words "under this or any other written law"; and  (b) by inserting after "Constitution" the words "or that other written law".</p>	<p>**</p> <p>Amends section 96(1) to make it clear that the requirement for the President to act only on the advice of Cabinet or a Minister or a prescribed body (unless expressly empowered by the Constitution to not in his or her own judgement) applies to all statutory functions of the President.</p>	
	<b>SVT VERSION</b>		
13	<i>Vacation of office of Minister</i> Section 105 (1)		
	<p style="text-align: center;"><b>PC</b></p> <p>Section 105.- (1) Subject to subsection (2), the appointment of a Minister terminates if:  (d) the Minister ceases to be a Member of the Parliament.</p>		

	<p style="text-align: center;"><b>SDL</b></p> <p>Section 105 of the Constitution is amended in subsection (1) by-  (a) replacing the full-stop by "; or" at the end of paragraph (d); and  (b) adding the following new paragraph –  "(e) the Minister is dismissed by the President under subsection 99 (1)".</p>	<p>*</p> <p>Amends section 105(1) to make it clear that Ministers may be dismissed by the President, on the advice of the Prime Minister, as provided by section 99(1)</p>		
	<p style="text-align: center;"><b>FLP COALITION</b></p> <p>Section 105 of the Constitution is amended in subsection (1) by-  (a) replacing the full-stop by "; or" at the end of paragraph (d); and  (b) adding the following new paragraph -  "(e) the Minister is dismissed by the President under subsection 99 (1)".</p>	<p>**</p> <p>Amends section 105(1) to make it clear that Ministers may be dismissed by the President, on the advice of the Prime Minister, as provided by section 99(1)</p>		
	<b>SVT VERSION</b>			
<b>14</b>	<i>Qualifications for appointment</i> Section <b>130</b> (a) (b)			
	<p style="text-align: center;"><b>PC</b></p> <p><b>130.</b> A person is not qualified for appointment as a judge unless he or she:  (a) holds, or has held, high judicial office in Fiji Islands or in another country prescribed by the Parliament; or  (b) has had not less than 7 years' practice as a barrister or solicitor in the Fiji Islands or in any another country prescribed by the Parliament.</p>			
	<p style="text-align: center;"><b>SDL</b></p> <p>Section 130 of the Constitution is amended -  (a) in paragraph (a) by deleting "high"  (b) in paragraph (b) by deleting "barrister or solicitor" and substituting "legal practitioner"</p>	<p>*</p> <p>Deletes the word "high" before judicial office" in section 130 so that a magistrate can qualify to become a judge. Also replaces "barrister and solicitor" by "legal practitioner" in line with the Legal Practitioners Act 1997.</p>		

	<p align="center"><b>FLP COALITION</b></p> <p>Section 130 of the Constitution is amended – (a) in paragraph (a) by deleting "high" (b) in paragraph (b) by deleting "barrister or solicitor" and substituting "legal practitioner"</p>	<p>**</p> <p>Deletes the word "high" before "judicial office" in section 130 so that a magistrate can qualify to become a judge. Also replaces "barrister and solicitor" by "legal practitioner" in line with the Legal Practitioners Act 1997.</p>		
	<p align="center"><b>SVT VERSION</b></p> <p>Section 130 of the Constitution is amended in paragraph (b) by deleting "barrister or solicitor" and substituting "legal practitioner".</p>	<p>***</p> <p>Is a consequence of the Legal Practitioners Act which has replaced "barrister and solicitor" by "legal practitioner" for all purposes.</p>		
<b>15</b>	<i>Appointment of ambassadors, etc</i> Section <b>149</b> (5) (a)			
	<p align="center"><b>PC</b></p> <p><b>149</b>-(5) The Parliament may make laws relating to: (a) the pensions entitlements of a person referred to in subsection (4); and</p>			
	<p align="center"><b>SDL</b></p> <p>Section 149 of the Constitution is amended in subsection (5) (a) by deleting "(4)" and substituting "(2)".</p>	<p>*</p> <p>Amends section 149(5) to correct a cross-reference to persons removed from office as ambassadors.</p>		
	<p align="center"><b>FLP COALITION</b></p> <p>Section 149 of the Constitution is amended in subsection (5) (a) by deleting "(4)" and substituting "(2)".</p>	<p>**</p> <p>Amends section 149(5) to correct a cross-reference to persons removed from office as ambassadors.</p>		
	<p align="center"><b>SVT VERSION</b></p>			
<b>16</b>	<i>Standing appropriation of Consolidated Fund for payment of certain salaries and allowances</i> Section <b>183</b> (i) (j)			
	<p align="center"><b>PC</b></p> <p>Section <b>183</b> (1) (j)</p>			

	<p style="text-align: center;"><b>SDL</b></p> <p>Section 183 of the Constitution is amended in subsection (1) by adding after paragraph (j) the following new paragraph- "(ja) the Commander of the Republic of the Fiji Islands Military Forces;"</p>	<p>*</p> <p>Adds to section 183, which appropriates the salaries of certain officers, the Commander of the Republic of the Fiji Islands Military Forces. (For change of title see clause 17).</p>		
	<p style="text-align: center;"><b>FLP COALITION</b></p> <p>Section 183 of the Constitution is amended in subsection (1) by adding after paragraph (j) the following new paragraph- "(ja) the Commander of the Republic of the Fiji Islands Military Forces;"</p>	<p>**</p> <p>Adds to section 183, which appropriates the salaries of certain officers, the Commander of the Republic of the Fiji Islands Military Forces. (For change of title see clause 17).</p>		
	<p style="text-align: center;"><b>SVT VERSION</b></p> <p>Section 183 of the Constitution is amended in subsection (1) by adding after paragraph (j) the following new paragraph- "(ja) the Commander of the Republic of the Fiji Islands Military Forces;"</p>	<p>***</p> <p>Adds to section 183, which appropriates the salaries of certain officers, the Commander of the Republic of the Fiji Islands Military Forces.</p>		
<b>17</b>	<i>Interpretation</i> <b>Section 194</b>			
	<p style="text-align: center;"><b>PC</b></p> <p><b>194.</b>-(1) In this Constitution, unless the contrary intention appears: <b>Gazette</b> means the <i>Fiji Republic Gazette</i> published by the order of the Government; <b>public office</b> means: (g) an office in, or as a member of, a statutory authority; or (h) an office established by a written law; (12) For the avoidance of doubt, use of the word must in this Constitution imports obligation to the same extent as if the word shall were used.</p>			

	<p style="text-align: center;"><b>SDL</b></p> <p>Section 194 of the Constitution is amended –  (a) in the definition of "Gazette" in subsection (1) by deleting "Fiji Republic Gazette" and substituting "Fiji Islands Government Gazette";  (b) In the definition of "public office"-  (i) in paragraph (g) by deleting ",or as a member of,";  (ii) by deleting paragraph (h) and substituting –  "(h) an office which is paid out of public moneys (being moneys to which Chapter 12 applies,"  (c) in subsection (12) by placing inverted commas around the word "must" and "shall";  (d) by adding the following new subsections-  "(13) Whenever a provision of this Constitution requires a person or body (" the consulter") to consult another person or body before advising on or making an appointment, the consulter must give due consideration to the views of that person or body into account when advising or making the appointment.  (14) Nothing in this Constitution prevents or has ever prevented a <u>Fijian who is</u> the President or Vice President of the State, the President of the Senate, the Speaker of the House of Representatives or a member of the House of Representatives or of the Senate from being a member, Chairman or Deputy Chairman of the Bose Levu Vakaturaga, a Provincial Council, a Tikina Council, the Fijian Affairs Board or the Native Land Trust Board."</p>	<p style="text-align: center;">*</p> <p>Amends section 194 (Interpretation) in 5 respects- Para.(a) amends the definition of "Gazette" in line with the new name of the country.  Para.(b) amends the definition of "public office"-  (i) to release membership of establishing authority from the scope of the definition; and  (ii) to refer to payment out of public monies rather than the existence of a written law, which is too wide.  Para. ( c) corrects a printing error in respect of inverted commas.  Para.(d) adds a provision defining "consultation" which is used in several places in the Constitution in relation to appointments.  Para.(e) also adds a provision to make it clear that the President, Vice-President, Senators and MPs can continue to hold office in the Great Council of Chiefs and in Provincial Councils, Tikina Councils, the Fijian Affairs Board and the Native Land Trust Board, if the appointing authority so desires. The provision is retrospective in effect.</p>		
	<p style="text-align: center;"><b>FLP COALITION</b></p> <p>Section 194 of the Constitution is amended –  (a) in the definition of "Gazette" in subsection (1) by deleting "Fiji Republic Gazette" and substituting "Fiji Islands Government Gazette";  (b) in the definition of "public office"-</p>	<p style="text-align: center;">**</p> <p>Amends section 194 (Interpretation) in 5 respects-  Para.(a) amends the definition of "Gazette" in line with the new name of the country.  Para.(b) amends the definition of "public</p>		

	<p>(i) in paragraph (g) by deleting, ",or as a member of,";</p> <p>(ii) in paragraph (h) by adding at the end "and paid out of public moneys (being moneys to which Chapter 12 applies)";</p> <p>(c ) in subsection (12) by placing inverted commas around the words "must" and "shall".</p> <p>(d) by adding the following new subsections-</p> <p>"(13) Whenever a provision of this Constitution requires a person or body (" the consulter") to consult another person or body before advising on or making an appointment, the consulter must give due consideration to the views of that person or body into account when advising or making the appointment.</p> <p>(14) Nothing in this Constitution prevents or has ever prevented the President or Vice President of the State, the President of the Senate, the Speaker of the House of Representatives or any member of the House of Representatives or of the Senate from being a member, Chairman or Deputy Chairman of the Bose Levu Vakaturaga, a Provincial Council, a Tikina Council, the Fijian Affairs Board or the Native Land Trust Board.</p>	<p>office"-</p> <p>(i) to remove membership of statutory authority from the scope of the definition;</p> <p>(ii) in para.(h) to refer to payment out of public moneys as well as the existence of a written law, so as to narrow the definition.</p> <p>Para. ( c) corrects a printing error in respect of inverted commas.</p> <p>Para.(d) adds a provision defining "consultation" which is used in several places in the Constitution in relation to appointments.</p> <p>Para.(e) also adds a provision to make it clear that the President, Vice-President, Senators and MPs can continue to hold office in the Great Council of Chiefs and in Provincial Councils, Tikina Councils, the Fijian Affairs Board and the Native Land Trust Board, if the appointing authority so desires. The provision is retrospective in effect.</p>		
	<p style="text-align: center;"><b>SVT VERSION</b></p> <p>Section 194 of the Constitution is amended –</p> <p>(a) in the definition of "Gazette" in subsection (1) by deleting "<i>Fiji Republic Gazette</i>" and substituting "<i>Fiji Islands Government Gazette</i>";</p> <p><i>and</i></p> <p>(b) by adding the following new subsections-</p> <p>"(13) Whenever a provision of this Constitution requires a person or body (" the consulter") to consult another person or body before advising on or making an appointment, the consulter must use all reasonable endeavours to achieve a convergence of views with the person or body</p>	<p>***</p> <p>Amends the definition of "<i>Gazette</i>" in line with the new name of the country.</p> <p>It also adds a provision defining "consultation" which is a term used in several places in the Constitution in relation to appointments.</p>		



	and must in any event take the views of that person or body into account when advising or making the appointment."			
<b>18</b>	<i>Re-naming of the Republic of Fiji Military Forces</i> Section <b>112</b> (1)			
	<b>PC</b> <b>112.</b> - (1) The military force called the Republic of Fiji Military Forces established by the Constitution of 1990 continues in existence.			
	<b>SDL</b> (1) Section 112 of the Constitution is amended in subsection (1) by adding at the end "under the name of the Republic of the Fiji Islands Military Forces." (2) The Constitution is amended by deleting "Republic of Fiji Military Forces" wherever it appears (except in section 112(1)) and substituting "Republic of the Fiji Islands Military Forces."	*	Renames the Republic of Fiji Military Forces as the Republic of the Fiji Islands Military Forces, in line with the new name of the country.	
	<b>FLP COALITION</b> (1) Section 112 of the Constitution is amended in subsection (1) by adding at the end "under the name of the Republic of the Fiji Islands Military Forces." (2) The Constitution is amended by deleting "Republic of Fiji Military Forces" wherever it appears (except in section 112(1)) and substituting "Republic of the Fiji Islands Military Forces."	**	Renames the Republic of Fiji Military Forces as the Republic of the Fiji Islands Military Forces, in line with the new name of the country.	
	<b>SVT VERSION</b>			
<b>19</b>	<i>Referendum to amend the constitution</i>			
	<b>PC</b>			

	<p style="text-align: center;"><b>SDL</b></p> <p><u>The Constitution is amended by adding the following section - 'Referendum 192A. The Parliament may make law to carry out referendum to entrenched provisions of the Constitution.'</u>  <i>[The Parliament may make law to amend sections..... by a referendum of registered voters.]</i></p>	<p style="text-align: center;">*</p> <p>Adds a new section 1192A to allow Parliament to carry out referendum to change entrenched provisions of the Constitution.</p>		
	<p><b>FLP COALITION</b></p>			
	<p><b>SVT VERSION</b></p>			

**Notes**

- Based on the Explanatory Note(s) provided in the SDL Revised Draft - 6/7/2002, see 'Talanoa Sub-Committee on Constitutional Changes', Discussion Paper, by Hon. Senator Q. Bale.
- \*\* Based on the Explanatory Note(s) provided in the FLP Coalition's Constitution (Amendment) Bill 2000, see 'Talanoa Sub-Committee Changes', on Constitutional Changes, Discussion Paper, by Hon. Senator Q. Bale. In order to maintain consistency in the numerical ordering of the clauses, the original clauses, numbering 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of the FLP Coalition's Constitution (Amendment) Bill 2000, are changed and now correspond to the clauses numbering 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 given in this Framework.
- \*\*\* Based on the Objects and Reasons given in SVT Constitutional (Amendment) Bill 1999, see 'Talanoa Sub-Committee on Constitutional Changes', Discussion Paper, by Hon Senator Q. Bale. To maintain consistency in the numbering of the clauses the original clauses numbering 3, 4, 8, and 9 of the SVT Constitutional (Amendment) Bill 1999 are changed and now correspond to the clauses numbering 4, 14, 16, and 17 listed in the Framework.

### **Amendments and Sections not Incorporated into the Framework**

Six sections, namely, section 64(2), section 99(1), section 100, section 130(b), section 137(3), and section 99(5), that appear in the Annex I and Annex II of the Discussion Paper, 'Talanoa Sub-Committee on Constitutional Change by Hon. Senator Q. Bale, have not been incorporated into the framework because they are not included in the SDL Revised Draft - 6/7/2002. However, these sections can easily be incorporated into the Framework if and when they are proposed in a draft form of a Bill for an Act to amend the Constitution.

Moreover, section 133, section 146(1), section 147, and proposed amendment to 'Re-naming of Judicial Commission' included in the SVT version are not part of either the SDL's Constitution (Amendment) Bill 2002 or the FLP Coalition's Constitution (Amendment) Bill 2000. For this reason they are not incorporated into the Framework.

### **References:**

1. Constitution of the Republic of the Fiji Islands, 27th July 1998
2. Hon. Senator Q. Bale, Talanoa Sub-Committee on Constitutional Changes, Discussion Paper.
3. Hon Krishna Datt, Comparison of Constitutional Amendment Bills -- SDL, PCG & SVT
4. Halapua Sitiveni, *Peace, Conflict and Development: Walking the Knife-edged Pathways in Multiculturalism*, Ratu Mara Friendship Foundation Lecture, Suva. May 2003.

## **PART 2**

### **Introduction:**

**Part 2** incorporates into our **Framework for Talanoa on Constitutional Changes** sections 64(2), section 99(1), section 100, section 130(b), section 137 (3), and section 99(5), that Appear in Annex I and Annex II of the SDL Discussion Paper and are not included in the SDL Draft Bill. Also incorporated are section 133, section 146(1), section 147(1) (d) (2) and the proposed amendments to the re-naming of the Judicial Commission included in the SVT Bill (Bill NO.2 of 1999) for an Act to Amend the Constitution.

This **Part 2** paper, which begins with page 19, should be treated as the continuation of the first paper, entitled **Framework for Talanoa on Constitutional Changes**, Bi-Partisan Talanoa Sub-Committee July 5, 2003, that ends with page 18.

**FRAMEWORK FOR TALANOA ON CONSTITUTIONAL CHANGES  
COMMON UNDERSTANDING OF THE BILLS TO AMEND THE CONSTITUTION**

Clauses	SECTION	Common Understanding of UPI taking into account the SCCP of a proposed Amendment	Common Understanding of the "non controversial areas"	Common Understanding of the "controversial areas"
20	<i>Members</i> Section 64 (2)			
	<p align="center"><b>PC</b></p> <p><b>64.</b> -(2) The Leaders of each of the parties entitled to be invited to participate in the Cabinet under Section 99 nominate a person or persons for appointment under paragraph (1)(c ) and, in tendering advice to the President pursuant to that paragraph, the Leader of the Opposition must ensure that the 8 persons proposed for appointment comprise such number of nominees of those parties as is proportionate to the size of the membership of those parties in the House of Representatives.</p>			
	<p align="center"><b>SDL</b></p>	<p>* Section 64 (2) clarification regarding the application of the proportionality formula envisaged under section 99(5). Further clarification of section 64 and section 99 regarding the power of the President to perform his functions when he has some doubts and wants that doubt clarified by the Supreme Court under section 123 before he finalizes his decision on the composition of Senate and Cabinet;</p>		

21	<i>Appointment of other Ministers</i> Section 99 (1)			
	<p style="text-align: center;"><b>PC</b></p> <p>99. - (1) The President appoints and dismisses other Ministers on the advice of the Prime Minister.</p>			
	<p style="text-align: center;"><b>SDL</b></p>	<p>* Section 99(1) to include appointment of Assistant Ministers;</p>		
22	<i>Attorney- General</i> Section 100			
	<p style="text-align: center;"><b>PC</b></p> <p>100. - (1) The Minister appointed as the Attorney General is the chief legal advisor to the Government (2) A person is not qualified to be appointed as Attorney-General unless he or she is qualified to practice as a barrister and solicitor in the Fiji Islands.</p>			
	<p style="text-align: center;"><b>SDL</b></p>	<p>* Section 100 to set a minimum (e.g. not less than 10 years practical experience) legal qualification for Attorney General. Consideration can also be given to confining appointment through the Senate rather than through HOR. May even equate it to Queens Counsel or Senior Counsel level to be fair to the public and to the Government in power;</p>		

23	<i>Qualifications for appointment</i> Section 130 (b)			
	<p style="text-align: center;"><b>PC</b></p> <p><b>130.</b> A person is not qualified for appointment as a judge unless he or she: (b) has had not less than 7 years' practice as a barrister or solicitor in the Fiji Islands or in any another country prescribed by the Parliament.</p>			
	<p style="text-align: center;"><b>SDL</b></p>	<p>*Section 130 (b) to increase the minimum qualification for judges from not less than 7 years to not less than 10 years practical experience. The word "high" before "judicial office" in section 130 be deleted so that a magistrate can qualify to become a judge. Also replaces "barrister and solicitor" by "legal practitioner" in line with the Legal Practitioners Act 1997;</p>		
24	<i>Retirement Ages for Judges</i> Section 137 (3)			
	<p style="text-align: center;"><b>PC</b></p> <p><b>137.-</b> (1) Subject to subsection (2), the term of appointment of the Chief Justice, a Justice of Appeal (including the President of the Court of Appeal) or a judge of the Supreme Court expires upon his or her reaching the age of 70. (3) The term of appointment of a puisne judge of the High Court expires upon his or her reaching the age of 65, and a person must not be appointed if he or she has reached that age.</p>			
	<p style="text-align: center;"><b>SDL</b></p>	<p>*Section 137 (3) to increase the retiring age for judges from 65 to 70 or 75 and for the Chief Justice from 70 to 75;</p>		

25	<i>Appointment of other Ministers</i> Section 99 (5)			
	<p style="text-align: center;"><b>PC</b></p> <p>99. - (5) In establishing the Cabinet, the Prime Minister must invite all parties whose membership in the House of Representatives comprises at least 10% of the total membership of the House to be represented in the Cabinet in proportion to their numbers in the House.</p>			
	<p style="text-align: center;"><b>SDL</b></p>	<p>*</p> <p>Section 99- especially subsection (5), to replace multi-party with multi- ethnic Cabinet. Details on how this can be done will need to be examined. We either amend this way, or give the Prime Minister power to impose a condition of acceptance to his invitation requiring the Party invited to give a genuine undertaking to allow policies of the Prime Minister's Party to be the guiding policies of the Coalition Government. This will also result in a genuine coalition of like-minded Parties, rather than a forced marriage of Parties whose policies (which voted them in) are diametrically opposed to the Prime Minister's Party;</p>		
26		<p>imunity of Discipline Forces between 19.5.00 and the date to be fixed following 2.11.01 mutiny;</p>		
27		<p>introduce protection of executive authority in the event of a coup;</p>		
28		<p>introduce provisions to guard against and prevent future coups.</p>		

29	<i>Other appointments</i> Section 133 (2) (3)			
	<p style="text-align: center;"><b>PC</b></p> <p><b>133.</b>-(1) Appointments to the following offices are made by the Judicial Service Commission:  (a) an office of Magistrate;  (b) the office of central agricultural tribunal under the Agricultural Landlord and Tenant Act;  (2) In making appointments under paragraph (1) (a) or (b), the Judicial Service Commission must consult with the Prime Minister and the Leader of the  (3) If a written law so provides, the Judicial Service Commission may also make appointments of Commission may also make appointments of persons to offices that are not judicial offices.</p>			
	<p style="text-align: center;"><b>SVT</b></p> <p>Section 133 of the Constitution is amended-  (a) in subsection(2) by deleting "(a) or";  (b) by repealing subsection (3) and substituting –  "(3)The Judicial and Legal Services Commission may also make appointments to any other public office or class of public office prescribed by regulations made by the Commission with the agreement of the Prime Minister as an office or class appointments to which will be made by the Commission."; and  (c )by adding at the end the following new subsection-  "(5) If the Judicial and Legal Services Commission appoints persons to offices that are not judicial offices (including the Solicitor-General), it may also:</p>	<p>***</p> <p>Amends section 133 in 3 respects-  Paragraph (a) removes the requirement for the Judicial Service Commission to consult the Prime Minister and Leader of the Opposition when appointing magistrates.  Paragraph (b) empowers the Judicial Service Commission (now renamed as the Judicial and Legal Services Commission) to make regulations giving itself power to appoint other officers, such as government legal officers and court officers in the Judicial Department. (Under Section 113 the Commission already has the function of appointing the Solicitor- General.)  Paragraph (c) adds a new subsection (5) to provide that if appointments of non-judicial officers are made (and in respect of the Solicitor-General in any event) the Commission has power to remove and</p>		



	(a) remove and take disciplinary action against holders of such offices; and (b) delegate to a person having powers of a Secretary of a department its powers of appointment, removal and disciplinary action in respect of holders of such offices (other than the Solicitor-General)."	take disciplinary action against the officers (but not in respect of the Solicitor-General).		
<b>30</b>	<i>Functions of Constitutional Offices Commission</i> Section <b>146</b> (1)			
	<b>PC</b> <b>146.-</b> (1) The Constitutional Offices Commission has the function of making appointments, in accordance with this Constitution, to the following offices:			
	<b>SVT</b> Section 146 of the Constitution is amended in subsection (1) by inserting after "offices" the words "and of removing and taking disciplinary action against holders of such offices".	*** Amends section 146 to make it clear that the Constitutional Offices Commission has the power to remove and take disciplinary action against holders of offices coming under its jurisdiction, thus making it similar to the other service commissions.		
<b>31</b>	<i>Functions of the Public Service Commission</i> Section <b>147</b> (1) (d) (2)			
	<b>PC</b> <b>147.-</b> (1)The Public Service Commission has the following functions; (a) to make appointments to public offices; (b) to remove persons from public offices; (c ) to take disciplinary action against holders of public offices. (2) The functions of the Public Service Commission do not extend to:			
	<b>SVT</b> Section 147 of the Constitution is amended- (a) in subsection (1) by adding at the end the following new paragraph- "(d) to specify salary scales and other terms	*** Amends section 147 by empowering the Public Service Commission to set salary scales and other terms and conditions of service for all public office holders, including those appointed by bodies set up		

	and conditions of service for public office holders."; (b) in subsection (2) by adding after paragraph (e)- "if and to the extent that those functions are conferred on some other person or body in respect of those offices."	under the Constitution, unless those bodies have power to set such terms and conditions. It also provides that if other powers relating to public offers are not expressly given to some other person or body under the Constitution, the powers are exercisable by the Public Service Commission.		
<b>32</b>	<i>Re-naming of Judicial Service Commission</i>			
	<b>SVT</b> The Constitution is amended by deleting "Judicial Service Commission" wherever it appears and substituting "Judicial and Legal Services Commission".	<b>***</b> Amends the name "Judicial Service Commission" to "Judicial and Legal Services Commission" which was its previous name. This is because the original Beattie Commission scheme, of dividing the Judicial and Legal Services Commission into 2 bodies, was not carried out and legal officers therefore at present come under the Public Service Commission. This is not proving satisfactory in practice.		