

YOUR GUIDE TO THE FIJI CONSTITUTION
OUR NATION OUR RIGHTS



Acknowledgements

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About Us

The Citizens' Constitutional Forum Limited (CCF) is a non-government organisation (NGO) that advocates and educates for good governance, human rights and multiculturalism in the Republic of Fiji. CCF works with women, youth, and other groups that are sometimes thought of as having a lesser social standing as well as politicians and community leaders. CCF also networks with other local and international NGOs to share experiences and lessons learned on peace building, participatory democracy, human rights, and social justice.

From the time that CCF came into being, it has been working to promote ways in which Fiji can return to democracy in a way that is positive and includes everyone in that process. CCF works extensively to educate local, rural and urban communities and also works with youth, academics and other civil society organisations (CSOs).

CCF receives funding from government bodies such as the Australian Department of Foreign Affairs and Trade and the United Kingdom Department for International Development, intergovernmental bodies such as the European Union and non-governmental organisations such as Conciliation Resources that are involved in peace-building efforts.

CCF is not aligned with, and does not support, any particular political party or group.

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Glossary of Terms

Abrogation

To put an end to, cancel, or do away with (a law, right, or formal agreement).

Accountability

The duty of an individual or an organisation to be responsible for what it does and to reveal the results of their work in a way that can be easily understood by members of the public.

Appeal

To ask a higher court to reverse or modify a decision of a lower court.

Arbitrary

Making a decision according to personal preference, without thinking of any rules or standards that should apply to the decision-making process, and, not following a process of logic to come to sensible conclusions.

Bill

A proposed law being considered by Parliament. The proposed law is then discussed by members of Parliament, and once they have agreed, the law is then passed, to become part of the laws of Fiji. A Bill does not become law until it is passed by Parliament. This is not to be confused with the Bill of Rights.

Bill of Rights

A formal, clear statement about basic rights and freedoms that are of central importance to every single person, and guaranteed to all people under the Constitution. This is very different from a Bill (proposed law) as it is already part of the Constitution.

Cabinet

The team of most senior ministers in the government, chosen by the Prime Minister, who work together to lead the government. They are responsible to Parliament for how they use their powers.

Collective Bargaining

A trade union negotiating wages and other working conditions with an employer.

Constituency

A group of voters in a specific area who vote a representative to a body that has the powers to make laws, such as Parliament.

Coup d'état (Coup)

The sudden, illegal and sometimes violent takeover of an existing government. After the takeover, the coup makers usually put in place an un-elected ruling body, referred to as the interim government.

Customary

Following the traditional and widely accepted practices that a particular society or place, has.

Democracy

A system of government in which citizens take part actively in politics and other aspects of being a citizen of a country. This happens directly or indirectly through their elected representatives, under a political system for choosing and replacing the government through free and fair elections held at regular intervals.

Eviction

When a landlord, acting by themselves or through someone representing them, removes a tenant from a rented property.

Freehold Land

Property which is “free from hold” of any entity besides the owner. Hence, the owner has free ownership forever. Sale of a freehold property does not require consent from the state, unlike leasehold property.

Gender identity

A person's private sense, and subjective experience, of their own gender rather than their sex at birth.

Jurisdiction

The authority of a court to make legal decisions and judgments in a given territory.

Parliament

The body made up of people who have been elected to it, and who are responsible for making laws.

Referendum

When everyone that is eligible to vote is asked to directly vote to either accept or reject a particular proposal. This is often in relation to the adoption of a new constitution, an amendment to the constitution, or a law.

Secret Ballot

A method of voting that ensures votes remain confidential, so that the voter is not influenced by any other person, or pressured to vote in a certain way.

Secular/Secularism

The belief that religion should not be part of how a country is governed, or, part of public education.

Sovereignty

The authority and power of a country to govern itself by making rules, laws and regulations independently.

Trade Union

Employees organised into a group for the purpose of improving working conditions by bargaining as a group with their employer(s).

Traditional/Native/Indigenous Land

Land owned by indigenous communities and managed in accordance with their customs.

Constitutional History of Fiji

From the time Fiji became independent in 1970, we have had four constitutions – the 1970, 1990, 1997 and 2013 Constitutions. During this period of our history, Fiji has at times been ruled by military governments that did not come into power through elections. During such times, there was no Constitution in place.

1970 & 1990 CONSTITUTIONS

Fiji was governed by Britain from 1874 onwards, so when it was time for Fiji to become independent in 1970, it needed to have a Constitution. The British government and Fiji's political leaders of that time had to sit down to discuss and agree on a document that became Fiji's first Constitution – the 1970 Constitution. Following a coup the military removed the government of 1987 from power. The interim government that came into place after that put together the 1990 Constitution after holding some meetings in public to get the views of members of the public. The 1990 Constitution was then approved by the Great Council of Chiefs.

THE 1997 CONSTITUTION

In 1995, the Rabuka government set up the Constitutional Review Commission, whose job it was to carry out a review of the 1990 Constitution. The outcome of that exercise was the 1997 Constitution.

HOW WAS THE 2013 CONSTITUTION MADE?

In 2006, the military removed the government of the day from power. Three years later, in 2009, the President issued a decree and did away with the 1997 Constitution. Thus, that constitution ceased to exist.

Fiji now has a new constitution – the 2013 Constitution. The process of putting together the 2013 Constitution began in March 2012 when a set of principles and values called the 'non-negotiable' principles were declared by the interim government. The general elections of September 2014 were part of the path to help Fiji return to being a democracy. A Constitution Commission was created to get the views of Fiji's people on the kind of constitution they wanted. The Commission's job was to complete a draft Constitution that would achieve the non-negotiable principles set out by the government. When the Constitution Commission produced its draft Constitution in December 2012, the draft document was rejected by the interim government. The Commission's draft was based on more than 7100 submissions made by Fijians. Those submissions were also available to the public. In March 2013, the government released its own draft of the current Constitution, so that members of the public could make their views known about it. This draft was a mixture of some of what the Constitution Commission had produced and some modifications. On 22 August 2013, the government released another version of the Constitution. This version includes provisions based on 1000 submissions from the public. However, these submissions were not available to the public. Finally, on 6 September 2013, the President officially expressed his approval of the current Constitution after some further changes.



Introduction to the Constitution

WHAT IS A CONSTITUTION AND WHAT IS IT FOR?

A constitution is a country's supreme law, meaning, it is a legal document that guides all other laws of a country. No law is greater than or above a constitution. It also provides and protects the rights of all citizens and determines how government organisations should function.

The purposes of a constitution are:

- (i) to identify and guarantee rights and freedoms of the people;
- (ii) to safeguard the structures of government and state what their powers are; and
- (iii) to establish government bodies and set out their powers and responsibilities.

DOES THE CONSTITUTION CONTAIN ALL THE LAWS IN FIJI?

The Constitution does not contain all of the laws of Fiji. However, it guides how all laws should be shaped and formed. Laws that do not align with the Constitution can be reviewed by the High Court and amended appropriately.

WHY DID WE GET A NEW CONSTITUTION?

After six years of military rule, Voreqe Bainimarama, who was then interim Prime Minister, announced on 9 March 2012, that a new constitution would be put in place through a process that would include everyone in Fiji by helping them to take part in that process, and that everyone would be able to clearly understand and participate in that process.

At the same time, a set of principles and values were announced as what the new constitution would be built upon. These principles and values were called the non-negotiable principles and values, meaning, they would not be changed. The interim government decided that there needed to be a new constitution that would be put together through a process in which every Fijian would have a voice.

The draft of the new constitution would also go through a process that would include everyone and one which everyone could clearly understand and participate in. The process would also include representatives of civil society groups and organisations that are Fijian-registered, including faith based organisations, national organisations, political parties and Government. The interim government emphasised that the main aim of this process would be to achieve peace, prosperity, economic well-being and a democracy that was true and would continue without interruption.

The purpose of the new Constitution was to ensure that all Fijians took part fully in designing a constitution that would unite all Fijians and to meet the needs of Fiji and the aspirations of all its people.



Taking a Look at the Constitution

THE PREAMBLE

What is a Preamble and what is its purpose?

A preamble is a brief statement that appears at the beginning of document to introduce it and explains the document's purpose and philosophy.

A preamble to a constitution usually cannot be enforced by the courts but it can still play an important role in highlighting important aspects of the country's constitutional history and how a country defines itself and its vision for the future. Therefore, a preamble is usually intended to inspire, and state the goals, principles and values of a country.


Courts and government bodies can also use a preamble to explain or understand a constitution, a law or develop policies. In this way, a preamble can have significant influence.

WHAT DOES THE PREAMBLE IN THE CONSTITUTION SAY?

The Constitution recognises that Fiji is made up of a variety of ethnic groups - the *iTaukei*, Rotumans, descendants of indentured labourers from British India and the Pacific Islands, and the descendants of European, Chinese, i-Kiribati, Tuvalu, Banaban, Wallis settlers and other immigrants to Fiji. The Constitution also recognises the ownership of customary land, cultures, customs, traditions and language. It declares that all these ethnicities make up a united Fiji and that we are all Fijians.

The preamble recognises the Constitution as the supreme law of the land, providing a framework for running the affairs of government and all Fijians. It commits all Fijians to recognise and protect human rights and respect human dignity through the Constitution. It further declares the Constitution's commitment to justice, national sovereignty and security, social and economic well-being and protecting the environment.

WHAT IS THE PREAMBLE?



The **preamble** is what the Constitution stands for. It highlights our **history** and the **values** and **principles** that the **State** stands to uphold.

PREAMBLE

Preambles usually recognise events that have taken place in a country's past and how those events define a country. Doing so makes the people of a country able to pave a way for their future. The constitutional history of a country is usually included in preambles to understand the set of circumstances in which a constitution was drafted. It inspires the people of the country, providing them with a sense of ownership. The preamble to the 2013 Constitution does not recognise Fiji's history of constitution-making and remains silent on the events and circumstances that led to the creation of the 2013 Constitution. On the other hand, the 1997 Constitution acknowledged the 'abrogation' of the 1970 Constitution and the making of the 1990 Constitution.

PEOPLE

Indigenous people are the descendants of those who first inhabited a country or a region. In Fiji, the iTaukei were the first to settle in Fiji. Similarly, the Rotumans settled in the island of Rotuma, which is a part of Fiji. This is different from people that arrived in Fiji later – either through migration, settlement or other means. For example, Fijians of Indian descent settled in Fiji after they were brought in as labourers under the indentured system (1879-1916). After the colonial period, many of the British also settled in Fiji. Over the years, many people, migrated and settled in Fiji. Despite our differences, we all are people of Fiji – Fijians.

NON-NEGOTIABLE PRINCIPLES & VALUES

Core principles and values that define the purpose of a constitution. The following are some of the principles and values that inspired the 2013 Constitution:

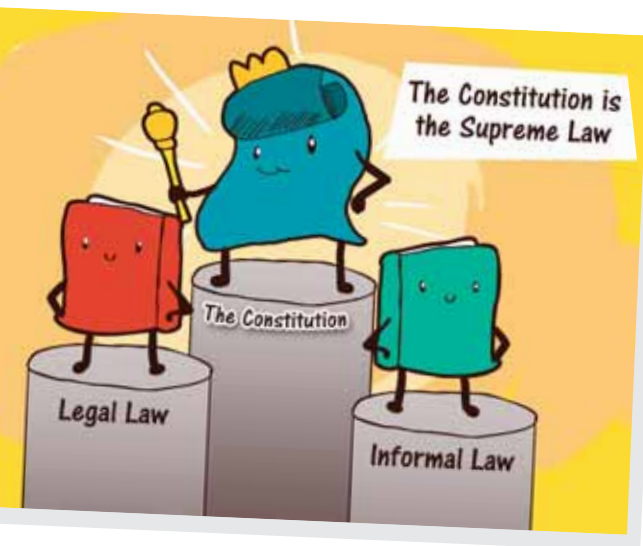
- (i) a common and equal citizenry;
- (ii) a secular state;
- (iii) the removal of systemic corruption;
- (iv) an independent judiciary;
- (v) elimination of discrimination;
- (vi) good and transparent governance;
- (vii) social justice;
- (viii) one person, one vote, one value;
- (ix) the elimination of ethnic voting;
- (x) proportional representation; and
- (xi) voting age of 18 years.

THE STATE - The Republic of Fiji

The Republic of Fiji is formed as a **sovereign** and **democratic** State, and is founded on the non-negotiable principles. The Constitution says the State must be formed according to these key principles and values. All decisions made by the government, any public office or person should promote these values and principles.

THE CONSTITUTION IS THE SUPREME LAW OF FIJI

The Constitution is higher than any other law in Fiji. All other laws in Fiji must be in line with the Constitution. The rights and freedoms of citizens must be protected and the duties of those holding public offices under the Constitution must be performed in line with the Constitution.



CONSTITUTIONAL INTERPRETATION

What happens if Parliament passed a law inconsistent with the Constitution?

Laws passed by Parliament must be in line with the Constitution. If they are not, such laws can be challenged in the High Court. If the court rules that a law is inconsistent with the Constitution, it can be said that particular law is invalid – not legally

STATE

A body of people that is politically organised, in other words, having a government and an established political system, usually occupying a definite territory or area.

CABINET

Is made up of all Ministers of Government that hold ministerial portfolios. This includes the Prime Minister and the Attorney-General.

GOVERNMENT

The body that governs a country. It is formed by the Prime Minister who chooses democratically elected representatives that receive the most votes. Usually this is made up of the party that wins the elections.

PARLIAMENT

A body made up of democratically elected representatives responsible for making a country's laws. Parliament includes the Speaker, Secretary-General, Government (Cabinet) and the members of opposition.

acceptable. However, in accordance with section 173 of the Constitution, this does not apply to any Decrees made between 5 December 2006 and first sitting of first Parliament under the Constitution, that is, 6 October 2014.

Secular State

The Republic of Fiji is a **secular** State. That means everyone has the right to personally choose and practise any religion. To better serve all people, the State is separated from religion.

WHAT DOES THIS MEAN?

A **secular** State treats all its citizens equally regardless of whatever religious belief any individual may or may not have, because everyone is equal before the law. That makes it possible for everyone to practise their own religion and beliefs. It also means the State does not interfere with religious affairs or favour any one religious grouping or body over others and similarly, religious bodies do not interfere with State affairs. This flows from the principle of equality before the law, which means that no one person or one religion is above the law. Freedom of religion, conscience and belief allows everyone to follow their own religion and belief. This also includes those who do not believe in religion (see section 22 of the Constitution).

The principle of a “**secular**” State in the Constitution says the same thing - that the State of Fiji does not favour or associate itself with a religion or belief and therefore treats all its people equally, whether they be believers of any particular faith, or, people who do not follow any religion. The State aims to serve all people equally and to do so, the State must remain neutral. Practically, the State does not use principles of any religion or belief to make public decisions, policies, and in running government bodies. These bodies and all citizens must treat

all religions equally, as equality before the law is a core principle in all democratic societies. In Fiji, as with most other countries, public officers cannot dictate, push or prefer the principles and values of any one religion over another when carrying out their duties. In order to run the country without favouring any particular group or belief, the State makes decisions by a process of logic and identifying what is good for all people.



Citizenship

Citizenship is the status that a person is given under the laws of a nation and that person's rights and duties in relation to that nation. All Fijians have equal status and national identity, which means that they are equally entitled to all the rights, privileges and benefits that come with Fijian citizenship, regardless of their race.

WHAT IS THE DIFFERENCE BETWEEN ETHNICITY & CITIZENSHIP?

What is the difference between ethnicity and citizenship? While citizenship is a person's recognised sense of belonging to a State or nation, ethnicity is a sense of belonging to a social group, sharing a common language, religion, culture or tradition.

WHO IS A CITIZEN OF FIJI?

Citizenship of Fiji is granted to anyone who is born, registered or naturalised (the legal act or process which allows a person born outside Fiji to become a citizen) in Fiji.

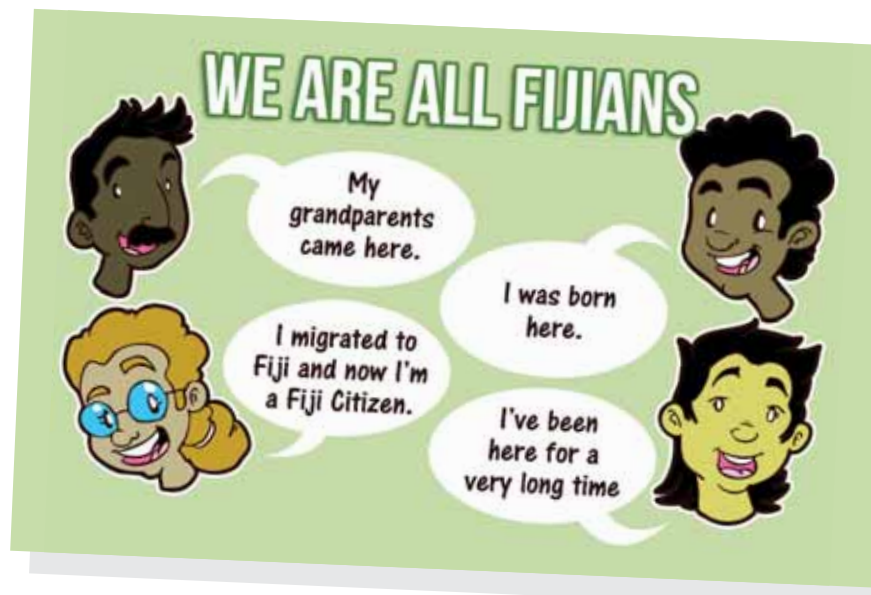
CAN I BE A CITIZEN OF FIJI & OF ANOTHER COUNTRY AT THE SAME TIME?

Yes, citizens of Fiji can hold multiple citizenships. That means that if a citizen of Fiji accepts the citizenship of another country, that person remains a citizen of Fiji unless they choose to give up that status, or the other country requires them to give up their Fiji citizenship.

Also, upon becoming a citizen of Fiji, a foreign person can keep his or her existing citizenship unless the laws of that other country say otherwise.

CAN I REGAIN MY FIJIAN CITIZENSHIP IF I LOST IT UPON ACCEPTING A FOREIGN CITIZENSHIP?

Yes, a former citizen of Fiji, who lost that citizenship upon acquiring a foreign citizenship, may regain citizenship of Fiji, while keeping that foreign citizenship unless the laws of that foreign country do not allow it.



Your Human Rights & The Constitution

Your Human Rights & The Constitution

WHAT ARE HUMAN RIGHTS?

Rights are the moral or legal entitlement to have something. Human rights are those basic set of rights that a person is naturally entitled to have, simply because they are human beings. These rights apply equally to everyone everywhere (equal and universal) and should not be taken away (inalienable) unless a law authorises it. All human rights have equal status which means that one right is not more important than the other. They are all linked together and cannot be separated (interdependent and indivisible). All rights contribute to the development of a person's human dignity which means that the improvement of one right often causes development in others (interdependence).

Often, human rights are guaranteed by law through agreements between countries. These are then brought home and made part of national laws by the State. In Fiji, these human rights are found in Chapter 2 of our Constitution and are called the Bill of Rights. We all bear the duty to respect the rights of others while the State has an obligation to respect, protect and fulfil human rights.

WHAT IS A BILL OF RIGHTS?

Generally, the Bill of Rights is a very clear, formal statement setting out the most important legal and civil rights for the citizens of a country. By formally putting these rights in place in the Constitution and making it difficult to change them, the government makes sure it will respect, protect, promote and fulfil these rights, within certain limits. This applies to each citizen in Fiji regardless of race, ethnicity, colour, place of birth, gender, sexual orientation, birth status, mother tongue, economic status, age or disability.

What the Bill of Rights does is prevent the government from taking away a citizen's legal and civil rights. The Bill aims to protect the rights and freedoms of individuals and sets out standards

against which the government must measure its policies and actions. This is supervised by the courts and the Human Rights and Anti-Discrimination Commission (HRADC).

As these rights have been made very clear in our Constitution, we can, as individuals or as a group, go to the courts and the HRADC for help when our rights have been abused or violated.

MY RIGHTS AND ITS LIMITATIONS: WHEN ARE MY RIGHTS TAKEN AWAY?

It is not that rights and freedoms are absolutely fixed. There are times when some rights may need to be limited or restricted, or even taken away. It is common for rights to be limited in order to maintain peace and security when there is enough reason to do so in a democratic society. For example, putting curfew hours in place during a coup takes away the right of movement within those hours, for a period of time. This is a reasonable measure taken by government to ensure public safety and public order.

LIMITATIONS TO YOUR RIGHTS

Fiji's Constitution has a detailed list of rights. Even in a free and democratic society, a government can limit rights where there are enough grounds and it seems necessary to do so. Section 6(5) of the Constitution provides for two broad types of limitations - **general** and **specific** limitations. General limitations are those that Parliament puts in place when it thinks they are 'necessary' to limit a certain right. These apply to all rights in the Bill of Rights. However, specific limitations apply only to certain rights and can either be expressed specifically in one of the rights or through a law that is passed to limit a specific right.

Read on for further explanation.

GENERAL LIMITATIONS

The Constitution allows the rights contained in the Bill of Rights to be limited whenever it is thought 'necessary' by Parliament. This applies to all rights contained in the Bill of Rights. It means that Parliament may pass a law limiting rights if it thinks it is 'necessary' regardless of whether it would be sensible and right to do so, in a free and democratic society. This clause on general limitation is found in section 6(5)(c) of the Bill of Rights. However, section 7(1)(a) makes it necessary for the courts to see the Bill of Rights in a way that promotes values that form a democratic society. It also allows the Courts to consider international law, where doing so is relevant.

Internationally, a limitation to a right must meet the requirements of being 'reasonable and justifiable in a free and democratic society'. This means that the limitation must be reasonable (fair and sensible). It must be justifiable (reasoned in accordance with the law). The limitation must also meet the standards acceptable in a free and democratic society. As such, this suggests that the Courts must use this standard to see if it is necessary to limit any right. Since it has not been defined when it is 'necessary' to limit a right in the Constitution, it is up to the Courts to understand and explain what 'necessary' means, so that it is in line with the internationally accepted requirement for limiting a right.

What does this mean?

It means that, for example, even though the Constitution guarantees freedom of speech, expression and publication in the Bill of Rights, if Parliament thinks it necessary, it can pass a law making it illegal to protest in front of the courthouse. Therefore, a citizen's right to the freedom of speech by carrying out a protest can be restricted, even though that right is specifically granted in the Bill of Rights. However, this limitation can be tested by a Court of law to see if

it is in line with the values of a democratic society and in line with international standards being reasonable or justifiable in a democratic society (see section 7 of the Constitution).

SPECIFIC LIMITATIONS

The Bill of Rights contains some limitations that allow for a law to be passed, to limit only a specific right. But, that does not apply to other rights (unlike the general limitation clause which applies to all rights). These 'specific limitation' clauses are found in each individual section in the Bill of Rights.

For example, the right to freedom of expression in section 17(3)(a) and freedom of assembly in section 18(2)(a) are restricted to ensure the 'orderly conduct of elections'. Another example is that the right to freedom of association in section 19(2)(c) is restricted for public office holders such as judges because they are meant to be independent and not biased.

You can only challenge a law that limits a right passed by Parliament after 6 October 2014 (first sitting of first Parliament). You cannot challenge laws limiting your rights that were made between 5 December 2006 and 6 October 2014.

HOW DOES THE BILL OF RIGHTS OPERATE WITH CUSTOMARY LAWS?

Customary law and the Bill of Rights operate alongside each other. However, as the Constitution is the supreme law of Fiji, if there is conflict, the Constitution will apply over any customary law. There is no requirement in the Constitution to recognise customary law when interpreting the Constitution.

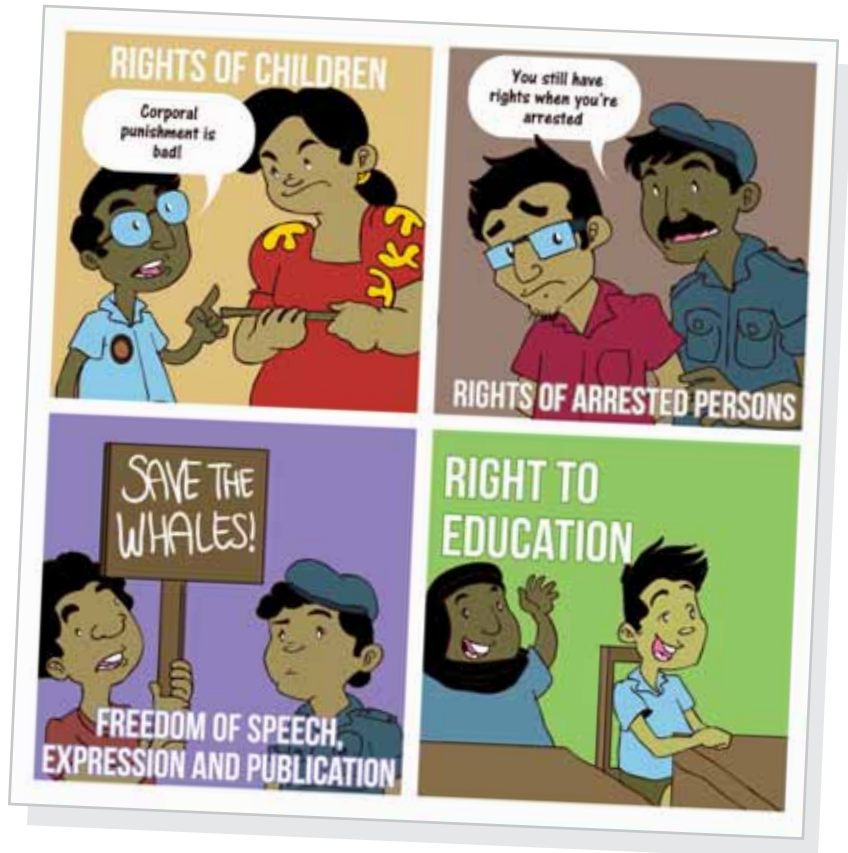
HOW DOES THE BILL OF RIGHTS OPERATE WITH INTERNATIONAL LAWS?

Rights protected in our Bill of Rights originally come from international agreements which guarantee that our rights will stay in place now and in the future. Some of these international agreements are the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).

If there is a need to explain or further understand how a right should apply, the Constitution says that the Courts may look at international law to protect our rights and freedoms (section 7(1(b))). The Courts will look at some of the above-mentioned international agreements and some others to help understand how these rights should apply. So, for example, when looking at limitations to the freedom of speech, expression and publication, the Court may look at what the UDHR and ICCPR say to decide whether these limitations are appropriate and fair in a democratic society.

What Rights are in the Bill of Rights?

Your rights in the Constitution are listed from sections 8 to 42. These are further divided into two broad categories of rights. Sections 8 to 27 relate to civil and political rights and sections 28 to 42 relate to economic, social and cultural rights. However, remember that all these rights are linked to each other. See discussion on page 18.



SECTION 8: RIGHT TO LIFE

Every person has the right to life, and a person must not be **arbitrarily** deprived of life. This means that the State can take human life providing laws and procedures are followed.

ARBITRARILY

Not based on reason or judgment but on personal whim or discretion without regard to rules or standards.

SECTION 9: RIGHT TO PERSONAL LIBERTY

No one can have their personal freedom taken away, or be arrested or put in prison without reason, except when such an action is enforced by law. That can mean carrying out a sentence ordered by a court or if the person is reasonably suspected of having committed an offence.

SECTION 10: FREEDOM FROM SLAVERY, SERVITUDE, FORCED LABOUR & HUMAN TRAFFICKING

A person must not be held in slavery or under someone's control through force (servitude). They must not be made to work against their will by being threatened with punishment (forced labour).

They must not be made to become part of human trafficking (illegal movement of people, usually so they can be used as forced labour or for commercial sexual exploitation). Forms of slavery, servitude and forced labour violate our basic values of human freedom and the freedom to make choices for ourselves. The use of force or intimidation violates a person's right of movement because human freedoms and values and human dignity cannot be bought and used for the benefit of another. However, forced labour does not include labour ordered as part of a court sentence or for someone serving a prison sentence or, labour required from a member of the military as part of their duties.

**SECTION 11:
FREEDOM FROM CRUEL
& DEGRADING TREATMENT**

Everyone has the right to freedom from torture of any kind, whether physical, mental or emotional, and from treatment or punishment that is cruel, inhumane, degrading or too harsh in comparison to the crime.

Everyone has the right to be free from any form of violence from any source, at home, school, and work or in any other place. This means that every person has the right to be free from treatment that is not acceptable because of the kind of suffering, pain, or humiliation it causes.

**SECTION 12:
FREEDOM FROM UNREASONABLE
SEARCH & SEIZURE**

You cannot be searched or have your home or possessions searched or seized unless there is good reason, under the authority of the law.

SEIZURE

A forceful confiscation of something against the will of a person.

**SECTION 13:
RIGHTS OF ARRESTED
& DETAINED PERSONS**

Anyone who is arrested or detained and is accused of committing a crime, at the time of arrest, has the right to be immediately informed about the following, in a language that he or she understands:

- the reason for their arrest or being taken into custody and the charges against them
- to remain silent
- the consequences of not remaining silent
- to speak with a lawyer of their choice in a private place in the place where the person is detained, and to be informed of this right. If the person cannot afford a lawyer, then he or she has the right to a lawyer from the Legal Aid Commission, who will be paid for by the government, in serious and complicated cases
- not to be forced to make a confession or admission that could be used in evidence against the person
- to be kept separately from people who are serving a sentence, if the person is detained and awaiting trial. A child under the age of 18 in the same situation should be kept separately from adults, unless that is not good for the child
- to be brought to a Court within 48 hours or, failing that, as soon as possible, with or without a charge
- at the first court appearance, to be charged or to be informed of the reasons for the detention to continue, or to be released
- to be released on reasonable terms and conditions while they are waiting to be charged or to be put on trial, unless it is in the interests of justice to keep the person in detention
- to challenge the lawfulness of the detention before a court of law. If the detention is found unlawful, then to be released
- to be treated with respect and dignity and to have humane conditions of detention, including at the least, the opportunity to exercise regularly, adequate accommodation, nutrition and medical treatment

- to speak with and be visited by the person's spouse, partner or next-of-kin, and by a religious counsellor or social worker

SECTION 14: RIGHTS OF ACCUSED PERSONS

Every individual charged with committing an offence has the right:

- not to be tried more than once for the same crime
- not to be charged for doing something that was not a crime at the time
- to be thought of as innocent unless proven guilty by a court of law
- to be given reasons for the charge against the person and a detailed and clearly written description of the charge in a language that he or she understands
- to be given enough time and facilities to prepare a defence
- to be informed of the right to defend themselves or be defended by a lawyer of their own choice. If the person cannot afford a lawyer, then he or she has the right to a lawyer from the Legal Aid Commission
- to be informed in advance of the type of evidence the prosecution intends to rely on and to have access to that evidence
- to have a public trial before a court of law
- to have a trial begin and conclude without unreasonable delay
- to be present at his or her own trial, unless the person chooses not to attend despite being summoned by court
- to have the entire court proceedings carried out in a language that the person understands
- to remain silent during the trial, not to testify during the trial, not to be forced to give evidence against themselves in their own trial, and, not to have any kind of conclusions drawn about them that may be negative or harmful, just because they have exercised any of these rights
- not to have illegally obtained evidence used against themselves
- to call their own witnesses and present evidence and to challenge any evidence presented against them
- to be given a copy of the record of the entire court proceedings from the day they first appeared in court including decisions made by the court
- to appeal to, or to a review by a higher court if they are found guilty

Remember that no one right is more important than the other. They all have equal status.

SECTION 15: ACCESS TO COURTS OR TRIBUNALS

- Anyone charged with committing an offence, or who is involved in a civil dispute, has the right to go through a fair trial or proceedings. A trial or proceeding must be held within a reasonable time-frame, before an independent and impartial court or tribunal. All hearings in a court of law and tribunals (other than military courts) must be open to the public unless there is good reason not to. For example, a court or tribunal may stop from hearing any matters related to family or domestic disputes, matters involving children, public morality, personal privacy, national security, public safety or public order.
- Anyone charged with an offence, or party to a civil dispute, as well as a witness in both kinds of proceedings, has the right to give evidence and to be questioned in a language that they are familiar with.
- Anyone charged or a party in a civil dispute has the right to follow the proceedings in a language that they are familiar with including sign language.

- If a child is called as a witness in criminal cases, the child's age must be considered and arrangements must be made for the comfort of the child when giving evidence.
- Those who cannot afford a lawyer and choose to be represented have the right to a lawyer from the Legal Aid Commission, especially in serious cases when justice demands that a person have a lawyer.
- Every person has the right to have access to justice. If a fee is required, the fee must be reasonable enough so that the person's right to have access to justice is not lessened or damaged in anyway.
- If evidence is illegally obtained and weakens or damages any of the rights in the Bill of Rights or any other law, then that evidence cannot be used, unless the interests of justice require it to be used.

**SECTION 16:
EXECUTIVE & ADMINISTRATIVE
JUSTICE**

Everyone has the right to action by public authorities that is lawful, based on reason or logic, proportionate, fair in terms of procedure, and, reasonably timely. This right ensures that public officials take a course of action that is legal and fair when making decisions that affect citizens. For example, if a person wants to build something and cannot get an approval from the authorities, he or she is entitled to receive written reasons for a decision made by a public office. If the decision is made against a person and it affects their rights, the person may challenge that decision in a court or tribunal with those written reasons. Sometimes some decisions made by a public office cannot be challenged depending on what the law says, for example, some Ministers' decisions under certain laws are seen as final and cannot be appealed.

The Constitution specifies that these rights cannot be exercised against a company, and will only apply to actions taken after the first sitting of the elected Parliament under this Constitution, being 6 October 2014. These rights may also be limited by certain laws.

**SECTION 17:
FREEDOM OF SPEECH,
EXPRESSION & PUBLICATION**

Everyone has the freedom of speech, expression, thought, opinion and publication. This includes seeking, receiving and imparting information, knowledge and ideas, including creative expression, academic freedom as well as scientific research.

It also includes the right to communicate political messages to anyone willing to receive them. This includes seeking, receiving and giving out political information and messages, regardless of the form of communication. As such, this can be done by speaking, writing, printing and art. It also extends to symbolic speech. For example, wearing black to show your support for a principle or belief or wearing t-shirts with messages for an open and transparent budget process.



However, this freedom does not include acts that would harm others. For example, shouting 'fire' in a crowded theatre without reason would create chaos. Another example could be advocating for illegal drug use. The Constitution allows this right to be limited in certain circumstances, for example, when it is necessary to do so for the sake of national security, public safety and hate speech (speech that offends, threatens, or insults groups, based on race, colour, religion, national origin, sexual orientation, disability, or other traits).

Limitations are also allowed under the Constitution so that elections can be held in an orderly manner, as well as for maintaining the authority and independence of the Courts, and, for the regulation, registration and conduct of media organisations. This must be read together with the commitment in the Constitution to the creation of a 'true democracy'.

SECTION 18: **FREEDOM OF ASSEMBLY**

The right of individuals to come together as a group, and for them to express, promote, pursue and defend issues of common concern together, is a recognised human, and, political right and civil liberty. The ability to assemble is an important way by which citizens can protest and influence their government and its leaders.

Under the Constitution, this right also includes acts to demonstrate, picket and present petitions. In certain situations, this right is limited, including when it is necessary so that elections can be held properly. This must be read together with the commitment in the Constitution to 'free and fair elections', and the creation of a 'true democracy'.



SECTION 19: **FREEDOM OF ASSOCIATION**

The right to freedom of association is closely associated with freedom of assembly, but focuses more on the freedom to join or leave groups, and for that group being able to work together on those things that its members collectively want. No one can be forced to join or belong to an association if they do not wish to.

Parliament may pass a law limiting the right to freedom of association so that trade unions can be regulated. Trade unions are set up when workers form groups to negotiate working conditions with employers. Laws limiting freedom of association can also be passed to manage essential services and industries, as well as for elections to be held properly. There is nothing that requires these limitations to be regarded as 'necessary'. However, the courts may look at international laws when trying to explain and understand the limitation.

ASSOCIATION

An association is an organisation of people united for a common purpose with a formal structure.

WOMEN'S ASSOCIATION

CHURCH GROUP

RACIAL ORGANISATIONS

YOUTH ORGANISATIONS

MEN'S GROUP

GENDER EQUALITY GROUPS

SECTION 20: EMPLOYMENT RELATIONS

Under this heading, there are a group of related rights:

- (a) Every person has the right to fair employment practices, including proper working conditions and being treated in way that human beings deserve;
- (b) Every employee has the right to form or join a trade union, and take part in the union's activities and programmes;
- (c) Every employer has the right to form or join an employers' organisation, and take part in its activities and programmes;
- (d) Trade unions and employers have the right to bargain as groups.

The Constitution allows for a law to be passed so that these rights are limited. Doing so would mainly be for the purpose of regulating trade unions, essential services and industries, the process of workers forming groups to negotiate working conditions with employers, and, so that elections can be held properly. There is no requirement that these limitations be deemed 'necessary', however the courts may look at international laws when trying to explain and understand the limitation.

Remember that the Bill of Rights must be read together with section 7 of the Constitution.

TRADE UNION

An organised group of employees formed for the purpose of improving working conditions collectively bargaining with their employer(s).

COLLECTIVE BARGAINING

Negotiation of wages and other conditions of employment by a trade union with their employer.

SECTION 21: FREEDOM OF MOVEMENT & RESIDENCE

Everyone has the right to freedom of movement and residence within Fiji. Every citizen has the right to a passport to leave and return to Fiji at any moment. This does not apply to persons charged with or found guilty of a crime or to those who are in Fiji illegally. This right may be limited where it is necessary to do so for holding elections properly and protecting a particular species in a particular environment, amongst other things.

SECTION 22: FREEDOM OF RELIGION, CONSCIENCE & BELIEF

Everyone has the right to freedom of religion, **conscience** and belief. This right includes the freedom to follow one's own religion or belief, either alone or with others and in public or private. Everyone also has the right to observe his or her religion or belief in teaching, practice, worship and practising or fulfilling the requirements of their religion. No one can discriminate against an individual based on their religious beliefs.

CONSCIENCE

A person's moral sense of right and wrong.

The Constitution allows this right to be limited as necessary to protect the rights and freedoms of others, as well as public morality and public nuisance.

SECTION 23: POLITICAL RIGHTS

Every citizen has the freedom to make political choices, and the right to form or join a political party, to take part in the activities of, or get others to join, a political party and campaign for a political party, candidate or cause.



SECRET BALLOT

A method of voting that ensures votes remain confidential, so that the voter is not influenced by any other person, or pressured to vote in a certain way.

REFERENDUM

A direct vote in which the entire population eligible to vote is asked to either accept or reject a particular proposal. This is often in relation to the adoption of a new constitution, an amendment to the constitution, or a law.

The right to vote

Every citizen has the right to free, fair and regular general elections. Every citizen who has reached the age of 18 has the right to vote by **secret ballot** in any election or **referendum** under the Constitution and to be a candidate for public office (a position involving responsibility to the public, especially within the government).

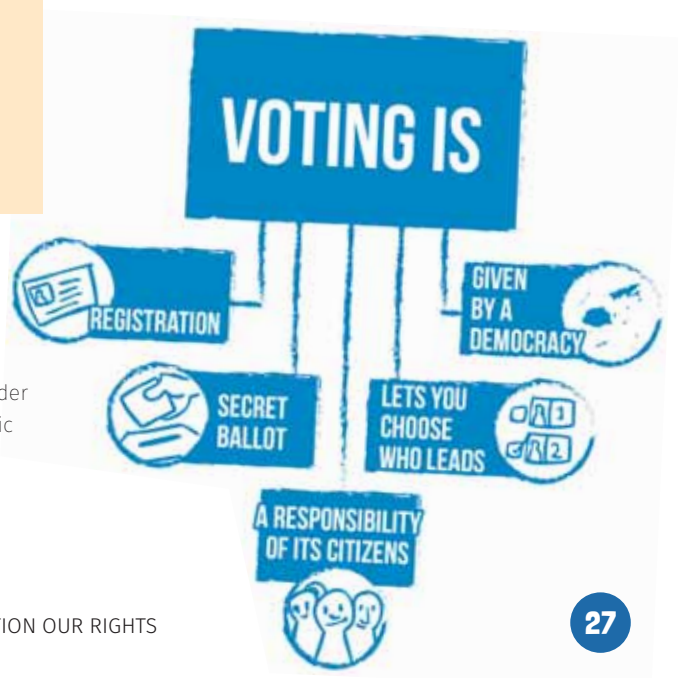
However, under the Constitution, Parliament has the authority to pass a law that limits this right so that the registration of voters and political parties can be regulated or managed. Have a look at sections 52-66 of the Constitution to fully understand how voting processes work and page 41 of this booklet for more information on voting and Parliament.

Why vote?

- Voting is how the citizen takes part in the setting-up of the government through general elections.
- Voting is a valuable civil and political right, because election results are decided by those who take part.
- The legitimacy of a government relies on the fact that it is elected by the people.
- Voting connects citizens with their political process and democracy. Through voting, we choose our leaders, who will make the laws and policies that govern how we live and how the country functions.
- Voting is also involving ourselves in the society that we are a part of.

LEGITIMACY

Acceptability or justification of political power or authority.



SECTION 24:

RIGHT TO PRIVACY

Every person has the right to personal privacy, which includes the right to keep their personal information and communications confidential, as well as, respect for their private and family life. This means that every person has the right to be free from **arbitrary** interference with their privacy, family, home or correspondence - communication between people through letters or email etc. They also have the right to be free from attacks to their honour and reputation. The Constitution allows this right to be limited to the extent necessary.

SECTION 25:

ACCESS TO INFORMATION

Every person has the right to get information held by a public office. The Constitution also provides for people to be able to ask any other person or body for information, if the information is required to exercise or protect any right.

Who is obligated to provide information to the public?

Public bodies such as government agencies and departments must make some information publicly available about their main activities, budgets and policies. In that way, the public knows how public funds are being spent. They can then also take



part in public matters and hold public authorities answerable for their actions and decisions.

However, certain information must be kept private to protect confidentiality, national security or commercial interests. The Constitution allows for access to information to be limited where necessary. Laws may also be passed to control the procedure of getting information from public bodies.

SECTION 26: **RIGHT TO EQUALITY & FREEDOM FROM DISCRIMINATION**

Every person is equal before the law and has the right to equal protection, treatment and benefit of the law. Equality ensures that everyone can fully and equally enjoy all the rights and freedoms recognised in the Bill of Rights.

A person must not be unfairly discriminated against, directly or indirectly because of his or her personal characteristics or circumstances, including race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, disability, age, religion, conscience, marital status or pregnancy; or opinions or beliefs. However, having these opinions and beliefs cannot

involve harm to others and their rights and freedoms.

Section 26(8) further says that some laws or government actions would not be against the right to equality and freedom from discrimination. Specific situations of a law made or action taken by the government are listed, which do not restrict this right and are limitations that can be allowed. Some examples relate to:

- keeping certain people from holding certain public offices
- allowing for a traditional community to own customary land and have access to marine resources
- placing chiefly title or rank upon individuals usually to recognise the traditional structures of indigenous society, or
- preventing certain people from having more privilege or advantage over other people than they should.

GENDER IDENTITY

A person's private sense, and subjective experience, of their own gender, rather than their sex at birth.

SECTION 27:

FREEDOM FROM COMPULSORY OR ARBITRARY ACQUISITION OF PROPERTY

A person cannot have their property or any interest in property taken away without their permission. The only exception to this is when the land is needed by the State for a public purpose (sometimes called the State acquisition of land). This applies to all types of land, including customary and freehold land. It is important for the State to have this authority because it is necessary for the country's development. Land may have to be taken by the State to build roads, bridges, housing and parks. It may also be necessary for other forms of development, such as mining. For the State to take land, it must be authorised by law. The State must also give compensation to the landowner. The amount of compensation depends on what the landowner or occupant agrees to. If an agreement cannot be reached, a court decides what a fair amount is.

To decide on what is a fair amount, the courts look at what the public purpose is, how the owner or occupant came to have or be on the land, the current value of the land, and the interests and difficulties of the people affected by the decision. Although it is not a constitutional requirement for the landowner to willingly agree for the State to take land, in practice, this often happens.

Importantly, a law can only allow the State to take land for a public purpose. If it is not necessary for a public purpose, such as development of the land, not even a law can allow land to be taken away without the willing consent of the landowner. This is a specific limitation

to one's property rights and a good example of when it is necessary for rights to be limited. It is the responsibility of Parliament, the government departments and public decision-makers to ensure that this section is used responsibly and carefully balance the need for development with the rights and interests of landowners. Also, land acquired from customary owners has to be returned to them once it is no longer needed by the State (see section 28 of the Constitution).

COMPULSORY ACQUISITION OF LAND

The ability of governments to get land for a necessary public purpose, without the willing consent of the owner or occupant. Compulsory acquisition of land is a concept often used by governments around the world for all types of land. This is a critical tool to ensure that, among other reasons, land is available for building facilities like roads and bridges etc., or even for creating conservation areas to protect plant and animal life.



Frequently Asked Questions

Q: Can the government take away my land without my permission?

No, except for a necessary public purpose. A written law may give the authority to the State to take any land but only when it is necessary for a public purpose. This is done without the owner's permission but on the basis that the owner will be paid an agreed compensation with little or no delay. If that cannot be agreed on, then a fair compensation is decided by the courts.

The process of consultation or negotiation between the State and land owners or occupants before reaching an agreement to give land is not part of the Constitution. However, it is important for land owners to take part in the negotiations and consultation on issues such as the nature of the public purpose, the selection of land, compensation and other factors that may concern them. It is essential to reach a fair agreement in this case. If land owners or occupants have any objections, then they have the right to have this heard by the courts.

Q: What then happens to my land when the State no longer needs it?

When iTaukei, Rotuman or Banaban land is no longer needed for the public purpose for which it was taken, it will return to its customary land owners. The Constitution is silent on what condition that land is to be returned in, or when it will be returned. This part of the Constitution will become clearer as this section is practised and put into action by the government and decision-makers. A lot is also up to the Courts to give meaning to this section while keeping the democratic rights of citizens in place. Written laws will also explain this further.

Note that the State's authority to acquire land under this section has been the law since the 1970 Constitution and is used in most countries around the world.

SECTION 23: RIGHTS OF OWNERSHIP & PROTECTION OF ITAUKEI, ROTUMAN & BANABAN LANDS

The ownership of all iTaukei, Rotuman and Banaban land will always stay with its customary owners. Ownership cannot be taken away permanently, whether by sale, transfer or exchange. This also means that customary land owners and occupants cannot decide to sell, transfer or exchange their land on their own. Customary land can only be taken by

the State when necessary for a public purpose under section 27 of the Constitution. When land is taken by the State in this way and is no longer required by the State for that public purpose, the land will be returned to the customary land owners.

Remember the discussion under section 27 of the Constitution — If customary land is taken by the State, it must be authorised by a written law. The land can only be taken for a necessary public purpose and the owner will be given an agreed compensation without delay. If an agreement on

the compensation is not reached, a fair and just compensation will be decided by the Courts. Land may be acquired by the State without consent and objections can be reviewed in Court.

CUSTOMARY LAND

Land owned by indigenous communities and managed in accordance with their customs.

FREEHOLD LAND

A freehold ownership in land is the least restricted form of land ownership. It gives the owner the exclusive right to the land for an indefinite period of time, and the owner can sell or lease the land on whatever conditions they like.

SECTION 29: PROTECTION OF OWNERSHIP & INTERESTS IN LAND

All ownership of land, and all rights and interests in land leases and land tenancies that existed immediately before this Constitution came into place, continue to exist under this Constitution. The State makes sure that all land leases and tenancies provide a fair and equal amount of money to the landowner as well as protecting all the rights of all parties. This includes security and protection for however long the land is leased, and fair and reasonable terms and conditions in all lease and tenancy agreements.

In Fiji there are different types of leases for traditional land owned by either mataqali, individuals or families. Leases are mostly managed by the iTaukei Land Trust Board and may be for different purposes such as agricultural (farming of crop/produce), commercial (roads, buildings and forestry), industrial (mining, mills and factories), residential (houses), and tourism (hotels and resorts).

Additionally, all freehold land that existed before this Constitution shall remain freehold, even if it is sold or purchased, unless it is sold to the State or acquired

by the State for a public purpose. Unlike the iTaukei, Rotuman and Banaban lands, there is no responsibility for the State to give freehold property back to the owners when it is no longer needed by the State.

LAND LESSEES OR LAND TENANTS

Either the government, or, those individuals or organisations who have an agreement with landowners to use land for an agreed period of time.

LAND LEASES OR LAND TENANCIES:

These refer to an agreement between government, a person or an organisation and landowners to use land for a set period of time in return for an agreed amount of money paid to the landowners. These leases or agreements expire after the agreed period and may be renewed again upon a further agreement.

SECTION 30: RIGHT OF LANDOWNERS TO FAIR SHARE OF ROYALTIES FOR EXTRACTION OF MINERALS

All minerals in or under any land or water, are owned by the State. However, the owners of any land (whether **customary** or **freehold**), or of any particular registered **customary** fishing rights will have to be paid a fair share of royalties or other money paid to the State for minerals being taken out of the land concerned, or the seabed in the area of those fishing rights.

The Constitution allows Parliament to make laws that help determine what makes for a 'fair share', taking into account several factors. These include, any benefit to owners from mineral exploration and exploitation, the risk of environmental damage, and, whether the State should contribute to a fund to meet the cost of preventing, repairing or compensating for any damage to the environment.



What are
my
Rights
as a
landowner?

MY PROPERTY IS MINE, UNLESS THE STATE NEEDS IT FOR A PUBLIC PURPOSE.

ITAUKEI, ROTUMAN AND BANABAN PEOPLE STILL OWN THEIR CUSTOMARY LANDS, UNLESS THE STATE NEEDS IT FOR A PUBLIC PURPOSE.

THE LAND THAT I OWNED PERSONALLY OR WITH MY COMMUNITY BEFORE THIS CONSTITUTION IS STILL MINE.

LANDOWNERS AND TENANTS GET A FAIR SHARE OF MONEY FROM LEASES. ALL PARTIES' RIGHTS ARE PROTECTED.

ALL MINERALS UNDER ANY LAND OR WATER BELONGS TO THE STATE. IF I OWN THE LAND OR HAVE REGISTERED CUSTOMARY FISHING RIGHTS FOR THAT AREA WHERE THE MINERAL WAS FOUND THEN I'M ENTITLED TO SOME FAIR SHARE OF THE ROYALTIES.



SECTION 31: **RIGHT TO EDUCATION**

Every person has the right to early childhood education, primary and secondary education and further education, depending on the resources that are available and provided by the State. Additionally, the State must aim to achieve free education, and to educate persons who were unable to complete primary and secondary education.

The Constitution also provides that the modern forms of the iTaukei and Fiji Hindi languages as used in conversation (not formally) shall be taught as compulsory subjects in all primary schools.

SECTION 32: **RIGHT TO ECONOMIC PARTICIPATION**

Every person has the right to choose their own work, trade, occupation, profession or other means of earning a living, subject to available resources provided by the State. A law may limit this right to the extent necessary.

SECTION 33: **RIGHT TO WORK & A JUST MINIMUM WAGE**

Every person has the right to work and to a wage level that is protected by law from being too low, subject to available resources provided by the State.

SECTION 34: **RIGHT TO REASONABLE ACCESS TO TRANSPORTATION**

Everyone has the right to have fairly easy access to transportation, subject to available resources provided by the State.

SECTION 35: **RIGHT TO HOUSING & SANITATION**

Everyone has the right to housing, clean drinking water and sewage disposal that is of acceptable quality, subject to available resources provided by the State.

SECTION 36: **RIGHT TO ADEQUATE FOOD & WATER**

Everyone has the right to be free from hunger. They have the right to have enough food to prevent hunger, and, of acceptable quality. They also have the right to have as much clean and safe water as is enough. The State must provide these rights, subject to available resources.

SECTION 37: **RIGHT TO SOCIAL SECURITY SCHEMES**

Every person has the right to schemes that provide financial help to people with little or no help, for their support in times of need, including the right to such support from public resources if they are unable to support themselves and their families. The State must provide for these rights subject to available resources.

SECTION 33: RIGHT TO HEALTH

Every person has the right to health, and to the conditions and facilities necessary to good health, and to health care services, including reproductive health care (care for the diseases, disorders and conditions that affect the functioning of the male and female reproductive systems and well as sexual health). A person must not be denied emergency medical treatment. The State must provide for these rights subject to available resources.

SECTION 39: FREEDOM FROM ARBITRARY EVICTIONS

Every person has the right to freedom from **arbitrary evictions** from his or her home or to have his or her home demolished, without an order of a court made after all the relevant circumstances have been considered. This means that no one can invade your private property or prevent you from accessing your house. The Constitution states that no law may permit arbitrary evictions, however, it is important to be reminded that Parliament may limit any of these if decided that doing so is 'necessary'.

ARBITRARY EVICTIONS

An act by landlord, or a person under their control, which is based on one person's decision and not supported by fair or strong enough cause or reason, and deprives a tenant of occupying, using or enjoying the rented premises.

SECTION 40: ENVIRONMENTAL RIGHTS

Every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations. A law or government action may limit this right to the extent necessary.

SECTION 41: RIGHTS OF CHILDREN

Children's rights are the human rights of children, including their right to be with their parent as well as the basic needs for food, state-paid education everywhere, health care and criminal laws appropriate for the age and development of children. The Constitution specially highlights particular rights like registration at birth, basic needs like food, water, shelter, medication, family, parents having the responsibility to care, and, protection from harm. The Bill of Rights enshrines the principle that what is best for a child should be thought of first in every matter concerning children.

SECTION 42: RIGHTS OF PERSONS WITH DISABILITIES

Persons with disabilities have the same and equal rights compared to persons who are able-bodied. They have the right to be employed, to live independently in the community, to move freely, to vote and to take part in sport and cultural activities. They should also be able to enjoy programs and policies designed to keep people from poverty by helping them manage risks such as unemployment, illness and old age. They also have the right to live in a physical environment where things such as buildings, bridges, walkways and vehicles allow easy access to wheelchairs and other similar aides used by those with disabilities. Braille and other forms of communication should also be made available to make it easier for such individuals to take part just as easily in society, as those people without disabilities. Being able to get justice and choose medical treatments and to enter freely into legal commitments such as buying and selling property, are also rights that people with disabilities must have. To the extent necessary, a law or government action may limit this right.

Remember the discussion on page 20 on how the Bill of Rights operates with International Law.

Frequently Asked Questions

Q: *Why are some of my basic rights subject to available resources?
What does this mean?*

The rights stated from section 31 till 38 are a part of everyone's basic economic and social rights. Everyone has the right to share and fully enjoy all these rights, and the State will need to provide them to everyone equally within due time and the resources it has. However, these rights are expensive for government to put in place and their enjoyment depends a lot on how much money the State has and how much money they can afford to put towards achieving these rights for everyone in their yearly budget. The State will also consider what an urgent need in a community is. For example, your community may need the State to build a primary school for 12 children but your community may also need a proper road for your farmers to be able to take their crops into town to sell them. As it is expensive to build both a road and a school for your community which only has 12 children, the State may decide to build a school in a nearby community so more children from the surrounding communities can also go to school. So the State may build a road for your community instead while building a school in a community near to yours which can cater for all children in surrounding communities. Children in your community can use the new road to easily go to this school and your farmers can take their crops into town. This may be one of the ways in which the State may choose to use its available resources to cater for everyone's basic rights. The Constitution guarantees that the State will continuously take steps to provide these rights over time within their means

SECTION 43: **LIMITATION OF RIGHTS UNDER STATES OF EMERGENCY**

In a state of emergency, all rights (other than a few listed ones) may be limited only to the extent 'strictly necessary and required by the emergency', and in keeping with Fiji's international law obligations.

SECTION 44: **ENFORCEMENT**

Any person that has had their rights contravened under this Bill of Rights can apply to the High Court to have that corrected.



SECTION 45:

HUMAN RIGHTS & ANTI-DISCRIMINATION COMMISSION

The Human Rights and Anti-Discrimination Commission (HRADC) is responsible for working to have human rights in public and private bodies protected, complied with, as well as respected. The HRADC educates monitors, investigates and reports on human rights issues. They are able to make recommendations to the government concerning matters affecting rights and freedoms and monitor whether the State is keeping its human rights obligations. They can also receive and investigate complaints from the public about human rights abuses.

The Commission was established under the Human Rights Commission Decree of 2009 and is responsible for playing a lead role in the protection and promotion of human rights so that the human rights culture can be strengthened in Fiji. The Human Rights Commission Decree of 2009 further empowers the Commission to investigate allegations of human rights violations and unfair discrimination matters.

***See contact information for the Legal Aid Commission and the Fiji Human Rights and Anti-Discrimination Commission**

Frequently Asked Questions

Q: *What can I do if my rights have been violated?*

A person whose rights have been violated can seek legal advice and apply to the High Court to uphold the Bill of Rights. A person is also able to report an abuse of rights to the Human Rights and Anti-Discrimination Commission (HRADC). The HRADC has a special responsibility to investigate human rights concerns and can apply to the courts for redress.*

Structure of the State: Separation of Powers

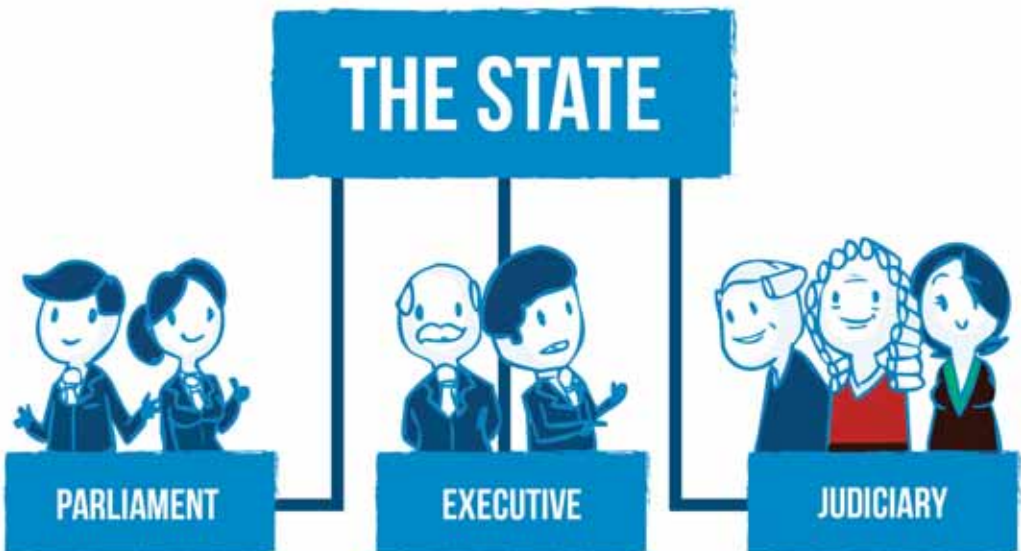
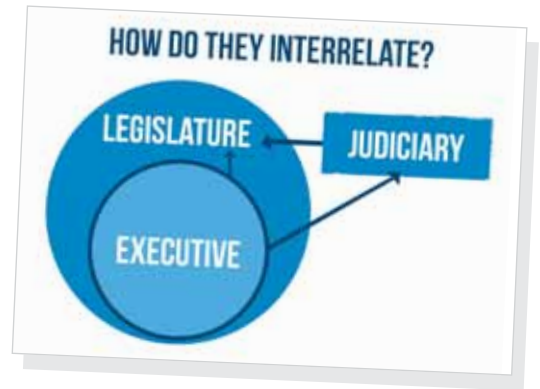
How does the State work?

As with most modern States, the political authority or power in Fiji is held by the State. This power is distributed by the State into three independent branches or arms — **the legislature, the executive and the judiciary**. Each of these arms has a limited amount of power and keeps the other arms in check. Such a structure ensures that the use of political power is balanced. These three arms must be separate and must act independently to ensure public resources are used wisely and that the best possible processes are in place for making decisions (good governance). This concept is called the 'separation of powers'.

Separation of powers refers to the three arms of State and their individual responsibilities, so that any one branch does not carry out the functions of another. If that does happen, it may amount to an abuse of power. Separation of powers prevents too much power placed in any one of these arms.

The three arms of the State are:

- **The Legislature:** responsible for making the laws and public policy of the State (the Parliament)
- **The Executive:** responsible for putting laws in place and managing the public policy made by the legislature (the Government).
- **The Judiciary:** responsible for interpreting the constitution and laws and applying their interpretations to disputes brought before it (courts of law).



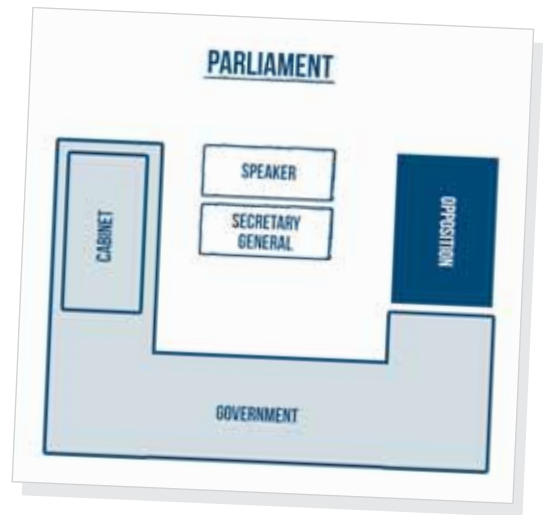
The Legislature: Parliament

WHO MAKES THE LAWS IN FIJI?

The authority and power to make laws in Fiji is placed with Parliament. No person or body other than Parliament has the authority to make laws. Parliament includes members of Cabinet (or government) and Opposition.

WHAT IS THE PARLIAMENT UNDER THE CONSTITUTION?

- It is a 50-member body whose purpose is to put forward and approve the laws of Fiji.
- Its members are elected from one national **constituency**.
- Parliament has a four year term unless dissolved after at least three and a half years by the President on the advice of the Prime Minister. Parliament is chaired by a Speaker who is not a member of Parliament. However, he or she is elected by Parliament. A session of Parliament may not begin, or continue, unless at least one-third of the members of Parliament are present.



CONSTITUENCY

A group of voters in a specified area who elect a representative to a legislative body.



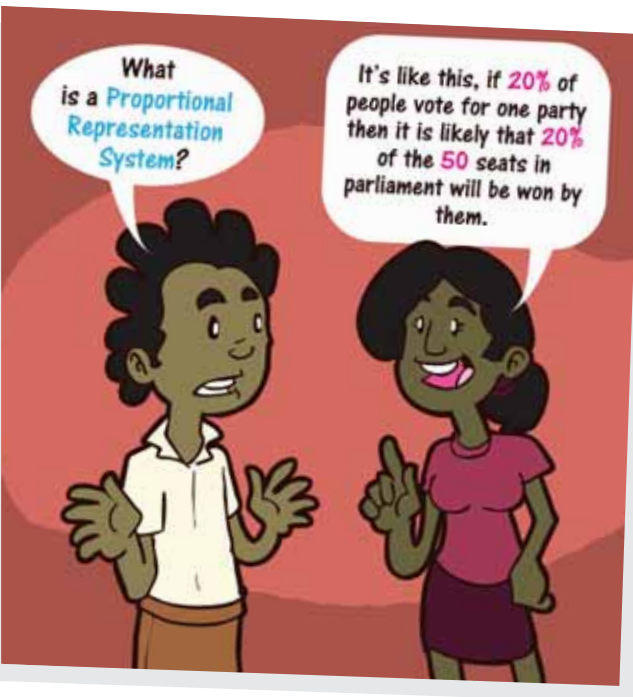
- Parliament cannot vote on a Bill (a proposed law) unless a majority of the members of Parliament are present.
- Also, Parliament may give force to international treaties on behalf of Fiji by passing laws giving effect to the treaty. International treaties or conventions will only bind the State after an approval by Parliament.

WHAT DOES A PROPORTIONAL REPRESENTATION SYSTEM MEAN?

It means that each of the 50 elected members of Parliament will represent and serve the interests of every citizen of Fiji, regardless of ethnicity, region, division, province or district. This means that members of Parliament no longer represent only a certain group of people. Rather, each member now serves all Fijians.

This is a very different system from the communal constituency system in previous elections. In those systems, citizens registered for voting as ethnic Fijians, Indo-Fijians, Rotumans or General Electors

(Europeans, Chinese, Banaban Islanders, and citizens of other ethnicities). They could only vote for a candidate of their own ethnic groups, in constituencies (voter groups) that had been reserved by ethnicity.



ELECTION OF MEMBERS OF PARLIAMENT

Members of Parliament are elected by secret ballot in free and fair elections run by the Electoral Commission (see section 52 of the Constitution). In each general election, candidates will get seats in Parliament in proportion to the total number of votes that each political party gets. So the more votes the candidate gets the more chances they have of winning a seat in Parliament. The political party with the highest number of votes then forms

government. Therefore, the total number of votes for each candidate of that political party and the total number of votes for each independent candidate determine the seats in Parliament.

SECRET BALLOT

A method of voting that ensures votes remain confidential, so that the voter is not influenced by any other person, or pressured to vote in a certain way.

WHO CAN VOTE IN THE GENERAL ELECTIONS?

Section 55 of the Constitution states that Fijian citizens 18 years and over may register to vote except for those: (i) serving a prison sentence of 12 months or longer; (ii) of unsound mind; or (iii) disqualified for an election offence (see section 23 of the Constitution).

CAN I VOTE IF I AM OUTSIDE FIJI?

Yes. A citizen of Fiji, who is not a resident of Fiji or is not present in Fiji on the day of the elections, but holds a valid Fijian passport, is entitled to vote too. Guidelines for this may be provided in any written law governing elections (section 55(5)(b) of the Constitution).

WHO CAN STAND FOR GENERAL ELECTION?

All those nominated by a registered party or nominated as independent candidates may stand for elections if they meet the following conditions outlined in section 56 of the Constitution:

- is a Fiji citizen, but does not hold dual citizenship;
- is a registered voter;
- lives in Fiji, but also must have lived in Fiji for two years prior to being nominated;
- is not an undisclosed bankrupt;

- is not a public officer at the time of nomination as a candidate (see section 57 of the Constitution);
- is not a member of the Electoral Commission for four years prior to being nominated;
- is not serving a term of imprisonment when nominated;
- has not been convicted for an offence with a maximum penalty of 12 months imprisonment or more in the eight years prior to being nominated; and
- has not been found guilty of breaking a law relating to elections, registration of political parties, or registration of voters.

The Electoral Decree 2014 is the law that provides rules and guidelines for elections and further elaborates on s 56 of the Constitution.

WHO SUPERVISES ELECTIONS?

The Electoral Commission is responsible for registering voters and conducting free and fair elections. The Commission and its functions are governed by the Electoral Decree 2014.

Section 72 of the Constitution establishes specific responsibilities of the Commission:

- the registration of citizens as voters, and the regular revision of the Register of Voters;
- voter education;
- the registration of candidates for election;
- the settlement of electoral disputes; and
- monitoring and enforcing compliance with any written law governing elections and political parties.

The Electoral Commission is made up of a chairperson with the same qualification and experience to become a judge, and six other members appointed by the President, on the advice of the Constitutional Offices Commission.

Additionally, the Supervisor of Elections, acting under the direction of the Electoral Commission, looks after the registration of voters and manages the elections.

WHAT ARE THE ROLES OF THE SPEAKER AND THE DEPUTY SPEAKER?

The Speaker chairs every session of Parliament, and makes sure that members of Parliament obey the rules and follow the correct procedures. The Deputy Speaker must perform the duties of Speaker if the Speaker is absent or is unable to perform those duties.

HOW ARE THE SPEAKER & DEPUTY SPEAKER OF PARLIAMENT ELECTED?

Parliament meets for the first time no later than 14 days after election results have been announced (section 67 of the Constitution). At this first sitting, members of Parliament elect a Speaker. A Speaker is not a member of Parliament, but is qualified to be a candidate for the general elections as a member of Parliament. Whoever gets the most votes shall be elected to the position. A Deputy Speaker must also be voted in from amongst the members of Parliament (section 77 of the Constitution).

WHAT IS THE ROLE OF THE LEADER OF THE OPPOSITION?

In parliamentary systems such as ours, the position of Leader of the Opposition is very important in providing criticism to the government that has both positive and negative comments but is valid and well thought out, regarding the government's policies and law. He or she has a vital role in ensuring that Parliament gets answers from the government for its actions so that government is accountable. The Leader of the Opposition is a person elected by the members of Parliament who do not belong to, or, support the Prime Minister's political party (see section 78 of the Constitution).

Under the current Constitution, the scope of the Leader of the Opposition's role is reduced. Under the 1997 Constitution, the Leader of the Opposition was asked for his/her advice, where selections and appointments were to be made to the Senate, the independent commissions and offices, as well as the offices of the Chief Justice and other judges.

However, the current Constitution removes the Senate, which used to be the second and 'Upper' House of Parliament under the 1997 Constitution. This has left Parliament with a single House, causing changes to the Leader of Opposition's functions.

In this Constitution, the Leader of the Opposition functions as a member of the Constitutional Offices Commission (COC), and is responsible for formally suggesting the appointment of another member of the COC. As part of the COC, the Leader of Opposition also gives advice to the President concerning the appointments of ten other public officers (see section 133 of the Constitution for the functions of the COC and the list of public officers). Further, the Leader of Opposition formally puts forward a candidate's name for Parliament to consider electing as President.

Opposition members of Parliament vote to elect the Leader of the Opposition. However if they cannot agree, there is no procedure to find a solution to this problem and the Office simply remains vacant until the majority members of Parliament write to the Speaker requesting a new set of names to be put forward for a new Leader of Opposition (section 78(3) of the Constitution).

ACCOUNTABLE

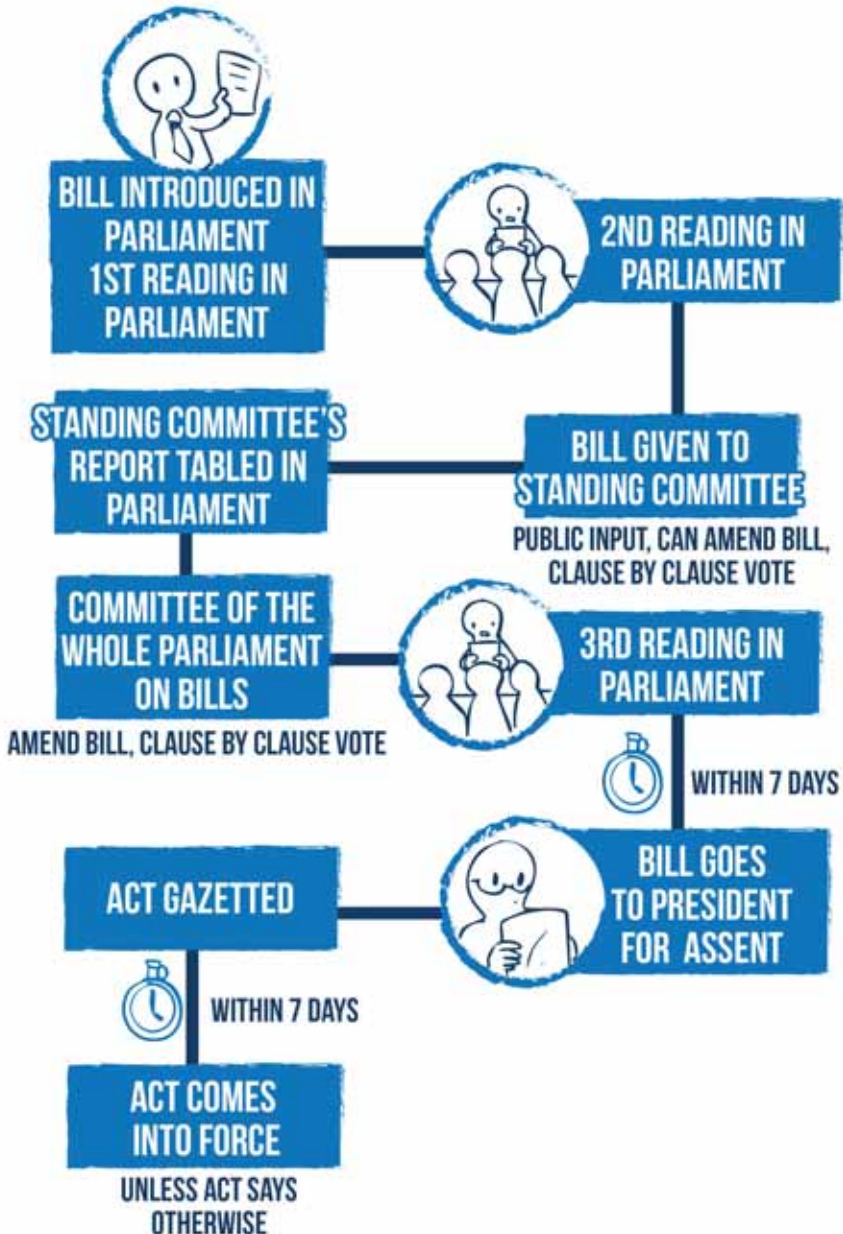
The obligation of an individual or an organisation to be responsible for its activities and to disclose their results of these activities, in a transparent manner.

HOW ARE LAWS CREATED?

1. A member of Parliament introduces a proposed Bill in Parliament.
2. The proposed Bill is discussed and amended, as the case may be, by the members of Parliament.
3. If the proposed Bill is passed by Parliament, the Speaker must present it to the President to express an agreement with the Bill.
4. Within seven days after receiving the Bill, the President must express his or her agreement. If the President does not do so within the period set out above, it will be thought that the President has agreed once the period has expired.

HOW DO LAWS COME INTO FORCE?

Within seven days after a Bill has been agreed to by the President, the Attorney-General must publish the Bill in the "Government of Fiji Gazette" as an "Act of Parliament". The Bill, which then becomes an Act of Parliament (or more commonly known as an Act) will come into force on a date provided for in the Act. If the Act does not set a date or does not provide for when a date will be set, it will come into force on the seventh day after its publication in the Gazette (section 49 of the Constitution).



The Executive: the Administrative arm of Government

In Fiji, the executive arm of the State In Fiji, the executive arm of the State is headed by the President. It includes the Prime Minister, who is the head of Government, his or her cabinet of ministers and the Attorney-General as well as all the ministries that report to cabinet ministers. Together, they make up the executive arm of the State. The main role of the executive is to manage the business of governing on a day-to-day basis. It usually develops proposals for laws, enforces the laws written and approved by Parliament as well as budget allocations for government income and expenditure and tax proposals, which are raised as revenue from public funds for government spending.

Members of Opposition, cabinet ministers and backbenchers, do not form part of the Government, in this sense. Together with the members of Cabinet, they form Parliament.

WHO HEADS THE EXECUTIVE POWER?

The Constitution states that the President is the Head of State and has the 'executive authority of the State' (section 81 of the Constitution).

EXECUTIVE

Executive means the arm of the State that is responsible for implementing and enforcing the laws written by Parliament. The President is the head of the executive and has executive authority or power in this regard and, to that end, appoints the Ministers of the Cabinet.



WHAT IS THE ROLE OF THE PRESIDENT UNDER THE CONSTITUTION?

Among all the public representatives of Fiji such as members of Parliament, Cabinet ministers, municipal councillors etc., the President is the chief public representative of Fiji. The President is mainly responsible for carrying out the powers of the executive arm of the State, but cannot act on his own. Instead, he must act on the advice of the Cabinet or a Minister in exercising this authority (section 82 of the Constitution). The President also has a symbolic role and performs the ceremonial functions and responsibilities as the Commander-in-Chief of the Republic of Fiji Military Forces and has the duty to annually present the government's speech on its programs and policies to Parliament.

HOW IS THE PRESIDENT ELECTED & FOR HOW LONG?

The President is elected by Parliament. The Prime Minister and the Leader of the Opposition each put forward the name of a person for the position and Parliament then votes on the two nominees. The nominee that gets the majority vote is appointed (section 84 of the Constitution). The President may serve two 3-year terms (section 85 of the Constitution).

CAN THE PRESIDENT BE REMOVED FROM OFFICE?

The President can only be removed for inability to perform presidential functions or misbehaviour. If the removal of the President is questionable, then an investigation must be started by the Prime Minister and carried out by a tribunal or medical board appointed by the Chief Justice (section 89 of the Constitution). The tribunal or medical board then advises the Parliament in making the decision to remove the President. The report of the tribunal and recommendations by the medical board are made public.

WHAT HAPPENS WHERE THERE IS NO PRESIDENT?

If the President is absent from duty or from Fiji or is, for any other reason, unable to carry out the functions of the President or if the office of the President becomes vacant for any reason, then the functions of the President are performed by the Chief Justice (section 88 of the Constitution).

WHAT IS A CABINET?

Cabinet is the committee of senior ministers in chosen by the Prime Minister to form part of Parliament. These ministers are accountable individually and collectively to Parliament for the exercise of their powers and for the performance of their individual roles. Every minister of Cabinet is assigned a portfolio, for example, Minister for Education. The Minister for Education is responsible for policy implementation to answer any question concerning education in Parliament, or otherwise.

Every minister must also provide regular reports about their Ministries and Departments (section 91 of the Constitution). The Prime Minister is part of Cabinet and is its chairperson.



COMPOSITION OF THE CABINET

There can be as many Ministers as seen necessary by the Prime Minister, who is chairperson of Cabinet. Due to changing circumstances such as resignations from Parliament and changing positions, there are currently 14 Ministers who were appointed by the Prime Minister and form Cabinet. They each have one or more portfolios under their administration.

The Attorney-General is a member of Cabinet and acts as the chief legal adviser of the Executive. He or she takes part as a Minister in Parliament but under section 96(4) he or she is cannot vote on matters in Parliament as the Attorney-General alone. However, if the Attorney-General also holds a ministerial portfolio, he or she is able to vote on matters in Parliament in their capacity as a Minister.

HOW ARE THESE MINISTERS APPOINTED?

After the Prime Minister chooses the Ministers to form Cabinet, they then swear an oath or affirmation of allegiance to the State and their prospective office. In doing so, the Ministers make a promise to be faithful to the State and to the position they will hold. The ceremony is carried out by the President. They then continue to be the Ministers under the portfolio until the Prime Minister removes them; they do not qualify to be members of Parliament (for example, through misconduct or illness); or through resignation. When this occurs, the Prime Minister can appoint an Acting Minister in the Minister's place (section 95 of the Constitution).

PRIME MINISTER

The Prime Minister is the head of Government and keeps the President informed about the issues related to the governance of Fiji. The Prime Minister has considerable powers under the Constitution. Some examples include:

- appoints and dismisses Ministers and gives them their titles, portfolios and responsibilities;
- advises the President on appointments of all 'independent' offices (except the Solicitor-General)

through the Constitutional Offices Commission, which is chaired by the Prime Minister (section 133 of the Constitution);

- advises the President on the appointment of members and the chairperson of 'independent' commissions such as the Human Rights and Anti-Discrimination Commission, the Public Service Commission and the Electoral Commission (section 133 of the Constitution);
- begins the process for the removal of 'independent' offices (by establishing a tribunal or medical board) through the Constitutional Offices Commission, chaired by the Prime Minister (section 137 of the Constitution);
- appoints and removes as many Ministers as desired (including the Attorney-General) (section 92 of the Constitution);
- sets the salary for the Chief Justice and President of the Court of Appeal, the Electoral Commission, the Human Rights and Anti-Discrimination Commission and the Public Service Commission, by providing advice to the President either directly or through the Constitutional Offices Commission (sections 113 and 136 of the Constitution);
- begins the process for the removal of the Chief Justice and President of the Court of Appeal by providing advice to the President that the question of removal should be investigated. A tribunal or medical board, appointed by the President on advice of the Prime Minister, is then established to hear the matter (section 111 of the Constitution).

APPOINTING THE PRIME MINISTER

(Section 93 of the 2013 Constitution)

- The Prime Minister must be a member of Parliament;
- The leader of the one political party who has won more than 50% of the total number of seats;
- If no political party wins more than 50% of the total seats, then at the first meeting of Parliament, the Speaker will call for nominations from members of Parliament and if only one person is nominated and seconded, then that person takes up the office of the Prime Minister;

- If more than one person is nominated and seconded then, the Speaker conducts a vote as below:
 - * After the first vote, the nominee who has more than 50% of the vote assumes office as the Prime Minister.
 - * If there is no clear majority after the first vote, then a second vote is held within 24 hours of the first vote and if a nominee has more than 50% of the votes then he or she assumes office as the Prime Minister.
 - * If again there is no clear majority, then a third vote is held within 24 hours of the second vote and if a nominee has more than 50% of the votes then he or she assumes office as the Prime Minister.
 - * If after the third vote, no nominee gets more than 50% of the votes then the Speaker will inform the President in writing that Parliament has been unable to appoint a Prime Minister. The President, within 24 hours of the notice, will dissolve Parliament and issue a writ for general elections to take place as the Constitutions directs.

REMUNERATIONS

Salaries, allowances and benefits for the President, Prime Minister, and other Ministers, the Leader of Opposition, the Speaker, the Deputy Speaker of Parliament and all members of Parliament are stated in a written law (see section 80 of the Constitution).

ATTORNEY-GENERAL

The Attorney-General is the chief legal adviser to the government in accordance with section 96 of the Constitution. The Attorney-General must be admitted as a legal practitioner in Fiji and must have not less than 15 years post-admission practice as a legal practitioner whether in Fiji or abroad and must not have been found guilty of any disciplinary proceeding involving legal practitioners whether in Fiji or abroad.

The Attorney-General is entitled to take part in Cabinet as a Minister, and to sit in Parliament, provided however that he or she shall not be able to vote in Parliament.



The Judiciary: Courts

Judicial authority, that is, Fiji's justice system, is entrusted in the Supreme Court, the Court of Appeal, the High Court and the Magistrates Court. Judicial authority resolves disputes over criminal, civil and constitutional matters. In the process, it applies, interprets and develops the law. It also plays important roles in relation to the **accountability** of the Parliament and the Executive. In applying and interpreting the Constitution, judges act as guardians of that supreme law and the rule of law.

COURTS IN FIJI

The Chief Justice heads the Supreme Court and is a member of the High Court. The Court of Appeal is headed by a judge appointed as its President. The High Court hears the most serious criminal, civil and constitutional cases. It also supervises the Magistrates Courts, which handles less serious criminal and civil cases, and can make decisions on issues related to the constitution that arise in such cases, subject to **appeal** to the High Court. Usually a case can be appealed from the High Court to the Court of Appeal and then to the Supreme Court, which has the final say in interpreting the Constitution.

SUPREME COURT

The Supreme Court consists of the Chief Justice, who is the President of the Supreme Court and other judges appointed as judges of the Supreme Court. The Supreme Court alone has the power to make decisions on **appeals** from all final judgments of the Court of Appeal. It has original jurisdiction on any questions relating to the Constitution. Decisions of the Supreme Court are binding on all other courts however the Supreme Court may review any of its own decisions (section 98 of the Constitution).

APPEAL

A request to a higher court (appellate court) for a reversal or modification of a decision of a lower court.



COURT OF APPEAL

The Court of Appeal consists of the President of the Court of Appeal and other judges who are appointed as Justices of Appeal. The Court of Appeal has the power to resolve **appeals** from

all judgments of the High Court. Final judgements from the High Court involving matters related to the Constitution and its interpretation can be appealed to the Court of Appeal by right, which means that the Court of Appeal will not first assess whether there are good grounds for an appeal in a constitutional matter (section 99 of the Constitution).

HIGH COURT

The High Court consists of the Chief Justice, other Judges of the High Court, Masters of the High Court and the Chief Registrar of the High Court. The High Court has unlimited original jurisdiction to resolve any civil or criminal cases under any law. Also, the High Court has original jurisdiction in any matter involving the interpretation of the Constitution, to hear appeals and to supervise any civil or criminal matters before the lower courts (section 100 of the Constitution).

ORIGINAL JURISDICTION

The first court a matter is able to be heard before. A matter has to be decided by the court with original jurisdiction before the decision of this court can be appealed to a higher court.

MAGISTRATES COURT

The Magistrates Court is made up of the Chief Magistrate and Magistrates as appointed by the Judicial Services Commission. The Magistrates Courts' jurisdiction and powers are given to it by a written law (section 101 of the Constitution).

JUDICIAL SERVICES COMMISSION

The Judicial Services Commission is made up of the Chief Justice, as the chairperson, the President of the Court of Appeal, the Permanent Secretary responsible for justice, a legal practitioner and a

non-legal practitioner. The Chief Registrar is the Secretary of the Commission.

The Commission may investigate complaints about judicial officers and is responsible for promoting programs for the continuing education and training of Judges and judicial officers, and to make sure the Judiciary functions efficiently (section 104 of the Constitution).

One person may hold more than one role. Powers of each role are independent from the others.

WHO CAN BE A JUDGE?

The appointment to a judicial office is guided by the principle that judicial officers should be of the highest capability and have strong moral principles and character. A person qualifies for appointment as a judge if he or she holds, or has held a high judicial office in Fiji or in another country prescribed by law; or, if he or she has had at least 15 years of post-admission practice as a legal practitioner in Fiji or in another country prescribed by law. He or she has not been found guilty of any disciplinary action involving legal practitioners whether in Fiji or abroad (section 105 of the 2013 Constitution).

WHO APPOINTS THE JUDGES?

The Chief Justice and the President of the Court of Appeal are appointed by the President on the advice of the Prime Minister following consultation with the Attorney-General. The Judges of the Supreme Court, the Judges of the Court of Appeal and the Judges of the High Court are appointed by the President on the recommendation of the Judicial Services Commission following consultation with the Attorney-General (section 106 of the Constitution).

HOW LONG CAN A JUDGE SERVE ON THE BENCH FOR?

A person who is not a citizen of Fiji and who is appointed to be a judge in Fiji serves for a period of not more than three years and may qualify to be re-appointed as determined by the Judicial Services Commission.

Any other appointment as a judge continues until the judge reaches retirement age. This is referred to as **life tenure** and is important because it is seen to safeguard the independence of the judiciary, as it allows judges to decide cases according to the rule of law, and not be subject to external pressures that are political in nature.

The retirement age for the Chief Justice, President of the Court of Appeal, Judges of the Supreme Court and Justices of Appeal is 75, and for the Judges of the High Court, at the age of 70. A person who retired as a Judge of the High Court, but has not reached the age of 75, is eligible for appointment as a Judge of the Supreme Court or as a Justice of Appeal (section 110 of the Constitution).

LIFE TENURE

A term of office that lasts for the office-holder's lifetime, or a mandatory retirement age at a specified age, unless the office-holder is removed from office due to extraordinary circumstances or chooses to resign.

CAN JUDGES BE REMOVED?

Yes. The Chief Justice, the President of the Court of Appeal and any other judicial officers appointed by the Judicial Services Commission may be removed from office by the President, for inability to perform the functions of his or her office (whether this is due to mental or physical illness or any other cause) or for misbehaviour, and may not otherwise be removed.

When removing the Chief Justice or the President of the Court of Appeal, the President starts an investigation so that he is satisfied of the reason for the removal. The Prime Minister advises the President during the investigation. The President then sets up a tribunal or medical board that will carry out the actual investigation. The tribunal or medical board then advises the President as part of the decision making process, suggesting recommendations in a report, which are then made public.

A similar procedure applies to the removal of Judges, Magistrates, and other judicial officers appointed by the Judicial Services Commission. However, instead of the advice of the Prime Minister, the President acts on the advice of the Commission (sections 111 and 112 of the Constitution).

Frequently Asked Questions

Q: What is the role of the judiciary?

The role of the judiciary is to decide on criminal, civil and constitutional matters. Criminal law involves the State prosecuting a person for an act that has been classified as a crime. In civil cases, individuals and organisations seek to resolve legal disputes. In addition to these functions, the judiciary must apply, explain the meaning of, and, develop the law that is passed by Parliament. The judiciary also oversees the functions of the other arms of government – the executive and the legislative – and makes sure they carry out their roles and functions well, according to the law (accountability). The judiciary makes sure the Constitution is followed while they perform this primary function.

Q: Why must the judiciary be independent?

To perform its role in a democracy, the judiciary should not be influenced by outside elements such as the executive and legislative, politics, media, personal interests, and other lawyers and judges. The judiciary must strictly look at relevant facts and the law to decide on cases. They must uphold the Constitution and the rule of law so that their decisions are always based on the same principles. When this happens, citizens are able to have faith in the judiciary's constitutional duty to provide just and fair decisions, regardless of who the decision affects.

Q: How does the independence of the judiciary work within the separation of powers?

So that citizens are protected from any unfair acts of government, the judiciary must be independent of the executive and the legislative arms, as well as its various departments and organisations. This is how the judiciary fulfils its role of making sure the other arms are accountable for their acts and conduct. The judiciary has this particular power over the other two powers, based on the theory of the separation of powers. This means that the executive and the legislative arms of government should not interfere with how the judiciary works. If government and a constitution protect the independence of the judiciary, then the judiciary will be free to decide cases based on merit and not through external influences.

A judiciary should try to retain a majority of judges who have the guarantee of a lifetime of employment or till a retirement age. This will help promote the independence of the judiciary, protect the development of the law in Fiji over a longer period of time and is suited to the people it serves. Although the executive arm of government consults with Parliament when it appoints members of the judiciary, the judiciary should be independent of both the executive and Parliament when exercising judicial powers.

With regards to amendments or changes to the Constitution, only Parliament (which is the body that has the power to make laws) has the power to do so but only if it has the support of a great majority of 75% of members of Parliament and registered voters, which is extremely difficult to achieve. The judiciary can only rule that a law is invalid if that law is not in line with the Constitution. By comparison, in the 1997 Constitution, the judiciary had the power to suggest changes to any part of the Constitution that might have been against democratic principles.

NOTE: Section 97 (2) of the Constitution states that the courts and all judicial officers are independent of the legislative and executive branches of Government, and are subject only to this Constitution and the law, which they must apply without fear, favour or prejudice. Whereas in the 1997 Constitution, section 118 stated that the judges of the State are independent of the legislative and executive branches of government.

Ensuring Ethical, Accountable & Transparent Government

Constitutional Institutions

A democratic government gets its powers and resources from the people who elected it. That means that government must be accountable and give answers to the people for its actions and decisions and show how their powers and resources are being used. A clear example of this is when members of Parliament question government. They ask government to explain their acts and or policies to govern the nation.

As discussed above, the three arms of government need to have measures in place that provide for checks and balances for their actions. This is needed to ensure that the government carries out its actions according to rules and standards, provides answers to the people for its actions and that whatever it does can be clearly seen and understood by the people. The separation of powers requires that the executive, legislative and judicial branches of government are each responsible for preventing abuse of power by the other two branches. Due to this requirement, the Constitution provides for various independent bodies, some old and others that have been recently created, to watch the actions of these arms of government. Acting like 'watchdogs', these bodies are independent and do not lean towards or against any one, when carrying out their official duties. Each of these bodies has its own rules and is designed to expose incompetence, corruption and violations of human rights by the State and its agents.

Some institutions like the Human Rights and Anti-Discrimination Commission and the Constitutional Offices Commission were recently revamped, with new members heading the organisation. In other cases, for example, the Office of the Auditor-General once again has the Auditor-General's Reports being tabled in Parliament. These reports are now examined by the Public Accounts Committee in Parliament. On the other hand, the Accountability and Transparency Commission is yet to be set up by government and a time-line for its establishment has not been set. This means that the important function the Commission serves will only be clear once government decides what role the Commission will have the authority to carry out. Much of the uncertainty around the establishment of these institutions could have been avoided if a timetable had been provided by the Constitution for the setting up of the independent institutions that it provides for.

The Constitution also keeps many existing laws and decrees in force, that, in different ways are not in line with the Constitution. This provides for these laws and decrees to be superior to the Constitution until they are changed or removed by Parliament, as the Constitution does not allow the Courts to hear challenges to the decrees put into force between 2006 and 2014. This is different from the 'non-negotiable' principles of 'good governance' and 'true democracy'. Based on these principles, these public institutions make sure that government's actions are clearly seen and understood by everyone, especially where the public may want answers for government's actions.

This Chapter focuses on the independent public bodies created by the Constitution. It looks at how these bodies watch over how other government departments and bodies do their work, so that:

- the State follows democratic standards and principles (ethics),
- that the State’s actions and decisions are open to the public (transparent), and
- that it provides answers to the public for its actions (accountable).

INSTITUTIONS RESPONSIBLE FOR ENSURING GOOD GOVERNANCE	INDEPENDENT LEGAL INSTITUTIONS	INSTITUTIONS RESPONSIBLE FOR PROVIDING STATE SERVICES
<i>Fiji Independent Commission Against Corruption</i>	<i>Office of the Solicitor-General</i>	1. PUBLIC SERVICE
<i>Human Rights & Anti-Discrimination Commission</i>	<i>Office of the Director of Public Prosecutions</i>	<i>Permanent Secretaries Public Service Commission</i>
<i>Accountability & Transparency Commission</i>	<i>Legal Aid Commission</i>	2. DISCIPLINED FORCE
<i>Code of Conduct</i>		<i>Fiji Police Force</i>
<i>Office of the Auditor-General</i>		<i>Republic of Fiji Military Forces</i>
		3. CONSTITUTIONAL OFFICES COMMISSION

INSTITUTIONS RESPONSIBLE FOR ENSURING GOOD GOVERNANCE

The institutions named in this section are directly responsible to make sure that government departments and bodies use the best possible processes in making decisions and putting them into action. The Fiji Independent Commission Against Corruption is responsible for prosecuting staff employed in public bodies for acts of corruption and bribery. The Human Rights and Anti-Discrimination Commission is responsible for making sure that people and organisations are aware of human rights and its principles and are abiding by those rights listed in the Bill of Rights. Although the Accountability and Transparency Commission has not been created yet, it is responsible for making sure permanent secretaries answer for their actions especially when there is a complaint against them. The Accountability and Transparency Commission will check whether government departments and offices comply with the Code of Conduct. The Office of the Auditor-General must provide an annual report to Parliament,

with detailed checks on how the government has been spending public funds. The bodies named in this section are independent, that is, they are not controlled or influenced by the government. That allows them to ensure that other departments and bodies provide answers for their actions and that these share information with public on their actions.

GOOD GOVERNANCE

Good governance is about the process of making and implementing decisions in political, traditional and organisational settings. Good governance emphasises on the best way a decision can be made, benefiting a greater number of people. When principles of accountability, transparency, upholding the rule of law, efficiency, effectiveness, participation and responsiveness are displayed in a decision-making process, it is a sign of good governance

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

The main purpose of the Commission is to investigate allegations of official corruption and bribery within government and its related bodies, charge the individuals facing these allegations and take these cases to court for trial. This means acts of corruption allegedly carried out by public officers in the civil service, in the judiciary and in an office that is created by the Constitution or any written law. The Commission was established in 2007 and is made up of a Commissioner, Deputy Commissioner and such other officers as may be appointed by law.

The Commission may investigate, begin and carry out criminal proceedings; take over investigations and criminal proceedings that fall under its responsibilities and functions, and also those which may have been started by another person or authority. It can also discontinue a proceeding that they started or carried out at any stage before judgement is delivered by it (section 115 of the Constitution).

HUMAN RIGHTS & ANTI-DISCRIMINATION COMMISSION

Everyone has the right to lodge a complaint with the Commission if their human rights have been violated. The Commission will receive and investigate complaints about alleged human rights abuses. It will then help the person or community to do what is needed to take the human rights matter to Court, as well as prepare the right documentation.

The Commission is also responsible for helping public and private bodies protect and respect human rights in Fiji so that being aware of human rights becomes a part of the way we live in Fiji. The Commission educates the public on the rights and freedoms recognised in the Bill of Rights as well as those recognised internationally. One of the Commission's most important functions is to keep a watch on how the State is keeping its obligations under human rights agreements with other countries and international bodies. It then

makes recommendations to Government on things that are affecting rights and freedoms as well as to existing or proposed laws. The Commission also makes recommendations to various institutions to improve the functions in line with human rights principles (s 45 of the 2013 Constitution).

The Commission is led by a chairperson, who is as qualified as a judge. It also has four other members who are appointed by the President on the advice of the Constitutional Offices Commission. The Commission's power, duties and functions are set out in the Human rights Commission Decree 2009.

ACCOUNTABILITY & TRANSPARENCY COMMISSION

When the Accountability and Transparency Commission is set up it will make sure that permanent secretaries as well as those who hold public offices are answerable for their actions. The Commission will do this by receiving and investigating complaints on all matters against them. Such figures will have to make sure they follow and enforce the Code of Conduct (see section 149 of the Constitution and page 56 of this booklet).

When it is set up, the Commission will be an independent one, which means, it will not have government control or influence. It will be made up of a chairperson and two other members for a period of three years, subject to renewal. They are appointed by the President, on the advice of the Judicial Services Commission following consultation with the Attorney-General who will also decide on salary levels for the commission members.

The authority, functions and responsibilities of the Commission will be governed by a written law (which is yet to be released), and a written law may make further provisions for the Commission (section 121 of the 2013 Constitution).

CODE OF CONDUCT

What is a Code of Conduct?

A Code of Conduct is a set of principles, values, standards, or rules that guide how an organisation

or public body will make decisions and carry out procedures to contribute to the welfare of its members and respect their rights. Although the Code is not part of the Constitution, the Constitution instructs Parliament to make a written law to establish a Code of Conduct for public officers and for members of all the bodies created under the Constitution and any written law (section 149 of the Constitution). It is worth noting that although previous Constitutions have instructed Parliament to establish a law for the Code of Conduct, it was never done. The current government is in the process of developing one.

The Commission and the Code of Conduct

The Accountability and Transparency Commission created under section 121 has an additional role to check that the Code is being followed and enforced. It is also the Commission's job to investigate allegations of the Code being breached by public officers by carrying out disciplinary and criminal action. Every year, each officer will have to declare everything they own as well as their debts and financial obligations, including those of his or her family. These declarations will be provided to the public. Whistle-blowers (people who tell the authorities about anything that is being done illegally) who inform the Commission about a breach by these officers will be protected.

When the Commission is set up, it will be made up of a chairperson and two other members appointed by the President, on the advice of the Judicial Services Commission following consultation with the Attorney-General.

A written law will overlook the Commission's authority, functions and responsibilities in relation to the Code of Conduct and will make further provisions for the Commission (section 121 and 149 of the 2013 Constitution). However, the written law is yet to be released.

THE OFFICE OF THE AUDITOR-GENERAL

Every year, the Minister of Finance announces the government's annual national budget. This includes estimates of revenue (how much the

ACCOUNTABILITY & TRANSPARENCY COMMISSION

This Commission is different from the FICAC which only seeks to keep those holding public offices accountable by investigating and prosecuting criminal proceedings on allegations of corruption and bribery only.

government earns), capital (what assets and money the government has) and expenses (how much government will spend and on what).

At the end of that year, the Auditor-General is responsible for auditing the public accounts, how public money and public property of the State were looked after, and, all transactions relating to public money or public property. The Auditor-General then provides a report to Parliament which gives an opinion on transactions or dealings concerning public money or public property of the State, as authorised under the Constitution or any other law, and whether the money was spent where government said it would be (section 151 and 152 of the Constitution).

The Auditor-General is appointed by the President on the advice of the Constitutional Offices Commission, following consultation with the Minister of Finance. The office of the Auditor-General is independent from the rest of government.

ACCOUNTABILITY

The obligation of an individual or an institution to account for its activities, accept responsibility for its activities and disclose its result in a transparent manner.

TRANSPARENCY

A transparent public body is one which makes information on all its dealings and practices readily available to the public.

INDEPENDENT LEGAL INSTITUTIONS

The following institutions are public offices that remain entirely independent when providing legal advice and services. This means that these institutions do not work in favour of any particular group of people. The decisions that each institution makes are impartial. For example, the Office of the Solicitor-General provides independent legal advice to government and public offices. The Director of Public Prosecutions provides independent legal advice and will bring to trial any member of the public, or, public office holder whom it believes has engaged in criminal activity. The Legal Aid Commission provides free legal services to those who cannot afford to get a private lawyer. The main aim of all these bodies is to work towards the welfare of the people of Fiji.

THE OFFICE OF THE SOLICITOR-GENERAL

The Solicitor-General is responsible for providing independent legal advice to Government and to the holder of a public office, preparing draft laws on the request of Cabinet, representing the State in court in any legal proceedings to which the State is a party, other than criminal proceedings. The Solicitor-General has the same status as a permanent secretary and is the Permanent Secretary for the Office of the Attorney-General. He or she also bears administrative and employment related responsibilities for the Office of the Solicitor-General (section 116 of the Constitution).

The Solicitor-General is appointed by the President on the recommendation of the Judicial Services Commission in consultation with the Attorney-General. He or she must have qualifications equivalent to those of a Judge and has the same tenure as a High Court Judge.

THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

The Office of the Director of Public Prosecutions can begin and carry out criminal proceedings before any court (except for military courts). It can

also take over criminal proceedings that have been started by another person or authority (except those proceedings initiated by FICAC). In addition, except for those proceedings begun by FICAC, it can discontinue criminal proceedings at any stage before judgement is delivered. It can also intervene in proceedings where the question of public welfare might be raised, and which can affect criminal proceedings or criminal investigations.

The Director of Public Prosecutions is appointed by the President on the recommendation of the Judicial Services Commission in consultation with the Attorney-General for a term of seven years and is eligible for re-appointment. He or she must have qualifications equivalent to those of a Judge. The Director of Public Prosecutions may appoint a legal practitioner from Fiji or abroad to be a public prosecutor for any criminal proceedings. He or she also bears administrative and employment related responsibilities for the Office of the Director of Public Prosecutions (section 117 of the Constitution).

LEGAL AID COMMISSION

The Legal Aid Commission's role is to provide free legal aid services to members of the public who cannot afford the services of a lawyer. The Commission is also responsible for running itself and provides regular updates and advice to the Attorney-General on matters related to its functions and responsibilities regulated under the Legal Aid Act 1996.

INSTITUTIONS RESPONSIBLE FOR PROVIDING STATE SERVICES

Chapter 6 of the Constitution provides for the bodies that look after how State services are provided to the public. The Constitution divides State services into three different categories – public service, the disciplined force and the Constitutional Offices Commission – and discusses the running of the bodies that fall under each of these categories. These institutions must answer to the public and to the institutions mentioned above, in making sure they keep the values and principles of public service and make decisions and use public resources well.

1. STATE SERVICES

What is Public or State Service?

This means the services that the State provides to the public as citizens of the nation. However, this does not include services in the Courts or judiciary, or, the services in the office of a member of a commission; or the services in an office created by this Constitution or those that continue to exist under the Constitution.

Some of the values and principles of public service include high standards of professionalism, following the rules and standards of the kind of conduct expected in the public service, putting Government policies in place quickly and properly, and, making sure that laws are in place and are followed. Other elements include: being free of corruption; responding quickly to requests and questions from the public, delivering services to the public in a way that is respectful, effective, impartial, fair and equal, and, being answerable for one's actions. Another equally important element is transparency, which includes making all information known quickly and properly to the public, as well as to Parliament.

There must also be the best use of public resources, in a way that is not wasteful. The good use of human resources and practices must be developed, to help develop people's careers in the civil service, so that the potential of people is developed in the best possible manner. When hiring and promoting people, the public service must be objective, impartial, encourage fair competition, ability, education and experience based on whether the people being hired or promoted deserve it.

What is a Public Office?

A public office is an office created by this Constitution or one that continues in existence under this Constitution; an office of a member of a commission; an office in a State Service; an office of Judge, Magistrate or an office in a court created by written law; an office in a statutory authority or a member of the same; or an office established by written law.

Who is a Public Officer?

This is a person who is a Fijian citizen and holds a public office. A person who is not a Fijian citizen can become a public officer with an approval from the Prime Minister.

PUBLIC SERVICE COMMISSION

The Commission is responsible for appointing and removing permanent secretaries, with the agreement of the Prime Minister and carrying out disciplinary action against permanent secretaries. They do not control the judiciary, military, police force or the corrections service, or any other body that is under the direct supervision of another body. The Public Service Commission is established under section 125 of the Constitution. It is made up of a chairperson and must have three to five other members appointed by the President on the advice of the Constitutional Offices Commission (sections 125 and 126 of the Constitution).

PERMANENT SECRETARIES

Each ministry is to be run by a permanent secretary appointed by the Public Service Commission with the agreement of the Prime Minister (section 127 of the Constitution). The permanent secretary of a ministry is responsible to the Minister concerned for the proper management of the ministry or any department under the ministry. The salary for permanent secretaries is determined by the Public Service Commission following agreement with the Prime Minister.

2. DISCIPLINED FORCES

FIJI POLICE FORCE

The Fiji Police Force is responsible to maintain law and order, keep the peace, protect the lives of all people and property, prevent and detect crime and enforce all laws and regulations in Fiji, within the powers provided to it under a written law.

Commissioner of Police

The Commissioner of Police commands the Fiji Police Force. The Commissioner of Police is responsible for organising and the management of the Fiji Police Force. He or she is appointed by the President, on the advice of the Constitutional Offices Commission following consultation with the Minister responsible for the Fiji Police Force (section 129 of the Constitution).

FIJI CORRECTIONS SERVICE

Formerly known as the Prisons and Corrections Services, the Fiji Corrections Service is responsible for the imprisonment of people who have been found guilty or are yet to be found guilty by the Courts, in either civil or criminal matters. Other services that this institution provides include rehabilitation. In other words, teaching criminals how to live a normal life once they return to society and helping them to change or reform, under initiatives such as the Yellow Ribbon Project, which helps such people to develop some working skills that they can use to contribute to society once they are released.

Commissioner of the Fiji Corrections Service

The Commissioner of the Fiji Corrections Service commands the corrections services provided throughout Fiji. The Commissioner is responsible for the organisation and administration of the Fiji Corrections Service and the deployment and control of its operations. He or she is appointed by the President, on the advice of the Constitutional Offices Commission following consultation with the Minister responsible for the Fiji Corrections Service (section 130 of the Constitution).

REPUBLIC OF FIJI MILITARY FORCES

The Republic of Fiji Military Forces has the overall responsibility to ensure the security, defence and well-being of Fiji and its people. During times of armed conflict, this institution maintains law and order on land and at sea. It supports the Police, the surveillance of Fiji's Maritime Zone and relevant departments. It also provides forces for international peacekeeping operations.

Commander of the Republic of Fiji Military Forces

The Commander of the Republic of Fiji Military Forces has executive command of the military, and is therefore fully in-charge of it. The Commander is appointed by the President, on the advice of the Constitutional Offices Commission, following consultation with the Minister responsible for the Republic of Fiji Military Forces (section 131 of the Constitution).

3. CONSTITUTIONAL OFFICES COMMISSION

The Constitutional Offices Commission is established under section 132 of the Constitution. The Commission is chaired by the Prime Minister and the Solicitor-General is its Secretary. The Commission also consists of the Leader of the Opposition, the Attorney-General, two people appointed on the advice of the Prime Minister and one person appointed on the advice of the Leader of the Opposition.

The Commission is responsible for providing advice to the President for the appointment of the following offices:

- the chairperson and the members of the Human Rights and Anti-Discrimination Commission;
- the chairperson and the members of the Electoral Commission;
- Supervisor of Elections;
- Secretary-General to Parliament;
- the chairperson and the members of the Public Service Commission;
- Commissioner of Police;
- Commissioner of the Fiji Corrections Service;
- Commander of the Republic of Fiji Military Forces;
- Auditor-General; and
- Governor of the Reserve Bank of Fiji.



Revenue and Expenditure

ANNUAL BUDGETS & THE CONSOLIDATED FUND

By 31 December of each year, the Minister of Finance must have tabled the government's annual budget. This includes estimates for a year of revenue (how much the government earns), capital (what assets and money the government has) and expenses (how much government will spend and on what), all in relation to running government and Parliament.

All revenue or money raised for the State and Government must be authorised through a written law and must be paid into one Consolidated Fund,

unless stated otherwise in a law. Money from the Fund cannot be withdrawn except when authorised by an appropriation law, which sets out how money is to be used. In the absence of an appropriation law, the Minister of Finance may authorise up to a third of the last budget to cover ordinary government spending. The Consolidated Fund is also used for payment of salaries and allowances of the President, judges, and all members of commissions and independent offices except members of the Independent Legal Services Commission and Judicial Services Commission.

PUBLIC ACCOUNTS COMMITTEE

The Public Accounts Committee is a committee formed under section 70 of the Constitution and Audit (Public Accounts Committee) Regulations 2007. The role of the Committee is to check and investigate things identified as out of place, as well as queries, in the Auditor-General's report and as a result prepare and present its own report on its findings. The chairperson then tables the Committee's report in Parliament after which the report is made public. Its members are from both sides of government, two from the opposition side and three from government.

Freedom of Information

In order to be truly open and transparent within the government and help the public know and understand exactly what the government is doing, the Constitution mandates that Parliament make a written law so that members of the public have the right to access official information and documents held by the government and its agencies (section 150 of the Constitution). Government has announced that this will be released in the near future.

Emergency Powers

WHAT ARE EMERGENCY POWERS?

A government may declare that the nation is in a 'state of emergency' during a time of disaster, naturally occurring or otherwise, such as civil unrest or a coup d'état. When the nation is in a state of emergency, the government can suspend or change the functions of the government to put emergency plans into place.

COUP D'ÉTAT

A sudden and unlawful seizure of an existing government, to depose the established government and replace it with a new ruling body, either civil or military.

EMERGENCY POWERS & HUMAN RIGHTS

During a state of emergency, the government may pass laws restricting rights and freedoms in order to respond to the disaster. For example, the government may place a curfew on the population during a **coup d'état** in order to protect public safety. This temporarily suspends freedom of movement until the situation has changed.

These laws can be passed by the executive because it may be difficult to pass a law in Parliament quickly enough to respond to the disaster.

EMERGENCY POWERS & THE CONSTITUTION (SECTIONS 43 & 154 OF THE CONSTITUTION)

The Constitution allows the Prime Minister to declare a state of emergency on the recommendation of the Commissioner of Police and the RFMF Commander, if the security and safety of Fiji is threatened and the declaration is necessary to deal with the threat.

A state of emergency is to be confirmed by Parliament after being declared by the Prime Minister. If Parliament is sitting, this must be done within 24 hours. If Parliament is not sitting, this must be done within 48 hours. However if a majority of the members of Parliament do not confirm the declaration made by the Prime Minister, then the declaration and any action taken under the declaration has no effect.

In the 1997 Constitution, Parliament was required to confirm the declaration of a state of emergency within 5 sitting days.

The declaration of a state of emergency will continue for a period of one month from the date of confirmation, and may be renewed by a further vote in Parliament.

Any law put into force during a state of emergency may limit the rights and freedoms in the Bill of Rights, except the right to life, freedom from slavery, freedom from cruel and degrading treatment, rights of arrested and detained persons, rights of accused persons, access to courts or tribunals, executive and administrative justice, freedom of religion, conscience and belief and the right to equality and freedom from discrimination.

Limitations to rights and freedoms during a state of emergency must be strictly necessary and required by the emergency, and, in keeping with the principles that Fiji is bound to under international law.

Immunity

The Constitution provides immunity, that is, guaranteeing protection from prosecution, for people involved in the 1987, 2000 and 2006 coups d'état. They further enforce the immunity provisions in the former 1990 Constitution and the Limitation of Liability for Prescribed Political Events Decree 2010, granting immunity for acts carried out by specific people in the 1987 and 2000 coups d'état, respectively (sections 155 and 156 of the Constitution).

Section 157 creates a further 'absolute and unconditional immunity', irrevocably granted to the President, Prime Minister and Cabinet Ministers, military, police, corrections service, judiciary, public service and any public office from any criminal or civil proceedings in any court, tribunal or commission, or disciplinary proceedings. Which means, that the protection from prosecution granted to these entities can never be reversed. However, this immunity does not apply to certain criminal acts or omissions defined in the Crimes Decree 2009, including acts related to bribery and corruption, forgery, perjury and giving false statement and making declarations, sexual crimes and prostitution, and property related crimes. This immunity applies from 5 December 2006 to the first sitting of the first Parliament elected under the Constitution, that is, 6 October 2014.

WHAT DOES THIS MEAN?

This means that those responsible for crimes and human rights abuses, such as, assault, grievous bodily harm, criminal intimidation, arson, torture, kidnapping or even murder, committed from 5 December 2006 to 6 October 2014, cannot be prosecuted or otherwise held liable. However, being unable to initiate proceedings for particular human rights abuses and crime, although, committed in the circumstances of a coup, is contrary to current international standards. Since these provisions cannot be amended or repealed it keeps those

responsible from being accountable for these acts perpetually. It also means that those that were victimised will not be able to seek justice for these particular periods in time.

WHY DO WE HAVE IMMUNITY PROVISIONS?

Governments and leaders that experience times of conflict often grant themselves immunity for acts or crimes committed during these times. Essentially, heads of state, leaders and prominent players during the conflict may be able to give themselves a pardon from any criminal and/or civil liability. Immunity provisions are common around the world especially in countries that have been through some conflict. It helps to smooth out a country's transition into peace and democracy. Immunity provisions are sometimes complemented with some form of national reconciliation, contributing to a peaceful transition.

Putting in place broad immunities getting the views of the public, means that such provisions may well be contrary to the wishes of citizens. Even to the extent that this provision does reflect how the Fijian population feel, the attitudes of the people regarding immunity may change over time. Given the difficulty in being able to change or do away with the immunity provisions in the Constitution, the Constitution will not be able to accommodate a change in how people see the issue, over time.

Section 164 of the 1990 Constitution contained similar immunity provisions for the leader of the military coup d'état of 1987 and the members of the Republic of Fiji Military Forces (including the Naval Division), the Fiji Police Force and the Prisons Services.

Changing the Constitution

Provisions for changes or amendments are an important part of modern democratic constitutions. On the one hand, they provide flexibility so that a constitution can be amended so that it evolves with the changing needs and circumstances of a country and its people. On the other hand, such provisions also seek to make the amendment process difficult enough so that constitutions are protected from unnecessary change.

Section 160 of the 2013 Constitution states that changes to it can only be possible by a Bill that is discussed three times in Parliament. It must be voted on twice by at least three-quarters (75%) of the members of Parliament. And, that there should be a period of at least 30 days between those votes.

The Electoral Commission must then hold a referendum on the proposal once it is referred to them by the President. During the referendum, three-quarters (75%) of registered voters must give their approval. It will be extremely difficult or near impossible to meet these requirements, in particular those concerning the referendum. The process by which a referendum will be carried out by the Electoral Commission

has not been specified and a written law will need to be made to address this. The President is then notified of the outcome of the referendum, which is also published in the media. If the voting requirements by registered voters are met, then the President approves the Bill.

Amendment in the Constitution also means to repeal, replace, revise or alter any provision of the Constitution other than the Immunity, Transition or the Amendment provisions.

This amendment process makes this Constitution extremely difficult to change. This is problematic because if there are provisions in the Constitution that all citizens do not support and attitudes may change over time, the Constitution may not be able to be modified to respond to the needs and circumstances of citizens.

REFERENDUM

A direct vote in which the entire population eligible to vote is asked to either accept or reject a particular proposal. This is often in relation to the adoption of a new constitution or an amendment to a constitution.



Transitional Provisions

WHAT IS A “TRANSITIONAL” PROVISION?

Transitional provisions are included in laws to smooth the changeover to a new law. They are legal rules that determine how other legal rules should be applied.

The Constitution allowed all office-holders in the government immediately before the General Elections

held on 17 September 2014 to remain in office until the first sitting of the new Parliament, that is, on 6 October 2014. The interim government had the power needed to dictate the entire transition process up to the first sitting of Parliament. This is afforded by the provision that gives the Prime Minister the power to perform the functions of the Constitution Commission up until 6 October 2014.

Useful Information

NATIONAL

Citizens' Constitutional Forum

23 Denison Road, Suva, Fiji
PO Box 12350, Suva, Fiji
Telephone: 3308379
<http://www.ccf.org.fj>

Official Fijian Government Website

<http://www.fiji.gov.fj/Govt--Publications/Constitution.aspx>

Official Fijian Parliament Website

<http://www.parliament.gov.fj>

Fiji Women's Rights Movement

76 Gordon Street, Suva, Fiji
PO Box 14194, Suva, Fiji
Telephone: 3313156
<http://www.fwrn.org.fj>

Fiji Women's Crisis Centre

88 Gordon Street, Suva,
Fiji Telephone: 3313300
<http://www.fijiwomen.com>

Legal Aid Commission

Headquarters: 41 Loftus Street, Suva, Fiji
Private Mail Bag, Government Buildings, Suva
Telephone: 3311195
www.legalaidfiji.org

Fiji Human Rights and Anti-Discrimination Commission

Level 2, Civic Tower,
272 Victoria Parade, Suva, Fiji
Telephone: 3308577
www.fhrc.org.fj

INTERNATIONAL

Conciliation Resources

<http://www.c-r.org>

European Union

http://eeas.europa.eu/delegations/fiji/countries_focus/fiji/index_en.htm

Australian Government Department of Foreign Affairs and Trade

https://www.dfat.gov.au/geo/fiji/fiji_brief.html

Amnesty International: Asia and the Pacific

<https://www.amnesty.org/en/region/asia-and-pacific>

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