

OUR VOICE OUR FUTURE OUR CONSTITUTION

This booklet contains a comparative analysis of the Fiji Government Draft Constitution (GDC) 2013, with the 2012 Draft Constitution by the Yash Ghai Commission and the 1997 Constitution of Fiji.

The information contained within is intended to provide readers with an informative review of the 2013 GDC, and assist readers with preparation to respond to the Fiji Government public consultations on the GDC.

Additionally the booklet provides information on the 2012 Draft Constitution by the Ghai Commission which many Fiji citizens contributed in drafting through approximately 7000 submissions to the Commission. The 2012 Draft Constitution was removed by the Fiji Government in Feb 2013 and replaced with the GDC.

For a copy of the full analysis report, please contact the Citizens' Constitutional Forum.



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THE GOVERNMENT DRAFT CONSTITUTION: WHAT YOU NEED TO KNOW

PREAMBLE

The 1997 Constitution, and the 2012 draft, provides examples of preambles that set out visionary statements, intended to be inspirational and to highlight principles.

Amongst the principles that could have been expected to be emphasised in any 2013 Constitution would have been the non-negotiable principles in the Fiji Constitutional Process Decree 2012.

PLEASE MAKE YOUR OWN COMPARISONS.

1997 Preamble

WE, THE PEOPLE OF THE FIJI ISLANDS,

SEEKING the blessing of God who has always watched over these islands:

RECALLING the events in our history that have made us what we are, especially the settlement of these islands by the ancestors of the indigenous Fijian and Rotuman people; the arrival of forebears of subsequent settlers, including Pacific Islanders, Europeans, Indians and Chinese; the conversion of the indigenous inhabitants of these islands from heathenism to Christianity through the power of the name of Jesus Christ; the enduring influence of Christianity in these islands and its contribution, along with that of other faiths, to the spiritual life of Fiji:

(a) to (f) points(listed)

RECOGNISING that the descendants of all those who chose to make their homes in these islands form our multicultural society:

AFFIRMING the contributions of all communities to the well-being of that society, and the rich variety of their faiths, traditions, languages and cultures:

TAKING PRIDE in our common citizenship and in the development of our economy and political institutions:

COMMITTING ourselves anew to living in harmony and unity, promoting social justice and the economic and social advancement of all communities, respecting their rights and interests and strengthening our institutions of government:

REAFFIRMING our recognition of the human rights and fundamental freedoms of all individuals and groups, safeguarded by adherence to the rule of law, and our respect for human dignity and for the importance of the family,

WITH GOD AS OUR WITNESS, GIVE OURSELVES THIS CONSTITUTION

2012 Draft Preamble

We are Fijian: iTaukei and all others who have come to make their home in these islands.

We recognise the indigenous Fijian and Rotuman peoples who first formed a spiritual connection with these islands, establishing a strong, vibrant culture lasting for thousands of years.

We receive the gifts of these islands, their history, heritage, and name with deep gratitude.

Together, we aspire to keep faith with the spirit of tolerance in building our nation.

Wishing to heal the divisions of our past, we acknowledge our struggles, and our failure to create a single nation and to establish an inclusive democratic society.

Striving now to live in unity, we resolve:

To share the spirit of play, work and worship

To create a modern progressive, multicultural nation founded on trust, tolerance, inclusiveness, compassion, the dignity and equality of each individual, and respect and stewardship of nature's gift and To build a just and sustainable government on the foundation of freedom, democracy, social justice, human rights and the rule of law.

In humility and hope, determined to overcome the past and having engaged in open discussion of our visions for Fiji, we adopt this constitution for ourselves and as a gift to our children, with the prayer that the generations who follow may live in peace and happiness.

2013 Government Draft Constitution Preamble

WE, THE PEOPLE OF FIJI,

DECLARING that we are all Fijians united by common and equal citizenry;

RECOGNISING the Constitution as the supreme law of our country that provides the framework for the conduct of Government and all Fijians;

COMMITTING ourselves to the recognition and protection of human rights, and our respect for human dignity; and

DECLARING our commitment to justice, national sovereignty and security, social and economic wellbeing, and safeguarding our environment;

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Everyone has the right to equal access to public service in his country.

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Chapter 1 - The State

The GDC :

Structured as 1997 doc. (Articles 1-5 similar to 1997)

State Provisions draw heavily from 2012 draft.

Mentions Non-negotiable - Secular State

Founding values from 2012 draft.

NOTE

Silent on Official and National Languages – No reference (1997 acknowledges English, Fijian and Indo-Fijian as the official languages)

Weak on Prohibiting Coups and Immunities (as in 2012 draft)

Chapter 2 Bill of Rights

The GDC:

Drawn from 1997 and 2012 draft with inclusion of new socio-economic rights:

Significant Limitation of rights by Passed by Law:

The right to life (s.8) is limited because the right is not protected in any case of deaths 'from the use of force which is no more than is absolutely necessary' in three sets of circumstances:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection'.

Limitation of labour rights

Limitations during State of Emergency

Application is horizontal

Does not commit State's role in the fulfilment of the rights

Applications to court on all BOR violations is referred to Attorney General who determines whether it should proceed further or not. This weakens the Judiciary as opposed to 1997 which allows the Courts, the Office

of the Human Rights Commission powers to behave quite independently.

Human Rights Commission draws from decree 11/2009.

Rights of Women not included

Cultural, and linguistic rights not included

Customary rights not included

Land Ownership rights not included



Chapter 3 Parliament

The GDC:

45 member parliament

No senate

4 year term same as 2012 unless dissolved after 3.5 years by President

Leader of Opposition is undermined

Public participation is limited as Speaker can have closed parliament sessions

Elections by secret ballot

18 years and over eligible to vote on registration



Parliaments and Senate

1970	1990	1997	2012 Draft	2013 Draft
52 Member Lower house	70 Member Lower House	71 member Lower house	71 member Lower house	45 member Parliament
22 members	34 member Senate	32 member Senate	National People's Assembly	No Senate
22 Fijian 22 Indian 8 Others	37 Fijian 27 Indian 1 Rotuman 5 Others	23 Fijian 19 Indian 1 Rotuman 3 Others	Non Communal allocation	Non Communal Allocation
Governor General	President	President	President	President

NOTE

“ How do these sections reflect National Identity, definition of Fiji as a State and the values of Fiji's Diversity?

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Chapter 3 Parliament

Eligibility criteria for all aspiring candidates (s.54(1-3))

Open List Proportional Representation

4 electoral divisions

Central 18/45=41% (Pop 342,386) 40%

West 16/45=36% (Pop 318,911) 38%

North 7/45=16% (Pop 135,004) 16%

Eastern 4/45=9% (Pop 39,313) 5%

Chapter 4 - The Executive

The GDC Says:

The President same role as 1997 but no Vice President.

Criteria for selection same as 2012 draft. The President is appointed after a vote in Parliament for two candidates, one each appointed by the Prime Minister and Leader of the Opposition (s.83).

PM elected by parliament as in 2012 and 1997. PM appoints and dismisses Ministers. No Multiparty cabinet.

Attorney General is Chief Legal advisor to Govt and minister in Cabinet.

PM can appoint AG from outside parliament.

Chapter 5 - Judiciary

The GDC Says:

Professional body of lawyers not included

All Government appointees

No/little/restricted constitutional protection on judiciary – allows room and space for government intervention.

AG has a controlling role in all appointments

The High Court, the Court of Appeal and the Supreme Court all play important roles in keeping government accountable.

Key roles include interpretation of the Constitution, and handling

appeals from decisions of lower courts.

The GDC limits the role of these courts in relation to constitutional interpretation compared to 1997 (s.123) and 2012 (s.120).

FICAC is listed under Judiciary but it is not a judicial institution. It should be under the Accountability section.

DPP independence is weakened as it is appointed by the Judicial Services Commission following consultations with the AG.

(1997 appointed by Constitutional Offices Commission consultation with AG.)

Independent Legal Services Commission controlled by AG.

Chapter 6 – State Services

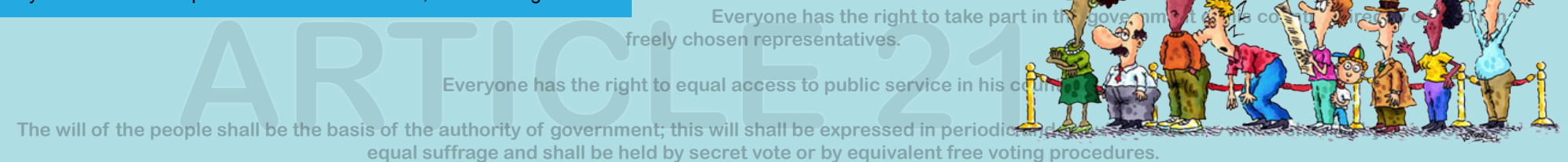
The GDC Says:

Concentration of Powers to PM who appoints:

1. The Chair and other members of the Public Service Commission (PSC) (s.121(2)); 1997 Appointed by the President and included the Chairperson and 3-5 others nominated by the Minister responsible for the PSC.
2. All permanent secretaries (although appointed by the PSC, the Prime Minister's agreement is required) (ss.122(1) and 123(4)); 1997 appointed by the Public Service Commission
3. Ambassadors (s.124(1));
4. Members of the Public Service Disciplinary Board (s.127(2);
5. The Commissioner of Police (s.128(4));
6. The Commissioner of Corrections (s.129(4));
7. The Commander of the RFMF (s.130(3)).

NOTE

“How do these sections reflect clear separation of powers between the executive, judiciary and the legislature?”



Chapter 7 – Revenue and Expenditures

The GDC Says:

No provision for borrowing as was included in the People's 2012 Draft, .

Instead, the GDC adopts the less strict 1997 requirement to account for monies on accepted principles of the private sector [1997, s.182].

No mention of a salaries and benefits commission previously known as the Higher Salaries Commission. GDC places the decision by the PM. Establish an independent committee to advise him on the appropriate remuneration.



Chapter 8 – Accountability and Transparency

The GDC Says:

Accountability and Transparency Commission

The Commission is composed of a chairperson, a qualified judge, and 2 other members all appointed by President after consulting the Prime Minister and Chief Justice (s.141). A law will be passed to set up the duties and functions of this Commission. Code of Conduct, Roles and responsibilities etc.....Powers and Purposes unclear. The AG has mentioned that will include some of the functions of the position formerly held by the office of the Ombudsman.

Conditions

Parliament must pass a law to establish rules for (ss.141-2): a Code of Conduct for public office holders [like 2012], monitoring procedures and powers to enforce violations by criminal and disciplinary proceedings and removal of office, protecting whistle-blowers, and requirements for public officials to disclose assets, liabilities and financial interests

Freedom of Information

Provision is made for Parliament to pass a law to allow the public to exercise their right to access information (s.142). This

Auditor General

The office is appointed by the Prime Minister after consulting Minister for finance. In 1997 and 2012 the Constitutional Offices Commission appointed the Auditor-General

Chapter 9 - Emergency Powers

The GDC Says:

The Prime Minister may declare a state of emergency on the recommendation of the Commissioners of Police and the Republic of Fiji Military Forces if: the security and safety of Fiji is threatened, and this is necessary to deal with the threat (s.151(1)).

Referred to Parliament for approval by Majority Vote and applied for a period of one month.

In contrast, the power to declare such a state was granted to Cabinet by legislation in 1997 and Cabinet on recommendation of National Security Council in 2012.

Chapter 10 - Immunity

The GDC Says:

Immunity is entrenched ('shall not be reviewed, amended, altered, repealed or revoked') for all actions: taken by the military and police from 1987 to 1990 [Constitution 1990, ch 14] (s.152), taken against the elected governments by the military in 2000 and 2006 [Decree 18/2010] (s.153), and taken by public officials from December 2006 until first sitting of Parliament after elections held under the GDC (s.154).

NOTE

“ How do these sections allow for independence to the bodies (offices and commissions) that assure accountability and transparency in their functions, processes, objectives and sharing of information?

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Everyone has the right to equal access to public service in his country.

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Chapter 11 - Amendment of Constitution

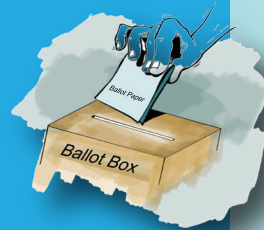
The GDC Says:

The GDC may only be amended by a bill passed three times in Parliament and by three-quarters of members supporting the last two votes.

The Electoral Commission must then hold a referendum on the proposal, which three-quarters of registered voters must approve (s.157).

What is a Referendum?

A referendum is one type of direct democratic system that allows citizens to directly decide important issues (looking a yes or no position) facing a nation and that supplements the indirect democratic system in which the representatives of citizens run a nation. It is decided by Vote and is led by a Referendums Commission or a body of the same, and in some cases by the Constitutional appointed bodies like the Elections Commission. Based on the registered Voter rolls.



Chapter 12 - Commencement, Interpretation, Repeals and Transitional

The GDC Says:

Most Decrees and Promulgations to remain in force after the election except those that will be repealed:

Executive Authority Decree,

Revenue and Expenditure decree,

State services decree,

Office of the VP and succession decree 2009 and

The administration of Justice decree 2009.

Most of the other decrees apart from the above will continue to be in force (they will be construed to be consistent with the constitution)

These decrees cannot be challenged until the first sitting of parliament.

NOTE

“What decrees should we amend? Why? How are the decrees consistent with the principles and objectives of a constitutional democracy?”

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Appointments

The GDC Says:

Commissions Appointments:

Accountability and Transparency: (President after consulting Prime Minister (PM) and Chief Justice (CJ))

Electoral: (Chairperson by PM; 3 members by PM; 1 member by Leader of the Opposition)

FICAC: (Attorney-General (A-G))

Human Rights and Anti-Discrimination: Not provided for (Decree 11/2009: (chairperson by President after consulting PM; two members by PM)

Independent Legal Services: A-G

Judicial Services: CJ as chairperson; President of

Court of Appeal: CJ as chairperson; President of Court of Appeal; Permanent Secretary of Ministry of Justice; 2 members by A-G

Mercy: (A-G as chairperson; 2 members by President)

Public Service: (PM)

Offices Appointment:

Chief Justice and President of the Court of Appeal: appointed by the President on advice of the PM after consultation with AG.

President: The PM & Leader of the Opposition nominate candidate each. President appointed by majority vote in Parliament.

Auditor General: (PM after consulting Minister for finance)

Commissioner of Corrections: (PM after consulting Minister for corrections)

Commissioner of Police: (PM after consulting Minister for police)

DPP: (Judicial Service Commission after consulting A-G)

Governor of the Reserve Bank of Fiji: (PM on advice of Minister for finance)

Secretary-General to Parliament: (PM)

Solicitor General: (Judicial Service Commission after consulting A-G)

Supervisor of Elections: (PM after consulting Electoral Commission)

Why Should you be involved?

ARTICLE 21 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS STATES:

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WHERE TO SEND YOUR SUBMISSIONS:

By Mail: Send your feedback to the Office of the Solicitor General

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By Email: Email your feedback to feedback.fiji.cons@gmail.com

By SMS: Text your feedback to 02. This service is available to both Digicel and Vodafone customers at 5 cents a text.

On Facebook: Post your feedback on Facebook. Look for the "Constitution" tab on the Ministry of Information's Facebook page.

You can also share your submissions with CCF
fijiconstitution1@gmail.com

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