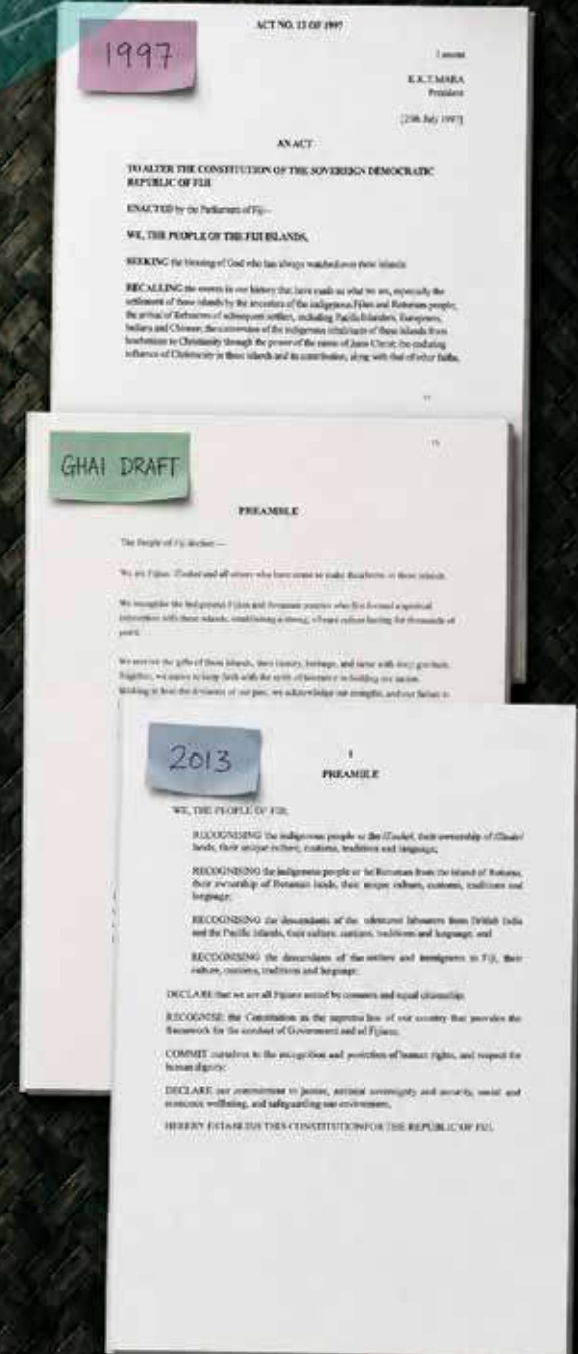




# Fiji's Recent Constitutional Frameworks

Comparing the **1997 Constitution**,  
the **Ghai Draft**, and the  
**2013 Constitution**.





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Comparing the **1997 Constitution**,  
the **Ghai Draft**, and the **2013 Constitution**.

Authored by

Nilesh Lal



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## Foreword

A mind-stifling myth that we need to dispel is that the constitution is an abstract and esoteric doctrinal construction that only legal scholars and political actors must read and interpret on behalf of society. Not really. Let's adjust our epistemic lenses a bit so we can see the constitution as a living public text, which guides the behaviour of our leaders, frames the legal-political order and entrenches our rights as citizens. Indeed we must have the right to know how these work and the impacts on our lives. The constitution must be seen as a people's guide to their sense of national belonging, place in society and how it provides them with the power to become active agents of accountability and transformation. Thus, instead of being locked away in the confined spaces of academic and legal minds, the contents of the constitution should be shared widely, to be understood by the ordinary persons the streets of Suva or Ba or in the villages of Nadroga or Lau. After all the often contested "piece of paper," impacts on all our lives, either positively or negatively, depending on how the constitution is used or abused by our leaders.

In this context, I must congratulate Dialogue Fiji for producing this constitutional comparative guide, which provides the readers with a simple, yet clear picture of the differences and similarities between the 1997, Yash Ghai and 2013 constitutions. Thus, in a way, readers are spoilt for choice—which is a democratically

empowering thing. The three constitutions had their specific characteristics, which defined their unique approaches and visions for the country. For instance, the electoral systems they proposed differed in various ways. The 1997 Constitution provided for the Alternative Voting system (sometimes referred to as the Preferential system), the Yash Ghai draft proposed a closed and multi-constituency Proportional Representation (PR) system, and the 2013 Constitution prescribed an open and single national constituency PR system. There were commonalities also in relation to broad principles of unity, human rights, cultural diversity and freedom of worship.

One of the positive aspects of the publication is that it provides very easily digested narratives of constitutionally complex issues, which can be understood by ordinary citizens. The comparative tables and analysis provide the readers with wide and varying historical lenses across one and a half decades (between 1997 and 2013) of constitutional making in Fiji. Since independence in 1970, Fiji has had five constitutions (if we include the Yash Ghai one), amongst the highest number in the world. Except for the 1970 Constitution, all were created and driven by the notoriously imposing coup ecosystem.

Fiji's never-ending constitution-making culture has become an embarrassing national obsession, to the point that we ridiculously

look dammed in the eyes of the world. We have become a laughing stock amongst our neighbours, who look up to us for regional leadership. Let's be clear. Our constitutional problems have nothing to do with the constitutions themselves. Rather the problems lie in the unscrupulously destabilizing political forces and behaviour, which keep driving us down the dark vortex of political volatility...It's the illegal coups...full stop! The coups have usurped our democracy and destroyed our sense of unity and as a consequence, we are forced to keep rewriting new constitutions, sometimes against our will—thus at this point, we have probably reached the state of constitutional fatigue. This has to stop, the people have had enough. Let's be serious about creating a stable, credible, genuine and sustainable democracy. Our future generations deserve better.

The “review” of the 2013 Constitution, which has started, is a continuation of this unabated historical trend of constitutional re-making. Whether this process leads to a totally “new” constitution is still to be seen, but certainly the pressure is on for that to happen. The time constraint (5 months instead of the usual 18 months) means that the public consultation will need to take place in a speedy Gonzales manner, before going through the parliamentary process, and if it survives, to go through a referendum.

While, theoretically, a referendum represents the direct will of the people in a simple and straight-forward way (especially if it has to do with simple things like choosing a new flag), constitutional

referendums in particular, are much more complex and problematic. This is because the ballot instructions will require voters to simply vote either “Yes” or “No” in response to the question, which could be along the lines of, “Do you endorse the new amendments to the 2013 Constitution?” It is difficult enough for educated people to read, understand the constitution and be informed about their choice, but imagine the situation of the less educated dalo farmer from Tailevu, fisherman from Kadavu, yaqona planter from Taveuni and pig hunter from Ra. Will they know what they are voting for? This is where the ordinary citizens will fall prey to predatory politicians who will use their usual mind-manipulation skills to win the votes to their side.

In 2012, I was commissioned by UNDP to carry out a review of the 2010 Nauru constitutional process, and one of the focuses of the exercise was to gauge why the new constitutional draft was rejected by voters during the national referendum. Amongst other reasons, two in particular stood out to me—the general lack of understanding of the contents of the constitution and secondly, the lack of trust in the constitution-making process, carried out by the government and UNDP. I can sense the same spectre haunting our review process if we are not careful.

Constitutional referendums are based on the “all or nothing” principle, meaning that if you disapprove of a single provision, you can just say “No” to everything. Conversely, if you like only an aspect of it, you can vote “yes” for the whole document. It leaves

virtually no chance for people to dissect and vote on different parts separately.

This is where civic education, such as the one now initiated by Dialogue Fiji through this handbook, becomes important. Constitutional review should not be just a singular political and legal process but must be a multi-pronged national program, which also includes enrichment of people's knowledge and invoking of positive consciousness. Civic education must be accompanied with ethical integrity in terms of quality and intent of information, especially at a time when predatory cyber disinformation is prevalent and impact on our daily lives. An intensive nation-wide civic education program involving civil servants, civil society and other "independent" entities must accompany the consultation process and referendum. This is not only to ensure that people make an informed decision, it should also be a process of trust building, especially at a time when public trust in the government and its processes are at an all time low.

The handbook is comprehensive, informative and user-friendly from beginning to end and I would recommend it for anyone interested in Fiji's constitutional culture—academics, lawyers, activists, politicians, professionals, public servants, corporate employees and, in fact, all citizens of Fiji, including the diaspora. The style makes it easily accessible to all, especially those often excluded from the imagined high and mighty pretensions of illusive academic and legal discourse.

I congratulate Dialogue Fiji for such an awesome project and wish them well in the future. Long live Fiji.

Distinguished Professor Steven Ratuva

University of Canterbury,  
New Zealand.

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## Introduction

# Why This Guide Matters — Understanding Constitutions in Fiji

Across Fiji today, conversations about the Constitution are everywhere. People speak with conviction about whether the 2013 Constitution should be retained, amended, or replaced. Others argue for a return to the 1997 Constitution, while some advocate for the adoption of the Ghai Draft Constitution. These debates go to the

heart of how power is exercised, how rights are protected, and how we live together as a nation.

Yet, in many instances, it is clear that these views are shaped less by a close understanding of what each constitution actually says, and more by political loyalties, historical experiences, or perceptions of legitimacy.

This guide begins from a simple premise:

A meaningful national conversation  
about Fiji's constitutional future  
must be grounded in knowledge,  
not assumption.

## Constitutions as Products of Political Moments



Fiji's three recent constitutional texts—the 1997 Constitution, the Ghai Draft Constitution, and the 2013 Constitution—are often discussed as competing alternatives. It is more accurate to understand them as products of distinct political moments.

Each was shaped by:

- ⇒ A particular configuration of political power,
- ⇒ A particular understanding of national unity and identity,
- ⇒ And a particular set of institutional priorities.

The 1997 Constitution emerged from a negotiated process that sought to stabilise a deeply divided political environment by reviewing a widely discredited constitution. It reflected compromise, accommodation, and a conscious attempt to reconcile competing interests.

The Ghai Draft Constitution was developed through an extensive process of public consultation. Its design reflects a more deliberate effort to rethink the structure of the state, drawing heavily on comparative constitutional practice and broad-based consultation.

The 2013 Constitution was introduced under markedly different conditions, where the process of constitution-making was centrally driven.

These contextual differences are not incidental. They help explain variations in institutional design, rights frameworks, and approaches to governance. But they also create a risk: that citizens judge constitutions primarily based on how they were made, rather than what they contain.

This guide does not ignore history or process. On the contrary, understanding context is essential. But context should inform our reading of the text, not replace it.



## A Constitution as a Settlement, Not Just a Text



A constitution is often described as the supreme law of the land. That is correct, but incomplete. In practice, a constitution performs at least three functions simultaneously.

- First, it is a **legal framework**. It defines institutions, allocates powers, and establishes rules for governance.
- Second, it is a **political settlement**. It embodies agreements, explicit or implicit, about how power is to be exercised and constrained.
- Third, it is a **statement of belonging**. It signals who is recognised within the political community, how diversity is accommodated, and what values are held to be foundational.

In societies marked by ethnic, cultural, and historical complexity, these dimensions are tightly interwoven. Questions of institutional design cannot be separated from questions of identity and trust. Nor can legal provisions be understood in isolation from the political conditions in which they are expected to operate.

For this reason, constitutional design is never purely technical. It is also normative. It reflects choices about fairness, inclusion, authority, and accountability.

Any serious engagement with Fiji's constitutional texts must therefore proceed with an appreciation that these documents are not merely legal instruments. They are **expressions of how the state understands itself, and how it expects its citizens to relate to it.**

## Looking Beyond Who Produced the Constitution



**Much of the contemporary discourse on Fiji's Constitution is framed in terms of authorship. Attention is directed to:**

- ➞ Who drafted the constitution,
- ➞ Which actors were included or excluded,
- ➞ And the broader political environment in which the document was produced.

These are legitimate considerations. A constitution that emerges from an inclusive and participatory process is likely to enjoy a different kind of legitimacy from one that does not.

However, an exclusive focus on authorship risks obscuring a more fundamental question: **What does the constitution actually do?**



**From a constitutional perspective, this requires a shift in analytical focus. Instead of asking only:**

- ➞ Who produced this constitution?

**We must also ask:**

- ➞ How does it structure executive power?
- ➞ What safeguards exist against abuse of authority?
- ➞ How are rights protected, and how easily can they be limited?
- ➞ How representative is the electoral system?
- ➞ How independent are key institutions?

Two constitutions may be produced under very different circumstances, yet contain provisions that are similar in substance. Conversely, two constitutions that appear similar on the surface may differ significantly in how power is structured and exercised.

This guide encourages readers to engage directly with the text itself. Not to ignore history, but to move beyond it.

## Why Comparison Matters



This publication brings together three constitutional texts – the 1997 Constitution, the Ghai Draft Constitution and the 2013 Constitution. Rather than presenting them separately, it places them side by side. The purpose is not to tell readers which constitution is “best.” The purpose is to allow readers to see the differences clearly, and to understand their implications.



### By comparing these texts, we can begin to ask better questions:

- ➔ What kind of electoral system best reflects the will of the people?
- ➔ How should executive power be structured and constrained?
- ➔ What makes an institution truly independent?
- ➔ How should rights be protected and limited?
- ➔ How easy or difficult should it be to change a constitution?

These are not technical questions for lawyers alone. They are citizens' questions.

## From Assertion to Understanding



A recurring feature of constitutional debate in Fiji is the strength of public opinion. This is not a weakness, but rather reflects engagement and interest in national affairs.

The difficulty arises when strong views are not accompanied by a corresponding level of understanding. In such circumstances, debate can become polarised, with positions hardening around narratives rather than evidence.

The objective of this guide is modest but important: to contribute to a shift from assertion to understanding.

### It does so by:

- ➔ Presenting constitutional provisions in a structured and accessible format,
- ➔ Explaining key concepts in plain but precise language,
- ➔ And situating institutional arrangements within a broader framework of democratic governance.

It is not assumed that readers will agree on every issue. Nor is agreement the goal. What matters is that disagreement, where it exists, is informed and grounded.

## How to Use This Guide



**The chapters that follow are organised thematically. Each addresses a specific dimension of constitutional design. Within each chapter, the reader will find:**

- ➞ A comparative presentation of relevant provisions,
- ➞ And a summary of the differences or similarities.

The guide is intended to be used flexibly. It can be read sequentially, or consulted by topic. It is equally suited for individual reading, classroom use, or facilitated discussion in community settings.

Readers are encouraged to approach the material critically. Constitutional texts are not self-executing. Their meaning and effect depend on interpretation, practice, and political context. No guide can substitute for judgment. What it can do is provide a more reliable basis for it.

## A Shared Responsibility



Ultimately, a constitution belongs to the people. It is not owned by governments, political parties, or experts. It is a framework that shapes the lives of all citizens.

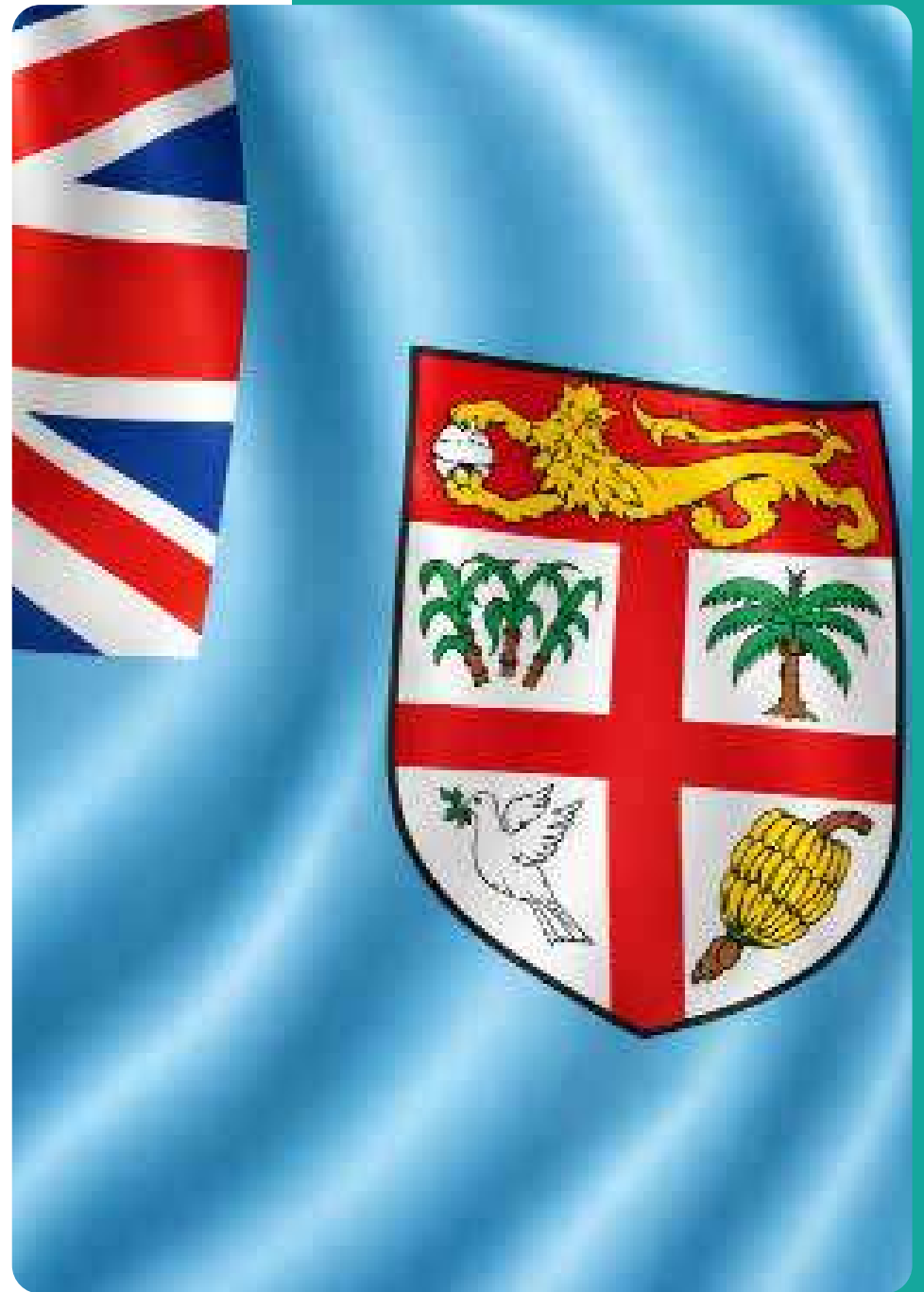
As Fiji continues to reflect on its constitutional future, the responsibility lies with all of us to engage thoughtfully, critically, and constructively.

This guide is an invitation to do exactly that.

# 1. The Preamble

| 1997 Constitution                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Ghai Draft                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 2013 Constitution                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Comparison                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>➔ Recognises the settlement of the islands by the ancestors of the indigenous Fijian and Rotuman people, and the arrival of subsequent settlers including Pacific Islanders, Europeans, Indians and Chinese.</li> <li>➔ Acknowledges Fiji's unique constitutional history, including the Deed of Cession and independence.</li> <li>➔ Emphasizes the importance of multiculturalism, social justice, human rights, and unity.</li> <li>➔ Expresses pride in Fiji's development and commits to harmony, unity, and respect for human dignity under the rule of law.</li> </ul> | <ul style="list-style-type: none"> <li>➔ Seeks to heal past divisions and build a unified, modern, and multicultural nation.</li> <li>➔ Acknowledges that the indigenous Fijian and Rotuman peoples first formed a spiritual connection with these islands, and commits to a multicultural nation.</li> <li>➔ Emphasizes values such as trust, tolerance, inclusiveness, compassion, and respect for human dignity, rights, and nature.</li> <li>➔ Adopts the Constitution with hope and humility, offering it as a gift to future generations for peace and happiness.</li> </ul> | <ul style="list-style-type: none"> <li>➔ Recognises the iTaukei, Rotumans, descendants of indentured labourers, and descendants of settlers and immigrants, together with their culture, customs, traditions and language.</li> <li>➔ Declares all as Fijians united by common and equal citizenry.</li> <li>➔ Recognises the Constitution as the supreme law, providing the framework for the conduct of Government and all Fijians.</li> <li>➔ Commits to protecting human rights, justice, national sovereignty, social and economic well-being, and environmental stewardship.</li> </ul> | <p><b>Common Themes:</b></p> <ul style="list-style-type: none"> <li>➔ All three preambles emphasize unity, human rights, and respect for cultural diversity.</li> <li>➔ Each constitution acknowledges Fiji's diversity and recognises different communities, though the 1997 Constitution is the one that expressly refers to the 'contributions of all communities.'</li> <li>➔ There is a shared commitment to human dignity, justice, and the rule of law.</li> </ul> <p><b>Differences:</b></p> <ul style="list-style-type: none"> <li>➔ The 1997 Constitution focuses on historical milestones and indigenous Christian influence.</li> <li>➔ The Ghai Draft emphasizes healing past divisions and creating a multicultural, inclusive society.</li> <li>➔ The 2013 Constitution centers on common and equal citizenry and positions the Constitution as the supreme law, uniting all as Fijians.</li> </ul> |
| <p>“ 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.</p> <p><b>PREAMBLE, 1997 CONSTITUTION</b></p>                                                                                                                                                                                                                                                                                                                                      | <p>“ Striving now to live in unity, we resolve— 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 gifts.</p> <p><b>PREAMBLE, GHAI DRAFT CONSTITUTION</b></p>                                                                                                                                                                                                                                                                      | <p>“ DECLARE that we are all Fijians united by common and equal citizenry; RECOGNISE the Constitution as the supreme law of our country that provides the framework for the conduct of Government and all Fijians.</p> <p><b>PREAMBLE, 2013 CONSTITUTION</b></p>                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

# The State and Founding Principles





## 2. The State And Founding Principles

| Element                                    | 1997 Constitution                                                                                                                                        | Ghai Draft                                                                                                                                                           | 2013 Constitution                                                                                                                                                                               | Comparison                                                                                                                                                                                                                                                |
|--------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Sovereign State</b>                     | Fiji is a sovereign, democratic state. (Sec. 1)                                                                                                          | Fiji is a sovereign, democratic state founded on values like human dignity, equality, and national unity. (Art. 1)                                                   | Fiji is a sovereign democratic state founded on values of common and equal citizenry and national unity. (Sec.1)                                                                                | All three constitutions define Fiji as a sovereign democratic state, but the 2013 Constitution emphasizes common and equal citizenry more strongly.                                                                                                       |
| <b>Distribution of Sovereign Authority</b> | Centralised within traditional state structures such as the Parliament, Judiciary, and Executive. (Chapters 6, 7, 9)                                     | Authority is distributed across various bodies, including the National People's Assembly, President, and Parliament, ensuring multiple checks and balances. (Art. 4) | Centralised within traditional state structures, with emphasis on separation of powers (but does not contain an express distribution-of-authority clause like Ghai Article 4.) (Chapters 3,4,5) | The Ghai Draft Constitution uniquely distributes sovereign authority more widely, aiming to prevent the concentration of power.                                                                                                                           |
| <b>Common Identity</b>                     | Emphasizes unity and respect for diversity within a multicultural society, acknowledging the rights and interests of all communities (Preamble, Sec. 6). | Strong emphasis on national unity and common identity, enriched by the diversity of languages, customs, and traditions. (Art. 1, 8)                                  | All citizens are recognized as "Fijians" with equal status and identity to promote a common national identity (Sec. 5).                                                                         | The 1997 Constitution recognises common citizenship alongside distinct communities, the Ghai Draft advances a unified multicultural nation, and the 2013 Constitution formalises a common national identity by declaring all citizens as equal "Fijians". |
| <b>Languages</b>                           | English, Fijian, and Hindustani have equal status; Constitution adopted in English with translations available. (Sec. 4)                                 | English, iTaukei, and Hindustani have equal status, with recognition and respect for all other languages used in Fiji. (Art. 5(2))                                   | Constitution adopted in English with iTaukei and Hindi translations, and separately makes conversational and contemporary iTaukei and Fiji Hindi compulsory in primary schools. (Sec. 3, 31)    | The Ghai Draft and 1997 Constitutions provide for multilingual equality, while the 2013 Constitution adds compulsory language education.                                                                                                                  |

| Element              | 1997 Constitution                                                                        | Ghai Draft                                                                                                                                                  | 2013 Constitution                                                                                               | Comparison                                                                                                                                                   |
|----------------------|------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Secular State</b> | Religion and state are separate, but the importance of worship is acknowledged. (Sec. 5) | Clear separation of religion and state, with equal treatment of all religions and no allowance for religious beliefs to override the Constitution. (Art. 6) | Secular state ensuring equal treatment of all religions and separation of religion from state affairs. (Sec. 4) | The 2013 Constitution strictly enforces secularism, similar to the Ghai Draft, while the 1997 Constitution still acknowledges religion's role in governance. |

## Key Takeaways:

# The State And Founding Principles



## What This Means

All three constitutions establish Fiji as a sovereign democratic state, but they differ in how power is structured and how national identity is defined. The Ghai Draft disperses sovereign authority across multiple institutions, while the 1997 and 2013 Constitutions rely more heavily on traditional state organs. The 2013 Constitution places particular emphasis on common and equal citizenry.



## Why It Matters

The way sovereignty is distributed determines how easily power can be concentrated or checked. Systems that disperse authority tend to create stronger safeguards against dominance by any single institution, but may be more complex to operate. Similarly, how a constitution defines identity shapes whether governance is oriented toward recognition of diversity or toward uniform citizenship.



## Questions to Consider

- ➔ Should constitutional design prioritise strong checks and balances, even if it creates institutional complexity?
- ➔ How should a constitution balance equality of citizenship with recognition of diversity?

# The Bill of Rights



### 3. The Bill Of Rights

| Right/<br>Freedom                                     | 1997 Constitution                                                                                   | Ghai Draft                                                                                                                                                                                         | 2013 Constitution                                                                                   | Comparison                                                                                                                                                       |
|-------------------------------------------------------|-----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Application of Rights</b>                          | Binds all branches of government and public officers; applies to existing and future laws (Sec. 21) | Rights belong to each person; the state must respect and protect them (Art. 18). This Chapter applies to all law and binds Parliament, the Cabinet, the judiciary, and all State organs (Art. 50). | Binds government and public officers; rights apply to all laws (Sec. 6)                             | All three constitutions emphasize the binding nature of rights on government entities and public officers.                                                       |
| <b>Right to Life</b>                                  | Protects the right to life; prohibits arbitrary deprivation (Sec. 22)                               | Protects the right to life (Art. 19)                                                                                                                                                               | Protects the right to life; prohibits arbitrary deprivation (Sec. 8)                                | Similar across all constitutions with the fundamental protection of life.                                                                                        |
| <b>Right to Personal Liberty</b>                      | Detailed provisions on lawful detention and exceptions (Sec. 23)                                    | Protects liberty; includes freedom from detention without trial (Art. 24)                                                                                                                          | Similar to 1997; detailed lawful detention provisions (Sec. 9)                                      | Consistent protection with slightly varying details in detention provisions.                                                                                     |
| <b>Freedom from Slavery, Servitude, Forced Labour</b> | Prohibits slavery, servitude, forced labour (Sec. 24)                                               | Prohibits slavery, servitude, forced labour, and human trafficking (Art. 23)                                                                                                                       | Prohibits slavery, servitude, forced labour, human trafficking (Sec. 10)                            | Expanded in Ghai and 2013 to include human trafficking explicitly.                                                                                               |
| <b>Freedom from Cruel or Degrading Treatment</b>      | Protects against torture, cruel treatment, scientific/ medical treatment without consent (Sec. 25)  | Right to dignity; prohibits torture, cruel, inhuman treatment (Art. 20, 24)                                                                                                                        | Protects against torture, cruel treatment, and unauthorized scientific/ medical treatment (Sec. 11) | Ghai Draft emphasizes inherent dignity; similar prohibitions in all three.                                                                                       |
| <b>Freedom from Unreasonable Search and Seizure</b>   | Protects against unreasonable search and seizure; must be lawful (Sec. 26)                          | Right to privacy includes protection from unreasonable search and seizure (Art. 25)                                                                                                                | Protects against unreasonable search and seizure (Sec. 12)                                          | All three constitutions protect privacy-related interests and guard against unreasonable search or seizure, though they structure those protections differently. |



| Right/<br>Freedom                              | 1997 Constitution                                                                                         | Ghai Draft                                                                                                                     | 2013 Constitution                                                              | Comparison                                                                                                         |
|------------------------------------------------|-----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| <b>Rights of Arrested and Detained Persons</b> | Detailed rights for detained individuals, including legal representation, humane treatment (Sec. 27)      | Detailed rights similar to 1997 but includes a broader scope of protections (Art. 41)                                          | Rights to legal representation, communication, humane treatment (Sec. 13)      | Detailed protections for arrested/detained persons in all constitutions, with slight variations.                   |
| <b>Rights of Accused Persons</b>               | Presumption of innocence, fair trial, protection against double jeopardy, detailed trial rights (Sec. 28) | Similar provisions with additional rights such as access to evidence (Art. 42)                                                 | Presumption of innocence, right to fair trial, detailed trial rights (Sec. 14) | Similar protections with some additional provisions in Ghai Draft.                                                 |
| <b>Access to Courts or Tribunals</b>           | Right to a fair trial, open hearings, and related access protections. (Sec. 29)                           | Right to fair trial and access to courts, including timely and affordable justice (Art. 40)                                    | Right to fair trial, access to interpretation, legal aid (Sec. 15)             | Ghai Draft emphasizes affordability and timely justice more explicitly.                                            |
| <b>Freedom of Expression</b>                   | Includes freedom of speech, press, with limits for security, public order, etc. (Sec. 30)                 | Freedom of expression and publication, with clear exceptions for hate speech, incitement (Art. 27)                             | Freedom of speech, press, with limits for security, reputation, etc. (Sec. 17) | The Ghai Draft and the 2013 Constitution expressly include academic freedom, while the 1997 Constitution does not. |
| <b>Freedom of Assembly</b>                     | Right to peaceful assembly, with lawful limits for security, public order (Sec. 31)                       | Right to peaceful assembly, petitioning, with lawful limits (Art. 30)                                                          | Similar provisions to 1997, with detailed lawful limits (Sec. 18)              | Consistent protection across all constitutions with lawful limits.                                                 |
| <b>Freedom of Association</b>                  | Right to form associations, with lawful limits (Sec. 32)                                                  | Similar protection with clear articulation of the right (Art. 29)                                                              | Right to form associations, with lawful limits (Sec. 19)                       | Consistent across all constitutions.                                                                               |
| <b>Labour Relations</b>                        | Rights to form unions, bargain collectively, fair labour practices (Sec. 33)                              | Includes rights to fair labour practices, collective bargaining, right to strike (Art. 36)                                     | Rights to fair employment, unions, collective bargaining (Sec. 20)             | Ghai Draft explicitly includes the right to strike, which is not as clear in the others.                           |
| <b>Freedom of Movement</b>                     | Right to enter, remain, move freely within, and leave Fiji; detailed limits (Sec. 34)                     | Right to movement and residence, and leave Fiji; and right to access foreshore land, reefs and similar marine areas. (Art. 28) | Right to movement, residence, and leave Fiji, with detailed limits (Sec. 21)   | Ghai Draft includes specific rights related to marine areas.                                                       |

| Right/<br>Freedom                                            | 1997 Constitution                                                                 | Ghai Draft                                                                                    | 2013 Constitution                                                                | Comparison                                                                                                                                        |
|--------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Freedom of Religion</b>                                   | Right to practice, manifest religion; limits for public safety, etc. (Sec. 35)    | Freedom of conscience, religion, and belief; detailed protection against compulsion (Art. 26) | Right to religion, with provisions for education and limits (Sec. 22)            | Ghai provides detailed anti-compulsion protections, though related education safeguards also appear expressly in the 1997 and 2013 Constitutions. |
| <b>Right to Privacy</b>                                      | Right to personal privacy, including communication (Sec. 37)                      | Right to privacy, covering personal information, communications, and family life (Art. 25)    | Right to personal privacy; detailed lawful limits (Sec. 24)                      | Similar across all constitutions with slight variations in wording.                                                                               |
| <b>Equality and Freedom from Discrimination</b>              | Equality before the law; prohibits discrimination on specified grounds (Sec. 38)  | Detailed equality provisions, including affirmative measures (Art. 21)                        | Equality before the law; prohibits discrimination on specified grounds (Sec. 26) | Ghai Draft includes more expansive and affirmative measures for equality.                                                                         |
| <b>Right to Education</b>                                    | Right to basic education; freedom to establish educational institutions (Sec. 39) | Right to free primary and secondary education; lifelong education (Art. 33)                   | Right to education; state's role in ensuring access (Sec. 31)                    | Ghai Draft emphasizes lifelong education and includes early childhood education.                                                                  |
| <b>Protection against Compulsory Acquisition of Property</b> | Right against deprivation of property without compensation (Sec. 40)              | Protection against arbitrary expropriation; detailed compensation provisions (Art. 37)        | Right against arbitrary deprivation; detailed lawful expropriation (Sec. 27)     | Consistent protection across all constitutions, with detailed compensation requirements.                                                          |
| <b>Environmental Rights</b>                                  | Not explicitly mentioned                                                          | Right to a clean and healthy environment (Art. 38)                                            | Right to a clean and healthy environment (Sec. 40)                               | Environmental rights are a focus in the Ghai Draft and 2013 Constitution, absent in 1997.                                                         |



| Right/<br>Freedom                          | 1997 Constitution                                                                                                                              | Ghai Draft                                                                                         | 2013 Constitution                                                                 | Comparison                                                                                                                                                                                                 |
|--------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Rights of Children</b>                  | No standalone children's-rights provision                                                                                                      | Comprehensive rights for children, including protection, education, family care ( <i>Art. 22</i> ) | Right to basic needs, family care, protection from abuse, etc. ( <i>Sec. 41</i> ) | Ghai Draft and 2013 Constitution both include detailed standalone children's-rights provisions, unlike the 1997 Constitution, which contains only limited child-specific protections.                      |
| <b>Rights of Persons with Disabilities</b> | No standalone disability-rights section, but disability is listed as a prohibited ground of discrimination in <i>Section 38(2)</i>             | Rights include accessibility, protection, dignity, and non-discrimination ( <i>Art. 44</i> )       | Right to accessibility, and reasonable adaptation ( <i>Sec. 42</i> )              | Ghai Draft and 2013 Constitution both include both include detailed standalone disability-rights provisions, whereas the 1997 Constitution protects disability mainly through equality and access clauses. |
| <b>Right to Housing and Sanitation</b>     | Not explicitly mentioned in the Bill of Rights but mandated as a target for social justice and affirmative action programs ( <i>Sec. 44</i> ). | Right to an adequate standard of living ( <i>Art. 35</i> )                                         | Right to accessible and adequate housing and sanitation ( <i>Sec. 35</i> )        | Housing and sanitation rights are included in Ghai Draft and 2013 Constitution, absent in 1997.                                                                                                            |
| <b>Right to Social Security</b>            | Not explicitly mentioned                                                                                                                       | Right to social security schemes ( <i>Art. 35</i> )                                                | Right to social security schemes ( <i>Sec. 37</i> )                               | Social security rights are included in Ghai Draft and 2013 Constitution, absent in 1997.                                                                                                                   |
| <b>Right to Health</b>                     | Not explicitly mentioned                                                                                                                       | Right to health, healthcare services, and reproductive health ( <i>Art. 35</i> )                   | Right to health, healthcare services, and reproductive health ( <i>Sec. 38</i> )  | Health rights are included in Ghai Draft and 2013 Constitution, absent in 1997.                                                                                                                            |
| <b>Freedom from Arbitrary Evictions</b>    | Not explicitly mentioned                                                                                                                       | Right to be free from arbitrary evictions ( <i>Art. 35</i> )                                       | Right to be free from arbitrary evictions ( <i>Sec. 39</i> )                      | Protection from arbitrary eviction is included in Ghai Draft and 2013 Constitution, absent in 1997.                                                                                                        |

| Right/<br>Freedom           | 1997 Constitution                                                                                                                                 | Ghai Draft                                                                                                                     | 2013 Constitution                                                                                                 | Comparison                                                                                                                                                         |
|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Language and Culture</b> | Grants equal status to English, Fijian, and Hindustani (Sec. 4) and guarantees the right to retain language, culture, and traditions (Sec. 6(c)). | English, iTaukei, and Hindustani have equal status (Art. 5). Right of communities to enjoy culture and use language (Art. 47). | Rights to language and culture; mandates compulsory teaching iTaukei and Fiji Hindi in primary schools (Sec. 37). | 1997/Ghai texts focus on the right to retain culture, while 2013 constitution mandates teaching of conversational iTaukei and Fiji Hindi in the school curriculum. |

## Key Takeaways: The Bill Of Rights



### What This Means

All three constitutions protect core civil and political rights, but they differ significantly in their scope, depth, and the ease with which the state can restrict those rights. The 1997 Constitution focuses primarily on traditional civil liberties, while the Ghai Draft and the 2013 Constitution expand this framework to include socio-economic rights such as health, housing, and environmental protection, as well as standalone protections for children and persons with disabilities.



### Why It Matters: Permitted Limitations

The strength of a Bill of Rights is often found not in the rights it grants, but in the limitation clauses that define when the state can legally take those rights away.

- ➔ **The Proportionality Test:** The Ghai Draft offers the highest level of protection by codifying a strict “proportionality test”; the state must prove that a limitation is “reasonable and justifiable in an open and democratic society” and, crucially, that there are no “less restrictive means” available to achieve the goal.
- ➔ **Broad vs. Specific Limits:** The 1997 Constitution ties restrictions to specific interests like “public order” or



“national security” but requires them to be “reasonable and justifiable in a free and democratic society”.

- ➞ **The 2013 “Catch-all” Clause:** The 2013 Constitution introduces a more flexible restriction framework; Section 6(5)(c) allows for limitations that are “not expressly set out” in the text, provided they are “necessary” and prescribed by law. Additionally, the 2013 text specifically allows for the limitation of free speech to enforce “media standards” and “registration of media organisations,” a restriction not found in the other two documents.

### Questions to Consider

- ➞ Should a constitution include socio-economic rights such as housing and health, or focus on civil and political freedoms?
- ➞ Should a constitution allow the government to restrict rights based on “necessary” laws that are not explicitly named in the constitutional text?
- ➞ Does requiring the state to prove there are “no less restrictive means” create a more secure environment for individual freedom?
- ➞ How should a constitution balance the state’s need to maintain “public order” with an individual’s right to assemble or speak freely.

# The Electoral System



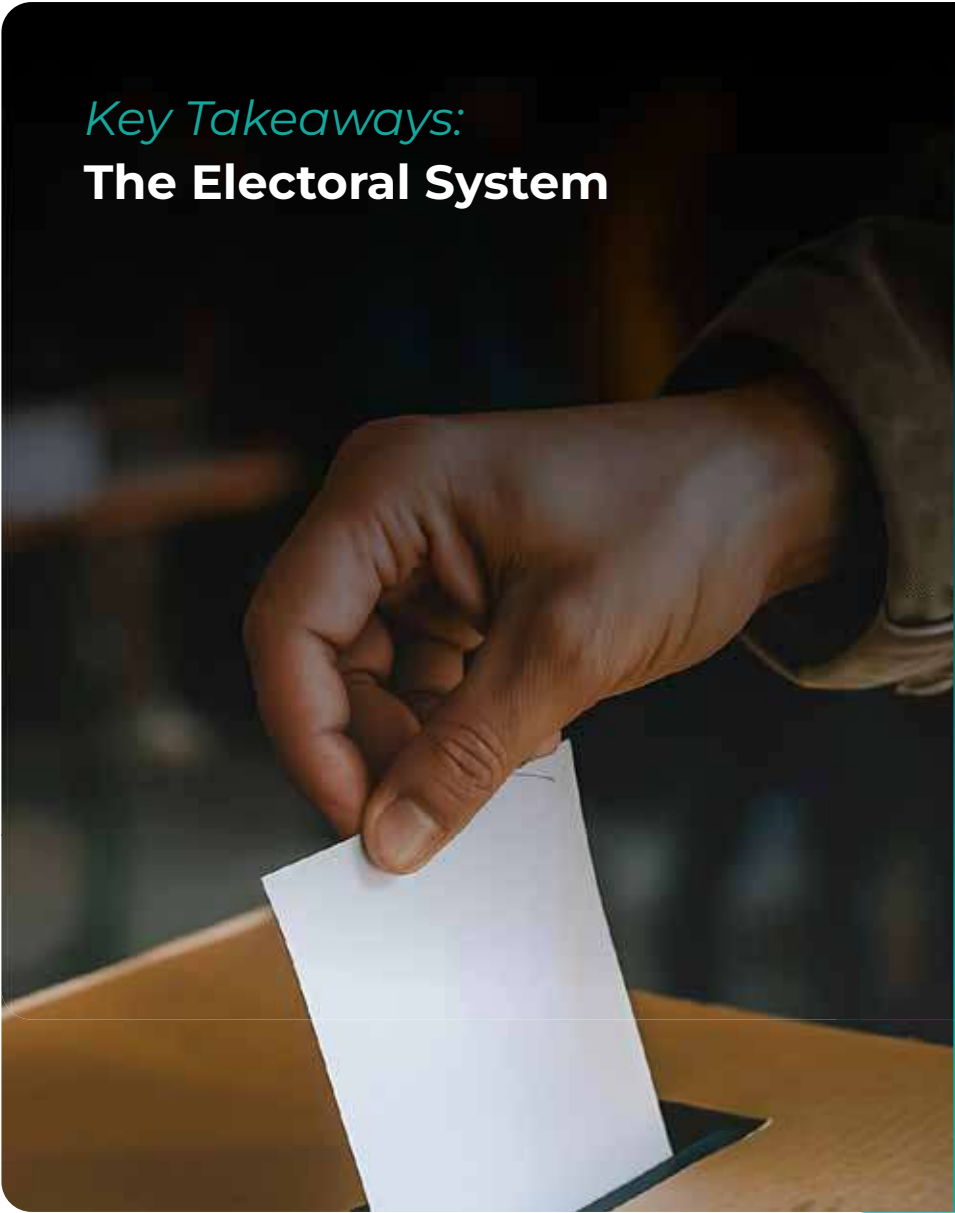
## 4. The Electoral System

| Provision                        | 1997 Constitution                                                                                                                                                                                                                                                               | Ghai Draft                                                                                                                                                                                                                                                                                                                       | 2013 Constitution                                                                                                                                                                                                                               | Comparison                                                                                                                                                                                                                                                                                                |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Electoral System</b>          | <b>Preferential Voting System:</b> Members of the House of Representatives are elected through a preferential voting system known as the alternative vote. (Sec. 54)                                                                                                            | <b>Proportional Representation:</b> Elections for Parliament use a closed list proportional representation system. (Art. 79)                                                                                                                                                                                                     | <b>Proportional Representation:</b> Elections for Parliament use a multi-member open list proportional representation system. (Sec. 53)                                                                                                         | The Ghai Draft and 2013 Constitutions introduce proportional representation, replacing the preferential voting system of the 1997 Constitution. The 2013 system uses an open list, allowing voters more influence over individual candidates.                                                             |
| <b>Composition of Parliament</b> | <b>71 Members:</b> The House of Representatives consists of 71 members representing single-member constituencies. 46 are elected by voters registered on ethnic electoral rolls (23 Fijians, 19 Indians, 1 Rotuman, 3 Others), and 25 are elected on an open roll. (Sec. 50-51) | <b>71 Members:</b> Parliament consists of 71 members. 60 are elected from multi-member electoral districts, and 11 are filled through a mechanism to ensure proportional distribution of seats among contesting parties (Art. 79)                                                                                                | <b>50 Members (initially):</b> Parliament initially consists of 50 members, with the number subject to review before each election to maintain proportionality with the population. (Sec. 54)                                                   | The 1997 Constitution has the most complex system, with separate rolls based on ethnicity. The Ghai Draft and 2013 Constitutions simplify representation, focusing on proportionality without ethnic division.                                                                                            |
| <b>Electoral Districts</b>       | <b>Single-Member Electoral Districts:</b> All seats are single-member constituencies divided by ethnic and open rolls. (Sec. 50-51)                                                                                                                                             | <b>4 Multi-Member Districts:</b> Fiji is divided into 4 electoral districts. Seats are allocated among these districts based on population, with boundaries set by an Act of Parliament (Art. 79)<br><br>For the first election: Central (24 seats), Western (22 seats), Northern (9 seats), and Eastern (5 seats). (Schedule 6) | <b>Single National Electoral Roll:</b> Elections are conducted using a single national electoral roll, with seats allocated proportionally based on total votes cast for parties and independent candidates across the entire nation. (Sec. 53) | The 1997 Constitution uses single-member constituencies with ethnic and open rolls, the Ghai Draft divides the country into four multi-member districts with seats allocated broadly by population, and the 2013 Constitution uses a single national electoral roll in which each vote is of equal value. |

| Provision                                         | 1997 Constitution                                                                                                                                                                   | Ghai Draft                                                                                                                                                                          | 2013 Constitution                                                                                                                                                                                       | Comparison                                                                                                                                                                                                         |
|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Voter Qualification and Registration</b>       | <b>Age 21 and over:</b> Citizens aged 21 and over, or such other age as Parliament prescribes, with two years' residence in Fiji are entitled to be voters. (Sec. 55)               | <b>Age 18 and over:</b> Every citizen over 18 is entitled to be registered to vote, and the Electoral Commission must maintain a single national common voters' register. (Art. 78) | <b>Age 18 and over:</b> Every citizen aged 18 and over has the right to be registered as a voter, with registration maintained in a single national common Register of Voters. (Sec. 55)                | The voting age is lowered to 18 in the Ghai Draft and 2013 Constitutions, reflecting a trend towards broader enfranchisement.                                                                                      |
| <b>Nomination of Candidates</b>                   | <b>Ethnic Qualification:</b> Candidates for communal seats must be registered voters on the corresponding ethnic roll. (Sec. 58)                                                    | <b>Proportional Representation Lists:</b> Candidates can be nominated by political parties or as independents. Party lists must alternate between women and men. (Art. 80)          | <b>Citizenship and Residency:</b> Candidates must be citizens of Fiji, resident for two years, and not holding dual citizenship. Public officers must vacate their office upon nomination. (Sec. 56-57) | The 1997 Constitution ties communal-seat candidacy to ethnic rolls, while the Ghai and 2013 Constitutions use non-ethnic candidacy rules within PR systems.                                                        |
| <b>Minimum Percentage of Women on Party Lists</b> | <b>None Specified</b>                                                                                                                                                               | <b>Gender Balance Requirement:</b> Party lists must alternate between women and men, subject to the temporary adjustments allowed by Schedule 6. (Art. 80, and Schedule 6)"         | <b>None Specified</b>                                                                                                                                                                                   | The Ghai Draft Constitution introduces an alternating women-and-men party-list requirement, subject to temporary adjustments, which is intended to strengthen women's representation.                              |
| <b>Race-Based Electoral System</b>                | <b>Ethnic Electoral Rolls:</b> Ethnic Electoral Rolls: 46 seats are elected by voters registered on ethnic rolls, namely 23 Fijian, 19 Indian, 1 Rotuman and 3 Others. (Sec. 50-51) | <b>No Race-Based Rolls:</b> Proportional representation with a single national common voters' register rather than ethnic electoral rolls. (Art. 78-79)                             | <b>No Race-Based Rolls:</b> Proportional representation with a single national electoral roll rather than separate ethnic electoral rolls. (Sec. 53)                                                    | The 1997 Constitution maintains a race-based electoral system, with separate rolls and communal seats, while the Ghai Draft and 2013 Constitutions abolish these divisions, promoting a unified national identity. |



| Provision                                     | 1997 Constitution                                                                                                                                                      | Ghai Draft                                                                                                                                                                                                                                              | 2013 Constitution                                                                                                                                                                                                                                                  | Comparison                                                                                                                                                    |
|-----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Election Threshold and Seat Allocation</b> | <b>None Specified:</b> No specific electoral threshold for seat allocation; seats are filled based on electoral outcomes in single-member constituencies. (Sec. 50-54) | <b>1% National Vote Threshold:</b> Parties must receive at least 1% of the total national vote to qualify for the 11 national seats. Seats are awarded to candidates based on the proportion of votes received within their districts. (Art. 79 and 81) | <b>5% National Vote Threshold:</b> Parties or independent candidates must receive at least 5% of the total number of votes cast to qualify for any seats in Parliament. (Sec. 53)                                                                                  | The 1997 Constitution does not specify an electoral threshold for seat allocation, while the Ghai Draft and 2013 Constitution introduce electoral thresholds. |
| <b>Compulsory Voting</b>                      | <b>Yes:</b> Every registered voter must vote in every election unless exempted by law. (Sec. 56)                                                                       | <b>No Specific Provision:</b> The Ghai Draft does not explicitly mention compulsory voting.                                                                                                                                                             | <b>No Provision:</b> The 2013 Constitution does not include a requirement for compulsory voting.                                                                                                                                                                   | The 1997 Constitution mandates compulsory voting, whereas the Ghai Draft and 2013 Constitutions do not include specific provisions on compulsory voting.      |
| <b>Term of Parliament and Dissolution</b>     | <b>5 Years:</b> The House of Representatives continues for five years unless sooner dissolved. (Sec. 59-60)                                                            | <b>4 Years:</b> Parliament continues for four years unless sooner dissolved. Early dissolution requires a resolution supported by at least 36 members. (Art. 87-88)                                                                                     | <b>4 Years:</b> Parliament continues for four years unless dissolved earlier. Early dissolution requires a two-thirds resolution, and may be moved only after Parliament has rejected a no-confidence motion and subject to the limits in section 62. (Sec. 58-62) | Both the Ghai Draft and 2013 Constitutions reduce the parliamentary term to four years.                                                                       |



## *Key Takeaways:* **The Electoral System**



### **What This Means**

Fiji's electoral evolution reflects a shift from the 1997 system of race-based rolls and single-member seats toward the 2013 national proportional system. While the Ghai Draft utilized district-based "closed" lists where parties ranked candidates, the 2013 Constitution treats the entire nation as one unified constituency where every vote carries equal weight.



### **Why It Matters:**

The 2013 framework uniquely institutionalizes the principle of "one person, one vote, one value" through a single national electoral roll. Its open-list system empowers voters to select specific individuals rather than merely accepting party-determined rankings.



### **Questions to Consider**

- ⇒ How does a single national roll best fulfill the commitment to a common and equal citizenry?
- ⇒ Does the ability to select individual candidates in an open-list system provide a stronger democratic mandate than party-selected lists?
- ⇒ Should representation prioritise fairness of outcomes or strength of local representation?

# The Parliament



## 5. The Parliament

| Provision                     | 1997 Constitution                                                                                                                                                                                                                                                                          | Ghai Draft                                                                                                                                                                                                             | 2013 Constitution                                                                                                                                                                                     | Comparison                                                                                                                                                                                                                                                                                                                |
|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Legislative Authority</b>  | Legislative authority is vested in a Parliament consisting of the President, House of Representative, and Senate. (Sec. 45)                                                                                                                                                                | Legislative authority is vested in Parliament, derived from the people, representing diversity and unity of the nation. (Art. 83)                                                                                      | Legislative authority and power to make laws are vested in Parliament, consisting of members of Parliament and the President. (Sec. 46)                                                               | All three constitutions vest legislative authority in Parliament, though the Ghai Draft emphasises the people's sovereignty.                                                                                                                                                                                              |
| <b>Composition</b>            | Parliament consists of the President, House of Representatives, and Senate. House of Representatives has 71 members. Senate has 32 members. (Sec. 45, 50, 64)                                                                                                                              | Parliament consists of 71 elected members and a Speaker. (Art. 85)                                                                                                                                                     | The number of elected members for the first election is 50, and this is reviewed before each general election to ensure the same MP to population size ratio as that of the first election. (Sec. 54) | The 1997 Constitution includes both a House of Representatives and Senate, while the Ghai Draft and 2013 Constitution are unicameral.                                                                                                                                                                                     |
| <b>Sessions of Parliament</b> | Parliament is summoned by the President on the advice of the PM no later than 30 days after the last day of polling in a general election. Subsequent sessions are also called by the President on the advice of the PM, but no more than 6 months must elapse between sessions. (Sec. 68) | Parliament must meet in its first sitting on the 14th day after a general election. Other sittings are determined by the Speaker, who must call a sitting if requested by the PM or at least 24 members. (Art. 96, 97) | Parliament must meet no later than 14 days after the announcement of the results of a general election, and no more than 6 months must elapse between sessions (Sec. 67)                              | All three constitutions specify a timeframe for the first sitting after elections, with the 1997 Constitution allowing up to 30 days after polling, the Ghai Draft fixing the sitting on the 14th day after the election, and the 2013 Constitution requiring it no later than 14 days after the announcement of results. |
| <b>Quorum</b>                 | A quorum for the House of Representatives is 24 members; for the Senate, it is 12 members. A sitting must be adjourned if a quorum is not present. (Sec. 70)                                                                                                                               | A quorum for Parliament is 24 members, and 35 members must be present for a vote on a Bill. (Art. 98)                                                                                                                  | A sitting of Parliament requires one-third of the members to be present for quorum; a majority is needed for a vote on a Bill. (Sec. 68)                                                              | All three constitutions regulate quorum, but they do so through materially different formulas.                                                                                                                                                                                                                            |

| Provision                   | 1997 Constitution                                                                                                                                   | Ghai Draft                                                                                                                          | 2013 Constitution                                                                                                                                 | Comparison                                                                                                                        |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| <b>Voting in Parliament</b> | Decisions are made by a majority vote of members present and voting. The presiding officer does not have a casting vote in case of a tie. (Sec. 69) | Majority vote of members present and voting. The presiding officer has no vote, and in case of a tie, the motion is lost. (Art. 99) | Majority vote of members present and voting, with no casting vote for the presiding officer in case of a tie. (Sec. 69)                           | Voting procedures are nearly identical across the three constitutions, emphasizing majority rule without a casting vote.          |
| <b>Notable Quotes</b>       | "The power to make laws for the State vests in a Parliament consisting of the President, the House of Representatives, and the Senate." (Sec. 45)   | "The legislative authority of the Republic is derived from the people and is vested in and exercised by Parliament." (Art. 83)      | "The authority and power to make laws for the State is vested in Parliament consisting of the members of Parliament and the President." (Sec. 46) | The Ghai Draft highlights the concept of legislative authority derived from the people, contrasting with the other constitutions. |

### Parliamentary Institutions and Offices and other related provisions:

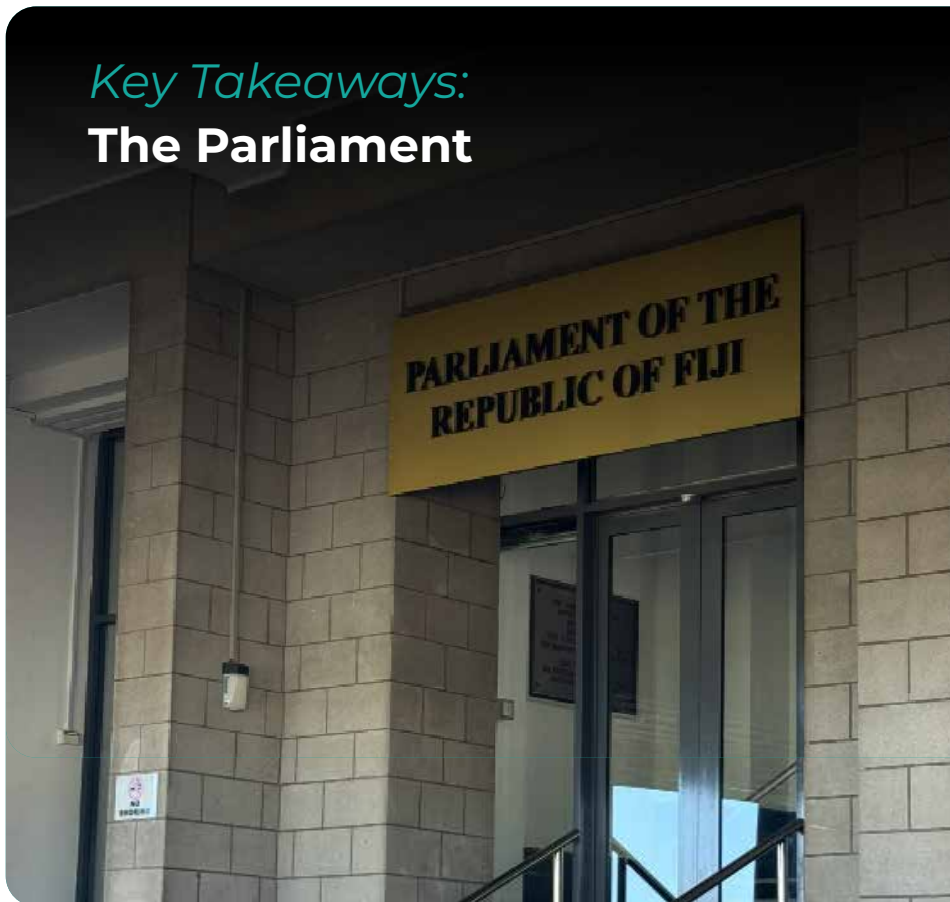
| Provision                      | 1997 Constitution                                                                                                                                                                                                                                        | Ghai Draft                                                                                                                                                                                                                                                                                    | 2013 Constitution                                                                                                                                                                               | Comparison                                                                                                                                           |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Electoral Commission</b>    | Consists of a Chairperson (qualified to be a judge) and 4 other members. Chairperson appointed by the President, and other members appointed on the advice of the Prime Minister, following consultation with the Leader of the Opposition. (Sec. 78-79) | Consists of a Chair and 2 other members appointed by the President based on recommendations from the Constitutional Offices Commission (Art. 149). At least one member must be qualified to be a judge. Membership must reflect Fiji's ethnic, cultural, and gender diversity (Art. 82, 149). | Consists of a Chairperson (qualified to be a judge) and 6 other members. Chairperson and members appointed by the President on the advice of the Constitutional Offices Commission. (Sec. 75)   | The 2013 Constitution has a larger commission (7 members total) compared to the 1997 Constitution (5 members) and the Ghai Draft (3 members).        |
| <b>Supervisor of Elections</b> | Administers voter registration and elections. Appointed by Constitutional Offices Commission after consulting the Minister. (Sec. 79)                                                                                                                    | Not explicitly stated in the Ghai Draft. The closest relevant provision refers to the administration of elections by the Electoral Commission.                                                                                                                                                | Continues from the State Services Decree 2009. Appointed by the President on the advice of the Constitutional Offices Commission following consultation with the Electoral Commission. (Sec.76) | The role of the Supervisor of Elections is clearly defined in the 1997 and 2013 Constitutions. The Ghai Draft lacks a specific mention of this role. |

| Provision                                       | 1997 Constitution                                                                                                                                                                                                                                       | Ghai Draft                                                                                                                                                                                                                                                                                                 | 2013 Constitution                                                                                                                                                                             | Comparison                                                                                                                                                                                                                                                                                          |
|-------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Speaker and Deputy Speaker of Parliament</b> | The Speaker is elected by members of the House of Representatives and must not be a member of the House but qualified to be a candidate. The Deputy Speaker is elected from the members of the House. (Sec. 80)                                         | Parliament has 2 presiding officers: a Speaker and a Deputy Speaker. The Speaker has an official status equivalent to that of the Chief Justice. The Speaker is independent and ensures the honour and dignity of Parliament. (Art. 90-91)                                                                 | The Speaker is elected at the first sitting after a general election. The Speaker must not be a member of Parliament, and the Deputy Speaker is elected from within the Parliament. (Sec. 77) | The Ghai Draft explicitly equates the Speaker's status to that of the Chief Justice and expressly affirms the independence of the role.                                                                                                                                                             |
| <b>Leader of the Opposition</b>                 | Appointed by the President. Represents the opposition party or parties and can be replaced by the President if no longer acceptable to the majority of opposition members. (Sec. 82)                                                                    | Elected by members of Parliament who are not supporting the government. Follows a similar procedure to electing the Prime Minister. (Art. 92)                                                                                                                                                              | Elected by opposition members in Parliament who do not support the Prime Minister. If no candidate receives majority support, the position remains vacant until resolved. (Sec. 78)           | The process is more clearly defined in the 2013 Constitution, which expressly provides for the position to remain vacant if no candidate secures majority support. The Ghai Draft also uses election by non-government-supporting members rather than presidential appointment.                     |
| <b>Parliamentary Emoluments</b>                 | Parliamentary Emoluments Commission established to review allowances and benefits payable to key parliamentary figures, including the Prime Minister, Ministers, and members of both Houses. Consists of a chairperson and two other members. (Sec. 83) | Salaries and Benefits Commission established to review salaries and benefits for Officers of the State, which includes MPs. It consists of the Chair of the Public Service Commission, 2 members with relevant qualifications or experience, and one woman and one man representing the public. (Art. 161) | Remunerations, including salaries and allowances, are prescribed by written law. Must not be varied to their disadvantage except as part of an overall austerity measure. (Sec. 80)           | The 1997 Constitution includes a specific Emoluments Commission, Ghai draft establishes an independent Salaries and Benefit Commission, while the 2013 Constitution essentially empowers members of Parliament to determine their own salaries through written law, subject to specific conditions. |



| Provision                              | 1997 Constitution                                                                                                                       | Ghai Draft                                                                                                                                                       | 2013 Constitution                                                                                                                                                                                                                            | Comparison                                                                                                                                                                                                                 |
|----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Secretary-General to Parliament</b> | Continues from the 1990 Constitution. Appointed by the Constitutional Offices Commission after consultation with the Speaker. (Sec. 84) | Appointed in accordance with the Standing Orders and with the approval of the House. The office and its staff form part of the Parliamentary Service. (Art. 104) | Established under the State Services Decree 2009. Appointed by the President on the advice of the Constitutional Offices Commission. Responsible for managing Parliament, advising the Speaker, and ensuring efficient operations. (Sec. 79) | All three constitutions provide for a Secretary-General to Parliament, but the 2013 Constitution states the management and procedural-advice functions much more explicitly than the 1997 Constitution and the Ghai Draft. |

## Key Takeaways: The Parliament



### What This Means

The 1997 Constitution establishes a bicameral legislature, while the Ghai Draft and the 2013 Constitution adopt unicameral systems. There are also differences in how Parliament is constituted, how it operates, and how leadership positions are filled.



### Why It Matters:

The structure of Parliament affects both efficiency and accountability. Bicameral systems can provide an additional layer of scrutiny, but may slow decision-making. Unicameral systems are more streamlined, but concentrate legislative authority in a single body. Rules around leadership, quorum, and procedures influence how effectively Parliament can hold the executive to account. A fully elected legislature, as provided in the Ghai and 2013 frameworks, ensures that every member holds a direct democratic mandate from the people, unlike the 1997 system where the Senate was composed of appointed members.



### Questions to Consider

- ➔ Is it more important for Parliament to be efficient or to have multiple layers of oversight?
- ➔ What institutional safeguards are needed to ensure Parliament remains independent of the executive?

# The Executive

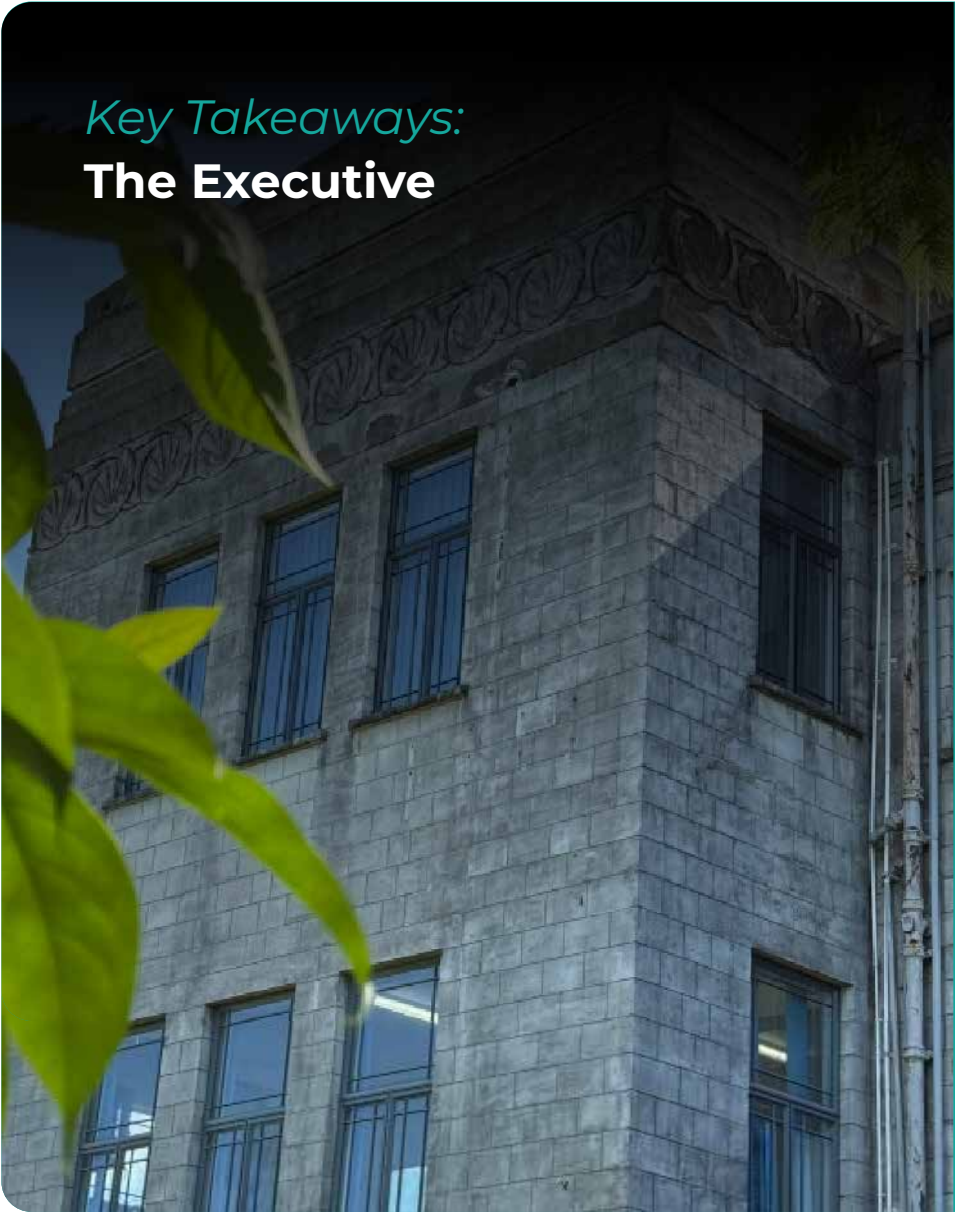


## 6. The Executive

| Provision                        | 1997 Constitution                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Ghai Draft                                                                                                                                                                                                                                                                                                                                                                             | 2013 Constitution                                                                                                                                                                                                                                                                                                                                                             | Comparison                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Head of State (President)</b> | <ul style="list-style-type: none"> <li>➔ The President is the Head of State, Commander-in-Chief of the military, and holds executive authority. (Sec. 85-87)</li> <li>➔ Appointed by the Bose Levu Vakaturaga after consultation with the PM. (Sec. 90)</li> <li>➔ Holds office for 5 years, eligible for one re-appointment. (Sec. 91)</li> <li>➔ Can be removed for incapacity or misbehavior. (Sec. 93)</li> <li>➔ The constitution gives the president discretionary powers - circumstances in which the President may act in his or her own judgment. (Sec. 96)</li> </ul> | <ul style="list-style-type: none"> <li>➔ The President symbolizes the unity of the nation and is elected by the National People's Assembly and Parliament in a joint session.</li> <li>➔ Uses the moral authority of the office to promote national values and may represent Fiji internationally. (Art. 73-76)</li> <li>➔ No re-election after serving one term. (Art. 74)</li> </ul> | <ul style="list-style-type: none"> <li>➔ The President is the Head of State, Commander-in-Chief of the military, and performs ceremonial functions. (Sec. 81)</li> <li>➔ Appointed by Parliament based on nominations by the Prime Minister and Leader of the Opposition. (Sec. 84)</li> <li>Holds office for 3 years, with one possible re-appointment. (Sec. 85)</li> </ul> | <p>The 1997 Constitution emphasizes the traditional role of the President and involvement of the Bose Levu Vakaturaga, while the Ghai Draft focuses on broader representation through election by the National People's Assembly. The 2013 Constitution centralizes control with parliamentary nomination and emphasizes a shorter term.</p> <p>The 1997 Constitution gives the President, an unelected entity, discretionary powers in certain specified circumstances, which can undermine democracy.</p> |
| <b>Vice-President</b>            | <ul style="list-style-type: none"> <li>➔ The Vice-President performs the functions of the President if the President is absent or unable to perform duties. (Sec. 88)</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                | <ul style="list-style-type: none"> <li>➔ Not specified as a separate office. The Speaker of Parliament acts as President if needed. (Art. 76)</li> </ul>                                                                                                                                                                                                                               | <ul style="list-style-type: none"> <li>➔ No separate office of Vice-President. The Chief Justice performs the President's functions in case of absence or incapacity. (Sec. 88)</li> </ul>                                                                                                                                                                                    | <p>The 1997 Constitution establishes a distinct Vice-President role, whereas the Ghai Draft and 2013 Constitution assign these duties to the Speaker of Parliament or Chief Justice, respectively.</p>                                                                                                                                                                                                                                                                                                      |

| Provision             | 1997 Constitution                                                                                                                                                                                                                                                                                                                                                                                                                       | Ghai Draft                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 2013 Constitution                                                                                                                                                                                                                                                                                                                                     | Comparison                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Prime Minister</b> | <ul style="list-style-type: none"> <li>➔ Appointed by the President from the House of Representatives, based on confidence of the House.</li> <li>➔ The President has discretionary powers in appointing the Prime Minister, acting in his or her own judgment. (Sec. 98)</li> </ul>                                                                                                                                                    | <ul style="list-style-type: none"> <li>➔ Elected by Parliament from among its members.</li> <li>➔ Can serve a maximum of 8 years. (Art. 114-115)</li> </ul>                                                                                                                                                                                                                                                                                                                          | <ul style="list-style-type: none"> <li>➔ The Prime Minister is the head of government and must be a member of Parliament.</li> <li>➔ Appointed based on parliamentary majority or through a vote in Parliament if no party wins 50% of seats. (Sec. 92-93)</li> </ul>                                                                                 | The 1997 Constitution grants the President discretionary powers in appointing the PM. In the Ghai Draft, the PM is elected by Parliament. Under the 2013 Constitution, the leader of a party holding more than 50% of seats assumes office, and a parliamentary vote is held only if no party wins more than 50% of seats. The Ghai Draft also introduces an 8-year term limit, which is absent in the other constitutions." |
| <b>Cabinet</b>        | <ul style="list-style-type: none"> <li>➔ Comprises the Prime Minister and other Ministers appointed by the President on the advice of the Prime Minister.</li> <li>➔ Multi-party representation in the Cabinet is required.</li> <li>➔ The PM must invite all parties with at least 10% of the seats in the House of Representatives to be represented in the Cabinet in proportion to their numbers in the House. (Sec. 99)</li> </ul> | <ul style="list-style-type: none"> <li>➔ Cabinet consists of the Prime Minister and up to 14 other Ministers, including a Deputy Prime Minister. (Art. 113)</li> <li>➔ PM must endeavour to select a Cabinet which, taken as a whole, reflects the ethnic, cultural and gender diversity of Fiji.</li> <li>➔ Ministers can be from inside or outside Parliament. Up to 4 ministers can be from outside parliament, approved by parliament with simple majority (Art. 117)</li> </ul> | <ul style="list-style-type: none"> <li>➔ Cabinet consists of the Prime Minister and Ministers appointed by the Prime Minister.</li> <li>➔ Cabinet size is determined by PM</li> <li>➔ Ministers must generally be members of Parliament, except the minister appointed as Attorney-General who can be from outside parliament. (Sec 91-96)</li> </ul> | The 1997 Constitution requires multi-party representation in Cabinet. The Ghai Draft limits Cabinet to 15 members including the Prime Minister, while the 2013 Constitution does not set a numerical cap and gives the Prime Minister direct power to determine the number of Ministers and appoint them.                                                                                                                    |

| Provision                            | 1997 Constitution                                                                                                                                                                                                                                                                                                                                                                                    | Ghai Draft                                                                                                                                                                                                                               | 2013 Constitution                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Comparison                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Attorney-General</b>              | <ul style="list-style-type: none"> <li>➔ The Attorney-General is the chief legal adviser to the government and must be a qualified legal practitioner.</li> <li>➔ Can attend both Houses but only vote in the House they are a member of. (Sec. 100)</li> </ul>                                                                                                                                      | <ul style="list-style-type: none"> <li>➔ No references to a constitutional Attorney General's office in the Ghai Draft.</li> </ul>                                                                                                       | <ul style="list-style-type: none"> <li>➔ The Attorney-General is the chief legal adviser to the government.</li> <li>➔ Must be a legal practitioner with at least 15 years of post-admission experience as a legal practitioner and has not been found guilty of any disciplinary proceedings.</li> <li>➔ May be appointed from outside Parliament only if the PM considers that there are no supporting MPs who are qualified, suitable or available. (Sec. 96)</li> </ul> | The 1997 Constitution ties the Attorney-General to the ministerial office and therefore to parliamentary membership, while the 2013 Constitution allows appointment from outside Parliament in limited circumstances. A corresponding Attorney-General provision is not found in the Ghai Draft.                                                                                  |
| <b>Removal of the Prime Minister</b> | <ul style="list-style-type: none"> <li>➔ The President may dismiss the Prime Minister only if the Government fails to get or loses the confidence of the House of Representatives and the Prime Minister does not resign or obtain a dissolution of Parliament.</li> <li>➔ The President may appoint a caretaker Prime Minister following the dismissal of the Prime Minister. (Sec. 109)</li> </ul> | <ul style="list-style-type: none"> <li>➔ The Prime Minister can be dismissed by a vote of no confidence in Parliament.</li> <li>➔ Requires at least 36 members of Parliament to support the motion for it to pass. (Art. 116)</li> </ul> | <ul style="list-style-type: none"> <li>➔ The Prime Minister may only be dismissed by a motion of no confidence that must also propose a new Prime Minister.</li> <li>➔ A motion of no confidence passes if it is supported by at least a majority of the members of Parliament. (Sec. 94)</li> </ul>                                                                                                                                                                        | The 1997 Constitution gives the President discretionary powers in relation to the replacement or temporary continuation of executive authority after loss of confidence, including appointment of a caretaker Prime Minister following dismissal, while the Ghai Draft and 2013 Constitution require a successful no-confidence motion that also proposes the new Prime Minister. |



## Key Takeaways: The Executive



### What This Means

All three constitutions provide for a parliamentary system of government but differ significantly in the distribution and limitation of executive authority. The 1997 Constitution emphasizes power-sharing through a mandatory multi-party Cabinet (the “Compact”) and grants the President specific discretionary powers.

The Ghai Draft introduces strict structural constraints, including a total cap on Cabinet size of 15 members (the Prime Minister and 14 Ministers) and an eight-year total term limit for the Prime Minister.

Furthermore, the Ghai Draft uniquely mandates that the Prime Minister must endeavour to select a Cabinet that reflects the ethnic, cultural, and gender diversity of Fiji. In contrast, the 2013 Constitution removes these specific constraints, centralising authority by allowing the Prime Minister unilateral discretion to determine Cabinet size and composition



### Why It Matters:

Executive design determines how power is exercised at the centre of government. Systems that distribute executive authority or require broader inclusion may promote consensus, but can also create complexity. More centralised systems may allow for decisive governance, but raise questions about checks on power. The balance between efficiency and accountability is a central constitutional concern.

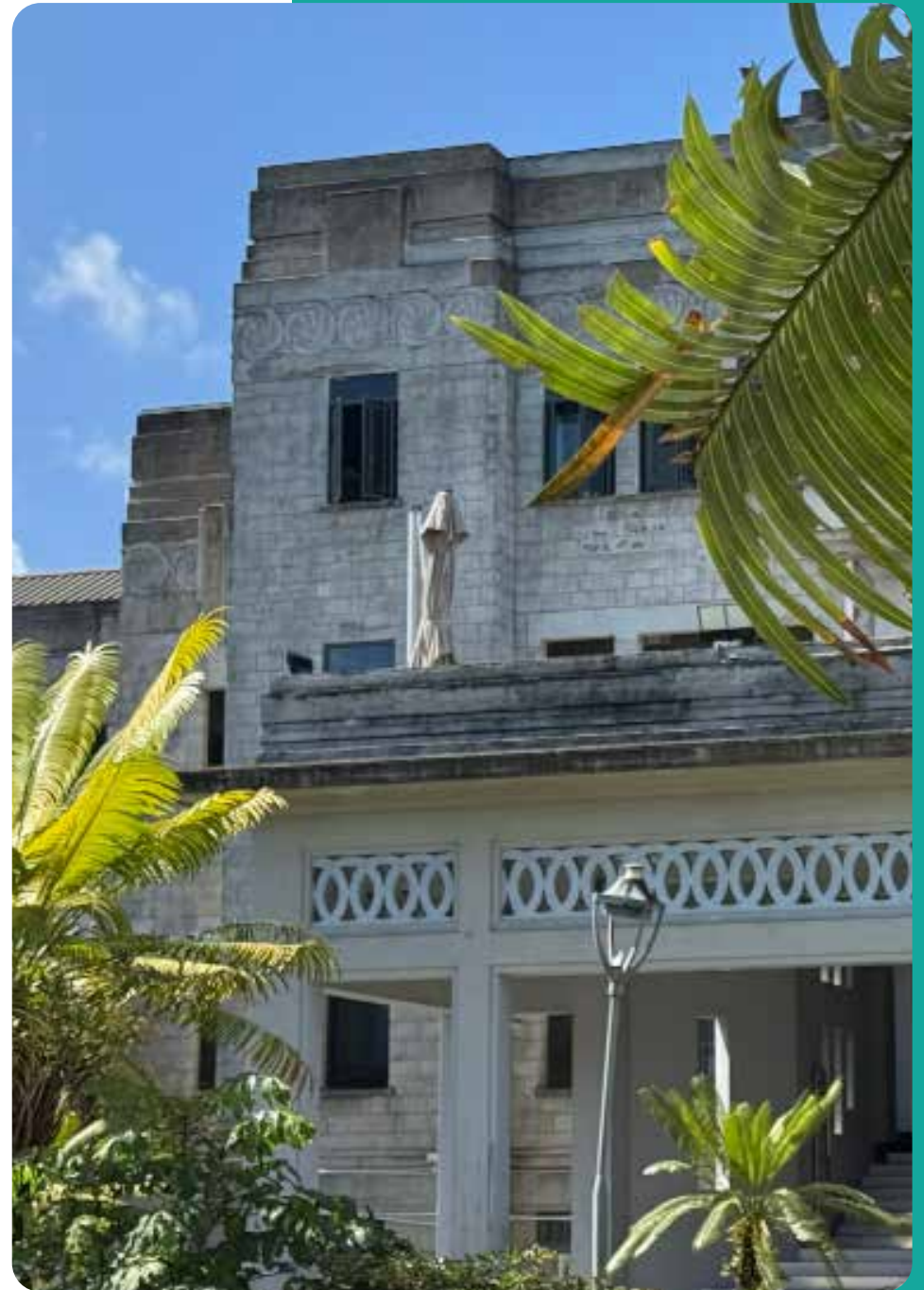


### Questions to Consider

- ➔ Should executive power be broadly shared or clearly concentrated for effective governance?
- ➔ What mechanisms are necessary to prevent excessive concentration of power?
- ➔ Should a constitution specify that a Cabinet must reflect the ethnic and gender makeup of the nation, or should this be left to political discretion?



# The Judiciary



## 7. The Judiciary

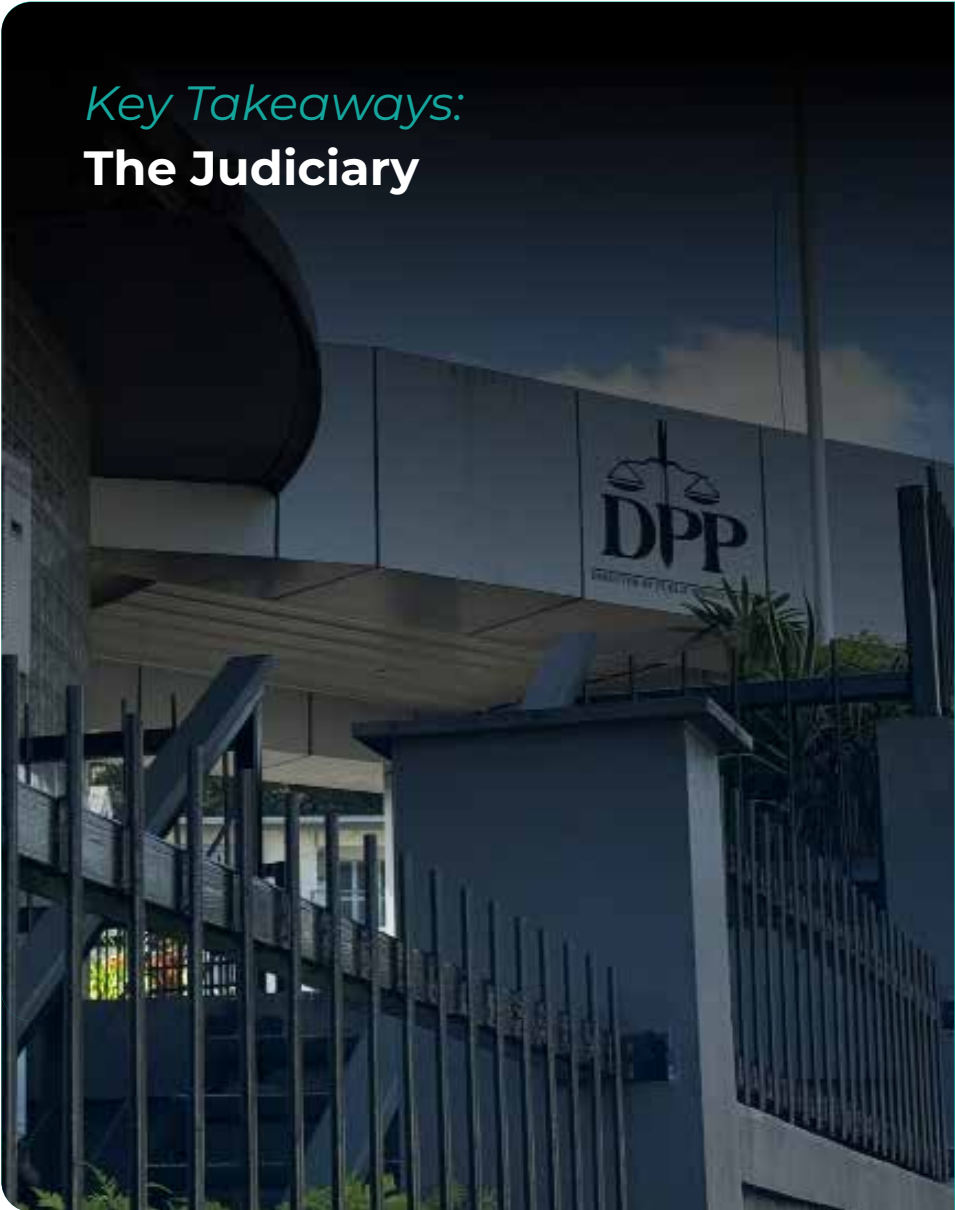
| Provision                              | 1997 Constitution                                                                                                                                                         | Ghai Draft                                                                                                                                                                         | 2013 Constitution                                                                                                                                                 | Comparison                                                                                                                                                                                   |
|----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Judicial Power and Independence</b> | Judicial power vested in the High Court, Court of Appeal, and Supreme Court. (Sec. 117-118)                                                                               | Judicial authority vested in courts established by or under the Constitution. (Art. 121)                                                                                           | Judicial power vested in the Supreme Court, Court of Appeal, High Court, Magistrates Court, and other courts created by law. (Sec. 97)                            | All three constitutions emphasise judicial independence, although the Ghai Draft and 2013 Constitution state the non-interference and institutional-protection requirements more explicitly. |
| <b>Supreme Court</b>                   | Final appellate court with exclusive jurisdiction over appeals from the Court of Appeal (Sec. 117, 122) and advisory jurisdiction on constitutional questions (Sec. 123). | Final appellate court of Fiji, with exclusive authority over appeals from the Court of Appeal and original jurisdiction in constitutional matters. (Art. 123)                      | Final appellate court with exclusive jurisdiction to hear appeals from the Court of Appeal. Also has original jurisdiction in constitutional questions. (Sec. 98) | All three constitutions establish the Supreme Court as the final appellate authority with some differences in composition and jurisdiction.                                                  |
| <b>Court of Appeal</b>                 | Jurisdiction to hear appeals from all judgments of the High Court. Appeals as of right from final judgments involving constitutional interpretation. (Sec. 121)           | Jurisdiction to hear appeals from High Court judgments. Must hear appeals involving constitutional interpretation or matters heard at first instance in the High Court. (Art. 124) | Jurisdiction to hear appeals from High Court judgments. Appeals as of right in constitutional matters. (Sec. 99)                                                  | Similar appellate jurisdictions across all three constitutions with slight variations in procedural requirements.                                                                            |
| <b>High Court</b>                      | Unlimited original jurisdiction in civil and criminal matters, including constitutional interpretation. Supervises subordinate courts (Sec. 120)                          | Original authority in civil, criminal, and constitutional matters. Supervises subordinate courts and tribunals. (Art. 125)                                                         | Unlimited original jurisdiction in civil and criminal matters, including constitutional interpretation. Supervises subordinate courts. (Sec. 100)                 | All three constitutions grant the High Court significant original jurisdiction, with oversight of lower courts.                                                                              |

| Provision                                | 1997 Constitution                                                                                                                                                                                                                                                                                                    | Ghai Draft                                                                                                                                                                                                                                                                                    | 2013 Constitution                                                                                                                                                                                                                                                      | Comparison                                                                                                                                                                                                                                                                                                                                 |
|------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Magistrates Court</b>                 | Magistrates' courts exist under offices and jurisdiction provided by law, with appointments made by the Judicial Service Commission. (Sec. 133)                                                                                                                                                                      | Magistrates' Courts are part of the judicial system, with jurisdiction determined by written law or legislation. (Art. 122, 125)                                                                                                                                                              | Magistrates Court with jurisdiction conferred by law. (Sec. 101)                                                                                                                                                                                                       | Magistrates' courts exist in all three constitutional frameworks, with their jurisdiction conferred by legislation or written law.                                                                                                                                                                                                         |
| <b>Judicial Service Commission (JSC)</b> | Consists of the Chief Justice, Chairperson of the Public Service Commission, and President of the Fiji Law Society. Recommends judicial appointments and may investigate complaints and take disciplinary action in relation to judges and judicial officers of courts subordinate to the High Court. (Sec. 131–133) | Consists of Chief Justice, one High Court Judge, one representative from the Ministry of Justice, one representative from the Fiji Law Society, and two non-lawyers (1 woman and 1 man) appointed by the COC. Promotes judicial independence and recommends judicial appointments. (Art. 135) | Consists of Chief Justice, President of the Court of Appeal, Permanent Secretary for Justice, a legal practitioner, and a non-lawyer appointed by the President on advice of CJ and AG. Responsible for recommending appointments and disciplinary actions. (Sec. 104) | The composition of the Judicial Service Commission differs significantly, with broader and more publicly representative membership in the Ghai Draft. The 1997 Constitution has the smallest commission, while the 2013 Constitution includes both legal and non-legal representation but with a narrower composition than the Ghai Draft. |
| <b>Appointment of Judges</b>             | Chief Justice appointed by the President on the advice of the Prime Minister following consultation with the Leader of the Opposition. Other judges appointed on the recommendation of the Judicial Service Commission. (Sec. 132)                                                                                   | Chief Justice appointed by the President on the recommendation of the JSC after consultation with the Prime Minister and Leader of the Opposition. Other judges appointed on the recommendation of the JSC. (Art. 129)                                                                        | Chief Justice appointed by the President on the advice of the Prime Minister following consultation with the Attorney-General. Other judges appointed on the recommendation of the JSC. (Sec. 106)                                                                     | All three constitutions involve the President in judicial appointments, with varying degrees of consultation required with other political figures. All constitutions except the 2013 constitution require consultation with the opposition leader.                                                                                        |

| Provision                                    | 1997 Constitution                                                                                                                                                                                                                                                   | Ghai Draft                                                                                                                                                                                                                                                            | 2013 Constitution                                                                                                                                                                                                                                                                                                                      | Comparison                                                                                                                                                                                                                                  |
|----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Removal of Judges</b>                     | Judges may be removed for incapacity or misbehaviour. The removal process involves a tribunal or medical board appointed by the President. (Sec. 138)                                                                                                               | Judges, including the Chief Justice, may be removed for incapacity or wrongdoing, following procedures outlined in Schedule 5. (Art. 134)                                                                                                                             | Chief Justice, President of the Court of Appeal, and judges may be removed for cause by the President following the recommendation of a tribunal. (Sec. 111)                                                                                                                                                                           | The 2013 Constitution includes specific provisions for the removal of the Chief Justice and the President of the Court of Appeal, while the 1997 Constitution and the Ghai Draft use more general judicial-removal provisions.              |
| <b>Retirement Age</b>                        | Chief Justice, Justices of Appeal, and Supreme Court judges retire at 70; High Court judges at 65. (Sec. 137)                                                                                                                                                       | Chief Justice and High Court judges retire at 70; Supreme Court and Court of Appeal judges at 75. (Art. 133)                                                                                                                                                          | Chief Justice, President of the Court of Appeal, Supreme Court Judges and Justices of Appeal retire at 75; High Court judges retire at 70. (Sec. 110)                                                                                                                                                                                  | Retirement ages are similar across all three constitutions, with slight variations in the age limits for different judicial positions.                                                                                                      |
| <b>Director of Public Prosecutions (DPP)</b> | Continues from the 1990 Constitution. The DPP is qualified to be appointed as a judge and appointed by the COC. Powers include instituting and conducting criminal proceedings, taking over cases, and discontinuing cases at any stage before judgment. (Sec. 114) | DPP is established as an Independent Officer under Chapter 13. The DPP must be a person qualified to be a High Court judge. Has authority to institute and conduct criminal proceedings, except in matters covered by the Ethics and Integrity Commission. (Art. 138) | DPP office established under State Services Decree 2009 continues in existence. The DPP is qualified to be appointed as a judge and is appointed by the President on recommendation of the JSC following consultations with AG. The DPP is independent and responsible for instituting and conducting criminal proceedings. (Sec. 117) | All three constitutions establish the DPP with significant prosecutorial powers, and the Ghai Draft and 2013 Constitution expressly frame the office as independent. The 1997 Constitution continues the office from the 1990 Constitution. |
| <b>Legal Aid Commission</b>                  | No express Legal Aid Commission provision                                                                                                                                                                                                                           | Legal aid provisions are not specifically detailed but Article 40 (3) requires the State, through legislation and other measures, to provide for legal aid for those who cannot afford to pursue/ access justice. (Art. 40(3))                                        | The Legal Aid Commission is established to provide free legal aid services to those who cannot afford legal representation. (Sec. 118)                                                                                                                                                                                                 | Only the 2013 Constitution explicitly establishes the Legal Aid Commission as an independent body for providing legal aid services.                                                                                                         |

| Provision                                             | 1997 Constitution                                        | Ghai Draft                                               | 2013 Constitution                                                                                                                                                                                                                            | Comparison                                                                                                                                                                |
|-------------------------------------------------------|----------------------------------------------------------|----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Independent Legal Services Commission</b>          | Not explicitly mentioned. [General judiciary provisions] | No explicit mention. [General judiciary provisions]      | Established by the Legal Practitioners Decree 2009 and continues in existence. The Commissioner is appointed by the President on the advice of the Judicial Services Commission following consultation with the Attorney-General. (Sec. 114) | The 2013 Constitution specifically establishes the Independent Legal Services Commission, while the other constitutions do not explicitly mention it.                     |
| <b>Fiji Independent Commission Against Corruption</b> | No FICAC provision.                                      | No FICAC provision.                                      | Established by the Fiji Independent Commission Against Corruption Promulgation 2007 and continues in existence. The Commission has wide-ranging powers. (Sec. 115)                                                                           | The 2013 Constitution establishes the Fiji Independent Commission Against Corruption with specific powers and responsibilities, not mentioned in the other constitutions. |
| <b>Public Service Disciplinary Tribunal</b>           | Not explicitly mentioned. [General judiciary provisions] | No explicit mention. [General judiciary provisions]      | Established with authority to hear disciplinary cases against public service officials. Decisions are subject to review by the High Court. (Sec. 120)                                                                                        | Only the 2013 Constitution establishes a specific tribunal for public service disciplinary cases.                                                                         |
| <b>Accountability and Transparency Commission</b>     | No Accountability and Transparency Commission provision. | No Accountability and Transparency Commission provision. | Established to investigate complaints against public office holders. Members are appointed by the President on the advice of the Judicial Services Commission following consultation with the Attorney-General. (Sec. 121)                   | The 2013 Constitution establishes this commission, which is not mentioned in the other constitutions.                                                                     |





## *Key Takeaways:* **The Judiciary**



### **What This Means**

All three constitutions establish an independent judiciary with similar court structures, but differ in how judicial appointments and oversight bodies are constituted.

The Ghai Draft provides for broader and more representative appointment mechanisms, while the 2013 Constitution adopts a more streamlined structure.

Furthermore, the 2013 Constitution allows the Prime Minister to advise the suspension of the Chief Justice indefinitely without a specified constitutional deadline to convene an investigative tribunal, whereas the Ghai Draft mandates that an investigative panel must be convened within seven days of a removal motion and establishes a high threshold for dismissal requiring the support of five out of seven panel members.



### **Why It Matters:**

Judicial independence depends not only on formal guarantees, but also on how judges are appointed, disciplined, and protected from external influence. Broader appointment processes may enhance perceived independence, while more centralised processes may raise concerns about influence. The design of judicial institutions is central to maintaining the rule of law.



### **Questions to Consider**

- ➞ What appointment process best ensures both independence and competence in the judiciary?
- ➞ How important is public confidence compared to institutional efficiency?



# State Services



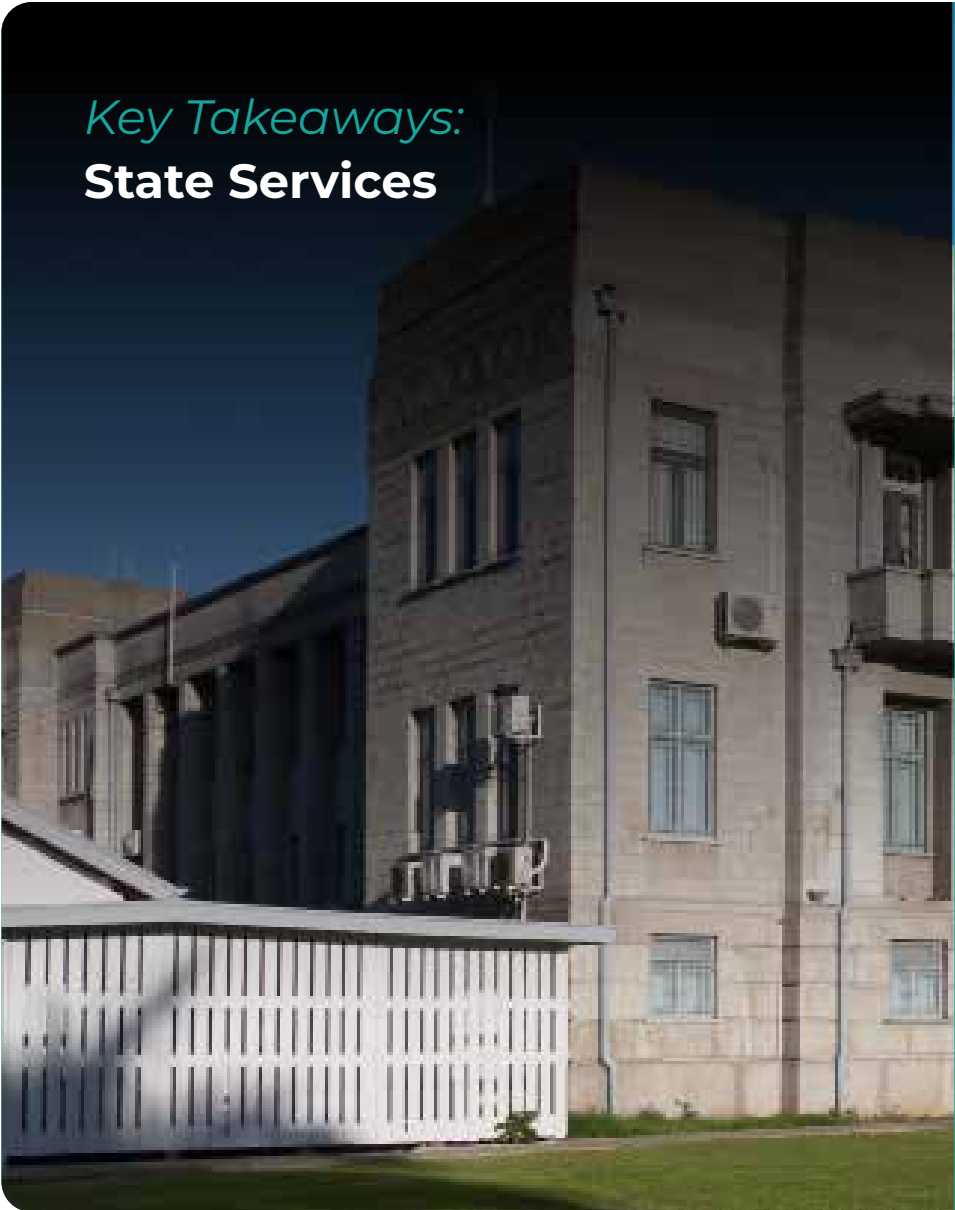
## 8. State Services

| Provision                        | 1997 Constitution                                                                                                                                                                         | Ghai Draft                                                                                                                                                                                                                    | 2013 Constitution                                                                                                                                                                                         | Comparison                                                                                                                                                                                                                                                  |
|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Recruitment and Promotion</b> | Recruitment based on merit, reflecting the ethnic composition of the population and promoting equality in training and advancement ( <i>Sec. 140</i> )                                    | Emphasis on merit, fairness, and diversity in public service recruitment and promotion. Broad representation of Fiji's diversity is required ( <i>Art 164</i> )                                                               | Recruitment based on merit, objectivity, and fairness. Emphasis on efficiency, transparency, and equity in public service ( <i>Sec. 123</i> )                                                             | All three constitutions emphasize merit, diversity, and fairness in public service recruitment, with the Ghai Draft and 2013 Constitutions providing more detailed guidance on transparency and equity.                                                     |
| <b>Public Office Holders</b>     | Only citizens can hold public office, except with the approval of the Prime Minister ( <i>Sec. 141</i> )                                                                                  | Public officers must be loyal to the people and act with integrity and professionalism ( <i>Art. 164</i> ). (Note: Does not contain the general citizenship requirement for public offices found in the other two documents). | Public office holders must be citizens, with a strong emphasis on professional ethics and the effective use of public resources ( <i>Sec. 123-124</i> )                                                   | All three constitutions place weight on citizenship and public-service ethics, although the 1997 Constitution allows the Prime Minister to permit a non-citizen to hold a particular public office.                                                         |
| <b>Public Service Commission</b> | Established under the 1990 Constitution; responsible for appointments, removals, and discipline in public service, excluding offices handled by other commissions ( <i>Sec. 142-148</i> ) | Established as an Independent Commission, responsible for ensuring an independent and professional public service. Includes recruitment, appointments, and discipline ( <i>Art. 168-169</i> )                                 | Continues as per the State Services Decree 2009, responsible for appointing, removing, and disciplining permanent secretaries and other duties prescribed by law ( <i>Sec. 125-126</i> )                  | All three constitutions provide for a Public Service Commission, but the Ghai Draft gives it the broadest express constitutional functions, while the 2013 Constitution focuses it more specifically on permanent secretaries and other prescribed offices. |
| <b>Permanent Secretaries</b>     | Each department is managed by a Permanent Secretary responsible to the Minister for the efficient, effective, and economical management of the department. ( <i>Sec. 110</i> )            | Established within each ministry, responsible for the efficient, effective and economical management of departments. ( <i>Art. 167</i> )                                                                                      | Established within each ministry, with responsibilities including efficient, effective and economical management and, responsibility for staff appointments, removals and discipline. ( <i>Sec. 127</i> ) | The Ghai Draft and 2013 Constitution provide detailed provisions for permanent secretaries, emphasizing their role in efficient government management.                                                                                                      |

| Provision                                                           | 1997 Constitution                                                                                                                                                                                                                  | Ghai Draft                                                                                                                                                                                                                                                            | 2013 Constitution                                                                                                                                                                                    | Comparison                                                                                                                                                                                                         |
|---------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Disciplined Forces</b>                                           | Disciplined Services Commission established for the police and prisons service, responsible for appointments and discipline. (Sec. 152–154)                                                                                        | Police and Corrections Services Commission established as an Independent Commission, with responsibilities for appointments, removals and discipline in the police and corrections services. (Art. 178)                                                               | Police and Corrections Services continue under separate command structures, with their functions and administration governed by sections 129 and 130. (Sec. 129–130)                                 | All three constitutions regulate the state's disciplined services, but they do so through materially different institutional structures. The Ghai Draft states the independence of the commission more explicitly. |
| <b>Independent Commissions</b>                                      | Constitutional Offices Commission, Public Service Commission and Disciplined Services Commission are established, with appointment and disciplinary functions set out across sections 143–147 and 152–154. (Sec. 143–147, 152–154) | Establishes a broad framework for multiple Independent Commissions and Offices, including the Public Service Commission, with constitutional objects centred on constitutional democracy, good governance, human rights, integrity and accountability. (Art. 144–149) | Establishes the Constitutional Offices Commission and maintains the independence of various commissions, including the Public Service Commission (Sec.132–133)                                       | The Ghai Draft provides the broadest express constitutional framework for independent commissions, with stated objects including protection of constitutional democracy and accountability in public affairs.      |
| <b>Public Service Commission (PSC): Appointment and Composition</b> | PSC consists of a chairperson and 3-5 members, appointed by the President on the nomination of the Minister, with each nomination approved by the appropriate sector standing committee of the House of Representatives (Sec. 143) | PSC is established as an Independent Commission under Chapter 13, consisting of 5 members, including a chairperson, appointed under the Chapter 13 appointments framework. (Art. 168)                                                                                 | PSC continues as per the State Services Decree 2009, consisting of a chairperson and 3-5 other members, appointed by the President on the advice of the Constitutional Offices Commission (Sec. 125) | The Ghai Draft and 2013 Constitution emphasize the independence of the PSC, although the Ghai Draft states the broader appointments framework more fully.                                                          |

| Provision                                                                   | 1997 Constitution                                                                                                                                                                                                                                                                 | Ghai Draft                                                                                                                                                                                                                                                                                                            | 2013 Constitution                                                                                                                                                                                                                                                                                                                                            | Comparison                                                                                                                                                                                                                                   |
|-----------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Public Service Commission (PSC): Functions</b>                           | The PSC is responsible for making appointments to public offices, removing persons from public offices, and taking disciplinary action against public officers. Functions exclude offices managed by other commissions or covered by specific legislation ( <i>Sec. 147-148</i> ) | The PSC ensures an independent and professional public service by setting recruitment standards, monitoring appointments and discipline, and providing educational opportunities. It also makes direct appointments and handles promotions and disciplinary actions. ( <i>Art. 168</i> )                              | The PSC appoints, removes, and institutes disciplinary actions against permanent secretaries and other public service roles. It has specific exclusions similar to the 1997 Constitution regarding judicial and military offices ( <i>Sec. 126</i> )                                                                                                         | All three constitutions provide for a PSC, but the Ghai Draft gives the most detailed constitutional guidance on recruitment standards and public service education, while the 2013 Constitution assigns more targeted functions to the PSC. |
| <b>Constitutional Offices Commission (COC): Appointment and Composition</b> | COC consists of a chairperson and two other members, all appointed by the President. Appointments are made based on the nomination by the Minister, with approval from the sector standing committee of the House of Representatives ( <i>Sec. 143</i> )                          | COC consists of the Chair of the Fiji Human Rights Commission or Ombudsman, the Chair of the Ethics and Integrity Commission or Electoral Commission, and 2 women and 2 men selected by the Prime Minister and the Leader of the Opposition. ( <i>Art. 151</i> )                                                      | COC consists of the Prime Minister (chairperson), the Leader of the Opposition, the Attorney-General, two members appointed by the President on the Prime Minister's advice, and one member appointed by the President on the Opposition Leader's advice ( <i>Sec. 132</i> )                                                                                 | The Ghai Draft provides a broader and more mixed composition for the COC, with stronger emphasis on representation and the independent commissions framework.                                                                                |
| <b>Constitutional Offices Commission (COC): Functions</b>                   | COC is responsible for making appointments to key constitutional offices, including the Supervisor of Elections, Ombudsman, Auditor-General, DPP, Secretary-General to Parliament, Commissioner of Police, and Governor of the Reserve Bank ( <i>Sec. 146</i> )                   | COC is responsible for encouraging citizens to make themselves available to serve, maintaining a register of those willing to serve, appointing members to Independent Commissions and Offices, and reviewing the conduct of Officers of the State, including convening a tribunal when required. ( <i>Art. 151</i> ) | COC provides advice to the President on appointments to key offices, including the Public Service Commission, Human Rights and Anti-Discrimination Commission, Electoral Commission, Supervisor of Elections Secretary General to Parliament, Police Commissioner, Corrections Commissioner, RFMF Commander, Auditor Gen., RBF Governor. ( <i>Sec. 133</i> ) | The Ghai Draft gives the COC a broader constitutional role, including citizen-facing recruitment into Independent Commissions and Offices and review of the conduct of Officers of the State.                                                |

| Provision                                              | 1997 Constitution                                                                                                                                                                                                            | Ghai Draft                                                                                                                                                                                                                                      | 2013 Constitution                                                                                                                                                                                                                                                             | Comparison                                                                                                                                                                                                                                       |
|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Terms and Conditions of Constitutional Officers</b> | Fixed terms for key constitutional officers (e.g., SOE, DPP, Auditor-General, Ombudsman) are 5 years; members of independent commissions serve for 2 years. Remuneration cannot be reduced during their term. (Sec. 169–171) | "Independent Officers" and members of "Independent Commissions" serve 5-year terms, renewable once. Salaries are determined by a separate Benefits Commission and protected against reduction except during national austerity. (Art. 150, 161) | Specified offices (e.g., SOE, SG to Parliament, RBF Governor, Police Commissioner, RFMF Commander, Auditor-General) hold 5-year terms; commission members serve 3-year terms. Remuneration is protected against disadvantage except during national austerity. (Sec. 134–136) | All three documents establish five-year terms for primary constitutional officers and protect their remuneration from reduction.                                                                                                                 |
| <b>Removal of Constitutional Officers for Cause</b>    | Constitutional office holders (Sec. 169 list) can only be removed for inability or misbehaviour. The process requires an investigation by an independent tribunal or medical board. (Sec. 172)                               | "Officers of the State" (defined in Art. 185) may be removed for incapacity or wrongdoing only via the rigorous procedures in Schedule 5, which involves a judicial/lay panel and a decision with written reasons. (Art. 67, Schedule 5)        | Specified office holders (Sec. 134 list) can only be removed for cause (inability or misbehaviour). The process involves investigation by a tribunal or medical board appointed by the Constitutional Offices Commission. (Sec. 137)                                          | These officers can only be removed for proven inability or misbehaviour through tribunal or medical board inquiries in all three frameworks, with the Ghai Draft uniquely requiring a multi-stakeholder panel including judicial and lay members |



## *Key Takeaways:* **State Services**



### **What This Means**

All three constitutions emphasise merit-based public service, but differ in how independence and accountability are structured. The Ghai Draft provides a more expansive framework for independent commissions, while the 2013 Constitution maintains key institutions but with more defined and sometimes narrower roles.



### **Why It Matters:**

The public service is the machinery through which government decisions are implemented. Its independence and professionalism are critical for good governance. Strong institutional frameworks can safeguard against politicisation, while weaker safeguards may expose the system to undue influence.



### **Questions to Consider**

- ➔ How independent should public service institutions be from political leadership?
- ➔ What balance should be struck between accountability and autonomy?



# Accountability



## 9. Accountability

| Provision                     | 1997 Constitution                                                                                                                                                                                                                                                                  | Ghai Draft                                                                                                                                                                                                                                                                                                                                                     | 2013 Constitution                                                                                                                                                                                                                                                                                                                                             | Comparison                                                                                                                                                                                                                                       |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Code of Conduct</b>        | <p>Applies to the President, Vice-President, Ministers, Members of Parliament, and others.</p> <p>Prohibits conflicts of interest, private gain, and actions that diminish public confidence.</p> <p>Parliament must create laws to enforce the code.</p> <p><i>(Sec. 156)</i></p> | <p>Applies to high-ranking officials including the President, Members of Parliament, Judges, and others.</p> <p>Establishes principles of democratic leadership, ethics, and integrity.</p> <p>Mandates the creation of an Ethics and Integrity Commission to monitor compliance.</p> <p>Includes protection for whistleblowers</p> <p><i>(Art. 62–67)</i></p> | <p>Applies to the President, Speaker, Prime Minister, Ministers, Members of Parliament, and other key public officials.</p> <p>Accountability and Transparency Commission to monitor compliance.</p> <p>Includes annual declaration of assets, whistleblower protection, and enforcement through criminal and disciplinary proceedings. <i>(Sec. 149)</i></p> | <p>The 1997 Constitution places enforcement responsibility on Parliament, while the Ghai Draft and 2013 Constitution establish independent commissions for monitoring compliance.</p>                                                            |
| <b>Freedom of Information</b> | <p>Parliament should enact a law to grant public access to official documents of the Government. <i>(Sec. 174)</i></p>                                                                                                                                                             | <p>Establishes a fundamental right of access to information held by State organs (Art. 32). The Ethics and Integrity Commission is responsible for establishing standards and monitoring compliance <i>(Art. 66)</i>.</p>                                                                                                                                      | <p>Grants the public the right to access official information and documents held by the Government and its agencies. Requires the creation of a written law to enforce this right. <i>(Sec. 150)</i></p>                                                                                                                                                      | <p>The 1997 and 2013 Constitutions delegate the creation of specific rights to (future) legislation, but the Ghai Draft is unique in establishing access to information as a substantive fundamental right located within its Bill of Rights</p> |

| Provision                   | 1997 Constitution                                                                                                                                                                                                                                                                                              | Ghai Draft                                                                                                                                                                                                                                                                                                                                                                    | 2013 Constitution                                                                                                                                                                                                                                                                                                                                                            | Comparison                                                                                                                                                                                                                            |
|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Auditor-General</b>      | The Auditor-General is appointed by the Constitutional Offices Commission following consultation with parliamentary committees. Responsible for auditing public accounts annually and reporting to Parliament. The Auditor-General operates independently with access to all necessary records. (Sec. 166–168) | The Auditor-General is an Independent Officer providing independent assurances to Parliament. Inspects, audits, and reports on public financial management. Has authority to initiate inquiries and access government records. (Art. 162)                                                                                                                                     | The Auditor-General continues to exist as an independent office. Audits public accounts and reports annually to Parliament. Appointed by the President on the advice of the Constitutional Offices Commission, following consultation with the Minister responsible for finance.<br><br>Independent with full control over budget and staffing decisions. (Sec. 151–152)     | All three constitutions provide constitutional protection for the office of Auditor-General, with the later texts appearing to articulate independence more expressly.                                                                |
| <b>Ombudsman</b>            | The Ombudsman is appointed by the Constitutional Offices Commission following consultation with the Prime Minister. Investigates administrative actions and complaints from the public. Reports annually to Parliament. (Sec. 157–165)                                                                         | Established as an Independent Office under Chapter 13, with powers to investigate complaints about failings in administration by State organs and Officers of the State. (Art. 170–172)                                                                                                                                                                                       | The 2013 Constitution does not expressly establish an Ombudsman.                                                                                                                                                                                                                                                                                                             | The Ghai Draft expressly establishes the Ombudsman with broad powers, and the 1997 Constitution also establishes the Ombudsman as a separate constitutional office. The 2013 Constitution does not expressly provide for that office. |
| <b>Reserve Bank of Fiji</b> | Appointed by the COC, which must consult with the Minister and the Board of the Reserve Bank. The office of Governor of the Reserve Bank is not considered a public office. (Sec. 146)                                                                                                                         | The Reserve Bank of Fiji is established as the central bank with primary functions including monetary policy and currency issuance. The bank operates independently but consults regularly with the Minister responsible for finance. The Governor is appointed by the COC following consultation with the Minister for Finance and the Board of the Reserve Bank. (Art. 163) | The Reserve Bank of Fiji is the central bank with primary objects such as protecting the currency and formulating monetary policy. It operates independently with regular consultation with the Minister responsible for finance. The Governor is appointed by the President on the advice of the COC, in consultation with the Minister responsible for finance. (Sec. 153) | The 2013 constitution removes the requirement to consult the Board of the Reserve Bank in appointing the RBF Governor.                                                                                                                |

## Key Takeaways: Accountability



### What This Means

The three constitutions adopt different approaches to ensuring accountability, including codes of conduct, access to information, and oversight institutions. The Ghai Draft and 2013 Constitution place greater emphasis on independent bodies to enforce accountability standards.



### Why It Matters:

Accountability mechanisms determine whether power can be effectively scrutinised and challenged. Independent institutions can strengthen oversight, but their effectiveness depends on how they are appointed, resourced, and protected. Formal provisions alone do not guarantee accountability.



### Questions to Consider

- ➔ What kinds of institutions are most effective in holding public officials accountable?
- ➔ How can accountability mechanisms be protected from political interference?

# Amendments



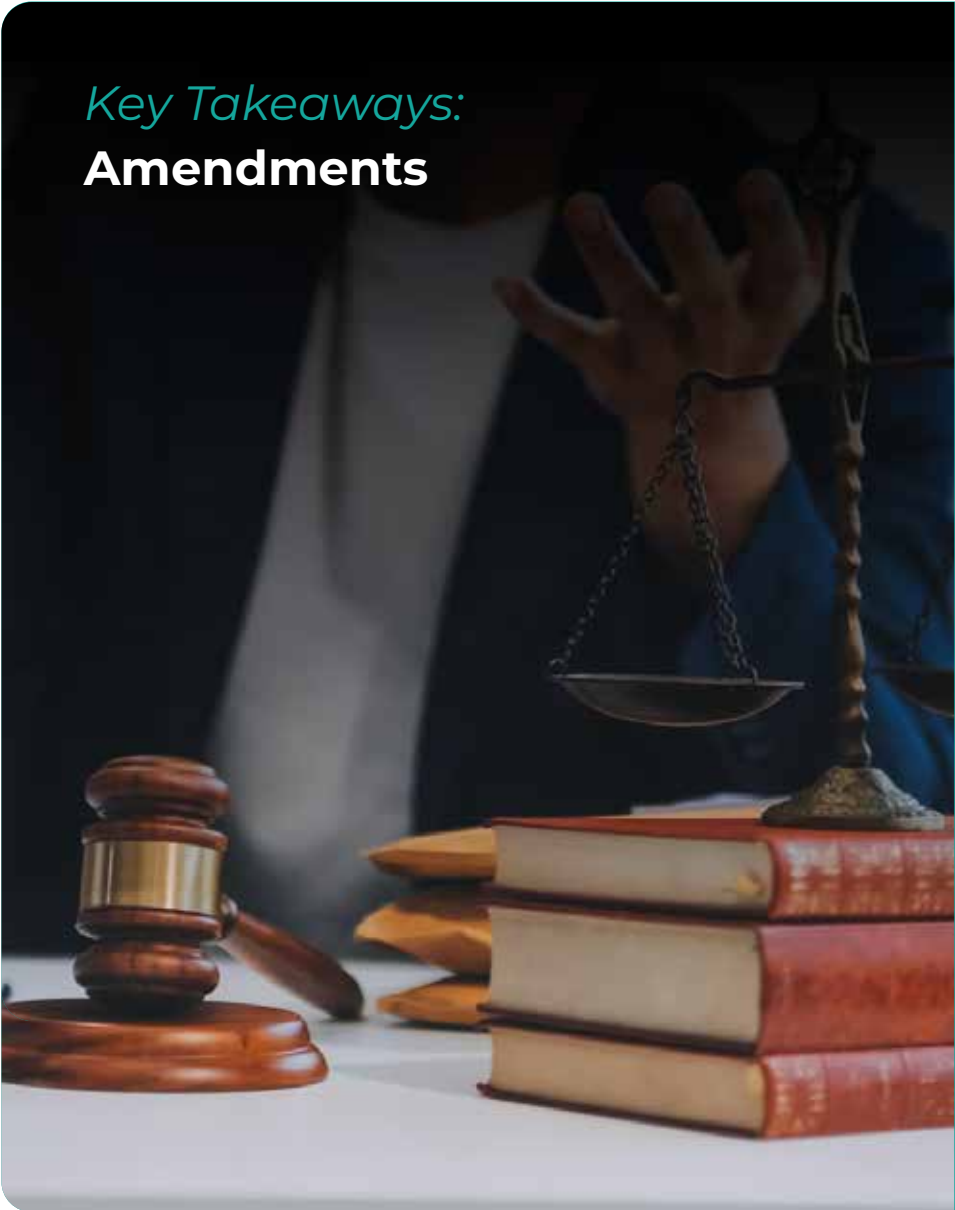
## 10. Amendments

| Element                       | 1997 Constitution                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Ghai Draft                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 2013 Constitution                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Comparison                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Amendment Process</b>      | The Constitution may only be altered as outlined in Chapter 15. (Sec. 190)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Amendments require a process involving the National People's Assembly, parliamentary votes, and public consultation. (Art. 182–183)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Amendments must follow the procedure outlined in Chapter 11, including parliamentary passage and a referendum. (Sec. 159–160)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | The 1997 Constitution's amendment process is more parliament-centric, whereas the 2013 Constitution adds a public referendum, and the Ghai Draft emphasises broad public participation and deliberation.                                                                                                                                                                                                     |
| <b>Amendment Requirements</b> | <b>Special Parliamentary Majorities:</b> Amendments must be introduced as a Bill specifically to alter the Constitution. The Bill must be read three times in each House of Parliament, with at least two-thirds of the members of each House voting in favour during the second and third readings. In the House of Representatives, an interval of at least 60 days must elapse between the second and third readings, and each reading must be preceded by a full opportunity for debate. The third reading cannot occur until after the relevant standing committee has reported on the Bill. (Sec. 190–191(1)–(2)) | <b>Initiation and Public Participation:</b> Amendments can be proposed by a petition signed by at least 1,000 citizens, a resolution from the National People's Assembly, or a resolution in Parliament. All proposals are publicized and considered by the National People's Assembly, which takes a non-binding advisory vote. <b>Parliamentary Procedure:</b> After the Assembly's vote, the proposal is introduced in Parliament. It must pass an initial vote with at least 48 members in favor. The Bill is then publicized for at least 6 months for public discussion and participation. A second parliamentary vote, within one year of the first, requires at least 48 members' support to pass the amendment. (Art. 183) | <b>Parliamentary Procedure and Referendum:</b> Amendments must be introduced as a Bill specifically to amend the Constitution. The Bill must be read three times in Parliament, with at least three-quarters of the members voting in favor during the second and third readings. An interval of at least 30 days must elapse between the second and third readings, and each reading must be preceded by full opportunity for debate. <b>Referendum Requirement:</b> After passing in Parliament, the Bill is referred to the Electoral Commission, which conducts a referendum for all registered voters. The Bill is approved if three-quarters of the total number of registered voters vote in favor. If approved, the President must assent to the Bill. (Sec. 160) | The 1997 Constitution's process is primarily within Parliament, with specific provisions for community representation and urgent amendments. The Ghai Draft emphasizes broader public participation and deliberation, involving the National People's Assembly and a longer process with public consultation. The 2013 Constitution introduces a public referendum, increasing the threshold for amendments; |

<sup>1</sup> The Supreme Court, in its 2025 opinion, has lowered the amendment threshold, however the above summarises what the constitutional text states.



| Element                     | 1997 Constitution                                                                                                                                                                                                    | Ghai Draft                                                                                                                                                            | 2013 Constitution                                                                                                     | Comparison                                                                                                                                                                                                                                                 |
|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Veto Power</b>           | Certain amendments require the support of specific community representatives, effectively giving them veto power over those amendments. <i>(Sect. 192)</i>                                                           | No equivalent veto power is mentioned; amendments require parliamentary approval and public participation.                                                            | No equivalent veto power is mentioned; amendments must pass the parliamentary and referendum thresholds.              | The 1997 Constitution includes unique protections for community representation, allowing specific groups to block amendments that would affect them directly. This is not found in the other two constitutions, which treat all amendments more uniformly. |
| <b>Urgent Amendments</b>    | Allows urgent amendments to bypass certain House of Representatives procedural requirements if certified by the Prime Minister and supported by a majority of at least 53 members of the House. <i>(Sec. 191(3))</i> | No specific provision for urgent amendments; all amendments must follow the standard process, including public consultation.                                          | No specific provision for urgent amendments; all amendments must go through the same process, including a referendum. | The 1997 Constitution provides a mechanism for expedited amendments in urgent situations, whereas the 2013 Constitution and Ghai Draft require the full, detailed process regardless of urgency.                                                           |
| <b>Public Participation</b> | Public participation is not explicitly required in the amendment process. The process is primarily within Parliament.                                                                                                | Public participation is emphasized through the National People's Assembly, public discussion, and consultation before final parliamentary approval. <i>(Art. 183)</i> | Public participation occurs through a referendum after parliamentary approval. <i>(Reference: Section 160)</i>        | The Ghai Draft places the greatest emphasis on public participation, requiring involvement at multiple stages. The 2013 Constitution involves the public through a referendum, while the 1997 Constitution does not mandate direct public involvement.     |



## Key Takeaways: Amendments



### What This Means

The three frameworks utilize different hurdles to protect the constitutional text. The **1997 Constitution** is Parliament-centric, requiring two-thirds majorities and granting **ethnic veto powers** over specific changes.

The **Ghai Draft** prioritizes **public deliberation**, requiring a National People's Assembly review and a six-month discussion period.

The **2013 Constitution** set the highest bar, requiring a 75% **parliamentary majority** followed by a **mandatory referendum** approved by 75% of all registered voters. In a landmark August 2025 advisory opinion, the Supreme Court of Fiji the Supreme Court issued an advisory opinion that effectively reinterpreted the law to lower the thresholds for amendments which allow changes with a two-thirds parliamentary majority and simple referendum majority.



### Why It Matters:

Amendment rules balance stability with flexibility. While the 1997 system protected communal interests, the 2013 system ensures near-total permanence, making reform extremely difficult. High thresholds prevent arbitrary changes but can also block necessary institutional evolution.



### Questions to Consider

- ➞ Should certain constitutional values be unamendable, as proposed in the Ghai and 2013 frameworks?
- ➞ Should judicial interpretation have the power to lower thresholds explicitly set by a written constitution?

# Bose Levu Vakaturaga



## 11. Bose Levu Vakaturaga (Great Council of Chiefs)

| Element                              | 1997 Constitution                                                                                                                                                                                                                   | Ghai Draft                                                                                                                                                            | 2013 Constitution                                              | Comparison                                                                                                                                                                            |
|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Recognition</b>                   | Recognised and continues to exist under the Fijian Affairs Act, with additional constitutional functions. <i>(Sec. 116)</i>                                                                                                         | Recognised as a cultural custodian and non-partisan advisory body for matters relating to Taukei language, culture, traditional values and practices <i>(Art. 56)</i> | Not mentioned or recognised.                                   | The 1997 and Ghai Draft constitutions recognize and define roles for the Bose Levu Vakaturaga, while the 2013 Constitution does not recognize it.                                     |
| <b>Functions and Role</b>            | Has constitutional functions that give it significant influence in legislative composition and key executive appointments, in addition to its continuing existence under the Fijian Affairs Act. <i>(Sec. 64(1)(a), 90, 116(2))</i> | Advisory role on iTaukei culture and values, with no legislative power. <i>(Art. 56)</i>                                                                              | No role or functions assigned.                                 | The 1997 Constitution gives the council legislative influence, the Ghai Draft limits it to cultural advice, and the 2013 Constitution excludes it entirely.                           |
| <b>Cultural Influence</b>            | Gives traditional chiefly leadership role in state institutions and key appointments                                                                                                                                                | Promotes iTaukei culture within a multicultural framework.                                                                                                            | No formal influence on culture or governance.                  | The 1997 Constitution links traditional and formal governance, the Ghai Draft focuses on cultural promotion, and the 2013 Constitution excludes it.                                   |
| <b>Appointment of Senate Members</b> | Appoints 14 of the 32 members of the Senate. <i>(Sec. 64(1))</i>                                                                                                                                                                    | Not involved in the appointment of members of the legislature.                                                                                                        | Not involved in the appointment of members of the legislature. | The 1997 Constitution grants significant legislative influence to the Bose Levu Vakaturaga, effectively enabling it to be involved in the legislative process affecting all citizens. |

| Element                                            | 1997 Constitution                                                                        | Ghai Draft                                                     | 2013 Constitution                                             | Comparison                                                                                                                                              |
|----------------------------------------------------|------------------------------------------------------------------------------------------|----------------------------------------------------------------|---------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Appointment of President and Vice-President</b> | Appoints the President and Vice-President after consulting the Prime Minister. (Sec. 90) | No role in the appointment of the President or Vice-President. | No role in the appointment of the President or Vice-President | The 1997 Constitution gives the Bose Levu Vakaturaga a key role in the highest executive appointments, unlike the Ghai Draft and 2013 Constitution.     |
| <b>Removal of President and Vice-President</b>     | Removes the President or Vice-President for inability or misbehavior. (Sec. 93)          | No role in the removal of the President or Vice-President.     | No role in the removal of the President or Vice-President..   | The Bose Levu Vakaturaga in the 1997 Constitution holds the power to remove the President and Vice-President, a role absent in the other constitutions. |

### Key Takeaways:

## Bose Levu Vakaturaga (Great Council of Chiefs)



### What This Means

The 1997 Constitution vests the Bose Levu Vakaturaga (BLV) with significant authority, including appointing the President and 14 Senators. The Ghai Draft reframes the BLV as a non-partisan advisory body focused on iTaukei culture and language. The 2013 Constitution removes all recognition of the BLV, excluding traditional authority from the formal state structure.



### Why It Matters:

The evolution reflects a transition from a system that integrated traditional chiefly leadership into state organs toward a model of uniform citizenship. It underscores the tension between recognising indigenous institutions and establishing a centralised, secular democracy.



### Questions to Consider

- ➔ How should a modern democracy balance traditional leadership with elective governance?
- ➔ Does excluding the BLV promote national unity or diminish cultural recognition?

# National People's Assembly





## 12. National People's Assembly

### Summary of the National People's Assembly from the Ghai Draft Constitution

#### Functions of the National People's Assembly

##### Annual Assembly:

The National People's Assembly is an annual forum where representatives from civil society and state officers gather to address national issues.

##### Key Functions:

- ➔ **Consideration of Challenges:** Address new or emerging challenges facing the nation.
- ➔ **Review National Progress:** Assess progress toward national goals recognized in the Constitution.
- ➔ **Receive Reports:** Hear reports from key state figures, including the President, Prime Minister, and heads of independent commissions.

- ➔ **Make Recommendations:** Provide recommendations to the Cabinet, Parliament, or any Independent Commission or Officer on public matters.
- ➔ **Elect the President:** The Assembly has the authority to elect the President of Fiji when necessary.
- ➔ **Constitutional Amendments:** The Assembly considers, debates, and holds advisory votes on any proposed amendments to the Constitution.

##### Meetings:

- ➔ The Assembly meets regularly during the first full week of October each year. The agenda is set by the Executive Committee.
- ➔ Additional meetings may be convened by the Speaker of Parliament for urgent national concerns.

#### Composition and Appointment of Members of the National People's Assembly

##### Members:

- ➔ **President of Fiji:** Includes the current President and any former Presidents.
- ➔ **Parliamentary Leaders:** The Speaker and Deputy Speaker of Parliament serve as Chair and Deputy Chair of the Assembly.

- ➔ **Prime Minister and Cabinet:** The Prime Minister, members of the Cabinet, and the Leader of the Opposition.
- ➔ **Parliamentary Representation:**
  - ◆ **Appointed by Prime Minister:** 4 members of Parliament selected by the Prime Minister.
  - ◆ **Appointed by Leader of the Opposition:** 6 members of Parliament selected by the Leader of the Opposition, ensuring representation of Parliament's diversity.
- ➔ **Local Government Representatives:** 10 representatives each from urban and rural local governments.
- ➔ **Independent Officers:** The Ombudsman, Chair of the Fiji Human Rights Commission, and Chair of the Ethics and Integrity Commission.
- ➔ **Civil Society Representatives:**
  - ◆ **Appointed by Constitutional Offices Commission:** 10 women and 10 men are appointed based on their qualifications and contributions to civil society.
  - ◆ **Appointed by Electoral Commission:**
    - ◆ **Initial Year:** 36 women and 36 men chosen by lot from nominations submitted by civil society across four electoral districts (Central, Western, Northern, Eastern).
    - ◆ **Subsequent Years:** Fewer members are appointed each year to maintain representation balance.

## Appointment Process

### Constitutional Offices Commission:

- ➔ **Criteria for Appointment:**
  - ◆ Must be a citizen of Fiji and a registered voter.
  - ◆ Demonstrates active engagement or leadership in civil society, with a record of honesty and integrity.
  - ◆ Cannot hold any public office.
- ➔ **Process:**
  - ◆ **Invitation:** The Commission invites expressions of interest from qualified individuals.
  - ◆ **Appointment:** Appointments are made to ensure the Assembly reflects the ethnic and cultural diversity of Fiji.

### Electoral Commission:

- ➔ **Nomination:** Civil society organizations may nominate up to 10 individuals who meet the criteria of civic involvement and leadership.
- ➔ **Selection:**
  - ◆ **Verification:** The Electoral Commission verifies the eligibility of nominees.
  - ◆ **Selection by Lot:** If the number of nominees exceeds the available seats, the Commission selects members by lot to ensure balanced representation by gender and district.

## Executive Committee

- ➔ **Leadership:** Chaired by the Deputy Speaker of Parliament.
- ➔ **Composition:** Includes 6 other members elected annually by the Assembly.

In a society like Fiji, with its history of authoritarian rule and political instability, a National People's Assembly is highly desirable as it promotes inclusive governance and democratic participation. This Assembly provides a crucial platform for representatives from civil society and state institutions to come together annually to discuss emerging national challenges and make informed recommendations.

By ensuring that governance includes voices from across the social spectrum, particularly those from marginalized and underrepresented groups, the Assembly mitigates the risk of power being concentrated in the hands of a few political elites.

This inclusiveness enhances transparency, accountability, and a shared commitment to national goals, which are essential for maintaining social cohesion in Fiji's multicultural society.

Furthermore, the Assembly's role in reviewing national progress and facilitating direct input into constitutional amendments and the election of the President strengthens democratic processes, ensuring that governance remains responsive and reflective of the diverse needs of all Fijians.

## About Dialogue Fiji

Dialogue Fiji is a civil society organisation based in Suva, Fiji, dedicated to promoting democracy, human rights and social cohesion. Through research, public education, civic engagement, and policy advocacy, Dialogue Fiji works to ensure that all Fijians have the knowledge, tools, and opportunities to participate meaningfully in the decisions that shape their lives.

Dialogue Fiji engages across Fiji's diverse communities (through workshops, public forums, research publications, media engagement, etc.) to build a more informed and engaged citizenry.

This publication is part of Dialogue Fiji's broader programme of civic education and constitutional literacy, designed to empower Fijians to participate in national conversations with knowledge, confidence, and critical thinking.

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