



**Submission
to the
Constitution Review Commission**
9 July 2026



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By Dialogue Fiji

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A. The Defective Review Process

1. Dialogue Fiji appears before this Commission with a deep sense of responsibility, but also with serious reservations about the process through which this constitutional review is being conducted. We say at the outset that Fiji does need constitutional reform. The 2013 Constitution contains serious structural flaws which have contributed to the concentration of power, and weakened independent institutions. But the legitimacy of constitutional reform does not come merely from the appointment of a Commission or the holding of hearings. It comes from a process that is transparent, participatory, deliberative, and trusted by the people.
2. On that test, the present process is deeply deficient.
3. A Constitution is not an ordinary law. It is the supreme legal and political compact of the nation. It defines the relationship between citizens and the State, distributes public power, protects rights, and sets the rules by which political disagreement is managed. In divided societies, the process by which a Constitution is made is as important as the text itself. A flawed process can produce a constitution, but it will not produce constitutional legitimacy. Fiji knows this from painful experience. Since independence, Fiji has had four constitutions, each reflecting the political conflicts and power struggles of its time. The recurring pattern has been that new regimes, whether after coups or elections, have treated constitutions as tools of political reset rather than as enduring frameworks for national stability.
4. That is why the present review process should have been designed with extraordinary care. Instead, it is rushed, opaque and insufficiently deliberative. A five-month process is simply not adequate for a proper and democratic national review of Fiji's supreme law. International comparative experience suggests that comprehensive constitutional reform requires careful sequencing, civic education, public consultation, transparent analysis, drafting, public feedback on draft proposals, and final political settlement. The benchmark for comprehensive constitutional reform is around 18 to 24 months. South Africa's process took about two years, Tunisia's about two and a half years, and Kenya's about 19 months. Fiji's own Reeves process took approximately two years, while the Ghai process took approximately one year.
5. This Commission is therefore presiding over what is the shortest major constitutional review in Fiji's history. That is not a badge of efficiency... but rather a warning sign.

B. Constitutional Engineering and the Need for Clear Objectives

6. For any constitutional engineering process in an ethnically divided society, there are certain desired objectives that must be deliberated upon and finalised right at the outset. Dialogue Fiji has not seen this CRC do that. The question, therefore, is this: what is the objective of this constitutional review? What exactly does it seek to remedy?

- 7.** If the objective is merely to cure the democratic deficit in the making of the 2013 Constitution, then this process fails to achieve that. A rushed, opaque and poorly documented review process cannot cure the democratic deficit of a Constitution that itself was criticised for lacking popular approval. It simply reproduces the same legitimacy problem in a different form.
- 8.** Constitutional engineering in ethnically divided societies aims to prevent conflict and secure democratic stability by structuring State institutions to accommodate, manage, or transcend ethnic differences. The ultimate goal is to foster political inclusion, ensure minority protection, and prevent the tyranny of the majority in deeply fragmented polities.
- 9.** There are a number of key objectives and strategies that are usually considered in such processes.
- 10.** First, power-sharing, or consociationalism. This involves designing executive and State institutions in a way that includes representatives from all major ethnic groups. This is often achieved through grand coalitions, proportional representation, mutual vetoes on vital cultural issues, and forms of segmented autonomy.
- 11.** Second, electoral engineering. This involves implementing voting systems, such as list proportional representation, that encourage politicians to appeal to voters outside their own ethnic group and increase the prospects of broader political inclusion. A well-designed electoral system can incentivise moderation, inter-ethnic coalitions and national political appeals.
- 12.** Third, decentralisation of power. In Fiji's context, decentralisation should not mean the creation of race-based or ethnically defined power structures. That would risk entrenching the very divisions that constitutional reform should seek to manage and transcend. Instead, decentralisation should focus on strengthening elected local government, municipal councils, provincial-level democratic structures, and community-based decision-making. The objective should be to bring power closer to citizens, improve accountability in service delivery, deepen grassroots democracy, and ensure that communities have a meaningful say in decisions affecting their daily lives.
- 13.** Fourth, minority rights and protections. This includes embedding an entrenched Bill of Rights, legal protections for minority communities, and institutions that can enforce these protections against the State and against majoritarian abuse.
- 14.** Fifth, cross-cutting cleavages. Constitutional design can structure institutions in ways that blur strict ethnic identities by encouraging national parties, cross-regional alliances and political competition around shared civic issues such as the economy, health, education, poverty, infrastructure and public services, rather than ethnic identity alone.
- 15.** These tools are used to build unified nation-states in societies where ethnic division can otherwise become politically destabilising. But they require careful constitutional design. They require public education, genuine deliberation and clarity of purpose. In Fiji's case, the CRC has not clearly explained whether it is seeking to improve ethnic accommodation, strengthen national unity, reduce executive dominance, enhance

institutional independence, reform the electoral system, or merely remedy the lack of legitimacy surrounding the making of the 2013 Constitution.

C. Transparency, Participation and the Nature of the Review

16. That absence of clarity is a serious weakness. A constitutional review cannot be everything and nothing at the same time. Before asking people what they want changed, the process should have helped the country understand the constitutional problem it is trying to solve.
17. We are aware of the argument that this is not a comprehensive review, but merely an amendment review. That argument is not correct. If this was only an amendment review, the terms of reference would clearly identify the specific provisions of the 2013 Constitution that were to be examined, and the Commission would consult the public only on those identified provisions. Instead, the Commission is inviting submissions on the Constitution as a whole. That is, in substance, a comprehensive review. It should therefore meet the standards of a comprehensive process.
18. The Ghai Commission, despite operating under an unelected military-backed regime, set a much higher standard for transparency and participatory constitution-making than what we are seeing now. Public hearings were conducted across the country in 2012, and more than 7000 submissions were received and all of these were published on a central website run by the commission. The Ghai process is widely acclaimed, not merely in Fiji but internationally, as an example of how constitution-making consultations should be conducted: open, participatory, well-documented, accessible to citizens, and grounded in genuine public engagement. That history is precisely why this process should have gone further, not backwards. If the central criticism of the 2013 Constitution is that it lacked popular legitimacy and disregarded the participatory Ghai process, then the corrective process cannot itself be opaque, rushed and poorly documented.
19. At minimum, this Commission should have had a dedicated website from the beginning of the process. Every public submission, unless confidentiality was specifically requested for valid reasons, should have been published. Hearings should have been livestreamed- in 2026 this is much more cheaper and easier to do than it was in 2012. Transcripts should have been made available. Citizens should have been able to go to one central public repository and see what individuals, organisations, political parties, traditional institutions, religious bodies, unions, business groups, women's groups, youth organisations and minority communities were actually telling the Commission. Public consultation requires notification, two-way exchange and meaningful participation, not merely the formal receipt of views behind closed doors.
20. The absence of a central public record weakens the entire exercise. How will the public know whether the Commission has fairly assessed the submissions? How will citizens know which views were dominant, which were marginal, which were organised, and which represented genuine community sentiment? Has the Commission released statistics on the number of submissions received, the categories of submitters, the geographic spread of participation, the gender and age profile of participants, or the

issues most frequently raised? Without such information, the process cannot be properly evaluated.

21. For these reasons, Dialogue Fiji was reluctant to participate in this process, despite receiving two invitations. We did not wish to legitimise a process that we consider flawed. However, we have ultimately decided to make this submission because Fiji's constitutional future is too important to abandon. We participate while placing on record our serious concern that the process, as presently designed, is unlikely to cure the democratic deficit that has long surrounded the 2013 Constitution.

D. Features of the 2013 Constitution That Must Be Retained

22. Having said that, Dialogue Fiji does not support reckless constitutional change. The 2013 Constitution contains progressive features which should be retained. It abolished ethnic communal rolls and reserved ethnic seats, established a single national electoral roll, adopted the principle of one person, one vote, one value, and introduced an open-list proportional representation system. It also entrenched common and equal citizenry, declaring that all citizens of Fiji are Fijians and that all citizens enjoy equal status under the Constitution. It established Fiji as a secular State, separated religion and State, abolished the unelected Senate, and placed legislative authority in a fully elected single House of Parliament. These provisions are foundational features of a modern, multi-ethnic, liberal democracy.
23. The principal weakness of the 2013 Constitution is not that it is too modern. The problem is that it combines progressive citizen equality with excessive executive power. It recognises equal citizenship, but leaves independent institutions too vulnerable to political capture. It creates a comprehensive Bill of Rights, but allows rights to be limited through broad and open-ended clauses. It establishes Parliament, but allows legislation to be rushed through with inadequate deliberation. It provides for independent offices, but gives the executive too much influence over their appointment and removal.

E. Correcting the Concentration of Executive Power

24. The central task of constitutional reform should therefore be clear: retain the modern democratic foundations of the 2013 Constitution, while correcting the structural concentration of power.
25. The first major reform should be to redesign the Constitutional Offices Commission. Under the current structure, the COC is dominated by government-aligned members: the Prime Minister, the Attorney-General, two Prime Ministerial nominees, the Leader of the Opposition and one Opposition nominee. This creates a 4 to 2 government-aligned majority, allowing the executive to shape the leadership of key watchdog institutions. That is a fundamental design flaw. Institutions such as the Electoral Commission, the Human Rights and Anti-Discrimination Commission, the Auditor-General and other constitutional offices must not depend on a body structurally controlled by the government of the day.
26. Dialogue Fiji proposes that the COC be reconstituted as a genuinely independent and balanced appointments body. It should include equal numbers of nominees from the

Prime Minister and the Leader of the Opposition, but those nominees should not be current Members of Parliament, political party office-holders, recent candidates, ministerial advisers, or persons who have held senior political office within the previous five years. In addition, the Fiji Law Society should nominate one member through an open process conducted by its Council, and one member should be nominated collectively by the Vice-Chancellors of Fiji's three universities. That nominee should be a senior academic of recognised standing in law, governance, public administration, political science, human rights, development studies or a related field, and should not be a current Member of Parliament, political party office-holder, recent candidate, ministerial adviser, or person who has held senior political office within the previous five years. This would ensure that the COC benefits not only from legal expertise, but also from independent academic knowledge of governance, institutions and democratic accountability.

- 27.** The chairperson of the COC should not be the Prime Minister. The chairperson should be an eminent independent person, preferably a retired judge or senior legal practitioner of high standing, appointed by consensus between the Prime Minister and the Leader of the Opposition. If they cannot agree within 21 days, the Fiji Law Society should provide a shortlist of three eligible persons, from which the President appoints the chair. This would move the COC away from executive control and towards constitutional guardianship.
- 28.** The Public Service Commission should also be constitutionally strengthened as the guardian of a professional, merit-based and politically neutral public service. The Prime Minister's agreement should not be required for the appointment or removal of Permanent Secretaries. Permanent Secretaries must serve the State, not the political executive of the day.
- 29.** Second, Fiji should retain the open-list proportional representation system, but reduce the electoral threshold from 5 per cent to 2 per cent. The current electoral system has major democratic strengths. It eliminates ethnic rolls, gives equal value to each vote, and ensures that every voter participates in the same national electoral process. The single national constituency also discourages narrow regional or communal appeals, rewards parties that campaign on issues of national interest rather than sectional interests, and completely removes the possibility of gerrymandering through the manipulation of constituency boundaries. These are important gains which should not be reversed. However, the democratic value of proportional representation is weakened when the electoral threshold is set too high. The current 5 per cent threshold is excessive for a small, diverse and politically fragmented society. It suppresses smaller parties, discourages new political movements, and artificially concentrates representation in larger parties. A 2 per cent threshold would preserve proportionality while preventing excessive fragmentation. It would also allow a genuine multiparty system to thrive.
- 30.** Political parties should be constitutionally encouraged, but not compelled as a condition of contesting elections, to ensure meaningful gender balance in their candidate lists. The Constitution should require any system of public funding for political parties to include gender equality criteria, including incentives for parties

that achieve at least 40 per cent representation of either gender in their candidate lists. This would promote women's political participation without excluding parties from the democratic process. Placing this principle in the Constitution would ensure that a future parliamentary majority cannot easily remove gender equality incentives through ordinary legislation.

- 31.** Third, the size of Cabinet should be constitutionally capped. Under section 91(1), the Prime Minister has sole authority to determine the size of Cabinet, while the Ghai Draft proposed a Cabinet cap of 15 members. Dialogue Fiji supports a constitutional cap of 15 ministers, including the Prime Minister and Attorney-General if the Attorney-General is a Cabinet minister. This would prevent executive bloat and reduce the use of ministerial appointments as instruments of political reward.
- 32.** The Constitution should also require Cabinet to reflect, as far as practicable, Fiji's gender, cultural, ethnic and regional diversity. A government that represents a multi-ethnic country must be seen to draw leadership from the full breadth of that country. If the composition of Parliament makes this impossible, the Constitution should permit the Prime Minister to appoint up to five ministers from outside Parliament, but only for the purpose of satisfying diversity, expertise or inclusion requirements. Such ministers should be subject to parliamentary confirmation, should have the right to speak in Parliament on matters within their portfolios, but should not vote. They should also be bound by the same standards of accountability, asset declaration, conflict of interest rules and parliamentary questioning as elected ministers.
- 33.** There should also be a constitutional term limit for the office of Prime Minister. No person should be permitted to serve as Prime Minister for more than two parliamentary terms, whether consecutive or non-consecutive. This would prevent excessive personalisation of executive power, encourage leadership renewal, and reduce the risk of one individual dominating the State over an extended period.

F. Strengthening Rights, Judicial Independence, Accountability and Parliament

- 34.** Fourth, the Bill of Rights should be retained but strengthened. The 2013 Constitution has a comprehensive rights framework, but section 6(5)(c) allows rights to be limited by restrictions that are not expressly set out in the text, provided they are necessary and prescribed by law. This creates a broad opening for the State to limit rights. The Constitution should instead codify a strict proportionality test. Any limitation of a right must be reasonable and justifiable in an open and democratic society, based on human dignity, equality and freedom. The State must bear the burden of proof. It must show that the limitation pursues a legitimate objective, is rationally connected to that objective, impairs the right as little as possible, and that there are no less restrictive means available to achieve the same purpose.
- 35.** The Constitution should also recognise access to information as a directly enforceable constitutional right, not merely as a right dependent on future legislation. Citizens cannot hold power to account if they cannot access information held by the State.
- 36.** Fifth, judicial independence must be strengthened. Under the 2013 Constitution, the Prime Minister advises the President on the appointment of the Chief Justice and the

President of the Court of Appeal after consulting only the Attorney-General. There is no requirement to consult the Leader of the Opposition. This is inadequate. The appointment of the Chief Justice should be made through an independent COC or a strengthened Judicial Service Commission, with public advertisement, transparent criteria, merit-based assessment and cross-party consultation.

- 37.** The Constitution should also close the dangerous loophole relating to suspension of the Chief Justice. The 2013 Constitution permits the Prime Minister to advise suspension pending a tribunal investigation, but does not specify a deadline for the tribunal to convene. This creates the possibility of an indefinite suspension, which can operate as removal in all but name. The Constitution should require that where the Chief Justice is suspended, the tribunal must be constituted and convened within seven days, and must complete its work within a prescribed period unless extended by the Supreme Court for exceptional reasons.
- 38.** Sixth, Fiji should retain a unicameral Parliament. There is no democratic justification for restoring an unelected Senate with law-making powers. Laws should be made by representatives directly elected by the people. The 2013 Constitution correctly abolished the unelected Senate and established a fully elected single House of Parliament. If Fiji wishes to strengthen legislative scrutiny, the answer is not to create another chamber of unelected legislators. The answer is to strengthen parliamentary committees, improve public consultation on Bills, resource the Opposition, and create constitutional safeguards against rushed law-making.
- 39.** The current four-year parliamentary term and election cycle should be retained. A three-year term provides insufficient time for governments to develop and implement medium to long-term policies, while a five-year term risks weakening democratic accountability by keeping voters too far away from the next opportunity to renew or withdraw their mandate. A four-year term strikes the appropriate balance between governmental stability and regular democratic accountability, and remains the appropriate model for a parliamentary democracy such as Fiji.
- 40.** The Public Accounts Committee should be constitutionally recognised as a central instrument of parliamentary oversight and should be chaired by an Opposition Member of Parliament, preferably the Shadow Minister for Finance. Fiji's parliamentary practice traditionally provided for an Opposition MP to chair the PAC, but this was altered in 2016 to allow a Government backbencher to chair the Committee. That change weakened the oversight function of Parliament. The PAC examines how public money is spent, and its work should therefore be led by a member who is institutionally independent of the executive. Comparative Commonwealth practice strongly supports Opposition leadership of the PAC. Restoring this principle would strengthen scrutiny of public expenditure, reinforce executive accountability, and align Fiji's Parliament with good parliamentary practice.
- 41.** The Speaker should also be constitutionally protected as an independent guardian of Parliament, not as an extension of the Government majority. The Speaker should be elected by a supermajority of Parliament and should be required to act with strict neutrality.

- 42.** Seventh, the Constitution should impose strict safeguards on the expedited passage of legislation. The current framework allows ordinary parliamentary majorities to bypass normal deliberation. The Ghai Draft required a much higher supermajority before deliberation could be bypassed. Dialogue Fiji proposes that any use of urgent procedures, including procedures similar to Standing Order 51, should require a two-thirds parliamentary majority, except in narrowly defined emergencies such as natural disasters, war, public health emergencies or urgent fiscal measures certified by an independent authority. Even then, the use of expedited procedures should be time-limited, justified in writing, and subject to post-enactment committee review. Democratic law-making requires that citizens who will be subject to the law must have a meaningful opportunity to understand and influence that law.
- 43.** The Constitution should create a citizens' petition mechanism, adapted from the participatory spirit of the Ghai Draft, which allowed constitutional amendments to be proposed by a petition signed by at least 1,000 citizens. Citizens should be able to petition Parliament to consider an issue of national importance, review an existing law, or initiate discussion on proposed legislation. Once a petition reaches a defined threshold, Parliament should be required to refer it to the relevant standing committee for public hearings and a report within a fixed period; where it reaches a higher threshold, Parliament should be required to schedule a full debate. This would not allow citizens to bypass Parliament or make laws directly, but it would ensure that Parliament cannot simply ignore issues that have significant public support.

G. Foundational Values That Must Remain Sacrosanct

- 44.** Finally, there are foundational values in the 2013 Constitution which should be treated as sacrosanct. Fiji must remain a secular State. In a multi-religious society, secularism is not hostility to religion. It is the only fair basis on which the State can treat all religions equally and protect freedom of conscience for every citizen. The Constitution must also retain equal citizenry. There can be no return to constitutional arrangements that classify citizens into different political categories based on race or ethnicity.
- 45.** The label "Fijian" as the common nationality of all citizens should be retained. Much of the debate around this issue confuses nationality with ethnicity. Ethnicity refers to ancestry, culture, language, customs and communal identity. Nationality refers to legal and political membership of the State. A person may be iTaukei by ethnicity and Fijian by nationality. A person may be Indo-Fijian by ethnicity and Fijian by nationality. These are not contradictory identities. They operate at different levels.
- 46.** Replacing "Fijian" with "Fiji Islander" would be a downgrade. The proud name of our country is Fiji. We are not the Republic of the Fiji Islands. We are the Republic of Fiji. "Fiji" carries dignity and authority. It reflects maturity as an independent nation. Colonial-era naming often emphasised geography because territories were viewed as possessions or collections of islands. Independent states, by contrast, increasingly adopt names that reflect nationhood rather than geography. Citizens of France are French, citizens of India are Indian, citizens of Australia are Australian, and citizens of Fiji should be Fijian. That common national identity does not erase indigenous identity. The iTaukei people remain the indigenous people of Fiji, with their distinct

culture, language, institutions and land rights. But the State must have one equal civic identity for all its citizens.

H. Conclusion

- 47.** In conclusion, Dialogue Fiji urges the Commission to recognise that Fiji's problem is not simply the text of the Constitution. It is the system of power around it. The 2013 Constitution contains progressive and modern features, but it also embeds structural vulnerabilities that enable excessive concentration of power. Reform should therefore be careful, principled and democratic. It should not become another episode in Fiji's long history of constitutional change driven by those who temporarily hold power.
- 48.** If this review is to have legitimacy, the Commission must immediately improve the process. It should publish all submissions, release participation statistics, livestream future hearings, issue thematic consultation papers, allow public comment on draft recommendations, and explain how competing views will be assessed. Without that transparency, the final report will struggle to command trust.
- 49.** Fiji does not need another Constitution that one side celebrates and another side rejects. We need a constitutional settlement that is modern, democratic, inclusive, rights-protecting and institutionally balanced. We need a Constitution that limits power, not one that merely transfers power from one political group to another. Above all, we need a Constitution that belongs to the people of Fiji.