

New constitution for Fiji

By Matthew Dornan

The Fiji government on Thursday released a new [constitution](#), which will come into effect in September paving the way for elections. The Prime Minister, Frank Bainimarama, also [announced](#) his intention to form a political party and stand for election. This will be Fiji's fourth constitution since independence in 1970. The Bainimarama government has been flagging a new constitution since 2009, when it abrogated the 1997 Constitution, dismissed the judiciary, and committed to holding elections in 2014 (it had previously committed to hold election in 2009). Those actions were in response to a Court of Appeal ruling that the military had acted illegally in seizing power in 2006 (commentary on the new constitution from one of the Court of Appeal judges can be found [here](#)) .

A key reason given for delaying elections until 2014 was the need for a new constitution. The Bainimarama government established the Constitutional Commission to draft the new constitution, and appointed as its head a well-known international legal expert, Professor Yash Ghai. But the much-publicised consultation process led by Ghai was increasingly rebuked by Bainimarama, culminating in the public release of Ghai's draft constitution against the wishes of the military in December 2012. The Constitutional Commission was subsequently dissolved and printed copies of the constitution burned.

The government on Thursday released the constitution that it has prepared. A [draft](#) [pdf] was distributed in March, and there are some notable changes in the latest version with respect to command of the military, protection of indigenous land, and the establishment of the Constitutional Offices Commission (described below). The new constitution is also very different to the constitution prepared by Yash Ghai.

Some key features of the constitution, and differences with earlier drafts, include:

Parliament - The new constitution establishes one electorate for all of Fiji (a relatively rare feature of democracies, but one that exists in Israel and the Netherlands). The Ghai constitution had proposed four electorates. The new constitution, like the Ghai constitution, is based on the principle of one-person, one-vote, and eschews the race-based electorates that had existed previously. Elections will be held every four years. Neither constitution made reference to the Great Council of Chiefs, an indigenous body that has held considerable power since independence, but which was abolished by the Bainimarama Government in 2012.

Military - The draft constitution distributed in March had appointed the Prime Minister as Commander-in-Chief of the military. This has changed in the constitution released on Thursday, in which the President performs a ceremonial role as Commander-in-Chief of the military. The President appoints the commander of the military forces, with advice from the Constitutional Offices Commission (see below). Both constitutions differ to arrangements under the Ghai constitution, where cabinet was to appoint a commander of the military for a single 5-year term.

Constitutional Offices Commission - The new constitution establishes the Constitutional Offices Commission, which will play an important role in appointing the head of the military, police, human rights commission, electoral commission, public service commission, and various other institutions. The Constitutional Offices Commission is unique due to its membership. It is chaired by the Prime Minister and includes various government nominees. But it also includes the leader of the opposition and an opposition nominee. This is reminiscent of provisions in the 1997 Constitution for cabinet to include members of opposition parties (a provision that was ignored for many years).

Land - The new constitution protects indigenous Fijian land. This is a notable

change from the government draft that was distributed in March, which had no such provisions, and broke with both past constitutions and the draft prepared by Yash Ghai.

Interim arrangements - The Ghai constitution included a lengthy section on interim arrangements prior to an election, which would have involved the military (and Bainimarama) stepping down before elections are held. Not surprisingly, the constitution drafted by the Fiji government includes no such provision.

State of Emergency - The new constitution gives the Prime Minister power to declare a state of emergency at the recommendation of the heads of the military and police. Parliament must approve the state of emergency for it to continue beyond 48 hours (or 24 hours when parliament is sitting). Authorities have broad powers under a state of emergency; people can be detained without charge for 7 days and without legal review for one month. In contrast, the Ghai constitution limited the ability of authorities to breach human rights during a state of emergency; required emergency legislation to meet Fiji's commitments under international law; and specified that a state of emergency could only be declared by the National Security Council, which included key ministers, heads of all security forces, and the opposition leader.

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