

Fiji: A New System Under Pressure

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Fiji became an independent nation in 1970, with a governor general as head of state, a bicameral Parliament and an electoral system weighted in favour of indigenous Fijians. From that date, Fiji enjoyed some 17 years of political and constitutional stability. However, following two military coups in 1987, Fiji has experienced major constitutional and political turbulence, with the political balance of power between indigenous Fijians and Indo-Fijians being central to the events leading to the two coups and the development of two alternative constitutions – the first in 1990, under which Fiji was declared a republic, severing its ties to the British monarchy, and the current constitution providing for the Republic of the Fiji Islands, which was passed by the Parliament in 1997.

General elections were held in 1999 based on the provisions of the 1997 constitution, which saw a change from a First Past The Post (FPTP) voting system to the preferential Alternative Vote (AV) system, resulting in the election of a coalition led by Fiji's first non-indigenous prime minister.

In May 2000, a further coup was staged, and was followed by a period of constitutional and political uncertainty that culminated in a successful court challenge in 2001. The court determined the interim administration to be illegal and the 1997 constitution to be the supreme law of Fiji.

Further national elections were held in August–September 2001.

The Legislative Framework

The legal framework for elections in Fiji comprises the 1997 constitution, the Electoral Act of 1998 (with subsequent amendments) and the Electoral (Counting Procedures) Regulations of 1999.

The 1997 constitution provides for a Parliament comprising an executive president and two houses. The upper House, the Senate, is made up of 32 appointed members. The House of Representatives has 71 members elected for a five-year term in single-member constituencies. Of the 71 seats, 25 are *open* seats, where the candidates and voters are from any ethnic group, and 46 are *communal*, that is, reserved on a racial basis: the candidates and voters in a communal

seat belong to just one ethnic group. There are 23 communal seats for indigenous Fijians, 19 for Indo-Fijians, one for Rotumans and three for 'general' electors (other races).

Registration and voting are compulsory, with the voting age set at 21.

The constitution provides for an independent Constituency Boundaries Commission (CBC), an Electoral Commission and a supervisor of elections.

Institutional Structure

The Electoral Commission is made up of a chair and four other members. The president appoints the chair, who must be, or be qualified to be, a judge. The other four members are appointed by the president on the advice of the prime minister following consultation with the leader of the opposition. The independence of the commission is guaranteed by the constitution, according to which the Electoral Commission is not subject to the direction or control of any other authority or person.

The Constituency Boundaries Commission consists of a chair and two other members. The chair is appointed by the president and must be, or be qualified to be, a judge. The other two members are appointed by the president, one on the nomination of the prime minister and the other on the nomination of the leader of the opposition.

The supervisor of elections, who is appointed by the Constitutional Offices Commission, is charged with the day-to-day management of electoral matters, subject to the direction of the Electoral Commission. He/she must be qualified to practise as a barrister and solicitor in Fiji. The supervisor is appointed for a period of five years (with a possibility for reappointment) and can only be removed for due cause as set out in the constitution.

Powers and Functions

The CBC is mandated to determine the boundaries of constituencies for both the communal and the open seats in the House of Representatives subject to meeting, as far as practicable, a series of criteria set down in the constitution.

The Electoral Act of 1998, along with the relevant regulations, sets out the specific powers of the Electoral Commission and the supervisor of elections, and prescribes details for the administration of elections. This includes the preparation and maintenance of the electoral registers; the conduct of elections (including postal voting and vote-counting); the handling of electoral offences; and the resolution of disputes by a Court of Disputed Returns.

The Electoral Commission has general responsibility for the registration of voters and the conduct of elections, and is empowered to make regulations in relation to a range of electoral matters including the registration of voters, the registration of political parties and candidates, and the penalties for violations of its regulations.

The supervisor of elections administers the registration of voters (there were 468,630 at the 2001 election) and conducts the elections for the House of Representatives and such other elections as are prescribed by the Parliament, subject to the direction of the Electoral Commission. He/she is required to take all reasonable steps to encourage all qualified persons to register on the appropriate electoral register; to publish the electoral registers at least once each year; to maintain a register of postal voters; to conduct elections in accordance with the law; and to appoint the registration and returning officers.

Financing

Estimates of expenditure are prepared by the supervisor of elections on an annual basis and submitted through the Electoral Commission to the Parliament for appropriation. While no difficulties have been encountered in the flow of funds from the Parliament to enable the Electoral Commission and the supervisor of elections to carry out their responsibilities, there is a heavy reliance on international donors to fund national elections.

Accountability

The Electoral Commission is required to make an annual report to the president concerning its operations and must submit a copy to both houses of Parliament. The Electoral Commission and the CBC are required, along with other statutory bodies funded by parliamentary appropriation, to account to the Parliament, while the supervisor of elections is subject only to the direction of the Electoral Commission.

The Professionalism of Electoral Officers

The office of the supervisor of elections is staffed by five permanent officers who, during the 2001 general elections, were augmented by some 14,000 temporary election staff, drawn almost entirely from the public service. While the performance and impartiality of the officials have been generally praised by electoral observers, the complexity of the AV system has led to calls for better training for electoral officials and other stakeholders such as party agents. Electoral officials are required to adhere to a code of conduct.

Relations with the Media and Other Institutions and Agencies

The media (radio, television and the print media) are not censored and were regarded by international observers at the 2001 elections to have been robust but balanced in their coverage and analysis of the political campaign. As the media play a major role in informing the population on electoral matters, the supervisor of elections and the Electoral Commission maintain an open relationship with the media.

There are some 30 political parties registered with the office of the supervisor of elections and, while some parties have found themselves at odds with the office, generally reasonable working relations have been established. Relations with civil society organizations, international donor agencies and observer groups have been positive and productive, providing a platform for analysis and potential reform of the electoral processes.

Electoral Reform Management

Following the 2001 elections, international observer groups and the Fiji Citizens' Constitutional Forum identified a range of issues arising from the conduct of the elections and made recommendations on the reforms needed. The supervisor of elections has indicated that the Electoral Commission and his office will consider the recommendations with a view to

improving the electoral system and the way it is administered. To the extent that suggested improvements need legislative changes, submissions may be put by the Electoral Commission to the Parliament for its consideration.

Undoubtedly the Electoral Commission, the Constituency Boundaries Commission and the supervisor of elections will continue to play their role in the administration of the electoral system of Fiji. The limited size of these bodies, the constitutional security they enjoy and the continued access to international funding and technical assistance point to their sustainability, albeit with a need for additional staff and professional training.

The office of the supervisor of elections faces significant challenges in order to become established as a credible and impartial administrator of the electoral system in Fiji. The Cabinet approved a restructuring of the office with a major increase of staffing levels prior to the 2006 election.