

CHAPTER 4

BILL OF RIGHTS

Application

21.-(1) This Chapter binds:

(a) the legislative, executive and judicial branches of government at all central, divisional and local; and

(b) all persons performing the functions of any public office.

(2) The rights and freedoms set out in this Chapter apply according to their tenor and are subject only to the limitations under laws of general application permitted by this Chapter and to such derogations as are authorised under Chapter 14.

(3) Laws made and administrative and judicial actions taken, after the commencement of this Constitution are subject to the provisions of this Chapter.

(4) In considering the application of this Chapter to particular legislation, a court must interpret this Chapter contextually, having regard to the content and consequences of the legislation, including its impact upon individuals, groups or communities.

(5) This Chapter applies to all laws in force at the commencement of this Constitution.

(6) To the extent that it is capable of doing so, this Chapter extends to things done or actions taken outside Fiji.

Life

22. Every person has the right to life. A person must not be arbitrarily deprived of life.

Personal liberty

23.-(1) A person must not be deprived of personal liberty except:

(a) for the purpose of executing the sentence or order of a court, whether handed down or made in Fiji or elsewhere, in respect of an offence of which the person has been convicted;

(b) for the purpose of executing the order of a court punishing the person for contempt of the court or of another court or tribunal;

(c) for the purpose of executing the order of a court made to secure the fulfilment of an obligation imposed on the person by law;

(d) for the purpose of bringing the person before a court in execution of the order of a court;

(e) if the person is reasonably suspected of having committed an offence;

(f) with the consent of the person's parent or guardian or upon an order made by a court, for the purpose of the person's education or welfare during any period ending not later than the date of his or her eighteenth birthday;

(g) for the purpose of preventing the spread of an infectious or contagious disease;

(h) for the purpose of the person's care or treatment or for the protection of the community if he or she is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol or a vagrant; or

(i) for the purpose of preventing the unlawful entry of the person into Fiji or of effecting the expulsion, extradition or other lawful removal of the person from Fiji.

(2) Paragraph (1)(c) does not permit a court to make an order depriving a person of personal liberty on the ground of failure to pay maintenance or a debt, fine or tax unless the court considers that the person has wilfully refused to pay despite having the means to do so.

(3) If a person (*detainee*) is detained pursuant to a measure authorised under a state of emergency:

(a) the detainee must, as soon as is reasonably practicable and in any event within 7 days after the start of the detention, be given a statement in writing, in a language that the detainee understands, specifying the grounds of the detention;

(b) notice of the detention must be published in the Gazette within 14 days after the start of the detention, giving particulars of the law under which the detention is authorised;

(c) the detainee must be given the opportunity to communicate with, and to be visited by:

(i) his or her spouse, partner or next-of-kin; and

(ii) a religious counsellor or social worker;

(d) the detainee must be given reasonable facilities to consult with a legal practitioner of his or her choice;

(e) the detention must, within one month and thereafter at intervals of not more than 6 months, be reviewed by an independent and impartial tribunal established by the Judicial Service Commission and presided over by a person qualified to practise as a barrister and solicitor in Fiji; and

(f) at a hearing before the tribunal the detainee may appear in person or be represented by a legal practitioner.

(4) Following a review by a tribunal under subsection (3), the tribunal may make recommendations to the appropriate authority as to the continued detention of the detainee.

Freedom from service and forced labour

24.-(1) A person must not be held in slavery or servitude and must not be required to perform forced labour.

(2) In this section:

forced labour does not include:

(a) labour required in consequence of the sentence or order of a court;

(b) labour reasonably required of a person serving a term of imprisonment, whether or not required for the hygiene or maintenance of the prison;

(c) labour required of a member of a disciplined Force as part of his or her duties or, in the case of a person who has a conscientious objection to military service, labour that the person is required by law to perform in place of that service; or

(d) labour reasonably required as part of reasonable and normal communal or civic obligations.

Freedom from cruel or degrading treatment

25.-(1) Every person has the right to freedom from torture of any kind, whether physical, mental or emotional, and from cruel, inhumane, degrading or disproportionately severe treatment or punishment.

(2) Every person has the right to freedom from scientific or medical treatment or procedures without his or her informed consent or, if he or she is incapable of giving informed consent, without the informed consent of a lawful guardian.

Freedom from unreasonable searches and seizure

26.-(1) Every person has the right to be secure against unreasonable search of his or her person or property and against unreasonable seizure of his or her property.

(2) Search or seizure is not permissible otherwise than under the authority of law.

Arrested or detained persons

27.-(1) Every person who is arrested or detained has the right:

(a) to be informed promptly in a language that he or she understands of the reason for his or her arrest or detention and of the nature of any charge that may be brought;

(b) to be promptly released if not charged;

(c) to consult with a legal practitioner of his or her choice in private in the place where he or she is detained, to be informed of that right promptly and, if he or she does not have sufficient means to engage a legal practitioner and the interests of justice require legal representation to be available, to be given the services of a legal practitioner under a scheme for legal aid;

(d) to be given the opportunity to communicate with, and to be visited by:

(i) his or her spouse, partner or next-of-kin; and

(ii) a religious counsellor or social worker;

(e) to challenge the lawfulness of his or her detention before a court of law and to be released if the detention is unlawful; and

(f) to be treated with humanity and with respect for his or her inherent dignity.

(2) The authorities holding a person who has been arrested or detained must promptly take all reasonable steps to inform his or her spouse, partner or next-of-kin of his or her arrest or detention.

(3) Every person who is arrested for a suspected offence has the right:

(a) to be informed promptly in a language that he or she understands that he or she has the right to refrain from making a statement;

(b) to be brought before a court no later than 48 hours after the time of arrest or, if that is not reasonably possible, as soon as possible thereafter; and

(c) to be released from detention on reasonable terms and conditions pending trial, unless the interests of justice otherwise require.

(4) A person who is ordered to be detained pending trial is, so far as practicable, to be kept apart from convicted persons.

(5) A detained child is, so far as practicable, to be kept apart from adults, unless that is not in the child's best interests.

Rights of charged persons

28.-(1) Every person charged with an offence has the right:

- (a) to be presumed innocent until proven guilty according to law;
- (b) to be given details in legible writing, in a language that he or she understands, of the nature of and reasons for the charge;
- (c) to be given adequate time and facilities to prepare a defence, including, if he or she so requests, a right of access to witness statements;
- (d) to defend himself or herself in person or to be represented, at his or her own expense, by a legal practitioner of his or her choice or, if the interests of justice so require, to be given the services of a legal practitioner under a scheme for legal aid;
- (e) not to have unlawfully obtained evidence adduced against him or her unless the interests of justice require it to be admitted;
- (f) to adduce and challenge evidence, and not to be a compellable witness against himself or herself;
- (g) to be given, on payment of a reasonable fee prescribed by law, a copy of the record of proceedings of the court and of the decision of the court within a reasonable time;
- (h) not to have the trial take place in his or her absence unless:
 - (i) the court is satisfied that the person has been served with a summons or other process requiring his or her attendance and has chosen not to attend; or
 - (ii) his or her conduct in the proceedings is such that the continuation of the proceedings in his or her presence is impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence;
- (j) not to be found guilty in respect of an act or omission unless the act or omission constituted an offence at the time it occurred, and not to be sentenced to a more severe punishment than was applicable when the offence was committed;
- (k) not to be tried again for an offence of which he or she has previously been convicted or acquitted; and

(l) if found guilty, to appeal to a higher court.

(2) Subparagraph (1)(h)(i) does not apply if the offence with which the person has been charged is an offence punishable by a term of imprisonment.

(3) A law is not inconsistent with paragraph (1) (k) to the extent that it:

(a) authorises a court to try a member of a disciplined Force for a criminal offence despite his or her trial and conviction or acquittal under a disciplinary law; and

(b) requires the court, in passing sentence, to take into account any punishment awarded against the member under the disciplinary law.

Access to courts or tribunals

29.-(1) Every person charged with an offence has the right to a fair trial before a court of law.

(2) Every party to a civil dispute has the right to have the matter determined by a court of law or, if appropriate, by an independent and impartial tribunal.

(3) Every person charged with an offence and every party to a civil dispute has the right to have the case determined within a reasonable time.

(4) The hearings of courts (other than military courts) and tribunals established by law must be open to the public.

(5) Subsection (4) does not prevent:

(a) the making by the Parliament of laws relating to the trial of juveniles, or to the determination of family or domestic disputes in a closed court; or

(b) the exclusion by a court or tribunal from particular proceedings (except the announcement of the decision of the court or tribunal) of persons other than the parties and their legal representatives if a law empowers it to do so in the interests of justice, public morality, the welfare of persons under the age of 18, personal privacy, national security, public safety or public order.

(6) Every person charged with an offence, every party to civil proceedings and every witness in criminal or civil proceedings has the right to give evidence and to be questioned in a language that he or she understands.

(7) Every person charged with an offence and every party to civil proceedings has the right to follow the proceedings in a language that he or she understands.

(8) To give effect to the rights referred to in subsections (6) and (7), the court or tribunal concerned must, when the interests of justice so require, provide, without cost to the person concerned, the services of an interpreter or of a person competent in sign language.

(9) If a child is called as a witness in criminal proceedings, arrangements for the taking of the child's evidence must have due regard to the child's age.

Freedom of expression

30.-(1) Every person has the right to freedom of speech and expression, including

(a) freedom to seek, receive and impart information and ideas; and

(b) freedom of the press and other media.

(2) A law may limit, or may authorise the limitation of, the right to freedom of expression in the interests of:

(a) national security, public safety, public order, public morality, public health or the orderly conduct of national or municipal elections;

(b) the protection or maintenance of the reputation, privacy, dignity, rights or freedoms of other persons, including:

(i) the right to be free from hate speech, whether directed against individuals or groups; and

(ii) the right of persons injured by inaccurate or offensive media reports to have a correction published on reasonable conditions established by law;

(c) preventing the disclosure, as appropriate, of information received in confidence;

(d) preventing attacks on the dignity of individuals, groups or communities or respected offices or institutions in a manner likely to promote ill will between races or communities or the oppression of, or discrimination against, any person or persons;

(e) maintaining the authority and independence of the courts;

(f) imposing reasonable restrictions on the holders of public offices in order to secure their impartial and confidential service; or

(g) regulating the technical administration of telecommunications;

but only to the extent that the limitation is reasonable and justifiable in a free and democratic society.

(3) In this section:

hate speech means an expression in whatever form that encourages, or has the effect of encouraging, discrimination on a ground proscribed by section 38.

Freedom of assembly

31.-(1) Every person has the right to assemble and demonstrate with others peacefully.

(2) A law may limit, or may authorise the limitation of, the right to freedom of assembly:

(a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of national or municipal elections;

(b) for the purpose of protecting the rights and freedoms of others; or

(c) for the purpose of imposing reasonable restrictions on the holders of public offices in order to secure their impartial service; but only to the extent that the limitation is reasonable and justifiable in a free and democratic society.

Freedom of association

32.-(1) Every person has the right to freedom of association.

(2) A law may limit, or may authorise the limitation of, the right to freedom of association:

(a) in the interests of national security, public safety, public order, public morality or public health;

(b) for the purpose of protecting the rights and freedoms of others; or

(c) for the purpose of imposing reasonable restrictions on the holders of public offices in order to secure their impartial service; but only to the extent that the limitation is reasonable and justifiable in a free and democratic society.

Labour relations

33.-(1) Workers have the right to form and join trade unions, and employers have the right to form and join employers' organisations.

(2) Workers and employers have the right to organise and bargain collectively.

(3) Every person has the right to fair labour practices, including humane treatment and proper working conditions.

(4) A law may limit, or may authorise the limitation of, the rights set out in this section:

(a) in the interests of national security, public safety, public order, public morality or public health;

(b) for the purpose of protecting the rights and freedoms of others; or

(c) for the purpose of imposing reasonable restrictions on members of a disciplined Force;

but only to the extent that the limitation is reasonable and justifiable in a free and democratic society.

Freedom of movement

34.-(1) Every citizen has the right to enter and remain in Fiji.

(2) Every citizen who satisfies the conditions (if any) prescribed by the Parliament has the right to be issued with a passport.

(3) Every citizen, and every other person lawfully in Fiji, has the right to move freely throughout Fiji and the right to leave Fiji.

(4) Every citizen, and every other person who has a right to reside in Fiji, has the right to reside in any part of Fiji.

(5) Every person who is not a citizen but is lawfully in Fiji has the right not to be expelled from Fiji except pursuant to an order of a court or a decision of the Minister on a ground prescribed by law.

(6) A law, or anything done under the authority of a law, is not inconsistent with the rights granted by this section to the extent that the law:

(a) provides for the detention of the person or enables a restraint to be placed on the person's movements, whether:

(i) for the purpose of ensuring his or her appearance before a court for trial or other proceedings;

(ii) in consequence of his or her conviction for an offence; or

(iii) for the purpose of protecting another person from apprehended violence;

(b) provides for a person who is a non-citizen to be detained or restrained as a consequence of his or her arrival in Fiji without the prescribed entry documentation;

(c) provides for the extradition, on the order of the High Court, of a person from Fiji;

(d) provides for the removal from Fiji, on the order of the High Court, of a child who had previously been unlawfully removed from another country, for the purpose of restoring the child to the lawful custody of a parent or guardian;

(e) provides for the removal from Fiji of a person who is not a citizen for the purpose of enabling the person to serve a sentence of imprisonment in the person's own country in relation to a criminal offence of which he or she has been convicted in Fiji; or

(f) regulates, controls or prohibits the entry of persons on to land owned or occupied by others.

(7) A law may limit, or may authorise the limitation of, the right of a person to freedom of movement:

(a) in the interests of national security, public safety, public order, public morality or public health;

(b) for the purpose of protecting the economy of a particular area or the ecology or distinctive culture of the area;

(c) for the purpose of imposing a restriction on the person that is reasonably required to secure the fulfilment of an obligation imposed on the person by law; or

(d) for the purpose of imposing reasonable restrictions on the holders of public offices as part of the terms and conditions of their employment;

but only to the extent that the limitation is reasonable and justifiable in a free and democratic society.

(8) If a court has made an order requiring a person to pay tax or maintenance, a further order of the court restricting his or her freedom of movement is to be taken as reasonable for the purposes of paragraph (7)(c) if the person has wilfully refused to pay despite having the means to do so.

(9) If action has been taken pursuant to paragraph (7)(b) restricting the movements of persons in order to protect the economy, ecology or distinctive culture of an area, a person whose interests are affected may request the Judicial Service Commission, in writing, to establish an independent and impartial tribunal to investigate the merits of the need to protect the economy, ecology or culture of that area.

(10) Upon receipt of the request, the Judicial Service Commission must establish the tribunal and must appoint as its chairperson a person qualified to practise as a barrister and solicitor in Fiji.

(11) Subsections 23(3) and (4) apply to a person whose right to freedom of movement is restricted pursuant to a measure authorised under a state of emergency in the same way as they apply to a person detained pursuant to such a measure.

Religion and belief

35.-(1) Every person has the right to freedom of conscience, religion and belief.

(2) Every person has the right, either individually or in community with others, and both in public and in private, to manifest his or her religion or belief in worship, observance, practice or teaching.

(3) The right set out in subsection (2) extends to the right of religious communities or denominations to provide religious instruction as part of any education provided by them, whether or not they are in receipt of any financial assistance from the State.

(4) The right set out in subsection (2) may be made subject to such limitations prescribed by law as are necessary:

(a) to protect:

(i) the rights or freedoms of other persons; or

(ii) public safety, public order, public morality or public health: or

(b) to prevent a public nuisance.

(5) Except with his or her consent or, in the case of a person under the age of 18, the consent of a parent or guardian, a person attending a place of education is not required to receive religious instruction or to take part in or attend a religious ceremony or observance if the instruction, ceremony or observance relates to a religion that is not his or her own or if he or she does not hold any religious belief.

(6) A person must not be compelled to take an oath, or to take an oath in a manner, that is contrary to his or her religion or belief or that requires him or her to express a belief that he or she does not hold.

Secret ballot

36. Every person who has a right to vote in an election of a member of the House of Representatives has the right to do so in secret.

Privacy

37.-(1) Every person has the right to personal privacy, including the right to privacy of personal communications.

(2) The right set out in subsection (1) may be made subject to such limitations prescribed by law as are reasonable and justifiable in a free and democratic society.

Equality

38.-(1) Every person has the right to equality before the law.

(2) A person must not be unfairly discriminated against, directly or indirectly, on the ground of his or her:

(a) actual or supposed personal characteristics or circumstances, including race, ethnic origin, colour, place of origin, gender, sexual orientation, birth, primary language, economic status, age or disability; or

(b) opinions or beliefs, except to the extent that those opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others;

or on any other ground prohibited by this Constitution.

(3) Accordingly, neither a law nor an administrative action taken under a law may directly or indirectly impose a disability or restriction on any person on a prohibited ground.

(4) Every person has the right of access, without discrimination on a prohibited ground, to shops, hotels, lodging-houses, public restaurants, places of public entertainment, public transport services, taxis and public places.

(5) The proprietor of a place or service referred to in subsection (4) must facilitate reasonable access for disabled persons to the extent prescribed by law.

(6) A law, or an administrative action taken under a law, is not inconsistent with the right to freedom from discrimination on the ground of:

(a) language;

(b) birth;

(c) economic status;

(d) age; or

(e) disability;

during the period of 2 years after the date of commencement of this Constitution if the law was in force immediately before that date and has remained continually in force during that period.

(7) A law is not inconsistent with subsection (1), (2) or (3) on the ground that it:

(a) appropriates revenues or other moneys for particular purposes;

(b) imposes a retirement age on a person who is the holder of a public office;

(c) imposes on persons who are not citizens a disability or restriction, or confers on them a privilege or advantage, not imposed or conferred on citizens;

(d) permits a person who has a discretion to institute or discontinue criminal proceedings to take account in the exercise of that discretion of traditional procedures in the State for the settlement of disputes; or

(e) makes provision with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters as the personal law of any person or the members of any group;

but only to the extent that the law is reasonable and justifiable in a free and democratic society.

(8) A law, or an administrative action taken under a law, may limit a right or freedom set out in this section for the purpose of:

(a) providing for the application of the customs of Fijians or Rotumans or of the Banaban community:

(i) to the holding, use or transmission of, or to the distribution of the produce of, land or fishing rights; or

(ii) to the entitlement of any person to any chiefly title or rank;

(b) imposing a restriction on the alienation of land or fishing rights held in accordance with Fijian or Rotuman custom or in accordance with Banaban custom; or

(c) permitting the temporary alienation of that land or those rights without the consent of the owners.

(9) To the extent permitted by subsection (10), a law, or an administrative action taken under a law, may limit a right or freedom set out in this section for the purpose of providing for the governance of Fijians or Rotumans or of the Banaban community and of other persons living as members of a Fijian, Rotuman or Banaban community.

(10) A limitation referred to in subsection (9) is valid only if it:

(a) accords to every person to whom it applies the right to equality before the law without discrimination other than on the ground of race or ethnic origin; and

(b) does not infringe a right or freedom set out in any other section of this Chapter.

Education

39.-(1) Every person has the right to basic education and to equal access to educational institutions.

(2) Every religious community or denomination and every cultural or social community has the right to establish and maintain places of education and to manage them, whether or not it receives financial assistance from the State.

(3) The admission policy of a place of education referred to in subsection (2) may be administered on the basis of the need to maintain its special character but, subject to that, those concerned in its management must ensure that it is open to all qualified students without discrimination on any ground prohibited by this Constitution.

(4) Nothing contained in, or done under the authority of, a law prescribing standards or qualifications for educational institutions is inconsistent with this section to the extent that the requirements of the law are reasonable and justifiable in a free and democratic society.

Protection against compulsory acquisition of property

40.-(1) Every person has the right not to be deprived of property by the State otherwise than in accordance with a law.

(2) The acquisition of property under a law referred to in subsection (1):

(a) is permissible for public purposes only; and

(b) is subject to the payment of agreed compensation or, failing agreement, to the payment of such compensation and within such period as is determined by a court or tribunal to be just and equitable taking into account all relevant factors including:

(i) the use to which the property is being put;

(ii) the history of its acquisition;

(iii) its market value;

(iv) the interests of those affected; and

(v) any hardship to the owner.

(2A) Nothing contained in, or done under the authority of, a law is inconsistent with this section to the extent that the law is inconsistent with this section to the extent that the law makes provision for the acquisition of property by way of:

- taxation;

- sequestration of bankrupt estates;
- confiscation of the proceeds of crime;
- penalty for breach of law;
- satisfaction of a mortgage, charge or lien; or
- execution of a judgement of a court.

(3) in this section:

property includes an interest in property.

Enforcement

41.-(1) If a person considers that any of the provisions of this Chapter has been or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if another person considers that there has been, or is likely to be, a contravention in relation to the detained person), then that person (or the other person) may apply to the High Court for redress.

(2) The right to make application to the High Court under subsection (1) is without prejudice to any other action with respect to the matter that the person concerned may have.

(3) The High Court has original jurisdiction:

(a) to hear and determine applications under subsection (1); and

(b) to determine questions that are referred to it under subsection (5);

and may make such orders and give such directions as it considers appropriate.

(4) The High Court may exercise its discretion not to grant relief in relation to an application or referral made to it under this section if it considers that an adequate alternative remedy is available to the person concerned.

(5) If in any proceedings in a subordinate court any question arises as to the contravention of any of the provisions of this Chapter, the member presiding in the proceedings may, and must if a party to the proceedings so requests, refer the question to the High Court unless, in the member's opinion (which is final and not subject to appeal), the raising of the question is frivolous or vexatious.

(6) When the High Court gives its decision on a question referred to it under this section, the court in which the question arose must dispose of the case in accordance with:

(a) the decision; or

(b) if the decision is the subject of appeal to the Court of Appeal or to the Supreme Court decision of the Court of Appeal or Supreme Court, as the case may be.

(7) The Attorney-General may, on behalf of the State, intervene in proceedings before the High Court that relate to a matter concerning a provision of this Chapter.

(8) If proceedings before the High Court relate to a matter concerning a provision of this Chapter, the High Court must not proceed to hear and determine the matter until it is satisfied that notice of the matter has been given to the Attorney-General and a reasonable time has elapsed since the giving of the notice for consideration by the Attorney-General of the question of intervention in the proceedings.

(9) A notice under subsection (8) is not required to be given to the Attorney-General if the Attorney-General or the State is a party to the proceedings.

(10) The Chief Justice may make rules for the purposes of this section with respect to the practice and procedure of the High Court (including rules with respect to the time within which applications are to be made to the High Court).

Human Rights Commission

42.-(1) This section establishes a Human Rights Commission.

(2) Its functions are:

(a) to educate the public about the nature and content of the Bill of Rights, including its origins in international conventions and other international instruments, and the responsibilities of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and other organs of the General Assembly of the United Nations for promoting respect for human rights;

(b) to make recommendations to the Government about matters affecting compliance with human rights, including the making of a recommendation that a particular question about the legal effect of a provision of the Bill of Rights be referred to the Supreme Court for its opinion; and

(c) to perform such other functions as are conferred on it by a law made by the Parliament.

(3) The Human Rights Commission consists of 3 members:

(a) the Ombudsman, who is to be its chairperson;

(b) a person who is qualified to be a judge; and

(c) one other member.

(4) The members of the Human Rights Commission referred to in paragraphs (3)(b) and (c) are appointed by the President on the advice of the Prime Minister following consultation by the Prime Minister with the Leader of the Opposition and the sector standing committee of the House of Representatives responsible for matters concerning human rights.

Interpretation

43.-(1) The specification in this Chapter of rights and freedoms is not to be construed as denying or limiting other rights and freedoms recognised or conferred by common law, customary law or legislation to the extent that they are not inconsistent with this Chapter.

(2) In interpreting the provisions of this Chapter, the courts must promote the values that underlie a democratic society based on freedom and equality and must, if relevant, have regard to public international law applicable to the protection of the rights set out in this Chapter.

(3) A law that limits a right or freedom set out in this Chapter is not invalid solely because the wording of the law exceeds the limits imposed by this Chapter if the law is reasonably capable of a more restricted interpretation that does not exceed those limits. In that case, the law must be construed in accordance with the more restricted interpretation.