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FIJI HUMAN RIGHTS AND ANTI-DISCRIMINATION COMMISSION

SUBMISSION TO THE PARLIAMENTARY SPECIAL COMMITTEE ON THE CONSTITUTION ON THE

CONSTITUTION AMENDMENT BILL 2026 (BILL NO.32)

Submitted on 23 October 2026

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1. INTRODUCTION

1.1 The Human Rights and Anti-Discrimination Commission (HRADC) welcomes the opportunity to make submissions to the Parliamentary Special Committee on the Bill No.32 of 2026 an Act to Amend the Constitution of the Republic of Fiji and for Related Matters (Bill No.32), recognizing that this is a significant moment in Fiji's history with far-reaching implications for human rights and democratic governance.

Constitutional Mandate

1.2 The HRADC's mandate to engage in this national review is rooted in the 2013 Constitution and its enabling legislation, the Human Rights and Anti-Discrimination Commission Act 2009.

1.3 Sections 45(4)(d) and (g) of the 2013 Constitution, together with sections 12(1)(f) and (i) of the Human Rights and Anti-Discrimination Commission Act 2009, provide the HRADC with authority to:

5. Monitor the State's compliance with international human rights obligations;
6. Recommend to Government legislative, administrative, or policy reforms to strengthen human rights protection; and
7. Review proposed laws and policies to ensure consistency with international human rights standards.

1.4 This submission is made in accordance with that mandate and in response to the invitation for submissions.

2. FIJI'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

2.1 Fiji is a State Party to all nine (9) core international human rights treaties,[1] namely the:

i. International Covenant on Civil and Political Rights (ICCPR);[2]
ii. International Covenant on Economic, Social and Cultural Rights (ICESCR);[3]
iii. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);[4]
iv. Convention on the Rights of the Child (CRC);[5]
v. International Convention on the Elimination of All Forms of Racial Discrimination (CERD);[6]

[1] List all conventions Fiji has ratified and their year of ratification
[2] Ratified on 16th August 2018.
[3] Ratified on 16th August 2018.
[4] Ratified on 28th August 1995. Article 2 of the Convention imposes the obligation on Fiji to implement the principles outlined in the Convention.
[5] Ratified on13th August 1993. Article 4 as above.
[6] Ratified on 11th January 1973. Article 2 as above.

vi. Convention on the Rights of Persons with Disabilities (CRPD);[7]
vii. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);[8]
viii. Convention for the Protection of All Persons from Enforced Disappearance (CED);[9] and,
ix. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW).[10]

2.2 As a member of the United Nations, Fiji fully embraces the Universal Declaration of Human Rights (UDHR). In 1995, Fiji adopted the Beijing Declaration and Platform for Action a landmark global policy asserting women's rights are universal human rights, women's empowerment and that gender equality is a fundamental requirement for peace and development. In 2023, Fiji adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which protects indigenous rights to self-determination, culture, identity, language, ancestral lands, dignity and well-being.

2.3 Fiji's ratification of the above nine (9) core human rights Conventions along with its adoption and support of UDHR, the Beijing Platform for Action and UNDRIP places numerous international obligations upon the State to align, its domestic laws, policies, and practices with universal human rights standards, as the primary Duty Bearer of human rights. Under international human rights law, the State's role as Duty Bearer carries a fourfold obligation to:

a. **Respect** human rights – the Government must refrain from acting in ways that deny, suspend, harm or violate human rights. For example, no arbitrary detention, no torture, no censorship.

b. **Promote** human rights – the Government must actively foster and nurture a culture of respect for human rights through advocacy, awareness raising, training, education and public engagement.

c. **Protect** human rights – the Government has a positive duty to ensure that rights are not unreasonably curtailed or interfered with. For example, effective laws, enforcement and remedies.

d. **Fulfil** the obligation to protect human rights – the Government must take active measures to give effect to rights. For example, by providing resources, services and systems that make rights a lived reality and not just a legal promise.

[7] Ratified on 7th June 2017. Article 4 as above.
[8] Ratified on 14th March 2016. Articles 2, 4 and 5 as above.
[9] Ratified on 19th August 2019. Article 4 as above.
[10] Ratified on 19th August 2019. Article 84 as above.

3. CONSTITUTION AMENDMENT BILL NO.32 OF 2026: KEY AREAS OF CONCERN

3.1 A Constitution is the principal means of safeguarding the rights of the nation's citizens, as well as guaranteeing that the power of the State will be exercised consistently with human rights, equality, justice and the upholding of the rule of law and democracy.

3.2 The Bill No.32 should therefore be examined not only against the proposed draft of the Constitution Review Committee and the current Constitution 2013, but also against the fundamental principle that no rights and the enjoyment of such rights should be eroded or impeded by any proposed Constitutional reforms.

3.3 Fiji is a State Party to the nine (9) core Conventions (listed out in full at section 2.1 above), and therefore has international obligations, as Duty Bearer, to ensure that all rights are applied equally to its citizenry and are able to be enjoyed and realized by its citizenry without unreasonable limitations. Fiji has also supported and adopted these foundational global declarations specifically the UDHR, the Beijing Declaration and Platform for Action and UNDRIP. These declarations reinforce Fiji's positive obligations to respect, promote, protect and fulfil the fundamental rights and freedoms of all the people of Fiji.

3.4 The HRADC is therefore making its submission through a human rights lens, assessing whether the rights provided within the Bill No.32 are in parity with Fiji's human rights obligations.

1. THE CONSULTATION PROCESS

3.5 Before addressing the substantive provisions of the Bill No.32, the HRADC wishes to express its concern regarding the consultation process implemented by the Parliamentary Special Committee on the Constitution Amendment Bill.

3.6 Constitutional reform is a matter of profound national significance. As the supreme law of Fiji, the Constitution underpins the protection of human rights, democratic governance, and the rule of law. Any process to amend the Constitution must therefore be transparent, inclusive, participatory, and informed by extensive and meaningful public engagement to ensure democratic legitimacy and strengthen social stability.

3.7 The HRADC remains deeply concerned that the timeframe provided for public consultation and submissions does not adequately facilitate meaningful participation by the public. The right of individuals and communities to participate in public affairs is protected under Article 25 of the ICCPR, which requires that citizens have an effective opportunity to participate in public affairs and decision-making processes. The United

Nations Human Rights Committee has affirmed that participation must be genuine and effective, rather than merely formal or procedural.[11]

3.8 Through its observation of public consultations conducted by the Parliamentary Special Committee on the Constitution Amendment over the past week, the HRADC notes that concerns regarding the accelerated nature of the consultation process have been consistently raised by members of the public. Participants repeatedly expressed that they had not been afforded sufficient time to access, read, understand, and consider the proposed amendments before providing feedback. Participants indicated that they were expected to review and comment on complex constitutional proposals on the same day as the consultation, limiting their ability to make informed submissions.[12]

3.9 Meaningful participation is a fundamental human rights principle and a cornerstone of democratic governance. Effective participation requires that individuals are provided with timely access to information, adequate opportunity to consider proposals, and a genuine ability to influence decision-making. International human rights standards recognize that participation in public affairs extends beyond elections and includes engagement in legislative and constitutional reform processes. Access to information, transparency, equality, and non-discrimination are essential components of such participation.

3.10 The HRADC further notes that Fiji's international human rights obligations require particular attention to the participation of groups that may face barriers to engagement. Article 7 of CEDAW requires States to ensure women's participation in public and political life on an equal basis with men. Articles 4(3) and 29 of the CRPD require States to closely consult with and actively involve persons with disabilities in decision-making processes affecting them and to promote their effective participation in public affairs. Fiji's disabled community often remind the public of the need for their participation with this declaration - "Nothing about us without us".

3.11 In the HRADC's view, constitutional amendment processes warrant the highest standard of public participation. The constitution is the nation's supreme law which establishes the foundational social contract of the state distinguishing it from ordinary legislation for which a standard level of consultation might be acceptable. Since amending the constitution will mean fundamentally changing the nation's democratic foundation, it requires an extra-ordinary threshold of public legitimacy and therefore demands an extended timeframe for nation wide participation.

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[11] See paragraphs 6 and 8 of the General Comment; tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11&ctl00_ContentPlaceHolder1_radResultsGridChangePage=2

[12] https://www.fijivillage.com/news/youths-question-rushed-consultation-on-constitution-amendment-bill-d34136/?utm_source=dlvr.it&utm_medium=facebook&fbclid=IwVERDUAVDKbNleHRuA2FlbQIxMABwZG9mBXNydGMGYXBwX2lkDDM1MDY4NTUzMTcyOAABHvJw2sHIFNKvjlLqWXzp4r5OXH0-b3jJqUiAkmyFfzTJNwj3D7zLZLXYNiij_aem_lq2k1Z6_zipIjlAukBQymQ; https://www.facebook.com/share/v/14sYYmVMbeC/; https://www.facebook.com/share/v/19yHzDvSFv/

3.12 Given the enduring impact of constitutional change on the rights and freedoms of present and future generations, members of the public must be afforded a genuine opportunity to understand proposed amendments, engage in informed debate, and communicate their views before decisions are made. This entails state responsibility through the Government to deliver appropriate civic education, provide logistical and transport assistance to remote areas and deploy accessible communications infrastructures.

3.13 The HRADC considers that the current consultation timeframe falls short of these principles and measures and risks undermining public confidence in both the process and its outcomes. Meaningful consultation cannot be achieved where individuals are not provided with sufficient time to understand proposals and formulate informed views. This is further aggravated when the consultation period is tightly compressed against rigid parliamentary timelines and a looming proposed referendum date on the 9th December 2026. Rushing the public under such severe time constraints may generate widespread confusion and misinformation which ultimately compromises the integrity of the constitutional reform. The final outcome may therefore lack the deep public trust and legitimacy required to sustain a supreme law.

Recommendations

The HRADC recommends that the consultation and submission period be extended to facilitate meaningful and effective public participation consistent with Fiji's constitutional values and international human rights obligations. In particular, the HRADC recommends:

a) adequate time for the public to access, read, and understand the proposed amendments;
b) strengthened civic education and public awareness initiatives explaining the nature and implications of the proposed amendments in clear and accessible language;
c) additional consultation opportunities for rural, maritime, and remote communities;
d) targeted measures to ensure the effective participation of women, persons with disabilities, youth, older persons, and other vulnerable or marginalized groups; and
e) the provision of consultation materials in accessible and user-friendly formats.

2. HUMAN RIGHTS PROVISIONS

3.14 The HRADC recognizes that Bill No.32 improves several human rights standards in terms of aligning the limitation clauses to international standards set by the ICCPR and various other Conventions, in that it introduces a proportionality test for limitations. This was an important point that was propounded by the HRADC in its written and verbal submissions to the Constitution Review Committee on 30 June 2026. In this vein, the proposed Bill of Rights is in some respect stronger than the current Bill of Rights.

3.15 However, several proposed provisions cause concern, and may pose the risk of regressing certain rights, for instance, the rights of the child under the proposed rewording relating to corporal punishment.

3.16 To keep these submissions as succinct as possible, a table is provided as Annex A which discusses the key differences between the current Bill of Rights and the proposed Bill of Rights, as well as the implications. Please note the HRADC recommendations that are contained in the table at Annex A.

3.17 As evident above, the Bill No. 32 contains several welcome improvements to the Bill of Rights, particularly with relation to aligning the limitation clauses to an international standard, providing stronger disclosure obligations for a fair trial, providing more protection to children in custody and strengthening the right to privacy.

3.18 However, as also evident above, there are very worrying implications arising out of several proposed provisions which could result in the regression of rights, namely those affecting children, in particular, the application of chastisement or corporal punishment, which is a violation of the State's obligations under the Convention on the Rights of the Child (Articles 19, 37 and 39).

Recommendations

The HRADC's key recommendations are to:

1. Retain the proposed improvements relating to limitations on rights, international law, children's detention safeguards, fair trial rights, freedom of assembly, freedom of association, privacy, education, and movement.
2. Amend the forced labour provision by clearly defining permissible communal and civic obligations.
3. Restore the explicit constitutional right to remain silent.
4. Remove the provision permitting "lawful and moderate chastisement" of children.
5. Introduce a constitutional right to remedy and truth.

3. CHAPTER 1. THE STATE AND FOUNDING PROVISIONS

3.19 Section 1 in the current Constitution 2013 lists from clauses (a) to (h) values that Fiji as a sovereign democratic State is founded on. None of those values explicitly state the name of a religion.

3.20 Section 1(1) of the Bill No. 32 lists from clauses (a) to (i) values that Fiji as a sovereign democratic State is founded on, and under (a) it explicitly states the name of the following religion, Christianity as a founding value.

3.21 Under international human rights law, a democratic state must maintain neutrality to ensure all individuals enjoy equal protection under the law without discrimination based

on religion or belief (Articles 2 and 7 of UDHR). Also, section 1 (a) of the Bill No. 32 does not harmonise with its section 4 on "Religious Liberty" as in elevating Christianity to a foundational state value it creates a risk of marginalising non-Christian communities.

3.22 Fiji is a multicultural and multi-faith nation. The Bill in recognizing Christianity as a core founding value of Fiji, rather than promoting unity and mutual respect, may serve to create a distinction between citizens on the basis of their religious beliefs, thus undermining the principles of equality, religious freedom and non-discrimination. The Bill may be improved by expressly recognizing that the recognition of a religious tradition must not and cannot diminish the rights of people who practice another religion or hold other beliefs, including those who hold no religious beliefs.

Recommendation

HRADC recommends that the word "Christianity" in section 1 (1) (a) be replaced with the phrase "equal respect for all religions" to read: “The Republic of Fiji is a sovereign democratic State founded on the values of-

(b) equal respect for all religions and family values

4. APPOINTMENT AND REMOVAL OF THE PRESIDENT AND VICE-PRESIDENT

3.23 Section 84(1) of the current Constitution 2013 expressly states that the “President shall be appointed by Parliament in accordance with this section.” Neither section 84 nor any other section in this Constitution provides for the appointment of the Vice-President. Section 89 (4) provides Parliament with the authority to remove the President based on the advice given by the tribunal on allegations against the President or the medical board on the health of the President. The 2013 Constitution vests in Parliament the appointing and removal authority of the President.

3.24 However, Section 103 of the Bill No. 32 expressly states that the “President and Vice-President are appointed by the Bose Levu Vakaturaga after consultation with the Prime Minister.” Section 107 provides the Bose Levu Vakaturaga with the authority to remove the President or Vice-President for incapacity or misbehaviour. The Bill No. 32 vests in the Bose Levu Vakaturaga the appointing and removal authority of the President and the Vice-President.

3.25 The President as Head of State of a sovereign democratic nation belongs to the entire nation and must represent the multi-ethnic and multi-cultural society that comprises Fiji. The appointing and removal process of the President or Vice-President should therefore reflect the fundamental principles of equal participation in public affairs, non-discrimination and democratic accountability (Articles 25, 26 of the ICCPR).

3.26 Vesting the appointing and removal authority of the Head of State in an unelected, hereditary, traditional indigenous institution, the Bose Levu Vakaturaga risks creating a tension with the right of every citizen to have an equal voice in their national governance.

3.27 While indigenous customary institutions have a legitimate place in national life, a rights-based framework requires that indigenous traditional leadership should not be the sole authority for appointing and removing the Head of State or Vice-President in a genuine democratic society. Rather, the process should engage the participation of other relevant stakeholders, including elected representatives, to ensure an inclusive and transparent appointment or removal mechanism that commands the trust and confidence of all communities. This strategy balances respect for customary leadership with the principles of democratic accountability, non-discrimination, and equal political participation of all Fiji citizens. This will ensure that appointments to the Office of the President and Vice-President reflect the diverse interests of the nation as a whole.

Recommendation

HRADC recommends that Government / Parliament amend sections 103 to 107 to ensure that the appointment and removal of the Head of State or Vice-President is done by a body comprising the Bose Levu Vakaturaga, other relevant stakeholders and elected representatives. In this regard, the Government / Parliament may wish to be guided by the CRC draft dated 31 August 2016, section 108 – Nomination and appointment of President.

5. IMMUNITY PROVISIONS

3.28 The HRADC is deeply concerned that the Bill No. 32 retains and further entrenches the immunity provisions contained in Chapter 14, despite significant public submissions during the constitutional review and constitution amendment bill process calling for the removal of immunity provisions and the recommendation of the Constitution Review Committee that these provisions be repealed or substantially reformed. The Constitution Review Committee identified a range of options to address concerns relating to legal certainty and constitutional stability while advancing accountability and the rule of law. These recommendations are not reflected in the proposed amendments in Bill No.32.

3.29 The HRADC notes with particular concern that the Bill No. 32 not only preserves the immunity protections contained in the 2013 Constitution but also continues the protections which are provided under the Limitation of Liability for Prescribed Political Events Act 2010 and extends constitution immunity to actions and omissions connected to prescribed political events occurring between 5 December 2006 and the first sitting of Parliament following the commencement of the new Constitution 2026 on 31st March 2028. The Bill No. 32 further provides that such immunity provisions are not subject to challenge or review by any court, tribunal, commission or other adjudicative body and

cannot be amended or repealed except in accordance with highly restrictive constitutional procedures.

3.30 From a human rights and rule of law perspective, broad and permanent constitutional immunity provisions raise serious concerns regarding accountability, equality before the law, access to justice, and the right to an effective remedy. International human rights standards recognise that individuals whose rights have been violated must have access to effective remedies and avenues of redress. Article 8 of the UDHR guarantees the right to an effective remedy before competent national tribunals, while Article 2(3) of the ICCPR obliges States to ensure accessible and effective remedies for persons whose rights have been violated, including where violations are committed by persons acting in an official capacity.

3.31 The UN Human Rights Committee has affirmed that these guarantees are fundamental safeguards of the rule of law. Constitutional provisions that permanently shield individuals or groups from judicial scrutiny risk undermining these principles and may impede victims' ability to seek accountability, truth and redress for alleged human rights violations.[13]

3.32 The HRADC is also concerned that the retention and expansion of these immunity provisions are inconsistent with the views expressed during the constitutional review process and currently during the Bill No. 32 consultations. Meaningful public participation is a core democratic and good governance principle and requires that public views be genuinely considered, particularly where proposed constitutional provisions have significant implications for accountability, access to justice, victims' rights, the protection of human rights and freedoms, and public confidence in constitutional governance.

3.33 While the HRADC recognises the importance of constitutional stability and national reconciliation, these objectives should, as far as possible, be pursued in a manner that is consistent with Fiji's obligations under international human rights law and the principles of accountability, equality before the law, and access to effective remedies. The HRADC therefore recommends that Parliament reconsider the retention and expansion of the proposed immunity provisions and give further consideration to the Constitution Review Committee recommendations.

Recommendation

The HRADC recommends that:

i. Parliament reconsiders the inclusion of the immunity provisions in Chapter 10 and give full consideration to the recommendations of the Constitution Review

[13] UN Human Rights Committee, General Comment No. 32 (2007), *Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*.

Committee (paragraphs 7.2.5.1- 7.2.5.4 of the CRC Report 2026, pages 38, 39) and the concerns raised through public consultations to remove/repeal the immunity provisions.

ii. Section 206 on Further immunity in Bill No. 32 be removed.

6. PROPOSED BICAMERAL SYSTEM

3.34 Fiji currently has a unicameral system, where there is one Parliament comprising 55 members of Parliament, with one nationwide constituency. This system is a stark contrast to Fiji's previous ethnic-based constituency system.

3.35 The proposed system keeps the 55 member system, but proposes a different election system – that is, 33 constituency members and 22 party members.

3.36 Furthermore, the Bill No. 32 also proposes bringing back the bi-cameral system comprising the President, the House of Representatives, and the Senate. Under section 75, the Senate would have the power to review Bills passed by the House of Representatives and any other purpose and responsibility provided for in the Bill. The Senate is appointed by the President as follows:

a. 14 members on the advice of the Bose Levu Vakaturaga (BLV);
b. 6 members on the advice of the Prime Minister;
c. 2 members on the advice of the Leader of Opposition; and
d. 1 member on the advice of the Rotuma Island Council.

3.37 The concern stemming from the makeup of appointments to the Senate is the possibility of certain Bills being vetoed by the Senate due to its makeup. While this doesn't necessarily mean that there may be human rights concerns, it nonetheless raises the concern of whether the people appointed have the required professional skill and competence to review Bills.

Recommendation

HRADC recommends that Government/Parliament reconsider the composition and powers of the Senate to reflect Fiji's multi-ethnic nature and democratic accountability in the context of elected entities vs non-elected entities.

7. STATE OF EMERGENCY

3.38 The HRADC recognises the need for constitutional emergency powers to enable the State to respond to exceptional circumstances affecting national security, public safety, public health, or the life of the nation. The Bill No. 32 establishes a dedicated framework for states of emergency in Chapter 13 (sections 200-203), replacing the emergency powers framework contained in section 154 of the 2013 Constitution.

3.39 The HRADC welcomes the inclusion of clause 202, which regulates the limitation of rights during a state of emergency. However, unlike the general limitations clause in section 8, section 202 does not expressly state that emergency measures be necessary, proportionate, and the least restrictive means available. Furthermore, although the wording in section 202(i)(a) (of the Bill No.32) and section 43 of the Constitution 2013 are nearly identical, the absence of a bracket/parenthesis around the non-derogable rights poses the risk of placing these non-derogable rights under the limitations in sub-clauses (i) and (ii). For ease of reference, the two sections are reproduced below:

i. Section 43 of the 2013 Constitution states: "Any law enacted or promulgated in consequence of a declaration of a state of emergency under this Constitution –

   (a) May limit a right or freedom set out in this Chapter ***(with the exception of the rights and freedoms set out in sections 8, 10, 11, 13, 14, 15, 16, 22 and 26)*** only to the extent that –
      (i) The limitation is strictly necessary and required by the emergency; and
      (ii) The law is consistent with Fiji's obligations under international law applicable to a state of emergency; and
   (b) Takes effect only when it has been published in the Gazette."

ii. Section 202 of the Bill No. 32 states: "Any law enacted or promulgated in consequence of a declaration of a state of emergency under this Constitution –

   (a) May limit a right or freedom set out in this Chapter ***with the exception of the rights and freedoms set out in sections 11, 13, 14, 16, 17, 18, 19, 25 and 29*** only to the extent that –
      (i) The limitation is strictly necessary and required by the emergency; and
      (ii) The law is consistent with Fiji's obligations under international law applicable to a state of emergency; and
   (b) Takes effect only when it has been published in the Gazette."

3.40 The HRADC recommends that Bill No. 32 provide clarity in relation to derogable and non-derogable rights, particularly in relation to a state of emergency. International human rights law recognises that certain rights, including freedom from torture, slavery,

and retrospective criminal liability, cannot be suspended even during periods of national emergency.

3.41 The HRADC welcomes the requirement under section 201 for the House of Representatives to be summoned during a state of emergency and emphasises the importance of continued parliamentary oversight and periodic review of emergency declarations.

3.42 However, section 201(3),(4) provides that a state of emergency can be extended for a period of up to 12 months if, during a period of the state of emergency, the term of the House of Representatives is due to expire. The HRADC is of the view that this proposed amendment should also require that the extension is valid only if it carries the support of at least 50% plus one of Parliament and should not extend for over 6 months after the state of emergency has ceased.

3.43 The HRADC further considers that courts should retain full jurisdiction during a state of emergency, pursuant to sections 2, 10 and 18 of Bill No. 32, including the power to review the legality of emergency declarations and measures, and to provide remedies where constitutional rights are unlawfully restricted.

3.44 Given the potential impact of emergency powers on rights such as freedom of expression (section 20), freedom of assembly (section 21), freedom of association (section 22), freedom of movement (section 24), political rights (section 26), privacy (section 27), and access to information (section 28), the HRADC considers that stronger safeguards are necessary to ensure compliance with democratic and human rights principles.

Recommendation

The HRADC recommends that clauses 200-203 be amended to:

a) expressly state that emergency measures must be necessary and proportionate as the least restrictive means possible is already explicitly stated in section 8 of Bill No. 32;
(b) expressly protect non-derogable rights during a state of emergency;
(c) provide for periodic parliamentary review of emergency declarations;
(d) confirm the continuing jurisdiction of the courts to review emergency declarations, regulations and actions;
(e) section 201(3) and (4) be amended to require that the extension may only be allowed if it is supported (by vote) by 50% plus one of Parliament; and
(f) section 201(3) and (4) extension should not exceed 6 months after the state of emergency has ceased.

The HRADC further recommends that section 202 be aligned with Fiji's obligations under Article 4 of the ICCPR, ensuring that any derogation from constitutional rights remains lawful, necessary, proportionate, non-discriminatory and subject to effective oversight and remedies.

8. RIGHTS OF INDIGENOUS PEOPLE

3.45 The Commission notes that many of the concerns previously raised regarding the protection of Indigenous Peoples' rights under the 2013 Constitution have been positively addressed in the proposed constitutional framework, Bill No. 32. In particular, the recognition of **Free, Prior and Informed Consent**, the strengthened protection of Indigenous lands, territories and resources, the enhanced recognition of Indigenous culture and traditional institutions, and the restoration of a formal constitutional role for the Bose Levu Vakaturaga represent significant advances towards alignment with international standards, including UNDRIP. However, important issues remain unresolved, particularly the continued State ownership of minerals and subsurface resources, and the need for stronger protections to ensure Indigenous Peoples exercise meaningful authority over decisions affecting their traditional lands and resources.

Continued State Ownership of Minerals and Natural Resources

3.46 The proposed framework does not appear to alter the existing constitutional position that vests ownership of minerals and subsurface resources in the State. As a result, Indigenous communities continue to possess ownership of customary land while lacking equivalent ownership or control over the minerals and resources located within or beneath those lands. This perpetuates longstanding concerns regarding economic justice, self-determination, equitable benefit-sharing, and Indigenous participation in decisions concerning resource extraction and development.

3.47 Section 30 of the 2013 Constitution vests ownership of all minerals in the State, separating mineral rights from customary land ownership. This colonial-era approach conflicts with the *iTaukei* concept of *Vanua*, which recognises the interconnectedness of land, sea, sky, people, natural resources and cultural identity.

3.48 Section 47 of Bill No. 32 states that all minerals in or under any land or water are owned by the State, however it entitles landowners to a fair share of royalties or other monies paid to the State in respect of the grant by the State of rights to extract minerals from that land or the seabed in the area of those fishing rights.

3.49 The proposed amendments in sections 45 - 47 of the Bill No. 32 are commendable as they introduce protections concerning consent, environmental rights and fair royalties. However, financial entitlements alone do not guarantee customary ownership or meaningful participation as they frequently relegate landowners to passive recipients of financial payments rather than active partners in development. For instance co – management models and joint venture opportunities should be pursued. The *iTaukei* communities should be involved and given seats on project governance bodies, oversight bodies and environmental monitoring entities. The framework should therefore better reflect the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and protect the rights and interests of affected iTaukei communities.

3.50 It is recommended that the proposed amendments better reflect Fiji's international obligations by strengthening sections 45 - 47, in explicitly guaranteeing free, prior and informed consent and meaningful participation in mineral related decisions. Independent environmental impact assessments must also be made publicly accessible before any project approvals, to enable FPIC to be realized. The proposed amendments must also reflect fair and transparent benefit-sharing, alongside effective environmental protections and compensation and remedies available for any harm to these resources.

Recommendation

HRADC recommends that the Bill No.32 should be amended to:

1. Recognise the rights of Indigenous Peoples to ownership, management, use, control and benefit from natural resources traditionally owned, occupied or used by them, consistent with Articles 25, 26 and 32 of UNDRIP.
2. Alternatively, where ownership of strategic resources remains vested in the State, constitutionally guarantee:
   - Free, Prior and Informed Consent (FPIC) before the approval of any exploration, extraction or development activity;
   - Fair, equitable and transparent benefit-sharing arrangements;
   - Meaningful participation in all decision-making processes;
   - Independent environmental and social impact assessments; and
   - Access to effective remedies and compensation for environmental, cultural or livelihood-related harm.

Protection Against Compulsory Acquisition of Indigenous Lands

3.51 The HRADC notes that Indigenous land rights remain vulnerable where the State retains powers to compulsorily acquire land in the public interest. Although the introduction of FPIC represents a significant advancement, stronger constitutional safeguards are required to ensure that Indigenous ownership cannot be undermined through compulsory acquisition without the genuine consent of affected communities. This is particularly important given the special cultural, spiritual and economic relationship Indigenous Peoples maintain with their ancestral lands.

Recommendation

HRADC recommends that Bill No. 32 should expressly provide that:

- customary Indigenous land shall not be compulsorily acquired except in the most exceptional circumstances prescribed by law, but which must still involve the FPIC of the affected Indigenous communities;
- any proposed acquisition must be subject to a robust FPIC process;
- acquisition should only occur where no other alternative exists; and

- affected communities are entitled to fair, prompt, adequate, equitable and proportionate compensation, together with appropriate and just restitution or remedial measures where applicable.

4. CONCLUSION

4.1 From a human rights lens, the Bill No. 32 contains important positive developments, including an expanded Human Rights Commission and stronger recognition of social and economic rights, as well as explicitly providing for free, prior and informed consent of Indigenous groups concerning their rights, interests, affairs, land and natural resources. The Commission also welcomes the proposed proportionality test on limitations (ie. Section 8 of the Bill No. 32 requires any limitations on rights to be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom), which is on par with international standards.

4.2 However, several provisions warrant further amendment, or outright deletion, especially the worrying addition of corporal punishment (ie. “lawful and moderate chastisement”) of children as a possibility.

4.3 The Commission respectfully urges that the Bill No. 32 be given more time for a more wider public submission process, as well as to amend provisions accordingly (as laid out in the recommendations above and in the table at Annex A) to keep it on par with international human rights standards as well as Fiji’s human rights obligations.

Annex A: Chapter 2 Bill of Rights in the 2013 Constitution, CRC Proposed Constitution Draft, and Bill No.32

Right	2013 Constitution	No.32 Bill of 2026	Human Rights Implications	Recommendation
Application/ Limitation of Rights under Law	Under section 6, Rights could be limited if expressly authorized by law and through other limitations that were 'necessary'.	Section 8 requires limitations to be 'reasonable and justifiable in an open and democratic society' considering less restrictive alternatives as well as the right itself, the purpose for the limitation. The State, as Duty Bearer, bears the burden to justify these considerations.	The proposed provision aligns Fiji with its international human rights Obligations. Implication: Huge Improvement.	The proposed amendment should be maintained as the wording is aligned with international human rights obligations.
Interpretation of the Bill of Rights	Section 7(b) states that the Court MAY, if relevant, consider international law applicable to the protection of the rights and freedoms in the Bill of Rights.	Section 9 states that the Court MUST, if relevant, consider international law applicable to the protection of the rights and freedoms of the proposed Bill of Rights.	Implication: Improvement, especially given Fiji's international obligations under the treaties it is party to, particularly the 9 core conventions.	The proposed amendment should be maintained as the wording is aligned with international human rights obligations.
Freedom from slavery, servitude, forced labour and human trafficking	Section 10 exceptions to forced labour include court ordered labour, imprisonment and disciplinary-force labour.	Section 13(d) adds 'reasonable and normal communal or civic obligations'.	Implication: Potential Regression of rights due to ambiguity of the addition. The 'reasonable and normal communal/civic	If the amendment is kept, we recommend that "reasonable and normal communal or civic obligations" be clearly defined. From a human rights lens, forced or compulsory labour is strictly prohibited,

			obligations' should be defined and limited.	however, certain forms of communal or civic work are explicitly defined and permitted as they are considered normal civic obligations. Such instances can include labour required during times of crisis, emergency and/or natural disasters that threaten the life and wellbeing of the country. Minor communal services (eg. Neighbourhood safety watches) performed by members of the community to protect the direct interest of that community.
Rights of arrested and detained persons	Section 13 limits detention for arrested persons to 48 hours before they are mandated to be brought before the Court.	Section 16 maintains the 48 hour limit, however it also adds that, for children, it will only be 24 hours. The provision also expressly mandates prompt release if not charged.	Implication: Improvement for children.	The amendment should be maintained.
Rights of arrested and detained persons	Section 13(1)(b) gives every arrested and detained person the right to remain silent.	Section 16 removes this explicit right. It does provide for the right of the arrested or detained person to be INFORMED of the right to remain silent,	Implication: Regression of the right to remain silent, as the right itself is not mentioned in the	The right to remain silent should be explicitly laid out in section 16. It is distinct from the right to be informed (of having the right to remain silent).

		but not the actual right itself.	proposed amendment.	
Rights of Accused Persons	Section 14(e) gives Accused persons the right to access evidence that the prosecution intends to rely on (not ALL evidence in Prosecution's custody).	Section 17(e) gives Accused persons the right to disclosure of ALL EVIDENCE regardless of whether Prosecution intends to rely on it or not during trial.	Implication: Huge improvement as it affords the right to a fair trial. Also notable because this issue was recently ventilated during FICAC's trial against Biman Prasad, where the Prosecution did not disclose all evidence and sought to introduce it last minute during trial (trial by ambush).	The amendment should be maintained.
Freedom of assembly	Section 18 limitations include national security and public order among other things.	Section 21 limitations require limitations to be 'reasonable and justifiable'	Implication: Improvement.	The amendment should be maintained.
Freedom of association	Section 19 limits to permitted regulation of unions, collective bargaining, strikes, lockouts and essential services.	Section 22 removes the limits outlined under the current provisions and expressly allows the right to strike.	Implication: Huge Improvement as there is stronger protection for association and unions.	The amendment should be maintained.
Freedom of movement	Section 21(7) gives the right to freedom	Section 24(7) adds restrictions to this right on	Implication:	The amendment should be maintained.

and residence	of movement and also includes limitation which specifies ecology.	customary-authority decisions under the iTaukei Affairs Act 1944 (in the interests of maintaining peace and good order in the community).	Improvement, as it explicitly recognizes indigenous and customary rights and norms.	
Right to privacy	Section 24 provides the right to privacy on personal information, communications and private and family life.	Section 27 adds the protection to personal information and data. It also removes the limitation clause present in the current provision.	Implication: Improvement, as it also aligns Fiji more with the Budapest Convention (the Cybercrime Convention).	The amendment should be maintained.
Right to equality and freedom from discrimination	Section 26 provides protection from discrimination on the grounds of race, culture, ethnicity, sex, gender, sexual orientation, gender identity, disability, age, and religion.	Section 29 adds protections concerning customary land, chiefly titles and governance of iTaukei, Rotuman and Banaban communities.	Implication: Scrutiny might be needed especially in how the added provisions may impact vulnerable groups within these communities.	The amendment should be maintained.
Right to Education	Section 31 provides the right to education as well as free education being progressively realized.	Section 32 provides the right to free early childhoold, primary and secondary education.	Implication: Improvement.	The amendment should be maintained.
Rights of children	Section 41 provides protection from	Section 40 has the same protections but introduces	Implication:	The proposed addition of the words “lawful and

	abuse, neglect, harmful cultural practices, violence etc.	the 'lawful and moderate chastisement' permissible for correction.	Huge regression. Recommendation is to remove the wording 'lawful and moderate chastisement permissible for correction'.	moderate chastisement is permissible for the purposes of correction" should be removed entirely. The rights of the child, as is, should remain.
Right to remedy and truth	Not in the Constitution 2013	Not in Bill No.32	Implication: This was a proposed addition by the CRC in their report. Given Fiji's volatile political history, it is imperative to include this right to provide recourse for those who have suffered from human rights violations.	Adopt the Constitution Review Commission Recommendation in section 16 of their proposed Bill of Rights that expressly states the Right to Remedy and Truth.