

CHAPTER 2

The Electoral Framework and Preparations for the Election

Legal Framework

The key documents which established the legal framework for the 2001 General Election were the 1997 Constitution, the Electoral Act 1998 and the Electoral (Counting Procedures) Regulations 1999.

What is known as ‘the 1997 Constitution’ – the background to whose adoption is described in Chapter 1 – actually came into effect in July 1998. It declares the Fiji Islands to be a sovereign, democratic republic, guarantees fundamental human rights, a universal, secret and equal suffrage and equality before the law for all citizens. Ethnic Fijians and the Polynesian inhabitants of Rotuma receive special constitutional consideration. It provides for an independent Human Rights Commission and incorporates a Compact which establishes non-discriminatory principles for the Government of Fiji Islands; social justice provisions aimed at all disadvantaged groups; and the establishment of merit and equal opportunity principles for recruitment, promotion and training opportunities in the public service.

The Constitution provides for a Parliament consisting of an executive President, serving a five-year term, and two Houses. The President is appointed by the Great Council of Chiefs after consultation with the Prime Minister. The 32 members of the upper House, the Senate, are appointed by the President; 14 are nominated by the Great Council of Chiefs, nine appointed on the advice of the Prime Minister, eight on the advice of the Leader of the Opposition and one on the advice of the Rotuma Island Council. While the powers of the Senate are limited so far as financial measures are concerned, its consent is required in any attempt to amend, alter or repeal any provisions affecting ethnic Fijians, their customs, land or tradition. The 71 members of the lower House, the House of Representatives, are elected. The maximum duration of a parliament is five years.

The President “acting in his or her own judgement” appoints as Prime Minister “the member of the House of Representatives who, in the President’s opinion, can form a government that has the confidence of the House of Representatives”. The Prime Minister in turn selects the members of the Cabinet: under this Constitution the Prime Minister is required to invite all parties with more than 10 per cent of the membership in the House of Representatives to be represented in the Cabinet.

So far as elections are concerned, the Constitution provides for an independent Constituency Boundaries Commission, an Electoral Commission and the Office of the Supervisor of Elections (which is popularly referred to as the Elections Office). It stipulates that the voting age is 21 and that registration and voting are both compulsory.

The Electoral Act 1998 sets out the powers of the Supervisor, rules relating to the delimitation of constituency boundaries, voter registration and the conduct of elections, including postal voting. The Act also sets out the procedures for the counting of the votes, electoral offences and the handling of election petitions and other post-election legal matters. It provides for a

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penalty of F\$50 for failing to register, a fine of F\$20 for not voting and further penalties, including possible imprisonment, if the matter has to go to court. The Electoral (Counting Procedures) Regulations 1999 set out further rules for the counting process.

Electoral Commission and Office of the Supervisor

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The registration of voters and the conduct of elections are the responsibility of an Electoral Commission, which is specifically provided for under the 1997 Constitution. The Commission consists of a chairperson and four other members, all of whom are appointed by the President. The Constitution stipulates that the chairperson, currently Ms Vasantika Patel, must be or be qualified to be a judge. Under the policy direction of the Commission day-to-day management of electoral matters is undertaken by a Supervisor of Elections, currently Mr Walter Rigamoto. His office normally has five permanent staff, but at this General Election it would supervise 14,000 election staff. Although it is technically independent, during election time it is heavily reliant on government officials, even at senior levels: the Commissioners of the Fiji Islands' four Divisions are the Returning Officers and their District Officers run the election in each district.

Constituencies and Rolls

Of the 71 seats in the House of Representatives, 25 are 'open seats' and 46 are 'communal seats': in the former, candidates and voters are from any ethnic group, whereas communal seats are reserved on a racial basis – all the candidates and voters belong to just one ethnic group. In Fijian communal constituencies, for example, only indigenous Fijians vote for indigenous Fijian candidates, in Indo-Fijian constituencies only Indo-Fijians vote for Indo-Fijian candidates, etc. There are 23 communal seats for Fijians, 19 for Indo-Fijians, 1 for Rotumans and 3 for General Electors (for those who are not on any of the other rolls). This means that electors appear on two rolls – one for the open seat and one for the racially reserved or 'communal' seat.

There was no new demarcation of electoral boundaries for this General Election; the last electoral redistribution was conducted in 1998.

The Alternative Vote

Fiji Islands uses the 'Alternative Vote' system, as recommended by the Constitutional Review Commission in 1996. Each voter may cast two votes, one for the 'open seat' and one for the 'communal seat'. The voter may vote 'above the line' on the ballot paper by placing a tick in the box of one party of her/his choice: the voting preferences will then be allocated for them, in the manner their chosen party has registered with the Electoral Commission. Alternatively, the voter may vote 'below the line' on the ballot paper and rank all the listed candidates in order of preference. In the 1999 election the great majority of voters (92 per cent) chose to vote 'above the line' and have the preferences decided for them, rather than take the more complex option of numbering the candidates in order of preference.

The candidate who obtains more than 50 per cent of the valid first preferences is declared elected. If no candidate secures that many votes, the candidate who has received the fewest first preference votes is excluded and each of that candidate's ballot papers are passed to the next candidate in the order of the voter's (or the party's) agreed preference. This process is repeated until only two candidates remain in the count and one obtains more than 50 per cent of the votes.

Advocates of the Alternative Vote claim that it encourages multi-ethnic government, provides incentives for moderation (because of the need to win 50 per cent of the vote to be elected) and encourages co-operation on cross-ethnic lines. Opponents say that it is confusing³ and because the overwhelming majority of voters tick above the line it gives too much power to the political parties rather than the individual voter. It is also objected that the Alternative Vote does not deliver a result proportional to the actual number of votes cast – it is possible to win as many as 15 per cent of the first preferences and not win a single seat.⁴

Arrangements were made for a postal ballot, beginning before the first of the election days and ending on 31 August. Application forms and an explanation were printed in the press.

The Electoral Timetable

The key dates in the electoral timetable for this General Election were as follows:

Thursday, 12 July Writs of Election issued
Monday, 16 July Last day for Supervisor to receive petitions of demonstrated support⁵
Thursday, 26 July Filing of nominations
Friday, 27 July Filing of objections to nominations
Thursday, 2 August Withdrawal of candidates
Saturday, 25 August Polling begins
Saturday, 1 September Polling ends
Sunday, 2 September Checking on ballot boxes at Counting Centres and verification of postal ballots
Monday, 3 September Counting begins
Friday, 7 September Scheduled date for end of counting

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Voter Registration

We were informed by the Elections Office that there was no complete re-registration for this election. Those who were registered for the 1999 General Election were told that they need not register again. The Elections Office had used an updated version of the voters' register which was compiled for the 1999 General Election, following a complete re-registration in October 1998 (known in Fiji Islands as an 'enumeration') using a combination of door-to-door teams and static registration centres. (Although the Office of the

³ At the 1999 General Election, 9 per cent of the ballot papers were declared invalid.

⁴ In 1999, the first time the Alternative Vote was used in Fiji Islands, outcomes in nearly half the constituencies were decided by reference to the party preferences. In nearly a quarter candidates who were ahead at the first count were eventually defeated by other candidates.

⁵ See explanation on page 14.

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Supervisor of Elections is required by law to update the register annually this was not done in 2000 because of the events of May that year.)

New registrants (who had to be 21 or older on 25 August 2001 and citizens resident in Fiji for two years) were able to register at their nearest District Office. District Electoral Public Awareness teams also travelled around the country to register eligible voters.

The lists of all those whose names were fully processed by 25 June 2001 were made available for inspection at the offices of all Divisional Commissioners, District Officers, Provincial Council Offices, City and Town Councils and the Elections Office. There were at least 20,000 new registrants on these lists. Objections were invited before 10 July. The main roll that then emerged consisted of the register used in the 1999 election, all the supplementary rolls used in the 1999 election, the roll as displayed and any amendments.

However, registration remained open until 19 July and corrections could be made even after that, so a number of supplementary rolls were produced, culminating in a final Supplementary Roll on 16 August. The total number of persons registered for the 2001 election when polling began was 468,630 (compared with 437,195 in 1999).

Voter Education

Voter education for the 2001 election began in June with advertisements in the print media and on radio and television, in the three main languages (English, Fijian, and Hindustani). They covered issues such as how and where to vote, the secrecy of the ballot, assistance at polling stations, how the postal ballot works, how the votes would be counted, etc.

The Elections Office also produced a 'polling guide' in the newspapers and on radio, distributed a 'How to Vote' leaflet in English, Fijian and Hindustani, established a voter helpline and reproduced in the press lists of candidates and party preferences. In the week before the first election day the newspapers carried lists of polling stations, showing who was entitled to vote at each. Three official websites were established. One – www.fijielections.com – was mainly intended for journalists and the international community, but also included information for voters such as how the voting system works and details of constituencies and candidates. A second – www.itc.com.fj – enabled enquirers to check that they were registered. The third – www.elections.gov.fj – provided the location and opening times of each polling station, which station voters in particular constituencies should use, press releases and other information.

In a final pre-election statement Supervisor of Elections Walter Rigamoto said that he believed that for this election people were better informed than for the 1999 General Election, when "we had a huge number of invalid votes". As a result, he said, he expected a decrease in the number of invalid votes. However, a number of political parties complained that the voter education effort had been inadequate and that as a result they had to spend much of their time explaining the voting system to the electors. Three parties told us that they were especially concerned that there had been too little voter education for rural women.

Training and Materials

The training of election officials began in June and continued right up to the election. Standards were severe: shortly before the election a number of trainee election officials – some of whom were students – were sacked because they did not satisfy the standards of the Elections Office. The Supervisor of Elections told us before the election that one of the reasons the Elections



TRAINING . . . a senior election official advising colleagues on the right way to set out the polling station. Standards were high – shortly before the election a number of trainee election officials were sacked because they did not meet the requirements of the Elections Office

Office used so many civil servants – most of the polling station and counting officials were either civil servants or teachers – was that they were disciplined and were used to working in a culture of impartiality. A *Code of Conduct for Election Officials* was produced in July 2001.

While some of the materials came from abroad – notably the indelible ink, which was brought in from India – the polling station kits were largely produced in Fiji Islands. The voting booths and ballot boxes, for instance, were Fiji-made and the ballot papers were printed by the Government Printer, in Fiji Islands.

Security

Primary responsibility for election security was with the Fiji Police Force, whose plan was that unarmed police would be present at all polling stations and would provide security for ballot boxes at polling station, district and divisional level. However, following a meeting of the National Security Council (NSC) on 20 August it was made clear that the Royal Fiji Military Forces would be ready to assist if needed by the police. According to press reports, army exercises were held immediately prior to the election and to underline the point a photograph of a 3rd Fiji Infantry Regiment platoon patrolling a Suva street appeared in the *Fiji Times* on 21 August. The Permanent Secretary in the Prime Minister's Office, Mr Jioji Kotobalavu made clear that the NSC was satisfied with police and army plans to safeguard public safety.

At this election, for the first time, the police budget was included in that of the Elections Office; six days before the first election day there were press

READY AND WAITING . . . a Commonwealth Observer is shown how ballot boxes are stored prior to polling day. The Observers noted that the Elections Office organised the polling well



reports that the cost of the police elections operation might be as much as F\$1.5 million. The overall Elections Office budget was F\$16.07m (compared with F\$11m in 1999).

Parties and Candidates

Prior to this General Election 26 parties were registered with the Elections Office. However, only 18 participated in the General Election. Between them they fielded 351 candidates for the 71 constituencies, only 31 of whom were women. Some of the parties stood multiple candidates, i.e. the same candidate in several seats. There were some 752 symbols. These could be printed above the line even where the party concerned was not standing a candidate in that seat.

To be nominated as a candidate a person must be a registered voter who is not disqualified from voting by an order of the court. Nomination papers must be signed by the registered officer of the political party by which the candidate has been endorsed and by not less than seven persons entitled to vote in the constituency in which the nominee intends to stand. The candidate must pay a fee of F\$500 unless she/he can prove the support of 250 electors or 5 per cent of the number of valid papers counted in the last election in that constituency, whichever is less (see reference on page 11 to petitions of demonstrated support).

According to press reports, many candidates had learned from the 1999 experience and had made detailed decisions concerning the ranking of preferences at constituency level. It also seems that discussions between the political parties were much more extensive than in 1999 and that most agreed their exchange of preferences on the basis of perceived common interests, rather than specific arrangements about particular policies. However, there were still some strange deals on preferences. For instance, a party representing Indian refugees from a part of the country which suffered 'ethnic cleansing' shortly after the coup gave its second preferences to the Conservative Alliance, led by coup leader George Speight. We were told that after the deadline for the notification of preferences some political parties wanted to change their preferences. The rules did not allow this, though some may have done this in practice.

It should be noted that the electoral laws are silent on the matter of the funding of political parties and their campaigns. There are no requirements for disclosure and transparency.

Observers, Financial Support and Technical Assistance

The media were allowed inside the polling station perimeter, but there were no accredited domestic observers. However, there were three international Observer Groups – from the Commonwealth, the United Nations (UN Fijian Electoral Observation Mission – UNFEOM) and the ACP/EU Parliamentary Assembly. Details of the Commonwealth Observers Group’s numbers and deployment were given earlier: the United Nations fielded 40 observers in 20 teams, the ACP/EU had six observers in three teams.

The Minister of Foreign Affairs, Mr Kaliopate Tavola, was quoted in the *Fiji Sun* on 20 August as saying that he had to “go to extreme efforts in trying to convince the Cabinet (to invite international observers). I had proposed to the Cabinet on two occasions ... the first time it was rejected and it was only the second time that the Cabinet approved it”. He explained that the Caretaker Government had invited international observers because the image Fiji projected to the international community in the General Election would pave the way forward for the country and was of high priority for the people of Fiji. He assured Fijians that observers would not interfere in the election.

Locally accredited diplomats were allowed to observe, election and other officials from Papua New Guinea and Australia and a US Congressman from American Samoa were also present. The Office of the Supervisor of Elections produced a *Code of Conduct for International Observers* and *Guidelines for International Observers*. The former made clear that no Fijians were to be accredited as observers.

The Elections Office received financial support from Australia, New Zealand, Japan, Germany and the UK. Technical assistance was provided by Australia and New Zealand. The United Nations Development Programme, supplemented by additional contributions from Japan, Spain, Germany, the UK and Ireland, funded an Electoral Assistance Project, led by an experienced former United Nations official. This Project provided information, materials, security advice and other assistance to the international observers. A Media Centre was established at one of Suva’s main hotels, with financial support from the Japanese and UK Governments.