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## **MONITORING REPORT: CONSTITUTIONAL COMPLIANCE REVIEW**

### **SUBJECT: LEGISLATIVE REVIEW OF BILL NO. 46 NATIONAL REFERENDUM BILL 2025**

**TO:** The Parliamentary Standing Committee on Justice, Law, and Human Rights  
**FROM:** Constitution Watchdog  
**SUBJECT:** Constitutional Compatibility of Bill No. 46 with the 2013 Constitution

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#### **I. EXECUTIVE SUMMARY**

1. This report provides an independent, non-partisan constitutional analysis of the *National Referendum Bill 2025* (Bill No. 46), currently under consideration by the Parliament of the Republic of Fiji. Following concerns raised by various political entities and civil society organizations regarding the Bill's compatibility with the 2013 Constitution, this monitoring exercise evaluates specific clauses of the proposed legislation against the enshrined Bill of Rights.
2. The primary objective of this review is to assess whether the administrative provisions for conducting a referendum infringe upon fundamental freedoms guaranteed to the citizens of Fiji. This report finds that while a legal framework for referenda is necessary under Section 160 of the Constitution, specific provisions regarding campaigning, assembly, and notice periods may inadvertently contravene constitutional guarantees.

#### **II. FREEDOM OF EXPRESSION AND CAMPAIGNING RESTRICTIONS**

3. The most significant constitutional tension arises between the Bill's restrictions on campaigning and **Section 17 of the Constitution**, which guarantees Freedom of Speech, Expression, and Publication. Clauses 22 and 23 of the Bill impose strict prohibitions on the use of badges, symbols, and "canvassing" during the referendum period.
4. Critics argue that broadly defining "canvassing" to include any attempt to persuade a voter effectively criminalizes standard political discourse. While Section 17(3) of the Constitution allows for reasonable limitations on expression to maintain public order, the complete prohibition of campaign materials and dialogue may fail the test of proportionality.
5. A referendum is inherently a contest of ideas; restricting the ability of citizens, political parties, and civil society to express views on the proposed amendments could undermine the "informed" nature of the vote. If voters cannot hear arguments for or against a proposal due to fear of prosecution, their **Political Rights (Section 23)**—which allow every citizen to participate in public affairs—are functionally curtailed.

### III. FREEDOM OF ASSEMBLY AND THE DEFINITION OF “UNLAWFUL”

6. Clause 25 of the Bill grants authorities the power to disperse gatherings deemed “unlawful assemblies” if they cause “annoyance” to voters. This provision draws scrutiny when measured against **Section 18 of the Constitution**, which guarantees Freedom of Assembly.

7. In constitutional law, terms like “annoyance” are often viewed as legally vague and subjective, potentially granting excessive discretion to enforcement agencies. Subjective enforcement criteria can lead to the arbitrary suppression of peaceful demonstrations or public meetings.

8. For a referendum process to be legitimate, citizens must be free to assemble and discuss the issues without fear of dispersal based on undefined standards of annoyance. The Constitution permits limitations on assembly only when necessary for national security or public safety; extending this to “annoyance” may exceed the constitutional boundary of reasonable limitation.

### IV. RIGHT TO INFORMATION AND ADMINISTRATIVE TIMELINES

9. Concerns regarding the logistical framework of the Bill, specifically Clause 11, focus on the sufficiency of notice periods. The Bill allows for polling station details and the specific referendum questions to be published as late as five days prior to polling. This short timeframe must be weighed against **Section 25 of the Constitution**, which provides the Right of Access to Information.

10. For a constitutional referendum, the electorate requires adequate time to study complex legal amendments to provide informed consent. A five-day window may practically deny citizens the ability to access and comprehend the information necessary to exercise their vote intelligently. Furthermore, if the dissemination of this information is not robust, it risks violating the spirit of transparency required by Section 25, which mandates that information held by the state should be accessible to facilitate public accountability.

### V. LANGUAGE INCLUSIVITY AND THE RIGHT TO EQUALITY

11. The format of the ballot paper and the language of instruction (Clause 16) are critical for ensuring inclusivity. While the Bill mandates guidance notices in English, iTaukei, and Fiji Hindi, concerns persist regarding whether the ballot papers themselves and the official questions will be accessible to all linguistic groups. **Section 26 of the Constitution** (Right to Equality and Freedom from Discrimination) prohibits discrimination on the grounds of language.

12. If the ballot paper is printed exclusively in English, or if the complex legal phrasing of the referendum question is not adequately translated, it disenfranchises voters with limited English proficiency. This would result in unequal participation, where one segment of the population is fully empowered to vote while another is marginalized by a language barrier. Constitutional equality demands that the state take active measures to ensure all citizens, regardless of their primary language, have an equal opportunity to understand the choice before them.

### VI. RECOMMENDATIONS

13. The National Referendum Bill 2025 seeks to establish a necessary legal framework for constitutional amendments. However, several administrative clauses appear to con-

flict with the fundamental rights enshrined in Chapter 2 of the 2013 Constitution. To ensure the Bill is constitutionally sound, Constitution Watchdog recommends the following:

- **Revise Clauses 22 and 23:** Narrow the definitions of “canvassing” to strictly target voter intimidation rather than peaceful discourse.
- **Amend Clause 25:** Remove subjective terms such as “annoyance” to align with standard public order limitations (e.g., incitement to violence).
- **Extend Notice Periods:** Amend Clause 11 to require a minimum 21-day notice period for referendum questions to guarantee the effective realization of the Right to Information.
- **Ensure Multilingual Ballots:** Mandate that all ballot papers be printed in English, iTaukei, and Fiji Hindi.

*This report is submitted in the public interest to uphold the Rule of Law and Constitutional Integrity in the Republic of Fiji.*