

Constitutional reform in Fiji

C. Guy Powles

Associate Professor, Faculty of Law,
Monash University

Fiji is today governed under the *Constitution of the Sovereign Democratic Republic of Fiji 1990*, which requires in Section 161 that the Constitution be reviewed before the end of seven years after its promulgation, that is, before 25 July 1997. The review process began formally in March 1995 when a Commission was appointed to undertake the task and report to the President by 30 June 1996. An extension of time for submission of the report is likely.

To appreciate the significance of the anticipated report of the Fiji Constitution Review Commission, it is helpful to glance back briefly over the constitutional events of the past 30 years.

Background

In the late 1960s, leaders of Fiji's principal communities (i) indigenous Fijians, (ii) Indian Fijians and (iii) a grouping of European, Chinese and other races (called 'general voters') were encouraged by the British colonial administration to agree to the terms of a constitutional charter under which Fiji would become independent. After serious disagreement at the 1965 London conference, concessions were

made by both the Alliance Party (predominantly indigenous Fijian) and the National Federation Party (Indian) at the second London conference in 1970, leading to the 'independence' *Constitution of Fiji 1970*.

The government of the new state was organised in the British 'Westminster' tradition, under which the Head of State acted on the advice of a Cabinet of ministers who, in turn, were appointed by the Prime Minister, himself chosen as the person who commanded the support of the majority of members elected to the House of Representatives. In the case of Fiji, the Queen of England was Head of State, represented locally by a Governor-General.

From 1970 until 1987, the Alliance Party won elections and governed Fiji under Ratu Sir Kamisese Mara as Prime Minister. An exception occurred in 1977 when the Alliance Party failed to gain a majority but, as leadership of the National Federation Party was allegedly uncertain, Ratu Mara was appointed caretaker Prime Minister and parliament was dissolved, leading to new elections won by the Alliance Party.

In 1987, a Labour–National Federation Party coalition won the general election and the Labour Party leader, Dr Timoci

Note

Bavadra, was appointed Prime Minister. The first sitting of parliament was brought to a halt on 14 May by a military coup led by Lieutenant Colonel (later Major General) Sitiveni Rabuka. Dr Bavadra and his Cabinet ministers were physically removed from parliament and detained. The Governor-General, Ratu Sir Penaia Ganilau, declared a state of emergency, dissolved parliament and appointed new ministers. On 1 October, a second military coup resulted in the abolition of the 1970 Constitution and the declaration of Fiji as a Republic.

A new charter was eventually prepared and adopted by the Interim Government—the Constitution of 1990, which is in force today. Initially, Ratu Penaia was President and Ratu Mara, Prime Minister. In the first election held in 1992, Sitiveni Rabuka was successful and appointed Prime Minister. After the death of Ratu Penaia, Ratu Mara was appointed President by the Great Council of Chiefs (acting in accordance with the new Constitution). In further elections held in 1994, Sitiveni Rabuka was again returned, supported by the Soqosoqo ni Vakavulewa ni Taukei (Indigenous Fijian Party).

The Constitutions

It is important to note that the compromises reflected in the 1970 Constitution had included acknowledgment that, if indigenous Fijians chose to vote strictly along racial lines, the combination of communal and national electoral rolls would block Indian supremacy in the House of Representatives. Also, key legislation regulating Fijian affairs and the administration and leasing of Fijian land (such as the *Agricultural Landlord and Tenant Act*) had been entrenched in the Constitution to prevent amendment without the concurrence of indigenous Fijian

members, and, in particular, the nominees in the Senate of the Great Council of Chiefs.

It seems that the Alliance Party lost the 1987 election because sufficient indigenous Fijians and others who were previously Alliance Party voters decided to support the Labour-National Federation Party coalition.

The coalition won 28 seats (19 Indian, 7 Fijian and 2 General) to the Alliance Party's 24 seats (15 Fijian, 6 General and 3 Indian). Contrary to fears expressed at the time, control of parliament along racial lines did not shift to Indian Fijians because the Constitution preserved the balance at 22 Fijian, 22 Indian and 8 General, in the 52-member House of Representatives.

The 1990 Constitution is constructed along the same lines as its predecessor. It is within the 'Westminster' tradition in the sense that the Prime Minister who appoints the ministers in Cabinet is the member of the House of Representatives who commands the support of that House. It contains modifications that give rise to concern that the 1990 document goes further than the 1970 document in favouring indigenous Fijians at the expense of other races: 37 of the 70 members of the House of Representatives must be Fijian and 1 Rotuman, while 27 must be Indian and 5 General. The 34-member Senate is dominated by 24 nominees of the Great Council of Chiefs. The President is chosen by that Council. The Prime Minister must be an indigenous Fijian.

There is also a constitutional requirement that parliament should promote the economic, social, educational, cultural and traditional interests of ethnic Fijians, notwithstanding any apparent conflict with the human rights guaranteed to all citizens in the Constitution (Section 21). Such human rights are further limited in situations of emergency, or if parliament chooses to pass laws prohibiting group

behaviour which threatens to ‘excite disaffection’ or ‘promote feelings of ill-will and hostility between races’ (as defined in Section 162).

The response of many indigenous Fijians, and the Soqosoqo ni Vakavulewa ni Taukei in particular, is that the 1990 Constitution does not go far enough to secure their legitimate aspirations. Others would retain the present Constitution in the belief that criticism of its provisions emanating from international and business quarters will eventually die away. For their part, Indians have demonstrated their anxiety by continuing to depart Fiji in significant numbers.

One may question to what extent the present and future health of Fiji’s economy, its political institutions and its social fabric can sensibly be said to depend upon the terms of the Constitution itself. One may also have reservations as to whether any proposals for significant change to the Constitution would be likely to be adopted, having regard to the impossibility of amending important parts of the document without first securing the approval of special majorities of members of parliament (which was also the case with the 1970 Constitution).

Nevertheless, the government appears to have taken its constitutional obligations seriously in the appointment of the present Review Commission and the resources provided to it.

Fiji Constitution Review Commission

Members of the Commission are the Reverend Sir Paul Reeves, former Governor-General of New Zealand, as Chairman, with Dr Brij Lal and Mr Tomasi Vakatora as Commissioners. The Commission is assisted by Mrs Alison Quentin-Baxter

and Mr Jon Apted as Legal Counsel and Mr Walter Rigamoto as Secretary. In the course of its work, the Commission is obliged by its mission statement to facilitate ‘the widest possible debate on the terms of the Constitution’ and ascertain ‘the variety of views and opinion among Fiji citizens on how the provisions of the Constitution can be improved to meet the needs of Fiji as a multi-ethnic and multi-cultural society’.

The Commission has engaged in a broad consultative process in Fiji. It has been open to hear submissions from ordinary members of the public, in addition to receiving detailed written and oral arguments from the main political parties and many interested groups, such as the Citizens Constitutional Forum. In pursuit of a wider understanding of the experience of other multi-racial societies, the Commission has travelled to Malaysia, Mauritius and South Africa. Interviews and discussions took place in London, New York, Canberra and Wellington. Throughout, the principal parties, reflecting opposing points of view, have been represented before the Commission.

The thoroughness and care with which the Commission has undertaken its task guarantee that Fiji will benefit from a searching analysis of the constitutional situation and an extensive report containing principled recommendations.

The outcome of the Commission’s research and its recommendations are awaited with heightened anticipation. The challenge faced by the members of the Commission to find answers for Fiji is a reflection of the challenge handed to the people of Fiji on independence. It would be unreasonable to expect a single inquiry such as this, no matter how competent, impartial and well-resourced, to discover solutions to some of the more fundamental difficulties inherent in a multi-racial post-colonial society such as that of Fiji.