**Comparing three Constitutions (and Reeves’ recommendations)**

**Introduction**

This Table summarises the major issues covered by the constitutions of 1970 1990 and 1997. At one level the constitutions were very similar. The structure did not differ greatly and many provisions repeated the language of the preceding version. But there are important differences: some reflect more modern drafting traditions. Others concern the balance between equal rights for all and special concern and protection for the interests of iTaukei.

All the Constitutions had provisions about the supremacy of the Constitution over other laws, about emergency powers, about public finance.

Although these constitutions were in many ways similar and followed a common pattern, there are other ways of dealing with several of the issues they cover, especially the provisions on human rights, even if not in content, in style and form of expression. So this Table is not presented with any intention of suggesting that a choice has to be made between these three: there are plenty of other examples.

The right-hand column indicates what the Reeves Commission Report of 1966 (Towards a United Future) recommended: there were some changes from their recommendations in the Constitution as adopted, mainly because of agreements reached between political parties.

Two preliminary points:

The Great Council of Chiefs was called this in the 1970 Constitution (abbreviated to GCC here). It was called Bose Levu Vakaturaga (BLV) in the 1990 and 1997 constitutions.

When a constitution says the head of state (Governor-General in 1970 otherwise President) must act “on advice” it means he or she must follow that “advice”.

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| **The issue** | **The Constitutions** | | | **What had the Reeves Commission recommended?** |
| **1970** | **1990** | **1997** |
| Preamble  (An introduction that rarely has legal effect but sets out history, objectives and vision) | Describes history, mentions God, diversity, rule of law, human rights | History; belief that 1970 Constitution did not protect indigenous interests enough, including land, way of life, values; Christianity; democracy; moral values, rule of law | History; stresses common citizenship, multicultural society, harmony and unity; mentions God | Largely the same, but the Preamble has a bit more detail on history |
| Principles  (usually cannot be used as basis of a legal claim, but used to interpret Constitution; not found in all constitutions) |  |  | Compact: non-justiciable but must be used in interpretation  Stresses rights of all communities, iTaukei interests, power sharing | Almost the same but the Constitution adds equitable sharing of economic power as a principle. |
| The people: citizenship  (who is, or is entitled to be a citizen, to hold a passport; probably right to vote only applies to citizens) | Born in Fiji; born overseas if father a citizen; woman married to citizen; others – ordinary law | Born in Fiji if either parent a citizen; born overseas if father a citizen. Wife of citizen, or person whose grandparent was citizen may be registered if PM satisfied if of good character and plans to live in Fiji.  Provisions for naturalisation. No dual nationality. | Born in Fiji if either parent a citizen; may be a citizen if born abroad and either parent as a citizen; husband or wife of citizen if has been in country for 3 of past 5 years (other conditions possible); abandoned children assumed to be citizens; former citizen may reclaim citizenship; no dual nationality; right of residence for spouses, children and former citizens. | Reeves had said every child born in Fii should be a citizen.  Otherwise the Reeves recommendations were adopted. |
| Definition of “Fijian” | Indigenous Pacific Islander | Both grandfathers were on Vola ni Kawa Bula (or entitled to be) | Any ancestor was native inhabitant of Fiji |  |
| Human rights: equality  Usually prohibits discrimination on various grounds | No law, and no person acting under law, may discriminate on grounds of race, place of origin, political opinions, colour or creed  Covers direct and indirect discrimination  No discrimination in shops, hotels etc  But: only citizens have benefit of provisions outlawing discrimination, and freedom of movement  And members of disciplined forces don’t have most of the rights | Similar  Includes sex  Nothing done under new Chapter II on Fijian and Rotuman interests violates the discrimination section. | Similar  Included “gender”, sexual orientation, birth[[1]](#footnote-1), primary language, economic status, age and disability.  Even non-citizens have right to freedom of movement.  But they can have disabilities imposed or privileges conferred. | Similar to what was adopted (though Reeves proposed sex and gender, using the latter to refer to socially constructed roles not apparently to sexual orientation) |
| Human Rights: which?  Some are usually found e.g. expression, association life etc; other like health, education not quite so common | Expression, conscience, assembly, association, freedom from torture etc., movement, right to life, personal liberty, property, fair trial etc., privacy | Broadly similar to 1970 | Largely similar – but structure a bit different and clearer.  Right to secret ballot is new. Also labour relations rights.  Right to basic education and equal access to educational institutions new.  Adds that law must be passed to give public right of access to government documents. | Largely as passed. |
| Human Rights: limitations  (Most rights may need to be limited to some extent should be by law and only for good reason) | Listed for each right (so e.g. death penalty recognised), some limits apply only if justified in democratic society – individual must show not justified; rights do not apply to pre-1966 law, or re-enactments of that law | Property: addition of law acquiring property of archaeological, cultural etc importance. Also to give owners of customary land royalty rights.  Otherwise broadly similar to 1970 | Listed for each right. Not identical to previous: e.g. death penalty not recognised. Freedoms (speech etc.) only to be limited if justifiable in free and democratic society (does not imply individual must show this). | Reeves recommended that the state would have to show that the limitation of a right was justified; perhaps the Constitution is not as clear as Reeves would have wanted. |
| Human Rights: enforcement and protection | Supreme Court (lowest among the superior courts – see below) has jurisdiction. Only the person affected by alleged breach may sue (unless they are detained) | High Court (lowest among the superior courts – see below) has jurisdiction.  Only the person affected by alleged breach may sue (unless they are detained). | Same as 1990 but also Human Rights Commission is formed: comprises Ombudsman and 2 others appointed on advice of PM who must consult PM, LoO and the relevant parliamentary committee. | Largely as enacted |
| Affirmative action  (is there permission, or even a requirement, to have special measures to assist disadvantaged individual or groups attain real equality?) |  | Laws, programmes and activities to promote interests of disadvantaged individuals or groups not discrimination.  Government must enact laws for social, economic, educational, traditional interests of iTaukei and Rotumans; may direct reservation of proportion of scholarships licences etc. for their benefit. Must consult BLV/Council of Rotuma | Must be law to provide for effective equality of access for disadvantaged groups or individuals to education, land and housing and public service.  Special measures to achieve substantial equality between different groups or categories not “discrimination”.  State services should reflect as closely as possible ethnic composition of population. | Largely as enacted |
| Voting: age | 21 | 21 (also residence requirement of 2 years in the country) | As in 1990 – but Parliament could change age. | Reeves recommended 18 (though 21 to be a candidate) |
| Voting system: the rolls | 3 rolls: Fijian (iTaukei), Indian and others  All also on national roll  Each person had 1 vote for their ethnic member and 1 for each types. | 4 rolls: Fijian (iTaukei), Indian, Rotuman and others.  No national roll. | 4 rolls as in 1990.  All on the open roll, too.  Alternative vote system.  Each person had 2 votes.  Voting compulsory. | As passed |
| The House of Representatives (how many members and how elected?) | 52 members:  12 iTaukei, elected by iTaukei  10 iTaukei, elected by national voters  12 Indian, elected by Indians  10 Indian, elected by national voters  3 others, elected by others  5 others elected by national voters  (all for constituencies: Fiji divided into layers of constituencies | 70 members:  37 iTaikei elected by iTaikei  27 Indian, elected by Indians  1 Rotuman, elected by Rotumans  5 others, elected by others[[2]](#footnote-2)  (constituencies for iTaukei members largely specified in the Constitution: each had 2 or three members (except 5 urban single member); other communities in single member constituencies | 71 members  23 iTaikei elected by iTaikei  19 Indian, elected by Indians  1 Rotuman, elected by Rotumans  3 others [general], elected by others[[3]](#footnote-3)  25 by voters on open roll.  Most constituencies for iTaukei based on provinces. | Recommended 70 members:  12 Fijians (iTaukei), 10 Indo-Fiians, 2 general voters and 1 Rotuman (intended to be transitional)  45 open seats (in 15 3-member constituencies).  Provinces should not be the basis for the Fijian reserved seats.  Recommended name: Bose Lawa. |
| The Senate: who was there? | 22: 8 appointed by GG on advice (must follow) of GCC  7 on advice of PM  6 on advice Leader of Opposition  1 on advice of Council of Rotuma  Senate runs for 6 years | 34: 24 iTaukei on advice of the BLV; 1 on advice of Council of Rotuma; 9 others by President from other communities (bearing in mind special interests of minorities).  Senate runs for 4 years. | 33: 14 appointed by President on advice of BLV; 9 on advice of PM, 9 on advice of LoO (proportionate to presence of each party in house); 1 on advice of Council of Rotuma.  Term of Senate expires with House. | Recommended 35:  28 elected to represent provinces  1 to represent Rotuma  6 appointed by President to represent under-represented communities and groups  Recommended name: Bose e Cake |
| The Senate: its role | Bills had to be approved by Senate as well as House – except those concerning taxes, public expenditure (money Bills); special provision about laws in iTaukei interests (see below) | Very little power over “money Bills”. May delay other Bills but not reject/amend them, if House insists on passing them and rejects Senate amendments. | Could not amend money Bills.  May delay other Bills but not reject/amend them, if House insists on passing them and rejects Senate amendments. | Similar to as enacted |
| Fair elections | Election Commission: chair appointed by GG on advice of Judicial Services Commission; 2-4 others appointed on advice of PM (must follow advice) after PM consults Leader of Opposition  Supervisor of Election appointed by Judicial and Legal Services Commission (JSC); independent (except E Commission may direct); removed only after tribunal of persons who have held high judicial office.  Commission’s salaries are charge on Consolidated Fund and may not be reduced while they are in office.  Constituency boundaries: fixed by Commission appointed by GG on advice of PM who must consult LoO. Similar constituencies must as far as possible contain equal number of voters. | Election Commission: chair appointed by President; 2-4 others appointed on advice of PM (must follow advice).  Supervisor of Election appointed by Judicial and Legal Services Commission (JSC); independent (except E Commission may direct); removed only after tribunal of persons who have held high judicial office  Commission’s salaries are charge on Consolidated Fund and may not be reduced while they are in office.  Similar constituencies must as far as possible contain equal number of voters – except for certain iTaukei seats that had to follow provincial boundaries. | Election Commission: chair appointed by President; 4 others appointed on advice of PM (must follow advice) after PM consults Leader of Opposition.  Supervisor of Election appointed by Constitutional Offices Commission (COC); Independent but E Commission may direct; removed only after tribunal of persons 2 of whom who have held high judicial office.  Commission’s salaries guaranteed from Consolidated Fund.  Similar constituencies must as far as possible contain equal number of voters – except for certain iTaukei seats that had to follow provincial boundaries. | As enacted |
| The Head of State: who? | Governor-General (representing Queen) appointed by Queen | President: appointed by BLV. 5 year term (does not say whether can be renewed). | President: appointed by BLV. Maximum 2 5 year terms. | Recommended BLV should produce 3-5 names and the President then be elected by secret ballot of 2 houses of Parliament sitting together. |
| The Head of State: powers  (the Head of State has been largely a ceremonial post as opposed to an executive President in the US, or Kiribati) | Some power to dissolve Parliament (e.g. if thought no chance of getting agreement in a PM)  Chose PM from House – person “best able to command the support of the majority”  Appoints Leader of Opposition (LoO)  Appoints committee to advise on prerogative of mercy  Otherwise most powers on advice of PM/Cabinet.  Assents to laws (may refuse but on advice of Cabinet?) | Similar powers on dissolution to 1970  Could not refuse assent to laws.  Chooses PM similarly – see also below.  Otherwise powers similar to 1970. | Could not refuse assent to Bills.  Acts on advice except: to call Parliament in exceptional circumstances, choice of chair of Electoral Commission, chair of boundaries commission (must consult PM and LoO) identifying PM, identifying LoO, deciding whether to dissolve if PM who has lost vote of no confidence advises one, appointing the 2 members of Committee on Prerogative of Mercy (other than AG) | Largely as enacted |
| The Head of State: removal | Dismissed by Queen | For gross misconduct; involves tribunal of 1 or 2 people who have held or could hold high judicial office; decision by the BLV. | For misbehaviour: involves tribunal of 1 or 2 people who have held or could hold high judicial office. For ill health a medical board.  PM may ask BLV to consider. | Recommended removal by the electoral college (¾ vote) after a Tribunal. |
| The Prime Minister | Member of House; removed by vote of no confidence of House | Member of House and iTaukei. | Person who “can form a government that has the confidence of the House of Representatives” | As enacted |
| The Cabinet  (sometimes called “government) | Members of House, chosen by PM | Members of House or Senate. Must include AG and Minister of Defence and other chosen by PM | Members of House or Senate. PM choses. Must fairly represent all parties in House, and PM must invite all parties with at least 20% of House to be in Cabinet. | Recommended a limit (15) on number of Ministers. Should come from either house (but not from appointed members of the upper house). |
| The courts – structure | Court of Appeal hears appeals from Supreme Court  Also appeals to Privy Council (London). | 3 levels: High Court – Court of Appeal, Supreme Court (ascending).  High Court Judges could sit in Court of Appeal. Must be Fijian (iTaukei) courts. | Same structure as 1990.  President) on advice of Cabinet) may refer issue of Constitution to Supreme Court for advisory opinion. | As enacted |
| Independence of Judges  (to stop them being subject to, especially, government influence) | Chief Justice appointed by GG after consulting PM and LoO  Other SCt Judges by GG after consulting JSC  SCt judges removed only following inquiry by committee of foreign judges, and reference by Queen to Judicial Committee of Privy Council, for inability or misbehaviour.  Justices of Court of Appeal appointed by GG after consulting JSC; removal as for SCt judges.  Judges’ salaries are charge on Consolidated Fund and could not be reduced while they are in office. | CJ appointed by President on advice of Cabinet.  High Court Judges by President after consulting JSC.  Justices of Appeal as for High Court Judges – but they appointed only for limited time.  Supreme Court Judges appointed by President after consulting JSC; CA judges may sit in SCt. SCt judges appointed for limited time.  Removal of judges similar to 1970 (no Privy Council involved). Judges’ salaries are charge on Consolidated Fund and could not be reduced while they are in office. | CJ appointed by President on advice of the PM (who consults the LoO)  Other judges appointed on recommendation of the JSC that must consult the relevant Minister and relevant parliamentary committee.  Removal requires report of Tribunal with members who hold/have held high judicial office. President appoints Tribunal, may remove the Judge after report – but exercises these powers on advice of the Cabinet.  Salaries guaranteed from Consolidated Fund and could not be reduced while they are in office. | Recommended appointment of CJ and other judges by President on the recommendation of the JSC, with the approval of the relevant Minister and of the relevant House committee.  Removal requires Tribunal, and vote of each House by ¾ of those present and voting. |
| Judicial (and Legal) Service(s) Commission  (intended to keep especially judicial appointments away from executive influence) | Chief Justice, Chair of PSC; one member on advice of CJ  Appoints magistrates and judiciary officers | Chief Justice, Chair of PSC; two members after consultation with PSC.[[4]](#footnote-4)  Appoints magistrates and judiciary officers; must be not less than 50% iTaukei and Rotuman and not less than 40% other communities. | Chief Justice, Chair of PSC, and President of Fiji Law Society.  Appoints magistrates and judiciary officers. | Recommended CJ, Chair of PSC and a person (qualified to be a judge) nominated by the Minister after getting agreement of the relevant House Committee. |
| AG and DPP  (Government’s legal advisor, and chief prosecutor of criminal cases respectively) | Must be AG (lawyer). DPP appointed by JSC, must be qualified to be Judge, independent; power to prosecute, take over prosecutions by others (and stop them); removed only after tribunal of persons who have held high judicial office. | AG may attend either house; may not vote.  DPP appointed by DPP with agreement of PM.  Powers of DPP similar to 1970.  DPP’s salary charge on Consolidated Fund and may not be reduced while in office. | A Minister must be AG (lawyer)  DPP appointed by Constitutional Officers Commission.  Powers of DPP similar to 1970.  DPP’s salary charge on Consolidated Fund and may not be reduced while in office. | Recommended appointment of DPP by COC after consulting AG.  Otherwise as enacted |
| Ombudsman | Appointed by GG after consulting PM, LoO and other party leaders; removable like Police Service Commission member; may investigate on complaint or own motion; not into acts of GG, constitutional commissions, DPP .  Salary is charge on Consolidated Fund and may not be reduced while in office. | Appointed by President on advice of PM and after consulting LoO and other party leaders.  Similar limits – but also may not investigate BLV and other institutions concerned with iTaukei rights.  Salary is charge on Consolidated Fund and may not be reduced while in office. | Appointed by Constitutional Offices Commission after consultation with PM.  Holds office for 5 years; can be re-appointed.  Could not investigate acts of a Minister of judge, or on appointment, removal etc. of public office holder. Nor President, BLV, DPP, a court.  Not subject to direction.  Remuneration must not be reduced while in office.  Removed only after report by tribunal of 3 persons of whom 2 hold/have held high judicial office. | Recommended appointment by President on basis of recommendation by COC with concurrence of PM and relevant House committee. |
| Public finance | Money to be kept in the Consolidated Fund. Payments out require authority under law. | Similar | Similar | Largely as enacted |
| Auditor General  (who audits public accounts) | Reports to Minister who must lay reports before House; not subject to direction; removed only after tribunal of persons who have held high judicial office,  Salary is charge on Consolidated Fund and may not be reduced while in office. | Removal similar to 1970  Salary is charge on Consolidated Fund and may not be reduced while in office. | Appointed by Constitutional Offices Commission after consultation with relevant parliamentary committee. Holds office for 5 years; can be re-appointed. Not subject to direction by anyone.  Audits public accounts, reports to House of Representatives (copy to Minister); removed only after report by tribunal of 3 persons of whom 2 hold/ have held high judicial office. Remuneration must not be reduced while in office. | Recommended appointment by President on basis of recommendation by COC with concurrence of Finance Minister and relevant House committee.  Should report to Minister who must then lay report before Parliament. |
| The police and security forces | Commissioner of Police, public servant; Police Service Commission must consult PM; only general directions from Minister.  Police above rank of Senior Inspector appointed by Police Service Commission (which is appointed by GG on advice of PM who must consult LoO) | Commander of Military appointed by President on advice of PM.  Commissioner of Police appointed by Police Service Commission on advice of PM.[[5]](#footnote-5)  Police Service Commission: Chair + 2, appointed by President; Chair and at least one other must be iTaukei. | Commander of Military appointed by President on advice of Minister; Commander is subject to control of Minister.  Commissioner of Police holds office for 5 years; can be re-appointed. Not subject to direction by anyone (except general directions of Minister).  Removed only after report by tribunal of 3 persons of whom 2 hold/have held high judicial office.  Remuneration must not be reduced while in office.  Police Service Commission renamed Disciplined Services Commission (Police and Prisons) | Recommended President should appoint Commander on advice of PM.  Did not recommend term limit for Commissioner of Police.  Otherwise essentially as enacted. |
| Gender issues | All equally entitled to protection of rights, regardless of sex…  “he” includes “she” etc. | All equally entitled to protection of rights, regardless of sex… and must be no law that discriminates on basis of sex – except personal or customary law.  “he” includes “she” etc. | Must be no law that discriminates on basis of sex – except for personal law if reasonable and justifiable in a free and democratic society. Make-up of judiciary to reflect the ethnic and gender balance of the community.  Men and women equally to have opportunities for training and advancement in state services.  Speaks of “he or she” etc. | As enacted |
| Customary law and institutions | Customary/personal law not subject to constitution in some respects  Role of GCC (see above)  Certain Acts (Fijian Affairs, Native Land Trust Board[[6]](#footnote-6) etc.) not amended unless at least ¾ of members of both houses support, and if, in case it affects Fijian land, customs or customary rights, has support of 6 of the 8 GCC members of Senate. | Must be law on application of customary law. Customary law not to apply if inconsistent with Constitution or general principles of humanity. But court excluded from decision of Native Lands Commission on customary law.  “Recognises” BLV.  Same laws may not be amended without support of more than half of all members of each house and of 18 of 24 BLV nominees in Senate. | “Compact” stresses rights of iTaukei and Rotumans to governance through separate administrative systems, “protective principle” of paramountcy of iTaukei interests. Equality rights may be limited by law in order to provide for application of customary law, or limiting alienation of customary land or fishing rights.  See role of BLV above.  Same laws may not be amended without support of more than half of all members of each house and of 9 of 14 Senators appointed on advice of the BLV.  There must be law to provide for customary law and dispute resolution according to iTaukei traditions.  A law must provide equitable share of royalties, in case of mineral extraction, to owners of land or fishing rights. | Largely as enacted.  Did suggest Native Lands Commission should be constituted by the Constitution. |

1. Covers whether the person was born out of wedlock or not, and other circumstances of birth. [↑](#footnote-ref-1)
2. Actually the Constitution does not specify who the electors are in each case, just the candidates. [↑](#footnote-ref-2)
3. Actually the Constitution does not specify who the candidates are in each case, just the electors! [↑](#footnote-ref-3)
4. It says with Commission – presumably means PSC? [↑](#footnote-ref-4)
5. Retained also previous provisions about consulting PM! [↑](#footnote-ref-5)
6. *(a)* the Fijian Affairs Act; *(b)* the Fijian Development Fund Act; *(c)* the Native Lands Act; *(d)* the Native Land Trust Act; *(e)* the Rotuma Act; *(f)* the Rotuma Lands Act; *(g)* the Agricultural Landlord and Tenant Act; *(h)* the Banaban Land Act; and *(i)* the Banaban Settlement Act. [↑](#footnote-ref-6)