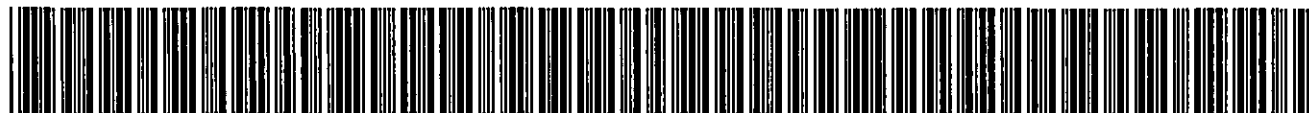


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UNDERSTANDING YOUR CONSTITUTION

Provisions for Indigenous Peoples



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Understanding Your Constitution : Provisions For Indigenous Peoples

The rights and interests of indigenous peoples have been given special recognition in each of the Constitutions of 1970, 1990 and 1997.

The indigenous peoples' most valuable asset, native land, is well protected by making it difficult for Parliament to change certain laws relating to it.

In addition, indigenous peoples' customary laws, practices, processes and values are an important part of the nation's culture and Parliament is required to embrace this principle when making laws.

The Constitutions of 1970 and 1990 gave special preference to indigenous Fijians in particular. For instance, in relation to employment and education opportunities. The 1997 Constitution continues to recognise the special need to provide for indigenous peoples, while also providing for the interests of other ethnic groups.

Let us now look at the ways in which indigenous interests have been protected and promoted since Independence.

The 1970 Constitution:

The 1970 Constitution recognised and sought to protect the inherent rights of the indigenous Fijian and Rotuman population in respect of title to land and customary laws and practices.

It did this in the following ways -

- It entrenched certain Acts dealing with Fijian and Rotuman affairs and native lands by requiring any alteration of those Acts to be supported by at least three quarters of the members of both Houses of Parliament.
- It provided that the alteration of any provision of these Acts affecting Fijian land, customs or customary rights should require the votes of at least 6 of the 8 members of the Senate appointed on the advice of the Great Council of Chiefs.
- As regards the Senate, it provided for 8 of the 22 members to be appointed by the Governor-General on the advice of the Great Council of Chiefs and for one member be appointed by the Governor-General on the advice of the Council of Rotuma, (the remaining 13 members being appointed on the advice of the Prime Minister and the Leader of the Opposition).
- It enabled the Great Council of Chiefs and the Council of Rotuma to determine their own procedure in selecting persons for appointment to the Senate.

The 1990 Constitution

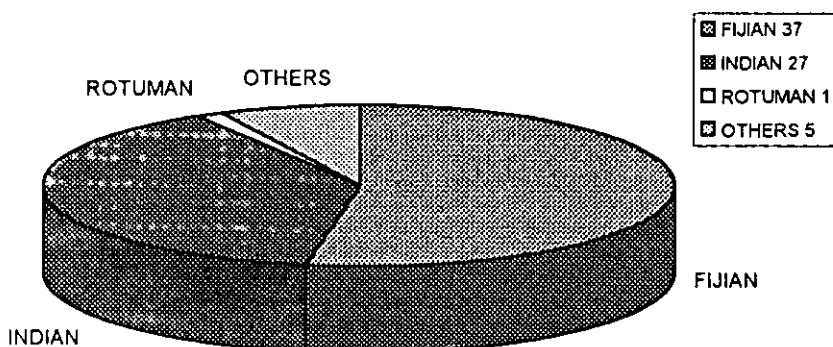
This strengthened the position of indigenous Fijians in response to what were perceived as weaknesses in the 1970 Constitution. In particular, the 1990 Constitution made the following changes-

- It provided for the President to be appointed by the Great Council of Chiefs which is known by its native name of Bose Levu Vakaturaga.

It required the Prime Minister, the acting Prime Minister and the Chairman of the Police Service Commission to be indigenous Fijians.

It did away with the national roll of electors, thus removing the opportunity for cross-voting. This made domination of government by one race more likely.

It created an ethnic imbalance in the distribution of seats in the House of Representatives i.e 37 Fijian members, 27 Indian members, 1 Rotuman member and 5 other members, which did not reflect the size of the Indian population.



It provided for 24 Fijian members of the Senate to be appointed by the President on the advice of the BLV and 1 Rotuman member to be appointed on the advice of the Rotuma Island Council, leaving Indian members to be included among the 9 other members to be appointed by the President from other communities.

It provided that decisions of the Native Lands Commission as to Fijian customs and as to headship over native land should not be challenged in the Courts.

Other features of the 1990 Constitution designed to reassure the Fijian population that their interests would be protected and their culture preserved included the following:

- i) imposing on Parliament a duty to enact laws promoting and safeguarding the interest of the Fijian and Rotuman people;
- ii) providing for the establishment of Fijian courts (i.e courts dealing with Fijian affairs only);
- iii) declaring Fijian customary law to be part of the the laws of Fiji and requiring Parliament to provide for its use; and
- iv) entrenching certain laws dealing with Fijian and Rotuman affairs by providing that any alteration should require the votes of a large majority of both Houses.

The 1997 Constitution

The new Constitution has not undermined the interests of indigenous Fijians or other indigenous groups. At the same time, it meets international standards by having greater regard to the interests of other ethnic groups.

In recognition of the need to protect indigenous interests, the new Constitution gives the existence of the Bose Levu Vakaturaga (BLV) special recognition and confers on it the functions of-

- i) appointing the President and Vice President, after consultation with the prime Minister;

- ii) removing the President or Vice-President in certain circumstances; and
- iii) advising on the appointment of 14 members of the Senate.

Consistent with the provisions of the earlier Constitutions, the new Constitution also provides that certain Acts relating to Fijian, Rotuman, and Banaban affairs, native land and agricultural land may not be amended without going through a special procedure and receiving the support of a majority of the members of the Senate appointed on the advice of the BLV.

Parliament is also required to provide for the use of customary laws and for dispute resolution in accordance with traditional Fijian processes. In doing so Parliament must have regard to the customs, traditions, usages, values and aspirations of the Fijian and Rotuman people. Parliament must also provide for the owners of land and customary fishing rights to be paid royalties for any mineral rights granted by the state over land or the seabed.

In general, laws may not be made which favour one group over others. However, it will be lawful to make laws which make special provision for Fijian, Rotuman or Banaban groups if such laws enable them to be governed in their own communities. Doing this will not be held as favouring them over other ethnic groups.

In these ways, the new Constitution acknowledges in a broadly acceptable way the special needs of the indigenous people of Fiji.

Conclusion

The new Constitution, as was the case with the 1970 and 1990 Constitutions, guarantees that the rights and interests of indigenous peoples are protected and preserved.

Native lands are protected by requiring a large majority vote by both Houses of Parliament to change the laws relating to them.

It is the duty of Parliament to provide for the application of customary laws, and for the use of traditional processes and practices, in dispute resolution.

The Fijian language is recognised and given a status equal to English and Hindustani. The Bose Levu Vakaturaga continues to be recognised and is given an important role to the political process by appointing the President and Vice-President, and fourteen Senators.

In relation to the conduct of government, one of the principles which the government must take into account is the need for the maintenance of legitimate Fijian interests.

This historical review of the 1970, 1990 and 1997 Constitutions shows that the rights of indigenous peoples, Fijians, Rotumans and Banabans have been and continue to be looked after in the new Constitution.

However, the Constitution makes it clear that the rights and interests of their fellow citizens, who make the Fiji Islands their permanent home, are equally important.

Therefore, as responsible citizens, indigenous groups in the country are required to show respect towards other ethnic groups in all spheres of life; social, political and economical.

Doing so will make the new Constitution a meaningful document and help towards building a united Republic of the Fiji Islands.

