

# Fiji

## The constitutional process: a view from the Fiji Women's Rights Movement

Virisila Buadromo

Early in 2012 Prime Minister Frank Bainimarama launched a constitutional process for Fiji to deliver a new constitution in February 2013 ahead of 2014 elections. He promised “true consultations” with “ordinary Fijians, not just the elite or the well-connected”.

The process included a five-member Constitution Commission to produce an initial draft, comprising two international experts and three Fijians. The constitution was to be approved by a Constituent Assembly, representing the people but appointed by the government, and requiring a two-thirds majority to change the commission's draft. The decree by which this process was put in place stipulated some essential features of the constitution, including racial equality and immunity for coup leaders. The constitution would not come into effect until a court had certified compliance with these constitutional principles.

The Fiji Women's Rights Movement joined others in Fijian society in participating actively in the constitutional process and making thousands of submissions to the commission. But in January 2013 the process was derailed when the government rejected the commission's draft, proposing instead to make a draft of its own. In time, the idea of a representative Constituent Assembly was also abandoned in favour of allowing a limited period of time for people to comment on the government draft. The revised constitution was finally enacted by military decree.

Racial divisions between indigenous Fijians (*i'Taukei*) and Indo-Fijians date from colonial times. The first independence constitution entrenched racial difference, including by providing for separate voters' rolls. The first two of a series of four coups in Fiji were prompted by an election in 1987 that returned a government in which Indo-Fijians were prominent. The constitution of 1997 was intended to heal divisions, but like previous

constitutions, it continued the use of separate voters' rolls and also privileged the position of the *i'Taukei* in other ways.

A third, more violent coup in 2000 followed a change of government in which an Indo-Fijian became prime minister. It involved a temporary seizure of power by the military and an attempt to abrogate the constitution, which the courts subsequently ruled to be still in effect. A fourth coup in 2006 installed a government led by military commander Bainimarama and led to the abrogation of the constitution in 2009. The architects of the coup justified it in terms of needing to save Fiji from a corrupt and racist government. Bainimarama advocated multiculturalism and anti-corruption, and promised to concede office and return to the barracks after implementing electoral reform and a “clean-up campaign”. But eight years on from the coup, Bainimarama remains in office.

### Mobilising for change: the experience of the Fiji Women's Rights Movement

For some, conflict in Fiji relates to ethnic tension between Indo-Fijians and indigenous *i'Taukei*. Others blame the military and its usurpation of democratic governments. From a women's rights perspective, the conflict in Fiji is about a fundamental power imbalance.

Fiji is a patriarchal society that favours men over women. It is superficially multi-racial, but Fijians are highly polarised among different ethnicities, and are essentially conservative. In Fiji, where the government is so tied to the



Participants at the Fiji Young Women Forum wearing the Fiji Women's Rights Movement's 'I Am Voting' t-shirts – a campaign encouraging young women's participation in the electoral process. © Fiji Women's Rights Movement

military, the women's movement is perceived as a threat to the establishment. The military is hierarchical and patriarchal: when one person gives an order, everybody follows. The predominantly male military perspective sees a group of female-led agitators as inimical to the military psyche. Fighting for women's rights is perceived as an attempt by the weaker sex to dominate men or take their space.

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A number of women's organisations unequivocally opposed the 2006 coup and have maintained their resistance to it. One of these is the Fiji Women's Rights Movement (FWRM), a feminist advocacy organisation established in 1986 whose core work is to promote legislative reform and policy change. FWRM has been targeted by the military on several occasions – including through physical attacks. But civil society and women's organisations more broadly were split over the coup and whether to accept or reject Bainimarama. FWRM initially had very little to do with other civil society organisations, often working in isolation because it mistrusted pro-regime organisations.

But from 2009 FWRM began to think more practically in terms of the conflict in Fiji. As FWRM members we

asked ourselves how our own actions impacted on the conflict: were we helping to resolve the conflict, or make it worse? We realised that simply taking a position, without listening or speaking to other groups or the government, was not contributing to progress. Responding to this recognition required a U-turn, reversing a strict policy of non-engagement with the government or civil society organisations aligned with it. So FWRM started working with other organisations and individuals and got involved in a dialogue process that developed into a multi-sectoral initiative called Dialogue Fiji. This provided a framework for civil society organisations, community leaders and some government representatives to start talking about the conflict – in effect, a mini “community” reconciliation process.

During three years of dialogue before the constitution development process began in 2012, we came to see the government and some civil servants in a different light and understand how we could engage with them. As women activists we also realised the need to consolidate the women's sector and from 2011 started mobilising women's organisations and people interested in gender equality and women's rights. We convened a consultation, in conjunction with the National Council of Women of Fiji, *Soqosoqo Vakamarama I Taukei* (Cakaudrove Women's Resource Center Project), and FemLINKpacific, which was attended by almost 100 women from across the country and developed into the Fiji Women's Forum.

### **Fijian women and the constitutional process**

A key factor invigorating the 2012 constitutional process was the mobilisation of different groups to make it happen. FWRM was initially very wary, fearing that involvement in a weak process could legitimise the Bainimarama government and imply agreement with its abrogation of

the 1997 constitution. There was widespread distrust of the role of the government, including in relation to the appointment of the Constituent Assembly. Nevertheless, we recognised an opportunity for change: the announcement of an independent Constitution Commission was seen as a very positive step insofar as it included highly renowned and credible commissioners – Professors Yash Ghai and Christina Murray – who it was felt would only be part of a process that was capable of supporting real change.

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So FWRM and others got involved. As it gathered pace the constitutional process increasingly gave civil society a sense that change was possible, and that people and communities could participate and influence decisions that would impact upon their lives. It was a beacon of hope after many years of military government and draconian laws. FWRM and civil society more broadly felt that through their submissions Fijian people could influence the process and reaffirm some positive aspects of the 1997 constitution – for FWRM, the Bill of Rights in particular – but also to acknowledge areas to be strengthened and reformed. Some 7,000 submissions were made to the commission, with people walking many miles to have their voices heard. But the government underestimated people’s level of criticism.

Women have taken the lead and have been pushing boundaries. The Fiji Women’s Forum has been instrumental in getting women involved. Women made almost a third of all submissions to the commission, and the Women’s Forum was a big factor in enabling this. The women’s movement tried to be involved in the Constituent Assembly that was supposed to follow the consultation and went to some lengths to choose representatives in an inclusive way. As the process progressed the government became extremely apprehensive and defensive, resorting to tactics to undermine the forum’s credibility. But the forum managed to sustain united action to increase women’s participation in the process and to get more women into parliament, focusing on the 2014 elections.

From the standpoint of the FWRM, the government’s 2013 constitution was a great disappointment. It threatens women’s rights in a variety of ways and is certainly much less favourable to the position of women than the draft originally proposed by the commission in December 2012. As it stands, moreover, this constitution will be hard to amend, requiring a three-quarter majority both in parliament and in a referendum. This is the constitution on the basis of which the elections expected sometime in 2014 will be held.

### **Supporting transition or legitimising autocracy?**

Fiji’s military leaders and the Fijian people both want legitimate governance. But legitimacy means very different things for each. FWRM sees legitimacy in terms of human rights and the rule of law. From our perspective, the constitutional process had to be independent and representative. The inclusion of two external commissioners, and the fact that three of the five commissioners were women, was seen as very positive. Participation was crucial to the process’s legitimacy. For the women’s movement and civil society more broadly this meant ensuring submissions could be made to the commission in a way that was free and fair and not coercive. The process progressively gained legitimacy as people became increasingly involved and took ownership, and space opened up for debate without interference from the security forces.

When the government rejected the draft in December 2012 legitimacy instantly evaporated. The state was subsequently prepared to *consult* people on the constitution in order to provide a superficial rubber-stamp of popular legitimacy, but it was not prepared to allow genuine *participation*. Now, irrespective of whether or not the proposed 2014 electoral process is free and fair, the government will declare itself legitimate. This does not give power back to the people, but centralises and reinforces it among the elite.

FWRM drew on experiences from other processes to try to find ways of holding the government to account. In Kenya, we saw that a parallel structure called the Citizens Assembly had been established to promote public participation in the constitutional process. We saw the benefits of this for Fiji and set up our own People’s Assembly after the government repudiated the “people’s draft”, as the commission’s draft came to be known. We created a space where different representatives could come and debate – including from both civil society and government. The Fijian media self-censors out of fear, but we were able to stream the whole process live on the internet. We encouraged people to send in questions for their representatives to respond to. The last day of

the People's Assembly coincided with the release of the government's draft constitution – the same day that it also announced it was scrapping the Constituent Assembly. In the end, the only space where were able to participate was the People's Assembly.

The Constitution Commission's independence gave it credibility and meant that the public and civil society had huge confidence in it. But the commission did not understand Fijian politics well, particularly in terms of its relationships with powerful figures like the attorney general and the prime minister. Its emphasis on independence also meant that communication with the state was weak and led to tension, which ultimately contributed to the draft constitution being discarded.

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The commission's expertise, combined with the huge number of submissions it received, meant that the draft constitution was a very strong document. It reiterated important parts of the 1997 constitution, but also strengthened it. FWRM was critical of some parts of the draft: for example, there was a proposal to replace the Senate with a Citizens' Assembly, but with no clarity on how many people would be appointed to it, or to whom it would be accountable. This lack of detail meant that a potentially good idea was ultimately idealistic, with question marks over its feasibility, which presented a basis for government resistance. Also, for procedural reasons it would have been difficult for the Constituent Assembly to have changed the draft.

Looking forward, the 2012 constitutional process demonstrated that civil society can effect change – even when the situation appears hopeless. There are many limitations in the government's new constitution. But civil society now has to try to interpret parts of it in ways that can work positively to give people more power and access.

FWRM's job now – as part of civil society and the women's movement – is to work to help the government understand that they do not need to fear us. They should be working with us to try to decentralise power back to the people. Military rule only works for the military, not for civilians. So people must be mobilised across a range of movements – not just the women's movement. It is about getting citizens to become active, rather than just being bystanders watching events unfold. It is about empowering the community and citizens to say, “You can make this change!”

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