

December 2018



Name of process

The 2012 Constitution-drafting Process

Type of process

Constitution-making

Outcome of process

The Government rejected the draft and developed its own constitution behind closed doors

Women's inclusion

- Inclusive commission
- Public consultations

Women's influence

High influence on the initial drafting process:

- The three women members of the five-person Constitution Commission had a strong influence on the content
- The Commission and women's groups organized to ensure women's contributions
- The Constitution Commission ensured geographic, ethnic, and rural/urban reach and representation
- Women's groups and the Constitution Commission provided education, training, and awareness-raising, and digital inclusion tools, to enable participation
- Women's groups capitalized on their close connections with individual commissioners

Fiji (2012)

Fiji's constitution-making process was decreed early in 2012 by the country's military Government, which had come into power in 2006 through a coup. Fijian women were actively involved through an inclusive Constitution Commission and country-wide public consultations: three of the Constitution Commission's five members were women, and a large number of women from diverse backgrounds, locations, ages and political affiliations contributed to the consultations. Women were empowered to participate through education, training, and awareness-raising campaigns, as well as through digital inclusion tools. Strong women's civil society organizations and movements advocated for women's interests and provided support for women's participation. The final text of the Commission's draft constitution (referred to in this case study as the Commission Constitution) included a number of provisions that reflected the themes advocated for by women, such as the advancement of women and youth, and human rights.

However, in 2013, the Government rejected the Commission Constitution and wrote a new version (referred to in this case study as the Government Constitution) via a more opaque and less inclusive process, in which women's groups had no formal or obvious role or influence. Some Fijians see the Constitution Commission's draft as a reference for future reforms.

IPTI is an initiative of:



—
INSTITUT DE HAUTES
ETUDES INTERNATIONALES
ET DU DEVELOPPEMENT
GRADUATE INSTITUTE
OF INTERNATIONAL AND
DEVELOPMENT STUDIES

I. Background

Fiji is a patriarchal society and traditional gender roles limit Fijian women's¹ participation in socio-political spheres, although the degree and experience of these limitations varies according to ethnicity, class, culture, and level of education.² Fiji ranks 121 out of 145 countries in the Global Gender Gap index and 75 out of 159 countries in UNDP's 2015 Gender Inequality Index.³ In terms of policy, it has made a number of moves in favor of women's rights and gender equality: a Department of Women was established in 1987; Fiji ratified the Convention on the Elimination of All Forms of Discrimination of Women in 1995; there is an active Ministry of Women, Children and Poverty Alleviation; and Fiji has had National Plans of Action for Women since 1999.⁴ Nonetheless, rates of violence against women and girls in Fiji are among the highest in the world: 64 percent of women aged 18–64 have experienced physical and/or sexual violence by their intimate partner at least once in their lifetime.⁵ These high levels of violence impact women across diverse locations, age groups, education levels, ethnicities, race, religion, and social and economic status. Although Indigenous Fijian women generally experience higher rates of violence than other groups.⁶ Few women seek help when violence is committed against them; many justify the actions of the perpetrators.⁷

Rates of violence against women are among the highest in the world

Fijian women workers are highly concentrated in subsistence agriculture and in the service sector (e.g. hotels, restaurants, and community and social services).⁸ Women often work in lower paid jobs, and men tend to occupy positions of power.⁹ Formal labor market participation is 41 percent among Fijian women, compared to 81 percent among Fijian men. Women's earnings are only 38 percent of men's.¹⁰

There is also low representation of women in political institutions. In Fiji's September 2014 elections, women obtained eight out of 50 seats in the House of Representatives (16 percent).¹¹ This was one of the best results for women in Fijian national elections, but is among the lowest rates in global terms.¹² In the last municipal elections in 2005, 23 out of 158 elected representatives were women (13 percent).¹³ However, thanks to the political engagement and increasing influence of women's civil society organizations (CSOs), the women's movement in Fiji is perceived as one of the strongest and most successful in the Pacific Island region.¹⁴ Women's CSOs have existed since the 1960s, and have both supported and opposed the Government.¹⁵ Led by trailblazing organizations such as the Young Women's Christian Association since the 1960s and 1970s, and the Fiji Women's Crisis Centre and Fiji Women's Rights Movement (FWRM) since the 1980s, women's CSOs have been active on a diverse range of issues. These include women's legal status, gender-based violence, women's media presence, and women's rights to fair wages. They have effected change in women's political representation and legislation.¹⁶ One mapping of CSOs found women-focused CSOs in Fiji to be either community-based and national-based.¹⁷ Priority areas of concern include violence against women, sexual and reproductive health and rights, leadership and education, income generation, climate change and adaptation, women in decision-making, and women in business.¹⁸

Women's CSOs have effected change in women's political representation and legislation

Despite Fiji's "high" human development (according to the 2016 Human Development Index), political instability and extreme weather patterns impact the economy, and environmental insecurity has specific impacts on women.¹⁹ Access to water, housing and services, health facilities, and medicine is difficult in the aftermath of disasters, and these especially affect women in remote and rural areas, although women are often excluded from decision-making in relation to climate-related planning and management.²⁰

***Fiji has experienced
four coups d'état
since independence
in 1970***

Political instability is longstanding: Fiji has experienced four coups d'état since independence in 1970, due to divisions in the country that stem from its colonial past. The British colonized Fiji in 1874 and, prohibited from exploiting Indigenous Fijians for labor, brought indentured laborers from India to work on the islands' plantations. At the beginning of the 20th century, a new wave of Indian immigrants arrived. The descendants of both groups make up the large Indo-Fijian community today, and constitute 37.5 percent of the population. Indigenous Fijians (or iTaukei) make up 56.8 percent, and ethnic minority groups 5.7 percent.²¹ The iTaukei were and remain landowners: they have for the most part held political power in Fiji, and form the majority in the military. Indo-Fijians, in contrast, are historically underrepresented in state structures but hold economic power, and have long advocated for equal political and civil rights, an agreement on political power sharing, and equal representation at all levels of governance.²²

The social, economic, and political divide between the two groups persisted throughout the 20th century and provoked inter-ethnic tensions, which were exacerbated by the divisive policies of the British colonial administration. In 1966, the Alliance Party (AP) was formed to protect the political and social rights of mainly iTaukei people, particularly the Chiefs, who feared losing their dominance in the country. The AP won elections in 1966 by a landslide and ruled Fiji for the next 20 years.

Fiji became independent in 1970. Tensions between the two groups persisted, and the four coups (two in 1987, one in 2000, and one in 2006) instrumentalized ethnic tensions, undermined Fiji's democracy, and enabled a militarization of the state. The coups of 1987 were by iTaukei groups, to counteract their perception of losing control of state institutions to Indo-Fijians (the first coup ousted the Fiji Labor Party from Government, which—despite being headed by an indigenous Fijian—was perceived by iTaukei groups to be controlled by Indo-Fijians). In 1987 the coup leaders proclaimed Fiji a republic, and in 1990 a new constitution ensured iTaukei political domination and introduced a presidency, which was largely ceremonial.

***The 1997 constitution
was the first attempt
to reflect ethnic
balance***

In 1997, another new constitution was agreed. This was the first attempt to reflect ethnic balance in Fiji's political institutions, and resulted in the election of an Indo-Fijian as Prime Minister in 1999. However, amid rumors that the new Government would attempt to reform land ownership laws to the detriment of the iTaukei, self-proclaimed Indigenous nationalist George Speight led a third coup in 2000. Commodore "Frank" Bainimarama headed an interim military Government, and

elections for Prime Minister were held in 2001. Five years later, however, Commodore Bainimarama ousted the elected Prime Minister, dissolved parliament, and declared himself head of an interim military Government. He said that he sought a good governance agenda, a corruption-free society, multiracialism, and equal citizenship for all Fijians.²³ In January 2007, the interim Government appointed a new President, who appointed Bainimarama Prime Minister. When the Fijian Court of Appeal ruled that Bainimarama's coup had been illegal, he stepped down as Prime Minister, but within 24 hours, the President had abolished the country's Constitution, dismissed the judiciary, and re-appointed Bainimarama, mandating him to pursue democratic reforms and hold elections by 2014.

Post-coup political elites have favored conservative cultural and religious mores

Fiji's coups have had significant impacts on women.²⁴ Post-coup political elites have favored conservative interpretations of cultural and religious mores, for example, constraining the political role of women. This has discouraged some women activists from overt criticism of post-coup governments, while others have actively participated in the ongoing debate of governance in Fiji.²⁵

In 2012, under pressure from the international community,²⁶ Prime Minister Bainimarama announced a constitution-making process and pathway to elections; in July he decreed the establishment of a Constitution Commission and a Constituent Assembly.²⁷ The decrees required that the constitution be the result of full, inclusive, and fair participation of all Fijians, without distinction between men and women.²⁸ They also required that the draft constitution contain a set of non-negotiable provisions that would achieve: a common and equal citizenry; a secular state; the removal of systemic corruption; an independent judiciary; elimination of discrimination; good and transparent governance; social justice; one person, one vote, one value; the elimination of ethnic voting;²⁹ proportional representation; and a voting age of 18.³⁰

A climate of fear overshadowed public debate

Once established, the Constitution Commission insisted that to work properly it required an atmosphere where speech was not curtailed. The Public Emergency Regulation (under which media was fully censored and political debate almost non-existent) was lifted in early 2012, and the Government began to further relax restrictions on freedom of expression, but a climate of fear still overshadowed public debate. Nonetheless, the Commission referred its draft constitution to the Government on 24 December 2012.³¹ The preamble emphasized multiculturalism, national unity, and trust among Fijian communities, and a just and fair government. The first five chapters defined the values of Fiji, including in relation to the country's founding values, human rights, natural heritage, civil and political rights, and good governance and leadership. The remaining chapters and schedules dealt with governmental institutions, finances, public administration, public servants, military and security forces, elections, amendments, and transitional arrangements.

The Commission Constitution contained many provisions to advance the role of women in Fijian society, which included: prohibiting discrimination on grounds of

The draft constitution contained many provisions to advance the role of women

sex, gender, pregnancy, and marital status; underlining the equal opportunities of women in the political, economic, social, cultural, and sporting areas of life; affirming that women have the right to equal pay for work of equal value; recognizing women's rights to property; and ensuring increased representation of women in public life, for example by installing quotas in a national people's assembly.³²

Despite having decreed the process, the Government began to oppose it. By the end of 2012, the Chair of the Constitution Commission had been threatened with deportation if he continued to meet with trade unions, civil society, and political parties. Copies of the draft constitution were confiscated and burned. The President strongly criticized the draft constitution in public.³³ And the Government removed important parts of the Commission mandate, including stopping it from presenting its draft constitution to the Fijian public for reaction, and for feedback from the Constituent Assembly.³⁴

The military Government flatly rejected the Commission Constitution

In early 2013, the military Government flatly rejected the Commission Constitution, on the grounds that it included what it considered to be non-democratic elements, such as a national people's assembly and the reinstatement of the Great Council of Chiefs, and provisions that military officers who also held civilian office would be assumed to have resigned from the military on the date that elections were announced.³⁵

The military Government drafted its own constitution behind closed doors. On 22 August 2013, the government draft was made public. Bainimarama abandoned the appointment of the Constituent Assembly, instead asking for the public to comment on the draft within less than two weeks. The draft constitution was then promulgated on 6 September 2013. It is unclear to what extent the final constitution took into account public feedback.³⁶

The Government Constitution is progressive in some respects: for the first time, it recognizes all citizens of Fiji as "Fijians," regardless of their racial or ethnic identity. It emphasizes socio-economic and cultural rights in the Bill of Rights, institutionalizes an equitable, non-racial electoral system, and promotes transparency, accountability, and a corruption-free environment.³⁷ However, it also contains a claw-back provision, with the potential to limit any right in the Bill of Rights; the granting of unconditional and inviolable immunity to military leaders; the provision of extensive powers to the Prime Minister and Attorney-General; and the ability to shield decrees from judicial oversight.³⁸ The Government Constitution does not advance women's rights and freedoms in society to the same degree as the Commission Constitution. It is limited to establishing the right to equality and the rejection of gender-based discrimination.³⁹

In September 2013, a group of youth and women's rights activists held a small protest against the Constitution at the Presidential House in the capital Suva. Fourteen people, mostly women, including from the FWRM and the Pacific Centre for Peacebuilding, were detained by the police for several hours, before being cautioned and released. Prominent leaders of political parties opposing the military

Women's organizations have remained politically active

Government also delivered a letter to Fiji's President calling on him not to assent to the Government Constitution and instead appoint a caretaker Government until the planned 2014 elections.⁴⁰ Women's organizations such as the FWRM have remained politically active, trying to mobilize citizens to fight for the rights not only of women but all citizens, and attempting to work with the Government on these issues.⁴¹ However, activism is limited by the Constitution. There are harsh penalties for criticizing the government, no freedom of information laws, and assemblies require permits.⁴²

Fiji held elections on 17 September 2014, and Bainimarama was elected Prime Minister. Freedom House deemed the elections to be free and fair, although a Fijian citizens' forum was concerned that, given the way Bainimarama came to power and ruled Fiji, and the way the new constitution was promulgated, the elections were not consistent with international standards and therefore neither free nor fair.⁴³ Bainimarama and his party also scored a narrow victory in the general election of 14 November 2018.

Many consider the Constitution Commission to be more "legitimate"

Some believe that the initial constitution-making process was never more than the military Government's strategy to give the appearance of being democratic and supporting gender equality.⁴⁴ Today, the more progressive Commission Constitution—which critics of the military Government refer to as the People's Constitution—is still considered by many Fijians, including pro-democracy activists and members of Fiji's major political parties (with the exception of Bainimarama's FijiFirst party),⁴⁵ to be more "legitimate" than the Government Constitution, which remains in place. The open and consultative review process, and in particular the high engagement by women, revealed the eagerness of Fijians to participate in public dialogue, civil society mobilization, and lawmaking.⁴⁶

Actors Involved in the Process

The military Government's decree for the Constitution Commission appointed its five members and required them to consult with the Fijian people and prepare a draft constitution between July and December 2012.⁴⁷ The Chair of the Commission was Professor Yash Ghai, a world-renowned Kenyan constitutional law scholar and practitioner (the Commission is also known as the Ghai Commission). Ghai was one of two international members along with Christina Murray, a human rights and constitutional expert from South Africa. The three Fijians on the Commission were Penelope Moore, a human rights expert and civil society veteran; Dr. Satendra Nandan, a writer, academic, and former Member of the Fijian Parliament; and Taufa Vakatale, the first woman Deputy Prime Minister of Fiji and an expert in the Fijian education system.⁴⁸

The military Government's decree for the establishment of the Constituent Assembly detailed its selection criteria and appointment process, its functions and procedures. The Assembly was supposed to consist of representatives of civil society groups, faith-based organizations, political parties and the Government. It was mandated to

begin debating and reviewing the Commission's draft in January 2013 and adopt the draft by the third week of March 2013. But it was never appointed.⁴⁹

Civil society has faced some legal restrictions on its activities

Civil society did play a role in consultations. Fijian civil society is mainly organized around faith-based organizations, but also exists for civic activities, and organizations such as sports clubs, trade unions, and women's groups.⁵⁰ The larger membership-based CSOs (ranging from the local to the national) often rely heavily on volunteers. Coalitions and alliances have been formed between CSOs around specific issues. However, civil society has faced some legal restrictions on its activities, in particular relating to expressions of disapproval of the Government.

International actors were also involved in the process. As noted above, two of the commissioners were international constitutional experts.⁵¹ The Commission was funded by the Australian, New Zealand, and British High Commissions, the US Embassy, and the European Union,⁵² with the support of international NGO Conciliation Resources.

International donors had started to increase emphasis on peacebuilding within their development programs before the coup. In 2002, AUSAid stated its intention to support local processes of dialogue and programs involving women peacebuilders. This prompted many CSOs and women's groups to think about how their work impacted on peacebuilding practices, which contributed to changes in their strategies.⁵³ UNDP (funded largely by the EU, AusAid, and NZAid) implemented projects in the years leading up to the Commission process in support of dialogue, civic education, and a return to democratic values—with implementing partners from Fiji's local CSOs, among them prominent women's organizations.⁵⁴

Countries such as Australia, New Zealand, the United Kingdom, the United States, the EU and even some key Pacific Island Forum states criticized the Government following the 2006 coup and applied pressure in the form of travel bans and sanctions.⁵⁵ As a result some of Fiji's key donors, including AusAid, NZAid, and the EU, shifted their funding strategies to support local CSOs.⁵⁶

Women Involved in the Process

Women in Fiji have a long history of mobilizing around political processes

Women in Fiji have a long history of mobilizing around political processes. Women actively participated in and impacted Fiji's constitutional reform process in the mid-1990s, making influential submissions on questions of discriminatory citizenship rights.⁵⁷ However, there have been tensions between women's organizations over positions and generational differences,⁵⁸ as well as between women's organizations and the governments-in-power, including a particularly fractious period from Bainamarama's coup in 2006 to the elections in 2014.⁵⁹

Established in 1986 as a feminist advocacy organization, FWRM has worked mostly to promote legislative reform and policy change.⁶⁰ Along with a group of other women's organizations and CSOs, it opposed the 2006 coup, and spoke out openly

***The FWRM began
civil society dialogue
to ease tensions***

against the military Government, despite threats and intimidation.⁶¹ In the post-2006 coup period, these organizations were increasingly isolated from other groups due to political divisions over the legitimacy of the military Government and Fiji's future.⁶² Other organizations imagined that the military would end the ethnicization of Fiji's politics (although with time their support for the Bainimarama eroded and they became more disenchanted with the Government's authoritarianism and violence). The FWRM began to develop a national program of civil society dialogue to ease the tensions and adapted its advocacy approach into a more collaborative, peacebuilding one.⁶³

The National Council of Women of Fiji (NCW) was established in 1968 to represent women's organizations nationally, and act as a focal point for government liaison on women's issues.⁶⁴ NCW represents both Indigenous and Indo-Fijian women's organizations, faith-based and cultural, and has played a politically conservative role.⁶⁵

Founded in 1924, Soqosoqo Vakamarama iTaukei (originally Qele ni Ruve) is a rural-based organization of Indigenous Fijian women. It is one of the largest associations in Fiji with a mission to improve conditions for Indigenous Fijian women. It plays a more moderate role in Fijian politics, unless issues affecting Indigenous Fijian women are raised.⁶⁶

Women's Action for Change (WAC) was founded in 1993 to promote gender equality, social justice, sustainable development, and peacebuilding work in Fiji through the theatre and the arts.

FemLINKpacific was critical of military intervention in Fiji, but sought to maintain dialogue with the military Government for the purposes of peacebuilding.⁶⁷ This women's media organization was established in September 2000 to address the obstacles to women's effective participation in open communication on common matters.

Women's organizations, including NCW, Soqosoqo Vakamarama, and the Catholic Women's League, assisted in the implementation of UNDP projects on civic education, dialogue, and restoring democracy to Fiji in the years leading up to the Commission process.⁶⁸ In April 2012, the FWRM, National Council of Women of Fiji, Soqosoqo Vakamarama iTaukei, and FemLINKpacific created the Fiji Women's Forum to advocate for an increase in representation of women in positions of political leadership in advance of the planned elections.⁶⁹

***Women advocated
for the rights of
women, minorities,
children, and youth***

During the constitution-drafting process, women's organizations advocated for women's involvement, as well as for the inclusion of particular provisions in the constitution, which would advance the rights of women, and those of minority groups, children, and youth. They also pushed positions on human rights, access to information, and the structure of the government, among other things.⁷⁰

The three women commissioners had informal personal relationships with both local and international CSOs, and Fijian women's rights activists. For example, Commissioner Moore had established and led the WAC.⁷¹

There is little evidence of women's involvement in the 2013 Government Constitution drafting process

There is little evidence of the numbers of women or women's groups involved in the 2013 Government Constitution drafting process, the content of their suggestions, or the ways they were included in or influenced the process. The FWRM did organize an informal people's assembly, called the Citizens' Constitutional Forum, on 20–22 March 2013 in Lami to provide a space for civil society and government representatives to debate the constitutional process. The forum was made up of 45 leaders and thinkers from around Fiji, representing different religions, genders, political parties, ages, etc. The forum aimed to hold the military Government to account, and the entire process was streamed live on the internet, with the outcomes published online.⁷² Ultimately however, there is little evidence that the forum had any influence on the content of the final constitution.

Modalities of Inclusion of Women's Groups

Women and women's groups were included in the constitution-making process in Fiji through two modalities: the inclusive Constitution Commission and public consultations.⁷³

1 | The Constitution Commission

The three women commissioners had a high influence on the inner workings of the Commission, although final decision-making power rested with Chairperson Ghai. According to Commissioner Murray, most decisions were made together in the Commission.

2 | Public Consultations

The Constitution Commission aimed at gaining legitimacy through public consultations, and actively sought to promote the participation of all genders and ethnicities, and obtain proportionate representation of Indo-Fijian and Indigenous Fijian men and women in submissions for consideration in the drafting process.⁷⁴ It therefore publicized and held public consultations with a wide spectrum of Fijians, including historically excluded or marginalized groups like women, and ethnic and sexual minorities.⁷⁵ In addition, the Commission encouraged submissions (including in writing, in person at seminars and group discussions, and online) from children, adults, and the diaspora, either as individuals or as groups, in long or short format, and in any language.⁷⁶

Public consultations were held throughout the country, followed by several public seminars and group discussions aimed at raising awareness of the constitutional drafting process.⁷⁷ A website was also set up.⁷⁸ Around 7,100 written submissions

The Constitution Commission actively sought to promote the participation of all genders and ethnicities

Public consultations were held throughout the country

were received by post, email, and even through Facebook.⁷⁹ Submissions were processed efficiently and made available online. Yet the tight timeframe for the whole process also meant that the consultation timeframe was very short—just two and a half months.

According to the Constitution Commission, the vast majority of submissions related to livelihoods, the economy, morality, politics, and state institutions.⁸⁰ Many were concerned with human rights, particularly women's and Indigenous people's rights.⁸¹ Submissions received at the local (and particularly rural) levels complained of the lack of access to state services and officials, including the lack of medical facilities.⁸² Many provisions in the Commission Constitution covered the issues raised in submissions, particularly on land, governance, and public institutions.

Considerable efforts were made to include women's voices. From the Government's announcement of the drafting of a new constitution, women's organizations and movements like the FWRM had taken the initiative and participated in development projects (e.g. with UNDP) to educate and train women in Fiji's political and constitutional procedures and how they could participate, and advocated for their involvement. Women contributed to almost one-third of all submissions to the Commission, and took part in the public seminars and discussions in large numbers.⁸³

The Government held its own round of consultations to inform its version of the constitution. The public had less than two weeks to make submissions, and the Government received 1,093 written submissions, approximately 15 percent of the number received by the Constitution Commission. None were made public. Little is known about how submissions were taken into consideration and incorporated into the Government Constitution. Even less is known about the participation and influence of women in the process.⁸⁴

II. Analysis of Women's Influence: Enabling and Constraining Factors

Women exerted a high level of influence on the initial constitution-making process

Women exerted a high level of influence on the initial constitution-making process. The Commission's composition, its work, and the work of women's groups ensured that thousands of women made submissions, which fed into the drafting of a constitution. It is possible to envisage that the Commission Constitution could be a reference for future constitution-making processes or reforms in Fiji (and potentially elsewhere) that seek to promote a more inclusive society.

A set of process and context factors, such as selection procedures, strong pre-existing women's networks and organizations, and high level of preparedness among women's organizations, enabled women's influence in the constitution-making process.⁸⁵

Process Factors

1 | Women-friendly Selection Criteria and Procedures

This was the first time women formed the majority in a representative body

The appointment of the Commission was decided by the military Government and set out in the decree, without explanation. The criteria for appointment considered experience and independence. Three women were selected, and this was the first time women formed the majority in a representative body in Fiji.⁸⁶

The Commission's choice of public consultation process and active efforts through women's organizations such as the FWRM to encourage women to participate in public meetings and write submissions also enabled the influence of Fijian women in the process. The locations of public hearings were selected to ensure the widest possible geographical, ethnic, and rural/urban reach and representation. The commissioners held meetings in villages across the country. They employed a range of advertising methods to bring people to meetings, such as mass media and SMS messages.

There is no account of the selection of actors in the Government's drafting process, and the level of participation of women is unknown.

2 | Effective Transfer, Communication, and Advocacy Strategies

The commissioners conducted the consultations and transferred the discussions and issues raised to the constitution-drafting process.⁸⁷

The commissioners regularly engaged with women's groups throughout the consultation period

Some of the commissioners had longstanding personal and professional links with women's CSOs and movements, such as Women's Action for Change and FWRM. These relationships developed in both informal and formal settings, such as lunches, workshops, and community visits. The commissioners regularly engaged with women's groups throughout the consultation period. These conversations were stated to be of great importance in shaping the commissioners' own perceptions about the varied issues discussed. They enabled women and CSOs to advocate for and influence the text of the draft constitution directly. This is particularly evidenced in the Bill of Rights and in the provisions relating to temporary special measures, land inheritance, and ownership.⁸⁸

Written submissions played a key role. In particular, the FWRM submitted a paper that not only advanced the rights of women, but also those of minority groups, children, and youth, but also concerned human rights, access to information, and the structure of the government.⁸⁹

Women's organizations' strategies to raise awareness of the process among the Fijian public were also effective. They also advocated among women's organizations internationally, to lobby international governments to apply pressure on the Government of Fiji.

3 | International Support and Funding

The Constitution Commission received substantial funding from the Australian, New Zealand, and British High Commissions, the US Embassy, and the European Union.⁹⁰ Conciliation Resources, a UK-based NGO, played a pivotal role in supporting the Constitution Commission and its public consultations. Funding was used to provide technical, organizational, and logistical support.

Funding was also essential to support CSO initiatives

Funding was also essential to support CSO initiatives committed to the development and advancement of women in Fiji during the constitution-drafting process. UNDP implemented the National Initiative on Civic Education (NICE) program leading up to and in parallel with the constitution-drafting process to increase awareness of civic and human rights, including the role of parliament, the rights of citizens, and democratic processes. As a side-effect, this supported Fijian people taking part in the consultations, and enabled women (especially rural women), youth, people with disabilities, and marginalized Fijians to make their voices heard.⁹¹ Women's organizations who worked on advocacy for women and capacity-building to assist women's participation were funded by Australia, the EU, and New Zealand, among others.⁹²

Fiji's women's groups that worked with women's organizations operating in other countries publicized Fijian political developments internationally. This resulted in international pressure being maintained upon the military Government, while at the same time safeguarding local women's groups from violent military intimidation.⁹³

4 | Varying Decision-making Power

The commissioners successfully included women's concerns

The three women commissioners had decision-making power, and the commissioners successfully included women's points of view and concerns into the Commission Constitution. Ultimately, however, the decision on acceptance of the draft lay with the Government. It decided not to accept the Commission's draft, and subsequently made the decisions regarding its own draft.

Context Factors

1 | Presence of Strong and Well-Prepared Women's Groups

The pre-existence of strong women's groups supported women's ability to participate in and influence the constitution-drafting process.⁹⁴ In addition, previous experiences of political mobilization by women's organizations including the constitutional reform process in the mid-1990s laid a precedent for women's participation in political processes.⁹⁵

As early as 2009, the FWRM was helping to close the gap between women, non-governmental organizations, and the Government through the encouragement of dialogue (this developed into a multisector initiative called Dialogue Fiji) and capacity

building.⁹⁶ These activities provided a framework for the different actors to start talking about the country's longstanding political crises.⁹⁷

Activists started mobilizing to consolidate a women's movement

In 2011, activists started mobilizing in order to consolidate a women's movement around the inevitable political change process.⁹⁸ Then, in April 2012, women's organizations created the Fiji Women's Forum to advocate for an increase in representation of women in positions of political leadership.⁹⁹ They also worked to raise awareness of women's specific needs in the new constitution. They conducted an education program for women voters.¹⁰⁰ A number of strong, active organizations focused on educating and building the capacities of women, both around constitutional matters and women's equality, and preventing gender-based violence. The Fiji Women's Crisis Center, founded in 1984, was a pioneer in providing community education on combating gender-based violence and engaging in advocacy to improve the response by authorities and develop policy and legislation to tackle domestic violence. Moreover, since 2003, the FWRM had developed a program to enhance the leadership capacity and advocacy skills of young women and girls.¹⁰¹ This helped to provide a foundation for women's participation during the public consultations.

The women commissioners were highly experienced, and their high level of expertise contributed to their influence.

2 | Early Elite Support Gave Way to Resistance

The Government's support of the Commission process only lasted during the set-up phase

The early part of the constitution-making process involved the general public and non-partisan experts. At first, the Constitution Commission had strong support from the Government, and the military and political elites. Critics of Fiji's military Government even suspected the Commission of colluding with the regime at the beginning of the process. However, the Government's support of the Commission process only lasted during the set-up phase, and dissipated as the Commission's activities became more critical of and detached from the Government, and this impacted on women's influence.¹⁰²

The break-up was rooted in conflicting perceptions of the roles of government and civil society in the process, particularly between the Prime Minister and the Attorney-General, and Chairperson Ghai.¹⁰³ The Constitution Commission's lack of attention to the Government during the consultations and drafting process proved to be a mistake from a larger perspective of inclusion and in light of the Government's power.

3 | Attitudes and Expectations Surrounding Societal Gender Roles

Strong patriarchal attitudes towards women persisted in Fiji.¹⁰⁴ This potentially constraining factor was significantly offset, however, by the strong influence exercised by the three women on the Constitution Commission, although it must be acknowledged that only one of the women was an Indigenous Fijian (Commissioner Vakatale) and none of the three women were from the Indo-Fijian population.

4 | Heterogeneity of Women's Political Identities Overcome through Adaptation of Strategy

Tensions constrained the ability of women's groups to coordinate

Following the 2006 coup, women's organizations and CSOs in Fiji were divided by differences of political opinion over the legitimacy of the military Government and Fiji's future.¹⁰⁵ These tensions constrained the ability of women's groups to coordinate and build coalitions to influence political decision-making. However, in the few years leading up to the constitution-drafting process, women's organizations took up a more collaborative strategy, and organized civil society dialogues, adapted their advocacy tactics, and even opened up channels of communication with representatives of the military Government. These adaptations contributed to women's groups overcoming their heterogeneous political identities, thus enabling them to have more influence in the Commission process.

III. Conclusion

Had the Commission Constitution been adopted, it could have provided the basis for a more gender-equal society

Women's influence was strong and substantial during the first, relatively inclusive constitution-drafting process under the lead of the Constitution Commission. The draft Commission Constitution promoted issues advocated for by women's groups, including women's rights and their increased participation in political decision-making, and youth, human rights, and the protection of minorities. Three experienced women commissioners were at the core of the decision-making process. International donor support and strong and well-prepared women's groups engaged Fijian women in the public consultation process, ensuring that they made submissions about issues they cared about, and that these submissions were transferred into the resulting draft. Had the Commission Constitution been adopted, it could have provided the basis for a more gender-equal society, including increased women's participation in decision-making.

However, the Government rejected the draft, along with the provisions recognizing the rights of women, and ensuring better representation of women in legislative positions, among others. Instead, a second constitution-drafting process took place without any formal or obvious role of women, or other societal actors. The constitution that was ultimately adopted recognizes the right to equal treatment and equal protection and prohibits unfair discrimination based on gender, but contains no specific provisions to address the unequal position held by women in the society. The Government Constitution does not have the same level of legitimacy as the Commission Constitution, since it was not drafted in the same participatory way.

References

- ¹ In this case study, “Fijian women” refers to all women in Fiji, including the two predominant groups, indigenous or iTaukei women and Indo-Fijian women, as well as women from other ethnic groups or backgrounds.
- ² Priya Chattier, “Women in the House (of Parliament) in Fiji: What’s Gender Got to Do with It?” *The Round Table*, Vol. 104, No. 2 (2015): 177-188.
- ³ World Economic Forum, *The Global Gender Gap Report 2015* (Geneva, 2015); United Nations Development Programme, *Human Development Report 2016* (New York, 2016).
- ⁴ Chattier, “Women in the House,” 178.
- ⁵ Fiji Women’s Crisis Centre, *Somebody’s Life, Everybody’s Business! National Research on Women’s Health and Life Experiences in Fiji (2010/11): A Survey Exploring the Prevalence, Incidence and Attitudes to Intimate Partner Violence in Fiji* (Suva, 2013), 2.
- ⁶ Fiji Women’s Crisis Centre, *Somebody’s Life, Everybody’s Business*, 6.
- ⁷ *Ibid.*, 146, 148.
- ⁸ Fiji Ministry of Strategic Planning, National Development and Statistics, *Fiji Post-Disaster Needs Assessment Tropical Cyclone Evan* (Suva, 2012), 55; Fiji Ministry of National Planning, *Millennium Development Goals, 2nd Report, 1990–2009 Reports for the Fiji Islands* (Suva, 2010), 31.
- ⁹ Fiji, *Millennium Development Goals*, 31–32.
- ¹⁰ International Women’s Development Agency, “Fiji”, <http://iwda.org.au/fiji/> [accessed 22 August 2018].
- ¹¹ Inter-Parliamentary Union, *Women in National Parliaments* (Geneva, 2016).
- ¹² Chattier, “Women in the House,” 177.
- ¹³ UNDP, *Women’s Representation in Local Government in Asia-Pacific* (New York, 2010).
- ¹⁴ Nicole George, *Situating Women: Gender Politics and Circumstance in Fiji* (Canberra: ANU Press, 2012), 5.
- ¹⁵ *Ibid.*, 39.
- ¹⁶ *Ibid.*, 5.
- ¹⁷ Department of Foreign Affairs and Trade, *Fiji Country Plan 2013/14 – 2016/17* (Canberra: 2016), 7.
- ¹⁸ *Ibid.*, 7.
- ¹⁹ UNDP, *Human Development Report 2016*.
- ²⁰ International Women’s Development Agency, “Here’s What Climate Change Looks Like in the Pacific”, 23 January 2018, <https://iwda.org.au/heres-what-climate-change-looks-like-in-the-pacific/> [accessed 27 August 2018].
- ²¹ Fiji Bureau of Statistics, *Census 2007*.
- ²² University of Maryland Center for International Development and Conflict Management, *Minorities at Risk Project*, <http://www.mar.umd.edu/> [accessed August 16, 2016].
- ²³ Stewart Firth, Jon Fraenkel, and Brij V. Lal (eds.), *The 2006 Military Takeover in Fiji: A Coup to End all Coups?* (Canberra: ANU Press, 2009).
- ²⁴ George, *Situating Women*, 5.
- ²⁵ *Ibid.*
- ²⁶ Yash P. Ghai, “Ethnicity, Politics and Constitutions in Fiji,” in *Bearing Witness: Essays in Honour of Brij V. Lal.*, eds. Doug Munro and Jack Corbett (Canberra: ANU Press 2017), 194.

- ²⁷ Government of Fiji, Fiji Constitutional Process (Constitution Commission) Decree 2012 (Decree No. 57 of 2012). Gazetted on 18 July 2012 (Suva, 2012); Government of Fiji, Fiji Constitutional Process (Constituent Assembly and Adoption of Constitution) Decree 2012 (Decree No. 58 of 2012). Gazetted on 18 July 2012 (Suva, 2012).
- ²⁸ Nils A. Butenschøn, Øyvind Stiansen, and Kåre Volla, *Power-Sharing in Conflict-Ridden Societies. Challenges for Building Peace and Democratic Stability* (London: Routledge, 2015); Decree No. 57 of 2012; Decree No. 58 of 2012.
- ²⁹ Electoral laws and processes in Fiji until this point resulted in voting and election of public officials according to ethnicity, little cooperation between ethnic communities or parties, a lack of multi-ethnic parties, and ultimately a non-integrated political system that reflected the ethnic divisions prevalent in Fiji. See Ghai, "Ethnicity, Politics and Constitutions in Fiji," 189-193.
- ³⁰ Decree No. 57 of 2012; Decree No. 58 of 2012.
- ³¹ The Constitution Commission, *Draft Constitution: The Explanatory Report*, 2012, 26.
- ³² *Ibid.*, 45.
- ³³ Ghai, "Ethnicity, Politics and Constitutions in Fiji," 196.
- ³⁴ *Ibid.*; Robbie Robertson, *The General's Goose* (Acton ACT: ANU Press, 2017), 272.
- ³⁵ Robert Norton, "Country Case Study: Fiji," in *Pacific Ways: Government and Politics in the Pacific Islands* ed. Stephen Levine, second edition (Wellington: Victoria University Press, 2016); Virasila Buadromo, "The Constitutional Process: A View from the Fiji Women's Rights Movement," *Legitimacy and Peace Processes: From Coercion to Consent* (Conciliation Resources, ACCORD Issue 25, 2014), 67.
- ³⁶ Romitesh Kant and Eroni Rakuita, *Public Participation & Constitution-Making in Fiji: A Critique of the 2012 Constitution-Making Process*, SSGM Discussion Paper 2014/6 (Canberra: Australian National University), 14.
- ³⁷ Joni Madraiwiwi, *Treading in Moses' Footsteps: Fiji's Fourth Constitution*, International IDEA, 30 September 2013, <http://www.constitutionnet.org/regioncountry/fiji> [accessed 11 September 2017].
- ³⁸ Citizens Constitutional Forum, *An Analysis: 2013 Fiji Government Constitution* (Suva: September 2013).
- ³⁹ *Ibid.*, 31.
- ⁴⁰ "14 Arrests in Fiji after Anti-constitution Protest," Radio New Zealand, 6 September 2013, www.radionz.co.nz/international/pacific-news/220673/14-arrests-in-fiji-after-anti-constitution-protest [accessed 22 August 2018].
- ⁴¹ Buadromo, "The Constitutional Process," 68.
- ⁴² Civicus, "Monitor Tracking Live Space: Fiji," <https://monitor.civicus.org/country/fiji/> [accessed 22 August 2018].
- ⁴³ Free and fair elections must have: "A coherent constitutional and legislative framework; independent and impartial election administrators, supported by a free media and peaceful order; and agreement of all political parties to participate in competitive elections" (Citizens' Constitutional Forum, *An Analysis: 2013 Fiji Government Constitution* (Suva, September 2013), 5) cf: Freedom House, "Freedom in the World 2015: Fiji," <https://freedomhouse.org/report/freedom-world/2015/fiji> [accessed 11 September 2018].
- ⁴⁴ Citizens Constitutional Forum, *An Analysis*. Appendix A.
- ⁴⁵ Kant and Rakuita, "Public Participation & Constitution-Making in Fiji," 15.
- ⁴⁶ Madraiwiwi, "Treading in Moses' Footsteps."

- ⁴⁷ Decree No. 57 of 2012, Section 6(3) and 7, Schedule 1.
- ⁴⁸ “Fiji Completes Constitutional Commission,” PR Newswire, 1 May 2012, <http://www.prnewswire.com/news-releases/fiji-completes-constitutional-commission-149626895.html> [accessed 28 September 2017].
- ⁴⁹ Decree No. 57 of 2012, Section 8 and Schedule 1.
- ⁵⁰ Mohammed Hassan Khan, Ashiana Shah, and Suliana Siwatibau, “Fiji Civil Society Index Report,” *A Civil Society in Transition* (Suva: 2007), 2.
- ⁵¹ Previous constitution-drafting exercises in Fiji also involved international experts. Richard Perez-Pena, “Albert P. Blaustein, a Drafter of Constitutions, Dies at 72,” *The New York Times*, 23 August 1994, <https://www.nytimes.com/1994/08/23/obituaries/albert-p-blaustein-a-drafter-of-constitutions-dies-at-72.html> [accessed 27 September 2018]; Yash Ghai and Jill Cottrell, “A Tale of Three Constitutions: Ethnicity and Politics in Fiji,” *International Journal of Constitutional Law*, Vol. 5, No. 4, (2007): 639–669.
- ⁵² The Constitution Commission, *Draft Constitution: The Explanatory Report*, 2012.
- ⁵³ George, *Situating Women*, 208.
- ⁵⁴ European Commission, “Action Fiche for the 10th EDF Envelope B in favour of the Republic of Fiji, 2012/024-140, Strengthening Civic Education and Dialogues to Support Transition to Democracy and the rule of Law in Fiji – CivED,” 1 January 2013, https://ec.europa.eu/europeaid/action-fiche-10th-edf-envelope-b-favour-republic-fiji-2012024-140-strengthening-civic-education-and_en [accessed 27 September 2018].
- ⁵⁵ George, *Situating Women*, 213; Robertson, *The General's Goose*, 235-7; Morgan Franciska Hanks, “Aid, Sanctions, and Civil Society: An Analysis of the Impact of Targeted Sanctions on Fiji’s Non-governmental Organizations,” Victoria University of Wellington, Masters thesis (2011), 66.
- ⁵⁶ Hanks, “Aid, Sanctions, and Civil Society,” 66-67.
- ⁵⁷ George, *Situating Women*, 141-2.
- ⁵⁸ *Ibid.*, 197.
- ⁵⁹ *Ibid.*, 203; DFAT, *Fiji Country Plan*, 7.
- ⁶⁰ Buadromo, “The Constitutional Process,” 65.
- ⁶¹ George, *Situating Women*, 204.
- ⁶² *Ibid.*, 206-7.
- ⁶³ *Ibid.*, 207.
- ⁶⁴ *Ibid.*, 56.
- ⁶⁵ *Ibid.*, 57.
- ⁶⁶ *Ibid.*, 170.
- ⁶⁷ *Ibid.*, 210.
- ⁶⁸ United Nations Development Programme and the Government of Fiji, “National Initiative on Civic Education (NICE): Mid-Term Project Review” (July 2009).
- ⁶⁹ Fiji Women’s Rights Movement, *Fiji Women’s Forum*, <http://www.fwrm.org.fj/programmes/intergenerational-womens-leadership/fiji-womens-forum> [accessed 11 September 2018]; Buadromo, “The Constitutional Process.”
- ⁷⁰ Juhie Bhatia, “Fiji Constitution Debate Bypasses Outer-Island Women,” *We News*, 19 October 2013, <https://womensenews.org/2013/10/fiji-constitution-debate-bypasses-outer-island-women/> [accessed 11 September 2018].
- ⁷¹ George, *Situating Women*, 129.

- ⁷² Citizens' Constitutional Forum & Fiji Women's Rights Movement, "Outcomes of the People's Constitutional Forum," March 2013, <http://www.c-r.org/resources/fiji-outcomes-peoples-constitutional-forum> [accessed 27 August 2018]; Buadromo, "The Constitutional Process."
- ⁷³ Thania Paffenholz, "Civil Society and Peace Negotiations: Beyond the Inclusion-Exclusion Dichotomy," *Negotiation Journal* (2014): 69-91.
- ⁷⁴ The Constitution Commission, *Draft Constitution: The Explanatory Report*, 2012, 122.
- ⁷⁵ The Constitution Commission, "Civic Education Flyer," http://www.c-r.org/downloads/ConstitutionCommission_Fiji_CivicEducation_Flyer.pdf [accessed October 13, 2016]; the Constitution Commission, *Draft Constitution: The Explanatory Report*.
- ⁷⁶ The Constitution Commission, *Draft Constitution: The Explanatory Report*.
- ⁷⁷ *Ibid.*, 122-3.
- ⁷⁸ Jason Gluck and Brendan Ballou, *New Technologies and Constitution Making* (Washington DC: United States Institute of Peace, 2014).
- ⁷⁹ The Constitution Commission, *Draft Constitution: The Explanatory Report*.
- ⁸⁰ *Ibid.*, 38.
- ⁸¹ *Ibid.*
- ⁸² *Ibid.*
- ⁸³ Buadromo, "The Constitutional Process."
- ⁸⁴ Citizens Constitutional Forum, *An Analysis: 2013 Fiji Government Constitution*.
- ⁸⁵ Paffenholz, "Civil Society and Peace Negotiations."
- ⁸⁶ Government of Fiji, "Fiji Completes Constitutional Commission," *PR Newswire*, 1 May 2012.
- ⁸⁷ The Constitution Commission, *Draft Constitution: The Explanatory Report*, 38.
- ⁸⁸ Constitution Commission Draft Constitution, 2012, Chapter 3, Part A; , Article 44.
- ⁸⁹ Fiji Women's Rights Movement, "Submission to the Constitution Commission," Suva, 2012, 2.
- ⁹⁰ The Constitution Commission, *Draft Constitution: The Explanatory Report*, 2012.
- ⁹¹ European Commission, "Action Fiche for the 10th EDF Envelope B in favour of the Republic of Fiji, 2012/024-140, Strengthening Civic Education and Dialogues to Support Transition to Democracy and the rule of Law in Fiji - CivED," 1 January 2013, https://ec.europa.eu/europeaid/action-fiche-10th-edf-envelope-b-favour-republic-fiji-2012024-140-strengthening-civic-education-and_en [accessed 27 September 2018].
- ⁹² *Ibid.*
- ⁹³ George, *Situating Women*, 199.
- ⁹⁴ Nicholl Rae, "Broken Promises: Women and the 2006 Fiji Election," in *From Election to Coup in Fiji: The 2006 Campaign and its Aftermath*, eds. Jon Fraenkel and Stewart Firth (Suva: Institute of Pacific Studies Publications, the University of the South Pacific and Asia Pacific Press, 2007), 168.
- ⁹⁵ George, *Situating Women*, 141-2.
- ⁹⁶ Buadromo, "The Constitutional Process"; Chattier, "Women in the House"; FWRM, "Submission to the Constitution Commission."
- ⁹⁷ Buadromo, "The Constitutional Process."
- ⁹⁸ Chattier, "Women in the House," 183.

- ⁹⁹ Fiji Women's Rights Movement, *Fiji Women's Forum*, <http://www.fwrp.org.fj/programmes/intergenerational-womens-leadership/fiji-womens-forum> [accessed 11 September 2018]; Buadromo, "The Constitutional process: a view from the Fiji Women's Rights Movement."
- ¹⁰⁰ Juhie Bhatia, "Fiji Constitution Debate Bypasses Outer-Island Women," *We News*, 19 October 2013, <https://womensnews.org/2013/10/fiji-constitution-debate-bypasses-outer-island-women/> [accessed 11 September 2018].
- ¹⁰¹ FWRM, "Inter-generational Women's Leadership," <http://www.fwrp.org.fj/programmes/intergenerational-womens-leadership/fiji-womens-forum> [accessed 11 September 2018].
- ¹⁰² Buadromo, "The Constitutional Process".
- ¹⁰³ Buadromo, email exchange.
- ¹⁰⁴ Fiji Women's Crisis Centre, *Somebody's Life, Everybody's Business*, 18.
- ¹⁰⁵ George, *Situating Women*, 206–7.

Acknowledgments

This case study was written by Estefanía Charvet and Hannah Brown based on research conducted in 2016 and 2017, and on information gathered in an unpublished background case study on Fiji (2006–2013) authored by Maria Christina Vibe and Christian Keller as part of the Broadening Participation Project. Both the original and this case study on women's inclusion in Fiji benefitted from several rounds of expert review. In appreciation of their in-depth comments, we would like to give special thanks to Virisila Buadromo and Ciaran O'Toole. We are also grateful to Dr. Nicole George and Dr. Christina Murray for sharing with us their thorough analysis and suggestions.

Women in Peace and Transition Processes

Case studies in this series are based on findings of the “Broadening Participation in Political Negotiations and Implementation” research project (2011–2017), a multi-year comparative research project led by Dr. Thania Paffenholz at the Graduate Institute of International and Development Studies, Geneva. The Broadening Participation project examined how and under which conditions various actors participated in and influenced peace and political transition processes. The project’s dataset comprises 40 mainly qualitative case studies of negotiation and implementation processes, covering 34 countries, and ranging from 1989 to 2014. These cases are categorized according to a range of groups of included actors and a framework of seven inclusion modalities developed by Thania Paffenholz. Among the case studies under review for this project, 28 included measurable involvement of women. In this context, women were defined as relatively organized groups, including delegations of women, women’s civil society organizations, coalitions or networks, which sought inclusion in peace negotiations and the implementation of agreements. The project did not investigate the role of women as mediators. For more information, see: www.inclusivepeace.org

The creation of this series of women case studies was made possible in part through a contribution from Inclusive Security and UN Women, and the original research project was supported by the Governments of Norway, Switzerland, Germany, Finland and Turkey. The Broadening Participation Project research was conducted in cooperation with Bilkent University in Ankara under the lead of Dr. Esra Çuhadar. The case study research additionally benefited from cooperation with Tufts University in Boston in 2013 and 2014 under the lead of Dr. Eileen Babbitt.

The Inclusive Peace & Transition Initiative (IPTI) is dedicated to evidence-based research and its transfer to policy and practice. The objective of the initiative is to support sustainable peace by providing expertise and information on the inclusion of diverse actors in peace and transition processes. This expertise is drawn from a collection of research projects that have been conducted for nearly a decade at the Graduate Institute of International and Development Studies in Geneva under the lead of Dr. Thania Paffenholz.

© by Inclusive Peace & Transition Initiative (The Graduate Institute of International and Development Studies), 2018 All Rights Reserved

Suggested citation: *Women in Peace & Transition Processes: Fiji (2012)*, Geneva: Inclusive Peace & Transition Initiative (The Graduate Institute of International and Development Studies), December 2018.

**IPTI, Graduate Institute
Maison de la Paix
Chemin Eugène-Rigot 2
1202 Genève**

This publication and more at:
inclusivepeace.org