

Introduction

On 1 July 2009, the Bainimarama regime announced a road map for democracy that promised a transition to parliamentary democratic rule by September 2014 (Ministry of National Planning 2009). An important part of this roadmap were the plans for a constitution-making process that would provide a 'solid foundation and framework for the rebuilding of our nation'. To ensure national ownership of the constitution, the regime promised a participatory constitution-making process that would involve political parties, the private sector, civil society, non-government organisations, and citizens of Fiji.

Constitution-making over the years has developed into an important element of democratic transition that involves 'a new social contract between and within the governed and the governors' (Partlett 2012). Constitution-making in transitioning societies is complex and multidimensional, and involves several processes with various actors consulting with each other to reach a settlement on the nature of the constitution. The measures adopted in reaching agreements vary — while some countries choose to modify the existing constitution, others repeal the existing one, thereby setting in motion a process for drafting a new one. This renewed interest in the processes of democratisation has led to more emphasis being placed on the importance of citizen participation in the drawing up and implementation of constitutions. According to Banks (2007, 138), participatory constitution-making is premised on the idea that democratic constitutions should be created and adopted through democratic processes.

Public Participation in the 2012 Constitution-Making Process in Fiji

Public participation in Fiji's recent constitution-making process was merely tokenistic. Decree No. 57 was clear regarding the functions of the Constitution Commission. Sections 7 and 8 mandated the commission to 'inform', 'collect', and 'receive' people's views. While doing this, the commission was to ensure that this process was coordinated with civic education so as to ensure that people had a good understanding of the issues before they expressed their views (Fiji Government 2012). However, this

is too simplistic an analysis of the extensive and exhaustive work that the Constitution Commission undertook. A more comprehensive analysis would offer more insight into the different interests at play during the public consultation phase, through the analysis of how, why and by whom participation was used.

For the people, participation signified *inclusion*. Since 5 December 2006, people in Fiji have been disenfranchised, unable to air their views. After five and a half years of suppression, they felt that they could finally have their say, although many were sceptical at first. This is evidenced by the fact that the commission received more than 7000 submissions of which just over 1000 were from groups.

For the Constitution Commission, participation meant a number of things. Firstly, it meant the *legitimation* of the process and for the draft constitution. It also meant *sustainability and empowerment* that would ensure the population taking ownership.

For the regime, participation meant *legitimation*. As Cornwall (2008) and White (1996) noted, participation is about motivations that lead to [governments] adopting participatory approaches and about power and control. It became evident that the regime had predetermined the outcome of this process and that public participation gave credibility to their ambitions. There was a gap between the rhetoric of 'genuine participatory process' and the actions of the regime and the military before, during, and after the public consultation phase. Changes to the decree governing the commission's work in late October 2012 and the actions of the police in December seizing copies of the draft constitution also indicate the regime's unhappiness with the process. On 10 January 2013, the president informed the nation that while the commission's draft contained a few good elements he had instructed the regime to draw up a new draft to be presented to the Constituent Assembly (*Fiji Times* 2013). On 21 March, the regime repealed the Constituent Assembly decree, thereby altering the process yet again. On 31 March, it released its own version of the draft where the people were asked to be the Constituent Assembly, providing comments, within a month, on the regime's draft constitution to the attorney general's office. The actions of the regime during and after the public consultation phase suggest

that the regime was unhappy with how things were unfolding, indicating that the regime felt it could no longer influence the process as it had wished.

After assenting to the constitution, on 6 September the president stated, 'With this document ... we lay the foundations of a new Fiji — taking our place among the great democracies and fulfilling the dream we all share of better days to come' (Fiji Government 2013). Bainimarama described the new constitution as a 'blueprint for democracy', marking a 'new beginning' for Fiji. 'The 2013 Fijian constitution enshrines principles that are at the heart of all the great liberal democracies ... an independent judiciary, a secular state and a wide range of civil, political and social-economic rights' (Australia Network News 2013).

Conclusion

There is a connection between the process and the outcome of the process, although the connection might not be straightforward as the process has many stages, any of which can influence the outcome (Cottrell and Ghai 2012). The recent constitution-making process in Fiji offered many promises and hopes for a transition to democracy; however, after the regime hijacked the process in Phase 2, these hopes vanished, confirming the suspicion that the regime had its own agenda.

Fiji is scheduled to hold elections on 17 September 2014. Political campaigning in the lead-up to the elections ranges from issues related to public policy to changes to the 2013 constitution. On 14 June 2014, the leader of the Social Democratic Liberal Party (SODELPA), Ro Teimumu Kepa, stated that once elected to power SODELPA would seek to change the 2013 constitution by referring to the Supreme Court for an advisory opinion on the status of the 1997 constitution (Radio New Zealand International 2014). Following this announcement, the commander of the military, in an interview, stated 'the army would not tolerate an elected government rewriting the new constitution' (Marks 2014).

These pronouncements by the military commander do not augur well for the future stability of Fiji. The intention to change the 2013 constitution by the major political parties (except the regime's FijiFirst Party) indicates the lack of ownership and legitimacy in the document that was borne of a fraught process, a document written in secrecy with the intention of preserving the status quo. The

elections and support these parties receive will clearly indicate the extent of discontent people have with the 2013 constitution.

Author Notes

Romitesh Kant is a teaching assistant at the University of the South Pacific. His research interests are in democracy, human rights and constitutionalism in multicultural societies.

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