

## Gender Quotas and the 2021 Samoan Constitutional Crisis: What Next for the ‘10 Per Cent Law’?

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While parliamentary gender quotas have been increasingly adopted around the world since the 1970s, they have proved less popular in the Pacific region. To date, the only independent Pacific state to adopt a parliamentary gender quota is Samoa, which introduced what was colloquially known as the ‘10 per cent law’ through a 2013 constitutional amendment. The law mandates a minimum level of women’s political representation; if this threshold is not met at a general election, the highest-polling unsuccessful women candidates can take up additional seats in parliament. This In Brief examines the implications of the constitutional crisis following the 2021 Samoan general election for its gender quota legislation, and how a similar situation might be avoided in the future.

The Samoan quota law was introduced by the Human Rights Protection Party (HRPP) government in 2013. While women’s representation in parliament had been consistently low since independence, the quota was perceived as largely motivated by external pressures, notably from the United Nations, rather than domestic drivers (Baker 2019). The law was first used, with little fanfare, in the 2016 general election. After only four women were elected outright, one additional woman member of parliament (MP) was appointed to what became a 50-seat legislature, meaning women made up exactly 10 per cent of parliamentarians. All the women MPs were members of the HRPP, which had been in power almost continuously since 1982. Notably, Fiame Naomi Mata’afa became Samoa’s first woman deputy prime minister following the 2016 election, another milestone for gender equality. Yet in 2020, Fiame resigned from cabinet in protest against controversial changes to the judicial system. Prior to the 2021 general election, she became leader of the newly formed opposition party Fa’atuatua i le Atua Samoa ua Tasi (FAST).

The result of the election, held on 9 April, was a shock: after 40 years of near-complete political dominance by the HRPP, there was a deadlock. HRPP and FAST both won 25 seats each, with a single independent MP seemingly in the deciding position. Five women were elected, including Fiame,

who ran unopposed. What followed was three months of political turmoil as a constitutional crisis evolved around the use of the 10 per cent law.

### The 10 per cent law and the 2021 constitutional crisis

At the centre of the crisis were differing interpretations of the gender quota provisions. The amendment [states](#) that women should ‘consist of a minimum of 10 per cent of the Members of the Legislative Assembly ... which for the avoidance of doubt is presently five’. Since the introduction of the amendment, the size of the Samoan parliament has increased slightly, from 49 to 51 members. Some argued that, due to this change, the five elected women MPs did not meet the requirement of ‘a minimum of 10 per cent’. Others disagreed, claiming that the correct interpretation was five women MPs. The difference was crucial: the appointment of an additional woman MP would boost the HRPP’s numbers and, with the sole elected independent MP joining FAST, create another deadlock.

As action moved to the courts and the stalemate dragged on, Samoa’s gender quota law became the subject of much public debate (Motusaga 2021a, 2021b). An HRPP-backed women’s empowerment march in support of the broader interpretation of the quota was held in Apia, the capital, in late May, with newspapers [reporting](#) more than 500 women marching and an even larger crowd at a later HRPP rally. In public and social media statements, FAST highlighted the value of having a woman leader — a development that a more generous interpretation of the quota provisions would ironically block — and accused the HRPP of [weaponising](#) gender equality for political purposes.

On 17 May, the Supreme Court [ruled](#) in FAST’s favour and declared the appointment of an additional MP unconstitutional. At the beginning of June, however, the Court of Appeal issued a [final ruling](#) that the constitutionally required number of women MPs is in fact six, not five, but that all petitions needed to be settled and by-elections held before any additional women

MPs could be appointed.<sup>1</sup> On 23 July, the Court of Appeal issued a further judgement paving the way for Fiame and FAST to officially take office. HRPP leader Tuilaepa Sailele Malielegaoi conceded shortly afterwards, although the HRPP has since staged multiple rallies and protests criticising the judiciary. In August, he [accused](#) New Zealand Prime Minister Jacinda Ardern of plotting to replace him with a woman leader.

### What next for the 10 per cent law?

While the constitutional crisis seems to be over, issues around the 10 per cent law remain. A key trigger of the crisis was the confusing wording of the constitutional amendment. Indeed, the three judges in the May judgement were divided on their interpretations of the provisions: Justices Tuatagaloa and Vaai argued the minimum threshold was five, while Justice Nelson argued it was six, but concurred that the way the additional woman MP was appointed was unconstitutional. All [agreed](#) the process for appointing additional women MPs needed to be clarified by parliament rather than the courts. The June judgement [noted](#) 'mixed messages, confusion and an ambiguity of ideas' within the quota provisions.

In the lead-up to the 2021 election, there were substantial changes to electoral law, including an increase in the number of parliamentary seats and a change to compulsory voting. Within this suite of changes, the constitutional gender quota provisions were left unaltered. There has been [significant debate](#) over whether this was an oversight. Certainly prior to 2021, given the almost absolute dominance of the HRPP, there seemed little likelihood the gender quota provisions would have any substantial impact on the formation of government. The lack of attention paid to potential implications of the quota in light of an expanded parliament suggests it was perceived as a peripheral rather than central facet of the electoral system. The 2021 crisis, however, proved this assumption incorrect, and updating the quota provisions now appears more urgent.

Any potential clarifications to the 10 per cent law face significant roadblocks in Samoa's new political landscape. During the HRPP's tenure, the party regularly won two-thirds or greater parliamentary majorities. This enabled the government to amend the constitution at will, including instituting the gender quota, which the opposition Tautua Samoa Party initially strongly opposed (Baker 2019). While FAST has won government, it is with a slim majority, making constitutional reform out of reach without HRPP support. In the immediate aftermath of the constitutional crisis, relations between the parties are still hostile, suggesting such bipartisan support is unlikely in the near future.

The Court of Appeal judgement supported a generous rather than restrictive interpretation as most fitting with the goal of the legislation, that is, to increase women's representation in parliament. The purpose of the 10 per cent law when it was introduced — by a cabinet that included both Fiame and Tuilaepa — was to provide guaranteed space for women in decision-making. This is crucially important, as women have historically been under-represented in Samoan politics. The elevation of Fiame to the position of prime minister in 2021 is a milestone for women in politics in Samoa and the wider Pacific region. While the messy debate over quota provisions complicated her path to power, it in some ways reinforced the importance of women's political representation and leadership. Yet, to guarantee the longevity and legitimacy of the 10 per cent law, constitutional amendments are necessary to ensure clearer, unambiguous language and institute an apolitical process by which additional women MPs are appointed. As noted by the Supreme Court judges, this is a job for parliament rather than the courts, but will require a bipartisan approach, a difficult prospect in the tense political environment of contemporary Samoa.

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### Author notes

Kerryn Baker is a fellow with the Department of Pacific Affairs at The Australian National University.

### Endnote

1. Election petitions were filed in 28 of the 51 constituencies. Subsequent court rulings and resignations have triggered at least seven by-elections.

### References

- Baker, K. 2019. *Pacific Women in Politics: Gender Quota Campaigns in the Pacific Islands*. Honolulu: University of Hawai'i Press.
- Motusaga, M. 2021a. [The Controversial Use of the Gender Quota in the 2021 Samoan General Election: A Personal Perspective — Part 1](#). DPA In Brief 2021/16. Canberra: Australian National University.
- Motusaga, M. 2021b. [The Controversial Use of the Gender Quota in the 2021 Samoan General Election: A Personal Perspective — Part 2](#). DPA In Brief 2021/17. Canberra: Australian National University.

