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TUVALU CONSTITUTIONAL REVIEW PROJECT REPORT

January – July 2018

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PROJECT OVERVIEW

Funding: USD\$800,000

Donors: DFAT, Australia; Government of Tuvalu; and UNDP

Programme Period: November 2016 – November 2019

Project Outputs:

1. Strengthened institutional and technical capacity of the Constitutional Review Committee and Attorney General's Office to undertake the Constitutional Review Process (Planning Stage)
2. Enhanced citizen knowledge and engagement on the Constitution and the Constitutional Review Process (Consultation and Information Gathering Stage)
3. Formulation of recommendations, amendments and support provided toward advisory referendum and Adoption of the new Constitution

Counterpart Institutions:

Parliament of Tuvalu and the Office of the Attorney General



BACKGROUND

Tuvalu's current Constitution dates from 1986. Although the Constitution has generally served the country well, there are a number of internal political concerns that have prompted the Government to consider a revision of the Constitution. The political system in Tuvalu has experienced a number of crises with which the Constitution itself was not sufficient to resolve several sensitive incidents that had occurred during the past years. Noting the economic, social and political advancement and developments nationally and globally, these are also important indicators that verify the need to review the Constitution to reflect the current context and also international practices and commitments that Tuvalu has under its international obligations.

A preliminary assessment was undertaken in mid-January through a UNDP led technical assistance mission and in addition to the political crisis that is seen as one of the key factors driving the need for the Constitution review, it was also noted there were other issues prompting possible constitutional revision which include the role of religion and religious freedom; the constitution not adequately reflecting trends in constitutional drafting; it is virtually silent on gender; it also does not recognize the need for inclusion of marginalized populations such as the disabled; it is silent on environmental issues and also written in a rather inaccessible style. Hence, constitutional review thus seemed appropriate with an eye toward modernizing the document and making sure it suits the needs of the country going forward.



Figure 1 The Protection of Traditional and Cultural Rights and Values is considered a fundamental part of the Constitutional Review Process

In consideration of the inherent needs identified, UNDP in close consultation with the Government and key stakeholders in Tuvalu developed a comprehensive project, the Tuvalu Constitutional Review Project (TCRP) to support the constitutional review process.

INTRODUCTION

The Tuvalu Constitutional Review Project (TCRP), commenced implementation in November 2016 following the official signature of the Project Document between the Government of Tuvalu and UNDP. The Project is funded through financial support from the Government of Tuvalu, Government of Australia and UNDP. The Project is directly managed by UNDP Pacific Office in Fiji which provides technical project management, procurement and policy advisory services through its technical advisors. This process is supported on the ground through a Constitutional Review Officer, Civic Education Officer and other technical drafters (to be hired in 2018).

The TCRP is a 3-year project supporting the government and people of Tuvalu to review their national constitution considering the socio-economic and political challenges. The project provides the required technical expertise and independent advice through constitutional experts to ensure the



constitutional review is more technically proficient, inclusive, participatory and transparent and also conforms to international treaties and conventions, in particular human rights. This process is expected to result in a more educated citizenry, a constitution with text that more accurately reflects the needs and aspirations of the Tuvalu people, and is able to endure and address social, economic and political challenges.

In the end this is all geared to ensure Tuvalu has more accountable and effective government (constitution better equipped to deal with past political crisis), a citizenry that is better able to hold leaders to account (because more educated on constitutional rights and duties), stronger social cohesion (because the constitution addresses root causes of rifts between the religions, islands and land rights), and more sustainable development (more socio-economic rights). The overall goal of the project hence is to ensure that citizens of Tuvalu and key governance institutions are empowered to better understand the constitutional review process and underlying issues through effective civic education and engagement during the constitutional review, which is undertaken in an open, transparent and inclusive manner.

SUMMARY OF PROGRESS

Output 1: Strengthened institutional and technical capacity of the Constitutional Review Committee and Attorney General's Office to undertake the Constitutional Review Process

Activity 1.1.2: Continued technical advisory support for CRC members & CRC Secretariat on roles and functions of the CRC and conduct of work based on international best practice

Comparative Constitutional Design Workshop, February 2018

The workshop was used as a critical research discussion and input to the whole constitutional reform effort and noted presentations from various experts and open and honest dialogue took place between the CRC and the experts on how various constitutional options available to cater for the challenges currently faced with the Tuvalu Constitution. A key outcome of the workshop, in addition to strengthening the CRC's understanding from a comparative constitutional review perspective was the completion of 10 comparative constitutional briefing papers through the experts and shared with the Tuvalu team comprising of the Tuvalu CRC and the CRC Secretariat. The papers were later used as key technical instruments for Phase II outreach consultations during which citizens were to be presented on constitutional options and asked key questions to determine their preferences on the constitutional issues and options developed by the experts. A workshop report is enclosed is annexed to this report.

CRC Technical Review Workshop, April 2018

A key feature of the workshop was for the CRC to note and approve the option papers on the key issues driving the constitutional reform and the options to be presented to the citizens for Phase II consultations. Whilst the CRC noted the presentations, they indicated that they would rely on the voices of the citizens on the options and will note their preference based on what the citizens vote for through the outreach missions.

The following sessions were held guided by individual presentations and discussions:



1. Political Reform (including international treaty ratification)
2. Culture, Traditional values and institutions
3. Judicial sector
4. Independent institutions
5. Bill of Rights and responsibilities (including Gender)
6. Climate and the environment
7. Citizenship, voting and representation
8. Finance
9. Preamble

A major outcome of the workshop was approval of the papers for Phase II outreach consultations to be presented to the citizens without any preconditions or preferences on the identified options; approval on the overall constitution making timeline; and also reviewed the agenda, structure and timing of the Phase II outreach consultations.

Activity 1.2.1: Salary support for CRC Secretariat Officer and Activity 1.2.5: Ongoing communications and office related support for the CRC Secretariat & Project Office

The Project continued to provide financial and other project relative support the office of the Head of the CRC Secretariat Office (HS) which was formerly titled as Constitutional Review Officer (CRO) and the project support office in Tuvalu throughout the reporting period. The Project facilitated purchase of key equipment's and supplies to ensure the office is resourced and also prepared to undertake the outreach consultations within all the outer islands. Major investment in 2018 included Projector, Project Camera, Stationery Supplies, Outreach storage black boxes with cutlery and other supplies.

Additionally, the Project has also hired a Project Implementation Support Officer (PISO) to support the project coordination and administration functions on the ground in addition to the Head of the Constitutional Review Office (formerly CRO position – titled changed). The Civic Education component work is carried through the CE Consultant under output of the project.

Output 2 Enhanced citizen knowledge and engagement on the Constitution and the Constitutional Review Process

Activity Result 2.1: Adequate research undertaken, and comprehensive information gathered for the review process

A comprehensive Research Plan was produced in early 2018 (Jan) and inputs were sought from various stakeholders mainly the Secretariat. The Research Plan outlined several research topics that were identified during the phase I consultations for further research, clarity and analysis. Hence, one of the main purpose of the research plan was to provide further clarity to ensure that the CRC, Secretariat and the citizens are provided with key information around various options available to them to support the constitutional reform efforts. The research plan was reviewed by the CRC, UNDP, International IDEA, academics and researchers supporting the research aspects from University of Chicago, University of New South Wales, Oxford University, Pacific Constitutional Research Network (PCRN) based in Vanuatu and other individual experts. The Research Plan features a summary list of research topics, the structure to be applied for the research papers, research methodology to be applied, researchers and research institutions, target audience and general readership. Through the research component of the project, more than 10 plus internationally reviewed papers supporting the



research topics identified by the CRC and through the consultation with the citizens were developed and used during the phase II outreach consultations.

Activity 2.1.2: Undertake technical review and research on the Constitution (international expert) which will aid in producing recommendations for amendments in the review process

As indicated above numerous researchers following the Sydney workshop were engaged and the list of research papers produced have been indicated under activity 1.1.2 above.

Activity 2.1.3: Mobilise expertise advice on issues relative to executive-legislative relations and gender

A Research Paper was developed and headed by Professor Cheryl Saunders from the University of Melbourne to cover the political system, mainly the head of state and relations between the executive and parliament. The short 5 pager research paper detailed on important elements surrounding the head of state, head of executive and the distinct role of parliament. The paper presented option and brief feedback outlining matters such as what if Tuvalu considered moving into a full presidential system; retaining a Westminster parliamentary system; an elected head of state; making the parliament more effective and increasing the size of parliament. These were important considerations and numerous debates and constructive feedback was done during the workshop conducted in Sydney in February as well as during the CRC workshop in April 2018.

A specific paper on gender was also produced to strengthen gender and gender rights in the constitution. The paper discussed on the constitutional language and how it was silent on gender and using more neutral terms to ensure equal aspects for both men and women were used in the constitution in modern legal parlance.

Activity Result 2.2: Development and planning conducted for Civic Education Campaign and resources and Consultations undertaken for the Review

Radio Programmes

A series of Radio Programmes conducted in Quarter 1 and Quarter 2 of 2018. This included radio programmes featuring students, experts and other key officials to create awareness on the Constitutional Review Process and significance of the citizens to join in the process through the consultations process. The radio programmes capturing radio awareness and public engagement sessions conducted from 5th March to 29th April is included in the annexes to this report.



Teams of students from Nauti Primary School and Fetuvalu Secondary School on the capital participated in debates and quizzes on Constitutional issues and these were broadcasted to schools in the outer islands.



Direct consultations to the Project Office was also made by members of the public and access to CE brochures both in English and in Tuvalu Vernacular was also provided throughout.

CE Materials

Prior to the Phase II Outreach Consultations, there were radio awareness sessions as well as posters and flyers that went out to the people. Whilst the CE Brochures both in English and in Tuvalu was used as the background CE materials, a number of posters and flyers continued to be developed and distributed to the people to ensure people are kept in the loop and fully aware of the consultations programme and key expectations.





Activity 2.2.4: Continue public consultations (Outreach 2) on all constituencies in Tuvalu on issues and proposed areas of amendments to the Constitution with effective M&E applied throughout to measure inclusion and transparency in the entire process

Completion of Phase I Consultation

In 2018, the Project conducted remaining consultations under Phase I Outreach Consultations for the Funafuti and Nukufetau community groups from 22-25 January. This was done to ensure all island communities are consulted and provided an opportunity to provide their initial feedback into the constitutional reform process. Prior to the 4-day consultations, media announcements were conducted on air on Radio over a 3-day period.

Phase II Outreach Consultations

The Phase II Outreach consultations commenced on 30 April onwards and was conducted on all the outer islands prior to consultations with individual island communities in Funafuti as well as the Funafuti island community separately. The consultations were undertaken under very challenging conditions in the outer islands whereby teams travelled in rough seas and on small boats to reach out to every single outer island ensuring that “no one is left behind” in this critical national process that will guide the future generations. The key outcome of the consultations is to inform the CRC on the choices of the citizens on various constitutional options presented to them which will eventually lead to constitutional amendments. These will be captured through an Executive Summary Report to the CRC which sits from 4-5 October 2018.

The following table captures the essence of the outreach and statistics of citizens that were met directly and who participated in the consultations process in Phase II.

		Male	Female	Total
Island Consultations	Vaitupu Island	374	327	701
	Nukulaelae Island	193	87	280
	Nukufetau Island	176	134	310
	Nanumea Island	261	147	408
	Nui Island	314	189	503
	Nanumaga Island	226	85	311
	Niutau	217	186	403
	Funafuti	279	235	514
Island Communities in Funafuti	Nanumea in Funafuti	128	46	174
	Nanumaga in Funafuti	100	46	146
	Niutao in Funafuti	85	50	135
	Nui in Funafuti	44	24	68
	Vaitupu in Funafuti	73	62	135
	Nukufetau in Funafuti	86	59	145
	Nukulaelae in Funafuti	104	47	151
	Total Population Reached Directly	2,660	1,724	4,384

Activity 2.2.7: Produce and compile island reports capturing all consultations and feedbacks



A draft Report capturing all island consultations as well as island community consultations in Funafuti has been developed and will be shared with the CRC. This report is expected to be shared with other stakeholders once its cleared by the CRC. The Report is expected to be the key document to be used for the CRC to make decisions on the amendments that will be drafted later in Quarter 3 of 2018.

Output 3 Formulation of recommendations, amendments and support provided toward advisory referendum and Adoption of the new Constitution

Translation of Entire Constitution into Tuvaluan

One of the work completed at the very beginning of 2018 till almost May of 2018 was the full translation of the current Constitution by a local translating expert into full Tuvaluan. This was not only necessary but considered critical for a full assessment of the Constitution from cultural and traditional aspects which are best done in the national language. The translated version of the Constitution was then presented and reviewed by the CRC Secretariat team prior to being finalized as official translated version to be used for all future amendments consideration and interpretation. This is the first time in history the entire Constitution had been translated in local language and also sets a good precedence in having the national supreme law done in a language which can be read and understood for the people it's been written for, hence, further acknowledging the support of the Project towards this important exercise.

Legal Drafting

The Project also advertised the positions of the Legal Drafters who are expected to be on board in September 2018. Given the nature of the review process, the Project will be mobilizing two legal drafters, one international and one national drafter to conduct the entire legal drafting work.



Financial Statement

EXPECTED OUTPUTS	PLANNED ACTIVITIES	Responsible Party	PLANNED BUDGET			Expenditure Quarter 1	Expenditure Quarter 2	Expenditure July to 14 Sept	Balance Budget
			Funding Source	Budget Description	Amount in USD	Amount in USD	Amount in USD	Amount in USD	
Output 1: Strengthened institutional and technical capacity of the Constitutional Review Committee and Attorney General's Office to undertake the Constitutional Review Process (Planning Stage)	<i>Activity Result 1.1: Capacity of the Constitutional Review Committee (CRC) is enhanced</i>								-
	Activity 1.1.2: Continued technical advisory support for CRC members & CRC Secretariat on roles and functions of the CRC and conduct of work based on international best practice	UNDP	Cost Sharing	71200-International Consultants	10,000.00	10,850.82			(850.82)
	Activity 1.1.4: Continued technical advisory support and ongoing trainings for CRC thematic sub-task forces (including policy advisory from UNDP HQ)	UNDP	Cost Sharing	75700-Workshop & training costs	8,000.00	242.77	8,675.10		(917.87)
		UNDP	Cost Sharing	71600-Travels	8,000.00	3,169.41	3,404.97	(216.19)	1,641.81
		<i>Sub-total Activity 1.1</i>			<i>26,000.00</i>	<i>14,263.00</i>	<i>12,080.07</i>	<i>(216.19)</i>	<i>(126.88)</i>
	Activity 1.2.1: Salary support for CRC Secretariat Officer (NOB-Tuvalu)	UNDP	Cost Sharing	71200-National Staff Salaries	32,000.00	8,247.39	9,275.00	7,855.15	6,622.46
	Activity 1.2.5: Ongoing communications and office related support for the CRC Secretariat/Project Office	UNDP	TRAC	72100 Contractual Services – Companies	2,000.00	1,074.95	1,137.27		(212.22)



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		<i>Sub-total Activity 1.2</i>			34,000.00	9,322.34	10,412.27	7,855.15	6,410.24	
	Project Management Costs[1]	UNDP	TRAC	Relevant DPC codes	17,500.00	438.36	4,485.21	3,514.94	9,061.49	
	Sub-Total for Output 1				77,500.00	24,023.70	26,977.55	11,153.90	15,344.85	
Output 2 Enhanced citizen knowledge and engagement on the Constitution and the Constitutional Review Process (Consultation and Information Gathering Stage)	<i>Activity Result 2.1: Adequate research undertaken and comprehensive information gathered for the review process</i>								-	
	Activity 2.1.2: Undertake technical review and research on the Constitution (international expert) which will aid in producing recommendations for amendments in the review process	UNDP	Cost Sharing	71200- International Consultant (Researcher)	15,000.00				15,000.00	
	Activity 2.1.3: Mobilise expertise advice on issues relative to executive-legislative relations and gender								-	
		<i>Sub-total Activity 2.1</i>				15,000.00	-	-		15,000.00
	<i>Activity Result 2.2: Development and planning conducted for Civic Education Campaign and resources and Consultations undertaken for the Review</i>	UNDP	Cost Sharing	74200 Audio Visual & Printing Production Costs	15,000.00				8,287.19	6,712.81



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Activity 2.2.4: Continue public consultations (Outreach 2) on all constituencies in Tuvalu on issues and proposed areas of amendments to the Constitution with effective M&E applied throughout to measure inclusion and transparency in the entire process	UNDP	Cost Sharing	71600 - Travels	100,000.00	37,236.58	1,868.37	11,277.41	49,617.64
Activity 2.2.5: Undertake consultations at thematic level with various stakeholders such as CSOs, heads of faith based organisations, government civil servants, vulnerable groups representing women, youth and disabled, including internationally/regionally	UNDP	Cost Sharing	Local Consultants	14,000.00	6,596.40	2,741.79	12,088.23	(7,426.42)
Activity 2.2.6: Organise debates and/ or panel discussions to discuss and deliberate on sensitive issues guided by thematic task-groups	UNDP							-
Activity 2.2.7: Produce and compile island reports capturing all consultations and feedbacks	<i>Sub-total Activity 2.2</i>			<i>129,000.00</i>	<i>43,832.98</i>	<i>4,610.16</i>	<i>31,652.83</i>	<i>48,904.03</i>
Project Management Costs	UNDP	TRAC	Relevant DPC codes	17,500.00	2,410.51	4,485.21	3,507.51	7,096.77
Sub-Total for Output 2				161,500.00	46,243.49	9,095.37	35,160.34	71,000.80



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Output 3 Formulation of recommendations, amendments and support provided toward advisory referendum and Adoption of the new Constitution	<i>Activity Result 3.1: Technical review, committee deliberations and formulation of recommendations completed</i>								-
	Activity 3.1.2 Formulation of Recommendations Report by CRC Secretariat and through technical support by the Constitutional Review Advisor	UNDP	Cost Sharing	75700-Workshop and meeting costs	5,000.00				5,000.00
	Project M&E (travel and associated costs) and Communications		Cost Sharing	71600-Travel	15,000.00		7,916.52		7,083.48
		<i>Sub-total Activity 3.1</i>			20,000.00	-	7,916.52	-	12,083.48
	<i>Activity Result 3.2: Drafting of Amendments and Conducting Advisory Referendum completed</i>								-
	Activity 3.2.1: Recruitment of Legal Drafters	UNDP	GCS	71200-International Consultants	33,950.00			59,929.93	(25,979.93)
	Activity 3.2.2: Legal drafting process for new Constitution mapped and drafting undertaken (5-6 months)								-
	Activity 3.2.4: Present Draft Constitution to CRC for first review and finalise any amendments	UNDP	GCS	75700-Workshop and meeting costs	7,848.00		332.98	3,675.40	3,839.62
		TRAC		5,152.00			1,056.80	4,095.20	
Activity 3.2.5: Undertake communication and distribute copies extensively of the draft Constitution for public consumption	UNDP							-	



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	Activity 3.2.6 Develop a comprehensive plan and timelines for the Advisory Referendum								-
		<i>Sub-total Activity 3.2</i>			46,950.00	-	332.98	64,662.13	(18,045.11)
	Project Management Costs	UNDP	Cost Sharing	Relevant DPC codes	17,500.00	8,708.32	4,521.56	4,538.84	(268.72)
	Sub-Total for Output 3				84,450.00	8,708.32	12,771.06	69,200.97	(6,230.35)
	Sub-Total All Outputs				323,450.00	78,975.51	48,843.98	115,515.21	80,115.30
General Management Support	Government CSA- 3%				1,050.00	(84.83)	-	12.90	1,134.83
	DFAT and other donors – 8%				19,160.00	5,963.91	3,079.96	1,788.75	10,116.13
TOTAL (\$USD)					343,660.00	84,854.59	51,923.94	117,316.86	91,366.26



Annexes

**Comparative Constitutional Design Workshop
With Tuvalu Constitutional Review Committee (CRC) and CRC Secretariat
26 February – 3 March 2018, University of New South Wales, Sydney, Australia**

DRAFT REPORT

Monday 26 February 2018

Opening Session

1. The opening session noted brief welcome remarks by Professor Rosalind Dixon, Professor of Law, at the University of New South Wales to welcome the Tuvalu delegation led by the Speaker of the Tuvalu Parliament and the Tuvalu Deputy Prime Minister to the workshop.
2. In opening remarks, the Speaker indicated that the workshop was for the whole CRC however, only six members of parliament including the Deputy Prime Minister and Minister for Health could make it. He also acknowledged the presence of the CRC Secretariat Members who were present in the workshop. The Speaker further acknowledged the support that was made available from the researchers and experts present in the room, in particular UNSW and UNDPs lead role in organizing the workshop.

Senator the Hon Concetta Fierravanti-Wells, Minister for International Development and the Pacific, Government of Australia also briefly joined the workshop in the morning session. The Senator pronounced the continued commitment and support available from the Australian Government to the Pacific Islands and that she would like to get a follow-up update on this particular process for the Tuvalu Constitutional Review process. She indicated on her intentions to visit Tuvalu, with efforts made in the past as well to foster greater partnerships with the Government of Tuvalu and its people.

3. Following the opening remarks, all participants briefly introduced themselves.
4. Review of program and objectives for the workshop:-

Jason Gluck, Policy Specialist, Political Dialogues and Constitutional Processes, UNDP briefly discussed on the planned discussion expected from the workshop on substantive constitutional issues examining comparative international models that were available to Tuvalu from the experts. He then noted that the workshop will also be used to develop options for the immediate next steps on the formulation of amendment proposals and public engagement processes which need to be mapped appropriately.

5. Report on the outcomes of the public outreach and the issues raised:-

Rt. Honourable Bikenibeu Paeniu then provided a quick update in terms of the outreach consultations undertaken with the citizens back in Tuvalu and in Fiji and NZ, in particular making reference to the younger population. The presenter mentioned about the issues paper, however



mentioned on the lack of focus on the preamble section which did not comprehensively cover the history of Tuvalu before the introduction of the church, pre-colonization, along with its traditional norms and values and also need to look at the issues that have been added to the original issues that were initially found. The lack of provisions on the environmental and climate change concerns which is currently missing from the constitution, thereby need for the Constitution to be more proactive and forward looking. There is common feedback from the public that the law-making process is not very engaging and consultations with people usually does not happen.

Parliament and executive relations and the issue of executive's majority power in parliament, with reference to the changes done in 2008 to add more parliamentary power for the executive. Questions around the number of parliament seating to take place in one year and whether they should be constitutionalized. The appointment process for the Speaker and whether he or she should be appointed outside the normal parliamentary election and selection process. The need to look at the issue of the courts and the appointment of the judges as well. The need to look at the section of traditional culture and norms. What can be done to marry the traditional practices with current modern systems, whether the Falekaupule should be constitutionalized, whether there should be a house of chiefs, adding to as the fourth government pillar.

The other issues, around human rights and freedom. The contentious issue on the issue of religious freedom, in particular the freedom to practice/ worship. Need to determine clearly whether there are fundamental human rights violations or not. Then the issue around gender and women's participation in parliament. This issue is mainly due to the traditional practices whereby women are usually not allowed to speak in traditional meetings. However, the culture also strongly respects the women in society and relations are valued strongly from the maternal side (the example presented on sister's children being dearer than the children of the brother).

Public service commission issues around independence of entities. Such as the executives influence on the PSC and selection and appointments processes. Also on independent entities, the ombudsman is currently not reflected in the constitution. Questions remain whether they should be constitutionalized.

The session broke for morning tea around 10.45am.

Executive/Legislative Relations

1. Introduction on challenges faced in Tuvalu related to separation of powers:

Refer to the presentation annexed to this report from Sa'aga Teafa, Ombudsman. In particular, Sa'aga noted the following challenges:

1. Parliament as rubberstamp – the high proportion of ministers in parliament creates executive dominance. How to reform ministerial appointment to address this?
2. Executive in the judiciary – separation of powers issue; chief justice appointed by Head of State acting in line with cabinet advice. See ss 122 and 123.



3. Summoning of the Parliament – the people think that providing for more sessions of parliament would be appropriate, so should this be constitutionalised? See s 116.
4. Executive as Legislature – see s 62(5)
5. speaker to be elected by the people – should the speaker be a Member of Parliament? Concern about whether MPs would have confidence in a non-elected speaker & effect on political stability. See s 104.
6. role of the people in law-making/treaty ratification – the people want to be consulted and feel that s 111 restricts their participation since the provision depends on the Governor General's discretion.
7. public participation in the national budget – currently the public is not engaged but wish to. See ss 111(4) and 166.
8. recalling of MP incapacitation and misconduct – currently tough procedure, requires petition by 50% of registered electors presented to the Governor-General.

In addition, Simon Kofe, Chief Magistrate mentioned around the votes of no confidence that has been a continuing factor and one of the key drivers of the review process.

2. Overview of Comparative experiences & models – Cheryl Saunders (Constitution Transformation Network

a. Presidential versus parliamentary systems

Cheryl Saunders further mentioned that:

- There are many different types of parliamentary systems and the Westminster is just not the only system available from around the world when it comes to options available and the setup
- Most of the time the constitutional writers use technical solutions for the problems faced in parliament and in constitutions
- Refer to the presentation annexed to this report for more details from Cheryl Saunders

Speaker: On the calling of Parliament, this has been one issue facing difficulty. Current situation is Parliament meets only once. On the last occasion, the head of state forced the meeting of parliament on the claim from a group of MPs that they have a majority. However, this was only a claim and it may or may not materialize. So the main solution would be to have more regular meetings of the parliament rather than leaving it for long whereby the previous case the executive dragged the session for long.

Elliot: Westminster system has lot of variations. For example, the questions around calling meeting of parliament, constitutions with similar heritage and background are a good comparative point, and their approaches can inform the one adopted here. The Fiji example was shared on the required number of seatings of parliament when demanded by MPs. There is a need to see the constitution as a whole package whereby changing one thing can affect another aspect of another constitutional provision. Future proofing needs to be reviewed as well such as whether there will be formal political parties in the election process. e.g. Samoa now has a very dominant governing party, which changes the context in which its Constitution operates. The other notable item is to have some recognition of the opposition as a way to reduce incentives of ministerial office, roles of accountability regardless of the presence of a political party system, however there are also disadvantages to it as well.



Question was put forward by Hon. Satini Manuella on Minister's who are not elected to be as MPs for it to be elaborated further by Cheryl.

Cheryl Saunders: indicated there are jurisdictions whereby Minister's can be non-MPs and also whereby there is a requirement for Ministers to not be MPs. Choosing from outside might improve the quality of executive government, but it is possible (although not necessary) that it would reduce ability of Parliament to hold the ministers elected from outside Parliament to account.

Satini Manuella: (in the case of Tuvalu) the reason why there was an increase in the number of Minister's was to have more sharing of workload, however, there could be an increase in the number of CEOs to manage the workload to solve the issue around executive-legislative power problems.

Isaia Taape: the oversight role of parliament is important and needs to be strengthened. The appointment of the Speaker needs to be also discussed in detail whether elected or appointed. If appointed it might not work in Tuvalu if elected. Stability of the Govt: vote of no confidence issue, the Kiribati case whereby the whole house will dissolve. The culture component in the constitution is very limited and needs to be defined well. Staff of the Parliament, need for a legal officer in parliament and as an MP this is needed and given that the constitution gives an MP the authority to also introduce/produce laws eg whereby as an MP if I need to take a bill or law to the people to be explained. The issue on the head of state is seen on the similar status quo as a chief and he or she should not be removed as in the current system. There is a need for Head of State to command respect from the people akin to the island chiefs, not someone merely installed by the institution.

Ese A.: reiterated on the earlier comments and the need for looking at issues from a practical perspective. She mentioned that it is reassuring that the Tuvaluan experience is not unique and that other similar constitutions can be drawn from. Need to engage stakeholders going forward, especially the people.

The Hon Bikenibeu Paeniu: The challenges are very much related to political motives – this requires deeper examination – are these motives in the public's best interest? Importance of incorporating cultural and traditional values and norms into the Constitution, so that the Constitution is marrying cultural norms and effective governance. Agreed with conceptual approach discussed, but must implement practical solutions. The Constitution must have flexibility to allow for adaptability. The challenge, regardless of the political structure, is to minimise political motives by Tuvaluan leaders.

Maatia Toafa: we are forty years now as a nation and we need to see whether the political motives are best for the people. It's about time to look at the issues now comprehensively given the review. The issue around culture and tradition should be married with the current practices and not be used as confrontational to each other. The issue around religion needs to be reviewed as well. The conceptual approach needs to be mutual with practical solutions and there needs to be flexibility in the constitution as well not to tie us down, however, not giving way to political motives.

Simon Kofoe: the conflicts in parliament are becoming more at a personal level now and these are spilling to the people now as well and this leads to conflicts between community households and families as well. The divisive effect of the parliamentary process on the people is also important, and C Saunders' point about seeking consistency with traditional values suggests that the Constitution should avoid processes that are disruptive or divisive. The approach to the consultations is open.



C Saunders: asked further that regarding the efforts to develop national unity, if personal divisions in Parliament are spilling over into communities, what is the attitude of people towards a move for national unity? Are the communities in favour of it?

S Kofe answered C Saunders: They are in favour of a system that reflects the kind of unity that exists in the customary Falekaupule. It is important to consider how we can create a political system that reflects traditional values.

Samuela Teo: the change in number of government; whether the changes in government is really as they a robust democracy or really affecting the government. The issue around increasing the number of Ministers from a third to half was to stop the votes of no confidence and increase in number of change in government. The MPs voted against the will of the people to change the number of MPs as Government, which helped the issue of continuous change in government but we need to look at whether it was the right thing to do. Parliament is still seen as a rubber stamp, whether there is even any need to hold any more parliament sessions given the power of the executive in terms of numbers as they can get any bill signed. The constitution review, once finished we need to ask where the review is coming from, whether from the top notch or from the bottom. The constitution is for the people.

Rosalind Dixon: we can think back to ancient constitutions as models that can be considered for Tuvalu. We should also think about economies of scale, relationships between consultations and size. Question is how can we adjust expectation and incentives for MPs. Whether we can introduce part time MPs such as the Australian example whereby there are Ministers appointed on full time salary and MPs who are on part time job as MPs and other work they are employed at. Question to Tuvaluan colleagues: "could you have Parliament of 40 part-time representatives, paid only for sitting weeks of Parliament"?

Bal Kama: A value-based system is important. There is no mention in the Tuvalu constitution on the connection to the people or notion of the people's will which is in contrast as Pacific Islands are people based nations. For instance, the PNG constitution which is saying "the legislative power of the people is vested in the parliament". In response to Dixon's point, Bal iterated that politicians in the Pacific are viewed differently, figureheads and as 'saviours' of the people for instance during events, which are different from the ones played in Australia. The dissolution in parliament, Samoa, the PM having the power on the dissolution of parliament, consider whether this retracts the power of the MPs.

Christina Murrey: the South African constitution has a section in the constitution whereby the defining of what the institutions are expected to do. There are provisions in the South African Constitution requiring parliamentary engagement with the public, requiring minority parties to be given space. The South African Parliament has fluctuated – currently quite strong because of civil society efforts, demanding that MPs are held to account and are motivated to serve their community. Although this is a movement in broader society, the SA Constitution empowers civil society organisations by emphasising transparency and the right to access information. Constitutions can also promote civil society organisations by preventing onerous registration processes or harassment. What you can do in the Tuvaluan Constitution regarding the civil procedure and public access?

Graham Hassall: the issue is where does sovereignty reside? Pre-contact Pacific society had more independent sovereignty than post-contact societies. All this while we have been studying how is Westminster being implemented in the Pacific. The Westminster system is misinterpreted most over in the Pacific for example, the executive comes from the legislature. If no votes of no confidence, it's



not Westminster. If no freedom of speech, then again, it's not Westminster. The key discussion here is if we are keeping the Westminster, then need to look at the essence of what aspects of the Westminster are being applied. The ultimate question is what size of government can Tuvalu afford?

Bikeni: there is definitely lack of understanding in the Pacific on the Westminster system. The quality of leaders needs to be emphasized as mentioned by DPM. The issue of the salaries of MPs and Ministers to solve the issue of power dynamics in Parliament. Need to look at options in the next session looking at the problems that are there.

Lunch

Executive/Legislative Relations II

1. Introduction on challenges faced in Tuvalu related to separation of powers:

Simon Kofe and Corinna I. Lafai: refer to presentations annexed

Speaker: put forward a question regarding the use of dissolution power in Kiribati as an alternative to no-confidence motions.

E Bulmer: answered that dissolution is more commonly used – but it would have to be adapted to the Tuvaluan context, since there are no parties in Tuvalu.

C. Saunders: the issue and solution presented by Kiribati needs to be looked at from the whole context and not only the dissolution of parliament such as the selection and election of the President from the MPs which gives him or her the mandate and legitimacy from the people. Hence, if there is no more confidence in it then it works in aspect of the dissolution of parliament since people can say that since there is no confidence in the President then we need to go back to square one.

The vote of no confidence motion was discussed whereby 5 MPs need to sign the motion.

R Dixon: the existing requirement offers a solution to the problem of no-confidence motions – it could be entrenched in the Constitution that any motion of no-confidence must be by one third of Parliament and with notice. No need for too strong attachment to concept of majority, since there are no parties in the Tuvalu system hence does not agree with Elliot on the Westminster being the ideal solution for the system or with Graham on the system of Westminster breaking down. Tuvalu does not have to follow the Westminster system and can design its own.

B Kama: In PNG there is a 12-month grace period after an election during which no vote of no confidence can be made. PNG experience whereby the MPs might at times bring in vote of no confidence due to their conscience of doing something right of highlighting

Ese: there is a strong miss in the Constitution, it's the Fenua which defines everything in the Tuvaluan way. The Fenua which makes people realize where they belong, the youths, the women etc in terms of their role in the islands. When it comes to MPs who voted against the will and aspirations of the Fenua, the MPs will suffer the consequences.



C. Saunders: the need to look at culture when designing the constitution is very important.

S. Kofe: need for strengthening national identity hence need to strengthen national unity – can be barriers to MPs serving the national interest. Consider that colonisation forced separate islands to come together under unified system, thus a tension between MP acting in the public interest, and MP acting for interest of their own constituency.

Ese: one of the reasons why the vote of no confidence comes is due to the people wanted to have a voice to share what they want to say as otherwise through normal motions they cannot fully share and have to just stick around the motion.

2. Overview of Comparative experiences & models – Cheryl Saunders (Constitution Transformation Network)

Cheryl's presentation followed from session 2. Saunders provided a recap over what was mentioned earlier. She focused on the following key topics and her presentation is annexed.

- i. Improvements on current system if it is maintained
 - a) Balance of power between parliament and executive
 - b) Size of parliament
 - c) Improving parliamentary independence and oversight of executive
 - d) Options for selecting the Speaker
 - e) Benefits of political parties (particularly in relation to government stability)
 - f) Practice relating to privileges, immunities, and remuneration of MPs
 - g) Options for when/how parliament is called into session
 - h) Parliament's law-making function in light of size/capacity (and role of public in law-making)
 - i) Parliament's role in budget (and role of public in same)
 - j) Questions of electing and recalling MPs

Coffee break

DPM asked on the constitutional referendum in Australia and how it didn't happen. Cheryl explained the complexity on the constitutional referendum process.

Kausea: queried on the issue of the caretaker government after dissolution of Parliament. Also what are the role and powers of the caretaker government during the caretaker period.

The selection of the head of state and the number of years it will take for a head of state to be selected per island.

C Saunders: In Australia, the government remains a caretaker until new government is sworn in. This process is institutionalized and works well.

In Tuvalu, there have been situations where the caretaker government exercises authority of parliament and continues to attend international events.



S Kofe: there have also been examples where a caretaker government manipulates elections to the advantage of one party.

C Saunders: In Australia, this would be resolved by the electoral committee. Need to set out some options in this regard, for instance, to set out what kind of responsibilities the caretaker may take on. This does not necessarily have to be done in the Constitution.

Speaker: In Kiribati an independent council is set up as caretaker.

Bal Kama: A name change for the Parliament may give the psychological shift.

Speaker: name change to Fale o Fenua which means House of the People so people own the house and the people in it has been discussed earlier.

The discussion then further went on to the distinction between the president and parliament system which is to do with the vote by the people which is the main thing. The participants also discussed on the islands having their own traditional governments and that it was important to give them the autonomy at that level. The need for national unity was required for operation of government that is more representative of everyone.

Elliot: put forward a discussion that if Tuvalu was starting now, what system will you chose if the Westminster model was not adopted and adapted. The example from Tokelau where there is a Council of Government rather than Parliament and Government.

Tuesday 27 February

Judicial Sector

1. Introduction on challenges faced in Tuvalu related to judicial sector

- a. Simon Kofe, Corinna Ituaso Lafai

Simon: refer to presentation

Satini: independence of the judges can be influenced given it's a very small society and Tuvaluan's can make friends easily. However, its important too for judges to be residing in country.

Samuela: the issue of lands can easily break down families. There is issue of lands lease whereby the Government is leasing land in Funafuti and distribution of yearly lease monies to the land owners is done to the chiefs and this causes lot of family issues and ends up in the courts.

DPM: people term it as Court of Scouts for the courts being run by local people. We haven't been able to provide the independence to the Auditor General's Office and the stipulation is .06% of national budget and that's too much and being very greedy. Reiterated on the lands case as spoken by Samu and that it became very political.



Corinna: cultural considerations needs to be taken into account for housing of judges. Example from Palau of the appointment of judges which were before for foreign nationals is now being changed to local experts.

The meeting noted the following:

The concern expressed in consultations is that because Judges are appointed by the executive, they might be, or appear to be less independent from political pressures.

- Matrix 41. Judge and chief justice to be elected separately and not under the power of cabinet but to be independent.
- Research plan 8. Concern of the people about the politicisation of the process because judges are appointed by Cabinet.

The challenge in developing appointment process is to balance judges' independence, while also ensuring judges are connected and accountable, in some way, to the people they serve.

Options from comparative experience:

- There are many different ways that judges may be appointed, that involve groups other than the executive. Some are outlined in the IDEA primer and other documents, and can be adapted to meet the needs of Tuvalu.
- Current process in Tuvalu is executive led, with the Head of State making judicial appointments on the advice of Cabinet.
- Chief Justice and Judges of Appeal appointed by the Head of State on the advice of the Cabinet.
- Other judges, are appointed by the Head of State on the advice of Cabinet after consultation with the CJ.
- Given the concerns about politicisation, one option that may be worth exploring is a Judicial Services Commission. Judicial Services Commissions are used in many other Pacific Island countries and across the Commonwealth.
 - Fiji, Kiribati, Samoa and Vanuatu, the power to appoint judges is vested in the Head of State acting on the advice of a Judicial Services Commission.
 - In Papua New Guinea, judges are appointed directly by the Judicial and Legal Services Commission.
 - In these countries, however, the *Chief Justice* is still appointed on the advice of the Prime Minister or the Cabinet.
 - In Solomon Islands and Tonga, all judicial appointments are made by the Head of State with the advice of the judicial services commission.
- A Commission is an independent body. It need not be a permanent full-time body – most are part time, meeting as required. Perhaps language such as 'Committee' or Meeting might reflect this better.
 - Members: Members of the Commission might include Chief Justice, a representative of the executive (eg Minister for Justice) Attorney-General, the public service commissioner, the legal profession, traditional chiefs, church leaders or members of the general community. The size varies – 3, 5, or even more people.
 - How are members appointed? There is a question about who appoints members of the JSC – if the executive appoints the JSC, is it really independent from the executive?



- One way to address this concern is to specify office holders (rather than individuals) to be members of the JSC. One example is in Vanuatu:
- The Commission consists of:
 - a. the Minister responsible for Justice, as chairman; and
 - b. the Chief Justice; and
 - c. the chairman of the Public Service Commission; and
 - d. a representative of the National Council of Chiefs appointed by the Council.
 - Another is to provide different bodies to nominate a person to the JSC (as in Vanuatu where the Council of Chiefs appoints a member)
 - **What does the JSC do?** The Commission might be responsible for selecting the judge who is then formally appointed by the Head of State. In other cases, it might prepare a shortlist and leave the final decision to Cabinet.
 - The benefit of a Commission is that it takes judicial appointments out of executive control, but still keeps a role for the executive in the process.
 - One potential issue to deal with in Tuvalu is the appointment of the Chief Justice, who may in fact be the only Judge of the High Court. It can't be that the Chief Justice a member of the Commission that decides his or her own appointment. In many Pacific countries, the Chief Justice is appointed on the advice of Cabinet, and the Commission (which includes the CJ) appoints other judges. In Tuvalu, you might want to consider a differently constituted Commission to appoint the Chief Justice.

There are a range of other options for appointments

- Can involve the Parliament or elect judges directly, although if there is concern about politicisation, this may give rise to new and different issues.
- Internal court process – the court could be responsible for advertising vacancies, identifying candidates.

The way in which the body who appoints judges goes about this task is also important for independence and for getting a good candidate.

The concern in the matrix about the selection criteria for judges. Important that a judge has the skills and experience to do the job. Matrix 41. Review the selection criteria to base it on the number of cases instead of work experiences. Such as 200 cases this ensures that the person hired has done practical cases and is qualified.

Global trend in judicial appointment procedures to more transparent processes. Whether the appointment is made by the executive or by a judicial services commission, the judicial position should be advertised, with clear selection criteria and I understand this is what happens in Tuvalu too.

There are also ways to involve other groups or the wider public, so that they get to know who is being appointed a judge:

- In Australia, the national executive has an obligation to consult state executives on High Court appointments – in Tuvalu, you might involve the Falekaupule, or other groups whose views are important and can help secure public confidence in the judiciary.
- In South Africa, the Judicial Services Commission televises interviews with judicial candidates.



In terms of constitutional change, you could consider changing the selection criteria for appointment, in terms of the experience or qualifications that candidates require.

Another way is to list additional considerations that the appointing body must take into account. For example, in Vanuatu, legislation requires the Judicial Service Commission to consider candidates' experience and abilities; his or her character and standing in the community in which he or she usually resides; and in the case of candidates from outside Vanuatu, their *judicial* experience.

Impartiality

The concern: Matrix 41. Chief Justice should not be allowed to handle case that are sensitive and against the government or one that has a minister involved. This could jeopardise his position as he must fulfil and satisfy the government or at times may dismiss ministers' cases.

This appears to be an issue of recusal for conflict of interest – appointing a person who has recently acted as a lawyer for government might mean that conflicts of interest are more likely to arise in the short term. This happened in Australia, where the Solicitor General was appointed to the High Court and decided not to hear cases on which he had provided the government with advice. It may be necessary to bring in an acting judge to hear cases if the CJ cannot.

Impartiality of judges is usually a matter of professional ethics. It is well established that where a judge has a close family connection to a party or an interest in the outcome, the judge should not sit on that case. However, the appropriate circumstances for recusal may be different in different countries. Judges working in small, isolated communities will have family and community connections to many people. For example, in one Samoan case, the judge disclosed distant family relationships to both the applicant and the respondent. The requirements of recusal and guidelines for judicial conduct are adapted to meet this practical reality.

For example, the Code of Conduct for Judicial Officers of Tuvalu states:

Tuvalu is a small country and the island jurisdictions are very small. If Judicial Officers were to disqualify themselves in every case where they know one or other participant, the hearing of minor matters might be considerably delayed. Undue delay can, in itself, constitute a denial of justice. Therefore, the interest of justice requires that Judicial Officers are careful not to disqualify themselves too readily. Inevitably Judicial Officers will hear cases where they know something of the parties. In every case it should be clear to all observers that the trial is conducted fairly. The Judicial Officers should explain their decision clearly giving their full reasoning. The reasons should leave no doubt that the decision was based on the law as applied only to those facts established by evidence in open court.

Security of tenure

- At the moment, Judges in Tuvalu are appointed for a period specified in the instrument of appointment.
- Practice is not clear – if a judge is appointed on a one year or two year contract, they may be susceptible to political influence – for example, they may make decisions that they think will please the executive, or whoever is responsible for their reappointment.
- If the term of tenure is longer, or non-renewable, these issues may not arise so much.
- Other options for tenure:
- Specify a retirement age for judges
- Specify a minimum term (eg 5 years, 7 years, 10 years)



- It may also be necessary to permit acting judges – eg a short term judge who sits for a short period to hear a specific case (if the CJ can't) or to clear a court backlog.

AFTER COFFEE

Isaia: need to review the duties of the PSC.

Kausea: the issue is mostly not with appointment but more so with removal of the officers.

Ese: there should be safeguards in place for distinguishing the politics and independent offices appointment as there will still be influence of the Parliament through 2/3rd majority to be able to change anything they want.

2. Overview of Comparative Experiences & Models

Presentations were made by Gabrielle Appleby (UNSW) + Anna Dziejic (Constitution Transformation Network) (20) around the following key aspects of judicial provisions in constitutions.

- a. Enhancing judicial independence
- b. Judicial appointments
- c. Constitutional recognition of lower courts
- d. Supreme Court v. Privy Council
- e. Should Tuvalu have a Supreme Court in residence?
- f. Good practice vis-à-vis public defender and public prosecutor
- g. Whether to separate the public prosecutor from the AG

In terms of the discussion, it was noted that lower courts are currently susceptible to reform and abolition at the will of the legislature because they have not been constitutionalized. It was noted that based on the current process, the lower courts are established under legislation.

The workshop discussed on the judicial independence of the lower courts from the Parliament and the Executive vs flexibility of design of the judicial system. The meeting also noted on the others ways of guaranteeing judicial independence (eg, guaranteeing tenure & remuneration of individual judges) that are available for Tuvalu to adopt and adapt.

Foreign judges and localization

The issue raised was on the question about a Supreme Court in residence, which relates to the concern, expressed in the Matrix 41. To encourage more Tuvaluans to be qualified to become future judges.

Q. Can Tuvaluans be appointed to the High Courts?

A. Tuvaluans can be appointed to the High Court, but only if they have been a judge or have practiced for at least five years in "a country with a legal system similar to that of Tuvalu". Section 124

On the face of it, this appears to preclude someone who has practiced as a lawyer in Tuvalu itself. One option is to amend the qualifications for judicial appointment. The draft Constitution of the Solomon Islands provides that:



- 168. A person is qualified for appointment as a judge only if the person—
 - holds, or has held, high judicial office ... or
 - has at least 5 years experience as a legal practitioner or legal academic in Solomon Islands, or in another country prescribed by Federal law.

It is important to retain the recognition of overseas legal experience, to support local judges because many Tuvaluans will have studied and practiced law overseas as well as at home.

Localization

The comments in the Matrix seem to want to encourage localisation – to make sure there are more Tuvaluans who can become judges. If this is what the people want, there are ways to foster this in the constitution, as well as in law and policy that you might like to think about.

In the Pacific region, PNG was the country that gave the most thought to localisation of the judiciary, and today it has the highest proportion of citizen judges in the Pacific region. Like Tuvalu, PNG at the time of independence knew that it did not have enough lawyers qualified to be judges. But it wanted its own citizens to be judges, to reflect national sovereignty and to ensure that the Courts created and reflected a law based on PNG values.

Some of the things that it did to encourage localisation:

- *Provide different qualifications for citizen and non-citizen judges. The purpose of the distinction, according to the Constitutional Planning Committee, was to provide greater scope for appointing Papua New Guineans, who, at the time of independence, had only recently begun to gain professional legal qualifications.*
- *Provide for different tenure of citizen and non-citizen judges. In PNG Citizens are appointed on 10 year terms, while non-citizens are appointed on three year terms. (In Samoa, citizens are appointed until retirement age, but non-citizens may be appointed on a fixed term of years). This means that when a citizen becomes eligible for appointment a judicial position will be available.*
- *This is not to say that there should only be local judges or only foreign judges. This is a decision that is open to Tuvalu to make, as vacancies arise. The point is the extent to which you want the Constitution to facilitate or, more strongly, promote.*

Should Tuvalu have a Supreme Court in Residence?

- This too was noted in the research plan and matrix. The concern seemed to be that a non-resident CJ makes the law more distant from the lives of the people. A non-resident judge also means that there can be delays in trials and problems if there are urgent matters.
- Full time, or a more accessible CJ is also important given the other functions bestowed on the CJ:
 - Chief Justice sits on the Committee that appoints the Ombudsman (along with the PM, Speaker, Chair PSC and President of the EKT) (Leadership Code Act 2006, s 40)
 - Chief Justice may appoint a person to preside over an independent and impartial tribunal to review a case where a person's freedom of movement is restricted under s 26(4) or detained during a public emergency (Constitution s 37)
 - Approve the advice of the PSC to the Head of State on personnel matters relating to magistrates (156)



- A full time CJ position is also likely to be more attractive to a local Tuvaluan lawyer - he or she is likely to prefer full time paid employment; and being a judge restricts a person's ability to take on other kinds of work.
- The issue is one off costs and benefits. You are in the best position to determine whether there is sufficient demand to support a full time High Court, understanding of course that resources are limited.
- Ultimately this may not be something that needs to go in the Constitution – at the moment, there is no constitutional provision that would prevent a full time High Court or a resident judge. Sittings are regulated by the Superior Courts Act.

Morning tea

Independent Entities

1. Introduction on challenges faced in Tuvalu related to Independent entities

- a. Filiga Taukiei, Andrew Puga Semeli

Refer to presentations attached. However, the discussion noted the following in terms of the role of the Attorney-General and Chief Prosecutor:

- The Concerns: The combination of the roles of Attorney-General and Chief Prosecutor in the one office raises concern about political manipulation of the prosecutorial role.
- Current process: Attorney General wears two hats one a public prosecutor and the other is the lawyer of government (see section 79 of the Constitution)

Australian Position

- Attorney-General: Political minister (sits in Cabinet). Responsible for legal services to government, and assisted by three officers:
 - Crown Solicitor
 - Solicitor-General
 - Director of Public Prosecutions
- Splitting the role of prosecutor (1970s/1980s):
 - Concerns that the combination of political and legal roles was compromising the independent determination of prosecutorial decisions in the public interest. Also a time of accountability and transparency reforms
 - DPP has function to determine whether to commence prosecutions:
 - Prospects of success; and
 - Public interest
 - AG maintains the power to direct the DPP, but must be tabled in Parliament

2. Overview of Comparative Experiences & Models

Refer to presentation by Elliott Bulmer (IDEA)

- a. A review of entities typically constitutionalized (compared to Tuvalu)
- b. Elections, Human Rights, House of Chiefs, Ombudsman all absent from Constitution
- c. Should the Office of the Secretary of Government remain in the constitution?



d. Comparative models for appointment of senior figures in independent entities

Maintaining the independence of the DPP so as to ensure the benefits of dividing the roles:

- a. Guaranteeing tenure and remuneration
- b. Making clear the functions and powers of the body and when it is subject to direction
- c. Guaranteed transparent, arms-length and merits-based appointment process
- d. Adequate funding and resourcing.

Introducing an appropriate accountability function for the exercise of the DPP's functions:

- a. Judicial review not usually available over prosecutorial decisions.
- b. The AG can be responsible for issuing framework directions within which the DPP has to exercise the public interest discretion. The AG can override the DPP's decisions in a particular case. AG must table directions & any direction to override DPP.
- c. Other ways of providing accountability: eg, oversight by Ombudsman or other independent office.

Filiga: there are concerns that the office of the Peoples Lawyer is not constitutionalised. Currently, the office of the Peoples Lawyer is set out in legislation and there is no right to an independent attorney in criminal cases. There is a need to ensure the Peoples Lawyer is independent from the government & public service and there is guarantees of tenure etc. Also need clarity on when is a person eligible to seek representation from the Peoples Lawyer, and what are the implications for government funding of the office?

The meeting noted on the challenges on the Courts:

- Lack of funding can undermine judicial independence, affects access to justice and the efficient determination of disputes.
- Guaranteeing levels of funding to the judicial branch of government undercuts the flexibility that governments and parliaments have in determining the budget in any given year, in the context of the particular social, economic and environmental landscape.

Some possible solutions noted:

The Australian Capital Territory *Financial Management Act 1996*:

- The Speaker of the Legislative Assembly, after consulting the relevant officer and the appropriate legislative committee, 'advise the Treasurer of the appropriation the Speaker considers should be made for the officer for the financial year', together with a budget for the office, and present that recommended appropriation to the assembly.
- If the Treasurer presents an appropriation that is 'less than the recommended appropriation', then the Treasurer must immediately 'present to the Legislative Assembly a statement of reasons for departing from the recommended appropriation.'

Establishment of an independent review mechanism that reports on adequacy of funding to branches and other agencies

Lunch



Traditional norms and governance

1. Introduction on challenges faced in Tuvalu related to traditional norms and governance

- a. Simon Kofe, Martin Vailopa, Corinna I Lafai

Presentation noted the following from the above presenters:

- 1- Preamble of Constitution – enshrining of culture
 - phrase re cultures and traditions not clearly defined in the constitution
- 2 – key issues
 - constitutionalise local governance – enable people to respect governance
 - establish house of chief – will use the chief of an island to be part of the government
 - review the Act – not aligned with some of Tuvaluan cultural norms and practices
 - constitutionalise customary law – to respect and uphold T traditions and value to uphold human rights
- 3 – traditional government system
 - maintenance of chiefly system is very important
 - family clan – depends on each family
 - women have no opportunity to be part of the ruling authority
- 4 – norms and values of Falekaupule system

S Kofe: provided further comments that the Constitution doesn't reflect Tuvaluan values – and thus there is a desire to strengthen culture. What aspects of culture can we define more clearly? Need to define those related to governance; less relevant to include notions of culture relating to just practices. Should seek to identify the underlying principle when defining aspects of culture. There is a need to go further – develop it as part of the governance system (Parliament, Executive government) which has been adopted from the Westminster system. Note there is the greater loyalty to the island community rather than the national community. Agrees with Bal's idea that the idea of projecting the concept of the Falekaupule to the national level is more legitimate to existing communal perceptions of leadership.

2. Overview of Comparative Experiences & Models: was presented by Graham Hassall, Megan Davis (UNSW), and Bal Kama (ANU)

- a. Balancing different governance systems (Comparative approaches to traditional governance)
- b. Relationship between Falekaupule and the national government
- c. More direct role in parliament? Upper House?
- d. Fourth pillar of government? If so, what role?
- e. Relationship between Falekaupule and the local government
- f. Should the Falekaupule system be constitutionalized or left to statute?
- g. Balancing traditional norms and standards with international norms
- h. Constitutionalizing traditional norms, values, and practices

G Hassall: points for the Commission as to why the courts won't institutionalise tradition

- Note the difference between Polynesian and Melanesian society. In Polynesia – chiefly leadership is ascribed to lineage / family
 - cf. Melynesia, where chiefdom must be earned.
 - Consider what traditional authority system Tuvalu has and consider notions of chiefly authority.
 - Samoa – number of matai in the country has exploded; every family wants to have more matai so that members of their family could be in Parliament
 - i. shows impact of the Constitution on local practices.
- 1) Traditional institutions are hard to discern
- what you see as tradition now is tradition as it has evolved over time; current leadership and custom has been modified by the British experience
 - what counts as tradition? consider what was created during the British colonisation period – concept of indirect authority
 - constitutionalising system now – be aware of neocolonialism.
 - Michael Goldsmith – concept of the meeting house was encouraged by the British as a decision-making forum
- 2) Basis for legitimacy in the family and on the islands
- people democratically pick their leaders on each island – chosen by families, or clans, or islands. But there is no concept of a national jurisdiction – the legitimacy of governance goes back to the island.
 - what's the legitimacy of their constituency on the national level? Hassall argues that it is on an island level.
- 3) difficult to integrate tradition into the modern state
- Consider existence of individual and collective rights and the constitutional conundrum – if you embrace one, what does this mean for the other? Every country balances this. The UK are champions of collective rights, from which individual rights have been extracted.
- 4) few instances where custom and tradition are uniform across the whole country, e.g. in Fiji and Samoa.
- difficult to entrench tradition because judge will have to consider where custom is uniform across the land
 - Tuvalu may be one country in the Pacific where there is uniformity of custom across the island.
 - reclaiming the role of tradition in governance, not only personal spaces. Village life is very much directed by what customary leaders are saying
 - Solomon Islands – custom doesn't appear in the Constitution or in law, although it is present as the basis of decision-making and everyday life
 - Samoa: parliament is made up of chiefs – customary leadership of Parliament. A family must agree that a person is chief for that person to be part of Parliament. Executive then drawn from the parliament.
-
- Traditional rights – the government shall not prohibit function of traditional leaders
 - custom and tradition are equally authoritative, but statute prevails only to the extent it is not inconsistent with traditional law. If traditional law covers the dispute, it prevails.
 - traditional leaders have the right to be consulted on any bill.



- There are examples in Pacific where even though there isn't an even spread of custom, there has been the creation of a council
 - traditional authorities do not need constitutionalisation to be valued; but they can be constitutionalised. But if they are – what purpose for constitutionalising it?
 - a national body to institutionalise custom and tradition – this is a new concept, and requires considering what powers and what resources are needed.

J Gluck: The idea that the council may be consulted – what triggers this?

G Hassall: The council is proactive. There is a close relationship between council and the leaders of government.

Bal K: refer to his presentation annexed

Ese: rights in Tuvalu are recognized differently from the constitution and then from the Fenua. Human rights perspective: even when decisions are made in a group still the rights are protecting for individual rights. In postcolonial societies, laws have influenced the formation of custom. The sentiments of people generally are to recognise their custom. Certain principles are the same throughout the islands. The difference in Tuvalu is that people are already in set positions in society – i.e. there is an established system. The use of 'powers' as a concept – invokes confrontation and dispute with this established system. In Tuvalu, rights, where individual or collective, it is all about protecting the individual.

Jason Gluck: So far many international models and comparative experiences have been discussed. But we need to know the thinking of the CRC and Secretariat going forward so that discussion is more responsive to the Tuvalu situation. Proposes that discussion should be organised among three macro questions:

- what should be the constitutional treatment of the role of the falekaupule (traditional governance) in local governance matters?
- e.g. silence, constitutional recognition of the Local Governemnt or Falekaupule Act, or modifying arrangements in the Act?
- what should be the constitutional treatment of the role of the falekaupule (traditional governance) in national governance
- what is the extent to which traditional norm and values, and customary law, should get constitutional recognition?

Simon Kofe: the substance of Tuvaluan values is very clear to a Tuvaluan – the only problem is that they have not been codified. Look at the principles and values – define what they are.

- e.g. the notion of bribery is very foreign to Tuvaluan culture (giving and expecting something in return)
- individual and collective rights: personally thinks that for every right, there is a corresponding responsibility.
 - people have negative perceptions of human rights
 - people have used rights to pursue their own interests and to avoid shouldering responsibilities in their communities
 - emphasis on rights should be accompanied by emphasis on responsibilities (obligations to family and community)
 - e.g. you can only register to vote if you're an active participant in the community



Bikenibeu Paeniu: people want norms values and traditions to be fully accounted in the constitution. This is a top priority. Yet each island also has different norms and values. Recognises what Kama said about differences across different communities.

- CRC – how can the level of women’s voices be represented at the national level without necessarily giving them seats in Parliament.
- national seats reserved for women? The idea was previously rejected.

Sam Teo: Custom is dying. Too many Western ideas on the capital island. The issue of respecting elders is a very important custom instilled from birth. Such custom is no longer practiced. Today’s youth don’t respect elders. We can enshrine custom – but it is dying. Filial piety – should be about looking after others, not only caring about yourself. If we want to enshrine custom, should address the status of custom in practice – as it is currently fading in Tuvalu.

Isaia Taape: The reason we are here are because of the findings we have from the consultation. Traditional values and norms to be integrated. Need to codify norms, values, traditional cultures. The issue is that traditional cultures are not being recognised in the Constitution.

DPM: shared the case on the recent case of the church denominations and the island traditional leaders

Bal: the need to define custom is to give values to the customs so that when the cases come to the courts, it gives the villager the assurance that they can be heard and that customs are valued

Megan Davis: a body was instituted to protect the rights of aboriginal customs, traditions and values.

Satini Manuella: How should we elect special seats, e.g. from women, from the community or from the nation?

- e.g. in Samoa there are special seats for women, who don’t want to be matai
- Is it an equal right and opportunity – they could be downgrading themselves by asking for “special seats” rather than asking for MP seats – how will special seats improve women’s status?

Elliot Bulmer: proposes a model for parliamentary arrangements where:

- special seats are reserved for female candidates
- 24 members of Parliament: 15 elected members, 8 chiefs and a speaker
- in 2 member constituencies – one seat for male candidate and one for female candidate
- only allow elected members to vote or act in matters of confidence. This is the case in Caribbean countries.

S Manuella: Women have the same challenges as men.

Rosalind Dixon: but do women do have the same challenges in pursuing the role of chief?

S Manuella: Raises the idea of chiefly clans – asserts there is a female chief somewhere but withdraws this.

The Hon Kausea Natano: need split between national parliament and the traditional leaders.



General disagreement among the CRC delegates about whether chiefs should be part of parliament because Parliament and falekaupule chiefs look after the local level. R Dixon and E Bulmer argue that this will increase their respect and status.

Wednesday 28 February

Fundamental Rights - Introduction & Overview

1. Introduction on challenges faced in Tuvalu related to fundamental rights
 - a. Filiga Taukiei & Corinna Ituaso Lafai (3-5 minutes each)

Refer to presentation made by Filiga: in particular the presentation identified key findings from the consultation on the rights of individuals and the rights for community as a whole. Lot of concerns raised on the rights of individuals and minority groups.

2. Overview of Comparative Experiences & Models – Rosalind Dixon (UNSW) (20 mins)
 - a. General review of bill of rights against comparative practice and international instruments
 - b. Limitation clauses
 - c. Overlapping rights
 - d. Partial Bills of Rights, AJCL
 - e. Rights of the disabled
 - f. Constitutionalizing the mechanism for ratifying international instruments

Refer to presentation by Ros. Need to define whose rights we are talking about. The constitution cannot capture all of the commitments of individuals between themselves.

Ross: in some countries human rights violation cases may go to courts all the time but in other countries such as Tuvalu it might be cases such as the one on religion went to the courts but most of the rights based issues will never go to the courts. Hence, we need to look at ways and means of how else we can address those rights. Here we can look at the role of independent commissions as earlier to by Elliot. Having mini constitutions which includes a mini bill of rights for instance so people at the lower level can understand. Need to review the limitation structure of the rights. One of the ways to limit rights is to say it out loud there is a right to free speech, but its limited when its deemed necessary such as its not a right for pornography, etc. Most emphasis, section 15 of the Constitution. Change the sentences etc to take out the limit to rights as presented currently. The second issue is the idea of what rights might be added. Many constitutions now talk about the freedom and security of a person. Some like South Africa also discuss about dignity of persons; others language rights and others which can be added.

The issue around the condition of general guarantee and that of specific guarantee, for instance the one on people with disability.

Suggestion to still keep section 15 (5) on the reference to laws of other countries to justify rights cases and also for international treaties and norms.

Kausea: Issues that have come recently, is on the rights of the child has taken away the rights of the parents. Some cases where parents have been taken to the courts for corporal punishment cases. The rights of women is coming up as a concern, and we need to fully understand through our experts. Also



fully support the need to understand the rights of people, many of these rights are only implemented by the law enforcement. The use of Falekaupule has also been happening to address the rights issues. The other thing is the number of rights of an individual and many people depend on the authorities to argue their cases on human rights. Religion rights has also been taken as a major concern, reference to the recent law on Religious Restrictions. Enforcement rights need to be looked at as well.

Hon. Isaia: the rights of child are infringing and affecting the protection on teachers. In cases where there are Childs' rights abuses the Government usually provides assistance and support to the child but in Tuvalu currently those facilities are not provided.

Bikeni: other rights as well such as climate change rights. The issue of communal rights and values and traditions and that of individual rights.

Sa'aga: could it be possible to have a bill of rights and responsibilities.

Ross: whilst the rights came from the UN covenants, however Tuvalu can draft its own Bill of Rights and Responsibilities. Sometimes societies may limit rights to protect rights of groups as a whole.

DPM: Tuvalu is based on communal relationships. Question on whether the rights of the wicked and worst needs to be still protected.

Rosalind: Yes, needs to be protected.

Simon: Tuvalu has a different context, whereby as Tuvaluans families connect with each other and neighbors as well. Suggestion to remove the section 15 (5).

Ese: reference to additional clause that was added under section 15 subsection 6.

Elliot: the origins of the rights is it came from Christian principles and communal rights many years back and not so much from an individual's rights-based perspective.

Bal: need to look at the rights within indigenous societies differently from western societies. The role of courts, places an important discussion point.

Jason: need to review what exactly needs to be in the constitution and what should not.

Morning Tea

Socio-Economic Rights

1. Introduction on challenges faced in Tuvalu related to socio-economic rights
 - a. Rt. Hon Bikenibeu Paeniu & Filiga Taukiei
2. Overview of Comparative Experiences & Models – Theunis Roux (UNSW)

Bikeni: the inter-connectivity of the rights within the constitution needs to be looked at. The enforcement of the rights is very critical.



Samuela: referred to the economic rights to the wealth from the seas and to be clarified in terms of the boundary lines in terms of the land and the ownership of resources around the island.

Ros: the need to reflect international rights to ensure Tuvalu can negotiate with international donors that there is specific protection of rights on various things which Government can use to say that's in the Constitution.

Lunch

Constitutions, Environment & Climate justice

1. Introduction on challenges faced in Tuvalu related to climate
 - a. Rt. Hon Bikenibeu Paeniu, Simon Kofe

A brief presentation was provided by Simon Kofe in which he mentioned the excerpt from the Prime Minister at the world stage whereby he says that if you are not saving Tuvalu from the effects of climate change, then in fact you are not saving the entire world. In more or less meaning that if Tuvalu is being failed by other nations to solve its climate change issues and problems then they will later onwards be facing the same effects of climate change which might become too late to control. Some of the issues raised further by Kofe was on the threat to Statehood that is presented by climate change sea level rise issues, looking at the criteria for the definition of statehoods in relation to population and maritime boundaries. Key questions posed for consideration were "If you can have a statehood without a population?" and "Can you have a State with maritime boundaries?". Kofe explained the current constitution text which defines the maritime boundaries and which is currently threatened given the changes in sea level of the islands which in fact affects the boundary lines based on current provisions. Noting the impact it has given 40% of the income is derived from fisheries resources.

Rt. Hon. Paeniu mentioned that the notion to climate change refugees has been continuously raised by leaders of Tuvalu. He challenged the team to determine how this can be constitutionalized?

2. Overview of Comparative Experiences & Models – Rosalind Dixon (UNSW), Cameron Holley (UNSW) + Richard Holden (UNSW)
 - a. Right to nature
 - b. Climate change and existential threats to the state

With reference to the presentation made by the team from UNSW, Prof. Dixon from UNSW further elaborated on the need for the Constitution to affirm its moral commitment to take care of the effects of the climate change. One issue to look at was that climate change poses an existent threat to the nationhood of Tuvalu. If the nation has to move all the Falekaupule, traditional institutions will need to be moved together communally. A key consideration was to develop and adopt a procedure to undertake for the relocation.

The Deputy PM reiterated that they will not move as a full nation as there are many sub-components of a nation. The use of technology such as those used in China and other countries can help save in the nation of Tuvalu to survive.

Prof Dixon, then mentioned that regardless of what options maybe applied later onwards still the current process can put in the constitution something around the need to save the nation with text around "that by all means to save the nation by technological means available" which will give Tuvalu a strong bargaining power to safeguard its traditions and culture.



Hon. Teo agreed with Prof. Dixon on the need to constitute such text around application of technology.

Hon. Manuella also indicated on how God created mankind to lead all the other creations. He further proposed need for the provisions to reflect to the world a message from the people of Tuvalu as it goes down in history if it happens. There is a need to reflect on the rights of Small Island States and the basic right to existence should be enshrined well in the Constitution.

The Speaker shared some feedback on the effect of the recent cyclones such as Hurricane Bebe and TC Pam which had some serious impact to the country, in which some islands were washed away completely.

Ian, the Tuvalu Climate Change Advisor indicated that perhaps there is need to look at the right to sustainable development, and add provisions such as that the nationhood of Tuvalu stays regardless of the effects of climate change and for it to defend the rights to exist to the international community to be well enshrined in the constitution.

In Netherlands, as shared by Bullmer (IDEA), there is a provision in the Constitution that the state has a responsibility to keep the country habitable. There were institutions that were constitutionalized to look at such issues on a longer time basis.

The DPM updated the participants on the trust funds to cushion the budget currently and also the additional trust fund for climate change impacts is also being administered by the Government.

The meeting also discussed briefly on the Insurance Protection scheme being applied by some countries to cover such losses from climate change.

Simon Kofe also briefly mentioned about the “Law of the Seas”, that indicates that you lose your territory if you lose the land territory. Its important to see how Tuvalu as a country could bargain and campaign with the international community to change these things.

Coffee Break

Constitutions and Gender Rights

This session noted the following presentations as below:

1. Introduction on challenges faced in Tuvalu related to gender rights
 - a. Corinna Ituaso Lafai, Filiga Taukiei
2. Overview of Comparative Experiences & Models – Professor Helen Irving (U. Sydney)
 - a. Equality and non-discrimination
 - b. Participation/inclusion, quotas and TPMs
 - c. General language

In discussion, Hon Taape mentioned that there are Women’s Practice Parliament being held in Tuvalu to increase women’s political empowerment and also noted that there are more women in senior government positions than men.

The AG asked the team to consider on the language versions for the constitution given the difficulties in the past with confusions emanating from the Falekaupule Act of which interpretations supersede the other.



Thursday 1 March

Citizenship, Membership and Voting

The following presentations were made on Thursday morning session.

1. Introduction on challenges faced in Tuvalu related to citizenship
 - a. Sa'aga T Teafa & Corinna Ituaso Lafai
2. Overview of Comparative Experiences & Models – Sangeetha Pillai
 - a. Citizenship issues
 - b. Voting rights

DPM: in terms of the eligibility criterion to vote

Elliot: mentioned about the case of Mauritius to provide an ethnic balance. In consideration of electoral boundaries, its important to talk about boundaries set for voting based on citizenship numbers and whether you want voting to be set by island based number of representatives.

Hon. Natano indicated that most of the questions or challenges to be addressed were noted by the Ombudsman's presentation already. However, he shared the case of the Banaba whereby there was a difference between them and the people living in the diaspora.

Hon. Manuella further urged the meeting to look at the voting rights of the people in the diaspora and also the term of parliament, why only 3 years and not more.

Bullmer (IDEA) also indicated that currently there are no rights in the Constitution to vote. This can be changed through ordinary law very easily and needs to be protected in the constitution.

The meeting also considered to look at the prisoner's right to vote.

The DPM further mentioned that the eligibility criterion to vote and citizenship are quite sensitive. He indicated the need to be participative, for instance, if you are in NZ, what have you contributed in Tuvalu to give you the right to vote, as there is a question of fairness, and also considering the high costs involved to undertake elections. Then also considering Tuvaluan's in Fiji, in Australia, in Kiribati, so why only discuss around voting for Tuvaluans in NZ and not in other countries.

Morning Tea

Constitutions and Religion

1. Introduction on challenges faced in Tuvalu related to religion
 - a. Simon Kofe & Filiga Taukie
2. Overview of Comparative Experiences & Models – Melissa Crouch (UNSW)



- a. General review of bill of rights against comparative practice and international instruments
- b. Limitation clauses
- c. Overlapping rights

The presentation by the People's Lawyer challenged the participants to see how the constitution can allow the protection of the traditional rights and norms of the islands against the effects of new things introduced by the new religious groups. She urged that these things need to work hand-in-hand. The freedom of religion case had caused a lot of problems in Tuvalu already and that different Fenua have responded differently to the religious freedom issues.

Hon Taape mentioned that the issue of religious freedoms is not relative to other religions such as Islam and the Bahai Faith groups but mainly within the Christian denominations itself. He further reiterated the need for respecting the elders is required very much in Tuvalu.

Hon. Teo questioned whether we can have the EKT as the State Church and all other churches allowed to practice as long as they meet the criterion with the traditional elders and island norms.

The AG mentioned about the Religious Restrictions Act and on the need for newer denominations to conform to the traditional values of that particular island which they want to register in.

The Senior Magistrate indicated that the issues is mainly based on the way the new religious groups practice which have an impact on the way the traditional norms have been administered in the past.

There was a discussion around the offerings of the Church Pastor's by the elites which the other churches want access to as well. This was not considered ideal given that the chiefs and elites provision to the EKT is on their own decision and needs to be honored.

The People's Lawyer questioned whether there are Preamble's in the other constitution whereby Christianity is mentioned directly or the State Church is denoted. Examples from the participants were shared on Tunisia whereby Islam is mentioned and which is also currently heavily debated in country.

The DPM further mentioned that the Restrictions Act needs to be looked at whether the petition to apply needs to be signed by 200 people as previously it was 50. However, there is no mention or reflection on culture or its consideration need to be articulated.

Lunch

Discussion on constitutional reform versus legislative reform: options for Tuvalu

1. Introduction by Hon Otinielu T Tausi, Mohammed Mozeem, Rt. Hon Bikenibeu Paeniu
2. Presentation by Rosalind Dixon (UNSW)

Closing session with UNSW

Free afternoon



Friday 2 March

(Coogee Sands Hotel and Apartments)

Discussion on next steps for constitutional review

Moderators: Hon Otinielu T Tausi, Rt. Hon Bikenibeu Paeniu, Jason Gluck

1. Reflections on Phase I

- Revisit the spreadsheet on the Consolidated Outcome of feedback from the citizens of Tuvalu
- Take note of the priority issues as raised by the people

Speaker mentioned that the CRC and the Secretariat tried to explain to the communities on what is there in the current constitution. However, given there was only two days on each island, we barely managed to finish that. In the next ones, we need to focus more on that and ensure that the community is able to fully understand what's in the process and also the work which is being done. The Speaker and Bikenibeu reiterated that there is a need to have full participation of the CRC members in the consultation.

The Ombudsman also mentioned that there has also not been a fully meeting of the CRC and the Secretariat and this was the first time they were meeting to discuss and present on things.

Simon mentioned that considering most of the Secretariat members have full time jobs most of the Secretariat have been helping using their spare time. He further mentioned that if there are issues from the Executive that needs to be addressed now, it should be addressed sooner than later. Also timing of the activities and the preparation for the outreach will require adequate planning, and ample notice so island communities are ready to participate. We need to engage more staff on the Secretariat on a full-time basis to ensure preparations are done properly.

Filiga reiterated on the comments shared by Simon and need for the Secretariat more in particular, on the analysis of the feedbacks from the outer islands as they haven't been looked well yet. Suggestion is to conduct secretariat meetings after every consultation to reflect and analyze the findings. Also need for proper recording of the consultations on what is presented and said.

Ese mentioned that we need to be realistic. If we are genuine about acquiring information about the context to Tuvalu then we should not be rushing into it. Looking at the elections if it's coming up then what is the process. We should seriously consider the language, as the reality of the problems we have been facing in the courts is due to the language. We should try to do it in Tuvaluan as that's where the problems are coming from and if its difficulty to translate it in English that's okay as its just translation. There is a lot of literature on how to undertake research in the Pacific on methodology etc on such processes but we are not using this process. We can consider the dividing of the groups when going to the outer islands so it can be done in a months' time. One of the areas where we will need further assistance, considering a lot of experts were provided by the UNDP, we lacked a customs or culture expert who is knowledgeable in the Pacific culture.

The discussion that revolved around the need for translation into Tuvaluan language and need for having the Tuvaluan feelings and values reflected in the constitution. The **Ombudsman** reflected on



the legal precision and the lack of richness in the Tuvaluan language to get the legal precision is very critical but then it's for the CRC to decide. The need for explanatory notes to better understand the constitution was also discussion and to have it in Tuvaluan as well.

The **Speaker** mentioned that in Parliament all the Hansards are in Tuvaluan and if someone needs the version in English then it will need to be translated.

The Project Costing needs to be looked at and the **DPM** asked for the submission of the budget for the cabinet to be done by next week. The **DPM and Speaker** mentioned that funds should not be an issue that should affect the process, focus should be on the Constitutional Review Process.

In terms of the draft Constitution, it was proposed to be presented in March 2019. By May need the first draft of the Constitution.

2. Reflection on the workshop discussions.

- What papers/reports from the workshop need to be produced?
- What are the main issues that require amendment?
For each issue discussed, what are the options that seem most appropriate for Tuvalu?
- What additional research is needed?

3. Discussion on Tuvalu norms and values.

- Discussion on next steps in terms of research, defining norms and values, and the “Roots” project.

4. Review checklist of research topics for the constitutional review.

- Discuss who is going to write each paper.
- Check to see if any additional topics are needed.

5. CRC and Secretariat to discuss and review the need, structure and functions of the thematic task force emanating from the phase I of the outreach and research in various thematic areas. The thematic taskforce can be responsible for consolidating all feedback based on different thematic areas and outlining amendment areas based on current constitutional provisions for consideration of the Secretariat and CRC.

6. CRC and Secretariat to determine the need and agree on structure for a Bill on the Amendment Process. Paper can be drafted by Prof. Tom Ginsburg and presented in March to CRC.

7. Review and finalise the draft schedule and structure of Phase 2 consultation, including:

- Duration on each island – noting that 2 days in Phase I was too short (not only as observed by the CRC and Secretariat but the people)
- Mode of transport – given that from experience traveling on scheduled boats is a disadvantage in that people are distracted and busy meeting relatives, government touring teams, preparing goods to ship to relatives on Funafuti



- Question on whether this Phase should be done by the Secretariat only and task forces or continue the same i.e. engage the CRC as in Phase I
 - Would Phase II include the diaspora?
 - How the civic education component will run in phase II
 - Structure of the Phase 2 – focus on options to clearly explain the advantages and disadvantages and particularly those elements that conform well to the Tuvalu values and norms within the context of international norms and standards
 - How to ensure the Phase II is absolutely non-partisan so that personal or political agendas are not pushed on the people.
8. TCRP Structure and Budget – the existing signed TCRP Prodoc needs to be updated. The TCRP was moved to Parliament through an agreement of MPs in December 2016 and hence there is a need to review:
- The Prodoc to reflect the present scope of the process
 - The current operating and management structure through the Secretariat and the CRC, as reflected in the Prodoc
 - The roles of the Clerk to Parliament and Attorney-General and their working relationship with the CRO
 - The Project overall budget – identifying key areas for Tuvalu to provide supplementary funding, and as well as UNDP/Tuvalu to jointly seek extra-budgetary sources from other donor partners
 - Possible alternative financial and administration options for smooth operation of project activities on the ground, in particular for the phase 2 consultations and meetings to be conducted in-country. Funds to be made available on site for expenses around catering, venue hire and logistical needs via an MOU between UNDP and Parliament for ease of operation defining clearly what role the CRO will play in the management of the disbursement of these funds. A budget to be developed and discussed in March and administered through a formal MOU for release of funds as required.
 - A minimal project manpower structure to ensure timely implementation of activities planned and agreed up to Phase 4 (i.e. before the National Election and Post-TCRP)
9. Timeline and Key decisions to be sought from the CRC – 2 papers will be circulated at the Sydney Workshop

The CRC and Secretariat members then strongly considered the timeline paper submitted and reviewed it strongly. The following table was reviewed and agreed upon. It was also discussed that the CRC needs to meet as soon as possible and the participants agreed to meet straight after the Parliament Seating from 21-27 March to have a CRC meeting from 28-29.

It was discussed and agreed that UNDP experts will provide a paper on what is Constitutional and what is not Constitutional for CRC and Secretariat to consider.

10. Next CRC Meeting – purpose, experts to attend



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Workshop Closed

Annexes

Presentation by Cheryl Saunders on “Overview of Comparative experiences & models

Presentation by Cheryl Saunders

EXECUTIVE/LEGISLATIVE RELATIONS – PART I

This session

- Long list of items on agenda, drawn from Tuvalu’s experience with parliamentary government...
- Divide broadly between two main problems
 - Instability of government
 - Executive dominance of Parliament
- Approach
 - How comparative understanding might help
 - Range of issues and options
 - Conceptual solutions
 - Technical solutions

Comparative understanding

- Some distinctive aspects of Tuvalu have fed into this list of issues, including:
 - Population size and diversity
 - Island geography
 - Authority of the Falekaupule
 - Local culture and traditions
 - Other
- Many of the problems that Tuvalu has encountered nevertheless are familiar in other parliamentary systems, in the Pacific and elsewhere
- Experience elsewhere offers insight, not automatic solutions
- Consider the total package of arrangements and the context in which they operate; compare with conditions in Tuvalu

Range of issues and options

- The two big issues are:
 - How to ensure stable and effective government?
 - How to make Parliament active and responsive?
- An associated issue is how to constitute the head of state so that the position fulfils its intended role
- These issues have been the subject of experimentation in parliamentary systems, including Tuvalu, for decades
- Other more recent issues, thrown up by conditions of 21st century:
 - What direct role, if any, should the people play in constituting public offices and in law-making?
 - How should public contracts and transnational arrangements (including receipt of aid) be handled in a parliamentary system?

Conceptual solutions

- Tendency to seek technical solutions for most of the issues on the agenda
- In addition, however, may be useful to publicly articulate an agreed understanding on some of the basic concepts, which may be taken for granted or ambiguous.
- These include:
 - That MPs and Ministers hold power for the public interest
 - That the Speaker is independent (and what that means)
 - The extent to which MPs are expected to act in their own understanding of the public interest, as opposed to acting on the wishes of their constituents
 - The extent to which Parliament is expected to play an independent role in holding the executive to account and reacting to proposals for new law, expenditure and other matters that come before it.
- The constitutional review provides an opportunity to canvass these issues, possibly drawing on cultural norms, as a foundation for any technical changes that are made.

Stable and effective government

- The stability of government is threatened by defections by MPs that initially supported the government and by the withdrawal of confidence
- Technical solutions might either reduce the incentives for defection etc or inhibit defection or no confidence votes by rules.
- Measures to reduce incentives include:
 - Enhancing the legitimacy/popularity of leader of the government through mode of choice
 - Providing for a dissolution of Parliament if government falls
 - Reducing the carrots of appointment as Minister (salary, other perks)
- Measures to control defection and no confidence votes include:
 - Limits on the number, timing and procedures for no-confidence votes
- Both need to be considered carefully, to avoid unintended and undesired consequences

Active and responsive Parliament: some options

- Reduce the proportion of Ministers to MPs and control it through constitutional entrenchment
- Adjust salaries, conditions and public expectations so that effective performance as MP is valued as highly as that of Minister
- Shore up the independence of the Speaker through procedures for election, recognition, tenure, support or other means
- Require Parliament to meet with stipulated frequency or provide procedures whereby a parliamentary minority can cause Parliament to be brought together
- Tighten the requirements for consultation in law-making procedures and for the use and making of delegated legislation
- Give Parliament greater control over its own budget and staff
- NB the possible use of a second chamber

Radio Program 5th March – 29th April

Radio Program 3.1

Date and Time conducted: 5th March, Monday, 2.30 pm – 4.00pm

Radio Hosts or Facilitators:

Temukisa Hauma, TCRP Civic Education Officer, Forms 2 and 3 students from Nauti Primary School and four teachers

What was covered:

The quiz was organised for the students after the workshop, it covered basic question on the constitutional awareness workshop that was conducted during the workshop

Radio Program 3.2



Date and Time conducted: 13th April, Tuesday, 3.30pm – 4.00pm

Radio Hosts or Facilitators:

Temukisa Hauma, Civic Education Officer, Fetuvalu Form 5 students

What was covered:

The students read their poems, this session focussed on the Constitutional awareness for students and people mainly on the outer islands. This will inform the people about the importance of the Constitutional review

Radio Program 3.3

Date and Time conducted: 19th April, Monday, 10.30am – 12.00noon

Radio Hosts or Facilitators:

Lanuola – Ag, Director of Gender Affairs, Corrina Ituaso, Ag, Attorney General, Nanoua Ewekia, Youth representative, Pasai Falasa Gender Affairs Officer, Mahu Homasi – Human Resource Officer, Mili Tusitala Red Cross Temukisa Hauma CVO and Tuvalu National Council of Women's President

What was covered:

This session aimed to educate the people about the Temporary Special Measures (TSM) which the Gender Department and the Council of women i trying to educate the people about and to support the idea. There was a free line for people to call and the panel responded to questions (This was a Talk Back Show)

Radio Program 3.4

Date and Time conducted: 26th April, Monday, 3.30 pm – 4.00pm

Radio Hosts or Facilitators:

Temukisa Hauma, TCRP Civic Education Officer, Form 2 and 3 students, Nauti Primary School and teachers

What was covered:

The session covered the roles and responsibilities of students in the classroom, home and communities as well as the roles of parents, teachers and communities towards them. This was aimed to educate the students about their roles and responsibilities at school, at home ad in the community. It also

Radio Program 4.1



Date and Time conducted: 2nd April, Monday, 3.30 pm – 4.00pm

Radio Hosts or Facilitators:

Rt.Hon. Bikenibeu Paeniu, TCRP, CRO, Simon Kofe, Senior Magistrate, Filiga Taukiei Nelu, People's Lawyer, and Temukisa Hauma, TCRP, Civic Education Officer.

What was covered:

This session was used to educate the people on Political Reform, It discussed the advantages and disadvantages of continuing to keep Her Majesty, the UK's Monarch as HOS for Tuvalu and briefly define Westminster Parliamentary versus Presidential Style of Governance, also the Independence of the 3 Pillars of Democracy i.e. Parliament, Executive and Courts

Radio Program 4.2

Date and Time conducted: 9th April, Monday, 3.30 pm – 4.00pm

Radio Hosts or Facilitators:

Simon Kofe, Senior Magistrate, Filiga Taukiei Nelu, People's Lawyer, Martin Vailopa, Culture Officer and Temukisa Hauma, TCRP, Civic Education Officer.

What was covered:

Falekaupule Traditional and Culture, This session was used to educate the people on Traditions and culture. They need to be aware of the importance of culture and ways to respect and maintain it

Radio Program 4.3

Date and Time conducted: 16th April, Monday, 3.30 pm – 4.00pm

Radio Hosts or Facilitators:

Simon Kofe, Senior Magistrate, Filiga Taukiei Nelu, People's Lawyer and Temukisa Hauma, TCRP, Civic Education Officer.

What was covered:

This session was used to cover the Preamble on the History of Tuvalu before the arrival of Christianity, to define the Tuvalu values and norms enshrined in the Constitution and the importance of defining our national values and principles

Radio Program 4.4

Date and Time conducted: 23rd April, Monday, 3.30 pm – 4.00pm



Radio Hosts or Facilitators:

Simon Kofe, Senior Magistrate, Filiga Taukie Nelu, People's Lawyer and Temukisa Hauma, TCRP, Civic education Officer

What was covered:

The session was aimed to educate the people on the Independent entities and their vital roles and to identify each of the Independent Entities which are in the current constitution and which are not.

Radio Program 4.5

Date and Time conducted: 29th April, Monday, 3.30 pm – 4.00pm

Radio Hosts or Facilitators:

Temukisa Hauma, TCRO, Civic Education Officer

What was covered:

This session was used to inform the people about the Second Phase of the Constitutional Review consultation as well as the update of the civic education activities that will be carried out during the consultation.

The Kaupule Secretaries were also requested to put up the posters and flyers (that were sent earlier) before the arrival of the team to their respective islands



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FAKATOMUAGA O TE FAKAVAE

E lua vaega o te Fakatomuaga o te Fakavae:

1) TALA FAKASOLOPITO O TUVALU

2) MAFAUFAUGA MO AKOAKOGA TAAU NE FAKAVAE KIEI TE FAKAVAE.



Te Nivaga II, 1988 te sui o te Nivaga 1, 1978

1. Tala Fakasolopito o Tuvalu

- 1892 - aofia mai lalo ote pui puiga o Pelatania
- 1916 - Kolone Kilipati mo Elise
- 1975 - Mavae mai Kilibati
- 1978 - Tutokotasi Tuvalu

2. Mafaufauga mo Akoakoga Taaau ne fakavae kiei te Fakavae

2.1 Ne lotomalie a tino o Tuvalu ke fakatu

se malo e tasi

2.2 Se Malo tela e fakavae mai

- Talitonuga Kelisiano;
- Fakanofoga fakatulafono; (Rule of Law)
- Tuu mo faifaiga faka Tuvalu
- Akoakoga mo mafaufauga taua ne fakavae kiei te Fakavae.



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2.3 TE MANUIA TUTUMAU O TUPULAGA NEI MO ATAEAO E MAUA MAI:

- Te fakamalosiga o tuu mo faifaiga masani;
- Te loto fenua ite agaaga o te fai mea fakatasitasi;
- Fealofani i vaasia o tino, kaiga mo fenua;
- Te fai tusaga o tino takitokotasi.

Niisi vaega ko la e fakataua

- Te ava mo te fakaaloalo
- Te salasala te loto malie i ikuga fai a te maalo;
- Polopolokiga/akoakoga i loto i kaiga;
- Tu mo faifaiga o fenua

Fesili:

- E mata e isi ne fakamafuliga e tau o fai ki te tala fakasolopito o Tuvalu?
- E mata e manino lei te fakamatalaga o tuu mo faifaiga Tuvalu i loto i te fakavae?
- E mata e mafai o fakafealofani a saolotoga o tino mo tuu mo faifaiga Tuvalu
- E mata e tau o fakamafuli te fakaasiga tela ki akoakoga Kelisiano i loto i te fakavae?
- Se a te uiga tonu o akoakoga Kelisiano io me ko te olaga kelisiano?



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TE ILOILOGA O TE FAKAVAE O TUVALU

FAKATOMUAGA O TE FAKAVAE



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SE A TE FAKAVAE?

Te Tulafono maluga o te atu fenua.

Te Tulafono napa tasi I te maluga.

Te matua o Tulafono.

A nisi tulafono e tau katoa o tautali ki te Fakavae

E fakatuu i ei a foitino mo olotou malosiga:

Ko oi e tau o kau atu ki te Iloiloga?

Tagata

Fafine

Talavou

Tino se katoatoa

Tamaliki akoga.

Ko oi e aoga ki ei te Iloiloga o te Fakavae tenei?

Ko te Malo, Fakapotopotoga kola se kau i te Malo Talavou, Tamaliki mo tino Tuvalu Katoa



Akoga Nauti kau atu ki te iloiloga o te Fakavae



Fetuvalu ko galue I potukau mo te iloiloga o te Fakavae



Tagata mo fafine ko kau tasi I te iloiloga o te Fakavae

Kai a ko Iloilo i ei a te Fakavae.

- Te Fakavae ko matua
- Ko uke mea fou ko oko mai ki te atufenua
- Ko uke foki a pokotiaga.

Ne a pokotiaga o te Fakavae tenei?

- ✓ Faifaiga Malo
- ✓ Local and Traditional Government
- ✓ Saolotoga ki Talitonuga
- ✓ Gender and other issues
- ✓ Socio-economic rights
- ✓ Independence of Entities

Kai a e taua tou kaufakatasi ki te iloiloga o te Fakavae?



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- E taua tou kaufakatasi ki te iloiloga o te Fakavae ke iloa ne koe me ne a mea kola e toki i te fakavae.
- E mafai o pokotia tou olaga manafai seiloa ne koe te Fakavae;
- Ka se mafai koe o fakaloiloigina ne se tino.
- E tau mo tino katao o fai tusaga ki et Fakavae

Ko oi e sokotaki koe e uiga mo tulaga o te Iloiloga o te Fakavae?

Te ofisa o te Iloiloga o te Fakavae tela e ofisa tasi mo te Palamene.

Te Koga:

Ko te Ulu ofisa o te Ekalesia Kelisiano Tuvalu (EKT)

Te Ofisa o te Iloiloga o te Fakavae e toka kae e fiafia o tali so se fesili fia maina I tualaga o te iloiloga.



Sautalaga mo tamaliki Motufoua I Vaitupu

Ne pokotiaga manafai koe se kau atu ki te iloiloga o te Fakavae?

- Seiloa ne koe me se a te taua o te Fakavae
- Ko se aofia koe I loto I te iloiloga tenei
- Ou manatu gali ko se fakaasi
- A faitioga totino o koe mo te fakaave ko se lagona ne nisi
- A koe ka fameo ki so se ikuga fai a te Malo mo te Atuenua.

Komiti Fakagalue o te Iloiloga o te Fakavae



Sausautalaga mo te fenua I tua o Funafuti



Tuu mo Faifaiga Tuvalu fakataliga o malo ki fenua

TE ILOILOGA O TE FAKAVAE O TUVALU



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Te lua (2) o malaga



Te Malaga ko fano ki fenua i tua atu o Funafuti.

- Nanumea
- Nanumaga
- Niutao
- Nui
- Vaitupu
- Nukufetau
- Nukulaelae
- Niulakita

Ne a Saolotoga Totino o Tino

Saolotoga o te tino e olo tasi mo te fai tusaga mo tiute tuavae ki nisi tino, fakapotopotoga mo te fenua.

Tena uiga ou saolotoga ke iloa ne koe o fakaaoga i te ava mot e fakaaaloalo kae amanaia foki ne koe a pokotiaga ki nisi tino.

Penei mo tou saolotoga o faipati kae fakaasi ou manatu, e fai lo aou manatu kae se tau o pokotia masei iei te saolotoga o te sua tino i tena olaga totino e iloa ia ia.

Te tiute tauavae o te Malo o puihui kae fakatoka ne ia ko tino ke ola lei, fiafia kae ke iloa ne latou o fakaaoga olotou saolotoga.

A te Malo e amanaia so se fakatagi a so se tino, tela e fakatoka ne ia auala fesoasoani o fakatoka ki fakatagi konei e auala itulafono.

E taaua ke iloa ne koe tou tiute mo tou tusaga

Tusaga o tamaliki ki fakapotopotoga

- Fakalogo ki so se tino matua
- Ava ki tino matua
- Fesoasoani kae amanaia tino matua
- Tausi te filemu
- Alofa
- Tausi ke ma te fenua



Fesoasoani o teu ke ma te fakai

Tusaga fai i loto i te kaiga



Fesoasoani ki te kaiga.

I loto I te kaiga:

- Ava ki matua mo tino I te kaiga
- Fakalogo ki matua



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- Lotomaulalo
- Alofa ki tino I te kaiga pela foki mo nisi Fesoasoani ki te kaiga
- Fakalogo kae tautali ki fakatonuga
- Fakamama te lima oko
- Atafai ki kope o te kaiga
- Fakamaoni ki lotu
- Fakamalosi ki te akoga

- ✓ Fakamaoni o fai a tiute I te faleakoga
- ✓ Tautali ki polokalme a te akoga
- ✓ Fai me aakoga
- ✓ Tausi ke ma kae gali te faleakoga

Ke masaua ne tatou me I tou saolotoga e matala kae olotasi foki loa mo tou tiute io me ko tusaga fai o tatou ki tou kaiga, fenua mo te Atu fenua.

E manakogna ke fai ne tatou a tou tiute mo tou tusaga kola e tau o fai ne tatou.

Tou Saolotaga mo toku Saolotoga e taua kii manafai e iloa ne koe, e iloa neau o fakaaoga.

Koi tuai o faipati koe io me fakaaoga tou saolotaga, mafaufau muamua me pefea manafai ko koe i te tulaga tena.

Tusaga i loto i te Akoga



Fai mea akoga kae fakalogo ki fakatonuga

I loto i te akoga:

- ✓ Ava ki faiakoga
- ✓ Ava ki so se faiakoga
- ✓ Fakalogo ki faiakoga
- ✓ Tautali ki fakatonuga a faiakoga
- ✓ Tautali ki tulafono a te akoga

Saolotoga o te tamaliki

Ki te akoga

Ola lei

Ko oi e fakataunu neia a Saolotoga o te Tamaliki

- Tamana mo te Matua
- Tupuna
- Faiakoga
- Tokita mo Neesi
- Te kaiga
- Te lotu
- Tino katoa

Saolotoga ki Talitonuga

A tino katoa e manako o fai tapuakiga i olotou talitonuga.



Saolotoga mo Fafine:



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Konei pokotiaga I saolotogao fafine ona ko tuu mo faifaiga faka Tuvalu.

A te fafine e se lagona tena leo I tonu fai mo maopoopoga fakafenua.

A te fafine e se nofo I loto i te Pouloto I te Falekaupule.

A ia e nofo faeloa mai tua o te pou tafa o tautua ki matai tagata I te pou loto.

A ia e se taulia manafai e fakasolo a manafa mo laukele o te kaaiga; vaganaa fua manafai ko seai se tagata I te taufanauaga.

MO TOU TIUTE

FAIGA MALO

1) Faka Palamene

Te faiga malo e fakaaoga ne Tuvalu mai te taimi ne Tutokotasi I ei, 1978 ke oko mai loa kit e tausaga nei ko te Malo faka-Palamene.

TOU SAOLOTOGA

Te Malo faka palamene se malo faka temokalase e fakaaoga ne Malo Kaufakatasi pela mo Australia, New Zealand Canada, Singapore mo nisi malo.

1) Malo Faka - Palamene:

- A sui ki te palamene e filifili mai ne fenua
- A te Ulu o te Malo e filifili ne sui filifilia ko la ne palotagina mai fenua.
- Te Kapineta e fili mai sui kola kooti ne palotagina tela e nofo mo te malosiga.
- A te Ulu o te Malo e mafai o nofo i te tofiga tenei ki se leva tela koi manakogina a ia ke nofo iei.
- Te malosiga o te malo faka palamene e nofo mot e Ulu o te Malo mo te Kapineta.
- A te Ulu o te Malo mo te Kapineta fai akatasi ne latou a ikuga io me ko te fakatelega o te malo.



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2) Faiga Malo Faka Pelesitene

A te Pelesitene ko te Ulu o te Malo.

- A ia e palotagina ne tino katoa, tela a ia ko te loto o te tokoukega o tino o te Atua fenua.
- A tena nofoaiga io me ko tena malo e faigata o mafuilufuli me ona e se mafai ne te palamene o fakateka te pelesitene mai tena tofiga faka pelesitene
- E mafai loa o fai tena tonu i a ia e aunoa mo se amanaia ne ia nisi fautuaga

- Te kesega I te malo faka pelesitene e filifili ne tino katoa ako palamene e filigina ne te potukauga tokouke o te palamene.

3) Faigaa Malo tela e palutaki – Te Faka pelesitene mo te Faka- Palamene:

- Te vaega malo tenei e isi se pelesitene e isi foki se ulu o te malo. Te malosi e nofo mot e Ulu o te Malo.
- Te Pelesitene mo te Ulu o te Malo e vaevae ia laua te malosiga o te fakatelega o te Malo.
- Te ulu o te malo e masani o nofo mo te malosi I te fakatelega o te Malo I loto I te Atua fenua.

4) Te faiga Malo Faka Falekaupule:

Te vaega tenei e onoono ki tulaga o te Falekaupule.

- Te Ulu Aliko/Pule Fenua/ Te tupu
- Te kaiga Aliko
- Fakaikuikuga o mataupu e fai ki te sisiga lima/lotomalie
- E seai ne kinauga

TE LAUNI LUA (2) O TE ILOILOGA O TE FAKAVAE

Mee – Iuni

Mataupu Taaua ka Sautalagina:

- Fakatokaga o te Fakatomuaga ke mafai o aofia i ei a mea konei:
 - 1) Tuu mo Iloga Tuvalu
 - 2) Mafulifuliga o Tau

- Vaega Faigaa Malo:
 - 1) Palamene
 - 2) Pelesitene
 - 3) Palutaki te Palamene mo te Pelesitene
 - 4) Fakatuu se Fale o Alik

- Sui ki te Palamene:
 - 1) Ke faopoopo te aofaki o sui ki te palamene
 - 2) Ke fai n enofoaga e 2 fakapitoa mo fafine

- Mataupu ko la e mafaufaugina ke toki ki loto i te Fakavae:
 - 1) Saolotoga o Fafne
 - 2) Saolotoga o Talitonuga
 - 3) Saolotoga olo tasi mo Tiute Fai
 - 4) Te pou napa 4
 - 5) Foitino foliki Tutokotasi.

- Mo nisi mataupu ko la seki kilogina ne te Komiti o te Iloiloga o te Fakavae



Ko Iloilo te Fakavae o Tuvalu

Ko te launi lua(2)

Mee – Iuni

Ko te kope taua o Te Atufenua

Mo koe mo au mo tatou katoa

E taua tou oko mai o fakaasi ou manatu

Tou tusaga mo toku tusaga mo te ataeao manuia o te Tuvalu

TUVALU MO TE ATUA



Tuvalu Constitutional Review Project (TCRP)

Phase 2

May – June, 2018



A Fundamental National Document

Come share your views and participate in the consultation.

Interact and raise your concerns.

Your input and mine are much appreciated for this vital nation noble course.

TUVALU FOR GOD

Appendix 4

Radio Program

Political Reform - Questions

1. **Head of State (HOS):**

- What are the advantages and disadvantages of continuing to keep Her Majesty, the UK's Monarch as HOS for Tuvalu?
- When and how will Tuvalu become a republic when the HOS changes?
- What extra benefits shall Tuvalu receive if it follows this path?
- Whether the HOS changes or not what will the appropriate powers be vested on the HOS
- Briefly define Westminster Parliamentary versus Presidential Style of Governance
- Independence of the 3 Pillars of Our Democracy i.e. Parliament, Executive and Courts (Ref#: 5)
- Requested for the members to discuss item by item and agree on the language in the Draft Research Plan.

Right now, we don't fully understand a hybrid of the Westminster and Presidential systems. It is important for the CRC and public to understand fully the envisioned hybrid.

- Considerations relating to remaining in the commonwealth (Ref# 3). Advantages and Disadvantages need careful consideration.
- Is there any possibility to merge with the Head of State and need to integrate this into the Separation of powers as well.
- People want to know whether changing the HOS away from Her Majesty the Queen would leave Tuvalu worse off
- Many people associate our present setup where the Queen is HOS and once it is changed Tuvalu automatically becomes a republic. It is noted however that systems like Samoa and Tonga while having their own respective HOS they are not republics.
- People want to know whether changing the HOS away from the Queen would bring more benefits



- At times of political instability the HOS has no powers to intervene and whether the HOS should be given any powers at all whether HOS remains unchanged or changed?

Parliament is very much dependent on the Executive both in its budgetary needs and the exercise of its functions such as Select Committees and the overseeing of the Executive.

- The oversight role of Parliament through its Select Committees is redundant and must be strengthened. For example, the Public Accounts Committee oversees the financial resources of the nation but is not very effective right now.
- To instill checks and balances that will ensure the separation of powers among the three main pinnacles of the Constitution
- Whether it is time for Tuvalu to have a second House and be the House made up of “Alik” Chiefs of the eight island communities and perhaps made them be the custodian of the Tuvalu culture.
- Qualification of leaders and criteria or norms to address in 6.1 issues.
- Problem can be addressed in Parliament, electoral systems i.e national seats, no family ties but based on merit and national unity and identity and how we are doing this. This is important to talk about esp, to contribute to things of the island functions and activities etc. 6.10 rationale
- Conflict of interest and importance of declaring its interest.
- To remain as a Westminster constitutional democracy and also to change to a presidential form of government
- Discuss Advantages and Disadvantages of each model – as well as the type of mixed hybrids of parliamentary and presidential Concise illustration of the main features of the American presidential system and those of the Westminster would help the people make informed choices.
- To control the frequent changes in Government

History of Tuvalu before the arrival of Christianity

- To define Christian Principles,
 - Why in other countries there is clear statement of separation of the church and state?
 - Define the Tuvalu values and norms enshrined in the Constitution
- 2) Paper on reflecting climate change in the preamble (including the maritime boundary of Tuvalu,
- The importance of defining our national values and principles of governance and whether this should be inserted in the Preamble or under the provisions.
 - We should focus on today’s values rather than previous practice.
 - The issues on what are values? There is not much emphasis of the values in the Preamble.



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- The Preamble can be listed to include national values. Honesty, integrity and moral values are not mentioned in the preamble. Important to clearly define the national values.