

TUVALU

CONSTITUTIONAL REVIEW PROJECT

Annual Project Report (Jan – Dec 2017)



Engaging the People of Tuvalu in reviewing the national Constitution!



*Empowered lives.
Resilient nations.*

Disclaimer

Report compiled by: Mohammed Mozeem, Project Manager/UNDP Governance Analyst

For clarifications or more information please contact him on email: mohammed.mozeem@undp.org

Table of Contents

PROJECT OVERVIEW	1
BACKGROUND	2
INTRODUCTION	2
SUMMARY OF PROGRESS	3
Output 1: Strengthened institutional and technical capacity of the Constitutional Review Committee and CRC Secretariat to undertake the Constitutional Review Process (Planning Stage)	3
Output 2: Enhanced citizen knowledge and engagement on the Constitution and the Constitutional Review Process (Consultation and Information Gathering Stage)	7
Output 3: Formulation of recommendations, amendments and support provided toward advisory referendum and Adoption of the new Constitution.....	15
KEY CHALLENGES.....	16
FINANCIAL REPORT	17
RISK MANAGEMENT.....	18
ANNEXES	23
Annex 1 – Terms of Reference for the Constitutional Review Committee (CRC)	23
Annex 3 - Constitutional Review Committee (CRC) - Rules.....	26
Annex 4 – Issues to Guide the Consultation with the people of Tuvalu	28
Annex 4 – Questions to Consider in Deciding Whether and How to Utilize a Constitutional Referendum	39
Annex 5 – Summary Report of the Consultations in Fiji and New Zealand.....	44
Annex 6 – Summary report of consultations in the islands of Nui, Nanumea, Niutao, Nanumaga, Nukulaelae and Niulakita	50
Annex 7 – Timelines for Tuvalu Constitution and Constitutional Review Committee Secretariat	69

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. 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.



Figure 1 The Protection of Traditional and Cultural Rights and Values is considered a fundamental part of 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

The following is a summary of the project progress based on activities defined under the Project work plan adopted for the period January to December 2017. During the initial period, the project undertook initial capacity building trainings for the Constitutional Review Committee (CRC) members, who are also members of parliament, and other key stakeholders. These were conducted in late 2016.

Output 1: Strengthened institutional and technical capacity of the Constitutional Review Committee and CRC Secretariat to undertake the Constitutional Review Process (Planning Stage)

Activity Result 1.1: Capacity of the Constitutional Review Committee (CRC) is enhanced

Development of Terms of Reference (TOR) for the CRC

The CRC has a TOR which was produced through technical assistance from the Office of the Attorney General. The CRC adopted (in December 2016) the TOR as a key instrument to outline the key responsibilities and functions of the committee of parliament. This was done to provide some level of clarity to the members on their role as members of this special committee of parliament, particularly their roles in leading the constitutional review process. A copy of the TOR is annexed to this report.

Develop committee rules for CRC and passed in parliament

During the capacity building workshop conducted in December 2017, the CRC identified the need to have a set of special parliamentary rules to supplement the Parliamentary Rules of Procedure for the CRC. This was due to the fact that the current Rules of Procedure did not adequately reflect the needs for a special committee such as the CRC which is expected to undertake major tasks in respect of the review process. The Project mobilized technical support to develop the CRC Rules which was presented and adopted by the CRC on 9 May 2017 during the second capacity building training. A copy of these rules is annexed to this Report.

Undertake technical training for CRC members on roles and functions of the CRC and conduct of work based on international best practice

A two-day training workshop for the Constitutional Review Committee (CRC) and the technical support staff was conducted from 8 – 9 May 2017 at Funafuti, Tuvalu. This was the second major technical support workshop conducted under the Project, the first one being in December 2016. Participants for the May workshop included, the Speaker to Parliament who presided as the Chair of the CRC, Members of the Parliament and Cabinet Ministers, CRC Secretariat (Constitutional Review Officer (CRO), Clerk to Parliament, Attorney General, Senior Magistrate, Peoples Lawyer and Ombudsman). Other stakeholders included the Permanent Secretaries from the Ministries of Education, Youth and Sports (MEYS) and Health; the UNDP officials. Altogether 28 participants attended the training

workshop over two consecutive days (this included 8 MPs-more than 50% participation rate, and included generally 30% female participation considering only one MP is a female).

The main objective for the workshop was to deliver to the CRC and the Secretariat a comprehensive orientation on the overall constitutional review process (outlining the key phases) and to conduct the first civic education programme to ensure that all the members are fully cognizant and thereby take full ownership of the process. The following objectives were achieved during the workshop:

- The workshop ensured that the CRC continuously revisits the work and aspirations behind the constitutional review process to ensure that the objectives and guiding principles remain intact throughout.
- Created an adequate level of knowledge within the CRC and other key actors involved on the key provisions of the Constitution.
- Thoroughly reviewed and notes undertaken on the key issues driving the constitutional review process. Done through review of the issues based paper development in April 2017.
- CRC approved the outline and agreement reached on a clear pathway in terms of timelines, the process, composition of teams for consultations and on key resource materials for the consultations.

In terms of the key outcomes and resolutions:

- The workshop enabled the review and validation of the methodology and structure of the Constitutional Review process by the CRC. Presentations were made on the various phases of the review process and prudently approved by the CRC. The CRC agreed on a proposed team composition for the outer island outreach consultations and tentative scheduling for such consultations.
- The CRC reviewed a comprehensive paper developed by UNDP expert and reviewed and finalized by the CRC Secretariat on the key issues driving the constitutional review process. The issues papers were agreed to be discussed, reviewed and presented to Tuvaluans during the outreach consultations so they are made aware of the key issues prompting the review.
- The CRC agreed on the need to conduct comprehensive outreach and civic education programme to create an adequate level of knowledge by the citizens on the process, the provisions in the current constitution first of all, prior to soliciting their feedback on amendments required and/ or proposed later in the process.
- CRC agreed and as reflected in the current constitution that the Constitutional Amendment instruments will be adopted by a 2/3rd majority of the Parliament and any amendment that the CRC needs to consult the people on will be reviewed by a referendum (advisory etc, the format for which was not really discussed in detail).
- The CRC further agreed that the following research papers be written to inform the review process empirically:
 - A paper analyzing all reviews and amendments done since 1978 be commissioned.
 - An analysis be undertaken on the international conventions and treaties Tuvalu has ratified and whether the Constitution conforms to such obligations.
 - Undertake an international comparative diagnosis of the current constitution.
 - A paper outlining the organization and challenges of the Courts in Tuvalu.
 - Paper on maritime rights of a nation following loss of land due to climate change.
 - Paper on citizenship and the passport scheme.
 - An analysis on the religious issues that are creating conflict and disharmony.
 - Separation of powers (President vs Prime Minister vs Hybrid) and the required checks and balances (Parliamentary oversight on the executive, judicial independence and judicial review).

- Paper on comparative practice of independent entities.
 - Papers on gender, inclusion, disability and socio-economic rights and freedom.
 - Other papers were also requested to be commissioned and can be noted through the workshop report annexed to this report.
- The CRC reviewed and adopted the Supplementary Rules of Procedure for the CRC and a code of conduct for the CRC Secretariat during this workshop.

Identification of thematic areas and development of TOR for sub-taskforces for each thematic area

In terms of the thematic task-forces, the outreach consultations have taken place so far did not see the need for thematic task forces in phase 1 of the outreach. This is due to the fact that in phase 1, the focus is to educate and increase citizens knowledge on the review process, on their rights and responsibilities enshrined in the current constitution, issues that are driving the review process prior to their effective participation and feedback for the drafting process. During outreach 2, this would have the need to consider thematic groups on specific areas who will be responsible in educating the citizens on specific issue areas and thereby soliciting their feedback, for example thematic taskforce on “the organization and challenges of the courts”, and a task force on “separation of powers”. This is expected to be reviewed and commissioned as needed in quarter 2, 2018 prior to phase 2 outreach consultations as deemed necessary by the CRC and the CRC Secretariat.

Develop manuals and undertake ongoing trainings for CRC thematic sub-task forces

A manual consisting of a copy of the Constitution, various resource materials around action planning, sample phases and tasks, brochures and civic education material examples from other review processes and on strategies around public consultations. The manual was effectively produced in late 2016 and continues to be used by the CRC as a key reference material. The training for the CRC conducted in May 2017 has been captured above.

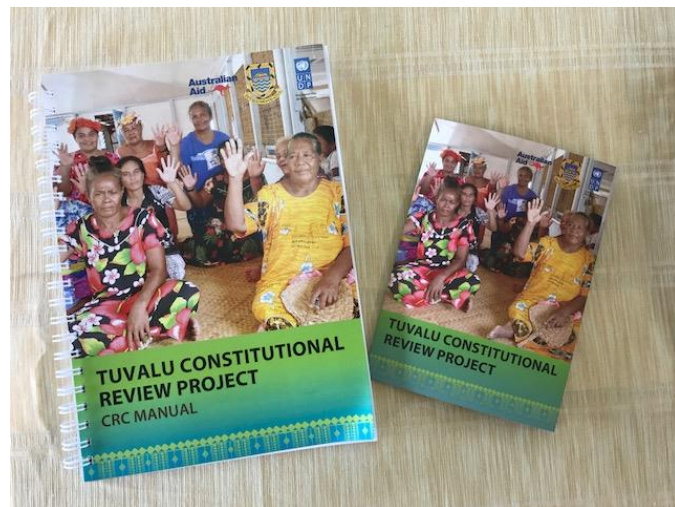


Figure 2 CRC Manual and Project Brochure

Trainings for the CRC thematic taskforce groups will be undertaken once they are identified and appointed. This is expected to be taking place essentially in 2018, prior to phase 2 of the outreach.

Activity Result 1.2: Establishment and building of capacity of the CRC Secretariat and Defining the Scope of the review process

Develop TOR and undertake recruitment of CRC Secretariat Officer

TOR was developed and position of the Constitutional Review Officer (CRO) was advertised during the month of February and interviews were conducted face-to-face on 8 March. The CRO commenced in his position on 26 April 2017 and is the key project officer based on the ground maintaining the CRC Secretariat Office.

Establish TOR for CRC Secretariat and tabled in CRC for approval

During the Secretariat workshop conducted in September 2017, which included Prof. Tom Ginsburg, International Constitutional Advisor and Elliot Bulmer from International IDEA; and members of the

Secretariat, a TOR was adopted for the CRC Secretariat. The agreed TOR defines the key composition of the Secretariat team based on the various legal and independent institutions in Tuvalu which are guiding the review process; it also contains the functions of the Secretariat; meetings of the Secretariat, including required quorums; and expenses and honorarium for the Secretariat members. A copy of the TOR is annexed to this report. The TOR has not been tabled to the entire CRC as it is not deemed necessary at this stage considering it's a guiding document only.

Conduct specialized training workshops to strengthen technical and secretariat capacity of CRC Secretariat

In September 2017, a technical support mission was conducted under the project consisting of Prof. Tom Ginsburg, International Constitutional Advisor; Dr Elliot Bulmer, Programme Officer, International IDEA; and Mohammed Mozeem from UNDP. The technical team conducted a two-day workshop from 14-15 September with members of the Secretariat. Around 11 participants were noted over the two days (30% female participation). In terms of the workshop, the key outcomes were review and validation of the CRC Secretariat TOR; development and sharing with the Secretariat a revised consultations matrix agreeing on key consultations coming up and general agreement. A paper on broadly defining the Tuvalu Constitutional Review timeline was also drafted and shared with the Secretariat to ensure the review process is kept on track. This was produced and with the CRO who later shared it with the CRC Chair in October. This is annexed to this report.



The workshop also carefully scrutinized and debated on what version of the Constitution will be the final product and which supersedes the other, i.e., the English or the Tuvaluan version. Through discussions on the pros and cons, it was decided that the English version will be the final outcome but a fully translated Tuvalu version will be produced following the adoption of the new constitution. The workshop further proposed that a paper be drafted on key decisions required by the CRC. this was produced and shared with the CRO in mid-September 2017.

Procurement of adequate resources (IT, stationery and furniture) for CRC Secretariat

The Project has procured a laptops, projector and screen, printer, office furniture, stationery supplies, and many other supplies for the CRC Secretariat Office. The budget under this component however, was reviewed adequately as initially the funding allocation in resourcing the



Figure 3 CRC Secretariat Office based in the

CRC Secretariat was very minimal. This has been done through the proposed reviewed AWP for 2017 for the Project.

Output 2: Enhanced citizen knowledge and engagement on the Constitution and the Constitutional Review Process (Consultation and Information Gathering Stage)

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

[Issues based comparative research undertaken to support the issues identified for the review process bringing experience from other review processes \(including past ones in Tuvalu\)](#)

An **Issues Based Analysis Paper** was produced in mid-April to ensure that the review process is adequately informed and substantiated through a thorough documentation of issues that drive the whole constitutional review process. While the initial scoping study conducted in early 2016 did map broadly the key driving factors prompting the need for an elongated and comprehensive review of the constitution, it touched mainly on the rudimentary causes which needed to be mapped in a more meticulous fashion. The issues analysis paper produced by Professor Tom Ginsburg and reviewed by UNDP was shared with the CRC Secretariat during the May 2017 technical support mission conducted by UNDP. The issues paper has since then been presented in detail during the CRC workshop conducted in early May (covered further above) whereby the CRC and CRC Secretariat thoroughly reviewed the key driving issues and added further issues to the original list. The issues based analysis paper was effectively distributed and presented to the citizens during the outreach consultations to ensure citizens are well informed and educated on what are the key prompting factors for the review. The issues paper apart from including key local evidences and arguments also contains key guiding questions to facilitate and solicit feedback from the citizens during the outreach consultations. The latest version of the issues based paper after thorough continued review by the CRC Secretariat team and UNDP experts is the 16 June 2017 version and is still effectively the current updated version. A copy of this version of the paper is annexed to this report.

In addition to the issues based analysis paper, a brief analytical paper was drafted around 20 May 2017 (by UNDP) following the 8-9 May CRC Workshop on **“Questions to Consider in Deciding Whether and How to Utilize a Constitutional Referendum”**. The paper presented key questions to be examined by the CRC and CRC Secretariat prior to consideration of the type, timing and if necessarily requiring a constitutional referendum ultimately. The paper employs questions around whether there is a need for the CRC to conduct a constitutional referendum, if yes, then how the referendum may be administered from an analytical opinion. The paper considers the design and legal articulation of the amendment process in the current constitution which does not considers a constitutional referendum as a key determinant of any required amendments. The paper briefly details on possible negative effects that inherits constitutional referendum processes using comparative experiences from countries where referendum processes have been applied recently. Additionally, the paper also briefly explains the formats available for the referendum, i.e., advisory or binding and the quantity of amendments that need to go through the referendum process. The paper also details on the voting thresholds, logistical challenges, the involvement of key actors in the process and whether official rules should be development prior to any constitutional referendum if agreed.

In November 2017, due to the need for support to the CRO and the Secretariat, the Project also acquired the services of Winnie Puara Tanei, as Reporting and Research Support Consultant. Apart from other work, one of the key deliverables of the consultancy exercise was to develop a comprehensive Research Plan in consultation with the CRC Secretariat and UNDP experts to enable the research aspects of the project be implemented in early 2018.

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

Produce detailed CE materials containing preamble and other important sections of the Constitution based on the issues identified for public consultations

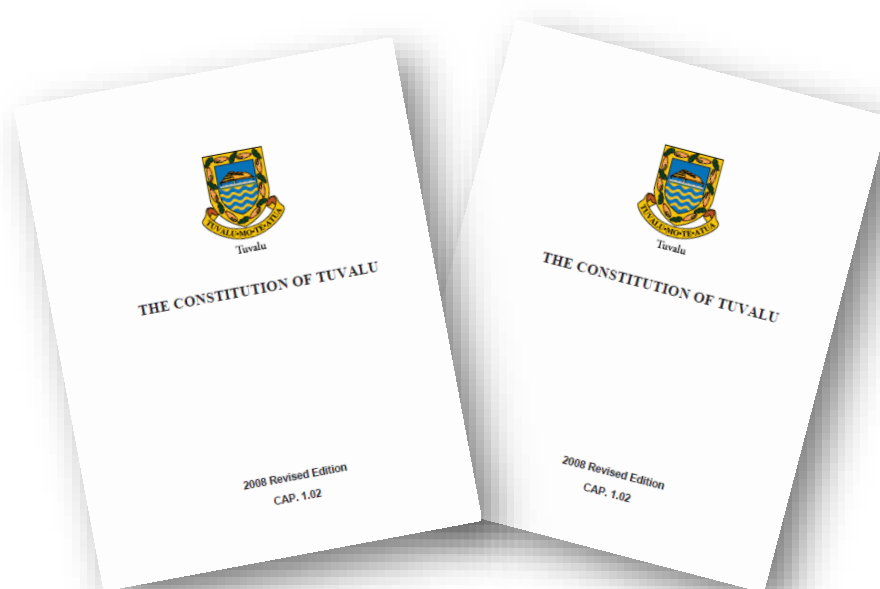
A very first product produced was banner on the Preamble section of the Constitution for ease of reference during the December 2016 for the CRC. Additionally, the full constitution was printed and supplied to the CRC as a resource. The banner was continuously used in outreach consultations for awareness and quick reference purposes.

The Project recruited a Civic Education and Research Officer Ms. Temukisa Hauma in late May 2017. Whilst the officer was hired to undertake both the civics education and research at the same time, it was later realized that it was not possible and that project will need to indulge in a more experienced researcher or mobilise international expertise to support the research aspects of the project. The Civic Education officer undertook the translation of the civic education brochures into Tuvaluan. These were done under the supervision of the CRO.

In May, UNDP experts supported the development of a comprehensive workplan and guideline document for the civic education component of the project. This is annexed to the report and was later utilized to craft the agenda and also guiding questions for the public consultations.

In mid-2017, through UNDP experts the Project undertook development of a set of 5 sets of Civic Education brochures, 1 x Tuvalu CRP Project Information Brochure and 1 x Poster as listed below. All of these were translated in Tuvaluan vernacular by the Civic Education (CE) Officer and the CRO and published and widely distributed and used during the civics education campaign in phase 1 outreach initiative:

- What is a Constitution?
- What is the Constitutional Review Committee?
- Fundamental Principles of Constitutional Democracy
- What is Democratic Governance?
- Knowing Your Rights
- Poster Titled “Lets Participate in Our Constitutional Review”



English Versions of the Civic Education Materials

"Supporting Democratic Culture through Civic Education"

WHAT IS A CONSTITUTION?

"Engaging the people of Tuvalu for a peaceful and democratic nation"

Constitutional Review Committee (CRC) Secretariat

"Supporting Democratic Culture through Civic Education"

WHAT IS THE CONSTITUTIONAL REVIEW COMMITTEE?

"Engaging the people of Tuvalu for a peaceful and democratic nation"

"Supporting Democratic Culture through Civic Education"

FUNDAMENTAL PRINCIPLES OF CONSTITUTIONAL DEMOCRACY

"Engaging the people of Tuvalu for a peaceful and democratic nation"

Constitutional Review Committee (CRC) Secretariat

"Supporting Democratic Culture through Civic Education"

WHAT IS DEMOCRATIC GOVERNANCE

"Engaging the people of Tuvalu for a peaceful and democratic nation"

Constitutional Review Committee (CRC) Secretariat

"Supporting Democratic Culture through Civic Education"

KNOWING YOUR RIGHTS

"Engaging the people of Tuvalu for a peaceful and democratic nation"

LET'S PARTICIPATE IN OUR CONSTITUTIONAL REVIEW

YOUR PARTICIPATION IN THE CONSTITUTIONAL REVIEW IS CRITICAL SO THAT:

The revised constitution reflects more fully the will of the people. People have an opportunity to talk and listen to each other about matters of national importance. People become familiar and are aware on the democratic principles and practice them. People can become more familiar with each other and build trust with fellow citizens. People become educated about the constitution - including their rights their obligations - and take ownership.

HOW CAN YOU MAKE A SUBMISSION TO THE CRC?

Email address: tuvuluconstitution@gmail.com
Website: www.parliament.tuvalu/constitution-review
Social Media: Facebook - Tuvalu Constitutional Review and Twitter: @CRC_Tuvalu

Comments box at CRC Secretariat, located at the CRC Secretariat Office, Parliament Office, Malaitupu, FUMAFITU. Comments in submissions boxes, which will be placed at each of the Kaupule Offices each island.

By Postal Address: CRC Secretariat, P.O. Box 100, Funafuti, Tuvalu

WHAT SUBMISSIONS CAN BE ABOUT:

The Constitution will govern your life. The CRC needs to know what you think that the Constitution should say. Also, what works well in your community and what should change? Below are some questions to guide your comments to the CRC - but your comments need not deal with these questions.

1. What is your vision for Tuvalu and its people?
2. What are the biggest problems that you face?
3. What can be done to ensure that the government, politicians and public servants serve the people of Tuvalu fully on the principles of merit and honesty?
4. What can the constitution do to build unity in Tuvalu and closer relations amongst its people?
5. How can the constitution ensure women's equality?
6. Which groups and communities are disadvantaged? What should the constitution do for them?
7. What challenges are faced by the youth of Tuvalu? How can they be solved?
8. Should the constitution say anything about how land in Tuvalu is to be regulated and protected? If so, do you have any suggestions?
9. What should the constitution say about the security forces, including the police?
10. Should elected public officials meet certain qualifications? (Suggestions?)
11. Is corruption a serious problem in Tuvalu? If so, what institutions are involved and how can corruption be stopped?
12. What human rights should be included in the constitution?
13. What do you think is meant by 'social justice' in the Tuvalu context, and what should be done to achieve it?
14. What should the constitution say about the role and status of customary law?
15. What aspects of the Tuvalu culture must be enshrined specially in the Constitution?
16. Do you think compulsory voting be constitutional?
17. Should the Constitution allow Tuvalu citizens living in the diaspora to vote in national elections?
18. Should Tuvalu continue to base its political system on the Westminster system or should we change to a Presidential system?
19. Should the Constitution allow for political parties?
20. Should the number of Members of Parliament be increased or reduced?
21. Should the Constitution allow for national seats in Parliament?

Disclaimer:
 This report is prepared through the Tuvalu Constitutional Review Project (TCRP).
 We acknowledge the support of the Government of Tuvalu and the Australian Government through the Pacific Partnership Programme.
 Prepared by: Australian Aid
 Date: 14 Oct 2015
 Tel: 01 919 1719
 Email: tuvalu@austraid.gov.au
www.austlii.org/au/other/dfat/pacificpartnership/

Australian Aid

Altogether, there were 13,000 copies of brochures as indicated above that were published and disseminated widely with the citizens. Additionally, there were more than 200 copies of pocket sized

Constitutions printed and disseminated and also more than 600 copies of A2 sized posters printed and disseminated in 2017.

Translated Versions of the Civic Education Brochures



It is to be noted that each of the outreach consultations (updates provided further below) had civic education as the initial start-up session to increase the understanding and engagement of the participants in the programme. This was reported by participants as a remarkable initiative.

The CE Officer also undertook activities to promote the review process to the youths in schools as well and through her experience as a former school teacher organized an “Essay Competition” for students in both primary and secondary schools. The topic for the essay competition was “What is a Constitution” and completed on 30 November 2017. Outreach of the Civics Education in schools also included distribution of public questionnaire which was shared with youths in schools for their feedback on the effectiveness of the CE programmes on the radio and also delivered during the outreach consultations. These questionnaires will be collected and analyzed in early 2018.

Develop comprehensive consultations plan outlining locations, budgets and timelines for public consultation and adequate monitoring and evaluation of the process

A planning mission was conducted from 7 – 14 March to provide support on the setting up of the CRC Secretariat and conduct a brief planning workshop with the CRC Secretariat and other stakeholders to produce options papers for the outer islands consultations schedule and a draft 2-day broad agenda. A total of 11 participants were noted for the workshop with a 36% female participation. Participants included representatives from the Tuvalu Parliament, Office of the Attorney General, Ministry of Home Affairs and Rural Development, the Ministry of Marine and Communication, NAPA II Project and the UN Joint Presence Office.

The outreach consultations plan was further developed in May during the CRC workshop and enhanced during each of the consultations through lessons learnt.

Produce a communications plan and undertake radio communication and customized written materials for public advocacy and promotional purposes

A brief radio communications plan was developed by the Civic Education Officer and through support from the CRO. The radio programme which ran effectively continuously for 6 solid weeks from late May to September and then as required from October to December has been one of the key modalities to deliver the civic education awareness and engaging with citizens during 2017. A total of 20 comprehensive radio programmes, both in English and Tuvaluan, on different subjects and issues were developed from the Issues Papers and the Civic Education Materials and delivered 3-times weekly as detailed in table below. Through brief indirect surveys during the outreach consultations on usage of the CE delivered via radio, it was noted that 100% of those that listened to the radio programmes found them an effective means to learn and understand about the constitution and the constitutional review process, which prior to the programmes they did not have much understanding on. All materials were delivered on radio in full vernacular.

Day	Time allocation		Person responsible
Monday	6.45 - 7.00am (15mins)	Recorded program	CRO & CE
	8.30 - 9.00pm (30mins)		CRO & CE
Wednesday	8.30 - 9.00pm (30mins)		CRO & EC
Friday	8.00 - 8.30 am (30mins)	Talk back show	Invite public (CRO/CE)
	8.00 - 8.30pm (30mins)		

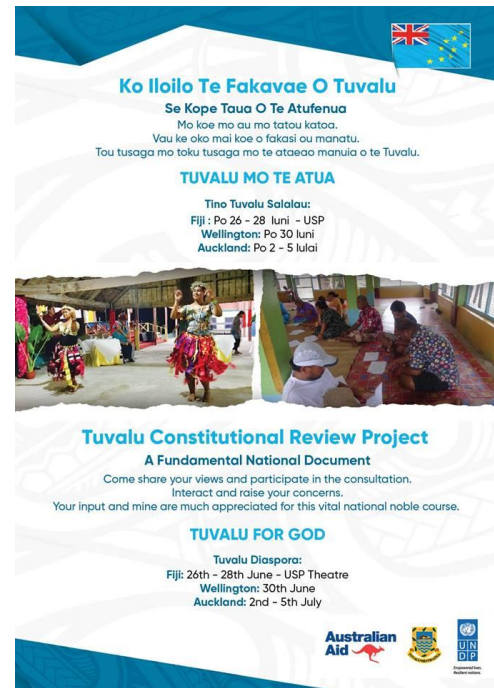
Undertake initial public consultations in Quarter 1 then undertake comprehensive awareness raising in Q3-Q4 (using civic education) on all constituencies in Tuvalu on issues and discuss proposed areas of amendments to the Constitution

Citizens outreach consultations were one of the significantly time consuming and crucial activities conducted under the Project. The Outreach Programmes were led by the CRO and the CRC Secretariat

to deliver comprehensive presentations and knowledge materials to the Tuvaluans on the constitutional review process, knowledge around the current provisions of the constitution, their rights and responsibilities as citizens and most importantly the need for their strong engagement and feedback into the process.

Prior to the outreach, comprehensive planning, review of the agenda/ programme within the Secretariat and with UNDP experts, coordination meetings and logistical arrangements (purchase of tickets for airlines/ boats, catering, venue hire, transport arrangements, etc) had to be completed. The applied methodology for the consultations is detailed below for reference:

- CRO and his team made prior arrangements with the Ministry of Home Affairs and individual island councils informing them about the consultation process;
- circulation of the agenda for the two-day consultation workshops were made in advance to all island councils and local boards;
- the use of media through press releases and public media announcements were conducted prior to travelling to outer islands;
- face to face interactions with island participants were successfully conducted through workshops held in the island community halls;
- the use of presentations and group work activities were conducted to engage participants in the review process;
- the use of pamphlets and handouts were distributed during the workshops;
- tape-recordings of consultations were made during the workshops; and
- follow ups were also made through separate emails, letters and phone calls.



In summary, the number of people who were reached and documented through the various comprehensively written outreach reports by the CRO and his team, include 2,351 individuals over the span of 3 countries, Tuvalu, Fiji and New Zealand. Of this number, the representation of females was notable and approximately 50% of all those who attended. A summary of all the consultations is mapped in the table below and the immense amount of work of the CRO and the CRC Secretariat as well as support from the Civic Education Officer, the Research Consultant and also officers from the Parliament can be noted from the Outreach Reports annexed to this report.

Date	Category	Location	No. of attendees & demographic breakdown		
			Total	Male	Female
26-28 June	Tuvalu diaspora	Suva, Fiji	406	173	233
29 June-4 July	Tuvalu diaspora	Wellington & Auckland, New Zealand	145	68	77
8-9 August	Nukufetau Island	Feagaimoteata Falekaupule, Nukufetau	81	56	25
10-12 August	Anipule III Falekaupule, Vaitupu Island	Vaitupu	512	188	324
5-6 September	Talimalie II Falekaupule, Funafuti	Focused groups – Religious Organisations and Men	121	86	35
7-8 September	Kainaki II, Falekaupule, Funafuti	Focused groups – Women and Youth	133	20	113
18-19 September	Kainaki II Falekaupule, Funafuti	First Batch of Civil Servants – Office of the Prime Minister, Ministry Foreign Affairs, Public Utilities and Infrastructure	152	108	44
20-21 September	Kainaki II Falekaupule, Funafuti	Second Batch of Civil Servants – Ministry of Education Ministry of Health, Ministry of Natural Resources, Ministry of Finance, Ministry of Communications & Transport	114	52	62
18-19 October	Vaiaku Falekaupule, Funafuti	Vaitupu and Nukulaelae communities on Funafuti	38	24	14
14-15 November	Nui Island	Manatua Mai Au Falekaupule	214	140	74
16-17 November	Nanumea Island	Nameana II Falekaupule	138	82	56
21-23 November	Niutao Island	Fetu Afiafi 3 Falekaupule	202	129	73
28-29 November	Nukulaelae Island	Avafoa 3	65	44	21
28-29 November	Niulakita Island		30	20	10
		Total	2,351	1,190	1,160



Auckland, New Zealand Consultations



Suva, Fiji Consultations





Produce and compile island reports capturing all consultations and feedbacks

The outreach consultations are summarized above and one of the major tasks of the CRO and his team was to compile and then translate the outreach consultation reports from Tuvaluan into English. These comprehensive reports are annexed to this report for further reference. A lot of effort went into these tasks considering the immense number of outer islands and community outreaches that have taken place. Pictures from the outreach to the outer islands and for outer island communities on Funafuti can be reviewed from the outer island outreach reports annexed to this report.



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

Recruitment of technical expertise (Constitutional Review Advisor Drafters) and initial support towards the amendments process

In 2017, the Project mobilized the services of Professor Tom Ginsburg to produce and provide necessary technical support and advisory towards various aspects of the project. Prof. Tom was able to conduct one support mission in 2017 to conduct a technical workshop with the CRC Secretariat on various issues concerning the review process. This is summarized earlier in the report. Additionally, external technical experience was continuously provided by UNDP experts on an ongoing basis to review and draft various issue papers, questionnaires, agenda's and other key documents for consideration of the CRC and CRC Secretariat in making key decisions.

In addition to the workshop conducted by Professor Tom Ginsburg, he produced the following supplementary instruments in support of the constitutional review process in 2017:

1. Supplementary Rules for the CRC - April
2. Code of Conduct for Public Consultations for the review team members - April
3. Issues Analysis – original paper detailing list of issues and guiding questions - April
4. Paper on broadly defining the Tuvalu Constitutional Review timelines (September)
5. A paper on key Questions for the CRC consideration - September
6. A simplification of the Constitutional Text - December

KEY CHALLENGES

- **Geographical** – given the lack of available vendors in terms of supply of equipment, stationery and other office supplies, including ICT related services, majority of the project assets and supplies, including printing and publications are done in Fiji and shipped to Tuvalu. This takes a lot of time in terms of production and cartage and is expensive to the Project due to lack of flights as well. This is something which is beyond the ability of the project to be solved. Additionally, getting in international experts to Tuvalu is logistically quite challenging and expensive due to very limited service available via the only airline serving the country. Internet and telephone connectivity is also a major issue which tends to make communication very challenging with counterparts.
- **Administration and Financial** – related to the geographical challenges, there are also lack of vendors who are registered as companies in Tuvalu which are able to provide services in terms of logistical aspects to the Project. For instance, to deliver catering services for Project workshops or providing other workshop related setup services. Such catering services are usually done by communities or groups who need to be paid in cash. This poses a need for accountable advances to be taken by Project staff to undertake payments.

A key concern faced by the Project team on the ground is the ability to access funds to administer activities which require quick cash. These includes activities such as Secretariat meetings and arrangement for other logistical needs. There is a limited amount of funds that can be disbursed via the UNDP accountable advance modality to the CRO himself and this continued to pose as a key challenge in terms of finances in 2017. One of the ways this is expected to be resolved in 2018 onwards is to enter into a MOU to transfer funds for activities which require cash on hand so ensure smooth project implementation.

- **Human Resources** – the initial design of the Project had just one officer considering that other support would have been provided through the Attorney General's Office (since Project was initially housed in AGs Office, then later shifted to Parliament). The Constitutional Review Officer (CRO) was expected to support the work of the Secretariat both technically and administratively. While Project Management and administration support is provided from UNDP Suva, there is a need to have other support staff who can provide on the ground administration and logistical support; need for staff in the area of civic education and research work and rapporteurs for consultations. Additionally, the recruitment for the CRO was also delayed due to salary scaling issues of all Project positions between UNDP and Government. Generally, it was noted that since UN salary scales offered were much higher than Government staff salary scales, particularly for large scale climate-change and environment projects, these were requested to be reviewed, hence, affecting the process of recruitment of the CRO.

FINANCIAL REPORT

The following tables presents the financial statements noting income, budget and expenses for the project against the 3 project outputs. The statement reflects expenses against total budgets per output for the financial year ending 31 December 2017.

PROJECT # 00096486 (FINANCIAL UPDATES OF TUVALU CONSTITUTIONAL REVIEW PROJECT 2017)					
Outputs	AWP ALLOCATION	EXPENSES	COMMITMENTS	TOTAL (C+D)	BUDGET AVAILABILITY (B-E)
A	B	C	D	E	F
Output 1: Strengthened institutional and technical capacity of the Constitutional Review Committee and AG's Office to undertake the Constitutional Review Process (Planning Stage)	70,597.00	66,265.21		66,265.21	4,331.79
Total Output 1	70,597.00	66,265.21	-	66,265.21	4,331.79
Output 2: Enhanced citizen knowledge and engagement on the Constitution and the Constitutional Review Process (Consultation and Information Gathering Stage)	137,903.00	134,355.09	3,011.58	137,366.67	536.33
Total Output 2	137,903.00	134,355.09	3,011.58	137,366.67	536.33
Output 3: Formulation of recommendations, amendments and support provided toward advisory referendum and Adoption of the new Constitution	36,183.00	43,775.30		43,775.30	(7,592.30)
Total Output 3	36,183.00	43,775.30	-	43,775.30	(7,592.30)
GMS (3% CSA and 8% CS)	10,805.00				10,805.00
TOTAL 2017	255,488.00	244,395.60	3,011.58	247,407.18	8,080.82
Total 2016 (Balance in 2016 reprogrammed to 2017)	32,000.00	28,250.00			3,750.00

RISK MANAGEMENT

#	Description	Date Identified	Type	Impact & Probability	Countermeasures / Mngt response	Owner	Submitted, updated by	Last Update	Status
1	Insufficient technical and human resource capacity within office of the Parliament (national partner) on Constitutional Review process and legislative drafting	January 2016	Organizational	<p>Considering the key work involved under the project is around constitutional review and legal drafting, limited capacity in AG's office could have an impact on project results and completion of activities.</p> <p>Enter probability on a scale from 1 (low) to 5 (high) P = 3</p> <p>Enter impact on a scale from 1 (low) to 5 (high) I = 3</p>	The project has adequately identified activities which will require additional technical experience from abroad on constitutional review processes. Hence to ensure the limited capacities in Tuvalu is matched with adequate external expertise, the project has inbuilt activities to ensure technical and human resource capacities are made available and recruited on needs basis. These are effectively mapped under the project activities.	Project Manager at UNDP and Attorney General	UNDP Project Manager, Mohammed Mozeem	19 Feb 2018	It should be noted that Project administration in country changed from AGs Office to Parliament. The Project hired a full time CRO, CE Consultant to support the process. Additionally, a CRC Secretariat comprising of key legal officers at national level were appointed and project hired additional technical advisor, Tom Ginsburg and technical

#	Description	Date Identified	Type	Impact & Probability	Countermeasures / Mngt response	Owner	Submitted, updated by	Last Update	Status
					Additionally, specified trainings around the CR process and other thematic areas around gender, HR, etc related to constitutional review and legal drafting is also targeted for 2018.				assistance is being provided directly via UNDP experts to the CRO and his team.
2	Project budget is not fully resource mobilised through government and development partner funding due to changing priorities	July 2016	Financial Operational	Approximately 40% of the total project budget has been mobilised to date. 60% of the remaining project budget needs to mobilised to ensure full implementation of the project is not affected. P = 2 I = 4	UNDP is continuing resource mobilisation efforts with Government of India and Government of Tuvalu to attain additional financial resources for the Project. Overall Project budget has increased to US\$900k, and there is a shortfall of \$265k.	Project Manager at UNDP and Attorney General, Tuvalu	UNDP Project Manager, Mohammed Mozeem	19 Feb 2018	Proposal was submitted through Tuvalu Government for Government of India funding initially in Sep 2017 and then revised in Feb 2018 for follow-up

#	Description	Date Identified	Type	Impact & Probability	Countermeasures / Mngt response	Owner	Submitted, updated by	Last Update	Status
3	Government priorities change due to other factors arising from climate change or natural disasters such as cyclone	July 2016	Environmental Strategic	As climate change is an ongoing concern for Tuvalu and has impacted the country in the past in the form of natural disasters such as cyclones and sea-level rise, further impacts of climate change has potential to change priorities of the government and stakeholders to some extent. P = 2 I = 3	The Project has been working very strongly with support from the Secretariat team to keep the focus and process a key priority with national leadership. CRO has been providing regular updates to the Cabinet through office of the AG	Project Manager at UNDP and Attorney General, Tuvalu	UNDP Project Manager, Mohammed Mozeem	19 Feb 2018	Less likely to affect as review process is now a high priority activity
4	Political instability affects priority to the CR process	August 2016	Political	Tuvalu has previously had periods of political instability that have impacted on all public sectors. Should a period of political instability arise during the project period, it is a risk that the CR process will be negatively impacted.	Project has continued to ensure regular updates and inclusion of CRC and the Chair in key decision making as well as outreach consultations to ensure high-level political commitment and	Project Manager at UNDP	UNDP Project Manager, Mohammed Mozeem	31 Jan 2018	Reduced impact

#	Description	Date Identified	Type	Impact & Probability	Countermeasures / Mngt response	Owner	Submitted, updated by	Last Update	Status
				P=2 I=3	project is treated as a priority within the Parliament and Cabinet.				
5	Communication on the Constitution is poor and citizens not effectively informed	August 2016	Operational	Due to the disparate nature of the country and poor communication infrastructure, one of the challenges and risks will be that citizens are not fully informed on the process or the proposed content. P=1 I=2	The Project undertook numerous methods to communicate to citizens including 3 x weekly radio broadcasts, circulation of 13,000 plus more of brochures, copies of Constitution and direct consultations were conducted on all outer islands in 2017 to communicate to citizens on the process.	Project Manager at UNDP	UNDP Project Manager, Mohammed Mozeem	31 Jan 2018	Risk has been adequately resolved through effective communication
6	Proposed changes to the constitution do not align with	August 2016	Political	The CR process is owned and led by the Government and people of Tuvalu.	The final content of the proposed changes will not impact on the	Project Manager at UNDP	UNDP Project Manager,	31 Dec 2017	Risk reduced to some extent

#	Description	Date Identified	Type	Impact & Probability	Countermeasures / Mngt response	Owner	Submitted, updated by	Last Update	Status
	global best practice			<p>There is a risk that the proposed changes to the constitution will not be aligned to global best practice.</p> <p>P=2 I = 3</p>	<p>project per say. UNDP continuously provides direct technical support via its experts and also through an independent technical advisor to ensure all activities under the review process are in line with global standards and conform to international law and best practice for constitutional review.</p>		Mohammed Mozeem		

ANNEXES

Annex 1 – Terms of Reference for the Constitutional Review Committee (CRC)

The Committee will undertake to coordinate and mandate a comprehensive review of the current Constitution of Tuvalu. The main responsibilities of the Committee will consist of the following: -

1. To examine the manner in which the Constitution has operated since its last review in 1986 with special reference to the extent that the provisions of the Constitution are appropriate or necessary for Tuvalu, including in particular with reference to the cultural and customary practices of Tuvalu;
2. To identify any provisions of the Constitution that require amendments as recommended in the findings in (1);
3. To prepare for the consideration of Parliament draft amendments to the Constitution should any such amendments be considered appropriate and necessary by the Committee.

In addition to the main responsibilities above, the Committee shall have the following functions:

-

4. To provide a basis and timeline for the national consultations for the findings in (1);
5. To coordinate the national consultation of the Constitutional Review;
6. To make a report on every sitting of Parliament each year on the progress of the review and the comments/questions/issues as may be raised from the national consultations;
7. Shall work together in collaboration with the Attorney General's Office and a Technical Assistance for the purposes of the Constitutional Review;
8. Subject to the approval of the Chair, the Committee may appoint a sub-committee to support it in its work and play an advisory role to the Committee.

Annex 2 - CRC Secretariat Terms of Reference

A Secretariat is established to support the work of the Constitutional Review Committee (CRC) as the Lead Institution in the implementation of the Tuvalu Constitutional Review Project (TCRP). All in all the Secretariat is fully accountable to the CRC through the Chair (and in his absence, the Vice Chair)

The Secretariat shall comprise of the following technical persons-

- | | | |
|---------------------------|-------------------------------|------------|
| 1. Sa'aga Talu | Ombudsman | Chair |
| 2. Simon Kofe | Senior Magistrate | Vice-Chair |
| 3. Bikenibeu Paeniu | Constitutional Review Officer | Secretary |
| 4. Laingane Italeli Talia | Attorney General | Member |
| 5. Seveleni Kapua | UN Joint Office, Tuvalu | Member |
| 6. Andrew Puga | Clerk to Parliament | Member |
| 7. Filiga Taukiei | Peoples Lawyer | Member |
| 8. Martin Vailopa | Culture Officer | Member |

The Secretariat shall be supported by the national TCRP staff-

1. Bikenibeu Paeniu Constitutional Review Officer (CRO), Secretary to the CRC and Secretariat (who shall participate fully in the deliberations as Chief Advisor and Secretary)
2. Temukisa Hauma Civic Education
3. Potoae V Saumanaia Clerical Assistant

Also supporting the Secretariat is the Project Manager Mohammed Mozeem UNDP Suva, Jason Gluck UNDP Constitutional Expert, New York, Tom Ginsburg, Graham Hassall and other expatriates technical experts and as well as Tuvalu experts engaged from time to time.

All matters other than those by the Secretariat going to the CRC shall all come through the Secretariat first to ensure all CRC policy and decision makings are well coordinated. This does not stop the two partners to the TCRP process UNDP and Australia from going direct to the Chair as and when deemed necessary.

The CRC and the Secretariat can add members to the Secretariat when deemed appropriate but on the approval of the Chair.

Functions of the Secretariat

In order for the Members of the Secretariat to perform their duties effectively and to be able to offer their best competent opinions freely at all times, and although the selection of Members was tied to the offices they hold, it is nonetheless imperative that all Members are accorded immunity in relation to the performance of their work under the Secretariat.

1. Tender the competent technical advice to the CRC to help in making informed decision relating to the TCRP process overall
2. Screen and assist in the preparation of materials to guide the consultations with citizens and the CRC such as agenda, presentations etc.
3. Make themselves present at all meetings of the CRC and where required tender their competent advice to the CRC

4. Each Member to contribute effectively throughout the process by leading specific subject(s) in presenting to the stakeholders
5. Help take minutes of all the discussions of the CRC and consultations with citizens
6. Help prepare reports particularly the records of discussion after each consultation
7. Help undertake the analysis of all feedback leading to a recommended framework of amendments to the Constitution
8. Oversee and review the work of all technical backstopping to the TCRP process and make relevant submissions to the CRC as and when required
9. Oversee the Project Budget from time to time
10. By all means endeavour to write and present subject of discussions to the people in the Tuvaluan language
11. Take part effectively as and when assigned subject matters to present to stakeholders including the CRC

Meeting of the Secretariat

1. The meetings of the Secretariat shall be called by the Chair, and/or any other Member and as well as the CRO
2. The Secretariat shall meet at least once every two months.
3. The quorum for a meeting to proceed shall be 3
4. Minutes of each Meeting shall be circulated to the Chair and Members of the CRC, including UNDP and Australia for information
5. Where decisions are required from the CRC (and the partners as appropriate) the Secretary shall follow up accordingly.

Expenses and Honorary Allowances

1. Members of the CRC Secretariat shall be paid a honorary allowance to compensate for the time and effort they commit to the process in attending meetings and for the extra tasks they perform on top of their normal duties
2. The honorary allowance shall be paid quarterly at the rate of \$300
3. All expenses incurred by the Secretariat in the performance of its tasks including, meeting costs, traveling, subsistence allowance, etc. shall be paid for under the project

Etc.

Annex 3 - Constitutional Review Committee (CRC) - Rules

Purpose and Application

The purpose of these rules is to supplement the Parliamentary Rules of Procedure for meetings of the Constitutional Review Committee (CRC). The Parliamentary Rules of Procedure shall remain the default rules. If on an issue the Parliamentary Rules are silent, or where they conflict with the CRC rules, the CRC rules shall prevail.

Deputy Chair of the CRC

- (1) There shall be a Deputy Chair of the CRC elected by its members and confirmed by the CRC. The Deputy Chair shall assume the responsibilities of the Chair in the absence of the Chair of the CRC.

Secretariat for the CRC

- (1) There shall be a Secretariat to assist the CRC in the fulfilment of its mandate as reflected in the terms of reference of the CRC.
- (2) There shall be a Constitutional Review Officer (CRO) who shall act as the Secretary to the CRC.
- (3) In addition to the CRO, the Secretariat shall be supported by other staff, Clerk to Parliament, office of the Attorney General and representatives of other relevant stakeholders as deemed necessary.
- (4) The CRO shall perform and carry out such duties and functions as instructed by the Chair of the CRC, towards carrying out the mandate of the CRC and the tasks of the constitutional review. The CRO shall not be involved in work related to the ordinary functions of Parliament unless agreed by the CRO and the Clerk.
- (5) The CRO may be dismissed only by a vote of the CRC at an official meeting, proceeding under Rule 40 of the Parliamentary Rules of Procedure.

Records of the Proceedings

- (1) The CRO through assistance from the Clerk to Parliament shall keep or cause written records to be kept of the proceedings in the CRC, in accordance with Rule 11 of the Parliamentary Rules of Procedure.

Report

- (1) The CRO shall prepare interim reports for the CRC on its activities each year and as deemed necessary.
- (2) At the conclusion of the operation of the CRC, the CRO shall prepare a public report of the process as a whole, describing the public outreach and all other activities of the CRC, and summarizing the outcomes.

Voting Rules

- (1) Notwithstanding Rule 40 of the Parliamentary Rules of Procedure, the Chair of the CRC shall have an original vote in all proceedings of the CRC.
- (2) Notwithstanding Rule 40(8) of the Parliamentary Rules of Procedure, the CRC shall take decisions by consensus whenever possible, and where consensus is not possible by a two-thirds majority.

Public Input

- (1) The CRC shall accept public submissions on the Constitution during such period as it announces. These submissions may be of oral or written form and shall be compiled by the CRO for presentation to the members. These submissions shall be listed in the final report of the CRC.
- (2) The CRC shall hold one or more public hearings on each island. The CRO shall prepare a summary of the discussion for the record of proceedings.

Annex 4 – Issues to Guide the Consultation with the people of Tuvalu

Please take note that this paper is only a guide emanating from the scoping study in January 2016 by an international expert and was further reviewed by the UNDP experts from New York and Suva, and the Constitutional Review Officer. All citizens of Tuvalu are encouraged to please share your own respective experiences, opinions etc. on how you had lived under the present Constitution and how you would like to see the ‘new’ version to be crafted.

Thematic Area 1: Political Reform

There are two fundamental questions regarding Tuvalu’s political system. First, should Tuvalu remain part of the British Commonwealth or become a Republic? Second, should Tuvalu remain a parliamentary system or switch to a presidential or semi-presidential (hybrid) system? Beneath these two fundamental questions are several subsidiary questions aimed at making the political system function more coherently, effectively, and efficiently.

The character of the political system. Tuvaluans have several times debated whether the country should become a republic. There are currently 16 Commonwealth realms, including the United Kingdom. This number has been fairly stable, and in recent years, Australia, Tuvalu and St. Vincent and the Grenadines have all voted in referenda to retain the British monarch as head of state.

There are arguments both for and against retaining the commonwealth in any country. Tradition is a powerful argument in favor. In addition, the presence of the Queen to resolve potential disputes between sitting politicians and the Governor General (GG) is a useful insurance policy against crises, despite the fact that such intervention has never been practiced in Tuvalu. At the times of political crisis in 1996 and 2010 when the Executive lost the majority of Parliament, the GG was simply powerless and so as the sovereign. Arguments for republicanism might include the idea that the monarchic system is outdated, and few new countries are signing up for monarchies. Or that as a matter of national pride and identity, sovereignty should rest in Tuvalu’s democratically elected parliament or the traditional leaders, rather than the monarch of a foreign country many thousands of miles away. Noting that there had been times in the past where talk of passing on the role of the sovereign to the traditional chiefs of Tuvalu.

System of Government.

If Tuvalu were to become a republic then it would need to make decisions about its system of government:

- One option would be to **retain the current system** as much as possible and replace the Governor General with a non-executive (symbolic) president to function as the head of state. In parliamentary republics, the presidency is often a symbolic position, chosen by the parliament and usually given to a senior statesman. This person performs a ceremonial role: meeting foreign leaders, presiding over formal events, and generally representing the state. In this system, the prime minister would retain the leadership of the government. The president would play a formal role in appointing ministers but have to do so on the advice of the government or parliament. In this sense it could be modeled on the current Governor-General.
- As in that office, a symbolic president may have some ability to exercise discretion to resolve government crises. For example if the parliament is deadlocked between two parties, a symbolic

president might be able to exercise discretion to choose one to have the first chance to form a government.

- The president might also have a role in approving certain policies as well but generally would be above the fray of politics. For example, the president might have the ability to grant pardons, or appoint the Chief Justice.
- In some such systems, the president can return legislation to parliament for reconsideration, but not block its passage.

A more radical change would be to create a true **presidential system**. In this system, the head of state is directly elected by the people and exercises executive power (serving as both head of state and head of government). There are large debates about whether a presidential or parliamentary system is the best and the answer is that “it depends”. Generally, societies with deep ethnic divisions prefer parliamentary systems because they avoid the “winner take all” nature of a presidential system. On the other hand, if there is a strong national leader, or if unity is needed, having a single focal point may be advisable.

Some arguments about the systems include:

- in a presidential system government is more stable because it cannot be dismissed by the parliament;
- accountability is better in a presidential system because the people have chosen the leader directly, and know who to blame or credit for policies;
- in a presidential system, too much ambition and public attention may focus on the President, making it easier for the President to become autocratic and leading to people being prepared to commit all sorts of abuses to become President;
- the government in a parliamentary system is less likely to become autocratic because the leader must constantly keep in mind the need to convince a majority of parliament - the people’s representatives – that what the government is doing is right. Only a prime minister who commands a large majority and has strong internal control over her party would be able to become autocratic;
- in a parliamentary system a leader can often stay in office longer so long as he or she remains popular (for example, in Germany, the current Chancellor Angela Merkel has been in office for 12 years) while in a presidential system, people are usually limited to two terms in office;
- a presidential system allows more decisiveness in the event of an emergency or crisis;
- in parliamentary systems in which cabinet must be drawn only members of parliament, the choice of possible Ministers is too narrow;
- in a parliamentary system the leadership is really the Cabinet – more collective and perhaps more national than in a presidential system;
- in a parliamentary system, especially in countries with strong political parties, the government typically has the support it needs to get laws passed, and so can be responsive;
- in a presidential system, especially when the president and Parliament are controlled by different parties, the president may have to bargain with Parliament to get laws passed, so government may find it hard to achieve much (but when President and Parliament are controlled by the same party they are typically very efficient).

Another option if Tuvalu wishes to change its system of government would be a “**semi-presidential**” system. In semi-presidential systems there is both a president and a prime minister who split executive power. Typically the president would have a bigger role in foreign policy (including defense) while the prime minister would have a role in leading the government in domestic affairs, but there are many different types. France and Sri Lanka are examples of mixed systems. The president is directly elected but the prime minister is responsible to parliament, and in some systems the president can dissolve parliament. Nowadays, semi-presidential systems are sometimes adopted when there are two powerful factions that must be accommodated in government. While there has been a large trend toward dividing executive power in this way, this model often leads to gridlock because the two executives compete over authority. Accountability can be unclear in this system. Having two power centers is also more costly than having one, so this model tends not to be adopted in small countries with budget constraints.

There is no best system. Tuvaluans need to think which would work best here considering Tuvalu’s past experience, the experience of other countries and the different rules that can ensure that the chosen system works as democratically as possible, is accountable to the people and allows the government to govern properly.

Improving the Parliamentary System. Even if the current political system is kept on the whole, there may be some modifications to the parliamentary system that could be considered. *Governments in Tuvalu have been highly unstable. Between December 2000 and December 2010, the country had seven prime ministers; with the exception of the full-term government of Prime Minister Apisai Ielemia and the current government of Enele Sopoaga, governments have lasted an average of roughly a year each.*

One possible way to address the frequent collapse of governments would be to dissolve the parliament when it votes no confidence in the government. This would mean that there would be a new election so that MPs would risk their own seats, and would have to have a very strong reason to want to change government. Another tool used in many parliamentary systems is called a “constructive vote of confidence.” If a government wins such a vote, parliament will not hear a motion to dismiss the government for a certain period, such as a year. This improves the stability of government; but to some extent reduces accountability for the short term. Still, it can help give governments the freedom to develop policies that take some time to materialize. Yet another possibility would be to prevent MPs from “crossing the aisle” once they are in the Cabinet. This is done by forcing MPs to resign if they leave government.

A second challenge currently faced in Tuvalu is the imbalance of power between the government and the parliament. Parliament only sits for a couple of weeks a year, and only when called to session by the Prime Minister. This rule led to the 2013 crisis when the Prime Minister refused to call parliament into session. And even when it does sit, Parliament is dominated by the Cabinet due to the fact that the Constitution allows 50% of the MPs to also serve as Cabinet members, with additional MPs serving as Acting Ministers. The net effect is that currently 7 of the 15 MPs are in the Cabinet. This is further complicated by appointing Government backbenchers as Acting Ministers thus leaving Parliament absolutely powerless. When a large percentage of the parliament is sitting in cabinet, the function of parliament is distorted. Accountability can decrease because there are few members to exercise oversight. This may also contribute to instability because non-cabinet MPs will jockey to get into cabinet.

Instead of parliament providing oversight on the government (one of the traditional core functions of parliament) the Tuvalu parliament is often a rubber stamp for whatever the Cabinet decides.

These challenges could be addressed in various ways. One possibility would be to require parliament to meet at certain designated times during the year, for a certain number of days. The argument against it might be that it could be wasteful, if parliament is called into session without active business. Another possibility would be to have an official other than the Prime Minister call parliament into session; for example, the Speaker.

With regard to the ratio of ministers to non-ministers, Tuvalu could consider returning to the previous constitutional requirement that no more than one-third of the MPs can serve on the Cabinet. A provision right from the outset contained in the 1978 and 1986 Constitution. Allowing some non-MPs to be ministers on occasion might be considered. And practice of Acting Ministers might also be revisited.

There are numerous other small reforms that could be considered. One has to do with the representative function of parliament. Right now the electorate is limited to Tuvaluans on the islands. Should Tuvaluans living overseas also be allowed to vote? Democracies differ on this point. Nearly 100 countries do allow expatriate citizens to vote. In some countries, like France, expatriate voting rights are the same as those in the country. In other countries, expatriates only retain voting rights for a certain period. In the UK, expatriates lose their voting rights after 15 years abroad. There is also the consideration that for as long as Tuvalu expatriate carry Tuvalu passports then they are entitled to vote.

The advantage of expatriate voting has to do with fairness. If voting is a fundamental right, one should not lose that right just because one is abroad. Right now the voting right of Tuvaluans in Tuvalu are constrained by the provision 'participation in community activities' such that many citizens were disqualified from voting thus losing their fundamental right to vote. The enforcement of this 'participation ...' clause had also been widely executed through high degree of nepotism on the parts of lay judges on the islands. On the other hand, if a large percentage of the population is abroad, it could dilute the representation of those actually living in the country. On some issues, expatriates might have systematically different interests and values than those on the island. There are good arguments on both sides.

Guiding Questions for Discussion

Should Tuvalu retain the Queen as head of state or become a Republic?

Would you like to directly elect the head of government, as in a presidential system, or do you prefer the current system of a prime minister selected by parliament?

Should Tuvalu remain a parliamentary system or adopt a presidential or semi-presidential system of government?

Do you think your island is adequately represented in the current political system?

Who do you hold accountable for current policies in Tuvalu?

Should the constitution try to encourage more government stability in Tuvalu, or are current arrangements working well?

Should parliament meet more often or more regularly?

Should overseas Tuvaluans be allowed to vote?

Do you have any other thoughts or ideas on the political system in Tuvalu or how to improve political stability?

Thematic Area 2: Local Government

A major trend in constitutional design around the world is devolution and decentralization. Devolution in the sense that local governments are empowered with clear functions and powers while decentralization delegate functions to lower levels of governments but with the authority being held by the central government. There are many arguments in favor of empowering local government. In large countries, local governments have better information on the local preferences of the people. Furthermore, if the people in different areas are diverse and have different interests and preferences, allowing issues to be resolved locally will lead to government that more effectively represents the needs and interests of the people. Another trend in constitutional design is to recognize traditional governmental institutions and this can be done in many ways, from empowering traditional institutions on local matters to including them in national institutions.

In the case of Tuvalu the local government reform through the Falekaupule Act 1997 is an example of a devolution process where traditional chiefs and heads of families had been given the powers that were normally held by elected councilors during colonial days. Local government and traditional government are merged in the role of the Falekaupule, as per the 1997 Falekaupule Act, which reinforces the traditional system of island government by vesting in the Falekaupule the functions of local government councils. *This is admirable and shows the flexibility of the traditional system of governance. It has also led to some legal controversies about the extent of Falekaupule power.*

Thus this review of the Tuvalu Constitution is a timely opportunity to carefully examine how and what best to constitutionalise the traditional Falekaupule system. For instance, constitutional reform could be used to clarify the role of the Falekaupule. One approach would be to restate the current law in the constitutional text. The Falekaupule Act provides that the traditional bodies have explicit power over local government functions related to agriculture, livestock and fisheries; building and town or village planning; education; forestry and trees; land; relief of famine and drought; markets; public health; public order, peace and safety; communications and public utilities; trade and industry; and other miscellaneous functions. A constitutional delimitation of the role of the Falekaupule and a restatement that their legal decisions are subject to the Bill of Rights would clarify these roles without changing the current status. Additionally, characterizing the traditional contributions to the collective goods on each island as local taxes could resolve controversies over the duty of each citizen to pay them. The idea for a second House in the Parliament setup according the traditional chiefs as the custodian of the culture and traditions of Tuvalu would be another point of consideration in this constitutional reform.

Another option would be to limit the role of the Falekaupule and constitutionalize a role for a separately elected local government. Still another option would be to resolve any tensions associated with the current system of traditional government by amending the 1997 Falekaupule Act, thereby avoiding constitutional debate and reform on this issue entirely.

Guiding Questions for Discussion

Should the Constitution say more about the role and responsibility of the Falekaupule?

Should the Constitution explicitly bind the Falekaupule to the bill of rights?

Should there be separate local governments and, if so, how should they be constituted?

If so, what would you want the roles, powers, and functions of the Falekaupule and local governments to be?

Should the Falekaupule have a role in national politics and government? Or should it be kept separate? For example, should the island chiefs be formalized into a 'House of Aliko (Chiefs)' such as in the Marshall Islands ("Iroji") and in Fiji the now defunct 'Council of Chiefs'?

Thematic Area 3: The Freedom of Belief

Religious freedom is one of the foundations of modern constitutionalism. It is a global norm that people should be free to practice whatever religion they like, and also to hold no religious beliefs. The reason for this is that religion is very important to many people: if the Constitution tries to pick one religion and say it is the best, it will lead to a lot of fighting about which religion should be selected. Therefore most countries in the world protect religious freedom, and also seek to separate church and state.

This is consistent, in many countries, with recognition of a state church or sect that has played a traditional role in the society. Many European countries recognize an official church, that may play a role in some ceremonies, but these countries also make clear that no one can be forced to engage in religious practices. In the Tuvalu the 'Ekalesia Kelisiano Tuvalu (EKT) is recognized as the State Church but with no absolute powers except to preside in official government functions. The minority religious groups had aired their concerns on the passage of the Religious Organisations Restrictions Act.

In other countries, the rule is that freedom of religion requires no mention of any sect in the Constitution. In this view, simply mentioning a religion in the legal text will serve as a kind of endorsement of that faith. In short, the universal principle of religious freedom has been interpreted in many different ways in constitutional practice. Roughly 25% of constitutions mention an official sect or church; in another 25% an official religion is explicitly forbidden, and the remainder are mostly silent on the question.

The current constitution of Tuvalu guarantees freedom of belief in Section 23, which allows Tuvaluans the right to change religions, protects them from coercion, guarantees the right of sects to set up schools and houses of worship, and generally protects the rights of believers. Non-believers are also to be protected from discrimination, as per Sections 11 and 27. The Constitution also speaks in general terms of Christian principles in both the preamble and in Section 29. There is no prohibition from establishing a state church, and the EKT is recognized as such by law. The Constitution also recognizes, in several places the importance of traditional values, culture, and practices. The Preamble states that, "the life and the laws of Tuvalu should therefore be based on respect for human dignity, and on the acceptance of Tuvaluan values and culture, and on respect for them." And according to Article 15, "In determining whether a law or act is reasonably justifiable in a democratic society that has a proper respect for human rights and dignity, a court may have regard to— traditional standards, values and practices. . ." In other words, "traditional standards, values and practices" can be considered in laws relating to fundamental rights. This provision was used to justify the passage of the Religious Organisations Restriction Act 2010, which some believe infringes on the religious freedom of the individual.

The key issue for consideration during the constitutional review, therefore, is the extent to which the Constitution should protect religious freedom, even when that freedom is in tension with traditional

standards, values, and practices. Also important is to consider how public power and religious authority are currently entangled, and how best to entangle them. For example, while many countries have a state church that is usually not interpreted to allow for any religious test for public employment. There have also been conflicts among religious groups and factions. The Constitution might seek to do a better job of providing a framework for everyone to practice their beliefs but not to impose them on others.

Guiding Questions for Discussion

Are there religious issues or tensions in Tuvalu that need to be addressed?

Are there marginalized religious communities in Tuvalu? And if so, what should the constitution do for them?

How should the Constitution of Tuvalu deal with the issue of religion?

Should the Constitution continue to refer to Christian principles?

Should the Constitution reflect the idea that public employees can be of any faith?

Should traditional standards, values, and practices be allowed to curtail religious freedoms (or other fundamental human rights)?

Can issues of religion in Tuvalu be adequately addressed by amending the Religious Organizations Restriction Act instead of through constitutional amendment?

Thematic Area 4: Gender and Other Issues of Inclusion

Gender is a topic which is receiving increasing attention in constitutional discussions. Most constitutions in the world today (nearly 90%) provide for equality on the basis of gender, and prohibit discrimination on that basis. Another trend in constitutional design is to provide quotas for female representation in legislative or executive bodies. For example, Kenya's Constitution requires that the state takes steps to ensure that no more than 2/3 of all legislative or executive bodies are from one gender. Nowadays more than 100 countries have some kind of quota for legislative representation, and many of these are contained in national constitutions. Some constitutions have quotas for women in the Cabinet and civil service. There are important constitutional considerations for women regarding a diverse range of issues, including citizenship and socio-economic rights. Finally, roughly 50 percent of the world's constitutions use the expression "he or she" so as to indicate that office-holders or citizens may be of either gender.

These trends are driven by a growing recognition that gender equity is not only a fundamental right, but a fundamental factor in social and economic development. Societies in which women are able to exercise their full capabilities tend to have higher levels of social outcomes, like education and wealth. Full protection of women from discrimination helps improve women's positions in terms of formal employment.

Disability rights are another issue on the horizon in many countries. Recognition of the status of the disabled in a constitution is clearly a modern trend: for example, by requiring that official state proceedings be accessible to the deaf and blind, and protection for people with disabilities. More broadly, there is a trend toward specific recognition of a broader set of groups for protection from discrimination. Some 20% of Constitutions so provide, and Fiji's 2013 Constitution provides a reflection of this trend. Among other Pacific nations with older constitutions, Vanuatu recognizes that there may be special

protections in law for women, children, and members of underprivileged groups and inhabitants of less developed areas. A very large number of constitutions, some 60% require the government to provide support for people with disabilities.

Similarly, many constitutions now require protection of the interests of the elderly. Some 13% prevent discrimination on the basis of age. More than 60% provide for the government support to the elderly. Finally, it is worth noting that a large number of constitutions now refer to the rights of children, in keeping with the International Convention on the Rights of the Child.

In terms of non-discrimination, some may argue that existing categories are sufficient or that equality can be stated at a general level; for example, a provision that simply says “all citizens are equal according to law.” Others believe that equality and nondiscrimination clauses should list specific groups. Some argue that the listed groups should be treated as exclusive, while others prefer to add the phrase “or other category” to reflect the notion that norms and ideas about equality are always evolving and we do not want to restrict future claims.

The current Constitution of Tuvalu is relatively silent on gender, and does not mention age, disability, children’s rights, or other categories in its listing of protected groups. There is no gender quota for public bodies. Section 11 provides for a set of fundamental rights and freedoms for all persons, “whatever his race, place of origin, political opinions, colour, religious beliefs or lack of religious beliefs, or sex.” Section 27, which prohibits discrimination on the basis of race, place of origin, political opinion, colour, religious beliefs or lack of religious beliefs, does not include sex or gender.

Guiding Questions for Discussion

What specific rights should be guaranteed to women by the Constitution?

Should the Constitution protect people from discrimination on the basis of sex and gender in Section 27?

Should Tuvalu seek to provide for a minimum percentage of women in parliament or other representative bodies? Should a certain % of government positions be reserved for women?

Should the Constitution protect the elderly from discrimination?

Should the Constitution protect the disabled from discrimination?

Should the Constitution reflect children’s rights explicitly?

Should the Constitution provide for financial support for vulnerable groups or should this be left to law?

Are there other groups that should have constitutional protections?

Thematic Area 5: Values

Constitutions are not just devices to establish government and set up laws. They are also expressions of fundamental values of a people and a country. In this sense, constitutions should be reviewed to make sure they reflect current values. Of particular importance in this regard is the preamble. The preamble speaks to the need for a constitution and can embody the values of the people.

Tuvalu's preamble sets out the legal basis of the document, and reaffirms the principles of the independence of the constitution. It also lists several principles, including a commitment to both tradition and change. *This is a very balanced statement, and it itself should be reviewed in the spirit of the current preamble.*

Consideration might be given to reflecting new values as well. One global trend is a growing role for the protection of the environment in constitutions. Fiji's Constitution, for example, mentions environmental rights, including "the right to have the natural world protected for the benefit of present and future generations through legislative and other measure."

The environment is mentioned only peripherally in the Tuvaluan Constitution, as part of a qualification on the right to freedom of movement in Section 26. Consideration might be given to recognizing the environment, possibly as one of the traditional values. The importance of climate change for Tuvalu is well understood. While constitutional regulations can do very little to confront the problem, a mention of the issue in the preamble might help garner attention abroad. Constitutional recognition of the issue could also provide a structure for resolving prospective distributional questions about the allocation of funds for adaptation and mitigation.

Guiding Questions for Discussion

Is the current preamble a good expression of Tuvalu's constitutional purposes?

Should the Constitution mention the environment in the preamble?

Should the government have a constitutional duty to protect the environment?

Independent Entities

Another trend globally is the constitutionalization of independent institutions that play a role in monitoring government or engaging in specialized functions. These commissions and other bodies often include appointees who represent non-political entities, or have mixed appointment processes to prevent them from being beholden to any particular entity. Examples of common independent institutions include human rights commissions, electoral commissions, judicial services commissions, anti-corruption commissions, public services commissions, and women's rights commissions. An Ombudsman, which often serves as an institution where people can present grievances with the government, is also in this category. In the Pacific region, the trend for constitutionalizing independent institutions is reflected in the Constitution of Fiji, which includes no less than ten such bodies - commissions for Human Rights and Anti-Discrimination, Electoral matters, Judicial Services, Legal Services, Corruption, Legal Aid, Mercy, Accountability and Transparency, Public Service, and Constitutional Offices. Papua New Guinea has commissions for Corruption, Judicial Services, Law Reform, Public Services and the Ombudsman. Other countries have fewer. Two constitutions in the region lack such bodies (Micronesia and Tonga). The most popular such body is a Public Service Commission, found in five different countries in the region; electoral commissions are found in four.

All of these commissions, of course, add to government complexity and expense, and so need to be carefully considered, particularly in smaller countries. For example, with only one magistrate judge resident in Tuvalu, there may be no need for a judicial services commission. Still, there may be special functions that would merit constitutionalization. The point nonetheless is that do Tuvalu need to establish

greater independence among these important institutions? The present setup for instance for the courts and the PSC was the best possible way to do so under the financial means of Tuvalu in the early days of Independence. *Now, Tuvalu has a greater degree of financial autonomy and thus should these independent entities be allowed the optimum level of independence in order to fulfill its mandate to the best? Specifically, consideration might be given to constitutionalizing the office of the Ombudsman, which already exists.*

There may also be merit in constitutionalizing the office of the People’s Lawyer and the right to an independent attorney in criminal cases. Given the small size of the legal profession, the Attorney General’s office sometimes finds itself on both sides of a case. Clarifying the separation of prosecution and defense would be consistent with rule of law principles.

At this point, Tuvalu is one of eleven independent states that maintain appeal to the Judicial Committee of the Privy Council in London. Within the Pacific, only the New Zealand associated states of Cook Islands and Niue retain it, along with a jurisdiction from Kiribati for cases involving constitutional rights. Given that many of the benefits of Privy Council jurisdiction—expertise and independence from local influence—are already achieved through having foreign judges, Tuvaluans may consider the benefits and costs to retaining the jurisdiction of the Judicial Committee.

Sections 149-153 of the Constitution describe the structure and role of the Public Service Commission, which plays the crucial role of managing the public sector. Given the importance of government jobs in the country, this body is tremendously powerful. We note that there is some discussion of the need to ensure its integrity, so this might be a topic of consideration during constitutional review.

Guiding Questions for Discussion

Should Tuvalu constitutionalize other independent commissions or should they be left to ordinary law?

How can their independence be protected?

Should the office of the Ombudsman be mentioned in the Constitution?

Include other Independent Institutions such as Auditor General, Commissioner of Police & Attorney General.

[ANNEX for ISSUES PAPER]

Issues to Guide the Consultation Process

(Extracted from the Report of the 8-9 May Workshop 2017)

The list of issues presented by way of a slide show emanated from the Workshop conducted in December 2016, the scoping done in January 2017 and from the discussion first week May between the CRO, Project Manager and the UNDP Constitutional Expert from UNDP New York-

- **Structure of Parliament:**
 - of critical importance is the ratio of Cabinet Minister to the total number of Members to make sure Parliaments holds the Government fully accountable.

- the work load of respective Ministers came up and perhaps the concept of having Associate Minister as in other Parliamentary setups may be a practical solution. But if so then indeed the number of MPs ought to increase
 - the question of having national seats was also raised to enhance national identity building and national unity toning down the existing 'island' spirit dominance. Reference was made to the Fiji experience where all seats are national.
 - the concept of party system was also discussed as an option to foster political stability.
 - representing women in Parliament be accorded due consideration as reflected in the experience of other countries. The only woman Member of Parliament shared her experience in that she used to think that women representation should not be an issue but from her experience, it was indeed difficult for her as a woman to fight her way through when she started campaigning etc. she appealed that perhaps to have the issue flagged with the people nonetheless so the CRC could learn what they think and say.
- **Judiciary:**
 - appointment of judges be done by a Tribunal outside the Executive for obvious reasons.
 - independence of the judiciary ought to be enforced at all levels and in particular be guaranteed adequate budgetary resources. It was recognized and appreciated that a major contributing factor to the non-independence of the judiciary and other constitutional offices is the lack of money in the early days of independence. Now Tuvalu has acquired a relative state of financial wealth today and thus the independence of these institutions should be put right. Reference was made to the TKIII which puts the financial independence of the judiciary a top priority.
 - to constitutionalize the Office of the Ombudsman
 - the separation of powers between the Judiciary, the Executive and Parliament is also imperative to further endorse the independence of the judiciary and other constitutional institutions.
 -
 - **Traditional governance:**
 - Falekaupule Act to be constitutionalized. It was noted that the Act is presently under review and thus the CRC process is timely. In addition the Act conveys powers to the Falekaupule and thus needs to be examined against the constitutional guiding principles.
 - 'House of Chiefs' as the custodian of the Tuvalu culture and even consideration for formalizing the establishment of a second House with powers relating to the culture. E.g. one of its main functions shall be the codification of the Tuvalu culture to help the Courts to make appropriate decisions when come to pass judgments on issues related to culture
 - more importantly is the marriage of traditional governance norms and practices with the 'western' democratic principles
 - of paramount importance is the financial independence of the Falekaupule institution.
 - **Freedom of Religion:**
 - while it is one of the fundamental rights of the individual, it is not absolute. In the case of Tuvalu for instance because the majority of the people are members of the EKT (Tuvalu Christian Church) and who had entrenched its doctrines within the Tuvalu cultural framework, a number of other religions tend to divide the community by refusing to participate in community activities some of which are for the EKT
 - there is no 'Council of Churches' who could be the platform to create greater cohesion among the smaller religious groups and the EKT

- the registration for new religions need to be re-examined well and to understand carefully the doctrines of the new religion so to ensure it does not infringe negatively on community life.
- the role of the Falekaupule conferred by the Religious Organisation Act need be examined well in light of the Bill of Rights.
- **Other rights:**
 - Constitution does not include rights for gender, sex, aged and people with disabilities
 - there is also the socio-economic rights which are accounted for in other constitutions.
 - In terms of the aged and people with disabilities in the Tuvalu culture they are the responsibilities of families (both nuclear and extended). Unfortunately this cultural practice tend to have weakened over the years and thus warrant careful research and assessment
 - the survey by the Fusialofa (NGO looking after the interest of people with disabilities) recently accomplished throughout the nation could be obtained to help determine the constitutional setup for such group

Annex 4 – Questions to Consider in Deciding Whether and How to Utilize a Constitutional Referendum

The Tuvalu Constitutional Review Committee (CRC) is currently deciding whether to employ a public referendum for the adoption of some or all of its proposed constitutional amendments. In deciding whether and how to utilize a constitutional referendum for Tuvalu, the CRC should ask a series of questions. The first two questions go to *whether* the CRC should utilize a referendum. The remaining questions address *how* the referendum might be utilized, should the CRC decide to employ one. UNDP does not have a view on whether Tuvalu should include a referendum as part of its constitutional review process. UNDP provides the following questions merely to help the CRC in making its own informed decision and stands ready to provide additional follow-up assistance.

1. Is a referendum necessary? It must be noted that the Constitution of Tuvalu does not require – or even raise the possibility – of a referendum on constitutional amendments. That said, it does not prevent a referendum either. Constitutional referenda are primarily used to confer legitimacy on the constitutional reform process – and by extension the constitution itself – by giving the people a say over the adoption of amendments. But referenda are only one way to obtain this legitimacy. Typically there are three points during a constitutional review where the people can input their views and shape the outcome: (1) by voting representatives who will undertake the review; (2) by being asked their views through public consultations; and (3) by adopting the draft via referendum. Tuvalu is already doing 1 and 2. The question the CRC should ask itself is whether a referendum is necessary to achieve legitimacy or whether having the elected parliament conduct the review and engaging in robust public consultation will be sufficient.
2. Are there possible negative effects? Referendum always carry with them risks, some of which are explained below:

- a. Upsetting political deals. Constitution making is by its very nature a negotiation between different interests – in this case the members of Parliament who represent different islands and sometimes different social and political perspectives. It is not uncommon in constitutional negotiations for compromises to be made where one side gets one thing and another side gets something else. Referenda, particularly if they are on an issue by issue basis (instead of one vote on the entire package of amendments) can upset these delicate compromises by approving one side’s amendment and rejecting the other. In such a scenario the CRC could approve two amendments and have one rejected in a referendum – creating unnecessary resentment and possible turmoil within the Parliament (or between the constituencies of the two sides). This problem can be further exacerbated if either side to the deal goes out and campaigns against the other side in the run-up to the referendum. And if they do not campaign against the other side’s issue they may be seen as betraying their constituency. (Yes, their constituency might be upset that the MP made the deal in the first place, but referenda shine a much brighter spotlight on these issues and create much more pressure.)
- b. Politicalizing/spoilers. As just mentioned, referenda often shine a huge spotlight on the most difficult and divisive constitutional matters. There are numerous examples where constitutional referenda are fought on one minor point - overshadowing all the other matters up for constitutional reform.
 - i. In Kenya (2010), for example, the referendum on the entire constitution was contested largely on the relatively minor issue of Islamic courts. There was a moment where people worried that the entire process would collapse because this issue had become so highly politicized. This, despite the fact, that there had been Islamic courts in Kenya for over a century with little fuss or controversy.
 - ii. In Grenada (2016) the government put 7 amendments to vote at referendum. The amendments addressed a range of important matters such as government reform, ending the use of the Privy Council, and strengthening numerous fundamental rights. One of the amendments called for adding the word “gender” to the list of grounds on which there can be no discrimination. Some of the churches believed that doing so could lead to same-sex marriage and as a result campaigned against the amendment. The atmosphere became so negative that not only was the amendment rejected – all the amendments were rejected, and the constitutional review ended with nothing.
- c. Referenda can become a tool to violate minority rights and interests. Referenda are by their nature majoritarian exercises. If the CRC seeks to amend the constitution in ways that may be unpopular – for example, by strengthening fundamental rights such as religious freedom or increasing women’s rights and participation – the people might resist these progressive initiatives. It is sometimes the responsibility of leaders (and legal frameworks, such as international treaties and national constitutions) to not only prevent discrimination but to move society forward to a more just position. And therefore there is an argument that sometimes certain matters should not be left to the people.
 - i. An example of such a consideration comes from South Africa. In 1996 – at the time of the adoption of the post-Apartheid constitution – an overwhelming majority of South Africans supported the death penalty and wanted it in the

constitution. Nelson Mandela and the ANC took the unpopular decision that legalizing (let alone constitutionalizing) the death penalty would violate the constitutional principle of right to life. South Africa did something similar with regard to homosexuality, being the first country in the world to list “sexual orientation” among the classes constitutionally protected under equality and anti-discrimination. Had either of these provisions be left to the people to decide a different outcome would likely have occurred.

- d. Finally, there is empirical evidence that often times referenda become votes on issues that have absolutely nothing to do with the constitutional amendment; that people say “no” because they are unhappy with their government, elected leaders, state of the nation, or something else. And even under the best of circumstances the public is typically operating with less information and deliberation, making it far more prone to be affected by passions and spoilers. Again, referenda tend to be highly politicized events that are not easily controlled.
- e. None of these risks might be serious in Tuvalu, but the CRC should consider how likely they are to occur and weigh that against the need for a referendum given that the constitution does not require one and that the people will still have participated in the process through the election of MPs and direct consultation through the public outreach campaign.

If the CRC decides to have a referendum as part of its constitutional review, the following questions address some of the considerations for how to utilize it:

- 3. Should the referendum be advisory or binding? The Constitution of Tuvalu does not require a referendum to take place, so one that occurs would not be legally binding. But it could still be politically binding. The BREXIT referendum, for example, was not legally binding, but politicians made it clear they would honor the vote – making the political cost of rejecting the results potentially disastrous for the government. The CRC should decide whether or not it will bind itself to the outcome of a referendum – or whether the referendum outcome will merely be advisory - and relay this information to the public as soon as possible. In making this decision, the CRC should consider the pros and cons inherent in an advisory opinion, which may be separate from more general considerations set forth above. For example, what is the value of an advisory referendum compared to the risk of an outcome that the CRC might wish to ignore?
- 4. Should all amendments go to referendum or just some amendments? The CRC should consider whether all proposed amendments will be put to referendum or only certain amendments – perhaps the most sensitive or divisive – be put to referendum.
 - a. If some amendments, what triggers the referendum? Certainty in what triggers a referendum will be crucial to protecting the integrity of the process, particularly if the referendum will only be used in difficult cases. Suppose there is broad disagreement in the CRC on whether a particular provision of the Constitution should be amended, or what a particular amendment should look like. One side or the other might see a referendum as advantageous to its position and therefore propose to activate it. The other side, naturally, will see this as an impediment to its position. If the circumstances that trigger the occurrence of the referendum are not clearly spelled out and agreed to ahead of time than the activation of the referendum event

- will be as contested and controversial as the underlying disagreement over the amendment itself. Since the CRC requires a two-thirds majority vote (10 out of 15 MPs) to adopt an amendment, one possible use of the referendum could be in circumstances where there is majority support for a proposal (say 8 or 9 MPs) but not the necessary two-thirds. The 8 or 9 could call for a referendum, with the rest of the CRC agreeing to abide by its results. There might also be a “negative” use of the referendum; for example, 5 MPs could call for a referendum on an issue that enjoys support of 10 MPs (perhaps under the theory that the CRC strives to make decisions on the basis of consensus and 5 MPs against a proposal demonstrates an absence of consensus). Another possible trigger could be a petition from outside the CRC with X number of citizens’ signatures, or a petition from X number of Faleakapule. Again, it depends on why the CRC thinks a referendum is a good idea in the first place, and what purpose the referendum is meant to serve.
- b. If a referendum is to be triggered by certain events, should it occur at the time of the disagreement or at a set time during (or at the end of) the process? Let us say that the triggering event – whatever it is – occurs. Is that issue immediately sent to referendum for resolution? Or is it pushed to the end of the process? If the former, it may create severe logistical challenges, increase costs, and delay the completion of the process (particularly if multiple referenda are needed throughout the process). However, if the referendum is left until the end (or near end) of the process, then the CRC will be continuing its work under the cloud of uncertainty regarding what presumably will be one (or more) of the most sensitive and divisive issues. Again, it certainty in the rules and procedures will be important to establish early in the process to avoid conflict later on.
5. If all amendments are put to referendum, should there be one “yes or no” vote or separate votes on each amendment? As with the other questions there are pros and cons with either decision. The advantage to a separate vote on each amendment, of course, is that voters can express their preference on each separate issue – this maximizes the majority’s buy-in and support for each constitutional reform. On the other hand, the advantages to a single “yes or no” vote is that (a) it is easier to manage (a ballot with 10 or 20 or 50+ amendments is extremely hard to design and even harder for voters to follow); and (b) it avoids the scenario where voters upset delicately reached political deals (see section 2.i, above). Going back to the Kenya example, had the voters been able to vote “no” just on the Islamic courts then the constitution may have passed but in so doing create severe inter-religious conflict.
6. What should be the voting threshold? Should an issue be deemed “approved” if it receives a majority vote? A super-majority (perhaps two-thirds)? What about a double-majority (for example, a majority of the overall voters and a majority on a certain number of islands)? Should there be a minimum threshold for voter turnout (in other words, X% of eligible voters must vote and X% of those must vote “yes”). How these questions are answer will impact not just the likelihood of a positive result, but the politics that underlie the referendum itself.
7. What operational and logistical considerations are there? There are numerous operational and logistical considerations that go into conducting a referendum, including:

- a. How much time is needed to prepare for and conduct a referendum, and how does this impact the CRC's timeline to complete the constitutional review?
 - b. What is the cost of conducting the referendum? And where is the money coming from?
 - c. How much additional time, labor, and cost will be required to conduct voter education on the referendum? (Although there will be substantial education throughout the process, additional information on the ballot, questions, procedures, etc. will be required.)
 - d. What additional institutional considerations are there? For example, is there an elections body in place and ready to oversee the referendum? Or will additional cost, time, and capacity building be required?
 - e. Is there an existing law that provides for the conduct of the referendum or is a new law necessary?
8. What role would the CRC, government, or other official actors play in the referendum? It is important to consider what role the CRC as a body, the MPs as individuals, or any other official actors might play in the referendum. Will they openly campaign for or against various proposals, for example? In Grenada, the government took the position of remaining silent/neutral about the amendments in the run up to the referendum – believing it should not try to influence the people. However, many think this contributed to the failure of the referendum, since the churches and other actors were openly campaigning “no” and there was no strong voice campaigning “yes.” In many other countries politicians and official actors are free to campaign, but of course this runs the risk of extreme influence on voters. The CRC should also consider what the impact would be of a divided CRC, where some MPs were campaigning “yes” and others campaigning “no.”
9. When should the rules of the referendum be established? As this note as frequently stated, certainty in the constitutional reform process, including with regard to whether and how a referendum might occur, is important. Whatever the CRC decides regarding the use of referenda, it is critical that its decisions be made as early as possible in the process and be clearly communicated to all stakeholders, including the public. This will help in preparing the people for the process, including managing expectations. More importantly, it will help in preventing conflicts later on. A situation the CRC absolutely should avoid is one where a dispute arises on a sensitive or divisive issue and only then does the CRC decide whether and how to use a referendum to resolve it.

Annex 5 – Summary Report of the Consultations in Fiji and New Zealand

Introduction

At the Board Meeting held at Suva on Friday 2 June 2017, in the UNESCAP Conference Room, Level 5, Kadavu House, 414 Victoria Parade, Suva, Fiji the CRC Secretariat members – Ag. Attorney General (AG) Laingane Italeli Talia, Clerk to Parliament (CP) Andrew Puga Semeli and the Constitutional Review Officer (CRO), Bikenibeu Paeniu deliberated on the need to start the outreach 1 at the earliest. It was agreed to first of all do the New Zealand and Fiji consultations as in accordance with the decisions by the CRC in its May 8-9 2017 Workshop in Tuvalu. The reason then was to avail the extensive ‘brainbox’ and experiences of the educated and working Tuvaluans in Fiji and New Zealand. Having lived outside of Tuvalu and exposed to the ‘modernised’ world this component of the Tuvalu diaspora would help the Secretariat to improve on its approach and format of its deliberations with the people in the 8 island communities of Tuvalu. The main driving reason though to commence the consultations at this time was because University was having its first Semester break and thus many students would be available.

The Secretariat then proposed to the Project Manager to start the consultations with the diaspora for the reasons explained above. In the minds of the Secretariat, the Fiji and New Zealand consultations were to be the testing grounds for our preparations before going out to the outer islands and on Funafuti the capital. After discussions for sometime, it was then agreed to proceed as recommended by the Secretariat. The CRO then spoke to the Chair of the Constitutional Review Committee (CRC) the Hon Otinielu Tauteleimalae Tausi and explained to him the proposal to start the consultations in Fiji and New Zealand. After a number of telephone conversations with the Chair, he kindly agreed to forego of his trip to Australia and instead join the Team (the composition of which was also approved by the CRC in its Workshop in May 2017) to Fiji and New Zealand.

The Secretariat (comprised of the CRO, AG and CP) joined the Chair (who had left Tuvalu earlier) at Suva on the Saturday 24 June 2017. Consultations were held at Suva for the Fiji diaspora from Monday 26 to Wednesday 28 June 2017. The Team left for Wellington, New Zealand on Thursday 29 June 2017. Consultations in Wellington was held on Friday 30 2017 for one day only. The Team then left for Auckland on Saturday 1 July 2017. The programmes for the Fiji and New Zealand Consultations are attached as Annexes 1 and 2.

Demographic breakdown of the diaspora outreach in Fiji and New Zealand

For the 3 days of consultations in Fiji a total of three hundred and eight-seven (387) Tuvaluans attended. Out of this number, 161 were males and 226 females. At the opening on Monday 26 June 2017, a total of 205 (80 males and 125 females) Tuvaluans attended. For Tuesday 27 and Wednesday 28 June 2017 78 (31 males and 47 females) and 104 (50 males and 54 females) citizens respectively attended.

For New Zealand, the demographic breakdown for Wellington is 23 males and 31 females not counting the more than 20 youth males and females who joined in the latter part of the afternoon. The register for Auckland unfortunately is misplaced but to note that the turnout was similar to that of Wellington.

Approach and Methodology

Pre-planning commenced between the Secretariat and the Project Manager and his assistant(s) whilst in Fiji before returning to Tuvalu following the Board Meeting. The President of the Tuvalu USP Students Association and the Elder of the Tuvalu Community in Suva were also contacted. Pre-planning

continued after the team arrived Tuvalu on Tuesday 16 June 2017. Following extensive exchanges of emails between the CRO and the Project Manager it was agreed on the recommendation of the CRO and members of the Secretariat for the Civic Education and Research Officer (CERO) Ms Temukisa Hauma to take a one week trip to Fiji to help the Project Manager with the organisation, attend to the logistics and in particular liaise with the Tuvalu representatives to ensure all is in order before the consultations officially start on Monday 26 2017. It was later decided that instead of one week the CERO to stay till the end of the consultations in Suva and return to Tuvalu on Thursday 29 June 2017 to ensure the logistics were well accomplished. She was also to be useful in the consultations proper.

As seen in the agenda itself, the consultations was organised mainly through a plenary-style format supplemented by 6 panelists for both Tuesday 27 and Wednesday 28 June 2017 in Fiji. The idea then was to compel Panelists to present from their own assessment of the issues having been guided by the Paper on Issues circulated earlier to them by email and later were presented by the Team during the opening session on Monday 26 June 2017. In Wellington however, because it was only day, the programme focused mainly on the Issues. At Auckland on the other hand, 2 days of consultations like Fiji i.e. Monday 4 and Tuesday 5 July 2017.

For Fiji based on a suggestion by a couple of people and based on the 500 some number of Tuvalu students attending University of the South Pacific (USP) and Fiji National University (FNU) it was arranged to devote one day (Tuesday 27 June) for the students only. Wednesday 28 June was for the community in Suva while Monday 26 June was open to all students and members of the Tuvalu community in Fiji. Just to note here too that while Tuesday and Wednesday were assigned separately to students and members of the community it was made clear to all during the opening session that all were welcome to attend all the sessions for the 2 remaining days.

It was also planned to use the whole of the two days from morning to night time but then again it was advised by members of the community to commence at late afternoons to enable those working to attend. For the 2 days Tuesday and Wednesday, sessions commenced around 3 pm onwards and ended around 9 pm. For New Zealand, it is somewhat different as many people especially those living in Auckland work and cannot attend the consultations during day time. Some considerable time was spent discussing the timing with the participants on Saturday night 1 July 2017 and agreed to commence at around 4 pm but still the number of people as shown by the number of people attending in Auckland is relatively small knowing that at least over 2,000 adult Tuvaluans live in Auckland.

Some important points to note at this stage-

- For the 3 days (26-28 June 2017) all sessions were opened and closed by the singing of the National Anthem followed by prayer. This was done to instill in the minds and souls of citizens the national motto and the lyrics of the national anthem which simply depict in a nutshell the guiding principles of Tuvalu and perhaps if it may positively help to instill the spirit of patriotism in a positive way among the citizens of Tuvalu. That is, patriotism to bring the people together as one and united for the good of all enshrining in their lives the values and norms of Tuvalu's constitution and culture.
- It may be inferred from the demographic breakdown above that the number of people attended is small. Numbers were never a considering factor in the planning. Rather the overriding goal was to get the message clear to all citizens of Tuvalu and moreover to listen to them, record all of what they say and analyse to establish common threads of thoughts etc. But indeed it is noted for future to consider a methodology that will get feedback from as many citizens as possible.

- There is certainly lessons learnt from the Fiji and New Zealand experience to improve the conduct and format of consultations in Tuvalu (and this will be discussed under the report of the consultations in Tuvalu on completion).
- The catering for both Fiji and New Zealand was based mainly on the current government policy and practice in Tuvalu. For Fiji a special consideration was accorded to the students and thus why a treat with the 'lovo' style of dinner. It is noted nonetheless for future consultations to control this element of the public outreach overall.

Summary of Findings – Fiji and New Zealand Consultations

A total of 78 interventions from individuals in Fiji and New Zealand were made. Subject matters referred to under these interventions included comments and observations. All had been consolidated into a 39-page Matrix and is being analysed at this point in time to establish common threads leading to thematic areas. Following are sample selections of discussions and common threads from Fiji and New Zealand (extracted from the consolidated matrix of findings of the consultations from Fiji and New Zealand):

- i. The TCRP Process
- ii. Preamble of the Constitution
- iii. Common threads in the following-
 - a. Political Reform
 - b. Culture, Values and Traditional Governance
 - c. Human Rights
 - d. Other rights
 - e. Independent Entities

The TCRP Process

- **Building consensus:** At the end of the consultations – i.e. outreach 1 to 3 and then submission to the Parliament for adoption, so what will happen then? Will the Parliament who are all also Members of the CRC adopt the “wish” of the people (assuming the wish of the majority)?
- **National Constitutional Convention or National Summit on the Constitutional Amendment Framework:** it was strongly recommended that between Outreach 3 and the final stage before submission to the Parliament that a Convention or Summit (in the same manner done for the Kakeega III) be convened where representatives of all the eight islands and delegations from the Tuvalu diaspora, Members of Parliament, Women, Youth and other vulnerable groups, private sector and civil society be held to go through each proposed amendment and adopt or otherwise. Thereafter at the end of the Summit, the agreed resolutions by the Summit be submitted to Parliament in the hope that the latter will simply rubber-stamp the decisions of the Summit.
- That workshops for all CRC Members and the CRC Secretariat be continued throughout the Project duration to ensure all understand their respective roles and to be fully committed to making the 'best' decisions without taking political lines but rather listen to the people taking into full account the competent advice from supporting technical experts both national and expatriates.
- Fakamalosi mai ke talia ke fai se 'constitutional convention pela mote fakamatalaga tena mai luga NCC.
- All reports be kept and digitised and be written in Tuvaluan as the original language
- That all presentations by the Team, whether power points or papers circulated to the people be written in the Tuvaluan language.

Preamble

- The Preamble of the Constitution of Tuvalu is seen as the main guiding framework for all the subsequent parts and thus it is imperative that it is explained well so all could understand the contents and what it aims to achieve.
- That Christian Principles were put in the Constitution for a reason by the fathers of Tuvalu and thus must be observed and defined to help the citizens comprehend and live by the aspired teachings.
- On the same token traditional norms and values are enshrined by the Preamble of the Constitution but in practice there is always clashes between traditions and human rights.
A classical example is the case on Nanumaga Island where the Falekaupule traditional government was taken to Court by a pastor from the Gospel Church where the latter won the Court case. Thus a major common thread emanated from the consultations was to marry the traditional values and norms of Tuvalu with the human rights (Bill of Rights)
- To consider enshrining a CREED for all citizens of Tuvalu in the Constitution so that all citizens to take the oath and creed as means of encouraging nation building and national identity.

Common Threads-

i. Political Reform

- Is it the Westminster system of Government that is a problem or is it the character(s) in the system? Perhaps Tuvalu ought to consider establishing criteria for Members of Parliament to ensure quality members of Parliament are elected instead.
- That Parliament should call Parliament Session but not the Executive (Cabinet) as it is the case now. And more importantly the Constitution to direct sessions of Parliament (e.g. 3 times a year) with the dates written in the Constitution.
- Define Tuvalu values and norms and marry the Bill of Rights enshrined in the Constitution with these norms so they side by side complementing each other.
- The power base of the Head of Government be vested on the people.
- The Head of State be removed from Her Majesty the Queen and vested on a Tuvalu citizen and that he or she be elected by the people.
- Allow the Tuvalu diaspora to vote during national elections.
- Increase the number of seats in Parliament and to also include national seats aside from Island representatives.
- The change effected in 2008 allowing for the numbers of Ministers to increase from 1/3 to 50% of the total number of Members of Parliament be reversed to remain at the former (1/3) to ensure Parliament plays its oversight role effectively on the Government of the Day.
- This is the golden opportunity to marry very carefully the western democratic style of government with the traditional governance system such as the Falekaupule such that at the end of the day the Tuvalu Constitution will certainly be owned and understood well by the citizens of Tuvalu.
- Too many times government changes and the post of the Prime Minister had been used as a bait to gain the numbers when come the 'number game' among Members of Parliament. It is important therefore to establish checks and balances to ensure stability in the Government and Prime Minister elected has quality leadership style for the good of all.
- The presidential style Government of Kiribati and the culturally based Government of Samoa are useful models to study.
- Head of Government whether in a presidential or Westminster system's term in office be limited to 2 or 3 terms.
- Consider a party system of Government to help stop Members from crossing the floor.
- etc.

ii. Culture, Values and Traditional Governance

- The Tuvalu values of making decisions by consensus, respect and upholding the traditional governance protocols do not divide up families and communities such as in the case of elections in the western democratic style. It is imperative therefore to incorporate as much as possible the values and norms of Tuvalu in the 'amended Constitution'.
- A very important challenge now is to seriously merge the traditional values and norms with those of the Bill of Rights to ensure they complement each other instead of having the status quo where the law prevails over traditional values – especially in cases where traditional values are not enshrined in a law.
- Responsibilities are inherent features of the Tuvalu traditional way of life right from the people up to the Chiefs and elders including women. These responsibilities must be defined well so each and every should know what her or his responsibilities as these are important to exercise when come to invoking one's human rights.
- The Falekaupule traditional governance system be enshrined in the Constitution and consideration be also given to making it one important pillar of the Constitution.
- Urban Council or Falekaupule style of Government be seriously considered given more than 50% of the population of Tuvalu live on Funafuti. This has been a subject matter since independence and perhaps this is the opportune time to consider options. In this way too, consideration be given to establishing electoral wards on Funafuti so when come to elections, these wards could vote for their respective representatives.
- etc.

iii. Human Rights (& other rights)

- Marry the Bill of Rights with the traditional norms and values.
- Respect and uphold the freedom of belief and to note that in exercising this right now ought to do it responsibly.
- Define what are human rights and the difference among them if any.
- Include the rights for gender, sex, people with disabilities and the aged in the Constitution.
- Consider according rights for the vulnerable group of LBGT but not to allow same sex marriage as this is taboo in the culture of Tuvalu and also in accordance with Christian principles.
- The rights of a person to live a good life, good home, access to food and water should also be included in the Constitution.
- Given the climate change phenomenon and its impact on Tuvalu it is important to demarcate clearly Tuvalu maritime boundaries.
- There is also the need to make it constitutionally mandatory for the Government and all to observe and respect the intact of the environment when come to development projects.

iv. Independent Entities

- Separation of powers among the 3 main pillars of Government – Executive, Parliament and Judiciary is considered imperative for the smooth invoking the democratic principles of governance implied in the Constitution
- Excessive power is currently vested on the Executive by the Constitution and given the experience so far it is strongly recommended to remove most of these and vest them on other independent committees. For instance appointments of PSC members be vested upon an independent tribunal or some form of independent committee.

- Parliament must be accorded its status as the oversight for the Executive in addition to its main function as the Legislature and thus the present arrangement where the Cabinet holds the majority of members of Parliament (8 Ministers including the Prime Minister) should be reversed to the original arrangement of 1/3 of the total members of Parliament.
- In terms of the Judges they should be appointed by a Tribunal of Judges instead of the Cabinet to ensure the integrity of the Judiciary. This also include appointments of Judges at the Island Courts.
- The mandate for the prosecution be removed from the Office of the Attorney General and vested in an Office of its own for obvious reasons.

Way Forward

Lessons learnt from the Fiji and New Zealand consultations had led to the improvement of the first leg of consultations in Tuvalu for Nukufetau and Vaitupu. Plenary was divided up into groups facilitated by the Secretariat members. All slide presentations were done in the Tuvaluan language. Optimum time was given to discussions so that at each of each presentation on one particular issue, this is followed by questions and answers including comments and observations.

The level of participation in New Zealand both for Wellington and Auckland is considered low and thus there will be serious review of the present methodology not only in Tuvalu but also for the diaspora. The team of four including the Speaker to Fiji and New Zealand is excessive and thus incurred much expenses in terms of catering and the travel. An innovative approach will be seriously crafted where more media work would be undertaken through the use of more pamphlets, radio, facebook etc. etc. It is also important that all documentation are prepared well in advance and sent to the people well before the team arrive. For instance here in Tuvalu it is now planned for all presentations be compiled into a booklet with the notes and be done in the Tuvaluan language and sent to the islands before the team arrive.

Last but not the least, the Fiji and New Zealand consultations were important testing ground though regrettably expensive but a lesson learnt. As the process move forward, it improves all along. The Secretariat recognises the importance of being compliant in its reporting and has already appealed to the Project Manager for consideration or personnel assistant to help the Tuvalu based office in meeting this requirement.

Acknowledgements

The Secretariat wish to acknowledge the support and assistance of the UNDP Suva through the TCRP Project Manager and his assistants. The continued financial assistance of Australia through DFAT is acknowledged with thanks and look forward to continued team work not only through paper work but face to face consultations from time to time to clear any clouds and maintain team spirit throughout this noble process. Last but not the least is sincere gratitude and thanks to colleagues in the Secretariat for the excellent team work and continued support on top of their respective duties. Without their support the process would have not come this far and in particular achieving its set targets.

God Bless Tuvalu!!!

Annex 6 – Summary report of consultations in the islands of Nui, Nanumea, Niutao, Nanumaga, Nukulaelae and Niulakita



13 – 30, November 2017

1. Acknowledgements

The Secretariat wish to acknowledge the support and assistance of the UNDP Suva through the TCRP Project Manager and his assistants. The continued financial assistance of Australia through DFAT is acknowledged with thanks and look forward to continued team work not only through paper work but face to face consultations from time to time to clear any clouds and maintain team spirit throughout this noble process. Last but not the least is sincere gratitude and thanks to colleagues in the Secretariat and particularly the Hon Speaker and Chair of the Constitutional Review Committee (CRC) for the excellent team work and continued support on top of their respective duties. Without their support the process would have not come this far and in particular achieving its set targets.

2. Introduction

The Constitutional Review Committee under the leadership of the Hon Speaker to Parliament Otinielu Tauteleimalae Tausi and its technical support staff conducted a series of consultation workshops in the outer islands from November 13th to November 30th, 2017. The series of workshops are part of the Phase I consultation process for the Tuvalu Constitutional Review Project. The series of workshops were broken down into two day workshops per island mainly focusing on the remaining outer islands of Nui, Nanumea, Niutao, Nanumaga, Nukulaelae and Niulakita. Note that Vaitupu and Nukufetau islands were consulted in the month of August 2017 and is therefore not included in this summary report.



Welcome ceremony hosted by Nui women

Food preparations hosted by Nanumea women & youth

2. Objective

The main purpose of the consultations were to:

- Introduce, explain and educate the people of Tuvalu on the different schedules and sections of the Tuvalu Constitution
- seek feedback and comments from participants
- identify the common threads and issues within the main thematic areas

- identify the main research topics that are crucial for the Phase II consultation review process
- summarise and analyse the common threads and issues
- recommend way forward

3. Methodology and Approach

Pre-planning of outer island workshops and consultations were conducted from August to November 2017. The following methodologies and approaches was used during the consultation process including:

- the Constitutional Review Committee made prior arrangements with the Ministry of Home Affairs and individual island councils informing them about the consultation process
- circulation of the agenda for the two day consultation workshops were made in advance to all island councils and local boards
- the use of media through press releases and public media announcements were conducted prior to travelling to outer islands
- face to face interactions with island participants were successfully conducted through workshops held in the island community halls
- the use of presentations and group work activities were conducted to engage participants in the review process
- the use of pamphlets and handouts were distributed during the workshops
- tape-recordings of consultations were made during the workshops
- follow ups were also made through separate emails, letters and phone calls
- and last but not the least writing (using laptop) all the interventions made throughout the 2 days discussions

The consultation review process used a mixed method approach from face to face interactions, to group work activities, media releases, tape recordings, emails, newsletters, phone calls and pamphlets. The importance of using such methodology is beneficial in engaging participants from the hard to reach audiences in the review process as well as gaining an in-depth knowledge of the common issues highlighted in the main thematic areas.



Nui Participants presenting their group work



Presentations from the CRC

5. Number of attendees & demographics (approximate)

Date	Category	Location	No. of attendees and demographic breakdown			Presiding/Present	
			Total	Male	Female	CRC	Secretariat
14-15 November	Nui Island	Manatua Mai Au Falekaupule	214	140	74	Chair - Hon Speaker of Parliament Otinielu Tausi Minister of Education, Youth and Sports – Hon Fauoa Maani Minister of Health – Hon Satini Manuela Member of Parliament Vaitupu – Hon Isaia Taape Member of Parliament Nukufetau – Hon Afele Pita Member of Parliament Niutao – Hon Samuelu P Teo	Constitutional Review Officer - Bikenibeu Paeniu Civic Education Officer - Temukisa Hauma Clerical Assistant - Talagali Vavau Reporting and Research Officer - Winnie Puara Tanei Clerk to Parliament - Andrew Puga Semeli ICT Officer Parliament - Poli Teakai Crown Counsel - Losaline F Teo Crown Counsel – Lisepa Paeniu UNDP Resident Officer- Seveleni Kapua
16-17 November	Nanumea Island	Nameana II Falekaupule	138	82	56	Chair - Hon Speaker of Parliament Otinielu Tausi Minister of Education, Youth and Sports – Hon Fauoa Maani Minister of Health – Hon Satini Manuela Member of Parliament Vaitupu – Hon Isaia Taape	Constitutional Review Officer - Bikenibeu Paeniu Civic Education Officer - Temukisa Hauma Clerical Assistant - Talagali Vavau Reporting and Research Officer - Winnie Puara Tanei Clerk to Parliament - Andrew Puga Semeli

						Member of Parliament Nukufetau – Hon Afele Pita Member of Parliament Niutao – Hon Samuelu P Teo	ICT Officer Parliament - Poli Teaokai Crown Counsel - Losaline F Teo Crown Counsel – Lisepa Paeniu UNDP Resident Officer- Seveleni Kapua
21-23 November	Niutao Island	Fetu Afiafi 3 Falekaupule	202	129	73	Chair - Hon Speaker of Parliament Otinielu Tausi Member of Parliament Vaitupu – Hon Isaia Taape Member of Parliament Niutao – Hon Samuelu P Teo	Constitutional Review Officer - Bikenibeu Paeniu Civic Education Officer - Temukisa Hauma Clerical Assistant - Talagali Vavau Reporting and Research Officer - Winnie Puara Tanei Clerk to Parliament - Andrew Puga Semeli ICT Officer Parliament - Poli Teaokai Crown Counsel - Losaline F Teo
24-25 November	Nanumaga Island	Faihouloto Falekaupule	81	65	16	Chair - Hon Speaker of Parliament Otinielu Tausi Member of Parliament Vaitupu – Hon Isaia Taape Member of Parliament Niutao – Hon Samuelu P Teo	Constitutional Review Officer - Bikenibeu Paeniu Civic Education Officer - Temukisa Hauma Clerical Assistant - Talagali Vavau Reporting and Research Officer - Winnie Puara Tanei Clerk to Parliament - Andrew Puga Semeli ICT Officer Parliament - Poli Teaokai Crown Counsel - Losaline F Teo

28-29 November	Nukulaelae Island	Avafoa 3	65	44	21	Chair - Hon Speaker of Parliament Otinielu Tausi Member of Parliament Vaitupu – Hon Isaia Taape Member of Parliament Nukufetau – Hon Afele Pita	Constitutional Review Officer - Bikenibeu Paeniu Clerical Assistant - Talagali Vavau Reporting and Research Officer - Winnie Puara Tanei ICT Officer Parliament - Poli Teaokai Crown Counsel - Losaline F Teo
28-29 November	Niulakita Island		30	20	10	Member of Parliament Niutao – Hon Samuelu P Teo	Clerk to Parliament - Andrew Puga Semeli Civic Education Officer – Temukisa Hauma

6. Comments on participation

A total of 730 people participated in all the consultations held so far. Women and youth participation were low as majority of participants were mainly men. Team Secretariat is trying its best to constantly remind people that participation is a key factor and that the constitution involves all people and ages. The voices of everyone should be heard as this is a once in a lifetime opportunity. Time is certainly an issue and many people commented that two days is insufficient. (Note that the Phase II consultations envisaged to commence in May 2018 will include extra days to incorporate more feedback from participants). The constitutional review process has resulted in people becoming more aware of the Constitution; understanding the important role that traditional culture play within the constitutional process and the significance of practicing their individual rights and freedom.



Traditional culture -presentation of gifts or alofa from women the Nui Island (sign of appreciation)



Evening feast – traditional dance by Nanumea



Niutao participants carrying out group work work



Nanumea participants presenting their group

7. Main concerns/issues addressed

The following evaluation method was used to weigh the feedbacks received from participants in the main thematic areas. 0 represented no issues raised with weighing of 0% and 9 or more

represented the most common issues raised with weighing between 90%-100%. The points were then given a percentage weighing as follows:

Number of times the same issue was raised	Weighing (100%)
0	0%
1-2	10%-20%
3-4	30%-40%
5-6	50%-60%
7-8	70%-80%
9 +	90%-100%

a. Political Reform

- 60% of participants agreed that Tuvalu should maintain its Westminster political system. 20% disputed this idea and suggested for Tuvalu to shift from Westminster to Presidential systems. The remaining 20% wanted Tuvalu to shift to party systems. The CRC and the participants reached a resolution that proper research and analysis must be undertaken to consider the pros and cons of all models under study such as Westminster, Party system and Presidential political models. The idea is to undertake a comparative study with examples of other countries' political systems to provide an option analysis and provide a preferred option of which approach Tuvalu should adopt. An issue with the current system is the political instability in the past years where Tuvalu is potentially ranked amongst one of the top Pacific Island Countries with political instability. Another major concern in this area if Tuvalu does shift from Westminster to Presidential systems is the huge benefits that Tuvalu has received so far from the European Union through development funding and scholarships and the contribution from Queen Elizabeth II as head of state. Careful consideration must be taken into account when addressing this issue and further research and analysis is required to portray a clearer picture of which political model best suits Tuvalu.
- 90% of participants agreed that Tuvalu's Constitution is the supreme and highest rule of law in the country referring to it as the 'grandparent rule of law' or 'tupuna tulafono'. 10% disagreed and had other preferred names such as 'mother rule of law'. Resolution was reached that Tuvalu's constitution should be referred to as the 'grandparent rule of law' where all other laws (regulations, acts, byelaws etc) must come under the Tuvalu Constitution. The latter is preferred as grandparent symbolises respect and highest authority of ruling where no other decision can be made beyond a grandparent ruling especially in Tuvalu's culture.
- The issue of laws changing overnight was also raised in this discussion as there have been cases in Tuvalu where some laws were passed overnight through 2/3 vote of parliament without proper wider public consultations. Resolution was made to research on urgency cases of when laws were passed overnight and to look at other similar Pacific Island Countries where this has happened. A comparative study must be undertaken to research on the law-making process in other countries and to identify cases where laws have been passed with urgency. Special consideration must be taken to identify the pros and cons of carrying out such practice.
- 80% of participants agreed that Tuvalu's constitution (mainly the Preamble) missed out an important period in Tuvalu's history which includes the introduction of Christianity or the good news in Tuvalu. Participants also suggested that climate change and sea level rise issues should be constitutionalised and mentioned in the constitution. The need to protect the environment is crucial in Tuvalu's context since this is a continuous and debated issue for the country. While constitutional regulations can do very little to confront the problem, a mention of the issue in the preamble might help garner

attention abroad and also provide a structure for resolving prospective distributional questions about the allocation of funds for adaptation and mitigation. The remaining 20% were satisfied with the status quo. The introduction of Christianity is an important period in Tuvalu's history where people were made aware of the light and moved from darkness to light. The former practices of brutal and harsh treatment such as, murdering or choking young children to death ended (form of punishment for children who misbehaved) after people realised that such practice was against the law and Christian principles. Research topic: to review the importance of religious beliefs 1980 – to define Christian principles in Tuvalu and the basic principles of Christianity. Other research topic the Preamble to address our national security issue and our Foreign Policy and International relations and diplomacy.

- 70% of participants agreed for Tuvalu's government to return from $\frac{1}{2}$ to $\frac{1}{3}$ of members of parliament to serve on the Cabinet. 30% suggested to increase the number of representatives or parliamentarians. For instance, increasing from two elected representatives per island to three representatives. With a suggestion to increase Nukulaelae's representative to be equal to all other islands (increasing from one to two elected representatives). The benefits of returning to the previous constitution requirement of $\frac{1}{3}$ outweighs the costs. Currently, Parliament is often a rubber stamp for whatever cabinet decides. The separation of powers between the parliament, cabinet and judiciary is seen to be unequal in this case as cabinet is the dominating power from all three pillars. Resolution was reached that for the benefit of all Tuvaluans the parliamentary system should return from $\frac{1}{2}$ to $\frac{1}{3}$ Member of Parliament and to increase the ministerial portfolios to three or four but to have separate chief executive officers for each portfolio. A strong point to support this shift or return to $\frac{1}{3}$ is that six islands in Tuvalu disagreed with the move from $\frac{1}{3}$ to $\frac{1}{2}$ with only two islands approving this move in 2008. Due to political moves the shift from $\frac{1}{3}$ to $\frac{1}{2}$ was approved by politicians.
- 80% of participants agreed for parliament to meet at certain designated times during the year, such as having three to four parliament sessions per year. 20% disagreed and mentioned that it might be a wasteful as there might not be an active business to discuss if dates are scheduled. Resolution reached that to prevent any politics from occurring such as parliamentary sessions being postponed (issue of checks and balances) that the importance of having certain designated times during the year should be considered when reviewing the constitution.
- 50% of participants disagreed with the idea of Tuvaluans living overseas having the right to vote for Tuvalu. They emphasised that voting should only be made by Tuvaluan citizens living in Tuvalu only. The other 50% approved with the decision to allow Tuvaluans living abroad to vote especially, as majority of Tuvaluan citizens are either abroad on work or study duties and they should not be stripped off their rights to vote as Tuvalu citizens. Resolution was made to allow only Tuvalu citizens who are either abroad studying or on work duties to vote in designated Tuvaluan Embassies but where their home country is Tuvalu. Alternatively, the voting system will not include Tuvaluans who are residing permanently overseas or have migrated to overseas countries.
- To be a good leader one must be corrupt. This phrase was raised by one of the Member of Parliaments with his experience seen in overseas countries through acts of bribery. This phrase was brought to the floor for discussions. 98% of participants disputed this phrase and stated that this is not a good example of good governance. Results from the participatory group activity work showed that participants expected their leaders to be morally upright and good in whatever they do as the saying goes, you reap what you sow, and if you sow bad seeds you would reap bad fruits and vice-versa. Today's leaders must be honest, trustworthy, faithful, godly-fearing, dedicated to their duties, people and country. Resolution reached – properly define and explain in detail good governance as well as the checks and balances (Research topic). Leadership code is important in the constitution.

b. Parliament and courts

- 70% agreed that the speaker for Parliament should be elected by the people and to be a separate body from that of the cabinet. Main reasons is to prevent any politics happening with the government of the day. It is noted that the speaker is elected by the cabinet and poses a risk as the speaker may at times take government sides in decision making. His role is ineffective as he lives in fear of losing his job or title if he is in dispute or disagreement with the cabinet. However, participants raised concerns of their disappointment as the current speaker has to play two roles, one to represent his island or fenua and to play the role of a speaker. 30% urged for further research to be carried out. CRC and participants agreed that further research is required to identify other Pacific Island Countries who have elected their speakers independently in this case the public had voted for the speaker instead of the cabinet and to consider what are the pros and cons of such practice.
- 90% of participants agreed that there should be a Parliament building to house our representatives and Member of Parliament. Examples were taken from overseas countries on the importance of having such building in place to enable parliamentarians. Current issue is that Tuvalu has no Parliament building and sessions are held in one of the community halls in Funafuti. The hall is used for multi-purpose reasons including functions, weddings, funerals and cultural festivities. 10% were concerned about the funding aspects and the location if the Parliament house is built. Resolution was reached that government should review and reconsider this as a priority in its future developments.
- 80% of participants agreed that the recruitment of judges and chief justice be selected separately by a committee rather than the cabinet. This was to prevent any politics occurring in the system (issue of checks and balances). The judge should be free to carry out his or her role without any fear of losing his or her job. Participants also agreed that although qualification and work experiences are key criteria for selecting a chief justice and judge, more priority should be given to the number of practice or cases the potential candidate has actually handled. 20% were satisfied with the current practice but questioned the need to have qualified Tuvaluans to take up such positions. Some doubted the capacity and capability of Tuvaluans undertaking such role and urged to have more scholarship opportunities available for Tuvaluans in the law field.
- 90% agreed that the 3 main pillars of Parliament, Executive government or cabinet and Judiciary must all have the same and equal powers. No one should be higher than the other but must all work together for the benefit of all. An issue raised was the dominant power of Cabinet and the need to delegate these powers equally among all three pillars such as returning from $\frac{1}{2}$ to $\frac{1}{3}$ of cabinet members. 10% were satisfied with the current practice but wanted to see improvements in the system to prevent any corruption or political behavior from politicians. Research topic: cabinet to ensure checks and balances to return powers and define the powers of Parliament, Cabinet and Judiciary to enable equal powers between all 3 bodies.
- 90% of participants agreed that the selection of MPs of having one citizenship rather than dual is of paramount importance. This prevents representatives from returning back to their other residential area and to prevent them from any political or corruptive behavior. An example was mentioned that the risk of having dual citizenship for any elected official or member of parliament should not be accepted as the elected official might abuse government funding and return at any time to his second residential area or place of citizen. 10% of participants were neutral about the issue and had no suggestions or reservations but agreed to improve the selection system for MPs and to review the criteria for age limit from 21 years (current selection criteria for any MP wanting to stand for election) to 30 or 40 years as this age is suitable and for maturity purposes.

c. Traditional governance values

- 90% of participants agreed to marry the traditional values and norms with the constitution and rule of law. They emphasised that consideration should be taken into account to ensure that the traditions and values are deeply embedded in the constitution. Participants also mentioned the importance of marrying the culture/traditions and values with the bill of rights (human rights and freedom). Majority also mentioned that should conflict arise between the rights and traditions then the latter should prevail. Concerns were raised to also constitutionalise the traditional Falekaupule system and stated the need to research ways of doing this. Some even suggested that a fourth pillar besides Parliament, Cabinet and Judiciary should be established for Falekaupule or Local Authorities. Concerns were also raised of the issue of having too many powers and the issue of equally separating all these powers to the four pillars. Another option is to reflect the roles and functions of the local authorities in one of the three mentioned pillars. Minority (10%) of participants were neutral about the issue but resolution was reached to consider the views of the majority and to research the best ways of constitutionalising the traditional Falekaupule system
- 60% of participants agreed that local island councils should be devolutionised rather than decentralised. The Falekaupule Act 1997 is an example of a devolution process where traditional chiefs and head of families had been given the powers that are normally held by elected councilors during colonial days. The importance of empowering local government is crucial as they have better information on the local preferences of the people. Other issues that were raised were concerns of insufficient funding from the budgetary votes of SDEs (Special Development Expenditures) and Falekaupule Trust Fund (FTF) for island developments. CRC commented that an issue seen with SDEs is that funds given to local authorities are not fully utilized at the end of the financial year. Government is hesitant to increase the SDE votes of local authorities due to this issue. Local authorities disputed this view and many mentioned that this is not the case in reality. Participants suggested that a fixed percentage of funding such as 6% of total revenues should be allocated for local councils, this will ensure that funds are sufficient for all outer island developments. Participants suggested that the local authorities (Falekaupule) should possess and have full control and power over the management of its funding so that they are able to utilise such funding over their island developments. The thought of devolutionising local authorities is supported but 40% of participants raised concerns of capacity and capability issues with staff. The need to have qualified accountants, planners and economist are crucial for the successful operation of local councils. Resolution was reached to research what is the best way whether to decentralise or devolutionise local government.
- 80% of participants suggested for government to record all the different culture and values of each island and to compile these in a booklet. The concern of islands have their own traditions should be fully understood by everyone as different islands (8 islands of Tuvalu) have different values, norms and traditions. A major issue is that Tuvalu has no cultural policy or guideline to illustrate the different traditional practices and norms of each island. This booklet is important for any foreigner wanting to understand Tuvalu's different culture and beliefs and to keep a record of the different traditional norms and values for future generation. 20% were neutral about the issue and resolution was made to ensure that proper recordings of all the different island traditions and values be written, this includes recording all traditional songs, dances, poems and legendary stories of the eight islands.

d. Human rights and freedom of belief

- 95% of participants supported the view of respecting religious freedom but for any new religion introduced into an island must first be approved by the local council or Falekaupule. The EKT or Congregation Church of Tuvalu is the state church. By-laws are important in this case to fully

implement any religious beliefs and restrictions from islands towards religious freedom. Without the approval from the Falekaupule the individual introducing such new religion or practice is only limited to undertake religious activities within his or her own household but is not allowed to do any outreach. Suggestions were made to have a Council of Churches to screen any new religion coming into Tuvalu and to prevent any conflicts between religion and culture. For example, Nanumaga Island is an example of a new person being forced to leave the island as he did not comply with the islands traditions and values of establishing a new religion and caused a lot of divisions and problems among communities. This caused major conflicts and problems with the island communities. There were other concerns of different languages being used during media outreach for preaching purposes. This is the freedom of expression of a person. Suggest to review this issue as there is a possibility of restricting any preaching aired on radio to only be conducted in Tuvaluan language. Suggestions were also made to review the registration of churches or beliefs in Tuvalu as a church can be registered if they have 2% of total population as their congregation. The previous system allowed only 50 members but there is strong suggestion to review the previous churches that came under the previous system do review whether these beliefs and churches should still be registered or need to be removed. This is mainly for the Muslim and Bahai congregation and other minority religious denominations. Participants also raised the issue of reviewing the traditional practice of EKT in Funafuti especially, in having everyone to do their devotion time in the evenings at 7pm as strongly practiced in outer islands. A good example is that of Samoa who has many denominations but have strong religious EKT practices. The remaining participants were neutral about the issue. Resolution was made to ensure that any religion coming into Tuvalu should uphold the values and traditions and come in peace, to support the island through contributions and to bring unity among other denominations.

- 80% of participants agreed with the issues of low participation of women in parliament and decision making. There are issues with women not having the right over the current land system in terms of inheritance. Participants disputed that women should not have any right over the current land system for any inheritance purposes as this is risky. The concern is that women get married and if they have any right over land system in terms of inheritance over land than this land will be lost and given to outsiders. Few suggested to have the native land act for women rights to be constitutionalised and to have women rights constitutionalised. However, majority disputed the fact of rationalising and reserving seats for women in Parliament but to leave the seats open to allow women the freedom to participate in politics and to prevent seats from not being filled or reserved. 20% were neutral about the issue and some even mentioned that women have so many rights already and freedom as they are entitled to maternity leave and breastfeeding breaks as compared to men. Few mentioned that women are culturally treated well in Tuvaluan society as they on do light household work such as cleaning and house-keeping chores. Men on the other hand, have tougher jobs they have to do plantation jobs and other hard labour. 20% were neutral about this issue but supported the idea of acknowledging women rights. Some participants also mentioned that although men are decision-makers and are respectable figures in Tuvaluan society but in reality they are not the boss in their own households as women mostly overrule men in some households.
- 85% strongly supported the rights of the disabled and gender equality but disputed the rights of having same sex marriage as this is a Taboo in Tuvaluan culture. 15% were neutral about the issue.
- 90% of participants disputed the rights of children and the fact that parents are not allowed to hit their children. Many raised their concern that this is a foreign practice that is against our tradition and norms. This was a hot topic and debate and participants strongly urged the

government of the day to firstly consult the public before signing any new convention or treaty that conflicts with the way of doing things in Tuvalu or the culture, norms and values. 20% approved this new ruling of children having rights and were more concerned on the fact of having such law in place to protect children from getting injured or severely beaten by their parents. The fact that parents are still allowed to hit their children is approved under this new ruling but any hitting that injures or cripples a child is not allowed. Many participants understood the new rules in place but urged the government of the day to consider Tuvalu's culture and values when signing conventions. Resolution was made that any convention or treaty that needs to be signed by a minister should first be consulted with the wider public for their views and feedback.

- 95% agreed with constitutionalising the traditional values and norms and marrying both the rule of law and traditional culture and values as well as marrying the tradition and culture to the bill or rights. 5% had no reservations and were neutral about the issue. Resolution was reached to marry the traditional values with the rule of law especially in cases where traditional values are not enshrined in a law.

e. Independent Entities and Finance

- 90% of participants agreed that the positions of Attorney General, Auditor General, Police Commissioner and Ombudsman should be constitutionalised and made independent. The major concern raised was that all these positions are under the control and power of cabinet. These positions are selected and approved by Cabinet. In many occasions the Attorney General have been instructed to dismiss ministers' cases. Currently, the Attorney General plays two roles and wears two hats at the same time, one a lawyer for the government and the other is a public prosecutor. The Attorney General is unable to perform her duty to the best of her ability as she cannot take her boss (in this case the cabinet) to court, this also affects her performance to do her duty professionally and acceptably. The same issues were raised for the other positions of Auditor General who has the role to publicly prosecute a civil servant including ministers for abuse of funds and works with the Police Commissioner to undertake further investigations. In many occasions the situation is similar to that of the Attorney General Office, the cases are dropped or dismissed and the minister responsible or accused is set free from all accusations. 10% of participants were satisfied with the current system but later agreed for the CRC to find solutions in addressing these issues. Suggested for government to review this selection process and to have either a committee or separate body select these officials so that they are independent from the control and power of the cabinet or government of the day.
- 80% of participants agreed that the Public Service Commission should be independent and should not be under the power of cabinet or Prime Minister as in the current system. The issues of politics and having cabinet ministers involve in any selection of candidates was raised. In some occasions the preferred candidate was selected not on merit or qualification but through friendship and family relations. Participants raised their frustration with the current process and urged the government of the day to prevent such bad practices. 20% of participants were neutral about the process of PSC but urged the CRC to strengthen this entity and ensure that such practices are prevented. Participants urged leaders to respect the PSC's decisions and to not interfere with the selection process.
- 90% agreed that government should control the use of supplementaries and over spending. Currently, government raised its supplementary allocations from \$500,000 to \$750, 000. Parliament plays a crucial role in approving any budgets or government money. The normal process requires the ministry concerned to raise supplementary bills to Parliament for approval prior to utilizing any government money or funds. This is not the case in Tuvalu, many times supplementary bills are submitted after the funds have been spent. 10% were satisfied with the normal practice and suggested to increase the supplementary votes from \$750,000 to one million or two million to cater for future developments.

Participants strongly urged that control and proper budgeting of funds are crucial and that government should learn to live within its means and allocated budget limit.



Group activity among Nanumean participants



Participants in Nanumaga



CRC in Nukulaelae (Members of Parliament)



Participants in Nukulaelae singing the National Anthem

8. Conclusion and recommendations

The CRC managed to successfully consult all the remaining outer islands. The methodology approach of having a mixed method was very useful in the consultation and review process. In-depth information and engagement with participants were achieved through the series of methods used in the consultation process. Some issues were raised that proper planning of delivering handouts should have been done in advance to allow island communities and participants to have ample time to read through the papers prior to the team's visit. The challenge of interpreting and converting the constitution to Tuvaluan was highlighted as a stumbling block in this area as there are a lot of legal jargons that needed to be changed into simple plain English for any normal individual to understand and for user-friendly purposes. The secretariat and committee with the assistance from the office of the attorney general and parliament offices successfully managed to convert all presentations including pamphlets and handouts to Tuvaluan language. This enabled participants to better understand the constitutional review process and the objectives of the consultation. Although the CRC was behind schedule for outer island consultation the objective of ensuring that all islands are consulted was successfully achieved. The only leg of consultation that is pending is the communities within Funafuti Island. A few have already been consulted but the remaining communities in Funafuti are yet to be consulted and this will be done in the month of December 2017, following the parliament session.

9. Annex

Thematic Matrix (summary of common threads)

Thematic Area	Group Work Input	Reason/Response
1. Political Reform	1. consider researching on the different model of political system and undertaking comparative study of other countries systems with pros and cons	There are both pros and cons of having the current system in place i.e. Westminster and other systems in place like Presidential and Party System.
	2. Tuvalu constitution to be called Grandparent rule of law or tupuna tulafono	Grandparent signifies respect in Tuvaluan culture as they are the elderly figure of society. Decisions made by grandparents are highly respected where people, such as parents, grandchildren etc must follow and abide by.
	3. Laws being passed with urgency overnight over a 2/3 parliament vote without proper public consultations.	Research other countries who have done the same thing or practice and provide pros and cons of such system. The certificate of urgency allows parliamentarians to undertake such practice but proper consultations must be followed.
	4. -Preamble missed out important history and events in Tuvalu such as the introduction of Christianity and the good news. - Preamble to include the importance of protecting the environment in Tuvalu	-The preamble only looked at the colonial period and from the time Tuvalu was under British ruling but did not take into account the history prior to 1892 when Tuvalu was a protectorate state. - Tuvalu is a country that is highly vulnerable to sea level rise and climate change and it is supported to constitutionalise the protection of environment to help garner attention abroad.
	5. Return cabinet from ½ to 1/3 members as per the previous government practice	Parliament is just a rubber stamp as majority of members form the cabinet (1/2). Parliament is not powerful like before and it is strongly suggested to return the cabinet number from ½ to 1/3 to strengthen the parliament's power and duties. Separation of powers is vital in this case and all three pillars of Parliament, Cabinet and Judiciary must have equal powers.
	6. Parliament to have scheduled sessions such as, three to four times per year and to be constitutionalised.	To prevent any politics from happening as the current system is ineffective due to the Prime Minister is in control of parliament times but issues of parliament postponements and backlog of submissions for parliament approval have been a major concern.
	7. Allow Tuvaluan nationals and citizens who are on work or study duties to be allowed to vote in the elections	To ensure that all votes are accounted for and to have representative figure where all Tuvaluans should be given the right to vote whether they are abroad studying or on work duties. Review the voting process and allow only Tuvaluans studying or working overseas

		to vote but to strictly state that Tuvaluans who have migrated overseas are not allowed to vote.
	8. Leaders must be upright and honest in everything they do – part of good governance	Good governance requires good leaders. The phrase to be a good leader one must be corrupt is not supported as this is against good practice and principles of good governance.
2. Parliament and courts	9. Speaker of Parliament to be elected by the people and to be independent from the cabinet	Issues of current system where the speaker is elected by cabinet raise concerns of politics and fear that the speaker will not be able to do his role professionally to the best of the ability. Research is required for comparative study of other countries and how they have elected their speaker, and to identify any cases of having a speaker independent from cabinet, what are the pros and cons of doing this
	10. Establish or build a Parliament House or building for our Member of Parliament	Parliament building is an important building in any government in the world. It is important to house our representatives in a place where people can freely go to them for any concerns. This will also allow parliamentarians to recruit more qualified staff to assist them with any political matters.
	11. Judge and chief justice to be elected separately and not under the power of cabinet but to be independent	To allow them to do their job to the best of their ability without any interference or hindrance from government and to prevent any politics from occurring. Currently, the positions are filled by Europeans from New Zealand. Encourage more Tuvaluans to undertake legal studies to increase the number of lawyers so that they are capable of becoming future judges and chief justice .
	12. Separation of powers to be equal between Parliament, Cabinet (Executive Government) and Judiciary	To allow equal powers between the three pillars by returning to 1/3 instead of ½ members of cabinet. This is an important aspect in running any government and that no other power or pillar should succeed the other.
	13. Review the selection criteria for choosing or allowing Member of Parliaments or citizens from wanting to give in their name for elections	Selection criteria to strongly state the need to have one passport and one citizen rather than having dual. Prevent any politics and corrupt behavior as well as reviewing the age limit from 21 years to 30 or 40 years.
3. Traditional governance values	14. Constitutionalise the traditional Falekaupule system	- to marry both the traditional values and norms with the rule of law and to strengthen the role and responsibilities of the local councils or Falekaupule
	15. Devolutionalise local government to allow more power and autonomy for local councils.	Local Government are more suited to handle local issues as they are well aware of the local preferences and needs of the people. They are best suited to handle the diverse needs of the population and to ensure that they are in charge of their own funding. To enable local government to utilise their funding on island developments.
	16. Book-keeping records of all the different cultures, values and norms in Tuvalu	Necessity to have all the different cultures and values of the eight different islands for future references and to allow foreigners wishing to study Tuvalu culture to have a better understanding of the traditions and values of Tuvalu.

<p>4. Human rights and freedom</p>	<p>17. Respect for religious freedom is accepted but with restrictions to new beliefs or new religion</p>	<p>For any new religion introduced into Tuvalu the approval of the Falekaupule is needed. By-laws are vital in each island to implement any restrictions towards religious freedom. Without such approval the individual introducing such religion can only have the freedom to do his religious beliefs within his own house. There have been cases where new religion has caused a lot of conflict and tensions especially as they do not comply with the traditions and values of the islands or because these religions have different doctrines to that of the state church or EKT. Many times these new religion are in conflict with the tradition and values of the islands. This was the case in the island of Nanumaga where the person was forced to leave the island as the individual did not comply with the islands traditions and values of establishing a new religion. Concerns of different languages used during media outreach for preaching purposes. Suggest to review as there is a possibility of restricting any preaching aired on radio to only be conducted in Tuvaluan language.</p>
	<p>18. Women's rights and representation in the Parliament to be considered</p>	<p>Gender equality is crucial in any society and the rights of the women should be equal to that of a men. Currently, women have low participation rates in Parliament or in top positions, they are not allowed to even speak in high level meetings or community meetings. This is due to the strong culture and tradition where men are always the head. The issue here is to try and empower gender equality in allowing women their rights to serve as parliamentarians and to be respected in community meetings such as land tribunal or panel reviews. Women to be free to do any trade they wish whether this includes doing carpentry, mechanical etc.</p>
	<p>19. Issues and rights on gender equality, rights of the child and disabled</p>	<p>Tuvalu has signed many conventions and treaties to protect the rights of a child, rights of the disable and having gender equality. Particular concern were raised with no proper consultations held with the wider public. Many have disputed the rights of the child as this conflicts with the traditional values and principles of parents teaching their children in ways of hitting them to learn their mistakes and to behave well. Government of the day to consider having wider public consultations prior to signing any conventions and to uphold and respect the traditional values of the country.</p>
<p>5. Independent Entities and Finance</p>	<p>20. Selection of Attorney General, Auditor General, Police Commissioner and Ombudsman to be independent</p>	<p>Attorney General wears two hats one a public prosecutor and the other is the lawyer of government. There is a need to separate the public prosecutor responsibilities to either having the Attorney General be selected by an independent body or to remove one of the responsibilities and select an independent lawyer who is not under the control of government. The same concern is also raised for Auditor General, Police Commissioner and Ombudsman. Cases have been dismissed especially when there are cases against a minister and at times the officers have been told to drop or dismiss any investigation or prosecution. Another reason is to ensure that the officers perform their roles and duties</p>

		without any fear of losing their jobs and to prevent any politics from occurring in the system.
	21. PSC to be independent from any cabinet or ministerial intervention in selection of applicants or candidates for positions	Cases where ministers or the Prime Minister have intervened in the selection process. Prevent any corruption and politics within the selection process.
	22. Control and limit budget supplementary votes and over spending of ministerial votes	Issue of increased supplementary votes from \$500,000 to \$750,000. Concern of ministries budget have busted or insufficient and ministries requesting extra funding to meet their expenditures before the year end. Normal process of seeking parliament approval is not followed and ministries have utilised supplementary votes prior to seeking approval from Parliament.

Annex 7 – Timelines for Tuvalu Constitution and Constitutional Review Committee Secretariat

Draft of 13/9/2017

MONTH	Description	Secretariat Action	Secretariat Reports/ Communication	CRC Action	Resources needed
PHASE I					
September 2017	Phase I consultations	<p>Develop proposals on timeline and process for the CRC</p> <p>Draft TOR for secretariat—send to cabinet/CRC</p> <p>Discuss internal division of labor among yourselves: research/logistics/liase with subcommittees/communications/different groups for specialized outreach</p> <p>Hire rapporteurs</p>	Issue short informal report on each consultation		Additional staff
October 2017	Phase I consultations continue	Continue consultations	Issue short informal report on each consultation	<p>Decide process for adoption on Sec't presentation of options; identify research topics; approve TOR.</p> <p>Meet with secretariat</p>	
November 2017	Phase I consultation ends	Begin intensive analysis of data; inform people of the process and rough timeline		Identify members of thematic subcommittees	

December 2017		Continue analysis and prepare report on Phase I consultations Gather external and internal analysis of key issues (eg political system, traditional governance) for subcommittees		Meet with Secretariat	
PHASE II					
January 2018		Present analysis of Phase I consultations to CRC and/or subcommittees	Jan 1: Submit report on Phase I to CRC [and public?] Radio shows on what people said; brochures etc.	Subcommittees begin to prepare options	
February 2018		Prepare materials for Phase II consultations, focusing on key issues for resolution Develop pre-drafts of different sections		Preamble committee begin drafting Other subcommittees narrow the options	
March 2018	Phase II consultation begins	Travel and consult; make sure to send materials in advance Try to obtain the island commitments on key issues	Radio shows on the phase	Travel and consult; perhaps have draft preamble in Tuvaluan	
May 2018	Phase II consultation completed	Begin producing a working draft based on the results; contentious issues bracketed			

June-August 2018	Drafting		Reporting on Phase II to CRC	Make the key decisions for the drafting	
September 2018	Working draft completed and begin final adoption process				
PHASE III					
Oct-Dec 2018	Phase III of public involvement: form to be determined (summit? Island presentations? Both?)	Translation of text to Tuvaluan Organize process & prepare commentary; compare the current constitution with proposed language Consider the transitional provisions based on the substantive decisions		Participate in process; amend as necessary. Send translation to the language board.	
December 2018	Translation completed Draft completed and sent to Parliament	Double-check transitional provisions and prepare workplan for constitutional implementation		Send to parliament for adoption	
Jan-Feb 2019	Adoption & promulgation	Finalize translation based on final draft			
March 2019	New elections under the new constitution		Final report on CRC process due		