



## Information on the Constitutional Congress & EPAC

Constitutional Congress is the central body that works on the actual Constitutional Reform Programme, dealing with substantive matters. It was mandated by the Solomon Islands Government and members were formally appointed in 2007.

According to the *2005 White paper on the Reform of the Solomon Islands Constitution*, the Constitutional Congress was to progress the Constitutional Reform Program and "undertake the task of finalizing a draft text of a new constitution of Solomon Islands..."

### Terms of Reference

The Terms of Reference [ToR] for Constitutional Congress was drawn up from Cabinet decision (C [2006] 5). The ToR included the Mandate from the Government; Background and General Overview of the Reform; Membership of Congress; Objectives; Operational Framework and Guidelines; Rules of Operation; and Output and Reporting.

### Induction of Members

In August 2007, the members joining the Constitutional Congress were introduced to the Constitutional Reform Program via an Induction Workshop.

The Induction Workshop was organized by the newly established *Constitutional Reform Unit* providing Secretariat duties, comprising administrative and technical assistance to the newly appointed members.

The Induction involved:-

1. providing a general overview of the Constitutional Reform Programme and Introduction to Constitutional concepts, including State creation and the Constitution-making Process;
2. Informing members of Congress' Terms of Reference, its organisation and working structure;



3. Instructing Provincial/Honiara City nominees of Congress to familiarize themselves with Provincial and Honiara City interests relevant to the work of the Reform; and
4. Determining the Rules of Congress' operation and preparing for the commencement of duties.

### The Structure of the Congress' Organization

#### Constitutional Congress

Regardless of what membership they were involved in, all members hold equal status. For purposes of designing its composition, the members were put into two categories:

1. Nominated Provincial and Honiara City members, also known as the **Provincial/Honiara City Nominees**. They were nominated by the respective Provincial Executives to represent their provinces & Honiara City in Congress. They are responsible to ensure that a provincial community interest (not just the provincial government interest) is brought to bear on issues that the Congress will consider.
  - (a) Their functions are to represent the overall interests of the Provinces and Honiara;
    - i. to provide information to the Congress on their province perspectives and disseminate information to respective provinces;
    - ii. to provide a provincial or city perspective on the issues and decisions that Congress (as a whole) will make; and
    - iii. To represent a balanced and impartial perspective on national issues.
  - (b) Their task is to stay informed on the work of Congress in order;
    - i. to provincially monitor the progressive development of the reform programme and advise Congress of provincial issues;
    - ii. to identify the Political Community and to perform tasks as the Congress may request; and



- iii. To keep provinces informed on Congress' work; liaising between the Secretariat (CRU) & their respective Provincial Executives about Constitutional Reform tasks to be carried out in the provinces.
  - (c) Nominees from each province were put into teams, currently referred to as *CC Provincial teams*. The teams usually have a working group of up to 3 nominees maximum.
2. **National Nominees** are nominated by the National Government to represent various stakeholders of national interest, which also includes two youths and other persons having special attributes and qualities to undertake this task.
  - (a) Their task was mainly to ensure voices of stakeholders represented are heard during Congress' meetings.

### Eminent Persons Advisory Council

In its Rules of Operation in the ToR, Congress was to work collaboratively with this group in a way that brings to the Reform a wealth of experience & inclusiveness.

The ***Eminent Persons Advisory Council (EPAC)*** was established by Government to be an associate body of the Constitutional Congress. They were to perform an important role in the technical work of Congress.

According to the *Organization of the Constitutional Congress (2007)*<sup>1</sup>, EPAC was required to endorse the findings and recommendations of Congress working committees (*i.e. Theme Committees*) before they are submitted to the whole Congress to consider in session.

Membership of EPAC comprises Solomon Islanders recognized for their traditional and civic capacities as distinguished leaders and States men. They also represent all Solomon Islands communities, including minority racial groups.

EPAC was previously called the *Elders Advisory Group (EAG)* during its inception in 2007. The name *Elders Advisory Group* was subsequently changed to *Eminent Persons Advisory Council* after it was considered that the status of those making up this group was very distinguished and prominent. Hence the change was deemed appropriate during the Induction period in 2007.

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<sup>1</sup> Document establishing the organization of Constitutional Congress



At the time, EPAC was given the opportunity through the *Organization of the Constitutional Congress* (2007) to be governed by its own rules. EPAC therefore nominated a Chairman and Vice Chairman for important EPAC sessions. The Chairmanships are currently operational.

### Objectives

As according to its ToR, the Objectives of Congress was to:

- i. Define Solomon Islands political community and engage that community in the constitutional making process;
- ii. Complete a final content of a new constitution;
- iii. Prepare a detailed report setting out the reasoning for the content *of the new constitution*;
- iv. Recommend an appropriate ratification procedure to bring the new constitution into effect.

Despite some changes in strategies in order to accommodate MoFT<sup>2</sup> lengthy financial processes, and the government's direction on the Reform, that also made changes to the Workplan/Timeline of Congress; to date these objectives are being fulfilled as the Constitutional Reform nears completion.

### Original Working Structure

Originally, the Constitutional Congress' operation was to integrate itself within and be assisted by an advisory group, having its own specialty, wisdom and expertise. Its structural framework was to work in committees to collate information gathered; and in sub-plenary and plenary to finalize contents of the draft of a new constitution.

The Provincial and Honiara nominees in Congress are to link to their home based committees and Provincial Authorities; and act as Congress' point of contact to the provinces and Honiara, and to operate as conduits for dissemination and collection of information.

The Congress would then deliberate on constitutional issues in a holistic approach when putting together all the findings, which is anticipated to lead to the compilation of content for the proposed Federal Constitution of Solomon Islands.

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<sup>2</sup> Ministry of Finance and Treasury



Throughout the process, EPAC was to check on their work as and when required.

However, it is notable that through several meetings, Congress and EPAC members have been working together (informally) on several tasks set to accomplish the process.

In early 2011, the Joint Executive of Congress and EPAC formally confirmed an amalgamation of the two groups to work together to fast-track the process as advised by the Sikua-led government at the time.

### Methodology

In its ToR, when carrying out its mandated task, the Congress was requested to;

1. Consider all previous constitutional reviews and relevant reports and documents pertaining to the draft federal constitution, which have informed and shaped the constitutional reform programme to date;
2. Conduct a country wide consultative tour to the provincial centres to understand the aspirations of the provincial political community; and with any person, official, leaders, office holder, organization or body Congress may so choose;
3. Invite submissions from any interested person or organization on the draft federal constitution or on any specific topic or matter Congress may desire public input;
4. Inform, seek and have regard to the views of Solomon Islands political community of the final draft of a new constitution at a convention representative of that community.

### Constitutional Reform Main Activities

1. **2008 - Political Community Identification:** This was the first task, as according to the Work plan/Timeline then, Congress set out to do after the Induction.
  - a. **Rationale:** There is no reliable or readily attainable source of information or knowledge defining Solomon Islands political community. The reason for that is that the political community, which Solomon Islanders identify, exists and operates outside the current constitutional/political framework. The constitution assumes a “civic” individualistic political community, not an ethnically diverse one.



Thus the identity and engagement of this community will be an integral factor in the constitutional-making process, in defining the union of a new Solomon Islands state and shaping a new constitution.

Congress was to define Solomon Islands' Political Community and plan a strategy to present the draft Constitution to that community at a Convention. At this convention, the representatives of this community will be given an opportunity to be informed on the draft and comment on it.

*CC Provincial teams* (with the assistance of some National Nominees and EPAC members due to work load) were to identify the Political Community of Solomon Islands.

Consultations were basically done in the Provinces and Honiara City. This activity was for Congress to identify the Political Community of Solomon Islands to consult, when going into deliberation activities of the Reform Program.

- a. **Method:** Congress' Provincial teams carried out the tasks in respective provinces from May to June 2008.
2. **2008 - Theme Committees Meetings:** Comprised seven (7) Theme Committees with a membership of 7 to 8 Congress and EPAC members per committee. The committees' task was to consider the main themes within the proposed Federal arrangement:
- 1) Foundation Provisions
  - 2) Federal Political Systems and Powers
  - 3) Public Finance and Revenue sharing
  - 4) Law and Justice
  - 5) Fundamental Human Rights and Freedoms, and Other Rights
  - 6) Constitutional Institutions, Representations and Public Service
  - 7) Transition

Originally this was the main (technical) working unit of Congress. The idea was that the work of each committee will be preceded by the delivery of a comprehensive working brief on the topic before it. *Constitutional Reform Unit*<sup>3</sup> prepared the working brief. Once completed, the respective committee was called together to commence its work.

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<sup>3</sup> Secretariat to the Constitutional Congress and EPAC; an established Division within the Prime Minister's Office



The committees were able to draw on the support from a number of specialists and the EPAC. Any member of specialist groups was able to sit in on work sessions.

The Committee meetings commenced from September to November, with the first three (listed above) deliberating on their respective themes separately, under the guidance of CRU's outgoing Technical Advisor at the time, Mr. Thomas Woods<sup>4</sup>.

As a result, each committee produced their reports, namely the *Political Systems and Powers Report (25 November 2008)*, the *Public Finance and Revenue Sharing Report (November 2008)* and the *Federal Foundation Theme Report (December 2008)*.

Each committee's reports were to be compiled along with other theme committees' reports to make an **Interim Report**. This Interim Report would then be communicated to the public, and the Provincial and Honiara City community.

3. **2008 – Sub-Plenary of Theme Committees:** According to the 2008 Work-plan of the committees, the committees together will meet to discuss the findings from their respective Theme Committee meetings.

The first three committees held a Sub-plenary after their Theme Committee meetings to brief the Secretariat and each other on their findings and deliberations.

The result of the sub-plenary was agreeing in principle to each Theme Committees' reports, which was submitted to CRU awaiting other Theme Committees to start their meeting on later dates.

However, by the end of 2008, a change in technical approach was taken. The government through CRU proposed a change in strategy in order to "fast-track" the process. The change in strategy was for Congress to look at these themes through the 2004 Draft Federal Constitution as the guiding document of the Constitutional Reform Program. It was in this development that the Constitutional Congress had to by-pass the Theme Committee approach to focus on Constitutional Reform via the 2004 Draft Federal Constitution.

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<sup>4</sup> Mr. Woods' contract lapsed late 2008, and had to leave the country for a similar job abroad. He completed the tasks of putting together the briefs for the first three committees, till the sub-plenary in November 2008.



4. **2009 – 1<sup>st</sup> Joint Congress and EPAC Plenary:** The original plan of the Constitutional Reform Work Plan 2008 was for the 1<sup>st</sup> Joint CC & EPAC Plenary to discuss substantive matters in relation to the Theme Committees' Interim Report. It was supposed to be held late 2008; however due to slow financial processing from the Ministry of Finance (MoFT), the Joint Plenary started in May 2009 and ended in June the same year.

After the administrative decision to redirect deliberations to the 2004 Draft Federal Constitution, the Joint Plenary went through the 2004 Draft clause by clause under the technical guidance of CRU's Consultant Lawyer Mr. Reginald Teutao.

The result of the 1<sup>st</sup> Joint Plenary was the *1<sup>st</sup> 2009 Draft Federal Constitution of Solomon Islands*.

5. **2010 - Provincial/Honiara City Feedbacks:** To get the provincial communities views on the 1<sup>st</sup> 2009 Draft Federal Constitution, *CC Provincial teams* conducted these feedbacks throughout 2010 beginning in January. However, due mainly to slow MoFT financial processes the feedbacks took up most of 2010.

All provinces completed their feedbacks with reports on the meetings/deliberations to put together for further changes on the Draft Federal Constitution text.

6. **2011 – 2<sup>nd</sup> Joint Congress and EPAC Plenary:** This was held to compile and make further amendments to the Draft as resolved by respective Provinces and Honiara City through their feedbacks. The 2<sup>nd</sup> Joint Plenary took up August till September due to lengthy deliberations on certain aspects of the draft Constitution, which were of particular interest to the provinces.

After much debate and rearranging of clauses and ideas, the 2<sup>nd</sup> Joint Plenary finally came up with the *2011 Draft Federal Constitution of Solomon Islands*.

7. **2012 – Provincial/Honiara City Conventions:** This was seen as the final opportunity for the Provinces, Honiara City communities and the public in general, to have their say on the Draft Federal Constitution (2011 version). In a way, it was to get their approval that the contents of the 2011 Draft accommodated their views expressed in the 2010 Provincial/HCC Feedbacks.

These conventions were completed in late 2012 and included consultations with tertiary students abroad (mainly in Fiji, Vanuatu and PNG) on the 2011 Draft.





8. **2013 – 3<sup>rd</sup> Joint Congress and EPAC Plenary:** This Plenary was held for CC and EPAC members to put together recommendations from the 2012 Provincial/Honiara City Conventions; and for external auditors engaged to do the first audit of the 2011 Draft, to make the way for the final drafting of the proposed Federal Constitution. The 3<sup>rd</sup> Joint Plenary was held for 20 days (October 14<sup>th</sup> – November 8<sup>th</sup> 2013) in Honiara.

External auditors engaged to audit the 2011 Draft were Professor Yash Ghai (Constitutional Law expert) and Professor Ronald Watts (Philosopher Economist & a founder of Forum of Federations). The auditors audited the 2011 Draft and 2013 Draft (a result of the 3<sup>rd</sup> Joint CC & EPAC Plenary). They presented audit reports of both drafts to CRU in December 2013.

9. **2014 – 4<sup>th</sup> Joint Congress and EPAC Plenary:** This Plenary was necessitated after it was seen that both Congress and EPAC needed to collaboratively look through the audit reports provided of the 2011 & 2013 Drafts with the external auditors and constitutional professional draftsman.

The 4<sup>th</sup> Joint Plenary convened for 7 weeks whereby plenary members discussed the Draft with the external experts Professor Yash Ghai (Constitutional Law expert), Professor Ronald Watts (Philosopher Economist & a founder of Forum of Federations); and Dr. Phillip Knight (Legal/Constitution Professional Drafter), who drafted the proposed Draft simultaneously during the Plenary. The plenary was held from February 17<sup>th</sup> to April 8<sup>th</sup> 2014.

10. **Public Awareness Program on 1<sup>st</sup> 2014 Draft:** During the **4<sup>th</sup> Joint CC & EPAC Plenary** in March 2014, the plenary jointly made a decision with external experts that CC Provincial teams inform their respective provinces of the recent 2014 Draft, professionally drafted by Constitution professional drafter Dr. Philip Knight.

This activity is seen as part of the ratification process and is anticipated for mid-2014. It will be conducted in the provinces and Honiara city by Congress' Provincial teams with the assistance of CRU Consultant Lawyer and lawyers within Congress.

11. **Final CC & EPAC Plenary:** This Plenary is anticipated to be convened in mid to late July and will be assisted by external experts, which includes the auditor and Drafter. With



their assistance the final Plenary will promulgate the **2<sup>nd</sup> 2014 Draft Federal Constitution of Solomon Islands**.

12. **Submission of the 2nd 2014 Draft:** This is anticipated for late 2014, when Constitutional Congress and Eminent Persons Advisory Council members will submit the **2<sup>nd</sup> 2014 Draft Federal Constitution of Solomon Islands** to the Honorable Prime Minister. This makes the significant completion and end to the mandate given to CC and EPAC to complete the progress Constitutional Reform to coming up with the content/text of the proposed Federal Constitution.
  
13. **Cabinet and Parliament Process:** This is when the proposed **Federal Constitution of Solomon Islands** is given to Cabinet, and Parliament amends Section 61 of the current 1978 Independence Order for the endorsement of the final constitution. However, the Parliament may choose to amend Section 61 even before receiving a final draft.
  
14. **Constituent Assembly:** Previously called the *National Convention*, this will be the final ratification process whereby the proposed Federal Constitution will go through bargaining by representatives of Solomon Islands political community, both national & regional stakeholders. When the final content of the proposed constitution is audited and drafted, it will be presented to these representatives to seek an indicative community response to the final draft.

The Assembly also has a state-building role. It will be a time when discussion will take place establishing the new union, and bargain the new political order of Solomon Islands. Realistically, this activity is anticipated for 2015.

Under the amended Section 61 of the current 1978 Independence Order, the Assembly will endorse the Constitutional Order of a new Federal State of the Republic of Solomon Islands.

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