

Fourth Joint Plenary endorses 2014 Draft



CONSTITUTIONAL REFORM UNIT

REFORM NEWS



4th Joint Plenary members (from left): Rev. Bp Lazarus Munamua, Charles Levo, Harry Alick and Brian Saoba during the meeting in March 2014. *Photo: Marilyn Maeta'a, CRU*

After 5 weeks, deliberating and getting professional perspectives from external experts on the *2014 Draft Federal Constitution of Solomon Islands*, the 4th Joint Plenary met an extra two weeks to go through and endorse the professionally drafted 2014 Draft.

Members of the 4th Joint Plenary of Constitutional Congress (CC) & Eminent Persons Advisory Council (EPAC), looked into the audit reports of auditors

Professor Yash Ghai and Professor Ronald Watts.

Both auditors, specialized in the area of the Federalism, had previously met with Plenary members in Honiara during the 3rd Joint CC & EPAC Plenary in October 2013—in which they audited both the 2011 and 2013 Drafts.

This year's Plenary work was intense as the members read through the auditors' suggestions and comments regarding the

contents of the proposed Federal Constitution, and working closely with the professional drafter and auditors to fine-tune the contents and style of the proposed Draft.

By the second week of Plenary, Dr. Phillip Knight (Legal/Constitution Professional drafter) started professionally drafting the Draft based on inputs from last year's 3rd Joint Plenary, for CC and

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EPAC members to consider.

Throughout the meeting, the Plenary covered a lot on the newly drafted version; however, by the 5th week, the deliberation had only reached half way of the professionally drafted work.

Dr. Knight submitted the 2014 Draft Federal Constitution he had done, to the 4th Joint Plenary to continue going through till April 8th, to see if ideas put into previous Drafts' work was accommodated for in this Draft.

Though the structure of the 2014 Draft has changed, much of the contents and ideas remain.

One obvious modified feature is the language, which has been transformed to more current and modern English, simplifying various legal jargons for the ordinary person to read and understand.

Upon endorsing the 2014 Draft, the 4th Joint Plenary agreed that this version of the proposed Federal Constitution should be taken back to the provinces to view and endorse

before it is drafted in its final form and submitted for the final national ratification process.

Experts are currently working closely with the Consultant Lawyer of Constitutional Reform Unit, Reginald Teutao, to complete inserting the Plenary's suggestions from where they left off after the experts' departure in March.

The 4th Joint CC & EPAC Plenary was held from 17th February to 8th April 2014 at the Monarch Conference facility, West Honiara. 

Experts guide Plenary thru audit and drafting

In reviewing the audit of the 2013 Draft Federal Constitution, the 4th Joint Plenary of Constitutional Congress and Eminent Persons Advisory Council (EPAC) had the privilege of receiving guidance from experts on the audit report and drafting process.

Professor Yash Ghai (Constitutional Law expert), Dr. Phillip Knight (Legal/Constitution Professional drafter) and Professor Ronald Watts (Philosopher Economist & a founder of Forum of Federations) joined the 4th Joint Plenary since mid-February 2014, to complete the task of auditing and drafting the proposed Federal constitution.

Prof. Ghai and Prof. Watts gave insight into crucial areas of federalism, in light of the audit reports they did on the 2011 and 2013 Drafts, followed by Dr. Knight's detailed presentation on the drafting.

In his presentation, Dr. Knight highlighted how various Federal Constitutions from other countries were drafted and how the proposed Federal Constitution of Solomon Islands can be drafted to accommodate the



Expert in Federalism Professor Ronald Watts gives advise to members of the 4th Joint CC & EPAC Plenary in February 2014 at Monarch conference room.

ideas and people's inputs during the Constitutional Reform Program.

He then drafted a sample of the Draft's Preamble in a professionally drafted constitution language, to which members of the 4th Joint Plenary were thoroughly satisfied.

Members noted that the experts' presence was a boost in Congress and EPAC's work, as they were knowledgeable in their respective fields of profession, in relation to federalism.

A full audit and professional drafting is expected to be complete, with that version of the Draft being fully considered by provincial stakeholders, anticipated to be held from May—June 2014.

A final national ratification process, which used to be called the *National Convention*, however later changed to *Constituent Assembly* based on suggestions from the experts regarding ratification, will see the proposed Federal Constitution enacted on a later date. 

Drafter encourages Plenary to look ahead in constitution-making

Professional drafter Dr. Philip Knight, who assisted the 4th Joint Plenary of Constitutional Congress and Eminent Persons Advisory Council (EPAC) in drafting the proposed Federal Constitution of Solomon Islands, encouraged Plenary to look to the future when drafting the constitution.

In his closing remarks to the Joint Plenary on Monday 17th March 2014, he said that a constitution should be constructed not only for present circumstances and needs but such that, future generations will be thankful for.

"I always think that that's the words I would like to leave with every group of people working on a constitution," Dr. Knight said.

He likened this encouragement to an example of a century-old building constructed as a provincial legislature in Canada.

"It is an amazing iconic, marvelous structure," he said, "a century ago when the very small population of that province met as a legislature and they passed a resolution calling for the construction of that building."

He said the resolution contains clauses that have become somewhat famous for the current generation of that province in Canada.

"I remind myself of it in every one of these projects," he said, "the direction was that the building that was constructed for the government, should be not such that meets current needs only but such that future generations will thank us for."

Dr. Knight and Professor Ronald Watts both thanked the Joint Plenary for their contributions that have



Dr. Phillip Knight making his final remarks on 17 March 2014 at Monarch conference room before leaving the 4th Joint Plenary.

helped in the audit and drafting process, resulting to the *2014 Draft Federal Constitution of Solomon Islands*, which is the first professionally drafted version of the proposed Federal Constitution since it came into existence in 2004.

In thanking the experts, Congress' Chairlady Jenny Tuhaika expressed her gratitude for their hard-work and patience with the discussions that have led to producing the text of this proposed constitution, which Dr. Knight drafted during the 4th Joint Plenary.

A farewell dinner was held for the

experts on Friday 14th March, before Professor Yash Ghai and his wife, Dr. Jill Cottrell Ghai who also assisted the team of experts on legal explanations, left that weekend. Both Dr. Knight and Professor Watts left the country on Tuesday 18th March 2014.

The 4th Joint Plenary spent an additional two weeks to look through the professionally drafted version, to later provide feedback to the experts on the contents.

The final version will be put together once the 2014 Draft goes through its public consultations, for the final ratification process. 



Reform in Pictures

Photos by Marilyn Maeta'a/CRU



Prof. Ronald Watts making comments on Day 11 (3 March).



Sir George emphasizes role of Governor General during 4th Joint Plenary.

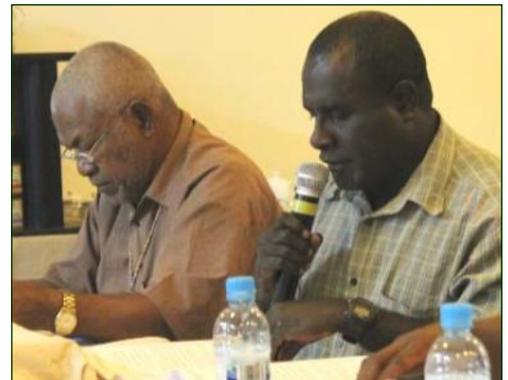


EPAC Members James Vaukei and Jason Dorovolomo on Day 21.



CC Member Judith Fangalasu assisting in minute-taking together with the Plenary's Minute-taker Francis Tekatoha during the 4th Joint Plenary.

CC member Charles Levo making a point and (right) Rev. Bp. Lazarus Munamua listening on Day 21 (17 March 2014).



Jack Faga (Makira/Ulawa CC nominee) raises a point, Brian Saoba (right) on Day 19 (13 March 2014).



Hilda Kari (Team leader Guadalcanal) making a point during deliberations on the Draft on Day 11 (3 March).



Reform in Pictures



Dr. Phillip Knight makes comments on 2014 Draft during Plenary.



Josephine Kama (EPAC member) makes a point during discussions.

From left: Johnson Levela (Team leader Temotu), John M. Tuhaika (Team leader Rennell Bellona) and Hudson Kwalea (Team leader Malaita) during 4th Plenary



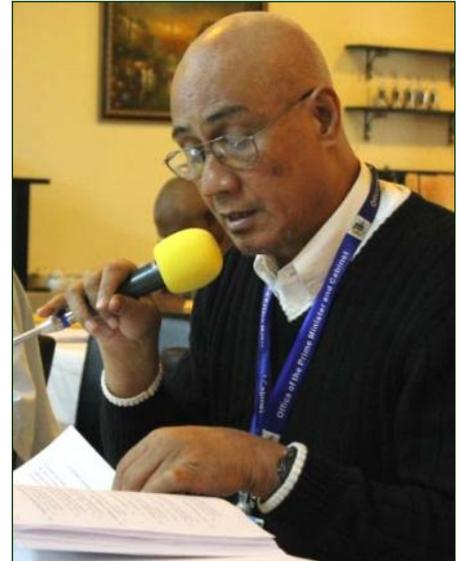
Below: From left—Harry Alick (Youth Rep) and Brian Saoba (Rennell Bellona nominee)



CC provincial nominees from left: Hilda Nose'e (Central Islands), Ellen Salopuka (Temotu), Clara Rebitai (Makira/Ulawa)



Catherine Adifaka (Congress HCC nominee) makes a point on Day 19 of Plenary (13 March 2014)



Reginald Teutao (CRU Consultant Lawyer) on Day 21 of 4th Plenary (17 March).



Clement Rojumana (EPAC member) on Day 21 of 4th Joint Plenary (17 March).

During their recent undertaking, auditing and drafting the proposed Draft Federal Constitution of Solomon Islands, *Media Officer/CRU* caught up with the experts to interview them on their work in the 4th Joint Plenary. These are some of their observations summarized from the interviews.



Professor Yash Ghai

What is your personal view of the Draft's current form?

YG: The Draft is good. There [are] a lot of new ideas. When you compare it with the Independence constitution, it has a lot of emphasis on values and principles, and on people as such, not just institutions. It covers a lot more ground. The Independence constitution was very much about institutions. [The Draft] is to some extent, modern in keeping with recent constitutions.

Speaking of the Independence Constitution, I understand you were a part of creating it?

YG: Yes, I was advisor to the Solomon Islands parties working with Chief Minister Sir Peter Kenilorea. I felt that all the Solomon Islander [Legislative Committee] members should work together. So I spent sometime talking to Bart Ulufa'alu, he was the leader of the Opposition. It took sometime but then he agreed, and I must say he was a very loyal member. By the time we began to negotiate with the British, the Solomon Islands team was quite united. They might have had their internal difference but in the negotiations they always took a joint position. And there was a lot of spirit of being Solomon Islander. That was a good experience.

In terms of that, how well are you acquainted now, with Solomon Islands' situation?

YG: I have to confess I have not been able to keep up with the political or economic developments here. I was invited back for two or three things.

One was to work with the committee chaired by [MP David] Kausimae, to look at the question of powers to be given to the provinces. I also made a visit of my own, for research purposes, but after that I sort of lost contact. Its only when I agreed to become involved in this exercise, that I read a few academic writings. But I can't say I have very deep understanding of the country. It's very good to interact with all these members of Congress and Eminent Persons, so I'm picking up a few things.

Do you have any professional views on the Constitutional Reform process to date?

YG: I have a special interest in the process. It's very important to involve the people, [to hear] their aspirations [and] hopes for their children, their future. Then it is the role of experts, on the basis of those aspirations and hopes to see what kind of system of government, values of the State, policies would achieve their aspirations. So it's an interaction between the people, who are sovereign for whom the constitution is made; and the experts who ultimately have the responsibility to turn their views into a legal document.

From an outside point of view looking in, do you think the current Draft is home-grown?

YG: I think so. I think their understanding of home-grown is a little different from mine; theirs is a very technical concept. My understanding of home-grown is two elements are important. One, it is genuinely made by the people of this country. Whereas in 1977 when we went to England, we were at this end and they were that end, negotiating and so on. The second element is, is it responsive? Is it responsive to the circumstances of the people, [their] situation, [their] aspirations? Is it based on their traditional values and institutions? So [it's] not something that you just import from another country, which happened with the independence constitution. So if you can respond to those kinds of concerns, I would say it's home-grown. 



Professor Ronald Watts

When you were approached for the audit expertise, how did you feel about being part of it?

RW: I found it a very interesting proposition because I've spent my life studying federal systems. And in fact, I've visited over twenty different federations. So when [it] was raised, I thought it would be very interesting to see what the issues are here in Solomon Islands and how one would apply federal arrangements.

What is your view of the Draft's current form after the first audit?

RW: Quite a few changes have been made since the audit. Some of the arrangements did not fit very well with experience elsewhere. For example, the powers of the Federal and State governments were all divided. Federations have found that some powers have to be shared by federal and state governments, [called] concurrent powers. Similarly in terms of finance, every government is given the power to levy every tax, which meant that taxation would be duplicated. Those were two of the major problems in previous drafts that have now been corrected.

One of the areas the Plenary and experts focused on was the economics of the proposed federal system, what are your views on that?

RW: While a constitution is a legal document, that's all it is. The advantage of a properly designed federal system is that it should help the economic wellbeing of the federation as a whole and States. A constitution that is

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drafted without taking economic considerations into account doesn't really benefit the new States that are built. So the aim must be in creating a federation, to create greater economic prosperity for everyone.

What other areas of the proposed federal arrangement in Solomon Islands stand out to you?

RW: The main thing one needs to guard against is making the constitution too detailed and complicated. Because the more complicated, the less flexible it is to adapt to changing circumstances and to economic needs. It's important especially when it's a small federation in terms of population. There's always a temptation to add more details [and] more arrangements, to make it more rigid; but in the long run that is counterproductive.

You've had an extensive experience with federal countries, how do you see the proposed federal system in Solomon Islands?

RW: There are [over] twenty-five federations around the world today, four or five of them are in the category of what I call micro-federations, and Solomon Islands comes into that category. They are with a total population of less than a million. One can think of Micronesia, Palau, St. Kitts and Nevis, [and] Comoros. They are important examples for Solomon Islands because [they're] an archipelago of islands, there are similar problems both in terms of size and islands being scattered.

[Also in] every federation [there are] two major principles. One is self-government for the States. The other is shared powers for the federal government, that's the element of unity in a federation. When you are converting [from] a unitary government to a federal one, there's a tendency to concentrate on dividing the powers, creating new States, State autonomy, all that. If you give insufficient attention to what holds them together, the whole thing will fall apart. It's very important to recognize the importance of a both State autonomy and self-government, and the role of the federation in holding them all together. I think that's the biggest single lesson from the experience of other federations. 



Dr. Phillip Knight

When you were first approached to join the experts, what were your initial reactions to the Draft?

PK: First, my initial reaction being asked to join was a considerable honour and a privilege; this is an important project, always nice to be asked to join a project like this in another country. My initial reactions to the Draft were that it's a good early Draft; it reflects a lot of thinking, decisions that have been taken and a lot of debate that's gone into them.

What's your view on the review of the Draft that you're currently involved in?

PK: It's been a very interesting process to observe people come with a lot of experience; they bring a lot of insight to the work they're doing. There's a bit of an unresolved question of how much of the aspirations expressed can be realised, given the size of the country, its state of economy [and so on]. It's interesting to listen to people working with those problems and seeing the resolutions they come up with.

As the drafter how do you address conflicts in different aspects within the constitution, just by listening to the Plenary or consulting other documents?

PK: Certainly by listening to the Plenary. One of the only ways I know to really get the intention of a group of people is to spend a lot of time listening to them, not just the ideas they're expressing as important as those are, but the way they express them, the passion in which they express them, the words they use, all of that. I [do] read other documents that give me some background, but the immediate task is one of listening to the plenary, listening to the different voices and understanding what the issue is.

For this exercise what difficulties have you encountered?

PK: It's a very short period of time, a long document, and a lot of issues still remain to be sorted through. We're at a difficult stage where everybody knows that we have to move forward but they've gained familiarity with one document. I'm always reminding myself; we have to move this forward but incrementally and slowly, and rooted as much in the decisions that have already been taken.

Solomon Islands was likened to a micro-federation, have you drafted a constitution for a country in a similar situation?

PK: Solomon Islands falls mid way in the range of countries I've drafted for. I've drafted for South Africa, a federation with a population of 45million people, very big and one single contiguous country. I've drafted for Kenya, which is similar in its structure but not a federation that has devolved governments. And then [in Canada] I've drafted for indigenous peoples, who are very tiny populations, 10,000 people or fewer; scattered over a wide geography but in small villages and communities, who are in fact structuring a micro-federation of their own.

After this drafting exercise, what is the process afterwards?

PK: There some issues identified in [the Draft] that [the plenary] needs to take under consideration, resolve and give us instructions. We will be refining the draft and visiting the conversation in continuous rounds until they're satisfied that it represents their best views and decisions. My motto in working with a group like this is; it's not finished till they say it's finished. It's not right till they say it's right. And it's very much their document, and they'll give instructions that we'll see through to the end.

So do you hope to go through with the process until its end, drafting the text of the constitution?

PK: I wish to be able to do that, it's not always my opportunity. I have to say that it's a very satisfying moment in a project like this and everyone who has been part of this project will feel that same satisfaction, if they're able to see it through to the end. When I have been able to be in that position with a project, it gives one a real sense of elation. It's very fulfilling. 



Solomon Islands Government

CONSTITUTIONAL REFORM UNIT

Office of the Prime Minister & Cabinet
P.O Box G1
Honiara
Solomon Islands

Phone: 21209/22742
Fax: 28649
Website: www.sicr.gov.sb

ABOUT CRU

The Constitutional Reform Unit (CRU) is the body responsible for the management and coordination of Constitutional Reform Project.

It is an established division within the Office of the Prime Minister and Cabinet, and it is the Secretariat for the Constitutional Congress.

CRU has staff that carry out administrative, media, legal and financial related undertakings for the Constitutional Reform Programme.

CRU is located at the East Wing (top floor end) of the Office of the Prime Minister and Cabinet, which is situated along Mendana Avenue, Honiara.

Publisher's Information

Publisher:
Constitutional Reform Unit

Content, Design & Editing:
Marilyn Maeta'a, Media Officer/CRU

Endorsement for release:
Ronald Unusi, PS/CRU
Karl Kuper, Director/CRU

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Issue 15: Updates on the Third Joint Plenary of CC & EPAC, and audit of Draft Federal Constitution.

Issue 16: Recap of the Third Joint Plenary and the Prime Minister's take on the Draft Federal Constitution's development.

For more information:

If you would like to know more about these & other documents, contact CRU EPS Ms. Stella Pitiveke on spitiveke@pmc.gov.sb.



Reform News
Issue 16 (Volume 1)
Oct–Dec 2013