

Changing Pacific Island constitutions: methods and philosophies

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I INTRODUCTION

The level of constitutional activity across the Pacific Island region is increasing noticeably - and there is every indication that the '90s will be "the decade of the constitution"!

Pacific Island constitutions have sought to strike a balance between the sovereignty of the elected representatives as law-makers and the supremacy of the constitution as the expression of a "higher" law. This paper examines the diverse constitutional approaches adopted towards limiting the power of the legislature to change the constitution, and in each case details the authority for, and techniques of, amendment and review.

The paper concludes that choices made by each state as to how and when it will, in practice, change its constitution are critical to the long-term preservation of an appropriate balance between "sovereignty" and "supremacy". Such choices should be regarded as contributing to the development of a "constitutional philosophy" unique to that state.

The independence constitutions of Pacific Island states¹ have attracted the interest of comparativists, mainly lawyers and political scientists, who see a bonanza of material in the experiences of a large number of constitutional entities. For the purpose of making comparisons, the attraction of studying constitutions in the Pacific lies in the perceived sharing of characteristics, such as:

- (1) social and economic environments which are isolated and mainly island-based;
- (2) decolonization over a relatively short common period (current political status has been achieved since 1962) leading to a regional grouping of nations possessing a certain community of interests;
- (3) introduced elements of governmental and legal theory and practice, drawing on British and American traditions, which require modification and adaptation;

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¹ The countries included here are long-standing South Pacific Forum members (numbering 11), together with the Federated States of Micronesia and the Marshall Islands which have joined recently, and Palau (a total of 14 entities). With the exception of Palau, the states are either independent or in free association. For details of each, see the Annexure.

- (4) a level of constitutionalism, advancing further in some states, which encourages pre-occupation with the idea of a supreme constitutional charter.

Thus it is not surprising that, despite the difficulties of collecting legal information, the region is now producing comparative studies on constitutions,² judicial and legal systems,³ and the institutions of government.⁴ As is demonstrated in this paper, however, there may be such variety and contrast in experiences and approaches that caution must be exercised in attempting to draw conclusions.

This presentation is introductory in nature, with the intention that it will lead to further study.

II REVIEW

The governments of the region have not lost interest in their constitutions since independence. Rather, the record in most countries shows occasions or periods of concern with constitutional change, for one reason or another. The occasion may be programmed, as where the constitution itself requires that a review be undertaken (as in Papua New Guinea (PNG)); or at least considered (constitutional conventions have resulted in the Federated States of Micronesia (FSM) and the Marshall Islands). In the case of Nauru, the original constitutional convention continued its work for 5 months *after* Independence Day, 31 January 1968, making a number of changes. Only PNG has provision for a General Constitutional Commission. It presented 2 interim reports, in 1979 and 1980, and a final report in 1983. It is now regarded as defunct.⁵

A *Periodic Review Requirements*

Periodic review of the constitution is required to be considered every 10 years in FSM, the Marshall Islands and Fiji (although the first review of Fiji's 1990 constitution is to be in 7 years) and every 15 years in Palau. In the case of the Micronesian states such requirements, linked with the likelihood that the procedure will involve a constitutional convention and a referendum, commit the state and its electorate to what may be a painful re-examination of issues. Nevertheless, such a process, recently concluded in the Marshall Islands and FSM, follows naturally from earlier constitution-making processes.

² PG Sack (ed) *Pacific Constitutions* (Australian National University, Canberra, 1982); YP Ghai (ed) *Law, Government and Politics in Pacific Island States* (University of the South Pacific, Suva, 1988).

³ CG Powles and M Pulea (eds) *Pacific Courts and Legal Systems* (University of the South Pacific, Suva, 1988).

⁴ P Larmour and RR Qalo (eds) *Decentralisation in the South Pacific* (University of the South Pacific, Suva, 1985); YP Ghai and J Cottrell *Heads of State in the Pacific* (University of the South Pacific, Suva, 1990).

⁵ It is unclear whether the legislature is bound to implement the recommendations. See T Deklin "Review of the Constitution in Papua New Guinea" in YP Ghai (ed), above n 2, 335, 345-346.

An element of constitutions which seldom escapes periodic review is the provision for apportionment and/or constituency boundaries in the electoral system. In some cases, it is left to government to initiate in the legislature, but the constitutions of FSM, Fiji, Kiribati, the Marshall Islands, Palau, the Solomon Islands and Western Samoa require regular consideration of aspects of the electoral system.

B Voluntary Review

Although under no constitutional obligation to do so, the Solomon Islands and Vanuatu also decided to conduct reviews of their constitutions after the first 10 years of operation. The Solomon Islands Parliament appointed a Constitutional Review Committee which presented its report in January 1988. A further select committee was appointed in August 1990 to examine methods of proceeding. In June 1990, the Parliament of Vanuatu decided to establish a Constitutional Review Committee, which was formally opened by the Prime Minister in October of that year. At the time of the change of government in 1991, the Committee had not reported.

C Developments

Until 1991, no formal constitutional change had occurred in direct response to the 4 major review exercises completed in PNG, the Solomon Islands,⁶ FSM and the Marshall Islands. Some of the amendments proposed for debate in the PNG Parliament in 1990 were finally passed in 1991, notably the extension of the period after taking office during which the Prime Minister may not be the subject of a motion of no-confidence, from 6 to 18 months. In the FSM and Marshall Islands, amendments adopted by the conventions were considered by the wider electorates and certain of them accepted.

New constitutions have appeared in only two states. Seeking a fresh expression of constitutional principles more consistent with the people's values, the Parliament of Tuvalu adopted a new constitution which came into effect in 1986 on the eighth anniversary of Independence Day. In 1987, a new order was imposed in Fiji. This led eventually to the promulgation of the Constitution of the Republic of Fiji, with effect from 25 July 1990.

D Re-Patriation

One of the objectives of post-independence review may be to "re-patriate" the constitution so that its legitimacy may be seen to derive from an expression of popular will (autochthony) rather than from the executive act (Order-in-Council) of the colonial authority. How far is the independent government prepared to go in this regard? The legitimacy of the constitutions of Western Samoa, Nauru, FSM, the Marshall Islands and Palau may be said to be derived, to some extent at least, from their origins in

⁶ The Papua New Guinea and Solomon Island reviews are discussed in YP Ghai "Constitutional Reviews in Papua New Guinea and Solomon Islands" (1990) 2 *The Contemporary Pacific* 313-333.

constitutional conventions which claimed to represent popular opinion. As in the case of Tuvalu, "re-patriation" may be an occasion to alter the form and presentation of the constitution and rules for its interpretation, without subjecting the underlying principles to fundamental reconsideration by the populace at large. This is one of the questions which the committee appointed in August 1990 by the Solomon Islands Parliament was asked to consider.

III LIMITATIONS ON LAW-MAKING GENERALLY

The constitution imposes several limitations on the law-making power of the legislature. Restriction on the power to amend the constitution itself is only part of the wider framework, usually articulated in the constitution, which assures supremacy and defines the relationships between the legislature, executive and judiciary. It is useful to begin with other parts of the picture.

A *Textual Supremacy*

Any law inconsistent with the constitution is void and the judiciary is expressly or by implication empowered to rule upon the validity of legislation.

B *Delegation to the Legislature - Or Omission from the Constitution*

Clash with the constitution (and therefore the need to amend it) is avoided where certain matters are expressly left to the legislature to decide, or omitted altogether. Thus, the "design" of many a Pacific constitution is such that it does not deal with an important area (such as regional government, village councils, eligibility to vote or land tenure) or an institution (such as an ombudsman or a law reform commission). Such a decision may reflect different concerns - for example, that the issue could not be settled in time for independence or is better thrashed out by the independent legislature, or that inclusion in the constitution might inhibit early reform. Western Samoa offers classic examples of the "delegation" and "omission" techniques. The constitution was designed to allow Parliament to introduce universal suffrage without constitutional amendment and, similarly, Parliament could confer so-called "validation" upon the customary law operations of traditional village councils. Although it chose for political reasons to hold a plebiscite on the suffrage issue, the government achieved both its objectives in the legislature.⁷

C *Regular Procedure*

Except in the federal system of the FSM, the constitution requires that bills be passed by a majority of votes of members of the legislature who are present. But will members present who abstain be counted as part of the total? Clearly not in some cases such as Fiji and the Marshall Islands where the majority is declared to be that of members "present and voting". It is not so clear in the Cook Islands, Niue and some other constitutions.

⁷

See the Electoral Amendment Act 1990, No 20 and the Village Fono Act 1990, No 3.

Minimum time for consideration of measures is built into some regular procedures (such as FSM, Kiribati, Tuvalu).

D Special Requirements

There is usually a requirement that certain financial measures may not proceed unless initiated or approved by the executive. In the Marshall Islands and Niue, Parliament is obliged to obtain reports on certain subjects before proceeding. In some cases, the upper house (Fiji), or council (the Marshall Islands), or the executive, has the opportunity to delay law-making, requiring reconsideration.

Special voting majorities (Palau) or, effectively, the approval of defined groups (Fiji, Tonga) may be necessary to deal with certain subjects, whether they be named statutes (Fiji), or defined areas of law (Fiji, Palau, Tonga). In this way, a form of constitutional entrenchment is accorded to those statutes and subject areas.

IV CONSTITUTIONAL AMENDMENT

Changing a constitution requires consideration of some of the factors which were relevant to its creation.

Who is involved?: How much consultation and involvement should there be - among the legislators? The general public? Much depends on the subject matter and scope of the proposed change. Are there just one or two matters of narrow compass, or is a review of the entire constitution called for? Does the occasion warrant a full-scale constitutional convention affording public representation, or would a parliamentary committee charged with consulting the public be appropriate? Investigation of technical or "special interest" issues might be desirable, leading to reports from specialist bodies such as law reform commissions and councils responsible for advising on tradition, language, customary law or land tenure.

Who decides?: What should the decision-making process be? Should it be done in the legislature or by public referendum or both? Should the bare majority opinion prevail, or might the importance of the issue suggest a higher proportion of eligible decision-makers, such as two-thirds, or three-quarters?

Legitimacy: Of primary concern to citizens and their leaders is the perceived legitimacy of the charter under which the state is governed. For many Pacific states, the constitution is symbolic of nationhood and unity. Although a proportion of citizens is always unaffected by the constitution (or even unaware of its existence), it is the stated intention of constitutions that they should express the aspirations of the people, who have consented to order their lives within agreed guidelines. Such symbolism and expression of aspirations contribute to political legitimacy for the constitution, which extends beyond formal legality. Accordingly, the changing of a constitution may call for consideration of processes that go further than the legal requirements specified in it.

Additional requirements: The minimum legal requirements for constitutional amendment usually stipulate procedures different from, and more extensive than, those prescribed for ordinary law-making. It is this additional burden on the legislature which protects the constitution from the whims of elected representatives, and accords the document its supremacy as a matter of law.

A range of techniques and combinations of procedures was at the disposal of constitution-makers.

V PROCESS

A *Consultation Mechanisms*

1 *Identification*

The proposal or bill to amend the constitution is usually required to be identified as such, or the required procedure has that effect.

2 *Time for consideration*

- a Advance notice of the bill (one month) is required in PNG and Solomon Islands.
- b Minimum time between successive votes is required in six countries, ranging from 60 days (the Marshall Islands) to 13 weeks (Niue).
- c Votes are to be on separate readings, separate days or separate sittings of the legislature (a regular procedure for FSM, Kiribati, Palau, the Solomon Islands and Tuvalu).
- d Time between stages of the process is required, for example before a referendum is held.

3 *Advice*

This is required on certain subjects in the Marshall Islands and Niue, and input from traditional leaders is contemplated in the Cook Islands, the Marshall Islands and Vanuatu.

4 *Constitutional convention*

A convention which permits representation and active participation beyond that of the legislature may encourage widespread consultation. However, these matters are determined by the legislature. Only FSM, the Marshall Islands and Palau provide for a constitutional convention, and only in the Marshall Islands is a convention a prerequisite for amendment. It is noteworthy that two states, Nauru and Western Samoa, which utilized conventions at the constitution-making stage, are not bound to go through that process again.

In the first judicial decision in the region to deal with the relationship between the legislature and the constitutional convention and their respective powers, the FSM Supreme Court has held that, in setting up the convention, Congress has no power to specify voting requirements to be followed by members of the convention.⁸

B *Decision-Making*

The obligation to consult is closely linked procedurally with the power to decide. Who exercises that power may depend on the subject matter.⁹

1 *Legislature alone*

In PNG, the Solomon Islands and Tuvalu amendment of any part of, or all of the constitution can, if the legislature so desires, be effected by that body alone. The legislature alone may amend most, but not all, in the Cook Islands, Fiji, Kiribati, Nauru, Vanuatu and Western Samoa. In Tonga, no wider consultation is required, but the assent of the monarch is.

2 *Referendum*

A referendum of electors is always required in four countries: FSM, the Marshall Islands, Niue and Palau. For this reason, their constitutions are regarded as relatively "rigid" or hard to change, but, apart from Niue, these countries provide for regular constitutional review.

The referendum is also required for certain amendments in the Cook Islands, Kiribati, Nauru, Vanuatu and Western Samoa. Vanuatu reduced the scope of the requirement soon after independence when it deleted reference to regional councils from Article 84.¹⁰ Vanuatu, along with PNG and the Solomon Islands, has had no experience with the referendum. Western Samoa, on the other hand, had conducted a crucial pre-independence adult plebiscite on the issues of independence and adoption of the constitution. Then, 30 years later, it decided to hold a referendum on the suffrage issue, which Parliament is constitutionally capable of deciding by itself.

⁸ The attempt by Congress to impose a three-quarters majority requirement on voting within the convention was struck down as invalid: see *Constitutional Convention 1990 v President* 4 FSM Intrm 320 (Appellate Division, 1990).

⁹ See the next section of this paper.

¹⁰ See the Constitution First Amendment Act 1980.

- 3 *Special majorities*
- a Amendment of the constitution generally requires the votes of a specified majority of total membership of the legislature.¹¹
 - b Most commonly, amendment requires at least two-thirds of total membership which, in some of the larger legislatures, is difficult to achieve. This is particularly so in PNG.
 - c Special majorities may be required for purposes such as the protection of the federal concept (FSM and Palau).
 - d Majorities of members of special groups may be required, serving to protect interests based in ethnicity, culture or traditional leadership such as the provisions found in the constitutions of Fiji, Tonga and Western Samoa.

VI SUBJECT AREAS

This survey also reveals a diversity of approaches to the crucial question - what subject areas deserve greater protection against amendment? How should a hierarchy be constructed? For example, should it deeply entrench certain constitutional provisions so that only a referendum can touch them, while other provisions may be amended by the vote of a prescribed proportion, say two-thirds, of the legislators? As might be expected, many constitutions entrench provisions relating to land and fundamental rights. The interests of ethnic or traditional groups may have been secured by special majority entrenchment.¹²

The most common practice is for there to be two levels of entrenchment. FSM, Palau and Tuvalu provide for only one, while Fiji, Kiribati and PNG have constructed more complex systems providing for three levels.

VII A GUIDING PHILOSOPHY?

The ranking of constitutional provisions according to the degree of protection to be accorded to them and the choice of procedures for amendment are essential components of any theory or philosophy of a constitution. In the absence of evidence to the contrary, for example, one would interpret the entrenchment of certain provisions, or a special procedure for amendment, as contributing to one's understanding of the constitution as a whole. Such understanding might be enhanced if one could find consistency between such components, and evidence from the preconstitution stage, such as the procedures used for considering and adopting the constitution, and views recorded in convention debates and by planning committees. There is ample scope for

¹¹ See the definition of "absolute majority" in the PNG Constitution, schedule 1.2.

¹² See part 3d above.

much-needed research into the development of constitutional thinking, country by country, across the region.

At this stage, indications are that, in the 1990s, certain fundamental issues are receiving more active attention than hitherto:

- 1 *The form, style and expressed authority* of the constitution are seen as affecting its continued acceptance and legitimacy. In some countries, repatriation in this sense is a priority.
- 2 As the opinions and judgments of higher court judges begin to make their impact, governments are aware that the judiciary search the constitution for guidance as to how it is to be interpreted. *Guiding principles* may be given greater prominence in the body of the constitution as well as the preamble.
- 3 *Traditional sources of power* are being considered from various cultural viewpoints, and in the light of different needs such as the preservation of law and order, determination of land issues and protection of customary values. It is tempting to enlist the traditional authority of chiefs in aid of the state, in local and sometimes central government. The implications of doing so, and particularly of changing the constitution to do so, are far reaching.
- 4 Rights vested in traditional owners to deal with *land and related resources* and to determine questions of title, succession and use are jealously guarded in many countries, in the face of the state's concern to employ courts and other governmental agencies to deal with these matters in the interests of efficiency, planning and economic development. A constitutional solution which recognises and balances these competing concerns will be difficult to find.
- 5 Tensions between notions of *central government and provincial/local autonomy* continue to pre-occupy leaders and to place strain on the constitutional charter.
- 6 Techniques are being pursued to enable *executive government to hold office* in a more secure fashion while at the same time requiring it to be more *accountable* for corruption and abuses of power.

In conclusion, when constitutional change is desired, *the choice of methods of amendment or review* is seen as crucial to public attitudes to the constitution itself as well as to popular support for government policy. There is also an awareness that constitutional requirements for amendment are minimum legal requirements, and that the extent and quality of public information, education and participation are as significant as formal procedures. This decade may determine, for many countries, whether satisfactory underlying constitutional philosophies are achievable.

ANNEXURE: ANALYSIS BY COUNTRY

I COOK ISLANDS

CONSTITUTION: 1965

A *Regular Law-Making Procedure*

Bills require a majority of votes of members present (art 34).

B *Special Requirements*

Subject matter:

Financial measures

Procedure:

On recommendation of Queen's Representative on advice of Cabinet (art 43)

The House of Ariki is advisory (art 9)

C *Constitutional Amendment*

1 *Basic level of entrenchment*

Subject matter:

Unless otherwise specified

Procedure:

Two-thirds of total membership of Parliament voting on 2 occasions with not less than 90 days between votes (art 4(1))

2 *Further level*

Subject matter:

Cook Islands autonomy and New Zealand responsibility - the relationship of free association (Constitution Act 1964 (NZ) ss 2-6); Head of State - "Queen in right of NZ" (art 2); 5-year maximum term of Parliament (art 37); power of amendment (art 41)

Procedure:

In addition to above, two-thirds of votes cast by electors at a referendum (art 41(2))

D *Review Requirements*

1 *Electoral matters*

No provision in Constitution

2 *Constitution generally*

No provision

II FEDERATED STATES OF MICRONESIA

CONSTITUTION:
1979

A *Regular Law-Making Procedure*

First reading of bill: two-thirds of all members of congress. Second reading on a separate day: two-thirds vote of state delegations, each of 4 delegations having 1 vote (Art IX, s 20). Assent of president (three-quarters vote of state delegations may override veto, Art IX, s 2(q)).

B *Special Requirements*

Subject matter:

Ratification of treaties

Procedure:

Two-thirds of members

Treaty delegating major powers of government to another government (eg USA under the Compact)

(In addition) majority approval by legislatures of two-thirds of the 4 states (art IX, s 4)

C Constitutional Amendment

1 One basic level of entrenchment

Subject matter:

Generally

Procedure:

By constitutional convention, popular initiative or congress - amendment requiring approval by three-quarters of votes cast in each of three-quarters of the 4 states (art XIV, s 1)

D Review Requirements

1 Electoral matters

Congress is to re-apportion itself every 10 years (art IX, s 10).

2 Constitution generally

At least every 10 years, congress to submit to referendum of voters "shall there be a convention to revise or amend the constitution?". If majority of votes cast say "yes", delegates to the convention are chosen by an election of voters (art XIV, s 2).

3 Developments

The current review process began with a 1989 decision in favour of revision and the constitutional convention sat in 1990. During 1991, proposals recommended by the convention were submitted to the wider electorate and certain of them obtained the necessary three-quarters approval.

III FIJI

CONSTITUTION: 1990

A Regular Law-Making Procedure

Majority of members present and voting in each House, Representatives and Senate (ss 62, 69)

B Special Requirements

Subject matter:

Appropriation, money, urgency and other matters

Financial measures

Alteration of Fijian Affairs Act or named Acts dealing with native land, Rotuma or Banaba; or any Bill which affects Fijian land, customs or customary rights

Alteration of Agricultural Landlord and Tenant Act

Procedure:

House of Representatives may override Senate (ss 62, 72-75)

Recommendation of Cabinet (s 71)

Majority of votes of all members of each House, including 18 (three-quarters) of nominees of Bose Levu Vakaturaga (BLV) in Senate (s 78(1))

Two-thirds majority of all members of each House including three-quarters of nominees of BLV (s 78(2))

C Constitutional Amendment

1 Basic level of entrenchment

Subject matter:

Unless otherwise specified

Procedure:

Majority of votes of all members of each House (s 77(5))

2 *Further level**Subject matter:*

Supremacy of the Constitution, fundamental rights, Fijian and Rotuman interests, citizenship, judiciary, service commissions, public service, ombudsman, auditor-general, special and emergency powers, some provisions as to President, dissolution of Parliament and amendment

Procedure:

Two-thirds of votes of all members of each House (s 77(3), (4)).

3 *Third level**Subject matter:*

Transitional provisions (Part XV), power of BLV to nominate 24 members to Senate (s 55), this power of amendment or amendment of special limitation on Parliament (above, s 78(1))

Procedure:

Two-thirds of votes of all members of each House including three-quarters of nominees of BLV in Senate (s 77(7))

D *Review Requirements*1 *Electoral matters*

Constituency Boundaries Commission to review every 5 years (s 48). Presidential Commission to report on elections after the first election and prior to any amendment (s 77(6)).

2 *Constitution generally*

Review within 7 years and thereafter every 10 years - no procedure prescribed (s 161).

FIJI

CONSTITUTION: 1970 (compared)

A *Regular Law-Making Procedure*

Similar

B *Special Requirements**Subject matter:*

Similar in relation to Senate, and both Houses in financial matters

Alteration of Fijian Affairs Act or named Acts relating to native land, Rotuma or Banaba, Agricultural Landlord and Tenant Act

Alteration of above Acts which affects Fijian land, customs or customary rights

Procedure:

Similar

Three-quarters of votes of all members of each House (s 68)

In addition, the votes of 6 (three-quarters) of nominees to Senate of Great Council of Chiefs (s 68)

C *Constitutional Amendment*1 *Basic level of entrenchment**Subject matter:*

Unless otherwise specified

Procedure:

Two-thirds of each House (s 67)

2 *Further level**Subject matter:*

Similar, but excluding 1990 provisions

Procedure:

Three-quarters of each House (s 67)

- 3 *Third level*
Subject matter:
 Similar

Procedure:
 Three-quarters of each House including three-quarters of GLC nominees to Senate (s 67)

- D *Review Requirements*
 Similar

IV KIRIBATI

CONSTITUTION: 1979

A *Regular Law-Making Procedure*

Majority of votes of members present and voting on first and second reading but the second reading not to occur until the next meeting of the Maneaba unless Bill certified as urgent or majority of all members resolve (ss 68, 73)

B *Special Requirements*

Subject matter:
 Financial measures

Procedure:
 Recommendation of Cabinet (s 68)

C *Constitutional Amendment*

1 *Basic level of entrenchment*

Subject matter:
 Unless otherwise specified

Procedure:
 Bill to be deferred to the next meeting of the Maneaba and supported at its second reading by two-thirds of all members (s 69)

2 *Further level*

Subject matter:
 Fundamental rights (Ch II)

Procedure:
 Two-thirds of all persons entitled to vote at referendum of electors (s 69)

3 *Third level*

Subject matter:
 Banaban community, including election to Maneaba, rights to land, local government and legal redress

Procedure:
 Elected Banaban member may veto up to additional reading where two-thirds of all members of Maneaba may prevail (s 124)

D *Review Requirements*

1 *Electoral matters*

Electoral Commission review every 4 years (s 63)

2 *Constitution generally*

No provision

V MARSHALL ISLANDS

CONSTITUTION: 1979

A *Regular Law-Making Procedure*

Majority of members of Nitijela present and voting (art IV, s 15)

B Special Requirements*Subject matter:*

Bills affecting customary law, traditional practice, land tenure, etc
 Bills prescribing compensation or qualification of judges
 Change of electoral districts

Procedure:

Reconsideration by Council of Iroij. Nitijela may override (art III, s 3)
 Reports to be obtained and published before passing (art IV, ss 19, 20)
 Report to be obtained and published prior to passing (art IV, s 2)

C Constitutional Amendment**1 Basic level of entrenchment***Subject matter:*

Unless otherwise specified

Procedure:

Two-thirds of all members of Nitijela voting twice with 60 days between readings, followed by referendum in which majority of votes cast by electors supports measure (art XII, s 3), or by constitutional convention

2 Further level*Subject matter:*

Supremacy of the constitution, Bill of Rights, traditional rights, principles of apportionment of electors and certain institutions and offices, etc

Procedure:

Examination of proposals by a constitutional convention, resolutions of which are approved by two-thirds of votes cast in referendum of all voters. Bill setting up constitutional convention requires either two-thirds vote of Nitijela or referendum requiring Nitijela to set it up (petition by 25% of voters may require Nitijela to hold such referendum) (art XII, s 4)

D Review Requirements**1 Electoral matters**

Districts to be reviewed every 10 years (art IV, s 2)

2 Constitution generally

At least every 10 years, Nitijela to obtain report on advisability of amending the Constitution, or of calling (or holding a referendum on the question of calling) a constitutional convention, and to publish the report.

3 Developments

The 1990 constitutional convention approved amendments to the Constitution as to "boundaries of the archipelago", Traditional Rights Court, terms of judges and public service commission. Certain of these recommendations were approved by the wider electorate in 1991.

VI NAURU**CONSTITUTION: 1968****A Regular Law-Making Procedure**

Majority of members present and voting (art 46)

B Special Requirements

Subject matter:

Financial matters

Procedure:

Recommendation of Cabinet (art 59)

C Constitutional Amendment

1 Basic level of entrenchment

Subject matter:

Unless otherwise provided for

Procedure:

Approval by two-thirds of total membership of Parliament voting at 2 readings separated by 90 days (art 84)

2 Further level

Subject matter:

Supremacy, fundamental rights, presidential and executive powers, Parliament, finance, citizenship, phosphate matters and amendment (Fifth Schedule)

Procedure:

In addition to above, approval by two-thirds of votes cast in referendum of voters (art 84)

D Review Requirements

1 Electoral matters

No provision in Constitution.

2 Constitution generally

No provision.

The original constitutional convention amended the Constitution in several respects during the 5 months after Independence Day, pursuant to article 92.

VII NIUE

CONSTITUTION: 1974

A Regular Law-Making Procedure

Bills to be passed by majority of the votes of the members present in the Assembly, on 3 readings of each Bill (art 22).

B Special Requirements

Subject matter:

Financial measures

Measures affecting criminal law or personal status

Measures affecting the public service

Measures affecting Niuean land

Procedure:

Premier's consent (art 30)

Report of Chief Justice (art 31)

Report of Niue Public Service Commission (art 32)

Report of special commission of inquiry (art 33)

C Constitutional Amendment

1 Basic level of entrenchment

Subject matter:

Unless otherwise specified

Procedure:

Bill to receive two-thirds of votes of total membership of Assembly on second and third readings, separated by 13 weeks, followed by majority of votes cast in referendum of voters.

2. Further level

Subject matter:

The principle of self-government in free association with NZ (ss 2-9, Niue Constitution Act 1974 (NZ)); executive authority vested in the Queen in right of NZ (art 1); appointments to Niue public service (art 69) and amendment power (art 35)

Procedure:

As above, but referendum requiring two-thirds of the votes cast by electors

D Review Requirements

1 Electoral Matters

No provision in Constitution.

2 Constitution generally

No provision.

VIII PALAU

CONSTITUTION: 1981

A Regular Law-Making Procedure

Bills to be read in each House (Delegates and Senate) on 3 separate days and passed by majority of members present on each occasion, and assented to by President (two-thirds of members present in each House may override President's veto) (art IX, ss 14, 15)

B Special Requirements

Subject matter:

Delegation of major governmental powers by treaty, compact or other agreement to another nation

Bill to approve, or delegation of powers which authorize the use, testing, storage, etc of harmful substances such as nuclear, chemical, gas or biological weapons or waste

Procedure:

Two-thirds of all members of each House and majority of votes cast in referendum of voters (art II, s 3)

Three-quarters majority of votes cast in referendum of electors on the issue (art II, s 3 and art XIII, s 6)

C Constitutional Amendment

1 One basic level of entrenchment

Subject matter:

Generally

Procedure:

Amendment may proceed by constitutional convention (Houses may ask voters by referendum whether they wish a constitutional convention); by popular initiative on petition of 25% of voters; or by resolution of three-quarters of all members of each House. Finally, amendment requires referendum majority of votes cast overall by electors and in three-quarters of 4 states (art XIV)

D Review Requirements

1 Electoral matters

Re-apportionment Commission to determine representation for Senate every 8 years

2 *Constitution generally*

Every 15 years, voters are asked by referendum whether they wish a constitutional convention to be held (art XIV - unclear whether mandatory)

3 *Developments*

Because of failure to secure three-quarters vote on "nuclear-free" provision, electorate has not yet approved the Compact of Free Association.

IX PAPUA NEW GUINEA

CONSTITUTION: 1975

A Regular Law-Making Procedure

Majority of votes of members of Parliament present and voting (s 114)

B Special Requirements

Subject matter:

Financial measures

Procedure:

Initiated by executive (s 210)

C Constitutional Amendment

1 *Basic level of entrenchment*

Subject matter:

Provisions listed in s 17(2) including leadership code, underlying law, adoption of laws (schedules 2-5)

Procedure:

Proposed law published and circulated to members 1 month before introduction, and 2 opportunities for debate each followed by a vote, each opportunity during a different meeting of Parliament separated by 2 months (s 14), and proposal passed by absolute majority of total membership (s 17(2)), schedule 1.2)

2 *Further level*

Subject matter:

Unless otherwise prescribed

Procedure:

As above, followed by votes of two-thirds absolute majority of total membership (s 17(1))

3 *Third level*

Subject matter:

Provisions listed in s 17(3) including some fundamental rights, voting and elections, ombudsman, law-making, judicial system and emergency

Procedure:

As above, followed by votes of three-quarters absolute majority of total membership (s 17(3))

D Review Requirements

1 *Electoral matters*

Boundaries Commission every 10 years (s 125).

2 *Constitution generally*

An Interim Constitutional Commission was to begin consideration of alterations immediately (s 261), followed by a General Constitutional Commission to enquire into the working of the Constitution (s 260).

3 *Developments*

The GCC under its 1978 Act reported to Parliament in 1979, 1980 and 1983. Many of the proposed amendments, eg relating to "no confidence" motions (s 145) require two-thirds

absolute majority. Proposals for change were introduced into Parliament in July 1990 and some became law in 1991.

X SOLOMON ISLANDS

CONSTITUTION: 1978

A *Regular Law-Making Procedure*

Majority of votes of members present and voting (s 71)

B *Special Requirements*

Subject matter:

Financial measures

Procedure:

Recommendation of Cabinet (s 60)

C *Constitutional Amendment*

1 *Basic level of entrenchment*

Subject matter:

Unless otherwise specified

Procedure:

Four weeks notice of Bill followed by the votes of two-thirds of all members on 2 separate readings (s 61(3), (4))

2 *Further level*

Subject matter:

Provisions for human rights, legal system, ombudsman, Parliament, auditor-general, amendment, miscellaneous (ch XIV)

Procedure:

As above, but with the votes of three-quarters of all members of Parliament (s 61(2))

D *Review Requirements*

1 *Electoral matters*

Constituency Boundaries Commission to review and report every 10 years (s 54).

2 *Constitution generally*

No provision.

3 *Developments*

Review was undertaken by committee appointed by Parliament (1987), which reported in January 1988. In August 1990, Parliament appointed a select committee to examine methods of establishing a new constitution.

XI TONGA

CONSTITUTION: 1875

(references here are to the 1967 edition)

A *Regular Law-Making Procedure*

Three readings each passed by a majority of votes and assented to by the King (cls 56, 68)

B *Special Requirements*

Subject matter:

Laws relating to the King, royal family, titles and inheritances of nobles

Procedure:

Majority of votes by nobles' representatives only, and assent of the King (cl 67)

C Constitutional Amendment

1 Basic level of entrenchment

Subject matter:

Unless otherwise specified

Procedure:

As for regular law-making, subject to the unanimous approval of the Privy Council and Cabinet (cl 79)

2 Further level

Subject matter:

Provisions for the law of liberty, succession to the throne, titles and hereditary estates of nobles (cl 79)

Procedure:

No amendment permitted (cl 79) but in practice this exclusion from the power of amendment has not been enforced.

D Review Requirements

1 Electoral matters

No provision in Constitution.

2 Constitution generally

No provision.

3 Developments

The Constitution is frequently amended by the legislature with the assent of the monarch.

XII TUVALU

CONSTITUTION: 1986

A Regular Law-Making Procedure

The majority of members present and voting on 2 readings, the second to be at the following session, and the clerk to circulate bills to local governments for consideration and comment between sessions (ss 110, 111)

B Special Requirements

Subject matter:

Financial measures

Procedure:

Recommendation of a minister (ss 111, 166)

C Constitutional Amendment

1 One basic level of entrenchment

Subject matter:

Generally, except for special provisions

Procedure:

As for regular law-making, supported at its final reading by votes of two-thirds of total membership of Parliament (s 7)

2 Special provisions

Subject matter:

Alteration of boundaries of Tuvalu for purpose of implementing international agreement

Amendment to give effect to United Kingdom constitutional change

Procedure:

As for regular law-making (two-thirds majority dispensed with) (s 2(3))

Order of Cabinet, followed by Act of Parliament (made without two-thirds majority before expiry of second session after Order is made) (s 8)

D Review Requirements

1 Electoral matters

No provision in Constitution.

2 *Constitution generally*
No provision.

In relation to amendment and review there is no significant difference in approach between the 1986 Constitution and the Independence Constitution of 1978.

XIII VANUATU

CONSTITUTION: 1980

A *Regular Law-Making Procedure*

A simple majority of the members voting in Parliament (art 19)

B *Special Requirements*

Subject matter:

Financial measures

Matters relating to custom and tradition, culture and languages

Procedure:

Consent of government (art 23)

Consideration by National Council of Chiefs, advisory only (art 28)

C *Constitutional Amendment*

1 *Basic level of entrenchment*

Subject matter:

Unless otherwise specified

Procedure:

Votes of two-thirds of all members of Parliament at a special sitting at which three-quarters of the total membership is present. If there is no such quorum at the first sitting, the bill may be passed by two-thirds majority of all members at a sitting a week later even if only two-thirds of the total membership is present (art 83)

2 *Further level*

Subject matter:

Provisions regarding the status of Bislama, English and French, the electoral system or the parliamentary system

Procedure:

As above, but subsequently supported in a national referendum (art 84)

D *Review Requirements*

1 *Electoral matters*

No provision in Constitution.

2 *Constitution generally*

No provision.

3 *Developments*

In June 1990, Parliament voted to establish a constitutional review committee comprising both parliamentarians and members of the community to review the Constitution and recommend changes in a report to Parliament by the end of 1991. Its work, which began in October 1990, has been somewhat overshadowed by national political leadership changes in 1991.

XIV WESTERN SAMOA

CONSTITUTION: 1962

A Regular Law-Making Procedure

Majority of votes of members of Parliament present (art 58)

*B Special Requirements**Subject matter:*

Financial measures

Procedure:

Consent of Head of State on advice of Cabinet (art 59)

*C Constitutional Amendment**1 Basic level of entrenchment**Subject matter:*

Unless otherwise specified

Procedure:

On third reading, 90 days having elapsed between second and third readings, bill carried by two-thirds of total membership of Parliament (including vacancies) (art 109)

*2 Further level**Subject matter:*

Prohibition on alienation of customary land other than by lease or licence according to statute (art 102) and amendment provision (art 109)

Procedure:

As above, followed by a referendum of electors on the territorial constituency rolls (who are chiefs) at which two-thirds of the votes support the amendment (art 109)

*D Review Requirements**1 Electoral matters*

Electoral Commissioner to review individual voters roll every 6 years (art 44 and second schedule).

2 Constitution generally

No provision.

3 Developments

In October 1990, a referendum of adult citizens voted by a small margin in favour of adult suffrage to replace Matai (chief) suffrage on territorial constituency rolls (but retaining the provision that only Matai are eligible for candidature).

Citizens defeated a proposal for a second "traditional" house of chiefs in Parliament, a proposal which would have required constitutional amendment.

Parliament then gave effect to the referendum (in the Electoral Amendment Act 1990, No 20), but was not obliged to do so and, furthermore, could have introduced the changes without consulting the people. No amendment to the Constitution was required (art 44).

