

# EXPLANATORY NOTE FOR CABINET ON THE DRAFT CONSTITUTION

## 1. INTRODUCTION

- 1.1** The draft Constitution comprises 270 sections, and is divided into 26 Chapters and 7 Schedules. It establishes a federal system of government for Solomon Islands. But it is a federal system that is unique to Solomon Islands, reflecting the nation's characteristics and aspirations not from any foreign import as to how Solomon Islands should be structured as a nation.
- 1.2** Communities and people throughout the country desire regional (provincial) autonomy. They have done so at various times and intensities both pre and post Independence but more recently noted as a term of the Townsville Peace Agreement, as a resolution of the meeting of Premiers at Buala in 2000, as a recommendation of the State Taskforce Report 2001 and through community consultations in 2003.
- 1.3** It needs to be understood, if not already clear that the type of autonomy Solomon Islands desire cannot be achieved under a unitary system of government. The concept of one supreme law making body, the National Parliament is perceived inappropriate given the diverse nature of the country, both geographically and ethnically, and given the varied political aspirations of the provinces. Whatever residual value the unitary model might possess it is largely perceived as a discredited system of government.
- 1.4** There are a number of important principles that underpin the draft Constitution that shape how that autonomy shall be portrayed and exercised. It is the realisation of those principles, not the concept of federalism per se, that form the constitutional foundation of the new Constitution. The main principles are as follows:
- 1.5 Affirmation and protection of village communities and customs**

An important characteristic of the draft Constitution is realising the fact that Solomon Islands is a nation made up of independent communities. They are distinctive, interdependent, interrelated and durable. Those communities will dictate and shape the constitutional destiny of Solomon Islands for which a nation constitution must acknowledge and provide for their fullest expression.

Those communities whether they are found within clan or tribal groupings or between clan and tribes or between islands have coexisted and considerable effort is made at the local level to maintain the union of those communities and to promote a peaceful coexistence.

The draft Constitution affirms the existence of those communities, it validates their institutions as well as the worthy customs and practices that regulate their affairs. They exist as the constitutional foundation of Solomon Islands.

Those communities ultimately will determine the form of state government that will best serve their local interests and ultimately it is the role of the federal government to serve their collective interests and well being.

It is the maintenance of the Union of Solomon Islands communities through their respective governments as a nation state that the foundation provisions of the draft constitution pays particular attention.

### **1.6 Political decisions and action are to be carried out at the most appropriate level of society**

This principle is otherwise known as subsidiarity. It is a dynamic concept that is designed to avoid unnecessary centralisation of government, even within a federal system. The principle allows federal or national power to expand only when circumstances require it and to be restricted or discontinued where it is no longer justified or appropriate.

It allows action and decisions to be taken at the appropriate level of government and then as closely as possible to affected communities and people.

This principle is only relevant when the federal government exercises a concurrent or shared power with state governments. If the action or decision of a concurrent power can be more appropriately handled by state government, then the federal government must relinquish the exercise of that power.

Similarly, a state government must relinquish decision making power if the decision should more appropriately be handled by affected village communities or people.

### **1.7 Realisation to determine own State governance institutions**

The provinces will be free to determine and form, within the parameters of the Constitution, their own governments. The principle of republicanism will therefore become the foundation of state constitutions.

### **1.8 Protection of group and fundamental human rights**

Every human being on Earth is endowed with inalienable fundamental rights. It is same for customary rights: one is also endowed with fundamental rights. Neither of those rights owe their existence to a Constitution or other law. They are innate, in other words they both owe their existence from birth.

The draft Constitution affirms the recognition of customary rights (group rights) as those rights are seen as imperative to be accorded supreme law status. They will frame all future government conduct.

The same is accorded to fundamental human rights. But these rights protect the respect and dignity of an individual no matter what the person's nationality, status, religion or cultural foundation.

It is the mutual co-existence of these fundamental rights that establishes the foundation for the draft Constitution. Having these rights enshrined as supreme law in a constitution defines the nation as a democracy, as it will its people against abuse of democratic power.

The enshrinement of these fundamental rights within the Constitution is to reflect their true status and necessary to protect them against manipulation or abuse by any future government.

## **2. Preamble**

- 2.1** The preamble is an introductory statement to the Constitution that sets out the core philosophy and beliefs of the people upon which the Constitution is based. The preamble is very important for it puts in perspective the reasoning for the Constitution and for the proper understanding of its provisions.

## **3. CHAPTER ONE – FOUNDATION PROVISIONS**

- 3.1** This Chapter sets out the founding provisions that create and define Solomon Islands as a nation. It sets out the rules as to how the Constitution should be interpreted and provides for its protection.

The principal provisions are –

### **3.2 The creation of a Republic**

Solomon Islands will be become a Republic. What is meant by the word “republic” is that firstly, the sovereignty of the nation and the mandate for the Constitution resides with the people of Solomon Islands. Secondly, the term signifies that the nation is not ruled by a Monarch but by a popular President whose existence and powers derive from the Constitution.

The Republic has as its foundation the following core principles;

- (a) the Union of Solomon Islands communities
- (b) the worthy custom and traditions of Solomon Islands
- (c) the peaceful coexistence of Solomon Islands communities and people
- (d) the need for government to operate as locally and autonomously as circumstances practically allow
- (e) democracy and the rule of law.

Solomon Islands will continue to be a democratic nation. The Constitution provides for democracy and establishes how best democracy within the Solomon Islands context should be exercised. It also protects the people from abuse of democratic power.

The other foundation provisions reflect the political society the people aspire to create as a Republic. It affirms the essential characteristics of Solomon Islands society, which the people can relate and how government should operate within it. Therefore it is important that decisions whenever practicable should be made as locally as circumstances allow.

### **3.3 Promotion of peace and security**

This provision outlaws the creation of a military force including paramilitary forces and militia outside of a law designed to preserve the peace and security of the nation.

### **3.4 Interpretation of the Constitution**

A constitution is a living document. It will be interpreted and amended in time as the circumstances of Solomon Islands change.

It is noted in the preamble that Solomon Islands will evolve in time to reflect external and local circumstances. A constitution must be flexible to reflect change and if that is not possible through interpretation then by amendment. A constitution is able to set guidelines to assist a courts interpretation of it.

It is important for a constitution not to be subject to rigid interpretation or for legal technicalities to distort or defeat the purpose of the Constitution.

Importantly, the Constitution should promote law that is relevant to Solomon Islands. This entails the creation of policy that forms law as well as the way courts interpret the constitution. Both government and the courts should exercise their creative powers in order to give effect to the Constitution and to create law that is relevant to Solomon Islanders.

Furthermore, the Constitution must be interpreted with regard to all Solomon Islanders and not to be interpreted to favour one group over another.

### **3.5 Defence of the Constitution**

If anyone by violent or unlawful means attempts to overthrow the Constitution or promotes hostility between communities or organises violence against persons causing fear to the general public acts in violation of the Constitution. A law will need to prescribe a suitable penalty but the Constitution establishes that a person convicted of an offence under this provision will no longer be eligible to hold public office.

### **3.6 Laws of Solomon Islands**

This provision is substantially the same as under the present Constitution except the draft removes uncertainty between the application of custom and common law. Common law briefly stated is court made law and generally has universal application.

The draft Constitution makes it clear that custom will override common law unless a court decides that in the interests of substantive fairness and justice the common law should prevail.

#### **4. CHAPTER TWO – SOCIAL CHARTER**

**4.1** This Chapter defines the type of society the people of Solomon Islands expect the Republic to promote and uphold. It is in effect a social contract in which the Republic owes a duty to the people to promote and maintain the conditions of a society they desire and the people in turn reciprocate by conducting themselves according to standards that should not undermine the Republic's duties.

**4.2** It is stated that these principles are non justiciable. That means the Republic or a person cannot be tried in a court of law if either is seen to breach their respective obligations. That does not undermine the importance of a Charter. The principles are important indicators as to whether the Republic is meeting its expected obligations to its citizens and to do so is of the highest importance. All future policies and laws should be measured against the principles in the Charter and over time there should be a progressive realisation of their implementation.

**4.3** The President is the guardian of the Charter. Each year he or she will report to Parliament on measures taken or otherwise towards the realisation of the Republic's duties.

#### **5. CHAPTER THREE- CUSTOMARY LAND RESOURCES AND PROPERTY RIGHTS**

**5.1** This Chapter is new. It elevates the importance the Constitution attaches to customary rights. By that customary land and resource rights are made certain and given protection. Moreover, the rights establish a benchmark by which all future laws must conform with. It is expected that the Republic will develop law that is uniform and consistent in the observance and application and treatment of customary land, resources and property.

The principal rights are –

##### **5.2 General protection of customary rights**

This ensures that customary rights can only be extinguished or overridden by free and informed consent or by law that provides for compensation and fair process.

### **5.3 Right of ownership and control of customary and resources**

This provision preserves the right for indigenous Solomon Islanders to own control, use and develop their land and all resources such as forests, waters, minerals and the fishery which they own.

There is also an obligation on the Republic to protect customary owners from unlawful intrusion of their rights.

### **5.4 Right to control development of customary land and resources**

Basically, owners have the right to decide their own priorities for the development of their resources.

Exploitative activities concerning customary land resources, such as logging and mining, must be accompanied by an impact assessment such activities might have on the environment and affected communities.

Customary owners have the right to receive a fair and just return from any financial or other benefits derived from the exploitation or development of their land or resources.

The exploitation or development of customary land or resources must result in some tangible social benefit for the owners and that must be made certain prior to any development taking place.

### **5.5 Right to restitution**

This right ensures to customary owners the right by due legal process to the restitution of lands or resources unjustly taken or confiscated. If restitution is not possible then they have the right to fair compensation.

### **5.6 Right to the conservation and protection of customary land and resources**

Customary owners have a right to the conservation, protection and restoration of their lands and resources.

### **5.7 Right of ownership, control and protection of intellectual property**

This protects the right of Indigenous Solomon Islanders to own and control their other properties such as their intellectual knowledge (medicines, stories, dances etc). This knowledge should be protected from any form of acquisition in which the ownership is alienated.

### **5.8 Preservation of custom laws and traditions**

The Constitution retains the legal effect of all customs, traditions, land tenure systems and institutions for the regulation of clan or tribal village communities until such changes are made by custom or other lawful means.

The protection of custom laws and practices is also a right affirmed under the Fundamental Rights and Freedoms in Chapter Four.

### **5.9 Right against enforced removal from customary land**

Owners are protected against the enforced removal from their customary lands unless by due process of law subject to compensation or appropriate relocation.

### **5.10 Acquisition of customary land by government**

A government can only acquire a fixed term interest over customary land or an interest of a similar nature not being a freehold interest. Any acquisition must be according to a legal process at the government's expense.

### **5.11 Public works**

Customary land owners in consideration of the protections given under the Constitution owe an obligation in good faith to the Republic to make available their lands for the purposes of public works.

## **6. CHAPTER FOUR – FUNDAMENTAL RIGHTS AND FREEDOMS**

**6.1** This Chapter is divided into 7 Parts and incorporates group rights and the fundamental human rights and freedoms. The Constitution affirms and protects these rights. They are affirmed because the rights and freedoms are fundamental. They do not take their existence from the Constitution, only their recognition and protection. The rights under this Chapter are grouped under the following distinct headings –

- Civil and Political Rights.
- Economic, Social and Cultural Rights
- Environmental and Property Rights
- Rights of women and other persons

**6.2** The recognition of the fundamental rights and freedoms are essential in a democratic society for they protect the citizen against abuse of democratic power. That protection is more appropriately enshrined in a constitution as supreme law. Each key right or freedom is noted generally and covers most possible exceptions. Legislation may provide for greater particularity of them.

**6.3** This Chapter affirms and protects another group of rights. They are also fundamental as are human rights. They relate to the right of clan and tribal village communities to develop their laws and customary practices to –

- (a) determine the responsibilities of individuals within their communities

- (b) promote, develop and maintain their institutional structures and their distinctive customs, traditions, procedures and practices; and
- (c) determine the methods customarily practised by clan or tribal communities for dealing with offences or breaches of custom.

Where appropriate, fundamental rights and freedoms are expanded to accommodate customary rights where they are consistent with the fundamental right or noted as an allowable limitation to the right or freedom in question. The following illustrate the point –

#### **6.4 Freedom of movement**

It is a fundamental right for a person to have freedom of movement.

In Solomon Islands context, that right, amongst other criteria, may be limited by the imposition of restrictions on a person's right of occupation. For instance, a right of occupation may terminate or not be granted if in violation of local custom.

#### **6.5 Health care**

Every person has the right of fair access to reasonable health care.

In addition to that right, persons have the right to their custom medicines and health practices, including the right to the protection of vital medicinal plants and mineral.

#### **6.6 Education**

Every person has the right to fair access to education.

In addition to that, clan and tribal communities have the dignity of their cultures, traditions and stories appropriately reflected in all forms of education and public information.

They also will have the right to establish and control their educational systems providing education in a manner appropriate to their cultural methods of teaching and learning.

#### **6.7 Enforcement**

The High Court is competent to hear rights complaints. That is provided for in Chapter 18. The draft Constitution provides for in Chapter 22 the establishment of a Human Rights Commission. The Commission will have, amongst administrative functions, a quasi judicial function to investigate and adjudicate rights disputes and matters. The formalities for hearing rights grievances are to be minimal. That is to ensure that the institutions remain accessible to the general public.

## **6.8 Limitation**

Fundamental rights and freedoms may be limited or further defined by legislation. In the case of civil emergencies certain rights may be suspended for the duration of the emergency. It is also competent for Parliament to legislate exceptions to certain rights, for instance the right against discrimination. The draft Constitution does permit, as an exception to an unlawful discrimination, the undertaking of special measures to relieve an established inequality.

## **6.9 Progressive realisation of rights**

It is an obligation of the Republic to progressively realise the Economic, Social and Cultural Rights in Part II. To do so is an international obligation under the International Covenant on Economic, Social and Cultural Rights. That Covenant has been ratified, along with other rights Conventions. It means that government must take reasonable steps to implement the rights and freedoms under this category within available resources.

## **7 CHAPTER FIVE – CITIZENSHIP**

**7.1** The draft Constitution simplifies the current constitutional provisions. The concept of “British protected person” is removed. One citizenship at the commencement of the new Constitution is protected. Citizenship can only be acquired either at birth if one parent is a citizen or by naturalisation. If the resident, amongst other criteria, has resided in Solomon Islands for 5 years may be eligible to be granted citizenship.

**7.2** The draft Constitution introduces the concept of dual citizenship. That means a citizen of Solomon Islands may acquire or retain citizenship of another country.

A law will be necessary to control the right of dual citizenship. For instance, a law may restrict the right of dual citizens holding public office. A law may prescribe the requirements of dual citizenship to ensure the right is not abused.

## **8 CHAPTER SIX – GOVERNMENT OF SOLOMON ISLANDS**

**8.1** This Chapter is divided into 3 Parts and introduces the government of the Republic. Since the concept of autonomous government will be established, it is necessary for this Chapter to outline the principles of co-operative government as well as the expected duties of a politician.

**8.2** There are essentially three types of government -

- Federal government
- State government
- Honiara city

Shared powers and finances require that inter-governmental cooperation between the various levels of autonomous government be absolutely necessary. It is not desirable to allow inter government relations develop in an ad hoc way. The principles of co-operative government are designed to promote the Union of the Republic, to preserve the respect of other government entities, not to encroach upon their jurisdiction and conduct with one another in mutual trust and good faith.

The duties of members of government in relation to their electorate are prescribed as are the duties of federal members in relation to the affairs of state governments.

## **9 CHAPTER SEVEN – THE PRESIDENT**

- 9.1** The President is the Head of State and the symbol of national unity of Solomon Islands. He or she shall be an Indigenous Solomon Islander. The Office is for 5 years and where practicable the Office of President must be held on a rotational basis by a person from each State.

The President is the Commander in Chief of all Solomon Islands uniformed forces. Operational command lies with the appointed officers.

- 9.2** The election for President is conducted by Parliament in the same manner the Prime Minister is elected except the Chief Justice presides.
- 9.2** The draft Constitution is very precise in setting out the Presidents powers. This is to ensure that no ambiguity arises either in the interpretation or exercise of power. The President must act on the advice of the Prime Minister in carrying out the powers and functions of Office. The exception is when personal discretion is specifically provided for in the Constitution, in which event the President acts according to his or her best judgement under law.
- 9.3** One significant power entrusted on the President is to ensure the constitutionality of legislation before he or she gives assent to it. The President has power to refer legislation to the High Court for an advisory opinion on a bills constitutionality or referral back to Parliament if an issue of constitutionality arises. The procedure for that is contained in Chapter 8.

## **10 CHAPTER EIGHT – THE FEDERAL PARLIAMENT**

- 10.1** This Chapter is divided into 6 Parts. The structure of the Federal Parliament remains essentially unchanged from that of the current Parliament. Parliament continues to be a single legislative chamber. There are two bodies, the Congress of States and the National Finance Council which Parliament owes certain obligations, but legislative power resides with Parliament.

The principal changes arise from adaptation of Parliament to a federal system and in regard to its composition and business.

## **10.2 Powers of Parliament**

Parliament has only such powers as the Constitution provides. They are in two categories –

- Exclusive powers
- Concurrent powers

The powers are set out in Schedule 5 to the draft Constitution. The concurrent powers are powers that Parliament share with the States. Both Parliament and the States do not compete with each other as to who should exercise a concurrent power. There is a rule and it is set out in sections 85 and 86.

The general rule is that if a concurrent power concerns a matter that sufficiently can be achieved by State government, then Parliament should relinquish that power to the State government.

The guidelines for that rule are set out in section 86. Essentially, Parliament only legislates or takes action in respect of a concurrent power if the matter has general application across the country.

## **10.3 Composition of Parliament**

Parliament shall have no fewer than 30 and no more than 50 members. In addition to elected members, Parliament may arrange for the appointment of persons to Parliament. Appointees do not have voting rights but may otherwise engage fully in Parliamentary business. They are afforded the same entitlements as elected members. Standing Orders of Parliament must provide for the process of appointment. The draft Constitution requires that appointees must broadly reflect Solomon Islands ethnic communities and gender composition.

The draft Constitution provides for affirmative action to secure women fair representation in Parliament. The Constitution leaves it up to Parliament to consider how best that might be achieved, but is required to enact a law to that effect within 3 years of the coming into effect of a new Constitution.

## **10.4 Recall**

The draft Constitution empowers an electorate to recall their elective representative. Parliament will need to prescribe a process as to how this should be done.

## **10.5 Assent to bills**

The President has power to refuse consent if the constitutionality of the bill is in question.

## **10.6 Parliamentary business**

The term of Parliament continues to be 4 years. The President on the advice of the Prime Minister shall determine Parliamentary sessions but no longer than 4 months must elapse between the end of one session and the next.

## **11 CHAPTER NINE – THE EXECUTIVE GOVERNMENT**

**11.1** This Chapter is divided into 4 Parts. The Office Prime Minister under that name continues. The Prime Minister is a relatively powerful position under the current Constitution in the absence of a well defined government and political parties. A convention of Solomon Islands Government is for the Prime Minister to continually lobby support outside the Executive Government and enjoys support so long as he or she has the confidence of a majority of members of Parliament. There is emerging if not already so, a practice to engage all members, as if a General Assembly, in the business of Government thereby eroding the true purpose of a Parliamentary Opposition, at least in the Westminster fashion.

It is necessary to ensure that appropriate checks are in place to protect against abuse of Executive power, to provide for stability and more efficient and accountable government. The principal provisions are –

### **11.2 Dismissal of Prime Minister**

The Prime Minister must vacate Office if parliament by vote of an absolute majority (a majority plus one) passes a motion of no confidence. A period of 12 months must lapse since a previous motion and notice of the motion must be before the Speaker at least 7 week days before it is introduced.

Should Parliament fail to elect a Prime Minister within 30 days, the President shall dissolve Parliament.

### **11.3 Appointment of Ministers and Cabinet**

The number of Ministers shall be determined by the Prime Minister. The draft Constitution makes provision for Cabinet Committees, appointed by Cabinet, as a forum for detailed consideration of issues before reference to Cabinet. The Cabinet Committee should relieve the burden of the present Cabinet to one principally of executive decision making. The Cabinet Committee can draw on whatever expertise Cabinet considers appropriate to assist it taking into account practical and political considerations.

The draft Constitution defines the matters that Cabinet must engage and make decision. This constitutes a check in order to avoid a single Minister or the Prime Minister or group of Ministers usurping the executive role of Cabinet and the principle of collective responsibility.

### **11.4 Conduct of Cabinet Members**

The draft Constitution defines the duties of Ministers in Cabinet which in addition to the established duties of collective responsibility and the avoidance of conflict include –

- (a) the protection of the Republic's interest in the departments within a Ministers portfolio
- (b) deciding both the direction and the priorities of his or her portfolio
- (c) responsibility to Parliament for ensuring that departments carry out their functions properly and efficiently
- (d) preserve the political neutrality of the public service
- (e) responsibility of the Republics interest in Government owned enterprises or companies

## **12 CHAPTER TEN – FEDERAL REVENUE ARRANGEMENTS**

**12.1** This Chapter is divided into 4 Parts. The revenue arrangements essentially remain unchanged except for necessary adjustments to accommodate a federal system. The principal changes are –

### **12.2 Taxing powers**

The Federal Government may impose any form of taxation other than State taxes. The Federal Parliament has however, exclusive right to impose taxes on income and profits, value added tax, general sales tax and custom duties. The Government as presently the case must only impose a tax, raise a loan or spend money pursuant to an Act of Parliament.

The Government has power to make arrangements with a State's to collect and account for any State tax and likewise a State may by arrangement collect any federal tax.

### **12.3 Appropriations**

The Public Accounts Committee, a Parliamentary Committee, must under the draft Constitution be given reasonable time to study estimates of revenue as well as any proposed Supplementary Appropriation Bill before such estimates or Bill is presented to Parliament.

### **12.4 Central bank**

The current position of the Central Bank will continue as under its empowering Act subject to the provisions of the draft Constitution. The primary focus of the Bank is to protect the value of Solomon Islands currency in the interest of a balanced and sustainable economic growth. In pursuit of that, the Bank shall perform its functions independently and without fear, favour or prejudice but there must be regular consultation between the Bank and the Government.

## **13 CHAPTER ELEVEN – CONGRESS OF STATES**

- 13.1** The Congress of States provides a link between the activities of State and the federal sphere of government. The chairperson of Congress is the President. Its members are the Head of each State and appointees made by the President on the advice of the heads of state. As far as practicable, women should equally make up the total number of appointees and members should broadly represent the ethnic diversity of Solomon Islands.
- 13.2** The principal function of Congress is to advise the Federal Government on matters of State interests but is generally responsible in providing a communication link with the federal sphere of government. Congress has no legislative responsibility.

#### **14 CHAPTER TWELVE – STATE GOVERNMENT**

- 14.1** This Chapter is divided into 5 Parts. Provincial regions will be free, subject to certain directions within the draft Constitution, to promulgate their own state constitutions as they wish. The state constitution is, subject to this draft Constitution, the supreme law of the State.
- 14.2** This draft Constitution protects the right of public participation in the state constitution making process. Existing Provincial Governments are responsible to oversee the process and to ensure that the requirements of the Constitution are met.
- 14.3** In putting a state constitution together, the community is required -
- (a) to ensure that the constitution is reflective of the characteristics and aspirations of State communities and must -
  - (b) promote the realisation of women taking part in the structure and administration of State Government; and
  - (c) avoid the centralisation of State Government power and to make governance relevant to state citizens by -
    - (i) ensuring that political decisions and actions are carried out at the closest possible level to the people affected;
    - (ii) sanctioning the right for clan and tribal village communities to exercise self determination over their affairs and way of life;
    - (iii) ensuring the coordination of State services and resources between State Government and village communities and for those services and resources to be delivered throughout the State in a reliable, fair and equitable manner; and
    - (iv) ensuring the timely distribution of income and other revenues held by the State to those beneficially entitled to such income or revenues.

- 14.4** The process of adoption of a state constitution requires first the Speaker of the provincial Assembly satisfying him or her self that the text is in accordance with the requirements of the Constitution and if adopted by at least three quarters of the members of the Provincial Assembly, the constitution is submitted to the Constitutional Court for certification.
- 14.5** The state boundaries are defined in Schedule 4 to draft Constitution. The jurisdiction of each State will extend 12 nautical miles from the low water line of each island. The area beyond the 12 mile mark will come under federal jurisdiction but the Federal Government may grant a State full or partial jurisdiction beyond the 12 mile mark.
- 14.6** Two or more States may amalgamate to create a new State or a State may partition to create a new State. The total number of States shall not exceed 12.
- 14.7** Existing court institutions will continue until a federal or state law amends or replaces them.

The draft Constitution recognises the right of clan or tribal village communities to administer their own systems of justice according to their own distinctive juridical customs and traditions. Many villages are already exercising some form of control over their communities. The draft Constitution acknowledges that practice and provides protection to ensure such practices conform to recognised standards.

## **15. CHAPTER THIRTEEN – STATE REVENUE ARRANGEMENTS**

- 15.1** A State Government may impose any form of taxation, levies and duties other than federal taxes. Similar to the Federal Government, a State Government must pass a law to impose a tax, raise a loan or spend public money.
- 15.2** The power of a State Government to impose a tax shall not be exercised in a way that it prejudices the economic policies outlined in the National Development Plan, economic activities across State boundaries, or the mobility of goods, services, capital or labour.

A State is not able to raise a loan, receive any money as a loan or give a guarantee except with the prior approval of the Federal Government.

## **16 CHAPTER FOURTEEN – STATE POWERS**

- 16.1** As with the federal sphere of government, a State Governments power is derived form the constitution. A State Government may exercise two categories of power –
- Exclusive power
  - Concurrent power.

Both categories of power are set out in Schedule 5 to the Constitution. Concurrent powers are those shared with the Federal Government. In the exercise of both powers, the State Government should not take action or make decision if the matter in question can be sufficiently achieved by any affected or relevant State community.

- 16.2** A legitimate exercise of a State power may be rendered unlawful if it infringes the requirement of a federal law or impedes or prejudices the jurisdiction of the Federal Government or any State Government.

Where a State law concerning a concurrent power conflicts with a federal law, the federal law shall prevail until otherwise determined.

## **17 CHAPTER FIFTEEN – FINANCIAL SHARING PROVISIONS**

- 17.1** This Chapter is divided into 2 Parts. The first Part sets out the sharing formula. The second Part establishes the National Financial Council. State Governments will not depend on grants from the federal sphere of government. The federal revenues are to be shared according to the formulae set out in this Chapter. There are 2 categories of revenue to be shared –

- Federal revenues
- Resource revenues

The Central Bank will be responsible for the revenue distribution to States. The role of the Bank is set out in section 171 of the draft Constitution.

### **17.2 Federal Revenue Formula**

Federal revenue (federal government income) is to be shared 50 – 50 between Federal and State governments. The formula between States is as follows:

20% - to be distributed on an equal basis between States

50% - to be distributed on the basis of population

30% - to be distributed on the basis of land area of each State.

### **17.3 Resource Revenue Formula**

States shall receive 60% of export duty income from logs or forest produce harvested in the State.

60% of all fishery and marine revenues paid for fishing rights to be distributed between the States based on the respective sea area of each State.

Where the Federal Government derives revenue from mining operations in a particular State, the share of that State shall be 60% of those revenues.

#### **17.4 Review of formula**

The ratio and formula for both categories may be changed or reviewed after the first 5 years of the draft Constitution coming into effect.

#### **17.5 Equalisation payments**

The draft Constitution provides for the making of equalisation payments if a State is unable to maintain services or to avoid monetary disparities between States.

The equalisation payments enable less prosperous States to provide their residents with public services that are reasonably comparable to those in other States, at reasonably comparable levels of taxation.

The equalisation payment would be calculated according to a formula set out in federal legislation. States with revenue raising ability below a threshold or standard would receive equalisation payments from the federal government to bring their revenues up to standard.

#### **17.6 Guadalcanal grievances**

The draft Constitution acknowledges the grievance of the Guadalcanal people regarding the settlement of Honiara and adjacent sea. The State of Guadalcanal will be entitled to a share of revenues from Honiara City according to an arrangement to be worked out between the Federal Government, Honiara City and the Government of Guadalcanal.

#### **17.7 National Finance Council**

There is established a National Finance Council. Generally, the role of the National Finance Council is to attend to matters regarding the processes of revenue sharing and the general operation and management of the financial arrangements between the federal and state spheres of government.

The Federal Government will be required to consult with the Council in regard to particular matters, specified in section 175 of the draft Constitution.

### **18 CHAPTER SIXTEEN – HONIARA CITY**

- 18.1** Honiara City will continue to operate under its empowering Act and will remain under the jurisdiction of the Federal Government until such time the empowering Act is amended or repealed.
- 18.2** This Chapter sets out the objectives of Honiara City, the administrative principles of government and governing principles. The Competent Authority of Honiara City, as will any future legislation regarding the government of Honiara, will need to conform to the requirements of the draft Constitution.

## **19 CHAPTER SEVENTEEN – ENVIRONMENT AND DEVELOPMENT**

- 19.1** This Chapter is divided into 3 Parts. Special provision is made to ensure that environmental protections are adhered to whenever any person is involved with the administration and the exploitation of land or natural resources and the sea. Law is required in order to give effect to this.
- 19.2** The draft Constitution makes it a requirement for the federal sphere of government and State government to prepare development plans. The national plan is the National Development Plan and the compilation of that plan must have regard to State plans.
- 19.3** Special provision is made regarding economic and social reforms and development. The basis of this is to ensure that the impact of externalities, such as conditions attached to development loans, economic reforms and the like are known, particularly environmental impacts and the impact on village communities are known in advance before they are accepted. This also applies to free trade arrangements. The impact of accession to free trade arrangements must be ascertained, such as economic, social, cultural, environmental, democratic and constitutional implications of free trade commitments on the Constitution.

## **20 CHAPTER EIGHTEEN – THE LEGAL SYSTEM**

- 20.1** This Chapter is divided into 4 Parts. The current judicial system remains intact except that a Constitutional Court is created. This is a superior court and has exclusive power to hear certain constitutional matters and to make final decisions on all constitutional matters.
- 20.2** **Constitutional court**

Only the Constitutional Court can hear disputes between organs of government relating to the constitutional status and powers of those bodies, to hear issues involving the constitutionality of legislation or amendments to the

constitution or decide whether the President or any State Head has failed to fulfil a constitutional obligation.

All other constitutional matters can be heard by the High court.

The Constitutional Court is also the body charged to certify State Constitutions and amendments.

- 20.3** The draft Constitution protects the independence of the judiciary and places an obligation on government to take measures to assist and protect the courts independence, impartiality, accessibility and effectiveness. Governments must also take measures to ensure the courts are adequately financed and resourced.

## **21 CHAPTER NINETEEN – PREROGATIVE OF MERCY**

- 21.1** The powers of mercy as contained in the present Constitution remain except that adjustments are made to give appropriate effect to a federal system of government. In this instance, the Head of each State, according to the State Constitution, may exercise powers similar to those vested in the President in regard to State offenders.

- 21.2** The draft Constitution does impose a limitation of the exercise of power of pardon in regard to certain offences. They relate to offences against the Constitution and in regard to a serious offence under the Leadership Code.

## **22 CHAPTER TWENTY – REPRESENTATION OF THE PEOPLE**

- 22.1** This Chapter is divided into 2 Parts. The first deals with Electoral and Constituency Arrangements. The second deals with Political Parties. The Part concerning electoral arrangements remains substantially the same as under the current Constitution. The arrangements only apply to the election of members to the Federal Parliament.

- 22.2** With regard to political parties, the draft Constitution affirms the right of any person to form a political party. All political parties will be required to be registered and must subscribe to certain fundamental criteria before a party qualifies to be registered. A political party is accountable to the Auditor – General in regard to its finances and to the oversight of the Electoral Commission who is administratively in charge of the registration process.

## **23 CHAPTER TWENTY ONE – PUBLIC ADMINISTRATION**

- 23.1** This Chapter is divided into 5 Parts. The draft Constitution sets out principles designed to guide public administration throughout the Republic. The Constitution establishes a Public Services Commission. The Commission is independent and is required to be impartial. Its function is to oversee the Public Service to ensure generally an effective and efficient service for the benefit of federal and state sectors of government.

- 23.2** There is also established a Federal Public Service. The Federal public Service is part of the executive branch of the Federal Government and is required to impartially implement decisions of the Government of the day by providing frank, honest and comprehensive advice to Ministers.
- 23.3** The police Force established under the current Constitution will continue to operate as the Police Force of Solomon Islands. States will not create their own police forces that would give rise to separate federal and state police forces. The Police Force will continue to be managed and have jurisdiction throughout the Republic. However, the Police Force will be required to be structured so to operate in the federal and state spheres of government.
- 23.4** The draft Constitution provides for the creation of a Solomon Islands Policing Policy. The policy will be jointly determined by federal and state governments and will make provision for different policies in respect of States after taking into account the priority policing needs of each State.
- 23.5** A similar provision is provided for the Prisons Services which shall also continue to operate nationally with States participating co-operatively in the management and operation of their own prisons with the Prisons Service.

## **24 CHAPTER TWENTY TWO – INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY**

**24.1** This Chapter is divided into 9 Parts. The following institutions strengthen constitutional democracy –

- The Public Solicitor
- The Director of Public Prosecutions
- The Human Rights Commission
- The Auditor – General
- The Electoral Commission
- The Ombudsman
- The Leadership and Anti-Corruption Commission

Those institutions are required to be impartial and not to be subject to the control by any person. They are accountable only to Parliament. The Government is required to ensure that these institutions are adequately financed and resourced.

**24.2** This Chapter establishes the critical criteria for appointment to a constitutional institution. The functions of Office for each of the institutions are defined by the draft Constitution.

The draft Constitution elevates the Leadership and Anti Corruption Commission from that of a statutory to a constitutional institution and extends its current powers to deal with corruption.

## **25 CHAPTER TWENTY THREE – ACCOUNTABLE AND TRANSPARENT GOVERNMENT**

**25.1** This Chapter is divided into 2 Parts. It sets out the Leadership Code. The draft Constitution has rewritten the current code. It has narrowed its application and elevated some of the current requirements from statute into the Constitution. That is particularly in relation to the declaration of assets, leadership obligations and introduces new provisions such as –

- The treatment of gifts and donations
- Actions of nominees, trustees
- Serious offences

A prosecution of an offence under the Leadership Code as with committing offence against the Constitution is a serious offence that will bar a person from entering public office and constitutes an offence for which is not eligible for the exercise of mercy. The leadership and Anti Corruption Commission are able to conduct an investigation of a person wishing to take up public office to determine whether that person is a fit and proper person under this Chapter.

## **26 CHAPTER TWENTY FOUR – MISCELLANEOUS FEDERAL POWERS AND RESPONSIBILITIES**

**26.1** The additional powers that Federal Government may exercise involve –

### **26.2 The provision for special areas**

This enables communities to be self administered under the jurisdiction of a federal law should special reasons arise and has the support of the community and governments concerned.

### **26.3 Federal intervention into the affairs of a State**

This sets out a procedure to protect the constitutional position of a State should it be necessary for the Federal Government to temporarily intervene into the affairs of a State. The Constitution prescribes when an intervention may take place and the process of intervention.

### **26.4 The taking over public debts of a State**

This empowers the Federal Government should the situation arise to take over or administer or restructure the public debt of a State.

### **26.5 International agreements**

The negotiation and signing of international agreements and participation in international forums is the responsibility of the federal Government.

## **27 CHAPTER TWENTY FIVE – AMENDMENT OF CONSTITUTION**

**27.1** This Chapter sets out the process as to how the Constitution may be altered. This Chapter cannot be altered in any way other than that prescribed.

**27.2** Chapters 1, 2 and 3 and sections 185, 186 and 187 and this Chapter can only be amended –

- (a) with the supporting vote of at least 75% of the Federal Parliament
- (b) with the endorsement of a majority plus one of State legislatures.

**27.3** The rest of the Constitution may be amended –

- (a) with the supporting vote of at least two thirds of the Federal parliament
- (b) with the endorsement of a majority plus one of State legislatures if-
  - (i) the amendment relates to a matter that affects States; or
  - (ii) concerns a matter within the legislative competence of a State.

**27.4** If an amendment concerns a State then the consent of that State must be sought.

**27.5** The President is unable to give his or her assent to an amendment or change until the State legislatures have considered the matter.

## **28 CHAPTER TWENTY SIX – GENERAL PROVISIONS**

**28.1** This Chapter provides for the transitional provisions and law repeals. The transitional provisions are set out in full in Schedule 7. The transitional period is 10 years. States are required to prepare a transitional plan for that period.

**28.2** The laws to be repealed are –

- The Solomon Islands Independent Order 1978
- The Constitutional (Amendment) Act 2001
- The Amnesty Act 2000.

## **29 SCHEDULES**

There are eight schedules.

