

# **FINAL REPORT**

CONSTITUTIONAL REVIEW PARLIAMENTARY SELECT COMMITTEE

DECEMBER 2022

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# CONSTITUTIONAL REVIEW PARLIAMENTARY SELECT COMMITTEE BRIEF

## FORMATION OF THE COMMITTEE

According to Rule 45(1) of Tuvalu's Parliamentary Rules of Procedure, "*Parliament may at any time resolve to constitute from amongst its Members one or more select committees to consider any matter which Parliament may refer to such committee.*"

During the July 2020 Parliament Session, Hon. Minister Simon Kofe of the Ministry of Justice, Communication and Foreign Affairs, pursuant to notice, moved the following Motion:

*"Motion 16: Honourable Members of Parliament to agree in establishing a constitution committee that would monitor in ensuring that the constitution plans for the review are observed.*

*Proposed names for the committee:*

- i) Hon Minister Simon Kofe*
- ii) Hon Minister Seve Paeniu*
- iii) Hon Dr Puakena Boreham*
- iv) Hon Fatoga Talama"*

Parliament passed this Motion after Committee membership was amended to replace Hon. Fatoga Talama with Hon. Minister Isaia Taape and Rt. Hon. Enele Sopoaga.

## COMMITTEE MEMBERSHIP

Hon. Minister Simon Kofe (Chair)  
Hon. Minister Seve Paeniu  
Hon. Minister Isaia Taape  
Rt. Hon. MP Enele Sopoaga  
Hon. MP Dr. Puakena Boreham

## ADVISOR

Attorney General

## SECRETARIAT

Nominated representative of the Clerk to Parliament with support from CEO MJCFA and MJCFA TA.

## TERMS OF REFERENCE

A Terms of Reference (ToR) for the Select Committee has been approved as of the December 2020 Parliament Session (see **Attachment 1**).

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# 1 INTRODUCTION & BACKGROUND

- 1.1 Since November 2016, Tuvalu has conducted a review of its Constitution to address internal political concerns that had prompted the Government to consider a revision of the Constitution.
- 1.2 To continue and complete this work, a Constitutional Review Parliamentary Select Committee was formed during the July 2020 Parliament Session. The Committee consists of the following members: Hon. Minister Simon Kofe (Chair), Hon. Minister Seve Paeniu, Hon. Minister Isaia Taape, Rt. Hon. MP Enele Sopoaga, and Hon. MP Dr. Puakena Boreham.
- 1.3 Between the July and December 2020 Parliament Sessions, the Select Committee met 3 times on 2<sup>nd</sup> November, 16<sup>th</sup> November, and 3<sup>rd</sup> December. During the December 2020 Session, the Select Committee tabled its First Progress Update (Paper 31/2020), and the Terms of Reference (ToR) for the Committee was officially approved by Parliament (see **Attachment 1**).
- 1.4 Between the December 2020 and April 2021 Parliament Sessions, the Select Committee also met 3 times on 8<sup>th</sup> February, 1<sup>st</sup> April, and 9<sup>th</sup> April. Aside from official meetings, the Committee held one awareness program on 19<sup>th</sup> April on a topic potentially requiring Constitutional Amendment: The Queen as Tuvalu's Head of State: Pros, Cons, and Alternatives. During the April 2021 Parliament Session, the Committee tabled its Second Progress Update (Paper 17/2021).
- 1.5 Between the April and August 2021 Parliament Sessions, the Select Committee met 5 times on 11<sup>th</sup> May, 27<sup>th</sup> May, 10<sup>th</sup> June, 28<sup>th</sup> June, and 19<sup>th</sup> August. Aside from official meetings, the Committee hosted awareness programs on two topics potentially requiring Constitutional Amendment on 20<sup>th</sup> May and 3<sup>rd</sup> June, respectively: the Election of the Prime Minister and the Bill of Rights and its Relationship to Culture. The Committee also held a live debate between Motufoua Secondary School (MSS) and Fetuvalu Secondary School (FSS) on 27<sup>th</sup> May and 4 pre-recorded TV and radio programs aired between 17<sup>th</sup> June and 29<sup>th</sup> July. During the August 2021 Parliament Session, the Committee tabled its Third Progress Update (Paper 21/2021).
- 1.6 Between the August and December 2021 Parliament Sessions, the Select Committee met 1 time on 16<sup>th</sup> September. Aside from its one official meeting, the Committee also hosted an information session with MPs on 30<sup>th</sup> August to informally discuss recommendations for Constitutional Amendment under consideration by the Committee. Subsequently, a public awareness program was aired on TV and radio on 23<sup>rd</sup> September to update the public on the status of the Constitutional Review. During the December 2021 Parliament Session, the Committee tabled its Fourth Progress Update (Paper 34/2021).
- 1.7 Finally, since the December 2021 Parliament Session, the Select Committee met 5 times on 27<sup>th</sup> January, 10<sup>th</sup> February, 24<sup>th</sup> February, 3<sup>rd</sup> March, and 27<sup>th</sup> September. Aside from

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official meetings, the Committee also hosted a Mock Parliament program for MSS and FSS students from 3<sup>rd</sup> to 6<sup>th</sup> January and a second information session with MPs on 17<sup>th</sup> February to informally discuss recommendations for Constitutional Amendment on which the Committee had not reached consensus. During the second information session with MPs, an anonymous questionnaire was distributed to Members to determine their tentative views on the recommendations discussed during the session. Following the outcomes of Committee meetings in January, February, and March and the second information session with MPs on 17<sup>th</sup> February, the Committee determined that its final report and recommendations for Constitutional Amendment could be tabled with Parliament for their consideration and debate in the December 2022 Parliament Session.

- 1.8 This Final Report includes the following sections for the consideration of Parliament: (1) the Committee's final list of recommendations for Constitutional Amendment categorized by theme (including annotation of non-consensus recommendations); (2) a general overview of the Committee's recommendations for Constitutional Amendment, including problems to be resolved through the recommendations, principles underlying the recommendations, sections of the Constitution that would be changed due to the recommendations, different options for Amendment and their implications and the option ultimately recommended by the Committee, references to any relevant information papers contained in the Attachments section, and proposed drafting for the recommendations (if the recommendations are non-consensus recommendations, the overview describes why there is a lack of consensus on the recommendations); (3) the Committee's summary recommendations for Parliament; and (4) attachments, which include the Committee Terms of Reference (ToR), a general overview of Committee meetings and events, a general overview of changes to recommendations for Constitutional Amendment from the beginning to the end of the life of the Committee, original and revised texts for each Committee recommendation for Constitutional Amendment, summarized minutes for all Committee meetings, papers relevant to Committee recommendations for Constitutional Amendment, and recommendations for amendment of the Parliamentary Rules of Procedure.
- 1.9 It is to be noted that, before tabling with Parliament, the recommendations for Constitutional Amendment and the proposed drafting for the recommendations as completed by the Committee's local consultant Mrs. Filiga Taukiei Nelu, were vetted through the Attorney General's Office and an international consultant Dr. Tom Ginsburg. Dr. Ginsburg is a Professor of International Law and Political Science at the University of Chicago and a specialist in comparative Constitutional law.

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## 2 FINAL LIST OF COMMITTEE RECOMMENDATIONS FOR CONSTITUTIONAL AMENDMENT

2.1 At the conclusion of this report, the Committee outlines 5 summary recommendations for Parliament as follows:

- 2.1.1 *Parliament is respectfully recommended to adopt the Committee's Final Report;*
- 2.1.2 *Parliament is respectfully recommended to adopt the Committee's consensus recommendations for Constitutional Amendment;*
- 2.1.3 *Parliament is respectfully recommended to review the Committee's non-consensus recommendations for Constitutional Amendment and provide feedback to be incorporated as part of the Constitutional Review.*
- 2.1.4 *Should the Committee's Final Report and suggested recommendations for Constitutional Amendment be adopted, Parliament is finally respectfully recommended to (1) take the Revised Tuvalu Constitution Bill 2023 as a direct product of the Final Report and (2) extend the life of the Committee so that it can accompany consultations in Funafuti and the Outer Islands after the First Reading of the Revised Constitution Bill.*

### **2.2 COMMITTEE'S CONSENSUS RECOMMENDATIONS FOR CONSTITUTIONAL AMENDMENT**

2.2.1 In reference to Recommendations 2.1.2 the recommendations for Constitutional Amendment the Committee has developed as the major substantive outcome of its work are as follows:

**A. Theme 1: Descriptions of Tuvalu's Statehood**

- **Recommendation 1:** Maintain the area of Tuvalu, including maritime zones; the nation's statehood; and all its entitlements;
- **Recommendation 2:** Declare Tuvalu as a Christian Nation.

**B. Theme 2: Enhancing the Stability of Governance**

- **Recommendation 3:** Provide for the following regarding the Caretaker Government:
  - (1) State that the Caretaker Government exists when Parliament is dissolved and when the seat of the Prime Minister is vacated;
  - (2) Clarify the roles and authority of the Caretaker Government, including the role of the Caretaker Government regarding significant appointments and terminations;
  - (3) Resolve any issues regarding a vacancy in the Governor General's Office during the Caretaker Period, including giving the Caretaker Government the authority to appoint an Acting Governor General.
- **Recommendation 4:** Remove the possibility for the Speaker to serve as the Acting Governor General in the absence of a person appointed in accordance with the terms in the Constitution and ensure that only a person so appointed can serve as Acting Governor General;
- **Recommendation 5:** Provide for the selection of the Governor General to be based on a fixed rotation of the Islands.
- **Recommendation 6:** Provide that the tenure of the Speaker ends when a new Speaker is elected;
- **Recommendation 7:** Provide the following regarding Parliament Sessions:
  - (1) Parliament shall meet at least twice within a 12-month period;
  - (2) One-half of MPs can request a Parliament Session if Sessions are not called at the prescribed times.
- **Recommendation 8:** Provide that votes of no confidence cannot happen in the first 12 months or last 12 months of the life of a Parliament;
- **Recommendation 9:** Add to the Constitution the option for the Governor General to trigger the recall of MPs/Ministers on grounds of incapacity after 6 months, with adequate safeguards to ensure a reliable medical decision and to prevent partiality in the application of the rule, while retaining the existing option for recalling an incapacitated MP under Section 99;

- **Recommendation 10:** Provide for greater consensus and cooperation in Parliamentary decision-making similar to the style of decision-making found in the Falekaupule and enhance Parliament’s oversight role;
- **Recommendation 13:** Appoint Constitutional Officers with the consent of Cabinet;
- **Recommendation 14:** Ensure that the appointment of Acting Prime Ministers or Acting Ministers is necessary and does not interfere with the functions of Prime Ministers or Ministers when they are out of country for official reasons;
- **Recommendation 15:** Amend sections of the Constitution referring to Queen Elizabeth II to more generic references to the Sovereign of Tuvalu that can apply to any successor to the Crown.

#### **C. Theme 3: Judicial Reforms**

- **Recommendation 16:** Remove requirement to have held judicial office in ‘a country with similar legal system to Tuvalu’ and replace with qualifications that facilitate the appointment of Tuvaluan candidates;
- **Recommendation 17:** Amend Section 79 on the AG’s function in the Constitution to enable the establishment of the Office of the Director of Public Prosecution in standalone legislation;
- **Recommendation 18:** Amend Section 79 on the AG’s function and other relevant sections to clarify that the AG is not the legal adviser to Parliament and include in the Parliamentary Rules of Procedure a legal adviser for the Speaker separate from the AG;

#### **D. Theme 4: Establishment of the Falekaupule**

- **Recommendation 21:** In the Constitution, recognize the Falekaupule as the traditional authority in Tuvalu.

#### **E. Theme 5: Rights and Culture**

- **Recommendation 22:** Introduce a Constitutional prohibition on discrimination against people with disabilities;
- **Recommendation 25:** Revise Constitutional provisions relating to rights (especially the Preamble, Section 15, and Section 29) to strengthen the position of culture and values;

## **2.3 COMMITTEE’S CONSENSUS RECOMMENDATIONS FOR CONSTITUTIONAL AMENDMENT**

2.3.1 In reference to Recommendations 2.1.3 above, the committee’s non consensus recommendations for Constitutional Amendment are as follows:



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- A. Theme 2: Enhancing the Stability of Governance**
- *[Recommendation 11: Ensure that the appointment, removal, and discipline of Police Officers is transparent and subject to external review or scrutiny (consensus not reached by the Committee on this Recommendation);]*
  - *[Recommendation 12: Insert in the Constitution that Parliament may by resolution require a non-binding referendum on any proposed amendment to the Constitution before the final reading (consensus not reached by the Committee on this Recommendation);]*
- B. Theme 3: Judicial Reforms**
- *[Recommendation 19: Appoint and suspend judges through the PSC (consensus not reached by the Committee on this Recommendation);]*
  - *[Recommendation 20: Remove existing right of appeal to the Privy Council (consensus not reached by the Committee on this Recommendation).]*
- C. Theme 5: Rights and Culture**
- *[Recommendation 23: Introduce a Constitutional prohibition on discrimination on the grounds of sex (consensus not reached by the Committee on this Recommendation);]*
  - *[Recommendation 24: Add a Charter of Values and Responsibilities to the Constitution and relate rights in the Bill of Rights to responsibilities listed in the Charter (consensus not reached by the Committee on this Recommendation);]*
  - *[Recommendation 26: Amend the Constitution so that the Courts can only declare that a law that accords with traditional standards, values, and practices is incompatible with a right in the Bill of Rights, but it is left to Parliament to resolve the incompatibility (consensus not reached by the Committee on this Recommendation).]*

The remainder of this report presents an overview of the recommendations for Constitutional Amendment listed above. This is done to support the Committee's summary recommendations that Parliament adopt the report, adopt the Committee's consensus recommendations for Constitutional Amendment, debate the Committee's non-consensus recommendations, take the Revised Tuvalu Constitution Bill 2023 as a direct product of the Final Report, and extend the life of the Committee so that it can accompany consultations on the Revised Constitution Bill between its First Reading and Final Reading.

### 3 GENERAL OVERVIEW OF RECOMMENDATIONS FOR CONSTITUTIONAL AMENDMENT

This general overview of the Committee’s recommendations for Constitutional Amendment outlines the following descriptions and justifications for each recommendation proposed by the Committee: (1) immediate issues or problems to be resolved through the recommendation, (2) principles underlying the recommendation, (3) sections of the Constitution that would be changed due to the recommendation, (4) options for Amendment and their implications, (5) the option for Amendment selected by the Committee with a rationale (or, in the case of a non-consensus recommendation, an explanation as to why there is a lack of consensus on the recommendation), (6) references to any relevant information papers contained in the Attachments section, and (7) proposed drafting for the recommended Amendment.

#### 3.1. Committee’s consensus recommendations for Constitutional Amendment

##### A. Theme 1: Descriptions of Tuvalu’s Statehood

<b>Recommendation 1: Maintain the area of Tuvalu, including maritime zones; the nation’s statehood; and all its entitlements</b>	
<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>Current drafting of Section 2 (The area of Tuvalu) in the Constitution does not address the impacts that climate change and sea level rise have/can have on the area and Statehood of Tuvalu, which may lead to threats to the sovereignty of Tuvalu if there is loss to physical territory due to climate change.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>Protecting the Statehood and sovereignty of Tuvalu</li> <li>Legally recognizing the impacts of climate change and sea level rise</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>Section 2 (The area of Tuvalu) and consequential amendments (e.g., add new Schedule 6 on Declaration of Tuvalu Geographical Coordinates)</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> Section 2 continues to define the area of Tuvalu but does not in any way note the threat to Tuvalu’s land area, maritime boundaries, and Statehood that may occur due to loss to physical territory caused by climate change.</p> <p><b>(2) Amend Section 2 to directly refer to climate change and dictate that the Statehood of Tuvalu and its maritime zones cannot be altered due to the effects of climate change:</b> Section 2 provides the legal basis for Tuvalu to continue to claim its sovereign entitlements despite any negative impacts from climate change and sea level rise.</p>
<b>5. Option Selected with Rationale</b>	<p><b>Amend Section 2 to directly refer to climate change and dictate that the Statehood of Tuvalu and its maritime zones cannot be altered due to the effects of climate change:</b> It is necessary to acknowledge climate change in the Constitution given the already significant threats it poses to Tuvalu; it is also necessary to define Tuvalu’s stance on any potential future impacts of climate change in the supreme law of the country so as to strengthen Tuvalu’s legal standing on climate change.</p>
<b>6. Information Paper</b>	N/A

**7. Proposed Drafting****2 Tuvalu Statehood<sup>1</sup>***Statehood*

(1) The State of Tuvalu within its historical, cultural and legal framework shall remain in perpetuity in the future, notwithstanding the impacts of climate change or other causes resulting in loss to the physical territory of Tuvalu.

*The Area of Tuvalu*

(2) The area of Tuvalu consists of all areas bounded by baseline coordinates including maritime zones measured from such baseline coordinates declared in Schedule 6 (Declaration of Tuvalu Geographical Coordinates).

(3) The baseline coordinates declared by Schedule 6 shall remain unchanged, notwithstanding any regression of the low water mark or changes in geographical features of coasts or islands due to sea-level rise or other causes, until and unless otherwise prescribed by an Act of Parliament.

(4) Nothing in this section prevents an Act of Parliament from proclaiming the jurisdiction of Tuvalu, complete or partial, over any area of land or water or airspace above, or prevents a law from having extra-territorial effect in accordance with section 86 (vesting of the law-making power).

*Addressing Climate Change in Protection of Statehood*

(5) Tuvalu is committed to:

- a. Protecting and conserving its land area, territorial waters and airspace as included in Subsection (2) and retaining its Statehood as included in Subsection (1); and
- b. Responding to climate change, which threatens the security and survival of its people and its land.

(6) The commitment of Tuvalu to responding to the threat of climate change recognises all relevant regional and international law related to climate change mitigation and adaptation, as well as the common but differentiated responsibilities of all States, sectors, organizations and individuals, and the need for international co-operation to address climate change and to protect those that are most affected.

*The Sovereign Will of the People of Tuvalu*

(7) The intent for perpetual Statehood prescribed in Subsection 1 and the area of Tuvalu defined in Subsection 2 constitutes the sovereign will of the people of Tuvalu.

**SCHEDULE 6****DECLARATION OF TUVALU GEOGRAPHICAL COORDINATES****(Section 2 (2))****PART 1 – NANUMEA**

Point Identifier	Latitude	Longitude	Outer Limit
TVBP00001	5°38'16.54" S	176°03'16.28" E	TS,CZ,EEZ
TVBP00002	5°38'16.59" S	176°03'14.42" E	TS,CZ,EEZ
TVBP00003	5°38'17.83" S	176°03'13.68" E	TS,CZ,EEZ
TVBP00004	5°38'27.52" S	176°03'15.14" E	TS,CZ,EEZ
TVBP00005	5°38'30.06" S	176°03'15.89" E	TS,CZ,EEZ
TVBP00006	5°38'39.38" S	176°03'19.23" E	TS,CZ,EEZ
TVBP00007	5°38'51.36" S	176°03'24.94" E	TS,CZ
TVBP00008	5°38'54.54" S	176°03'26.45" E	TS,CZ,EEZ
TVBP00009	5°38'55.22" S	176°03'26.79" E	TS,CZ,EEZ
TVBP00010	5°38'57.50" S	176°03'27.99" E	TS,CZ

<sup>1</sup> Drafting for this Amendment was conducted with the assistance of the Environmental Defenders Office (EDO) in Australia. EDO has immense experience with environmental and climate change law and assisted Tuvalu with drafting work and consultations pro bono (<https://www.edo.org.au/>).

TVBP00011	5°39'00.42" S	176°03'30.06" E	TS,CZ
TVBP00012	5°39'01.29" S	176°03'30.70" E	TS,CZ
TVBP00013	5°39'03.75" S	176°03'33.34" E	TS,CZ
TVBP00014	5°39'05.35" S	176°03'35.26" E	TS,CZ
TVBP00015	5°42'15.35" S	176°08'00.72" E	TS
TVBP00016	5°42'24.08" S	176°08'09.08" E	TS
TVBP00017	5°42'25.78" S	176°08'10.89" E	TS,CZ
TVBP00018	5°42'27.83" S	176°08'13.48" E	TS,CZ
TVBP00019	5°42'29.09" S	176°08'15.59" E	TS,CZ
TVBP00020	5°42'32.28" S	176°08'21.09" E	TS,CZ
TVBP00021	5°42'32.43" S	176°08'22.15" E	TS
TVBP00022	5°42'32.63" S	176°08'26.07" E	TS
TVBP00023	5°42'31.34" S	176°08'29.24" E	TS
TVBP00024	5°42'30.14" S	176°08'31.24" E	TS
TVBP00025	5°42'29.68" S	176°08'31.92" E	TS
TVBP00026	5°42'28.62" S	176°08'33.51" E	TS
TVBP00027	5°42'26.24" S	176°08'35.28" E	TS
TVBP00028	5°42'19.81" S	176°08'39.06" E	TS,CZ
TVBP00029	5°42'16.63" S	176°08'39.79" E	TS,CZ
TVBP00030	5°42'13.60" S	176°08'40.20" E	TS,CZ
TVBP00031	5°42'09.51" S	176°08'40.70" E	TS,CZ
TVBP00032	5°42'08.11" S	176°08'40.36" E	TS,CZ
TVBP00033	5°42'06.18" S	176°08'39.72" E	TS,CZ
TVBP00034	5°42'05.46" S	176°08'39.42" E	TS,CZ
TVBP00035	5°40'19.84" S	176°07'51.71" E	TS,CZ
TVBP00036	5°40'11.84" S	176°07'48.44" E	TS,CZ
TVBP00037	5°40'10.02" S	176°07'47.69" E	TS,CZ
TVBP00038	5°39'58.58" S	176°07'42.77" E	TS,CZ
TVBP00039	5°39'56.95" S	176°07'42.05" E	TS,CZ
TVBP00040	5°39'48.91" S	176°07'37.65" E	TS,CZ
TVBP00041	5°39'43.98" S	176°07'34.76" E	TS,CZ
TVBP00042	5°39'42.05" S	176°07'33.47" E	TS,CZ
TVBP00043	5°39'39.21" S	176°07'30.99" E	TS,CZ
TVBP00044	5°39'32.76" S	176°07'24.89" E	TS,CZ
TVBP00045	5°39'20.58" S	176°07'11.93" E	TS,CZ
TVBP00046	5°39'19.82" S	176°07'11.10" E	E TS,CZ
TVBP00047	5°39'17.66" S	176°07'07.75" E	E TS
TVBP00048	5°39'15.12" S	176°07'03.83" E	TS,CZ,EEZ
TVBP00049	5°39'13.29" S	176°07'00.52" E	TS,CZ,EEZ
TVBP00050	5°39'09.45" S	176°06'51.62" E	TS,CZ,EEZ
TVBP00051	5°39'08.77" S	176°06'50.00" E	TS,CZ,EEZ
TVBP00052	5°38'55.87" S	176°06'09.82" E	TS,CZ,EEZ
TVBP00053	5°38'54.68" S	176°06'05.30" E	TS,CZ,EEZ
TVBP00054	5°38'53.81" S	176°06'01.94" E	TS,CZ,EEZ
TVBP00055	5°38'38.17" S	176°04'50.69" E	TS
TVBP00056	5°38'30.06" S	176°04'22.49" E	TS
TVBP00057	5°38'29.37" S	176°04'20.26" E	TS
TVBP00058	5°38'25.66" S	176°04'07.67" E	TS,CZ,EEZ
TVBP00059	5°38'25.15" S	176°04'05.53" E	TS,CZ,EEZ
TVBP00060	5°38'24.52" S	176°04'02.25" E	TS,CZ,EEZ
TVBP00061	5°38'17.77" S	176°03'25.56" E	TS,CZ,EEZ

TVBP00062	5°38'16.83" S	176°03'20.23" E	TS,CZ,EEZ
TVBP00063	5°38'16.65" S	176°03'17.97" E	TS,CZ,EEZ
PART 2 – NANUMANGA			
Point Identifier	Latitude	Longitude	Outer Limit
TVBP00064	6°16'11.82" S	176°19'19.30" E	TS
TVBP00065	6°16'12.71" S	176°19'17.12" E	TS
TVBP00066	6°16'14.84" S	176°19'14.76" E	TS
TVBP00067	6°16'17.95" S	176°19'11.65" E	TS
TVBP00068	6°16'22.48" S	176°19'07.91" E	TS,CZ
TVBP00069	6°16'29.74" S	176°19'03.98" E	TS,CZ
TVBP00070	6°16'34.96" S	176°19'01.41" E	TS,CZ
TVBP00071	6°16'47.80" S	176°18'55.43" E	TS,CZ
TVBP00072	6°17'00.20" S	176°18'49.82" E	TS,CZ
TVBP00073	6°17'05.79" S	176°18'47.55" E	TS,CZ
TVBP00074	6°17'07.71" S	176°18'46.83" E	TS,CZ
TVBP00075	6°17'11.62" S	176°18'45.54" E	TS,CZ
TVBP00076	6°17'14.64" S	176°18'44.69" E	TS,CZ
TVBP00077	6°17'20.19" S	176°18'43.97" E	TS,CZ
TVBP00078	6°17'23.49" S	176°18'43.92" E	TS,CZ
TVBP00079	6°17'27.80" S	176°18'44.94" E	TS,CZ,EEZ
TVBP00080	6°17'38.03" S	176°18'49.32" E	TS,CZ,EEZ
TVBP00081	6°17'42.57" S	176°18'51.67" E	TS,CZ,EEZ
TVBP00082	6°17'44.84" S	176°18'53.05" E	TS,CZ,EEZ
TVBP00083	6°17'58.36" S	176°19'01.42" E	TS,CZ,EEZ
TVBP00084	6°18'05.75" S	176°19'06.17" E	TS,CZ,EEZ
TVBP00085	6°18'08.11" S	176°19'07.94" E	TS,CZ,EEZ
TVBP00086	6°18'10.11" S	176°19'09.94" E	TS,CZ,EEZ
TVBP00087	6°18'11.49" S	176°19'12.82" E	TS,CZ
TVBP00088	6°18'11.58" S	176°19'15.67" E	TS,CZ
TVBP00089	6°18'11.01" S	176°19'18.38" E	TS,CZ
TVBP00090	6°18'09.06" S	176°19'20.69" E	TS,CZ
TVBP00091	6°18'04.13" S	176°19'23.85" E	TS,CZ
TVBP00092	6°17'56.44" S	176°19'28.22" E	TS,CZ
TVBP00093	6°17'40.40" S	176°19'36.55" E	TS,CZ
TVBP00094	6°17'37.07" S	176°19'37.71" E	TS,CZ
TVBP00095	6°17'34.40" S	176°19'38.51" E	TS,CZ
TVBP00096	6°17'21.65" S	176°19'38.61" E	TS
TVBP00097	6°16'59.02" S	176°19'39.09" E	TS,CZ
TVBP00098	6°16'54.13" S	176°19'38.92" E	TS,CZ
TVBP00099	6°16'50.66" S	176°19'38.31" E	TS,CZ
TVBP00100	6°16'24.33" S	176°19'32.30" E	TS,CZ
TVBP00101	6°16'23.17" S	176°19'31.90" E	TS,CZ
TVBP00102	6°16'12.00" S	176°19'20.27" E	TS,CZ
PART 3 – NIUTAO			
Point Identifier	Latitude	Longitude	Outer Limit
TVBP00103	6°06'05.45" S	177°20'11.65" E	TS,CZ
TVBP00104	6°06'05.45" S	177°20'10.35" E	TS,CZ
TVBP00105	6°06'05.71" S	177°20'07.12" E	TS,CZ
TVBP00106	6°06'06.17" S	177°20'03.07" E	TS,CZ
TVBP00107	6°06'06.36" S	177°20'02.39" E	TS,CZ
TVBP00108	6°06'06.94" S	177°20'00.66" E	TS,CZ

TVBP00109	6°06'07.21" S	177°20'00.07" E	TS,CZ
TVBP00110	6°06'10.40" S	177°19'53.87" E	TS,CZ
TVBP00111	6°06'10.63" S	177°19'53.50" E	TS,CZ
TVBP00112	6°06'12.42" S	177°19'51.56" E	TS,CZ
TVBP00113	6°06'13.47" S	177°19'50.71" E	TS,CZ
TVBP00114	6°06'13.64" S	177°19'50.58" E	TS,CZ
TVBP00115	6°06'14.65" S	177°19'49.85" E	TS,CZ
TVBP00116	6°06'16.19" S	177°19'48.91" E	TS,CZ
TVBP00117	6°06'18.13" S	177°19'47.94" E	TS,CZ
TVBP00118	6°06'19.65" S	177°19'47.43" E	TS,CZ
TVBP00119	6°06'20.25" S	177°19'47.37" E	TS,CZ
TVBP00120	6°06'21.69" S	177°19'47.28" E	TS,CZ
TVBP00121	6°06'22.26" S	177°19'47.27" E	TS,CZ
TVBP00122	6°06'22.90" S	177°19'47.29" E	TS,CZ
TVBP00123	6°06'23.95" S	177°19'47.66" E	TS,CZ
TVBP00124	6°06'25.48" S	177°19'48.36" E	TS,CZ
TVBP00125	6°06'26.62" S	177°19'48.90" E	TS,CZ
TVBP00126	6°06'27.84" S	177°19'49.55" E	TS,CZ
TVBP00127	6°06'28.48" S	177°19'49.97" E	TS,CZ
TVBP00128	6°06'29.38" S	177°19'50.58" E	TS,CZ
TVBP00129	6°06'32.18" S	177°19'52.68" E	TS,CZ
TVBP00130	6°06'35.95" S	177°19'55.76" E	TS,CZ
TVBP00131	6°06'40.13" S	177°19'59.53" E	TS,CZ
TVBP00132	6°06'46.44" S	177°20'06.93" E	TS,CZ
TVBP00133	6°06'49.59" S	177°20'10.67" E	TS,CZ
TVBP00134	6°06'52.55" S	177°20'14.91" E	TS,CZ
TVBP00135	6°06'52.91" S	177°20'15.55" E	TS,CZ
TVBP00136	6°06'54.42" S	177°20'18.74" E	TS,CZ
TVBP00137	6°06'55.21" S	177°20'21.06" E	TS,CZ
TVBP00138	6°06'55.55" S	177°20'24.12" E	TS,CZ
TVBP00139	6°06'55.54" S	177°20'24.85" E	TS,CZ
TVBP00140	6°06'55.35" S	177°20'26.56" E	TS,CZ
TVBP00141	6°06'52.89" S	177°20'47.36" E	TS,CZ
TVBP00142	6°06'52.78" S	177°20'48.19" E	TS,CZ
TVBP00143	6°06'52.40" S	177°20'50.56" E	TS
TVBP00144	6°06'49.94" S	177°21'06.55" E	TS,CZ
TVBP00145	6°06'49.71" S	177°21'07.53" E	TS,CZ
TVBP00146	6°06'48.10" S	177°21'10.69" E	TS,CZ
TVBP00147	6°06'47.54" S	177°21'11.46" E	TS,CZ
TVBP00148	6°06'47.35" S	177°21'11.71" E	TS,CZ
TVBP00149	6°06'47.13" S	177°21'11.93" E	TS,CZ
TVBP00150	6°06'46.30" S	177°21'12.69" E	TS,CZ
TVBP00151	6°06'45.78" S	177°21'12.98" E	TS,CZ
TVBP00152	6°06'44.50" S	177°21'13.65" E	TS,CZ
TVBP00153	6°06'43.15" S	177°21'14.25" E	TS,CZ
TVBP00154	6°06'42.48" S	177°21'14.52" E	TS,CZ
TVBP00155	6°06'40.46" S	177°21'14.99" E	TS,CZ
TVBP00156	6°06'38.16" S	177°21'15.33" E	TS,CZ
TVBP00157	6°06'37.05" S	177°21'15.35" E	TS,CZ
TVBP00158	6°06'25.88" S	177°21'14.09" E	TS,CZ
TVBP00159	6°06'25.58" S	177°21'14.02" E	TS,CZ

TVBP00160	6°06'23.46" S	177°21'13.40" E	TS,CZ
TVBP00161	6°06'21.93" S	177°21'12.74" E	TS,CZ
TVBP00162	6°06'20.66" S	177°21'12.19" E	TS,CZ,EEZ
TVBP00163	6°06'19.88" S	177°21'11.76" E	TS,CZ,EEZ
TVBP00164	6°06'18.85" S	177°21'11.19" E	TS,CZ,EEZ
TVBP00165	6°06'17.83" S	177°21'10.57" E	TS,CZ,EEZ
TVBP00166	6°06'15.96" S	177°21'09.35" E	TS,CZ,EEZ
TVBP00167	6°06'15.66" S	177°21'09.09" E	TS,CZ,EEZ
TVBP00168	6°06'14.38" S	177°21'07.91" E	TS,CZ,EEZ
TVBP00169	6°06'13.66" S	177°21'07.23" E	TS,CZ,EEZ
TVBP00170	6°06'13.04" S	177°21'06.51" E	TS,CZ,EEZ
TVBP00171	6°06'12.72" S	177°21'06.03" E	TS,CZ,EEZ
TVBP00172	6°06'11.91" S	177°21'04.61" E	TS,CZ,EEZ
TVBP00173	6°06'11.67" S	177°21'04.08" E	TS,CZ,EEZ
TVBP00174	6°06'11.28" S	177°21'03.01" E	TS,CZ,EEZ
TVBP00175	6°06'10.81" S	177°21'01.74" E	TS,CZ,EEZ
TVBP00176	6°06'09.94" S	177°20'59.27" E	TS,CZ,EEZ
TVBP00177	6°06'09.53" S	177°20'57.63" E	TS,CZ,EEZ
TVBP00178	6°06'09.41" S	177°20'55.84" E	TS
TVBP00179	6°06'05.92" S	177°20'17.22" E	TS
TVBP00180	6°06'05.60" S	177°20'14.42" E	TS,CZ
TVBP00181	6°06'05.52" S	177°20'12.80" E	TS,CZ
PART 4 – NUI			
Point Identifier	Latitude	Longitude	Outer Limit
TVBP00182	7°11'06.85" S	177°08'35.85" E	TS,CZ
TVBP00183	7°11'07.07" S	177°08'31.92" E	TS,CZ
TVBP00184	7°11'07.75" S	177°08'27.57" E	TS,CZ
TVBP00185	7°11'09.74" S	177°08'24.01" E	TS,CZ
TVBP00186	7°11'12.51" S	177°08'21.12" E	TS,CZ
TVBP00187	7°11'16.65" S	177°08'18.56" E	TS,CZ
TVBP00188	7°11'22.68" S	177°08'17.30" E	TS,CZ
TVBP00189	7°11'28.96" S	177°08'16.41" E	TS,CZ
TVBP00190	7°11'33.98" S	177°08'16.10" E	TS,CZ
TVBP00191	7°11'38.49" S	177°08'16.36" E	TS,CZ
TVBP00192	7°11'45.92" S	177°08'17.31" E	TS
TVBP00193	7°11'57.55" S	177°08'18.83" E	TS
TVBP00194	7°14'24.22" S	177°08'22.70" E	TS,CZ
TVBP00195	7°14'30.76" S	177°08'23.12" E	TS,CZ
TVBP00196	7°14'36.73" S	177°08'23.80" E	TS,CZ
TVBP00197	7°14'41.86" S	177°08'25.22" E	TS,CZ
TVBP00198	7°14'46.05" S	177°08'26.64" E	TS,CZ
TVBP00199	7°14'47.10" S	177°08'27.16" E	TS
TVBP00200	7°14'54.48" S	177°08'30.83" E	TS,CZ,EEZ
TVBP00201	7°14'59.24" S	177°08'34.45" E	TS,CZ,EEZ
TVBP00202	7°15'04.06" S	177°08'38.28" E	TS,CZ,EEZ
TVBP00203	7°15'07.30" S	177°08'42.11" E	TS,CZ,EEZ
TVBP00204	7°15'10.13" S	177°08'46.98" E	TS,CZ,EEZ
TVBP00205	7°15'12.43" S	177°08'51.70" E	TS,CZ,EEZ
TVBP00206	7°15'14.37" S	177°08'56.11" E	TS,CZ,EEZ
TVBP00207	7°15'17.09" S	177°09'05.28" E	TS,CZ
TVBP00208	7°15'21.59" S	177°09'22.01" E	TS,CZ

TVBP00209	7°15'22.53" S	177°09'26.99" E	TS,CZ
TVBP00210	7°15'23.28" S	177°09'32.66" E	TS,CZ
TVBP00211	7°15'22.09" S	177°09'40.73" E	TS,CZ
TVBP00212	7°15'20.69" S	177°09'45.76" E	TS,CZ
TVBP00213	7°15'18.75" S	177°09'49.53" E	TS,CZ
TVBP00214	7°15'16.39" S	177°09'52.15" E	TS,CZ
TVBP00215	7°15'11.57" S	177°09'55.30" E	TS,CZ
TVBP00216	7°15'06.91" S	177°09'57.45" E	TS,CZ
TVBP00217	7°15'01.47" S	177°09'59.23" E	TS,CZ
TVBP00218	7°14'55.03" S	177°10'01.15" E	TS,CZ
TVBP00219	7°14'50.89" S	177°10'02.27" E	TS,CZ
TVBP00220	7°14'41.88" S	177°10'03.68" E	TS,CZ
TVBP00221	7°14'34.29" S	177°10'04.36" E	TS,CZ
TVBP00222	7°14'29.16" S	177°10'04.25" E	TS,CZ
TVBP00223	7°14'13.13" S	177°10'03.41" E	TS,CZ
TVBP00224	7°13'10.16" S	177°09'56.81" E	TS,CZ
TVBP00225	7°12'18.72" S	177°09'49.49" E	TS
TVBP00226	7°12'13.04" S	177°09'48.90" E	TS,CZ
TVBP00227	7°12'05.00" S	177°09'46.86" E	TS,CZ
TVBP00228	7°11'59.61" S	177°09'45.08" E	TS,CZ
TVBP00229	7°11'51.34" S	177°09'40.56" E	TS,CZ
TVBP00230	7°11'46.68" S	177°09'37.89" E	TS,CZ
TVBP00231	7°11'34.17" S	177°09'27.56" E	TS,CZ
TVBP00232	7°11'31.34" S	177°09'24.94" E	TS,CZ
TVBP00233	7°11'28.41" S	177°09'21.06" E	TS,CZ
TVBP00234	7°11'17.11" S	177°09'06.11" E	TS,CZ
TVBP00235	7°11'14.23" S	177°09'00.97" E	TS,CZ
TVBP00236	7°11'11.93" S	177°08'56.46" E	TS,CZ
TVBP00237	7°11'10.15" S	177°08'52.00" E	TS,CZ
TVBP00238	7°11'08.68" S	177°08'47.65" E	TS,CZ
TVBP00239	7°11'07.38" S	177°08'41.99" E	TS,CZ
PART 5 – VAITUPU			
Point Identifier	Latitude	Longitude	Outer Limit
TVBP00240	7°27'23.00" S	178°40'01.57" E	TS,CZ
TVBP00241	7°27'23.07" S	178°39'58.26" E	TS,CZ
TVBP00242	7°27'23.82" S	178°39'54.54" E	TS,CZ
TVBP00243	7°27'24.83" S	178°39'51.29" E	TS,CZ
TVBP00244	7°27'26.51" S	178°39'49.09" E	TS,CZ
TVBP00245	7°27'28.20" S	178°39'47.20" E	TS,CZ
TVBP00246	7°27'32.25" S	178°39'44.38" E	TS,CZ
TVBP00247	7°27'36.23" S	178°39'42.56" E	TS,CZ
TVBP00248	7°27'40.69" S	178°39'41.99" E	TS,CZ
TVBP00249	7°27'46.67" S	178°39'42.38" E	TS,CZ
TVBP00250	7°27'53.95" S	178°39'43.93" E	TS
TVBP00251	7°27'58.24" S	178°39'45.42" E	TS
TVBP00252	7°28'35.75" S	178°40'05.68" E	TS
TVBP00253	7°29'42.99" S	178°40'38.60" E	TS
TVBP00254	7°29'50.78" S	178°40'43.72" E	TS
TVBP00255	7°29'54.60" S	178°40'46.42" E	TS
TVBP00256	7°29'56.17" S	178°40'47.68" E	TS
TVBP00257	7°29'57.42" S	178°40'49.21" E	TS



TVBP00258	7°29'58.98" S	178°40'52.10" E	TS
TVBP00259	7°30'00.28" S	178°40'54.79" E	TS
TVBP00260	7°30'01.00" S	178°40'58.05" E	TS
TVBP00261	7°30'01.04" S	178°41'01.93" E	TS
TVBP00262	7°30'00.50" S	178°41'06.55" E	TS
TVBP00263	7°29'59.91" S	178°41'10.49" E	TS
TVBP00264	7°29'58.90" S	178°41'14.58" E	TS
TVBP00265	7°29'57.68" S	178°41'18.36" E	TS
TVBP00266	7°29'55.78" S	178°41'22.03" E	TS
TVBP00267	7°29'52.72" S	178°41'26.53" E	TS,CZ
TVBP00268	7°29'49.77" S	178°41'29.68" E	TS,CZ
TVBP00269	7°29'44.56" S	178°41'35.17" E	TS,CZ
TVBP00270	7°29'39.88" S	178°41'39.83" E	TS,CZ
TVBP00271	7°29'31.88" S	178°41'47.31" E	TS,CZ
TVBP00272	7°29'29.36" S	178°41'48.88" E	TS,CZ
TVBP00273	7°29'21.85" S	178°41'52.84" E	TS,CZ
TVBP00274	7°29'16.33" S	178°41'55.71" E	TS,CZ
TVBP00275	7°29'12.13" S	178°41'57.00" E	TS,CZ
TVBP00276	7°29'08.51" S	178°41'57.94" E	TS,CZ
TVBP00277	7°29'04.79" S	178°41'58.03" E	TS,CZ
TVBP00278	7°29'00.96" S	178°41'57.44" E	TS,CZ
TVBP00279	7°28'58.82" S	178°41'56.85" E	TS,CZ,EEZ
TVBP00280	7°28'53.17" S	178°41'53.89" E	TS,CZ,EEZ
TVBP00281	7°28'46.58" S	178°41'48.19" E	TS,CZ,EEZ
TVBP00282	7°28'43.50" S	178°41'44.92" E	TS
TVBP00283	7°28'39.69" S	178°41'40.92" E	TS,CZ,EEZ
TVBP00284	7°28'37.03" S	178°41'37.55" E	TS
TVBP00285	7°27'40.14" S	178°40'30.15" E	TS
TVBP00286	7°27'37.48" S	178°40'27.36" E	TS
TVBP00287	7°27'32.00" S	178°40'21.35" E	TS,CZ
TVBP00288	7°27'29.81" S	178°40'18.83" E	TS,CZ,EEZ
TVBP00289	7°27'28.45" S	178°40'17.19" E	TS,CZ,EEZ
TVBP00290	7°27'26.99" S	178°40'14.72" E	TS,CZ,EEZ
TVBP00291	7°27'25.43" S	178°40'10.98" E	TS,CZ
TVBP00292	7°27'24.40" S	178°40'07.25" E	TS,CZ
TVBP00293	7°27'23.57" S	178°40'04.04" E	TS,CZ
PART 6 – NIULAKITA			
Point Identifier	Latitude	Longitude	Outer Limit
TVBP00294	10°47'08.82" S	179°28'26.50" E	TS,CZ
TVBP00295	10°47'08.83" S	179°28'24.57" E	TS,CZ
TVBP00296	10°47'10.06" S	179°28'14.76" E	TS,CZ
TVBP00297	10°47'10.91" S	179°28'10.19" E	TS,CZ
TVBP00298	10°47'11.41" S	179°28'07.92" E	TS,CZ
TVBP00299	10°47'11.93" S	179°28'06.33" E	TS,CZ
TVBP00300	10°47'12.67" S	179°28'04.91" E	TS,CZ
TVBP00301	10°47'14.09" S	179°28'03.30" E	TS,CZ
TVBP00302	10°47'15.62" S	179°28'02.60" E	TS,CZ,EEZ
TVBP00303	10°47'18.57" S	179°28'02.48" E	TS,CZ,EEZ
TVBP00304	10°47'20.24" S	179°28'02.68" E	TS,CZ,EEZ
TVBP00305	10°47'22.15" S	179°28'02.98" E	TS,CZ,EEZ
TVBP00306	10°47'22.98" S	179°28'03.39" E	TS,CZ,EEZ

TVBP00307	10°47'23.98" S	179°28'04.51" E	TS,CZ,EEZ
TVBP00308	10°47'25.71" S	179°28'06.70" E	TS,CZ,EEZ
TVBP00324	10°47'14.25" S	179°28'43.85" E	TS,CZ
TVBP00325	10°47'12.32" S	179°28'42.55" E	TS,CZ
TVBP00326	10°47'10.36" S	179°28'40.77" E	TS,CZ
TVBP00327	10°47'09.22" S	179°28'39.11" E	TS,CZ
TVBP00328	10°47'09.10" S	179°28'36.97" E	TS,CZ
TVBP00329	10°47'08.85" S	179°28'28.47" E	TS,CZ
Declaration of Archipelagic Baselines (Nukufetau, Funafuti & Nukulaelae)			
Point Identifier	Latitude	Longitude	Point Reference
TVBP0330	7° 55' 39.37" S	178° 22' 48.89" E	Further most point on reef north of Funaota islet in Nukufetau atoll
TVBP0331	7° 55' 36.81" S	178° 22' 42.27" E	Further most point on reef north of Funaota islet in Nukufetau atoll
TVBP0332	7° 55' 35.79" S	178° 22' 38.14" E	Further most point on reef north of Funaota islet in Nukufetau atoll
TVBP0333	7° 55' 35.64" S	178° 22' 35.13" E	Further most point on reef north of Funaota islet in Nukufetau atoll
TVBP0334	7° 55' 38.38" S	178° 22' 28.94" E	Further most point on reef north of Funaota islet in Nukufetau atoll
TVBP0335	7° 55' 39.26" S	178° 22' 27.40" E	Further most point on reef north of Funaota islet in Nukufetau atoll
TVBP0336	7° 55' 41.60" S	178° 22' 24.16" E	Further most point on reef west of Funaota islet in Nukufetau atoll
TVBP0337	7° 55' 59.91" S	178° 22' 01.42" E	Further most point on "Paefa" reef west of Funaota islet in Nukufetau atoll
TVBP0338	7° 57' 01.96" S	178° 20' 57.50" E	Further most point on "Paefa" reef north of Teafatule islet in Nukufetau atoll
TVBP0339	7° 57' 09.38" S	178° 20' 51.24" E	Further most point on "Paefa" reef north of Teafatule islet in Nukufetau atoll
TVBP0340	7° 57' 10.99" S	178° 20' 49.92" E	Further most point on "Paefa" reef north of Teafatule islet in Nukufetau atoll
TVBP0341	7° 57' 17.58" S	178° 20' 45.95" E	Further most point on "Paefa" reef north of Teafatule islet in Nukufetau atoll
TVBP0342	8° 01' 48.85" S	178° 18' 14.10" E	Further most point on reef west of Fale islet in Nukufetau atoll
TVBP0343	8° 01' 50.97" S	178° 18' 13.52" E	Further most point on reef

				west of Fale islet in Nukufetau atoll
TVBP0344	8° 01' 52.95" S	178° 18' 14.56" E	Further most point on reef west of Fale islet in Nukufetau atoll	
TVBP0345	8° 01' 55.88" S	178° 18' 17.20" E	Further most point on reef west of Fale islet in Nukufetau atoll	
TVBP0346	8° 02' 00.35" S	178° 18' 22.21" E	Further most point on reef west of Fale islet in Nukufetau atoll	
TVBP0347	8° 38' 36.57" S	179° 04' 23.60" E	Further most point on reef close south of Avalau islet in Funafuti atoll	
TVBP0348	9° 25' 42.68" S	179° 50' 33.53" E	Further most point on reef south west of Temotutafa islet in Nukulaelae atoll	
TVBP0349	9° 25' 46.91" S	179° 50' 38.26" E	Further most point on reef southsouth west of Temotutafa islet in Nukulaelae atoll	
TVBP0350	9° 25' 48.93" S	179° 50' 40.58" E	Further most point on reef southsouth west of Temotutafa islet in Nukulaelae atoll	
TVBP0351	9° 25' 50.48" S	179° 50' 43.04" E	Further most point on reef southsouth west of Temotutafa islet in Nukulaelae atoll	
TVBP0352	9° 25' 52.27" S	179° 50' 45.92" E	Further most point on reef southsouth west of Temotutafa islet in Nukulaelae atoll	
TVBP0353	9° 26' 08.04" S	179° 51' 25.84" E	Further most point on reef south of Fenualango islet in Nukulaelae	
TVBP0354	9° 26' 08.86" S	179° 51' 28.20" E	Further most point on reef south of Fenualango islet in Nukulaelae atoll	
TVBP0355	9° 26' 10.69" S	179° 51' 33.63" E	Further most point on reef south of the Motualama islet in Nukulaelae atoll	
TVBP0356	9° 26' 10.78" S	179° 51' 34.28" E	Further most point on reef south of the Motualama islet in Nukulaelae atoll	
TVBP0357	9° 26' 11.33" S	179° 51' 39.70" E	Further most point on reef south of the Motualama islet in Nukulaelae atoll	
TVBP0358	9° 26' 11.23" S	179° 51' 44.29" E	Further most point on reef south of the Motualama islet in Nukulaelae atoll	

TVBP0359	9° 26' 10.77" S	179° 51' 47.67" E	Further most point on reef south of the Motualama islet in Nukulaelae atoll
TVBP0360	9° 26' 10.49" S	179° 51' 48.27" E	Further most point on reef south of the Motualama islet in Nukulaelae atoll
TVBP0361	9° 26' 08.01" S	179° 51' 53.59" E	Further most point on reef eastsouth east of Motualama islet in Nukulaelae atoll
TVBP0362	9° 26' 06.58" S	179° 51' 55.50" E	Further most point on reef eastsouth east of Motualama islet in Nukulaelae atoll
TVBP0363	9° 26' 04.28" S	179° 51' 57.84" E	Further most point on reef east of Motualama islet in Nukulaelae atoll
TVBP0364	9° 26' 02.25" S	179° 51' 59.60" E	Further most point on reef east of Motualama islet in Nukulaelae atoll
TVBP0365	9° 25' 58.07" S	179° 52' 01.77" E	Further most point on reef south east of Fetuatasi islet in Nukulaelae atoll
TVBP0366	9° 25' 56.18" S	179° 52' 02.56" E	Further most point on reef south east of Fetuatasi islet in Nukulaelae atoll
TVBP0367	9° 25' 52.69" S	179° 52' 03.98" E	Further most point on reef south east of Niuoku island in Nukulaelae atoll
TVBP0368	9° 25' 47.82" S	179° 52' 05.97" E	Further most point on reef south east of Niuoku island in Nukulaelae atoll
TVBP0369	9° 25' 46.12" S	179° 52' 06.66" E	Further most point on reef south east of Niuoku island in Nukulaelae atoll
TVBP0370	9° 25' 42.44" S	179° 52' 07.95" E	Further most point on reef south east of Niuoku island in Nukulaelae atoll
TVBP0371	9° 25' 41.20" S	179° 52' 08.36" E	Further most point on reef east of Niuoku island in Nukulaelae atoll
TVBP0372	9° 25' 31.36" S	179° 52' 11.07" E	Further most point on reef east of Niuoku island in Nukulaelae atoll
TVBP0373	9° 25' 19.27" S	179° 52' 13.97" E	Further most point on reef east of Niuoku island in Nukulaelae atoll
TVBP0374	9° 25' 11.32" S	179° 52' 15.43" E	Further most point on reef east of Niuoku island in Nukulaelae atoll
TVBP0375	9° 25' 00.52" S	179° 52' 17.17" E	Further most point on reef

			east of Niuoku island in Nukulaelae atoll
TVBP0376	9° 24' 53.72" S	179° 52' 18.32" E	Further most point on reef east of Niuoku island in Nukulaelae atoll
TVBP0377	9° 24' 50.50" S	179° 52' 18.49" E	Further most point on reef east of Niuoku island in Nukulaelae atoll
TVBP0378	9° 24' 43.15" S	179° 52' 18.85" E	Further most point on reef east of Niuoku island in Nukulaelae atoll
TVBP0379	9° 24' 32.35" S	179° 52' 18.09" E	Further most point on reef east of Niuoku island in Nukulaelae atoll
TVBP0380	9° 24' 26.56" S	179° 52' 17.10" E	Further most point on reef east of Niuoku island in Nukulaelae atoll
TVBP0381	9° 24' 21.73" S	179° 52' 15.93" E	Further most point on reef east of Niuoku island in Nukulaelae atoll
TVBP0382	9° 24' 20.58" S	179° 52' 15.65" E	Further most point on reef east of Niuoku island in Nukulaelae atoll
TVBP0383	9° 24' 12.41" S	179° 52' 13.46" E	Further most point on reef east of Niuoku island in Nukulaelae atoll
TVBP0384	9° 23' 55.18" S	179° 52' 06.84" E	Further most point on reef east of Niuoku island in Nukulaelae atoll
TVBP0385	9° 23' 29.88" S	179° 51' 54.93" E	Further most point on reef east of Niuoku island in Nukulaelae atoll
TVBP0386	9° 21' 06.19" S	179° 50' 24.61" E	Further most point on reef east of Tumiloto island in Nukulaelae atoll
TVBP0387	9° 21' 00.63" S	179° 50' 21.03" E	Further most point on reef east of Tumiloto island in Nukulaelae atoll
TVBP0388	8° 26' 03.35" S	179° 10' 15.38" E	Further most point on reef east of Mulitefala islet in Funafuti atoll
TVBP0389	7° 56' 56.74" S	178° 25' 10.80" E	Further most point on reef east of Niutali islet in Nukufetau atoll

### Recommendation 2: Declare Tuvalu as a Christian Nation

<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>Although Christian principles are mentioned in the Constitution, Tuvalu is never described as a country defined by its majority affiliation to Christianity.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>Tuvalu's religious identity</li> </ul>

<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>• Preamble and consequential amendments</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> The current Constitution contains references to Tuvalu as “an independent State based on Christian principles ...” This suggests that Tuvalu adopts Christian concepts in its way of life but may not clearly define the religion adopted by the majority of Tuvaluans.</p> <p><b>(2) Refer to Tuvalu as a “Christian nation” in the Preamble:</b> The Constitution more clearly defines the religion adopted by the majority of Tuvaluans without prescribing that all Tuvaluans or all people living in Tuvalu must practice Christianity.</p>
<b>5. Option Selected with Rationale</b>	<p><b>Refer to Tuvalu as a “Christian nation” in the Preamble:</b> It is important to clearly define Tuvalu in the Preamble, and Tuvalu’s majority Christian religion is one of its important defining characteristics. Fortunately, the phrase “Christian nation” is general in the way it promotes Christian values and principles, and recognizes all Tuvaluans regardless of whether they are Christian or not.</p>
<b>6. Information Paper</b>	N/A
<b>7. Proposed Drafting</b>	<p><b>Preamble</b></p> <p><b>WE</b>, the People of Tuvalu: -</p> <p><b>THANKFUL</b> that our islands and oceans, known in ancient name as the Tuvalu islands, were given by God as our home in the Pacific Ocean;</p> <p><b>CELEBRATING</b> our distinct culture and tradition influenced mainly by people of Polynesian decent;</p> <p><b>RECALLING</b> our history and the arrival of the black birders, traders and explorers;</p> <p><b>REAFFIRMING</b> the adoption of the 1986 Constitution and within it, the vision of its Preamble and Guiding Principles;</p> <p><b>REJOICING</b> in the coming of Christianity to our home;</p> <p><b>AFFIRMING</b> our identity as a Christian nation; ...</p>

## B. Theme 2: Enhancing the Stability of Governance

<p><b>Recommendation 3: Provide for the following regarding the Caretaker Government:</b></p>	
<p><b>(1) State that the Caretaker Government exists when Parliament is dissolved and when the seat of the Prime Minister is vacated;</b></p> <p><b>(2) Clarify the roles and authority of the Caretaker Government, including the role of the Caretaker Government regarding significant appointments and terminations;</b></p> <p><b>(3) Resolve any issues regarding a vacancy in the Governor General’s Office during the Caretaker Period, including giving the Caretaker Government the authority to appoint an Acting Governor General.</b></p>	
<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>• There is currently no provision in the Constitution for a Caretaker Government to be established after the dissolution of Parliament although this is common practice.</li> <li>• Although a Caretaker Government is provided for in the case of the vacation of the Office of the Prime Minister, the roles and authority of the Caretaker Government, including regarding significant appointments and terminations, are unclear.</li> <li>• The current system where the Speaker automatically becomes Acting Governor General if no one is appointed can lead to conflicting roles for the Speaker, especially during the Caretaker-Government period and when the position of the Governor General becomes vacant (through resignation or death).</li> <li>• The current system where the Governor General can resign at any time can negatively impact the transition of the new Government after a general election.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>• Stability of Government</li> <li>• Integrity of election process and installation of new Government</li> </ul>

<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>Section 56 (Acting Governor-General), Section 71 (Caretaker governments), and consequential amendments; add new Section 73 (Vacancy in the office of Prime Minister)</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> Caretaker Government cannot be established after Parliament is dissolved and, even in the case where it can be established after the vacation of the office of the Prime Minister, the roles and authority of the Caretaker Government are unclear. In the case of the Governor General resigning or dying, the Caretaker Government has no defined authority to appoint an Acting Governor General, which would leave the position vacant or automatically filled by the Caretaker Speaker and create problems when/if transitioning to a new Government.</p> <p><b>(2) Amend Sections 56 and 71 and add Section 73 to allow for a Caretaker Government after Parliament is dissolved, define the roles and authority of the Caretaker Government, and give the Caretaker Government the power to make significant appointments:</b> Legalizes the current practice of establishing the Caretaker Government after the dissolution of Parliament and more clearly defines the roles and authority of the Caretaker Government. In providing the Caretaker Government with the authority to make significant appointments, overcomes the risk of a vacuum being created in the case of the Governor General resigning or dying during the Caretaker Period and contributes to the greater stability of the new Government.</p>
<b>5. Option Selected with Rationale</b>	<p><b>Amend Sections 56 and 71 and add Section 73 to allow for a Caretaker Government after Parliament is dissolved, define the roles and authority of the Caretaker Government, and give the Caretaker Government the power to make significant appointments:</b> The following changes to the Constitution are necessary to increasing the stability of Government—</p> <ul style="list-style-type: none"> <li>Legalize the current practice of establishing the Caretaker Government after the dissolution of Parliament;</li> <li>More clearly define the roles and authority of the Caretaker Government so that all relevant parties are clear on what the Caretaker Government may and may not do;</li> <li>Ensure that the Caretaker Government can make necessary appointments, laws, regulations, etc. if there is a clear need (e.g., the death or resignation of the Governor General or a public and urgent emergency).</li> </ul>
<b>6. Information Paper</b>	<p>(1) Paper on Governor-General Vacating Position Immediately Before, During and After the General Election (see <b>Attachment 6</b>)</p>
<b>7. Proposed Drafting</b>	<p><b>57<sup>2</sup> Acting Governor-General</b></p> <p>(1) Where —</p> <p>(a) the office of Governor-General is vacant; or</p> <p>(b) the Governor-General is —</p> <p>(i) absent from Tuvalu; or</p> <p>(ii) for any other reason unable to perform any of the functions of his office, the functions of the Governor-General or the relevant parts of those functions shall be performed by a person appointed in accordance with subsection (2).</p> <p>(2) For the purposes of subsection (1)(c), an appointment shall be made in the same way as the appointment of a Governor-General under section 56 (appointment, etc., of Governor-General) and the provisions of that section, with the necessary modifications, apply, provided that any oath or affirmation required under section 58 (oaths and affirmation by the Governor-General, etc) may be taken or made before the Governor-General.</p>

<sup>2</sup> Some section numbering has changed to reflect the updated numbering in the Revised Constitution.

	<p>(3) No question whether the need for the performance of any function of the Governor-General by another person (including the Speaker) in accordance with subsection (1) has arisen, or has ceased, shall be considered in any court.</p> <p>(4) Subject to Section 72 (caretaker governments), a Prime Minister of a caretaker government may exercise the powers described in subsection (2).</p> <p><b>72 Caretaker governments</b></p> <p>1. After the dissolution of Parliament and until the Prime Minister is elected by the Members of Parliament and has taken the Oaths prescribed by this Constitution, the Cabinet continues in office in a caretaker role.</p> <p>2. When the Cabinet is in a caretaker role it —</p> <ol style="list-style-type: none"> <li>shall provide any necessary assistance to the Electoral Commission to enable it to hold peaceful, free and fair elections;</li> <li>shall carry on the day-to-day affairs of government;</li> <li>subject to (b), shall not enact new laws, regulations or orders, nor may it repeal or amend any existing regulations or orders;</li> <li>shall not incur any unusual or unnecessary expenditure without the approval of the Parliament;</li> <li>shall not make any major policy decisions, or enter into significant contracts or undertakings;</li> <li>shall not make any significant appointments and terminations except in circumstances allowed under sub-section 3.</li> </ol> <p>3. In exceptional circumstances, such as the need for a declaration of public and urgent emergency due to a natural disaster or pandemic or the death or resignation of the Governor-General or other similar circumstances of public importance, which may require the Cabinet in a caretaker role to act in ways that may reasonably be considered to fall outside subsection (2), before it acts, the caretaker Cabinet must seek the simple majority vote, in confidence, of the dissolved Parliament.</p> <p>4. The caretaker government in office shall leave office when the newly elected Prime Minister has taken the Oath of Allegiance and Oath of office as prescribed by this Constitution.</p> <p><b>73 Vacancy in the office of Prime Minister</b></p> <p>(1) In the event of a vacancy in the office of Prime Minister, the Cabinet in office immediately before the occurrence of the vacancy continues in office as a caretaker government having the same role as prescribed in section 72(2) and (3) until a new election of a Prime Minister is completed.</p> <p>(2) If the Prime Minister —</p> <ol style="list-style-type: none"> <li>dies; or</li> <li>ceases to be a member of Parliament for any reason other than the dissolution of Parliament; or</li> <li>is removed from office under section 65 (removal from office of an incapacitated Prime Minister),</li> </ol> <p>then subsections (4)-(7) apply.</p> <p>(3) If the Prime Minister resigns under section 64(2)(d) (which relates to the resignation of the Prime Minister) and indicates in his notice of resignation that he wishes it to become effective immediately, then subsections (4)-(7) apply.</p> <p>(4) Subject to subsection (5), in a case to which subsection (2) or (3) applies the Deputy Prime Minister shall perform the functions of the Prime Minister.</p> <p>(5) If —</p> <ol style="list-style-type: none"> <li>there is no office of Deputy Prime Minister; or</li> <li>subject to section 70 (acting ministers), there is a vacancy in the office of Deputy Prime Minister; or</li> </ol>
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	<p>(c) the Deputy Prime Minister is absent from Tuvalu; or</p> <p>(d) the Deputy Prime Minister is for any other reason unable to perform the functions of the Prime Minister,</p> <p>a Minister appointed by the Head of State, acting in his own deliberate judgment after consultation, in confidence, with the other Ministers, shall perform the functions of the Prime Minister.</p> <p>(6) The provisions of section 63(6) (which relates to the appointment of former members of Parliament to be Ministers) apply in respect of a caretaker government holding office under this section.</p> <p>(7) A caretaker government goes out of office when a new election to the office of Prime Minister is completed.</p>
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<p><b>Recommendation 4: Remove the possibility for the Speaker to serve as the Acting Governor General in the absence of a person appointed in accordance with the terms in the Constitution and ensure that only a person so appointed can serve as Acting Governor General</b></p>	
<p><b>1. Issue to be Resolved</b></p>	<ul style="list-style-type: none"> <li>• Currently, there is confusion as to whether the Speaker becomes Acting Governor General automatically upon the Governor General being absent from Tuvalu or unable to perform the functions of his Office or if another person should be appointed as Acting Governor General and only if said person cannot be so appointed, the Speaker takes up the role of Acting Governor General.</li> <li>• The current system where the Speaker can become Acting Governor General can lead to conflicting roles for the Speaker.</li> </ul>
<p><b>2. Underlying Principles</b></p>	<ul style="list-style-type: none"> <li>• Stability and effective functioning of Government</li> </ul>
<p><b>3. Sections of the Constitution to Amend</b></p>	<ul style="list-style-type: none"> <li>• Section 56 (Acting Governor General) and consequential amendments</li> </ul>
<p><b>4. Options and Their Implications</b></p>	<p><b>(1) Maintain the status quo:</b> Confusion remains as to whether the Speaker becomes Acting Governor General automatically in any circumstance where the Governor General is out of Tuvalu or unable to perform his functions and may lead to conflicting roles for the Speaker.</p> <p><b>(2) Amend Section 56 to remove Subsection (d) so that the Speaker is not identified to serve in the role of Acting Governor General:</b> In all cases, when the Governor General is out of Tuvalu or unable to perform his functions, another person is appointed, based on procedures outlined in the Constitution, to take his place. This reduces confusion surrounding who should take up the role of Acting Governor General but may cause difficulty or delay if consensus cannot be reached as to who should be appointed as Acting Governor General or if there is no appropriate candidate for the position.</p>
<p><b>5. Option Selected with Rationale</b></p>	<p><b>Amend Section 56 to remove Subsection (d) so that the Speaker is not identified to serve in the role of Acting Governor General:</b> It is critical for the appointment process for the Acting Governor General to be as clear as possible so as to avoid any confusion as to who should take on the role. It is further necessary to avoid appointing as Acting Governor General any person who may already serve in a role with functions that could potentially conflict with those of the Acting Governor General.</p>
<p><b>6. Information Paper</b></p>	<p>N/A</p>
<p><b>7. Proposed Drafting</b></p>	<p><b>57 Acting Governor-General</b></p> <p>(1) Where —</p> <p>(a) the office of Governor-General is vacant; or</p> <p>(b) the Governor-General is —</p> <p>(i) absent from Tuvalu; or</p>

	<p>(ii) for any other reason unable to perform any of the functions of his office, the functions of the Governor-General or the relevant parts of those functions shall be performed by a person appointed in accordance with subsection (2).</p> <p><del>(c) — a person appointed in accordance with subsection (2); or</del></p> <p><del>(d) — in the absence of a person appointed in accordance with subsection (2) who is able to perform those functions — the Speaker.</del></p> <p>(2) For the purposes of subsection (1)(c), an appointment shall be made in the same way as the appointment of a Governor-General under section 56 (appointment, etc., of Governor-General,) and the provisions of that section, with the necessary modifications, apply, provided that any oath or affirmation required under section 58 (oaths and affirmation by the Governor-General, etc) may be taken or made before the Governor-General.</p> <p>(3) No question whether the need for the performance of any function of the Governor-General by another person (including the Speaker) in accordance with subsection (1) has arisen, or has ceased, shall be considered in any court.</p> <p><b>(4) Subject to Section 72 (caretaker governments), a Prime Minister of a caretaker government may exercise the powers described in subsection (2).</b></p>
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<b>Recommendation 5: Provide for the selection of the Governor General to be based on a fixed rotation of the Islands or regions (i.e., North, Central, and South) of Tuvalu</b>	
<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>Currently, there is no set process for the selection of the Governor General that allows all Islands equal opportunity to have a representative serve in the position.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>Stability and equity of Government</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>Section 55 (Appointment, etc., of the Governor-General) and consequential amendments (e.g., add new Schedule 7 on Order of Rotation for Appointment of the Governor-General)</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> No set rotation for selection of the Governor General is introduced, and there may continue to be issues regarding different Islands not having equal opportunity to hold the Governor General position.</p> <p><b>(2) Amend Section 55 and add Schedule 7 so that the position of Governor General rotates among the Islands:</b> Allows for equal opportunity among Islands to have a representative serve as Governor General.</p>
<b>5. Option Selected with Rationale</b>	<p><b>Amend Section 55 and add Schedule 7 so that the position of Governor General rotates among the Islands:</b> Given the importance of Island representation in Tuvalu, it is critical that a more equitable rotation system be implemented that can allow all Islands to have a representative serve as Governor General in a reasonable time.</p>
<b>6. Information Paper</b>	N/A
<b>7. Proposed Drafting</b>	<p><b>56 Appointment, etc., of the Governor-General</b></p> <p>(1) The Governor-General shall be appointed, and may be removed from office at any time (with or without cause), by the Sovereign, acting in accordance with the advice of the Prime Minister given, and subject to sub-section (5), after the Prime Minister has, in confidence, consulted the members of Parliament.</p> <p>(2) A person is not qualified to be appointed Governor-General unless —</p> <p style="padding-left: 20px;">(a) he has attained the age of 50 years; and</p> <p style="padding-left: 20px;">(b) he is otherwise qualified to be elected as a member of Parliament.</p> <p>(3) The Governor-General vacates his office —</p> <p style="padding-left: 20px;">(a) on death; or</p> <p style="padding-left: 20px;">(b) if he is removed from office under subsection (1); or</p> <p style="padding-left: 20px;">(c) subject to subsection (4), if he resigns by notice in writing to the Speaker; or</p> <p style="padding-left: 20px;">(d) if he ceases to be otherwise qualified to be elected as a member of Parliament;</p> <p style="padding-left: 40px;">or</p>

	<p>(e) at the end of the period of four years after the date of his appointment.</p> <p>(4) A resignation under subsection (3)(c) takes effect on the day on which it is received by the Speaker, or on such later date as is agreed between the Governor-General and the Prime Minister.</p> <p>(5) Candidates for appointment to the office of Governor-General shall rotate amongst the islands of Tuvalu in accordance with Schedule 7.</p> <p style="text-align: center;"><b>SCHEDULE 7</b> <b>(section 56(5))</b></p> <p style="text-align: center;"><b>ORDER OF ROTATION FOR APPOINTMENT OF THE GOVERNOR-GENERAL</b></p> <p>1. The order of rotation shall be from south to north, in accordance with the following rules –</p> <p>(a) the candidate for appointment to the office of Governor-General shall then pass, each time a Governor-General is to be appointed, to the next most northerly island; the next Governor-General to be appointed shall be from the most southerly island.</p> <p>2. In making the nominations under this Schedule, the Prime Minister shall consult with the Falekaupule of the relevant island.</p> <p>3. For purposes of this section, the islands are as follows:  Nanumea  Nanumaga  Niutao  Nui  Vaitupu  Nukufetau  Funafuti  Nukulaelae</p>
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<b>Recommendation 6: Provide that the tenure of the Speaker ends when a new Speaker is elected</b>	
<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>• Lack of consensus in legal opinions as to when the Speaker’s term ends.</li> <li>• Need to determine whether the Speaker’s term should end when Parliament dissolves or whether it should continue until the election of a new Speaker.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>• Stability of Government</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>• Section 105(1)(b) (Tenure of office of the Speaker) and consequential amendments</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> Continued uncertainty as to when the tenure of the Speaker ends.</p> <p><b>(2) Amend the Constitution so that Speaker’s tenure ends when Parliament dissolves:</b> There is no Speaker and no one to exercise the functions of the Speaker (e.g., serve as representative of Parliament and administer Parliament and its buildings) from the time Parliament dissolves until a new Speaker is elected.</p> <p><b>(3) Amend the Constitution so that Speaker’s tenure ends when new Speaker is elected:</b> The Office of the Speaker is never left vacant, and the functions of the Speaker are always maintained.</p>
<b>5. Option Selected with Rationale</b>	<p><b>Amend the Constitution so that Speaker’s tenure ends when new Speaker is elected:</b> Given the special functions of the Speaker, it is critical that the Office of the Speaker is never left vacant and that the functions of the Speaker are maintained.</p>
<b>6. Information Paper</b>	<p>(1) Paper on the Tenure of the Speaker (see <b>Attachment 6</b>)</p>

<p><b>7. Proposed Drafting</b></p>	<p><b>107 Tenure of office of the Speaker</b></p> <p>(1) The office of Speaker becomes vacant —</p> <ul style="list-style-type: none"> <li>(a) on death; or</li> <li>(b) when, after the general election, the election of the next Speaker is concluded, as provided under section 106(2) (Election of the Speaker); or</li> <li>(c) subject to subsection (2), if —             <ul style="list-style-type: none"> <li>(i) he announces to Parliament his resignation from office; or</li> <li>(ii) he resigns his office by written notice addressed to Parliament and given to the Clerk of Parliament; or</li> </ul> </li> <li>(d) if he ceases to be a member of Parliament for any reason other than the dissolution of Parliament; or</li> <li>(e) if he becomes Prime Minister or another Minister; or</li> <li>(f) if he becomes the Head of State or a Judge of the High Court; or</li> <li>(g) if Parliament so resolves by resolution supported by the votes of two thirds of the total membership.</li> </ul> <p>(2) A resignation under subsection (1)(c) takes effect on the date on which it is —</p> <ul style="list-style-type: none"> <li>(a) announced to Parliament; or</li> <li>(b) received by the Clerk of Parliament, as the case may be.</li> </ul>
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<p><b>Recommendation 7: Provide the following regarding Parliament Sessions:</b></p> <p><b>(1) Parliament shall meet at least twice within a 12-month period;</b></p> <p><b>(2) One-half of MPs can request a Parliament Session if Sessions are not called at the prescribed times.</b></p>	
<p><b>1. Issue to be Resolved</b></p>	<ul style="list-style-type: none"> <li>• Currently, Parliament is only required to meet once in a 12-month period, which may be insufficient to complete the legislative work of Tuvalu and provide for proper oversight of the Executive.</li> <li>• The Speaker has the power to call a sitting of Parliament if the Executive does not advise the Head of State to do so in compliance with provisions in the Constitution, but, if the Speaker is in any way predisposed toward the Executive, this may not be an effective method to ensure that Parliament sessions are called even if the Executive has lost the majority.</li> </ul>
<p><b>2. Underlying Principles</b></p>	<ul style="list-style-type: none"> <li>• Stability of Government</li> </ul>
<p><b>3. Sections of the Constitution to Amend</b></p>	<ul style="list-style-type: none"> <li>• Section 116(2) and 116(4) (Meetings of Parliament) and consequential amendments</li> </ul>
<p><b>4. Options and Their Implications</b></p>	<p><b>(1) Maintain the status quo:</b> Parliament meets only infrequently, which may negatively affect Parliament’s legislative work and oversight role. Although no provision is included in the Constitution to provide a direct remedy should the Executive and the Speaker not call Parliament within the prescribed time limits, MPs or other citizens are able to take the Executive and/or Speaker to court if they violate the prescribed timelines for Parliament sessions set in the Constitution.</p> <p><b>(2) Increase lower limit for Parliament sessions to twice every 12 months:</b> Increases mandatory number of Parliament sessions to be held every 12 months. Although no provision is included in the Constitution to provide a direct remedy should the Executive and the Speaker not call Parliament within the prescribed time limits, MPs or other citizens are able to take the Executive and/or Speaker to court if they violate the prescribed timelines for Parliament sessions set in the Constitution.</p> <p><b>(3) Increase lower limit for Parliament sessions to twice every 12 months and provide that one-half of MPs can request a Parliament session if sessions are not called at the prescribed times:</b> Increases mandatory number of Parliament sessions to be held every 12 months. Provides a direct remedy should the Executive and the Speaker not call Parliament within the prescribed time limits. If the request of the one-half of</p>

	MPs is not heeded, they can take the Executive to court for directly violating provisions in the Constitution.
<b>5. Option Selected with Rationale</b>	<b>Increase lower limit for Parliament sessions to twice every 12 months and provide that one-half of MPs can request a Parliament session if sessions are not called at the prescribed times:</b> To fully exercise its legislative and oversight roles, it is necessary for Parliament to be mandated to meet more than once every 12 months. Given that Executive groupings may seek to avoid Parliament sessions if they have lost the majority and given that the Speaker may side with the Executive, it is important to provide another method for the calling of Parliament sessions according to prescribed timelines.
<b>6. Information Paper</b>	N/A
<b>7. Proposed Drafting</b>	<b>119 Meetings of Parliament</b> (2) Sessions of Parliament shall be held in such a way that Parliament shall meet at least twice within a 12-month period. ... (4) In the event of a failure to comply with subsection (2) and (3), the Head of State — (a) shall proclaim a meeting of Parliament if so required in writing by —i. the Speaker, or ii. one-half of the members of Parliament.

<b>Recommendation 8: Provide that votes of no confidence cannot happen in the first 12 months or last 12 months of the life of a Parliament</b>	
<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>There is currently no standalone Section in the Constitution regulating the Vote of No Confidence.</li> <li>A lack of regulation on when the Vote of No Confidence is used may destabilize Government and lead to frequent turnover, especially for Governments that are new or nearing the end of their Parliamentary term.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>Stability and effective functioning of Government</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>To insert a new Section 113 (Vote of No Confidence) and include relevant consequential amendments</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> The Vote of No Confidence will continue to be mentioned only obliquely in the Constitution and no regulations will be outlined in the document on how the Vote of No Confidence might be regulated.</p> <p><b>(2) Introduce the following restrictions on votes of no confidence: Votes of No Confidence cannot happen in the first 12 months or last 12 months of the life of a Parliament:</b> The concept of the Vote of No Confidence is directly defined in the Constitution and restrictions are placed on the Vote of No Confidence so that new Governments and Governments nearing the end of their tenure cannot be removed. This is meant to stabilize Government by giving new Governments 12 months to prove themselves and recognizing that removing a Government within 12 months of an election is unnecessary as the voters will soon enough be able to select new MPs.</p> <p><b>(3) Introduce the following restrictions on votes of no confidence: MPs must confirm by signature to the Speaker their support for motion of no confidence; the motion to be included in the list of subjects for the Parliament sitting or must have at least seven days’ notice; votes of no confidence cannot happen in the first 12 months or last 12 months of the life of a Parliament; and once a motion of no confidence is passed, the Prime Minister is dismissed and Parliament will automatically be dissolved unless a Prime Minister is elected within seven days, or Parliament will be automatically dissolved (subject to decision on direct election of the PM):</b> The concept of the Vote of No Confidence is directly defined in the Constitution. Numerous restrictions are placed on the Vote of No Confidence, which may render</p>

	the Vote of No Confidence essentially useless, especially if one of the consequences of a Vote of No Confidence is that Parliament might be dissolved.
<b>5. Option Selected with Rationale</b>	<b>Introduce the following restrictions on votes of no confidence: Votes of No Confidence cannot happen in the first 12 months or last 12 months of the life of a Parliament:</b> It is important to define the Vote of No Confidence in the Constitution and restrict its excessive use, but it is also critical that the Vote of No Confidence remains a tool that can be effectively utilized by Parliament in the case that a Government has lost support.
<b>6. Information Paper</b>	N/A
<b>7. Proposed Drafting</b>	<b>113 Vote of No Confidence</b> (1) Subject to the provisions of this section, Parliament may pass a motion of no confidence in the Government with the support of the votes of a majority of the total membership of Parliament. (2) A vote of no confidence shall not be held — (a) within the first 12 months of the life of a Parliament following the date of the most recent general election; or (b) during the last 12 months of the life of a Parliament before a dissolution under 121(1) (Dissolution of Parliament).

**Recommendation 9: Add to the Constitution the option for the Governor General to trigger the recall of MPs/Ministers on grounds of incapacity after 6 months, with adequate safeguards to ensure a reliable medical decision and to prevent partiality in the application of the rule, while retaining the existing option for recalling an incapacitated MP under Section 99**

<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>The current system for recalling an MP on the grounds of incapacity, which involves more than 50 percent of the persons who are registered for Parliamentary elections in a district signing a petition to the Head of State stating that an MP for that district is unable to perform properly his/her functions because of infirmity of body or mind, may be difficult to implement given Tuvalu's consensus-based and non-confrontational culture.</li> <li>Given this, it may be difficult to recall an MP on the grounds of incapacity even if it is clear that the MP is not performing their functions due to infirmity of body or mind.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>Stability and effective functioning of Government</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>Section 99 (Recall of incapacitated member) and consequential amendments</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> Island constituencies continue to hold the power to trigger the recall of their MPs due to infirmity of body or mind; however, this Section of the Constitution may not be frequently used because it is openly confrontational.</p> <p><b>(2) Change the recall system so that the Head of State triggers the recall of an MP due to infirmity of body or mind:</b> The recall of MPs may be triggered more frequently because the Head of State is able to determine in his/her own deliberate judgement whether an MP might be incapacitated; however, Island constituencies, who elected the MPs in the first place, would then be disempowered to make this choice.</p> <p><b>(3) Maintain the current system while also adding the option for the Head of State to trigger the recall of an MP due to infirmity of body or mind:</b> Island constituencies continue to hold the power to trigger the recall of their MPs due to infirmity of body or mind, but the Head of State is also invested with the power to trigger a recall in the event that an Island constituency may be unable/unwilling to do so.</p>
<b>5. Option Selected with Rationale</b>	<b>Maintain the current system while also adding the option for the Head of State to trigger the recall of an MP due to infirmity of body or mind:</b> Island constituencies cannot be disenfranchised or disempowered from making important choices regarding the

	office of their elected MPs, but MPs who are clearly incapacitated and cannot carry out their functions can also not be allowed to continue in office due to inaction.
<b>6. Information Paper</b>	N/A
<b>7. Proposed Drafting</b>	<p><b>101 Recall of incapacitated member</b></p> <p>(1) The recall of a member of Parliament can be initiated if —</p> <p>(a) The Head of State, acting in his own deliberate judgement, determines that a member of Parliament is unable to perform properly the functions of a member because of infirmity of body or mind; or</p> <p>(b) More than 50 percent of the persons who are registered as electors for Parliamentary elections in an electoral district sign a petition to the Head of State stating that a member of Parliament for that district is unable to perform properly the functions of a member because of infirmity of body or mind.</p> <p>(2) If (1)(a) or (b) occurs, and the Head of State, acting in his own deliberate judgment, is satisfied that</p> <p>(a) the member has for a continuous period of six months been unable to perform properly the functions of a member because of infirmity of body or mind; and</p> <p>(b) it is desirable in the interests of the good governance of Tuvalu that the question of removing the member on grounds of infirmity of body or mind should be investigated,</p> <p>he shall appoint a Professional Medical Tribunal consisting of three persons to investigate the question of the capacity of a member of Parliament.</p> <p>(3) The members of the Tribunal appointed under subsection (2) shall be medical practitioners who have been legally qualified to practice medicine in Tuvalu or another Commonwealth country for a period of not less than five years.</p> <p>(4) The Tribunal appointed under subsection (2) shall investigate the question and present a joint report directly to the Head of State himself.</p> <p>(5) If, after considering the report of the Professional Medical Tribunal, the Head of State, acting in his own deliberate judgment, is satisfied that it is desirable in the interests of the good governance of Tuvalu to recall the member, he shall declare the seat of the member concerned to be vacant and give a written notice of such declaration to — (a) the Speaker; and (b) the member.</p>

<b>Recommendation 10: Provide for greater consensus and cooperation in Parliamentary decision-making similar to the style of decision-making found in the Falekaupule and enhance Parliament’s oversight role</b>	
<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>Perceived disconnect between consensus-based Tuvaluan governance traditions and more conflictual governance style currently found in the Tuvalu Parliament.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>Stability of Government</li> <li>Strengthening Tuvaluan values and culture in the central Government</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>Section 81 (Establishment of Parliament) and consequential amendments</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> No changes are made in the Constitution of Tuvalu, but the Parliamentary Rules of Procedure may be amended to provide for greater consensus and congeniality in Parliament (see <b>Attachment 7</b>).</p> <p><b>(2) State in the Constitution that Parliament shall strive to operate in accordance with the principles of consensus and cooperation:</b> Basic characteristics of Parliament are outlined in the Section of the Constitution on the Establishment of Parliament to highlight that Parliament is meant to function in accordance with the Tuvaluan values that dictate consensus-based Tuvaluan governance traditions. The</p>

	Parliamentary Rules of Procedure may also be amended to provide for greater consensus and congeniality in Parliament (see <b>Attachment 7</b> ).
<b>5. Option Selected with Rationale</b>	<b>State in the Constitution that Parliament shall strive to operate in accordance with the principles of consensus and cooperation:</b> It should be clarified in the Constitution that Parliament is meant to function in a way that dovetails with Tuvaluan culture and society and not in a way that conflicts with it.
<b>6. Information Paper</b>	(1) Special Considerations for Developing Consensus and Cooperation in Parliamentary Decision-Making & Enhancing Parliament’s Oversight Role (see <b>Attachment 7</b> )
<b>7. Proposed Drafting</b>	<b>83 Establishment of Parliament</b> (1) A Parliament is established for Tuvalu. (2) Parliament is the representative, legislative and deliberative assembly of Tuvalu. (3) Parliament shall exercise the functions of decision making and oversight and shall strive to do so through consensus and cooperation.

### Recommendation 13: Appoint Constitutional Officers with the consent of Cabinet

<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>The appointment of certain Constitutional Officers, including the Secretary to Government and the Commissioner of Police, is completed by the Head of State “acting in accordance with the advice of the Public Service Commission given after consultation with the Cabinet.”</li> <li>Although Cabinet must work closely with these Constitutional Officers, Cabinet has no power of consent or final advice over their appointment.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>Stability of the Executive and its relationship with Constitutional Officers</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>Section 159 (Special cases of appointments) and consequential amendments (e.g., combine Section 158 [Secretaries to Ministries] into Section 159)</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> The Head of State continues to appoint certain Constitutional Officers in accordance with the advice of the Public Service Commission given after consultation with Cabinet, but situations may arise where the views of Cabinet are not adopted and Constitutional Officers are appointed who cannot work well with Cabinet.</p> <p><b>(2) Provide that certain Constitutional Officers should be appointed by the Head of State acting in accordance with the advice of Cabinet given after consultation with the Public Service Commission:</b> All Constitutional Officers previously appointed through consultation with Cabinet before discussion with the Public Service Commission are now appointed with advice from Cabinet after consultation with the Public Service Commission. This ensures that Cabinet can work well with these Constitutional Officers but may entail the appointment of Officers who are less qualified or appropriate in the view of the Public Service Commission.</p>
<b>5. Option Selected with Rationale</b>	<b>Provide that certain Constitutional Officers should be appointed by the Head of State acting in accordance with the advice of Cabinet given after consultation with the Public Service Commission:</b> Cabinet must be able to work in close coordination with its Secretary to Government, Attorney-General, Commissioner of Police, etc. Consequently, the views of Cabinet regarding the appointment of these Officers should not be outweighed by the Public Service Commission.
<b>6. Information Paper</b>	N/A
<b>7. Proposed Drafting</b>	<b>Section 158 (Secretaries to Ministries) is combined into Section 159 (renumbered as Section 162).</b> <b>162 Special cases of appointments</b> (1) This section shall be read subject to section 145 (localization). (2) The Auditor-General —



	<p>(a) shall be appointed by the Head of State, acting in accordance with the advice of the Public Service Commission, and with the approval of Parliament signified by resolution; and</p> <p>(b) may be suspended or removed from office in accordance with Division 5 (Removal, etc., of Certain Officials).</p> <p>(3) The Secretary to Government and secretaries to Ministries—</p> <p>(a) shall be appointed by the Head of State, acting in accordance with the advice of the Cabinet given after consultation with the Public Service Commission; and</p> <p>(b) may be suspended or removed from office in accordance with Division 5 (Removal, etc., of Certain Officials).</p> <p>(4) The Attorney-General —</p> <p>(a) shall be appointed by the Head of State, acting in accordance with the consent of the Cabinet given after consultation with the Public Service Commission; and</p> <p>(b) may be suspended or removed from office in accordance with Division 5 (Removal, etc., of Certain Officials).</p> <p>(5) The Commissioner of Police —</p> <p>(a) shall be appointed by the Head of State, acting in accordance with the advice of the Cabinet given after consultation with the Public Service Commission; and</p> <p>(b) may be suspended or removed from office in accordance with Division 5 (Removal, etc., of Certain Officials).</p> <p>(6) The Director of Public Prosecutions —</p> <p>(a) shall be appointed by the Head of State acting in accordance with the advice of the Cabinet given after consultation with the Public Service Commission; and</p> <p>(b) may be suspended or removed from office under Division 5 (Removal, etc., of Certain Officials).</p> <p>(7) The Personal Staff of the Governor General—</p> <p>(a) shall be appointed by the Governor General acting in his own deliberate judgment; and</p> <p>(b) may be suspended or removed by the Governor General acting in his own deliberate judgment.</p> <p>(8) The Personal Staff of the Governor General shall be members of the State Service.</p>
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<b>Recommendation 14: Ensure that the appointment of Acting Prime Ministers or Acting Ministers is necessary and does not interfere with the functions of Prime Ministers or Ministers when they are out of country for official reasons.</b>	
<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>• Currently, Section 68 (Acting Prime Minister) and Section 69 (Acting Ministers) provide for Acting Prime Ministers and Acting Ministers whenever a Prime Minister or Minister is out of the country (for the Prime Minister, the acting appointment is mandatory, while, for Ministers, the appointment is optional).</li> <li>• This may lead to two problems: (i) the potential for Constitutional crisis if an Acting Prime Minister/Minister usurps powers; and (ii) challenges to the validity of legal acts executed by a Prime Minister/Minister while abroad in their official capacity.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>• Stability of the Executive</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>• Section 68 (Acting Prime Minister), Section 69 (Acting Ministers), and consequential amendments</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> Acting Prime Ministers or Acting Ministers are appointed whenever the Prime Minister or other Ministers are out of country, but situations may arise where the power of a Prime Minister/Minister to exercise his/her official</p>

	<p>role while on official travel is questioned because an Acting Prime Minister/Minister is simultaneously exercising the same role in Tuvalu.</p> <p><b>(2) Provide that Acting Prime Ministers or Acting Ministers are only appointed when a Prime Minister/Minister is unable to perform his functions due to illness or absence from Tuvalu:</b> There is no longer danger that the legitimacy of acts undertaken by the Prime Minister/Minister while on official travel abroad will be questioned due to the presence of an Acting Prime Minister/Minister, but the calling of Cabinet, a function the Prime Minister is required to be in country to exercise, may still require the temporary appointment of an Acting Prime Minister even when the Prime Minister is exercising his/her official functions from abroad.</p>
<b>5. Option Selected with Rationale</b>	<p><b>Provide that Acting Prime Ministers or Acting Ministers are only appointed when a Prime Minister/Minister is unable to perform his functions due to illness or absence from Tuvalu:</b> Given improvements in digital technologies and the need for clarity on the official powers of the Prime Minister/Minister while abroad, it is necessary to provide greater specificity on when an Acting Prime Minister/Minister can or should be appointed.</p>
<b>6. Information Paper</b>	N/A
<b>7. Proposed Drafting</b>	<p><b>69 Acting Prime Minister</b></p> <p>(1) This section applies when the Prime Minister is —</p> <p>(a) absent from Tuvalu and prevented from discharging functions of his office; or</p> <p>(b) for any other reason unable to perform the functions of his office.</p> <p>(2) Subject to subsection (3), in a case to which subsection (1) applies until the Prime Minister returns to Tuvalu or is again able to perform the functions of his office the Deputy Prime Minister, (if any) shall perform those functions.</p> <p>(3) If —</p> <p>(a) there is no office of Deputy Prime Minister; or</p> <p>(b) there is a vacancy in the office of Deputy Prime Minister; or</p> <p>(c) the Deputy Prime Minister is absent from Tuvalu and prevented from discharging functions of his office; or</p> <p>(d) the Deputy Prime Minister is for any other reason unable to perform the functions of the Prime Minister,</p> <p>a Minister appointed by the Head of State, acting in accordance with the advice of the Prime Minister, shall perform the functions of the Prime Minister.</p> <p><b>70 Acting Ministers</b></p> <p>(1) When—</p> <p>(a) subject to section 72 (caretaker governments), the office of a Minister other than the Prime Minister is vacant; or</p> <p>(b) a Minister other than the Prime Minister is —</p> <p>(i) absent from Tuvalu and prevented from discharging functions of his office; or</p> <p>(ii) for any other reason unable to perform the functions of his office,</p> <p>the Head of State, acting in accordance with the advice of the Prime Minister, may appoint another member of Parliament to perform temporarily the functions of the Minister.</p> <p>(2) The provisions of section 63(6) (which relates to the appointment of former members of Parliament as Ministers) apply to an appointment under this section in the same way as they apply to other appointments.</p>

**Recommendation 15: Amend sections of the Constitution referring to Queen Elizabeth II to more generic references to the Sovereign of Tuvalu that can apply to any successor to the Crown**

<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>Given the recent passing of Queen Elizabeth II, it may be appropriate to change the section of the Constitution on “The Sovereign of Tuvalu” to not specifically refer to Queen Elizabeth II but to any successor of the Crown.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>Clear reference to the Sovereign of Tuvalu</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>Section 48 (The Sovereign of Tuvalu) and consequential amendments</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> In the Constitution, the Sovereign of Tuvalu will continue to refer to Queen Elizabeth II, but the section on “Succession to the Crown” will provide for reference to the Sovereign to extend to the Heirs and Successors of the Sovereign according to law.</p> <p><b>(2) Amend Section 48 on “The Sovereign of Tuvalu” to include more generic references to the Sovereign of Tuvalu that can apply to any successor of the Crown:</b> In the Constitution, the Sovereign of Tuvalu will not specifically refer to Queen Elizabeth II; instead, all successors to the Crown will be covered under Section 48.</p>
<b>5. Option Selected with Rationale</b>	<p><b>Amend Section 48 on “The Sovereign of Tuvalu” to include more generic references to the Sovereign of Tuvalu that can apply to any successor of the Crown:</b> To reduce the need for Constitutional amendment with the passing of each specific Sovereign of Tuvalu, a more generic reference to the Sovereign can be adopted.</p>
<b>6. Information Paper</b>	N/A
<b>7. Proposed Drafting</b>	<p><b>49 The Sovereign of Tuvalu</b></p> <p>(1) The Sovereign, by the grace of God the Royal Majesty of the United Kingdom of Great Britain and Northern Ireland and of Other Realms and Possessions, Head of the Commonwealth, Defender of the Faith, having at the request of the people of Tuvalu graciously consented, is the Sovereign of Tuvalu and, in accordance with this Constitution, the Head of State.</p> <p>(2) The Royal Style and Titles are as determined by Act of Parliament.</p>

### C. Theme 3: Judicial Reforms

<b>Recommendation 16: Remove requirement to have held judicial office in ‘a country with similar legal system to Tuvalu’ and replace with qualifications that facilitate the appointment of Tuvaluan candidates</b>	
<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>The current provisions in the Constitution hold that any person serving as a High Court Judge for Tuvalu must have first served as a Judge, barrister, or solicitor in another country (with a similar legal system to Tuvalu).</li> <li>This provision makes it extremely difficult for Tuvaluans to become High Court Judges because it disqualifies those who have served as Judges, barristers, or solicitors only in Tuvalu.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>Judicial reform</li> <li>Localization</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>Section 124 (Qualifications of Judges) and consequential amendments</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> No matter their experience or qualifications, Tuvaluans will be disqualified from holding the position of High Court Judge unless they serve as a Judge, barrister, or solicitor in another country first, while foreigners can much more easily obtain the position of High Court Judge of Tuvalu through the same provision.</p> <p><b>(2) Remove the requirement to have held judicial office in a country with similar legal system to Tuvalu:</b> Tuvaluans can become High Court Judges if they have served as a</p>

	Judge, barrister, or solicitor in Tuvalu, thereby equalizing employment opportunities for Tuvaluans and foreigners in the higher levels of the Judiciary.
<b>5. Option Selected with Rationale</b>	<b>Remove the requirement to have held judicial office in a country with similar legal system to Tuvalu:</b> Tuvaluans must be given the fair opportunity to serve as Judges of the High Court in their own country, and the position of High Court Judge should not be reserved for foreigners.
<b>6. Information Paper</b>	N/A
<b>7. Proposed Drafting</b>	<b>127 Qualifications of Judges</b> A person is not qualified for appointment as a Judge of the High Court unless — (a) he is or has been a judge of a court of unlimited jurisdiction in civil and criminal matters in Tuvalu or some country that has a legal system similar to that of Tuvalu, or of a court having jurisdiction in appeals from such a court; or (b) has been qualified for at least five years to practise as a barrister or solicitor, or the equivalent, in a country referred to in paragraph (a).

<b>Recommendation 17: Amend Section 79 on the AG’s function in the Constitution to enable the establishment of the Office of the Director of Public Prosecution in standalone legislation</b>	
<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>Currently, the roles of the Attorney General and the Director of Public Prosecution are fused into one person; however, the Attorney General is meant to serve as the legal advisor for the Government of the day, while the Director of Public Prosecution is the principal prosecuting authority in the country.</li> <li>The fusing of the Attorney General and the Director of Public Prosecution roles may cause a conflict of interest, especially if a person being prosecuted is a powerful figure in the Government.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>Judicial reform</li> <li>Transparency and good governance</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>Section 79 (The Attorney-General), Section 159 (Special cases of appointments), and Schedule 1 (Rules for the Interpretation of the Constitution); insert new Section 161 (Office of Director of Public Prosecutions); and consequential amendments (e.g., existing Section 161 [Application of Division 5])</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> The Attorney General and his/her Office continue to hold the roles of both legal advisor to the Government and principal prosecuting authority, which may lead to conflicts of interest when prosecuting cases against persons affiliated with the Government.</p> <p><b>(2) Amend the AG’s function in the Constitution to remove prosecutorial functions and specify that prosecutorial functions will be assigned under an Act of Parliament:</b> The Attorney General no longer holds the role of principal prosecuting authority for Tuvalu; although the Constitution specifies that this role will be taken up by another body, it is left to an Act of Parliament to establish the Director of Public Prosecution.</p> <p><b>(3) Amend the AG’s function in the Constitution to remove prosecutorial functions and establish the Director of Public Prosecution:</b> The Attorney General no longer holds the role of principal prosecuting authority for Tuvalu, and the Director of Public Prosecution is established in the Constitution to take over this role with specific functions, etc. to be outlined in an Act of Parliament.</p>
<b>5. Option Selected with Rationale</b>	<b>Amend the AG’s function in the Constitution to remove prosecutorial functions and establish the Director of Public Prosecution:</b> To avoid conflicts of interest, it is necessary for the role of the Attorney General to be divorced from the role of the principal prosecuting authority in Tuvalu. It is further preferable to generally establish the Director of Public Prosecution in the Constitution to specify the person/body who will undertake the role of principal prosecuting authority in the country.
<b>6. Information Paper</b>	N/A

<p><b>7. Proposed Drafting</b></p>	<p><b>81 The Attorney-General<sup>3</sup></b></p> <p>(1) An office of Attorney-General for Tuvalu is established as an office in the Public Service.</p> <p>(2) The Attorney-General shall be appointed in accordance with section 162(4)(a) (which relates to the appointment of the Attorney-General).</p> <p>(3) The Attorney-General is the principal legal adviser to the Government, and has such other functions as are prescribed.</p> <p>(4) A person is not qualified to hold or to act in the office of Attorney-General unless he is entitled to practice before the High Court.</p> <p><del>(5) Unless he is excused by or under the authority of Parliament, the Attorney General—</del>  <del>(a) shall attend all meetings of Parliament; and</del>  <del>(b) may take part, in accordance with the Rules of Procedure of Parliament, in the proceedings of Parliament and committees of Parliament (but without a vote).</del></p> <p>(5) Unless he is excused by or under the authority of the Prime Minister, the Attorney-General shall attend all meetings of the Cabinet.</p> <p><del>(7) Subject to the succeeding provisions of this section, in any case where he considers it desirable to do so the Attorney General may—</del>  <del>(a) take criminal proceedings against any person before a court (other than a court-martial or other military tribunal) in respect of an offence; or</del>  <del>(b) take over and continue any criminal proceedings referred to in paragraph (a) that have been taken by any other person or authority; or</del>  <del>(c) discontinue, at any stage before judgment is given, any criminal proceedings referred to in paragraph (a) that have been taken by him or by any other person or authority.</del></p> <p>(6) Subject to any Act of Parliament, the functions of the Attorney-General may be performed —  (a) in person; or  (b) through officers responsible to him, acting in accordance with his general or specific instructions, and references to the Attorney-General include references to officers so acting.</p> <p><del>(9) Where any person or authority other than the Attorney-General has taken any criminal proceedings, nothing in this section prevents the withdrawal, in accordance with law, of those proceedings by any person or authority except where those proceedings have been taken over by the Attorney General.</del></p> <p><del>(10) Subject to subsections (8) and (9), the powers conferred on the Attorney General by subsection (7)(b) and (c) are vested in him to the exclusion of any other person or authority.</del></p> <p><del>(11) Subject to section 15 (independence) of Schedule 1, in the performance of his functions under subsection (7) the Attorney-General is not subject to the direction or control of any other person or authority.</del></p> <p><del>(12) Subject to subsection (13), for the purposes of this section—</del>  <del>(a) an appeal from a decision in any proceedings; and (b) a case stated or question of law reserved for the purpose of any proceedings, is part of those proceedings.</del></p> <p><del>(13) The functions of the Attorney General under subsection (7)(c) shall not be exercised in relation to—</del>  <del>(a) an appeal by a person convicted in any proceedings; or</del>  <del>(b) a case stated or question of law reserved at the instance of a person convicted in any proceedings; or</del>  <del>(c) a judicial review of any proceedings.</del></p>
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<sup>3</sup> Part of this drafting was supplied by the Office of the Attorney General in cooperation with a technical advisor.

	<p><b>161 Office of Director of Public Prosecutions</b></p> <p>(1) The office of Director of Public Prosecutions is established as an office in the Public Service.</p> <p>(2) The Director of Public Prosecution shall be appointed in accordance with section 162(6)(a) (which relates to the appointment of the Director of Public Prosecution).</p> <p>(3) A person who is qualified to practise before the High Court is qualified to be appointed as the Director of Public Prosecutions.</p> <p>(4) The Director of Public Prosecutions in any case where he may consider it desirable to do so may-</p> <p>(a) institute and undertake criminal proceedings against any person before any court (other than a court-martial or other military tribunal) for any criminal offence; and</p> <p>(b) take over and continue any criminal proceedings that have been instituted or undertaken by any other person or authority; and</p> <p>(c) discontinue at any stage before judgment is delivered any criminal proceedings instituted or undertaken by the Director or any other person or authority.</p> <p>(5) The functions of the Director under subsection (4) may, subject to an Act of Parliament, be exercised by the Director:</p> <p>(a) in person; or</p> <p>(b) through any other person acting under the Director’s general or specific instructions,-</p> <p>and references to the Director include references to officers so acting.</p> <p>(6) The powers in subsection (4)(b) and (c) are vested in the Director to the exclusion of any other person or authority.</p> <p>(7) An Act of Parliament or any other law may provide other functions, duties or powers of the Director.</p> <p>(8) The Attorney-General shall exercise the powers of the Director if:</p> <p>(a) the office of the Director of Public Prosecution becomes vacant; or</p> <p>(b) the Director is for any reason unable to perform the functions of the office.</p> <p><b>162 Special cases of appointments</b></p> <p>(6) The Director of Public Prosecutions—</p> <p>(a) Shall be appointed by the Head of State acting in accordance with the advice of the Cabinet given after consultation with the Public Service Commission; and</p> <p>(b) may be suspended or removed from office under Division 5 (Removal, etc., of Certain Officials).</p> <p><b>Schedule 1: Rules for the Interpretation of the Constitution</b></p> <p>Schedule 1 of the Constitution is amended in section 2 by inserting after the definition of “Deputy Prime Minister” the following definition:</p> <p><b>“Director of Public Prosecutions” or “Director”</b> means the person appointed as Director of Public Prosecutions under section 162;</p> <p><b>164 Application of Division 5</b></p> <p>Insert (f) Director of Public Prosecutions</p>
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<b>Recommendation 18: Amend Section 79 on the AG’s function and other relevant sections to clarify that the AG is not the legal adviser to Parliament and include in the Parliamentary Rules of Procedure a legal adviser for the Speaker separate from the AG</b>	
<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>• There is confusion as to whether the Attorney General is the legal advisor to the Government (the Executive) or the legal advisor to Parliament and its Members.</li> <li>• This is compounded by the provision in the Constitution that the Attorney General must take part in Parliament sessions.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>• Judicial reform</li> </ul>

	<ul style="list-style-type: none"> <li>• Transparency and good governance</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>• Section 79 (The Attorney-General) and consequential amendments</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> Confusion continues regarding whether the Attorney General and his/her Office serves the Government (Executive) and/or the Speaker and the Parliament Office, impeding the ability of the Parliament Office to institute independent legal counsel.</p> <p><b>(2) Amend the Constitution so that the Attorney General is not required to sit in Parliament and provide in the Parliamentary Rules of Procedure that the Speaker is accorded independent legal counsel:</b> It is clarified that the Attorney General and his/her Office serves only the Government (Executive), and the Speaker/Parliament Office can more easily access funding for independent legal counsel.</p>
<b>5. Option Selected with Rationale</b>	<p><b>Amend the Constitution so that the Attorney General is not required to sit in Parliament and provide in the Parliamentary Rules of Procedure that the Speaker is accorded independent legal counsel:</b> Clarity must be rendered regarding the role of the Attorney General and his/her Office in relationship to the Government (Executive) and Parliament so that proper legal counsel is accorded to all branches of Government.</p>
<b>6. Information Paper</b>	<p>Paper on Considerations on Amending the Parliamentary Rules of Procedure (see <b>Attachment 7</b>)</p>
<b>7. Proposed Drafting</b>	<p><b>81 The Attorney-General</b></p> <p>(1) An office of Attorney-General for Tuvalu is established as an office in the Public Service.</p> <p>(2) The Attorney-General shall be appointed in accordance with section 162(4)(a) (which relates to the appointment of the Attorney-General).</p> <p>(3) The Attorney-General is the principal legal adviser to the Government, and has such other functions as are prescribed.</p> <p>(4) A person is not qualified to hold or to act in the office of Attorney-General unless he is entitled to practice before the High Court.</p> <p><del>(5) Unless he is excused by or under the authority of Parliament, the Attorney General—</del></p> <p><del>(a) shall attend all meetings of Parliament; and</del></p> <p><del>(b) may take part, in accordance with the Rules of Procedure of Parliament, in the proceedings of Parliament and committees of Parliament (but without a vote).</del></p> <p>(5) Unless he is excused by or under the authority of the Prime Minister, the Attorney-General shall attend all meetings of the Cabinet.</p> <p><del>(7) Subject to the succeeding provisions of this section, in any case where he considers it desirable to do so the Attorney General may —</del></p> <p><del>(a) take criminal proceedings against any person before a court (other than a court-martial or other military tribunal) in respect of an offence; or</del></p> <p><del>(b) take over and continue any criminal proceedings referred to in paragraph (a) that have been taken by any other person or authority; or</del></p> <p><del>(c) discontinue, at any stage before judgment is given, any criminal proceedings referred to in paragraph (a) that have been taken by him or by any other person or authority.</del></p> <p>(6) Subject to any Act of Parliament, the functions of the Attorney-General may be performed —</p> <p>(a) in person; or</p> <p>(b) through officers responsible to him, acting in accordance with his general or specific instructions,</p> <p>and references to the Attorney-General include references to officers so acting.</p>

	<p><del>(9) Where any person or authority other than the Attorney General has taken any criminal proceedings, nothing in this section prevents the withdrawal, in accordance with law, of those proceedings by any person or authority except where those proceedings have been taken over by the Attorney General.</del></p> <p><del>(10) Subject to subsections (8) and (9), the powers conferred on the Attorney General by subsection (7)(b) and (c) are vested in him to the exclusion of any other person or authority.</del></p> <p><del>(11) Subject to section 15 (independence) of Schedule 1, in the performance of his functions under subsection (7) the Attorney General is not subject to the direction or control of any other person or authority.</del></p> <p><del>(12) Subject to subsection (13), for the purposes of this section —</del></p> <p style="padding-left: 40px;"><del>(a) an appeal from a decision in any proceedings; and (b) a case stated or question of law reserved for the purpose of any proceedings, is part of those proceedings.</del></p> <p><del>(13) The functions of the Attorney General under subsection (7)(c) shall not be exercised in relation to —</del></p> <p style="padding-left: 40px;"><del>(a) an appeal by a person convicted in any proceedings; or</del></p> <p style="padding-left: 40px;"><del>(b) a case stated or question of law reserved at the instance of a person convicted in any proceedings; or</del></p> <p style="padding-left: 40px;"><del>(c) a judicial review of any proceedings.</del></p>
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**F. Theme 4: Establishment of the Falekaupule**

<b>Recommendation 21: In the Constitution, recognize the Falekaupule as the traditional authority in Tuvalu</b>	
<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>Although critical to Tuvalu’s local governance structure and determinative of Tuvalu’s decision-making principles and culture, the Falekaupule is not recognized in the Constitution and is, therefore, not formally highlighted as an institution critical to the governance of Tuvalu.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>Recognizing Tuvaluan culture and values</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>The Preamble, Schedule 1 (Rules for the Interpretation of the Constitution), and consequential amendments; insert a new Part IX (Falekaupule) and Section 139 (The Falekaupule)</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> Although traditional authorities and local governments and authorities are mentioned in the Constitution, the Falekaupule is not directly referenced and, thus, not recognized as critical to the foundations of Tuvalu’s governance system.</p> <p><b>(2) Amend the Constitution to mention the Falekaupule in the Preamble and define the institution in Schedule 1 on Rules for the Interpretation of the Constitution:</b> The Falekaupule and its definition is inserted into the Constitution, but it is not formally recognized, which may render its status as lower than that of the central Government.</p> <p><b>(3) Amend the Constitution to mention the Falekaupule in the Preamble and recognize the Falekaupule in the body of the document:</b> The Falekaupule is recognized in the body of the Constitution, which will serve to afford it relatively equal status with the central Government.</p>
<b>5. Option Selected with Rationale</b>	<p><b>Amend the Constitution to mention the Falekaupule in the Preamble and recognize the Falekaupule in the body of the document:</b> Given the critical nature of the Falekaupule</p>



	to Tuvalu, it is necessary to recognize the institution in the Constitution, if only briefly, and certify its importance to the foundation of Tuvalu’s governance system.
6. Information Paper	N/A
7. Proposed Drafting	<p><b>For amendments to the Preamble, see Recommendation 25</b></p> <p><b>PART IX Falekaupule</b></p> <p><b>139 The Falekaupule</b></p> <p>The role of the ‘Falekaupule’, as the island traditional governing authority on each of the islands of Tuvalu, is hereby recognized. The ‘Falekaupule’ derives its authority from the island’s culture, traditions and values and an Act of Parliament.</p> <p><b>Schedule 1: Rules for the Interpretation of the Constitution</b></p> <p>Before “the High Court” and “the Independence Constitution”:</p> <p>“Islands” or “Island communities” means the Islands, and indigenous peoples of Nanumea, Nanumaga, Niutao, Nui, Vaitupu, Nukufetau, Funafuti, and Nukulaelae</p> <p>Between “electoral district” and “final decision”:</p> <p>“Falekaupule” means the traditional governing assembly in each island of Tuvalu which is composed in accordance with the aganu (i.e., <i>the traditional local customs and usages</i>) of each island and established under section 4 of the Falekaupule Act 1997</p>

### G. Theme 5: Rights and Culture

<b>Recommendation 22: Introduce a Constitutional prohibition on discrimination against people with disabilities</b>	
1. Issue to be Resolved	<ul style="list-style-type: none"> <li>While freedom from discrimination based on race, place of origin, political opinion, color, and religious belief or lack of religious belief is guaranteed in Section 27 (“Freedom from discrimination”) in the Constitution, freedom from discrimination for people with disabilities is not referenced.</li> <li>There is, consequently, no Constitutional protection for people with disabilities from various forms of discrimination.</li> </ul>
2. Underlying Principles	<ul style="list-style-type: none"> <li>Rights and protections of marginalized groups</li> </ul>
3. Sections of the Constitution to Amend	<ul style="list-style-type: none"> <li>Section 11 (The fundamental human rights and freedoms), Section 27 (Freedom from discrimination), and consequential amendments</li> </ul>
4. Options and Their Implications	<p><b>(1) Maintain the status quo:</b> The right to freedom from discrimination for people with disabilities is not guaranteed; people with disabilities do not possess Constitutional-level protections if they are discriminated against based on their disability.</p> <p><b>(2) Include “disabilities” in Section 11 on fundamental human rights and freedoms and Section 27 on freedom from discrimination:</b> Tuvaluans are guaranteed the right to freedom from discrimination based on disability, and people with disabilities are afforded Constitutional-level protections if they are discriminated against based on their disability.</p>
5. Option Selected with Rationale	<p><b>Include “disabilities” in Section 11 on fundamental human rights and freedoms and Section 27 on freedom from discrimination:</b> Given that Tuvalu has ratified the Convention on the Rights of Persons with Disabilities and because ensuring freedom from discrimination for persons with disabilities does not conflict with Tuvaluan cultural values, it is important and possible to amend the Constitution to protect persons with disabilities.</p>
6. Information Paper	N/A
7. Proposed Drafting	<p><b>11 The fundamental human rights and freedoms</b></p> <p>(1) Every person in Tuvalu is entitled, whatever his race, place of origin, political opinions, colour, religious beliefs or lack of religious beliefs, disability, or sex, to the following fundamental rights and freedoms: —</p> <p>(a) the right not to be deprived of life (see section 16); and</p>

	<p>(b) personal liberty (see sections 17 and 18); and  (c) security for his person (see sections 18 and 19); and  (d) the protection of the law (see section 22); and  (e) freedom of belief (see section 23); and  (f) freedom of expression (see section 24); and  (g) freedom of assembly and association (see section 25); and  (h) protection for the privacy of his home and other property (see section 21); and  (i) protection from unjust deprivation of property (see section 20), and to other rights and freedoms set out in this Part or otherwise by law.</p> <p><b>27 Freedom from discrimination</b>  (1) In this section, discrimination refers to the treatment of different people in different ways wholly or mainly because of their different —  (a) races; or  (b) places of origin; or  (c) political opinions; or  (d) colours; or  (e) religious beliefs or lack of religious beliefs; or  (f) disability,  in such a way that one such person is for some such reason given more favourable treatment or less favourable treatment than another such person.</p>
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<b>Recommendation 25: Revise constitutional provisions relating to rights (especially the Preamble, Section 15, and Section 29) to strengthen the position of culture and values</b>	
<p><b>1. Issue to be Resolved</b></p>	<ul style="list-style-type: none"> <li>• Tuvaluan culture and values are not sufficiently emphasized in the Bill of Rights and other sections of the Constitution on rights, causing a situation where rights and freedoms may outweigh culture and values, especially when relevant sections are used in Court cases.</li> <li>• <b>The Preamble</b> could more clearly demonstrate the importance of Tuvaluan culture by placing culture more prominently among the 3 pillars upon which Tuvalu constitutes itself as an independent state and amending text that provides for changes to Tuvaluan principles and values.</li> <li>• <b>Section 15 (“Reasonably justifiable in a democratic society”)</b> may unnecessarily subject Tuvaluan laws to judgement based on what is done in other democratic countries or the perspective of the Courts and undermine culture and values.</li> <li>• <b>Section 29 (“Protection of Tuvaluan values, etc.”)</b> was not adequately amended in the 2010 Constitutional amendments and must be adjusted to subject all freedoms in the Bill of Rights to Tuvaluan culture and values.</li> </ul>
<p><b>2. Underlying Principles</b></p>	<ul style="list-style-type: none"> <li>• Balancing human rights and culture in the Constitution</li> </ul>
<p><b>3. Sections of the Constitution to Amend</b></p>	<ul style="list-style-type: none"> <li>• The Preamble, Section 15 (Reasonably justifiable in a democratic society), Section 29 (Protection of Tuvaluan values, etc.), and consequential amendments</li> </ul>
<p><b>4. Options and Their Implications</b></p>	<p>(1) <b>Maintain the status quo:</b> Some protections for Tuvaluan culture and values are already offered in the Constitution; however, the Courts continue to have the power to interpret laws in favor of rights and freedoms instead of culture and values.</p> <p>(2) <b>Revise the Preamble, Section 15 (“Reasonably justifiable in a democratic society”), and Section 29 (“Protection of Tuvaluan values, etc.”) to strengthen the position of culture and values:</b> Greater protections are provided for Tuvaluan culture and values</p>

	in the Constitution; regarding <b>Section 15</b> , which requires more extensive amendment, changes may weaken the independence of the Courts while strengthening the power of Parliament because amendments might give Parliament greater power to determine how Courts judge cases relating to rights and culture.
<b>5. Option Selected with Rationale</b>	<b>Revise the Preamble, Section 15 (“Reasonably justifiable in a democratic society”), and Section 29 (“Protection of Tuvaluan values, etc.”) to strengthen the position of culture and values:</b> The Constitution, specifically the Preamble, Section 15, and Section 29, must be revised to bolster the position of culture/values and further protect culture/values in relation to the Bill of Rights.
<b>6. Information Paper</b>	N/A
<b>7. Proposed Drafting</b>	<p><b><i>**It is to be noted that the version of the Preamble adopted as the basis for revisions is the version drafted by Rt. Hon. Enele Sosene Sopoaga in 2019.</i></b></p> <p><b>Preamble</b>  <b>WE</b>, the People of Tuvalu: -  <b>THANKFUL</b> that our islands and oceans, known in ancient name as the Tuvalu islands, were given by God as our home in the Pacific Ocean;  <b>CELEBRATING</b> our distinct culture and tradition influenced mainly by people of Polynesian decent;  <b>RECALLING</b> our history and the arrival of the black birders, traders and explorers;  <b>REAFFIRMING</b> the adoption of the 1986 Constitution and within it, the vision of its Preamble and Guiding Principles;  <b>REJOICING</b> in the coming of Christianity to our home;  <b>AFFIRMING</b> our identity as a Christian nation;  <b>RECALLING</b> that our islands were later named the Ellice Islands under the protection of Her Most Gracious Majesty Queen Victoria in September 1892 and on 12 January 1916 in unification with the Gilbert Islands became the Gilbert and Ellice Islands Colony;  <b>RECALLING</b> further that on 1 October 1975 Her Most Excellent Majesty Queen Elizabeth II was graciously pleased to establish the Ellice Islands as a separate colony under our ancient name of Tuvalu;  <b>RECOGNISING</b> that the Constitution adopted on independence, which was given the force of law by Order in Council of Her Most Excellent Majesty dated 25 July 1978 and took effect on 1 October 1978, provided for its amendment or replacement by Ordinance of the Parliament established by it;  <b>RECOGNISING</b> further that the Constitution has served the people of Tuvalu well since Independence but must now, more than forty years since its adoption, be reconsidered in the light of our history, world affairs and development, and our present and future needs;  <b>ACKNOWLEDGING</b> God as the Almighty and Everlasting Lord and Giver of all good things, humbly placing ourselves under His good providence, and seeking His blessing upon us and our lives;  <b>REAFFIRMING</b> our desire to constitute ourselves as a free and democratic sovereign nation based on Christian Principles, Tuvaluan values and culture and the Rule of Law;  <b>REAFFIRMING</b> also our allegiance to Her Most Excellent Majesty Queen Elizabeth II, Her Heirs and Successors;  <b>DEEPLY CONCERNED</b> with the imminent existential threat of Climate Change and sea-level rise to the security and survival of Tuvalu, and the urgent need for meaningful work with the rest of the world to protect and save Tuvalu;  <b>AND HAVING CONSIDERED</b>, as individuals, groups, and island communities, in our Falekaupule, and in our Parliament, what should be in our Constitution,  <b>DO HEREBY ESTABLISH AND ENACT</b> the following Constitution of Tuvalu -</p>

**IN SO DOING, WE**, the people of Tuvalu set out for ourselves and our governmental institutions, the following Principles:

**PRINCIPLES OF THE CONSTITUTION**

1. The principles set out in the Preamble to the Independence Constitution are re-affirmed and re-adopted.
2. Our right as the people of Tuvalu both present and future, to a full, free and secure life, and to moral, spiritual, personal and material welfare, is affirmed as one given to us by God.
3. While believing that Tuvalu must take its rightful place amongst the community of nations in search of peace and the general welfare, nevertheless the people of Tuvalu recognize and affirm, with gratitude to God, that the stability of Tuvaluan society and the happiness and welfare of the people of Tuvalu, both present and future, depend very largely on the maintenance of Tuvaluan values, culture and tradition, including the vitality and the sense of identity of island communities and attitudes of co-operation, self-help and unity within and amongst those communities.
4. Amongst the values that we the people of Tuvalu seek to maintain are those embodied in our traditional forms of community, the Falekaupule, and the strength and support of the family and family discipline.
5. In government, and in social affairs generally, the guiding principles of Tuvalu are:
  - agreement, courtesy and the search for consensus, in accordance with traditional Tuvaluan procedures, rather than alien ideas of confrontation and divisiveness;
  - the need for mutual respect and co-operation between the different kinds of authorities concerned, including the central Government, the traditional authorities, Falekaupule, and the religious authorities.
6. Therefore, the life and the laws of Tuvalu should be based on respect for Christian principles, Tuvaluan values and culture, the Rule of Law and human dignity.
7. The people of Tuvalu recognize that in a changing world, and with changing needs, the manner and form of the expression of these principles and values may change, but the Constitution must recognize their fundamental importance to the life of Tuvalu and also, where necessary, reinforce them.

THESE PRINCIPLES, under the guidance of God, are solemnly adopted and affirmed as the basis of this Constitution, and as the guiding principles to be observed in its interpretation and application at all levels of government and organized life.

**15 “Reasonably justifiable in a democratic society”**

- (1) Notwithstanding anything to the contrary in this Part, other than —
  - (a) section 33 (hostile disciplined forces); and
  - (b) section 36 (restrictions on certain rights and freedoms during public emergencies),
 all laws, and all acts done under a law, must be reasonably justifiable in a democratic society that has a proper respect for human rights and dignity.
- (2) Any question whether a law is reasonably justifiable in a democratic society that has a proper respect for human rights and dignity is to be determined in the light of the circumstances existing at the time when the decision on the question is made.
- (3) Subsection (2) does not affect any question whether an act done under a law was reasonably justifiable in a democratic society that has a proper respect for human rights and dignity.
- (4) A law may be declared not to be reasonably justifiable in a democratic society that has a proper respect for human rights and dignity only by the High Court or some other court prescribed for the purpose by or under an Act of Parliament.

	<p>(5) In determining whether a law or act is reasonably justifiable in a democratic society that has a proper respect for human rights and dignity, a court may have regard to —</p> <ul style="list-style-type: none"> <li>(a) traditional standards, values and practices, as well as previous laws and judicial decisions, of Tuvalu; and</li> <li>(b) law, practices and judicial decisions of other countries that the court reasonably regards as democratic; and</li> <li>(c) international conventions, declarations, recommendations and judicial decisions concerning human rights; and</li> <li>(d) any other matters that the court thinks relevant.</li> </ul> <p>(6) Notwithstanding subsection (5), any law, or any act done under a valid law, which accords with traditional standards, values and practices shall not contravene subsection (1) above, unless the relevant traditional standard, value or practice would be regarded by a resolution of Parliament supported by the votes of two-thirds of the total membership as one which should be eliminated.</p> <p><b>29 Protection of Tuvaluan values, etc.</b></p> <p>(1) The Preamble acknowledges that Tuvalu is an Independent State based on Christian principles; Tuvaluan values, culture and tradition; the Rule of Law; and respect for human dignity.</p> <p>(2) This includes recognition of — (a) the right to worship, or not to worship, in whatever way the conscience of the individual tells him; and (b) the right to hold, to receive and to communicate opinions, ideas and information.</p> <p>(3) Within Tuvalu, the freedoms of the individual can only be exercised having regard to the rights or feelings of other people, and to the effect on society.</p> <p>(4) It may therefore be necessary in certain circumstances to regulate or place some restrictions on the exercise of those rights, if their exercise</p> <ul style="list-style-type: none"> <li>(a) may be divisive, unsettling or offensive to the people; or</li> <li>(b) may directly threaten Tuvaluan values or culture.</li> </ul> <p>(5) Subject to section 15 (definition of “reasonably justifiable in a democratic society”) nothing contained in a law or done under a law shall be considered to be inconsistent with section 23 (freedom of belief); or section 24 (freedom of expression); or section 25 (freedom of assembly and association); or section 26 (freedom of movement); or section 27 (freedom from discrimination) to the extent the law makes provision regulating or placing restrictions on any exercise of the right-</p> <ul style="list-style-type: none"> <li>(a) to spread beliefs;</li> <li>(b) to communicate opinions, ideas and information;</li> <li>(c) to assemble and associate with others;</li> <li>(d) to move freely or reside within Tuvalu or to enter and to leave Tuvalu; or</li> <li>(e) to not be discriminated against;</li> </ul> <p>if the exercise of that right may otherwise conflict with subsection (4).</p>
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**3.2 Committee’s non consensus recommendations for constitutional amendment.**

**Theme 2: Enhancing the Stability of Governance**

<b>Recommendation 11: Ensure that the appointment, removal, and discipline of Police Officers is transparent and subject to external review or scrutiny (non-consensus recommendation)</b>	
<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>• Currently, Police Officers below the level of Inspector are appointed, removed, and disciplined by the Commissioner of Police, meaning that the processes are completely internal. This leads to a lack of transparency in the Police Service and potentially shields Officers from repercussions for any inappropriate actions.</li> </ul>

<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>Stability and transparency of State Services</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>Section 157 (The Police Force) and consequential amendments</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> Appointment, removal, and discipline procedures for Police Officers below the level of Inspector are marked by a lack of transparency with little possibility for outside oversight (aside from the right to appeal to the Public Service Commission); however, this also allows for the rapid appointment, removal, and discipline of Police Officers when there is this need.</p> <p><b>(2) Amend the Constitution so that the appointment, removal, and discipline of all Police Officers (aside from the Commissioner of Police) is conducted through the Public Service Commission:</b> The appointment, removal, and discipline procedures for all Police Officers are more transparent and follow the same procedures as those used for civil servants; however, the process for hiring lower level Police Officers may be delayed because the Commissioner of Police can no longer make appointments directly.</p>
<b>5. Reason for Lack of Consensus</b>	<p>Some Members see it as necessary to channel all Police appointment, removal, and discipline through an independent body like the Public Service Commission to avoid cases in which Police Officers are not disciplined or removed despite serious infractions and to ensure that Officers are appointed according to standard procedures. However, other Members see issues with this proposal, including a potentially lengthy process for appointing Police Officers when they are needed urgently in emergency situations.</p>
<b>6. Information Paper</b>	N/A
<b>7. Proposed Drafting if Recommendation Accepted</b>	<p><b>160 The Police Force</b></p> <p>(1) An office of Commissioner of Police is established as an office in the Tuvalu Police.</p> <p>(2) The Commissioner of Police shall be appointed in accordance with section 162(5)(a) (which relates to the appointment of the Commissioner of Police).</p> <p>(3) Excluding the Commissioner of Police, members of the Tuvalu Police may be appointed, removed and disciplined in the same manner, with any necessary modifications, as members of the Public Service under section 158 (the Public Service).</p>

**Recommendation 12: Insert in the Constitution that Parliament may by resolution require a non-binding referendum on any proposed amendment to the Constitution before the final reading**

<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>Although referendums are a useful way to determine public opinion on matters of national interest, including amendments to the Constitution, currently, Parliament is not explicitly vested with this power in the Constitution.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>Clarity of Parliamentary powers and procedures for Constitutional amendment</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>Section 7 (Alteration of the Constitution generally) and consequential amendments</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> Parliament (or the Executive) can hold referendums on matters of national interest as part of their inherent powers under the Constitution, but there is no explicit reference to referendums or their relationship to Constitutional amendments in the Constitution.</p> <p><b>(2) Provide that Parliament may by resolution require a non-binding referendum on any proposed amendment to the Constitution before the final reading:</b> The Constitution explicitly states Parliament's power to hold referendums with reference to Constitutional amendment, but referendums are non-binding and may not determine Parliamentary decisions on these amendments.</p>

5. Option Selected with Rationale	Provide that Parliament may by resolution require a non-binding referendum on any proposed amendment to the Constitution before the final reading: Although the holding of referendums is covered as part of the inherent powers of Parliament, it is important to directly outline this power in the Constitution, especially so that it can be considered as an option when determining Constitutional amendments.
6. Information Paper	N/A
7. Proposed Drafting	<p><b>7 Alteration of the Constitution generally</b></p> <p>(1) An Act of Parliament may alter this Constitution.</p> <p>(2) A Bill for an Act to alter the Constitution must state that it is a Bill to alter this Constitution.</p> <p>(3) Subject to —</p> <p style="padding-left: 20px;">(a) section 2(3) (which relates to alterations to the description of the land areas of Tuvalu); and</p> <p style="padding-left: 20px;">(b) section 8 (alterations to the Constitution to give effect to U.K. constitutional arrangements),</p> <p>a Bill for an Act to alter this Constitution is not passed by Parliament unless it is supported at its final reading in Parliament by the votes of two-thirds of the total membership of Parliament.</p> <p>(4) A Bill for an Act to alter this Constitution shall not be excluded from the operation of section 114(2) (which relates to the circulation of Bills to local governments and authorities).</p> <p>(5) The Parliament may by resolution require a referendum on any proposed amendment to the Constitution before the final reading. The outcome of the resolution shall not be binding on Parliament.</p>

### Theme 3: Judicial Reforms

<b>Recommendation 19: Appoint and suspend judges through the PSC (non-consensus recommendation)</b>	
1. Issue to be Resolved	<ul style="list-style-type: none"> <li>Although, in a democratic Government, the three branches of the Executive, the Legislature, and the Judiciary are meant to be independent (as much as possible), the Constitution provides for the appointment and suspension of Judges with the advice of Cabinet, which gives the Executive influence over the Judiciary.</li> </ul>
2. Underlying Principles	<ul style="list-style-type: none"> <li>Judicial reform</li> <li>Transparency and good governance</li> </ul>
3. Sections of the Constitution to Amend	<ul style="list-style-type: none"> <li>Sections 122 (The Chief Justice of Tuvalu), 123 (Other Judges), 125 (Remuneration, etc., of Judges), 126 (Tenure of office of Judges), 127 (Removal of Judges from office), and 128 (Suspension of Judges)</li> </ul>
4. Options and Their Implications	<p>(1) <b>Maintain the status quo:</b> Cabinet continues to advise on the appointment and suspension of the Chief Justice of Tuvalu, as well as other judges, creating potential conflicts, where the Executive may have undue influence over the Judiciary.</p> <p>(2) <b>Amend the Constitution so that judges are appointed and suspended through a new independent body:</b> The establishment of a new independent body to advise on the appointment and suspension of judges ameliorates the potential conflict caused when the Executive advises on the appointment of the Judiciary, but establishing a new independent body may be costly and it may be difficult to establish a body that is truly independent.</p> <p>(3) <b>Amend the Constitution so that judges are appointed and suspended through the Public Service Commission:</b> The appointment and suspension of judges through the advice of the Public Service Commission ameliorates the potential conflict caused when the Executive advises on the appointment of the Judiciary and utilizes an existing independent body to complete the appointment/suspension process;</p>

	however, issues with lag in the Public Service Commission process may cause delays in the appointment of new judges.
<b>5. Reason for Lack of Consensus</b>	Some Members hope to avoid the undue influence of the Executive on the Judiciary by removing Cabinet from the process for appointing and suspending judges, but some Members hope to retain the current system for reasons that possibly include delays that may occur if the Public Service Commission takes on the appointment and suspension process.
<b>6. Information Paper</b>	N/A
<b>7. Proposed Drafting if Recommendation Accepted</b>	<p><b>125 The Chief Justice of Tuvalu</b></p> <p>(1) An office of Chief Justice of Tuvalu is established.</p> <p>(2) The Chief Justice shall be appointed by the Head of State, acting in accordance with the advice of the Public Service Commission, for such period as is specified in the instrument of his appointment.</p> <p><b>126 Other Judges</b></p> <p>If the Public Service Commission is satisfied that the appointment of an additional Judge is necessary for the proper performance of the functions of the High Court, the Head of State, acting in accordance with the advice of the Public Service Commission given after consultation with the Chief Justice, may appoint a person to be a Judge of the High Court —</p> <p>(a) for such period; or</p> <p>(b) in relation to such matters,</p> <p>as is or are specified in the instrument of his appointment.</p> <p><b>128 Remuneration, etc., of Judges</b></p> <p>(1) The salaries or other remuneration and the allowances of the Judges of the High Court are as provided for in section 172 (remuneration of certain officials).</p> <p>(2) Subject to this Constitution and to any Act of Parliament, the other conditions of employment of a Judge of the High Court are as agreed between the Judge and the Public Service Commission.</p> <p><b>129 Tenure of office of Judges</b></p> <p>(1) A Judge of the High Court vacates his office —</p> <p>(a) on death; or</p> <p>(b) if he is removed from office under section 130 (removal of Judges from office); or</p> <p>(c) subject to subsection (2), if he resigns by notice in writing to the Head of State; or</p> <p>(d) at the end of the period of his appointment; or</p> <p>(e) in the case of a Judge appointed in accordance with section 126(b) (which relates to the appointment of other Judges for certain matters) - on the conclusion of the matters in relation to which he was appointed.</p> <p>(2) A resignation under subsection (1)(c) becomes effective on the date on which it is received by the Head of State, or on such later date as is fixed by agreement between the Judge and the Public Service Commission.</p> <p><b>130 Removal of Judges from office</b></p> <p>(1) A Judge of the High Court may be removed from office only —</p> <p>(a) for inability to perform properly the functions of his office (whether arising from infirmity of body or mind, or from some other cause) or for misbehavior; and</p> <p>(b) in accordance with this section.</p> <p>(2) A Judge of the High Court may be removed from office by Parliament, by resolution, if —</p> <p>(a) the question of his removal from office has been referred to a tribunal appointed under subsection (3); and</p>



	<p>(b) the tribunal has advised Parliament that he ought to be removed from office for a reason set out in subsection (1)(a).</p> <p>(3) If the Public Service Commission decides, or Parliament resolves, that the question of removing a Judge from office should be investigated, the Head of State, acting after consultation with —</p> <p>(a) the Prime Minister; and</p> <p>(b) in the case of a Judge other than the Chief Justice, the Chief Justice, shall appoint an independent tribunal consisting of a chairman and at least one other member, each of whom is qualified for appointment as a Judge of the High Court, to investigate the question.</p> <p>(4) The tribunal shall investigate the question and report on it to Parliament, with its advice whether or not the Judge should be removed from office.</p> <p>(5) The provisions of Schedule 3 (procedure, etc., of the Public Service Commission and certain Tribunals) apply to and in respect of the tribunal.</p> <p><b>131 Suspension of Judges</b></p> <p>(1) If the question of removing a Judge of the High Court from office has been referred to a tribunal under section 130 (removal of Judges from office) the Head of State, acting in accordance with the advice of the Public Service Commission may suspend the Judge from office.</p> <p>(2) A suspension under subsection (1) —</p> <p>(a) may be lifted at any time by the Head of State, acting in accordance with the advice of the Public Service Commission; and</p> <p>(b) ceases to have effect if the tribunal advises Parliament that the Judge should not be removed from office.</p> <p>(3) A suspension under this section takes effect without loss of remuneration or other entitlements.</p>
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<b>Recommendation 20: Remove existing right of appeal to the Privy Council (non-consensus recommendation)</b>	
<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>• Whether the Privy Council, which resides in the UK and has never been fully utilized in Tuvalu, should be retained as the highest Appeals Court for Tuvalu.</li> <li>• Whether, given the Committee’s decision to retain the Sovereign as Head of State, the Privy Council should also be retained.</li> <li>• Whether, given that the Privy Council can be removed without removing the Sovereign as Head of State, the Privy Council should be retained.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>• Judicial reform</li> <li>• Localization of the Judiciary</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>• Section 9 (Interpretation of Part II), Section 119 (The judicial system), and consequential amendments (e.g., Division 3 [The Court of Appeal] and Schedule 1 [Rules for the Interpretation of the Constitution]); remove Division 4 (The Sovereign in Council)</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> Tuvalu still maintains the Sovereign as Head of State and the Privy Council remains as the highest Appeals Court, signifying the importance of Tuvalu’s relationship with the UK; however, the Privy Council continues to be underutilized.</p> <p><b>(2) Remove the Privy Council as the highest Appeals Court:</b> Tuvalu still maintains the Sovereign as Head of State but replaces the Privy Council with the more commonly utilized Court of Appeal as Tuvalu’s highest Appeals Court (to be renamed the Supreme Court of Tuvalu); some may see removal of the Privy Council as weakening Tuvalu’s relationship with the Sovereign and the UK but retention of the Sovereign as Head of State should prevent this.</p>

<p><b>5. Reason for Lack of Consensus</b></p>	<p>Some Members hope to retain the place of the Privy Council given that the King has not been removed as Head of State and to preserve the important relationship between Tuvalu and the Sovereign and the Privy Council, as well as the right of Tuvaluans to have access to the Council. However, other Members hope that appeal cases can be reviewed and decided by judges familiar with Tuvalu’s context and that an external body is not allowed the authority to determine Constitutional issues that may impact Tuvalu’s culture and values.</p>
<p><b>6. Information Paper</b></p>	<p>(1) Brief on Removal or Retention of the Privy Council (see <b>Attachment 6</b>)</p>
<p><b>7. Proposed Drafting if Recommendation Accepted</b></p>	<p><b>All references to “Court of Appeal” in the Constitution changed to “Supreme Court.”</b></p> <p><b>9 Interpretation of Part II</b></p> <p>(1) In this Part, “court” means a court having jurisdiction in Tuvalu, including—</p> <ul style="list-style-type: none"> <li>(a) the Supreme Court of Tuvalu; and</li> <li>(b) the High Court of Tuvalu; and</li> <li>(c) such other courts and tribunals as are provided for by or under Acts of Parliament.</li> </ul> <p><b>122 The judicial system</b></p> <p>The judicial system of Tuvalu consists of —</p> <ul style="list-style-type: none"> <li><del>(a) the Sovereign in Council (as provided for in Division 4); and</del></li> <li>(a) the Supreme Court of Tuvalu (as provided for in Division 3); and</li> <li>(b) the High Court of Tuvalu (as provided for in Division 2); and</li> <li>(c) such other courts and tribunals as are provided for by or under Acts of Parliament.</li> </ul> <p><b><del>136 Jurisdiction of the Sovereign in Council</del></b></p> <p><del>(1) An appeal may be made from a decision of the Court of Appeal to the Sovereign in Council —</del></p> <ul style="list-style-type: none"> <li><del>(a) with the leave of the Court of Appeal —</del> <ul style="list-style-type: none"> <li><del>(i) in the case of a final decision on a question as to the interpretation or application of this Constitution; or</del></li> <li><del>(ii) in the case of a final decision in proceedings under Division 5 (Enforcement of the Bill of Rights) of Part II;</del></li> <li><del>(iii) in the case of —</del> <ul style="list-style-type: none"> <li><del>(A) a final decision; or</del></li> <li><del>(B) an interlocutory decision, that is to say, a decision of a kind referred to in subsection (2),</del></li> </ul> </li> </ul> </li> </ul> <p><del>in any proceedings, where in the opinion of the Court of Appeal the question involved in the appeal is one which, because of its great general or public importance, or otherwise, ought to be submitted to the Sovereign in Council; and</del></p> <ul style="list-style-type: none"> <li><del>(b) in such other cases and on such conditions as are provided for by or under an Act of Parliament.</del></li> </ul> <p><del>(2) In subsection (1)(a)(iii)(B), “interlocutory decision” refers to a decision which —</del></p> <ul style="list-style-type: none"> <li><del>(a) is made during or for the purposes of some legal proceedings; and</del></li> <li><del>(b) is incidental to those proceedings; and</del></li> <li><del>(c) does not finally dispose of those proceedings.</del></li> </ul>

**Theme 5: Rights and Culture**

***Recommendation 23: Introduce a Constitutional prohibition on discrimination on the grounds of sex (non-consensus recommendation)***

<p><b>1. Issue to be Resolved</b></p>	<ul style="list-style-type: none"> <li>• While freedom from discrimination based on race, place of origin, political opinion, color, and religious belief or lack of religious belief is guaranteed in Section 27 (“Freedom from discrimination”) in the Constitution, freedom from discrimination based on sex is not referenced.</li> </ul>
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	<ul style="list-style-type: none"> <li>The absence of sex in Section 27 is likely a drafting error as sex is included in another section on fundamental human rights and freedoms, and the inclusion of sex in the Section would highlight the significance of women's rights in relation to reproductive health and other existing societal measures (that can be interpreted as discriminatory in nature).</li> <li>The inclusion of sex in Section 27 may increase the likelihood of success of legal challenges to Tuvaluan laws to permit same-sex marriage or other similar rights.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>Balancing human rights and culture in the Constitution</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>Section 27 (Freedom from discrimination) and consequential amendments</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> The right to freedom from discrimination based on sex is not guaranteed; legal challenges to Tuvaluan laws to permit same-sex marriage or other similar rights are less likely to succeed in Courts.</p> <p><b>(2) Include “sex” in Section 27 on freedom from discrimination:</b> Tuvaluans are guaranteed the right to freedom from discrimination based on sex, highlighting the significance of women's rights in relation to reproductive health and other existing societal measures (that can be interpreted as discriminatory in nature); legal challenges to permit same-sex marriage, etc. may be more likely to succeed, but amendments to other parts of the Constitution to strengthen culture and values can block these challenges.</p>
<b>5. Reason for Lack of Consensus</b>	Some Members see inserting sex into Section 27 as causing conflict with Tuvaluan culture and values, especially relating to land rights, marriage, and protocols in the Falekaupule. However, other Members note that inserting sex would highlight the significance of women's rights in relation to reproductive health and other existing societal measures and that Tuvalu has also ratified the Convention on the Elimination of All Forms of Discrimination Against Women, which makes amending the Constitution to include freedom from discrimination on the grounds of sex critical.
<b>6. Information Paper</b>	N/A
<b>7. Proposed Drafting if Recommendation Accepted</b>	<p><b>27 Freedom from discrimination</b></p> <p>(1) In this section, discrimination refers to the treatment of different people in different ways wholly or mainly because of their different —</p> <ul style="list-style-type: none"> <li>(a) races; or</li> <li>(b) places of origin; or</li> <li>(c) political opinions; or</li> <li>(d) colours; or</li> <li>(e) religious beliefs or lack of religious beliefs; or</li> <li>(f) disability; or</li> <li>(g) sex,</li> </ul> <p>in such a way that one such person is for some such reason given more favourable treatment or less favourable treatment than another such person.</p>

***Recommendation 24: Add a Charter of Values and Responsibilities to the Constitution and relate rights in the Bill of Rights to responsibilities listed in the Charter (non-consensus recommendation)***

<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>The protection of rights and freedoms in the Constitution may lead to a culture of entitlement in Tuvalu, where individuals are concerned more about their rights than the well-being of others.</li> <li>Setting out both the rights and responsibilities of Tuvaluans in the Constitution can balance how rights are exercised and judged in Court.</li> </ul>
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	<ul style="list-style-type: none"> <li>The Charter of Values and Responsibilities could be directly balanced against the rights and freedoms in the Constitution to strengthen the position of culture and values.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>Balancing human rights and culture in the Constitution</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>To insert a new Part III/Section 43 (Charter of Values and Responsibilities) and make consequential amendments</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> No changes required to the Constitution and basic principles underlying Tuvaluan society already outlined in the Preamble; however, greater focus on rights in the Constitution than responsibilities may lead to a culture of entitlement.</p> <p><b>(2) Insert Charter of Values and Responsibilities in the body of the Constitution:</b> Responsibilities given equal weight to rights because both are inserted in the body of the Constitution; however, issues may arise because list of responsibilities is not exhaustive and may be read as prescriptive.</p> <p><b>(3) Insert Charter of Values and Responsibilities in a schedule to the Constitution:</b> Responsibilities are recognized in the Constitution but may be seen as not having equal weight to rights given their placement in a schedule (rather than the body); issues regarding list of responsibilities not being exhaustive and being read as prescriptive may be alleviated because responsibilities are not in the body of the Constitution.</p> <p><b>(4) Aside from adding the Charter of Values and Responsibilities to the Constitution, also outline which rights and freedoms in the Bill of Rights relate to which responsibilities:</b> The balancing relationship between responsibilities and rights and freedoms is more clearly outlined in the Constitution but concerns about the Charter of Values and Responsibilities (e.g., that the list of responsibilities is not exhaustive and may be read as prescriptive) may be exacerbated when the responsibilities are connected to rights.</p>
<b>5. Reason for Lack of Consensus</b>	Some Members feel that it is important to give a prominent place to responsibilities in the Constitution so as to balance out the protection of and reliance on individual rights as outlined in the Bill of Rights. However, other Members feel that the Charter of Values and Responsibilities may have unforeseen consequences and will be difficult to implement and that the content and placement of the Charter must be considered more carefully.
<b>6. Information Paper</b>	N/A
<b>7. Proposed Drafting if Recommendation Accepted</b>	<p><b>PART III</b></p> <p><b>CHARTER OF VALUES AND RESPONSIBILITIES</b></p> <p><b>43 Charter of Values and Responsibilities</b></p> <p>(1) There shall be a Charter of Values and Responsibilities as contained in (2) which shall declare the core values of Tuvaluan society in accordance with the Principles of the Preamble and shall declare the fundamental duties of Tuvaluans in relation to themselves, their families, the community and the State.</p> <p>(2) Under this Constitution and in relation to the freedoms listed in Sections 23 to 27 of the Bill of Rights, every person has the following fundamental duties and responsibilities to themselves, their descendants, and others –</p> <p>(a) to respect society, communities, Islands, leaders, and cultural practices and norms; to know their duties and roles in society despite different religions; to participate in and contribute to Island Communities; to work toward their own improvement and work in peace and harmony with others; and to use rights in a way that will not harm others;</p>

	<p>(b) in the case of parents, to care for and not neglect their children and to teach children to uphold their duties, Tuvaluan ways of life, and Christian values;</p> <p>(c) in the case of children, to listen to and respect their parents, teachers, and all people; to assist in the home and with their family; to do what they are directed to do; and to attend school and classes;</p> <p>(d) in the case of husbands and wives, to perform their proper roles in upholding family values and communal society;</p> <p>(e) in the case of pastors and churches, to respect Island Community customs and traditions, to unite and contribute to communities, to help church members, to help to improve the lives of all people, to respect all people, and to respect the different religions of others;</p> <p>(f) in the case of leaders, to respect Island Community customs and traditions; to encourage Christian principles; to bring peace, harmony, unity, and respect to the Island, different religious groups, men, women, youth, and children; to improve the lives of the people, aid the development of the nation, and protect the people and the country; to abide by the leadership code and show respect to all people; to review decisions properly; and to conduct themselves according to Tuvaluan duties and responsibilities; and</p> <p>(g) to recognize that the fact that certain responsibilities are referred to in this Constitution does not mean that there may not be other responsibilities retained by the people or conferred by law.</p>
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***Recommendation 26: Amend the Constitution so that the Courts can only declare that a law that accords with traditional standards, values, and practices is incompatible with a right in the Bill of Rights, but it is left to Parliament to resolve the incompatibility (non-consensus recommendation)***

<b>1. Issue to be Resolved</b>	<ul style="list-style-type: none"> <li>• Currently, the Courts have great power to determine whether Tuvaluan culture and values are upheld, but Parliament, which is composed of elected officials, might be better placed to make these determinations.</li> <li>• Consideration that the declaration of incompatibility is a method used in the UK where, if the Courts find a law incompatible with the Bill of Rights (or legislation on rights), they declare the incompatibility but leave the matter to Parliament to decide whether and how the conflict between the law and the Bill of Rights should be resolved.</li> </ul>
<b>2. Underlying Principles</b>	<ul style="list-style-type: none"> <li>• Balancing human rights and culture in the Constitution</li> </ul>
<b>3. Sections of the Constitution to Amend</b>	<ul style="list-style-type: none"> <li>• Section 40 (Jurisdiction of the High Court as to the Bill of Rights) and consequential amendments</li> </ul>
<b>4. Options and Their Implications</b>	<p><b>(1) Maintain the status quo:</b> Some protections for Tuvaluan culture and values are already offered in the Constitution; however, the Courts continue to have the power to interpret laws in favor of rights and freedoms instead of culture and values.</p> <p><b>(2) Insert a provision for a declaration of incompatibility into the Constitution:</b> Decisions on how rights and culture should be balanced in legislation will be determined by Parliament, which represents the people; however, changes may weaken the power of the Courts while strengthening the power of Parliament because Parliament will have the ultimate power to decide how cases where rights and culture conflict should be resolved.</p>
<b>5. Reason for Lack of Consensus</b>	<p>Some Members feel that inserting the declaration of incompatibility may disproportionately weaken the power of the Courts/Judiciary and strengthen the power of Parliament, especially in regard to Judiciary powers. However, other Members feel that elected Officials should, in the end, exercise the authority to determine matters</p>

	relating to culture and values because they represent their constituencies while the Courts do not.
<b>6. Information Paper</b>	(1) Paper on the Declaration of Incompatibility (see <b>Attachment 6</b> )
<b>7. Proposed Drafting if Recommendation Accepted</b>	<p><b>40 Jurisdiction of the High Court as to the Bill of Rights</b></p> <p>(1) Subject to sub-section (3), the High Court has original jurisdiction —</p> <p>(a) to determine any application made under section 38 (application for enforcement of the Bill of Rights); and</p> <p>(b) to determine any question referred to it under section 39 (questions as to the Bill of Rights arising in subordinate courts),</p> <p>and may make any orders, issue any writs and give any directions that it thinks appropriate for enforcing or securing the enforcement of this Part.</p> <p>(2) Subject to section (3), the High Court may refuse to exercise its powers under subsection (1) if it is satisfied that adequate means of redress for the alleged contravention are or have been reasonably available to the person concerned under any other law.</p> <p>(3) Where the Constitutional right in Subsection (1)(a) and (b) is a challenge to any law, or any act done under a valid law, which accords with traditional standards, values and practices, and, if the Court is satisfied that there is an incompatibility, it shall, as the only redress, make a declaration of incompatibility and provide a report to Parliament on the incompatibility;</p> <p>(4) Parliament shall prescribe the rules and procedures to be taken in disposing of a declaration of incompatibility made under subsection 3.</p>

*\*Note: Revisions to the numbering of sections have been made throughout the Constitution based on additions or deletions caused by Committee recommendations; minor amendments to text for sections not pertaining to Committee recommendations have also been made based on advice from the Committee’s local and international consultants.*

## 4 SUMMARY COMMITTEE

### RECOMMENDATIONS FOR PARLIAMENT

- 4.1 Given the overview of the Committee's final recommendations for Constitutional Amendment outlined in this Final Report, it is the view of the Committee that this Report should be supported by Parliament.
- 4.2 If the Committee's Final Report is supported by Parliament, the Committee will table a Revised Constitution Bill that reflects the outcomes of the Report for First Reading.
- 4.3 If the First Reading of the Revised Constitution Bill is successful, the Bill will have to be disseminated to each Kaupule for comment before the Second and Third Readings of the Bill. The Committee would like to participate in this process and hold consultations in Funafuti and the Outer Islands on the Revised Constitution Bill so as to better explain the rationale for Amendments and more deeply understand any comments and concerns from Island Communities. This will require the extension of the life of the Committee until the Parliament Session in which the Second and Third Readings of the Revised Constitution Bill take place.
- 4.4 Consequently, and as noted at the beginning of this Report, the Committee's summary recommendations for the consideration of Parliament are as follows:
  - 4.4.1 Parliament is respectfully recommended to adopt the Committee's Final Report;
  - 4.4.2 Parliament is respectfully recommended to adopt the Committee's consensus recommendations for Constitutional Amendment;
  - 4.4.3 Parliament is respectfully recommended to debate the Committee's non-consensus recommendations for Constitutional Amendment and determine whether they should be adopted as part of the Constitutional Review. The non-consensus recommendations are as follows:
    - 4.4.3.1 Recommendation 11: Ensure that the appointment, removal, and discipline of Police Officers is transparent and subject to external review or scrutiny;
    - 4.4.3.2 Recommendation 12: Insert in the Constitution that Parliament may by resolution require a non-binding referendum on any proposed amendment to the Constitution before the final reading;
    - 4.4.3.3 Recommendation 19: Appoint and suspend judges through the PSC;
    - 4.4.3.4 Recommendation 20: Remove existing right of appeal to the Privy Council;
    - 4.4.3.5 Recommendation 23: Introduce a Constitutional prohibition on discrimination on the grounds of sex;
    - 4.4.3.6 Recommendation 24: Add a Charter of Values and Responsibilities to the Constitution and relate rights in the Bill of Rights to responsibilities listed in the Charter;

- 4.4.3.7 Recommendation 26: Amend the Constitution so that the Courts can only declare that a law that accords with traditional standards, values, and practices is incompatible with a right in the Bill of Rights, but it is left to Parliament to resolve the incompatibility.
- 4.4.4 Parliament, especially the Rules Committee, is also respectfully recommended to consider suggested points for amending the Parliamentary Rules of Procedure as outlined in **Attachment 7**.
- 4.4.5 Should the Committee's Final Report and suggested recommendations for Constitutional Amendment be adopted, Parliament is finally respectfully recommended to (1) take the Revised Tuvalu Constitution Bill 2023 as a direct product of the Final Report and (2) extend the life of the Committee so that it can accompany consultations in Funafuti and the Outer Islands after the First Reading of the Revised Constitution Bill.