



CONSTITUTIONAL REFORM UNIT

# REFORM NEWS

## PS details progress to Premiers

Permanent Secretary Special Duties Mr. Ronald Unusi attended the Premiers' Conference held in Gizo to brief the Premiers on the progress of the Constitutional Reform Program.


Mr. Unusi made the presentation entitled *Development of the Draft Federal Constitution of Solomon Islands* that spelt out where the Reform has progressed to and the future direction of the process.

This presentation was said to be compiled with presentations of other Govern-



CRU Permanent Secretary Ronald Unusi.

ment Ministries to give to the Premiers during the conference.

The Premiers' Conference was held from 17<sup>th</sup>–21<sup>st</sup> June 2013. 

## Development of the Draft Federal Constitution of Solomon Islands

CRU PS Ronald Unusi's brief presentation to the Premiers' Conference held, June 2013 at Gizo, Western Province.

### Introduction

From the start, the people of Solomon Islands collectively decided through their elected leaders that constitutional reform in this country shall be "process driven" rather than being prescriptive; a direct protest against the manner the country's independence constitution was

trust upon them by the former colonial rulers.

This approach is viewed as the most democratically fair and just one in which the polity and its diverse constituents are given every opportunity to be heard and influence the outcome; despite the inherent potential for delay.

### Progress since 2004

Since 2004, the Constitutional Reform (CR) process via a Cabinet mandate, under the leadership of the Constitutional Congress (CC) collaborating with the Eminent Persons Advisory Council (EPAC) and the effective administrative support of the Solomon

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# FROM THE CHAIR OF CONGRESS

She was nominated a Constitutional Congress National nominee representing Solomon Islands women, through the SI National Council of Women (SINCW). *Mrs. Jenny Tuhaika* found herself in what may seem the top role in Congress yet has its own set of challenges. In this issue, as Chairlady of Congress, Jenny shares with *CRU Media* her experience in chairing meetings of up to 50 Congress and Eminent Persons Advisory Council (EPAC) members, made up of Solomon Islanders from different walks of life.



## Jenny Tuhaika

**CRU:** As of 2009, you held the Chairperson position of Congress, what was it like working then?

**JT:** I was elected by Congress to take the place of Sir John Ini Lapli as Chairperson. When I came in, the original plans of the work of Congress and EPAC were already in the process of changing. Originally, Congress was mandated to do the work and EPAC was to check our work. At that time, the CNURA Government wanted to speed up the work, so we agreed during the [first] Joint Plenary [in 2009] that we should do the work together instead of Congress doing the work and EPAC checking it.

Secondly, Congress had initially established Theme Committees that covered the seven main [themes] of the Draft Constitution. Only three Theme Committees were able to meet [late 2008] and because the Government wanted this work to go fast, they said that there is no need for the other Theme Committees to meet. So we used those three Committees' reports and worked on the Draft [Federal Constitution 2004]. Those were the two major changes that happened when I came in as the Chairperson.

**CRU:** How challenging do you find chairing those big meetings, especially in a male-dominated Congress?

**JT:** We have prominent leaders [in Congress and EPAC] where it could have been very difficult for me to chair the meetings, if there was no set of ground rules. I thank the wisdom of Congress, who had the idea to make ground rules [at the start of Congress]. Those rules have guided me during my chairing of Congress meetings. I am grateful to the members of Congress and EPAC for the fact that they had set the ground rules and also respect it. Sometimes when I apply the ground rules [during meetings] it even rules out some speakers too when they go against what the rules say, but they respect it.

The other challenging thing for me is when we are covering areas in the Constitution that is a little bit sensitive to members of Congress and EPAC. Areas like revenue sharing, power sharing, resource ownership, taxation, and those topics that are sensitive, sometimes I call for break early when I start to sense tense debate. There are some very strong views and opinions. I have to be very sensitive, wise, observing and watching, and have to make a right decision to calm any tense or heated argument during meeting times.

**CRU:** Congress has held two major meetings so far, the first Joint Plenary in 2009 and Second Plenary in 2011, what were the differences

you've found between these two meetings?

**JT:** In the first Plenary, going through the clauses and the chapters of the Draft was easy. There was no tough discussion. I didn't find any really deep heated discussion and debate on certain areas in the draft. But as for the Second Plenary, I saw that the level of debate and discussion was higher.

I think one of the things that happened [this time round] was that members of Congress and EPAC have really grasped what's in the Draft and the issues in there. And also the people in the provinces have started to get a better understanding of the document, so their contributions were even higher. So I had to step higher too, in making wise decisions, in controlling the meetings.

**CRU:** So with this in mind, would you say you're looking forward to the next Plenary, which is likely to have a more developed kind of debate?

**JT:** In fact, I expect the level of discussions for this next and last plenary to be tougher. It will be more intense, because everyone in the provinces will know that this is their last opportunity to have their views [heard], to have their say on Draft Constitution. Also the challenging thing is, we are only given one month to meet. I am trying to work out how I will base discussions on the matrix, to see what each province's position is, with regards to

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**Chairing a meeting of the Joint Executive of Congress and EPAC in May 2011.  
Photo by Marilyn Maeta'a, CRU**

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each chapter in the Draft. This is so that discussions won't drag because I am mindful of the fact that we have only one month.

**CRU:** How are you preparing yourself for that meeting as the Chair?

**JT:** I'm reading through the reports of the Provincial Conventions [and] looking at where each province's stand is very strong. That's why every time a province's report comes out, I insist on getting a copy because I don't want to just wait for the matrix [of the combined positions of the provinces] to come out; I want to get to know the various positions of the provinces, what their views and arguments are. I have pictured how I will control the discussions in Plenary. For some chapters, it will be straightforward, but there are those that will have very strong and different opinions.

**CRU:** During debates on issues like women's representation, or maybe some areas of interest from the province you come from, when issues like those come out, how do you voice your opinion in this setting while being chairperson? I understand this could be quite challenging.

**JT:** In fact it has already happened throughout the process. I really have to train myself when I sit as Chairperson, to cut off from my views and opinions. Because if I allow my views and opinions to control me, it will reflect on how I will control Chairing of the meeting. When it comes to issues about women, I tell you, sometimes things that are said there [during the meetings], is really tough and for a person who is not professional, you will certainly react.

But I always remind myself that I'm the Chairperson and I have to be neutral. No matter if someone



**Mrs. Tuhaika (centre) chairing the 2nd Joint Plenary of Congress and EPAC in August 2011.**

speaks against something I really support, I cannot be penalizing that person unless they go outside of the ground rules. Otherwise everyone has the right to express, to share and to speak. I do have my strong opinions and views, but when I sit there as the Chair, it deprives me of voicing my views. So I always share my views with other colleagues, who will in turn bring it up during the meetings.

**CRU:** A lot of people won't understand the pressure on the Chairperson during such meetings, because you make it seem simple. Any final comments on your work in Congress?

**JT:** We have two big events that are coming up; the upcoming [Third Joint] Plenary, and the National Convention. I am hopeful that in this Plenary, we will come up with a document that will be ready to be audited by the legal experts; and prepared to take to the National Convention, because the National Convention will be a place where there will be negotiations and dialogues.

I am also hopeful that, this Plenary will put in order, some areas that haven't been addressed properly, such as taxation, revenue sharing and power sharing. After the National Convention, we will place the outcome of the National Convention to the government, [which is] our

final work. I would also like to stress [as Chair of Congress] I want to see a document that is acceptable to the government, and that will also reflect work that Congress and EPAC have put into it.

**CRU:** Thank you Chairlady for this opportunity to talk about your work, all the best for the final Joint Plenary.

**JT:** Thank you. I look forward to that final Plenary. 🙏

# Remembering Viola Malasa's work



Late Viola Malasa was nominated by the Choiseul Provincial Government to be a member of the Choiseul Province Constitutional Congress team, when Congress was inducted to the Constitutional Reform Program in 2007.

She was enthusiastic and serious about her work whenever Constitutional Reform activities were undertaken.

Those who knew her would remember late Viola for her friendliness and humility; the diligence, hard-work and care she put into addressing her province's contributions to the Constitutional Reform.

Since joining Congress, she actively participated in the Community Identification activity in Choiseul in 2008; Choiseul Provincial Feedback on the 1<sup>st</sup> 2009 Draft Federal Constitution in 2010; Choiseul Provincial Convention on the 2011 Draft Federal Constitution in 2012; Proposed State Maritime Boundaries and Special Areas meetings in 2010 and 2011; and the Joint Plenary of Constitutional Congress (CC) and Eminent Persons Advisory Council (EPAC) in 2009 and 2011.

Her active involvement in her province's participation in the Reform



**Top Right:** Late Viola Malasa inserting contributions into the Draft Federal Constitution from the 2nd Joint CC & EPAC Plenary, September 2011.

**Right:** Taking notes during discussions on the Special Area between Choiseul and Isabel provinces during the Proposed State Maritime Boundaries meeting, June 2010.

*Photos by Marilyn Maeta'a, CRU*



saw to Choiseul Province being the first province to hold and complete their feedback and convention before other provinces.

She also volunteered to assist the Constitutional Reform Program whenever the need arose.

Though a Congress member, she assisted the Constitutional Reform Unit (CRU) during the 2011 Joint CC & EPAC Plenary sessions, typing in changes, inputs and suggestions from the Joint Plenary into the

Draft Federal Constitution. Yet this did not stop her from actively contributing to issues of concern during the Joint Plenary deliberations.

Her passing in June 2013 came as a shock and sadness to members of Congress, EPAC and CRU; however Late Viola Malasa's work and professional contributions to the Constitutional Reform Program will be remembered by her colleagues, and those that have come to know her through the Reform. 🌐

# PS's Presentation to Gizo Premiers' Conference

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Government through the Constitutional Reform Unit (CRU) as the Secretariat to the Constitutional Reform Program (CRP); has produced three drafts and been through four rounds of nation-wide consultation.

It is envisaged that the process may see two more drafts before the final text enveloped by the veracity of the conclusiveness of "the People Have Spoken" principle is received by the Cabinet.

Two more crucial steps in the process remain before the end of the mandate of CC & EPAC; the final Joint Plenary of CC & EPAC, and the National Convention.

This National Convention will involve converging of the seniors in the legal and political process to "bargain" the final provisions, which will define the nature and character of the new constitution – the Federal Constitution of Solomon Islands.

From its inception, the CR process

was by political design/authority to be guided by a Constitutional Lawyer assisted by a local Consultant Lawyer, both forming an integral part of the Secretariat team reporting to PS/CRU.

This was fundamental to providing proper advice on the aspects of the Constitution to CC & EPAC.

It was clear in the minds of the designers of the program that the Constitutional Lawyer was to be an expatriate to give both the process and the home-grown document independent and impartial advice. Hence, an expatriate lawyer was involved in the process from the start until 2009.

Also it was always accepted by CC & EPAC that its work was to be subjected to external legal audits and professional legal drafting, in order to give the document international acceptance and credibility.

CR Work-Plan for 2013 contains the following main events;


- Have a legal audit conducted on the 2011 Draft Federal Constitution of Solomon Islands by an external expert on constitutional law on federalism to produce an audit report for the final CC & EPAC Joint Plenary;

- Stage the final Joint Plenary of CC & EPAC to deliberate on the provincial reports and the legal audit report to produce the 2013 Draft;

- Drafting of the bill by a professional draftsman using modern simple language;

- Convening of the National Convention of the all national stakeholders to bargain the final outcome: "The People Have Spoken."

- Adaption of the final text of the Draft Federal Constitution produced by the National Convention by CC & EPAC;

- Submission of the final text of Federal Constitution of Solomon Islands to the Prime Minister; and then onto Cabinet. 

## Latest Developments; what's next & when? Presented to 2013 Premiers' Conference by PS/CRU

### Status of Progress

On September 2012; the Joint CC/EPAC Executive, resolved to formally approach the Republic of India on the basis of its bilateral relations with Solomon Islands, with a request for technical assistance to provide an expert on constitutional law on federalism and a professional legal draftsman to assist in the work at this advanced stage.

This was communicated through Solomon Islands High Commission in Port Moresby. A form for requesting technical assistance and guidelines for making submissions was

subsequently received. The response received also indicated it was possible to get a 2 in 1 expert.

In December 2012, Solomon Islands Government (SIG) submitted a completed request form for Technical Assistant to the Department of External Affairs of Government of the Republic of India.

This was the original submission for technical assistance to India made with a cost-sharing arrangement.

As CRU was poised to embark on the 2013 Work-Plan at the beginning of this year, the Consultant Lawyer/CRU raised certain aspects

within the draft Constitution that contain issues, which were of grave concern to him and must therefore be addressed by the overseas legal auditor before the final Plenary can be held.

These included 1) the proposed State Maritime Boundaries; 2) Taxation Powers of Federal, State, and Community Governments; 3) Legislative powers of Federal, State, and Community Governments; 4) Debt Servicing of Solomon Islands Foreign and Domestic Loans exclusively by the Federal Government during Federation when the Federal Constitution takes effect; 5) State Loans

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# WHAT'S NEXT, WHEN?

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without the approval of the Federal government, but the Federal Government to bail out States if default on their (State) loans; and, 6) Formation of the Federal, States and Community Governments.

The Consultant Lawyer felt strongly that Congress needed independent and impartial advice to guide it during the third plenary as this will be its final opportunity to influence the outcome.

On 1st March 2013; the Joint CC & EPAC Executive met, discussed this matter amongst others, and resolved to defer the final Joint Plenary until the arrival of the external legal auditor and professional legal drafter from India or from elsewhere, which SIG must find to provide the much needed independent and impartial advice to CC & EPAC during the final Plenary.

The Prime Minister as Minister responsible was briefed by representatives of the CC & EPAC Joint Executive and CRU on this matter, to which he agreed.

It was further resolved at the meeting with the Prime Minister and officials of Office of the Prime Minister & Cabinet (OPMC) on 7<sup>th</sup> March 2013; that SIG is to pay for the full cost of engaging these external expertise.

This was communicated to the Government of India by a letter from the Prime Minister himself dated 14<sup>th</sup> March 2013. The latest advice from India through Ministry of Foreign Affairs & External Trade (MFAET) is that the person identified awaits the final approval by the Minister of Foreign Affairs before they can release the person's name.

As the process to secure the expert(s) from India seemed to be dragging; CRU has been exploring

other options.


This included making direct approach to certain leading constitutional experts in the region and familiar to the region, to share this need with them. Those whose résumé indicate possessing strong and considerable knowledge on federal constitutions and governance systems.

This is with the intention to get them to indicate their potential interest and availability to do this work without making any commitments.

Later, CRU will submit this for endorsement of the Joint CC & EPAC Executive and OPMC.

CRU is awaiting responses either from India or elsewhere where SIG can find persons with the requisite credentials and expertise interested and available.

OPMC is committed to fund the entire bill for engaging them under the 2013 CRU Recurrent & Development Budgets.

Advice on the next step of the process will be given if positive feedback on the efforts put forth to secure these outside expertise is received, and there's definite confirmation on having an external legal auditor on board. 

## Farewell RenBel Team Leader



**Late Fr. Francis Taupongi during the State Boundaries meeting June 2010.**

Late Fr. Francis was a member of the Rennell Bellona team, which he was team leader of since early 2010.

He actively participated and lead Rennell Bellona team in the first and second consultations on the proposed State Maritime Boundaries meetings (2010 & 2011); CC team leaders' workshop (2011); 2nd Joint CC & EPAC Plenary (2011); and the Rennell Bellona Provincial Convention (2012).

His contributions to the Constitutional Reform and cordial working relationship with CRU and other CC & EPAC members will be surely missed.



## Information on the 2011 Draft Federal Constitution

The **2011 Draft Federal Constitution of Solomon Islands** has a Preamble, 27 Chapters and 10 Schedules.

It came out of the 2011 Provincial and Honiara City Feedbacks on the *1<sup>st</sup> 2009 Draft Federal Constitution*.


The 2<sup>nd</sup> Joint Plenary of Constitutional Congress and Eminent Persons Advisory Council (EPAC) put together the Provinces' and Honiara

City's feedbacks into the Draft to become the *2011 Draft Federal Constitution*.

In 2012, the *2011 Draft* was reviewed by the Provincial Conventions of all nine Provinces and Honiara City Council to see whether changes and suggestions from the 2011 Provincial/Honiara City feedbacks were accommodated for.

Solomon Islands tertiary students

studying abroad, particularly in institutions in Fiji, Vanuatu and Papua New Guinea were also consulted on the *2011 Draft* by CRU in 2012.

Together with this and findings from the 2012 Provincial/Honiara City Conventions, the 3<sup>rd</sup> Joint Plenary of Congress and EPAC will discuss these later in 2013. The *2011 Draft* will also be audited by professional legal and constitutional audit experts around that time. 

## Changes in the 2011 Draft Federal Constitution

Based on the *1<sup>st</sup> 2009 Draft Federal Constitution*, changes were made reflective of the 2011 Provincial/Honiara City Feedbacks, and thus became the *2011 Draft*. Summary of the changes below are in comparison to the *1<sup>st</sup> 2009 Draft Federal Constitution*.

### Chapter One

Chapter on **Foundation Provisions**, had three new clauses added, namely Clauses 6 *National Flag*, 7 *National Anthem* and 8 *National Symbols*.

### Chapter Two

Chapter on **The Social Charter between the Republic and the People** had minor changes made to clauses.

### Chapter Three

Chapter on **Customary Land, Resources and Property Rights** had major changes done to Clauses 16 *General protections of Ownership and Guarantee of Fair Due Legal Process*; and 17 *Rights and interests of Usage, Occupation, Cultivation, Development and Control of Customary Land and Resources*; and *Restoration of Ownership of Perpetual Estates*.

### Chapter Four

Chapter on **Protection of Fundamental Rights and Freedoms of the individual**, had its title changed and most of its clauses were re-

vised, thus only 17 out of its 40 original clauses were retained, which deal with specific areas of fundamental rights and freedoms.

### Chapter Five

Chapter on **Citizenship**, had Clause 49 *Regaining of Solomon Islands Citizenship* revised, and renumbering of its clauses due to the changes to the number of clauses in Chapter 4.

### Chapter Six

Chapter on **Government of Solomon Islands** had minor changes and renumbering done due changes in Chapter 4's clauses.

### Chapter Seven

Chapter on **The President of Solomon Islands** had few changes done to various clauses of the Chapter, renumbering of clauses; and changing of title in Clause 63 *The Acting President of the Democratic Federal Republic of Solomon Islands*.

### Chapter Eight


Chapter on **The Federal Parlia-**

**ment** had renumbering and rearrangement of clauses done; with sub-clauses revised in Clause 65 *Powers of the Federal Parliament*, Clause 68 *Composition of Parliament*, Clause 69 *Participation of women in Parliament*, Clause 74 *Recall*.

### Chapter Nine

Chapter on **The Executive Arm of Government** has two options, which are detailed in this Chapter. **Option One** looks into the preference of the *Grand Government* option, whereby a cohesion in the Government system is detailed in the Chapter. **Option Two** spells out the preference of the *Political Party or Parties Government Formation and Political Allegiance*, whereby it retains the revised clauses of the *1st 2009 Draft's* take on **The Executive Government**.

### Chapter Ten

Chapter on **Federal Revenue Arrangements** had minor changes done to this chapter's clauses. 

*To be continued on Issue 15*



Solomon Islands Government

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**ABOUT CRU**

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

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

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

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

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**For more information:**

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



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