

Tuvalu Constitution updated: culture, climate change and decolonisation

by Simon Kofe and Jess Marinaccio

21 September 2023



Consultations on the constitutional amendments on Tuvalu's outer island of Nanumea

Photo Credit: Grant Drecala

On 5 September 2023, I (Kofe) [announced the unanimous passage](#) by Tuvalu's parliament of the Constitution of Tuvalu Act 2023. The new constitutional amendments will come into effect on 1 October 2023, Tuvalu's 45th Independence Day.

Since November 2016, [Tuvalu has been conducting a review of its Constitution](#) to address a variety of concerns. The review has spanned two separate governments. In July 2020, Tuvalu's parliament formed a Constitutional Review Parliamentary Select Committee to continue work on drafting constitutional amendments that began in 2016. I (Kofe) served as Chair of the committee since that time.

The Constitution of Tuvalu Act 2023 provides a fully updated version of the Tuvalu Constitution that incorporates all amendments made to the Constitution since 2008. More importantly, the Act brings into effect a number of new amendments to the Constitution centring on the following themes: (1) the climate crisis and recognition of Tuvalu's statehood; (2) enhancing the stability of governance; (3) judicial reforms; and (4) rights and culture.

The effects climate change and sea-level rise have had on Tuvalu are already well known to the international community, and have been [written about previously by Kofe](#). Taking a groundbreaking step in line with [Tuvalu's Foreign Policy](#), one of the 2023 amendments to the Constitution formally recognises the threat of climate change and declares Tuvalu's maritime zones, statehood and other entitlements permanent regardless of any effects climate change may have on the land territory of Tuvalu. This amendment will have a critical role in climate change activism and will strengthen Tuvalu's legal standing in combating the climate crisis, especially if land is lost due to climate impacts.

To enhance the stability of governance, extensive amendments have been made to ensure that the executive, legislature, and public and state services in Tuvalu

operate more effectively. For example, whereas parliament sessions were formerly **mandated only once in a 12-month period**, they are now required twice in 12 months, and half or more of the Members of Parliament can request parliament sessions if sessions are not held at the prescribed times. Additionally, votes of no confidence can now no longer be held in the first 12 months or the last 12 months of a parliamentary term; the necessity that parliament works towards cooperation and consensus has been highlighted; the definition, function and term of the caretaker government have been clarified; and avenues for recalling incapacitated MPs have increased. These changes have been made to expand the oversight role of parliament, reduce rapid changes of government, and enhance overall parliamentary efficacy.

The method for nominating the Governor-General of Tuvalu has also been adjusted so that a balanced rotation among the eight islands of the country can be adopted, given that the position of Governor-General is highly coveted and there is the expectation that people from each of Tuvalu's islands should have the opportunity to fill the role.

Under the theme of judicial reform, Tuvalu's parliament has made significant decolonial changes. Previously, it was extremely difficult for a Tuvaluan citizen to hold the position of High Court Judge because the **Constitution required that** any person holding that position must have first held judicial office in "some country that has a legal system similar to that of Tuvalu". This made it nearly impossible for any Tuvaluan citizen, even those who had served as magistrates, barristers or solicitors in Tuvalu, to become a High Court Judge in their own country. The 2023 amendments have removed this requirement, ensuring that Tuvaluans who have held the position of judge, barrister or solicitor in Tuvalu have the necessary prerequisites to hold the position of High Court Judge.

The recent amendments have also bolstered the independence of the judiciary by eliminating the involvement of the Cabinet in the appointment and suspension of high court judges. In the revised Constitution, judges are now appointed by the Head of State acting in accordance with the advice of the Judicial Services Commission, which comprises the Chair of the Public Service Commission, the Secretary to the Government, the Attorney General, the Police Commissioner, and the President of the Ekalesia Kelisiano Tuvalu (the Tuvalu Christian Church).

Finally, balancing international ideas of human rights as championed by bodies like the United Nations and the local/indigenous cultures of Tuvalu has become of utmost importance since Tuvalu gained independence in 1978. The updates to the Constitution made in 1986, as well as the **amendments in 2010**, incorporated measures to safeguard Tuvaluan culture and values amidst worries that globally

standardised human rights ideals might compromise Tuvalu's community-driven and consensus-oriented traditions. Several of the 2023 amendments were also made in recognition of problems regarding balancing human rights, or the rights of the individual, and the importance of protecting and promoting Tuvalu's culture and communal society. This again represents a decolonial and culture-forward approach prevalent in the Pacific.

The introduction of a Charter of Duties and Responsibilities in the new Constitution alongside the Constitution's existing Bill of Rights is an innovative approach that acknowledges the dual role that individuals play in society: both as right-holders and as community members with obligations to each other. This inclusion is an effort to infuse individual rights with a sense of collective responsibility, a hallmark of many Pacific cultures.

The place of Tuvaluan culture and Christian values has also been strengthened in the Preamble to the Constitution, with a declaration that Tuvalu is a Christian nation founded on Christian principles, and an amendment has been made to formally recognise in the Constitution the Falekaupule – the customary governments of Tuvalu's eight islands – as the traditional governing authorities of the nation.

Towards achieving a balance with ideas of human rights, however, amendments have also been introduced to establish constitutional prohibitions on discrimination against people with disabilities and on the grounds of sex to provide greater protections for women and the differently abled.

Tuvalu's 2023 constitutional amendments show moves toward decolonising aspects of Tuvalu's central government and interweaving culture and local Tuvaluan knowledge into Westminster parliamentary and government systems. Moves to enshrine climate change in Tuvalu's supreme law, enhance the cooperative nature and efficacy of parliament, localise high-level positions in the judicial system, and balance international concepts of human rights with significant aspects of Tuvaluan culture and values are all steps towards moulding Tuvalu's Constitution into a document that respects and empowers indigenous Tuvaluan epistemologies and concerns.

Author/s:

Simon Kofe

Simon Kofe is Tuvalu's Minister for Transport, Energy, Communication and Innovation and a Member of Parliament for the Funafuti constituency. He was previously Minister for Justice, Communication and Foreign Affairs.

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Jess Marinaccio

Jess Marinaccio is a technical advisor in Tuvalu's Ministry of Transport, Energy, Communication and Innovation. Marinaccio previously worked as Assistant Professor of Asian Pacific Studies at California State University, Dominguez Hills and for Tuvalu's Department of Foreign Affairs and Embassy in Taiwan.

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