

HOW CAN PARLIAMENTARY DEMOCRACY FUNCTION MORE EFFECTIVELY IN SMALL PACIFIC ISLAND COUNTRIES SUCH AS TUVALU AND NAURU?

LISEPA PAENIU*

INTRODUCTION

This paper discusses the problem of executive instability in Nauru and Tuvalu and possible legal controls that could be introduced to address the issue. The reason this topic was chosen is the striking political instability reoccurring in both countries, which is disregarded in the Pacific regional news. Nauru has had 19 changes of government in the last 10 years, due mostly to votes of no confidence. In the 43 years since independence it has had 41 government changes. Had each government served its full term, only 15 governments should have come into office.¹ In the same way, in the past 10 years, Tuvalu has had five changes in the office of the Prime Minister position. From 2002 to 2006 every Prime Minister that came into office did not last longer than two years in office.² The fact that there is little literature about the political instability of both countries is proof that the political situation of both small island countries is overlooked in the Pacific region.

This paper first outlines the underlying causes of instability in Nauru and Tuvalu. The problems that executive instability causes in both countries will also be explained. The third section of this paper considers various legislative and constitutional provisions from other Pacific island countries that could be used to control the problem. The first provision that will be discussed was selected from the Constitution of Kiribati, specifically s 32, concerning the way which a president is elected. This provision was selected not only because of Kiribati's political stability but also because there have been multiple occasions where this provision has been recommended for adoption in Nauru and Tuvalu. The second provision that has been selected is from the 1963 *Electoral Act* of Samoa. The newly introduced s 15 F was chosen given that it controls party-hopping in Samoa. In Nauru and Tuvalu's context such provision would address the issue of floor-crossing which is another cause of instability. The last legal control in this research paper is the 2003 *Organic Law on the Integrity of Political Parties and Candidacy Act* of Papua New Guinea, which deals with restricting the ability to vote on motions of no confidence. In conclusion, a summary of which control(s) are more suitable for Nauru and Tuvalu will be explained.

EXECUTIVE INSTABILITY IN NAURU AND TUVALU

Many scholars claim that the origin of the problem regarding political instability in both countries derives from the lack of a formal political party system. Since independence, Members of Parliament have been elected as independents and are usually elected based on family and personal connections. The grouping of Members of Parliament is not based on any ideological or philosophical basis, but rather upon personal affiliations with the ultimate objective of holding a ministerial portfolio. In Tuvalu, 'trying to form regional alliances fails

* Law graduate, University of the South Pacific.

¹ Ludwig Scotty, 'Challenges for parliamentary democracy in the absence of a party system' (Paper presented at the 19th CPA Australian and Pacific Regional Seminar, Brisbane Australia, 20–23 September 2011).

² Economist Intelligence Unit, 'Pacific Islands: Tuvalu - Political background' (27 August 2007) <http://search.proquest.com/docview/466541341?accountid=28103> (Accessed 1 November 2012).

because of personal bids for a ministerial portfolio or differences between close neighbours'.³ Politics revolves around particular ongoing island affairs and therefore no broader location or ideologies will provide enough support to form political parties. Politics in Nauru, on the other hand, has placed more emphasis upon the individual. In Nauru, 'politics is influenced by family, clan and religious links, although there are two informal parties, the Democratic Party and the Naoero Amo Party'.⁴ In Nauru, the extent to which personal-based politics has developed is seen as 'national policy requirements get lost and economic policy loses out to adventurism'.⁵ Groups are formed usually with regards to who you know and with whom you work better. Although there have been some coalition governments in Tuvalu and Nauru based on former workplace or school connections, the lack of unity will always be a contributing factor continuing the politically unstable atmosphere. The idea is that political parties will provide basic goals and purposes for being in Parliament, which are to be stated publicly, and will organise politicians to direct their efforts toward achieving those stated goals.⁶

Another reason is that Members of Parliament tend to have a short-term goal when elected: to maintain their seats in Parliament and to be in the Cabinet or in the governing party caucus. 'Island level concerns dominate parliamentary debate reflecting the Tuvaluan psyche for the promotion of one's own island community, because of the pressure to conform, the perceived benefits of status, recognition or re-election'.⁷ It is a general understanding that the only way to better serve the constituents is by having access to resources, which is only possible if you have a ministerial portfolio. In Nauru, 'Members of Parliament do not have nor do they pursue policies intended to achieve stated goals that the people can see and accept as will be beneficial nationally'.⁸ Because of the lack of access to the rewards associated with being in Cabinet, government backbenchers often turn to support the opposition in no confidence votes, bringing about changes in government.⁹

A further root of the problem is that Members of Parliament freely cross the floor without any penalties. Given that there are no ideological issues or political parties holding members to one side of the House, there is little control regarding floor-crossing.¹⁰ In Tuvalu, floor-crossing began in 1993 when Bikenibeu Paeniu crossed the floor to join the opposition and became Prime Minister. In Nauru's case, it is asserted by scholars that a politician crossing the floor occurs repeatedly because of the lack of political parties.¹¹ Nevertheless, there are no sanctions for politicians who change sides in either country. The lack of sanctions from the electorate regarding floor-crossing by Members of Parliament provides a continuing

³ P Panapa and J Fraenkel, 'The Loneliness of the Pro Government Backbencher and the Precariousness of Simple Majority Rule in Tuvalu' (Paper presented at the Executive Power and the Battle for Parliamentary Confidence Conference, Port Vila Vanuatu, September 2007) 7.

⁴ Economist Intelligence Unit, 'Pacific Islands: Nauru - Political background' (27 August 2007) <http://search.proquest.com/docview/466542299?accountid=28103> (Accessed 24 October 2012).

⁵ Ruben Kun, Whitlam Togomae and Roland Kun, Draft National Integrity Systems, Transparency International Country Study Report Nauru (2003) <http://www.sprep.org/att/IRC/eCOPIES/Countries/Nauru/15.pdf> (Accessed 24 October 2012) 12.

⁶ Panapa and Fraenkel, above n 3.

⁷ Peter Larmour and Manuhia Barcham, National Integrity System Transparency International Country Study Report Tuvalu 2004, p. 5, viewed from <http://www.anti-corruption.org/AntiCorruption%20%20Working%20Docs/Tuvalu%20-%20National%20Integrity%20Systems%20study%20-%20TI%20-%202004.pdf> (Accessed 24/10/12).

⁸ Panapa and Fraenkel, above n 3.

⁹ Economist Intelligence Unit, 'Pacific Islands: Tuvalu - Political background', above n 2.

¹⁰ Ibid.

¹¹ Economist Intelligence Unit, 'Pacific Islands: Nauru - Political background', above n 4.

source of political instability for the country.¹² It is asserted that in Tuvalu ‘defections occur because leaders stray away from caucus principles and policies, accusations of corruption, lack of efficiency and ineffectiveness’.¹³ Generally, the reasons behind floor-crossing are usually seen to be opportunist tactics by a Parliamentarian to gain a higher, better-paid position in government.

Furthermore, the problem seems also to originate from a numbers game. Given that Tuvalu has a 15-member Parliament, the government had always relied on one pro-government backbencher to maintain its majority. Therefore, in response to unremitting government instability, the Ielemia government introduced a constitutional amendment in 2007 increasing the size of the Cabinet by two. The government was clearly trying to bring to an end the period where government majorities depended on relying on a single pro-government backbencher. Cabinet is now able to hold nine votes of the 15-member Parliament which is adequate to defeat any confidence challenge if Ministers remain loyal.¹⁴ In Nauru, given that there are 18 Members of Parliament, with nine members on each side and both sides refusing to accept nomination of one of their members as speaker, this leads to a stalemate. This again is a problem because there is no government running the executive branch of government. This problem plagued Nauru in 2010 when there was a ‘hung Parliament’ for almost half of the year.¹⁵

In addition, a no-confidence motion against the head of government is freely permitted to be tabled in Parliament at any time during any sitting of Parliament. In Tuvalu, this is stipulated by s 63 (2) (f) of the Constitution; in Nauru it is stated in ss 24(1) and (2) of the Constitution. Despite regular elections and absence of severe social crises in Tuvalu since 1993, there has been an increasing frequency of no-confidence challenges in Parliament and resulting defeats of governments. In Nauru, late in 2011 President Stephen resigned before a motion of no confidence was scheduled to be voted upon regarding allegations of corruption. His successor, President Pitcher, lasted just six days in office before a vote of no confidence whereby he was replaced by President Dabwido. In Tuvalu, every Prime Minister has had a motion of no confidence vote tabled against him since 1985.

Existing controls for political stability in Nauru

In 2009, the *Constitution of Nauru (Parliamentary Amendments) Act* was unanimously passed by Parliament but it required a referendum.¹⁶ ‘The main proposals that were put to referendum were changing the method of electing the President to direct popular election, and inserting new social and economic rights in the Constitution.’¹⁷ On 27 February 2010 the national referendum did not approve the legislation, as some Members of Parliament who previously supported the Bill had campaigned against it prior to the commencement of the referendum.¹⁸ As a result of the referendum, there was another Bill with consequential amendments to the 2009 Act, which included an increase to the total number of members of

¹² Ibid.

¹³ Mose Saitala, ‘The Battle for Parliamentary Confidence in Tuvalu: Causes, Consequences and Possible Solutions’ (Paper presented at the Executive Power and the Battle for Parliamentary Confidence Conference, Port Vila Vanuatu, September 2007).

¹⁴ Panapa and Fraenkel, above n 3.

¹⁵ Republic of Nauru Government Information, ‘Nauru Parliamentary Deadlock Ends’ (Press Release 1 November 2010).

¹⁶ Certain amendments to the Constitution which are stipulated in Schedule 5 need approval by national referendum.

¹⁷ Katy Le Roy, ‘Nauru’s Parliament in Crisis’ *Parliamentarian* 25 August 2010, 5.

¹⁸ Ibid.

Parliament from 18 to 19, and making the speaker a non-Member. ‘Part of the reason for these proposed amendments is that there would always be an odd number of members on the floor, thereby avoiding stalemates, and that the Speaker could not be used in numbers games because he or she would not be a member and would not have any voting rights’.¹⁹ Nonetheless, again this Bill was rejected by Parliament.

Existing controls for political stability Tuvalu

In 2000 the government had tried to prevent political instability, although illegally, through the appointment of Special Ministerial Advisors (SMAs) which did not work. The three Prime Ministers who governed under the SMA system preceding to the High Court ruling on the illegality of the practice²⁰ were all removed by a vote of no confidence, mainly as a result from Parliamentarians, including a number of special ministerial advisors, crossing the floor.²¹

In 2002, Tuvalu tried to commence nationwide consultations and radio programmes to help the electorate understand that changing the political system is the solution to the country’s political instability. Prime Minister Sopoaga claimed that in order to control political instability, Tuvalu should move towards changing from a Westminster-style Parliament to a republic so that the President is elected by the people instead of by the government. However, the referendum that was scheduled to take place at the end of that year never occurred.²² It is unknown why the national referendum never occurred. However, it could have been based on a few reasons such as the equity problem or the cost problem that Tuvalu, being a republic, will encounter. These reasons are discussed in detail later in this paper.

In 2007, the Ielemia government amended the Constitution as aforementioned to increase the total number of ministers from five to seven to keep Members of Parliament from changing sides too often in the hopes of guaranteeing political stability. Yet, in the last general election, Mr. Toafa lost majority in Parliament when Mr. Willy Telavi²³ crossed the floor during the Christmas holiday in 2010 to join the opposition and then became Prime Minister; he is still in office to date.

Overall, there is an urgent need to address the issue of instability in both countries. Many legal reforms and recommendations have had no positive impact to control the instability in Nauru and Tuvalu. As a result, it is important, after assessing the existing legal controls, to examine the problems that instability causes for small island countries.

Problems caused by instability

‘A weakening in good governance standards stems from political instability caused generally by frequent changes in Government’.²⁴ Frequent changes in government often result in inconsistent national policy agenda; disruption of delivery of essential public services; and

¹⁹ Scotty, above n 1.

²⁰ *Latasi v Attorney General* [2003] TVHC 26 www.paclii.org.

²¹ Larmour and Barcham, above n 7.

²² BBC Monitoring Asia Pacific – Political, ‘Pacific: New Tuvalu PM says no intention to leave Commonwealth’ (8 August 2002) <http://search.proquest.com/docview/449933744?accountid=28103> (Accessed 1 November 2012).

²³ He is the second Member of Parliament from Nanumea Island, where Mr Toafa is also from.

²⁴ Panapa and Fraenkel, above n 3.

discouragement of investment and economic development.²⁵ Regular government changes have imposed high costs, for example, due to the associated delay and modification of national budgets.²⁶ When a new government comes into office national budgets need to be changed according to the new priorities and focal points that the Cabinet has in mind.²⁷

Politics can be very personal, which may lead to the premature termination of employment of senior public servants without cause, which in turn can affect the efficient administration of public policy and implementation of essential public services.²⁸ As stated in numerous gazette documents, Permanent Secretary positions in Nauru change almost as frequently as when a new government comes into office. The government changed for the third time in this Parliament's life in June 2012 and demanded a report of the previous government's budget and expenditure within a matter of hours so that they could utilize certain information to launch an attack against the outgoing government for overspending budgetary limits without seeking prior parliamentary approval. Consequently, the government terminated the contract of the Secretary for Finance and threatened to take the outgoing Minister of Finance to court.²⁹ It turned out, however, that upon a report provided by the Ministry of Finance there was no such overspending of monies or illegal expenditures incurred. In Tuvalu's case, Permanent Secretary positions are usually re-shuffled when there is a change in government which usually means that administrative matters are disrupted constantly. Most of the time Permanent Secretaries are well equipped with knowledge about projects and areas that need to be improved as well as the handling of staff, so when they are prematurely terminated or reshuffled to another post it affects the administration's organisation overall.

'Political instability undeniably heightens the stop-start gaps in the implementation of reform programs'.³⁰ Disruptions and uncertainties caused by regular government changes in Tuvalu has led to frequent changes in ministers and movement of senior officials with inevitable inefficiencies in policy formulation and implementation.³¹ Projects and areas of development considered to need immediate attention usually varies from government to government. For example, when a new Cabinet is chosen after a general election, it develops an outline of policies to be applied throughout its term of office. 'This takes time, and added to this is that the Public Service needs to put the policies into effect. In Nauru, the general implementation of programs may not get underway for two years or so'.³² Therefore, a stop-and-start gap in implementing reforms always takes place when a change in government occurs.

Generally, 'political instability increases people's negative perception of Members of Parliament and Parliament'.³³ Given the constant changes of government, the general public has accepted that Parliamentarians are opportunistic, self-centred, power-hungry and greedy

²⁵ For Nauru, a change in government could mean, for example, that there would be re-negotiations with AUSAID (the country's biggest donor agency) that could lead to delays in project implementation. In Tuvalu, a change of government could mean that boat schedules to the outer islands would be disrupted, hindering primary school students from receiving stationery and people from receiving food supplies and building materials.

²⁶ Economist Intelligence Unit, 'Pacific Islands: Tuvalu - Political background', above n 2.

²⁷ Asian Development Bank, 'Tuvalu 2006 Economic Report: From Plan to Action' (2008) <http://www.adb.org/Documents/Assessments/Other-Assessments/TUV/2006/2006-Economic-Report.pdf> (Accessed 24 October 2012).

²⁸ Panapa and Fraenkel, above n 3.

²⁹ Nauru Gazette No. 316 of 2012 (14 June 2012) www.ronlaw.nr.

³⁰ Saitala, above n 13.

³¹ Economist Intelligence Unit, 'Pacific Islands: Nauru - Political background', above n 4.

³² Nauru Constitutional Review Commission, *Suggestions for direct election of President, The 'Naoero Ituga' Report* (28 February 2007) 109.

³³ Saitala, above n 13.

people.³⁴ Although Parliamentarians are better off than most people it is a commonly accepted fact that the only way to be influential, access money and live a luxurious lifestyle is by holding a ministerial portfolio. 'Parliament has failed miserably in seeing for itself whether the regulatory framework it provides was effective or adequate and whether public institutions expend public resources as intended and in the best interests of the public'.³⁵ Therefore, the negative stigma attached to this institution continues, which does not assist the nation in moving out of its unstable environment.

OPTIONS FOR CONTROL

This paper discusses three legal options which can be used to control or reduce political instability in both small island countries.

The Parliamentary structure of Kiribati via s 32³⁶ of its Constitution is the first option. This section was selected because it has been a part of constitutional amendment proposals in Nauru and Tuvalu, but there has never actually been a thorough contextual comparison and contrast of whether this provision is beneficial or practical. Second, s 15 F (4) of the *Electoral Act* of Samoa 1963 will be explained as a legislative provision which could be used to control floor-crossing. This was selected because it is one of the legal controls that hinder politicians in Samoa from party-hopping. Given that Nauru and Tuvalu politicians are not prevented from crossing the floor in their Parliaments, this provision's purpose is to prevent this practice from continuing. Last of all, the provision in Papua New Guinea's *Organic Law on the Integrity of Political Parties and Candidacy Act* of 2003 regarding voting on motions of no confidence will also be discussed. This provision was selected because both Nauru and Tuvalu have no limits placed on who can vote on motions of no confidence, which is another cause of political instability. It is acknowledged that Papua New Guinea has a flawed political system and that this legislation was deemed unconstitutional, but it will still be argued that the purpose of such provision could be adopted but with a less rigid approach.

Kiribati

Existing laws which control instability

In Kiribati, constitutional provisions have been the catalyst of political stability, especially s 32, which stipulates the election of *Beretitenti* and s 71, which states the way in which the Speaker of Parliament is chosen. Kiribati has a mixed political system which allows for the President to be elected by the people. When a motion of no confidence is successful, Parliament is automatically dissolved and politicians contest their seats again. Further, the Speaker, who is not a Member of Parliament, is unbiased and cannot be used in numbers games, which is what happens in Tuvalu and Nauru.

Samoa

Samoa Electoral Act 1963

According to s 15 F (4), where:

³⁴ Economist Intelligence Unit, 'Pacific Islands: Nauru - Political background', above n 4.

³⁵ Q Clements, 'Tuvalu Legislative Needs Assessment' (2000) http://www.undppc.org.fj/userfiles/file/TUVALU_LNA.pdf (Accessed 24 October 2012) 3.

³⁶Section 32. '(1) Nomination for and an election to the office of Beretitenti shall be held in such manner as is prescribed by this section and, subject thereto, by or under law- (a) as soon as practicable after the first sitting of the Maneaba ni Maungatabu following a general election and before proceeding on any Bill...'

- (a) A Candidate elected as a Member is or becomes, as the case may be, a member of a political party in accordance with subsection (1) or (2) or (3); and
- (b) The Candidate resigns subsequently from such political party and becomes a member of another political party during the term for which the Candidate was so elected, the seat of such Candidate as a Member of Parliament shall become vacant and such Candidate shall be disqualified from holding such seat.

It should be noted that this section was recently introduced in Samoa in 2005 by the *Electoral Amendment Act*, adding s F to Part IIA of the *Electoral Act of 1963*. The purpose of the amendment is to stop politicians from party-hopping because of the growing numbers of new political parties and given that the next general election was scheduled for the following year.

Laws to control instability

It should be noted that:

[P]olitical parties were not recognised in Parliament until 1997 when provisions for Recognition of Parties and for the Leader of Opposition were written into the Standing Orders. The Standing Orders provide that any group of members of not less than 8 shall be recognised as a party in Parliament on its leader notifying the Speaker, provided that not less than 100 registered members of that party who are registered electors and or voters affixed their signatures to the application for registration. The Speaker must be informed of the name of the Party, the identity of the leader and deputy leader, the parliamentary members and any changes and any coalition between 2 or more parties.³⁷

In the recent *Aiafi v Speaker of Legislative Assembly*³⁸ case, the Supreme Court of Samoa was asked to determine whether a group of Parliamentarians formed a new political party in the life term of Parliament. The Speaker had declared their seats vacant and there were pending bye-elections to be followed. The Supreme Court held that because the applicants had not registered their political party the provisions of the *Electoral Act* do not apply and therefore their seats should not have been vacated nor should there be a bye-election.

Papua New Guinea

The third legislative provision that could be used to control political instability is taken from Papua New Guinea's *OLIPPAC Act 2003* s 70.³⁹

- (1) A Member of the Parliament –
 - (b) who voted for the Member elected Prime Minister in the election; and shall not vote –
 - (d) for a motion of no confidence in –
 - (i) that Prime Minister; or
 - (ii) the Ministry headed by that Prime Minister; or
 - (iii) a Minister appointed on the advice of that Prime Minister...

³⁷ Political parties in The Parliament of Samoa <http://www.parliament.gov.ws/GeneralInformation/tabid/5175/language/en-US/Default.aspx> (Accessed 3 October 2012).

³⁸ [2009] WSSC 65.

³⁹ 'Voting in the case of a motion of no confidence or in the election of a prime minister following resignation where the member resigning is nominated for election'.

Laws to control instability

In s 107 (4), the Constitution disallows a Minister and/or a person who is registered in a political party to be Speaker or Deputy Speaker.⁴⁰ In s 129 the Constitution provides for Parliament to make organic laws regarding the integrity of political parties. Then, in s 130A the Constitution allows the passing of an Organic law to deal more specifically with political parties. More importantly, in Papua New Guinea motions of no confidence are regulated through s 145 of the Constitution.⁴¹

ADOPTION OPTION FOR NAURU/TUVALU

Kiribati

Kiribati has a hybrid of a presidential and Westminster parliamentary system that seems to have the best of both models. Members of Parliament are elected through a general election and then, amongst the Members of Parliament, three or four presidential candidates are then selected. A Presidential election is then held by universal suffrage. The Cabinet is appointed by the president from among the members of the House of Assembly, which includes the president, vice president, attorney general, and up to eight other ministers. The *Maneaba Ni Maungatabu* is a unicameral House of Assembly with 41 seats; 39 elected by popular vote, one ex officio member, and one member nominated to represent Banaba; members serve four-year terms. Since independence in 1979 there have only been three successful motions of no confidence against the President, which is a statistic that directly indicates the stability of such a system.⁴² The *Beretitenti* is required to notify the Speaker in order to resign or when a matter before the *Maneaba* raises an issue of confidence. When a motion of no confidence is successful, Parliament is automatically dissolved, which then leads to general elections.

Given that Members of Parliament do not like to risk their seats there have only been three motions of no confidence tabled successfully in the history of Kiribati's politics. Furthermore, Kiribati's Speaker is a non-elected Member of Parliament and there are three well-established political parties.⁴³ The parties are loose groupings rather than disciplined blocks, with little or no structure. Members may change allegiance on a number of occasions during their tenure. It is also common for members to vote according to the special interests of their electorates on certain issues. At the commencement of the tenth meeting of the Ninth Parliament it became clear that there only three political parties on 23 August 2010. The Speaker announced in Parliament that Maneaban Te Mauri Party and Kiribati Tabomoa Party had combined as one to form the United Coalition Party, now recognized as Karikirakean Tei-Kiribati, or KTK Party.

⁴⁰ '(4) No Minister or Parliamentary Leader of a registered political party may be the Speaker or Deputy Speaker, and if a Speaker or Deputy Speaker becomes a Minister or Parliamentary Leader of a registered political party he vacates his office as Speaker or Deputy Speaker, as the case may be'.

⁴¹ Section 145 (b). 'A motion of no confidence in the PM or a Minister is a motion of which not less than one week's notice, signed by a number of members of the Parliament being not less than one-tenth of the total number of seats in the Parliament, has been given in accordance with the Standing Orders of the Parliament'.

⁴² Nanau, 'Modern Structures of Government II' (Lectures delivered at the University of the South Pacific, Suva, Fiji, 2012).

⁴³ Initially, there were four political parties in the Ninth Parliament: Boutokaan Te Koaua (BTK Government), Maurin Kiribati Party (MKP), Maneaban Te Mauri Party (MMP) and Kiribati Tabomoa Party.

Rights issues or concerns

As already mentioned the only concern about introducing such constitutional control would be that the successful Presidents in both Nauru and Tuvalu would hail from the constituency that has the most people. Given that in both countries people vote according to where they live, it will be difficult for the least-populated islands or districts to ever have their Member of Parliament become President. Nauru is divided into eight constituencies. Depending upon its size, seven constituencies have two seats and four seats for one constituency.⁴⁴ 'The political system itself encourages parochialism over national interest as Members of Parliament (MPs) are elected for the islands rather than at a national level.'⁴⁵ The cost of having two general elections for both small island countries would be another issue. Unless there is funding available for such a proposal it would be more detrimental to introduce such a legal control.

Nauru's context

Nauru has a presidential system as well as a Westminster parliamentary system where the head of government is also the head of state, as in Kiribati. There are no political parties nor is the formation and strengthening or promotion of political parties going to be a practical solution. Furthermore, this solution has already been proposed by the Constitutional Review Committee in 2007.⁴⁶ However, as already mentioned, two Bills containing constitutional amendments have been rejected by Parliament. The reason for the negative response has not been publicized but there could be a range of reasons. One reason could be a cost issue when implementing these legal reforms. Nauru is already a near-bankrupt country, so having two separate elections is costly. Further, there is an equity problem given that people elect Members of Parliament through districts it would be unfair and almost impossible for the Members of Parliament from districts that have the smallest number of voters from ever holding Presidency.

Tuvalu's context

In Tuvalu, the problem with this style of electing a leader of government is that candidates from the least populated islands will rarely have a chance to become President. Given that people in Tuvalu vote according to the island they belong to it will be extremely difficult for people from Nukulaelae to ever have a President. Therefore, this system is most likely going to lead to the domination of the head of government position by the Nanumea, Funafuti and Vaitupu candidates as they have more people from their islands compared to the other five islands.

Another main concern in Tuvalu is that two elections are too costly for the country. The government not only has to fund the election of Members of Parliament but would also have to fund the election of the President. If there is funding from a donor for general elections then this legal control would be practical for Tuvalu; otherwise it is unrealistic.

Summary

Therefore, overall although Kiribati is politically stable compared to Nauru and Tuvalu, its system of electing the President might not be the best option. The fact that the people in Nauru and Tuvalu both vote for the President according to their island or district will make it

⁴⁴ Scotty, above n 1.

⁴⁵ Economist Intelligence Unit, 'Pacific Islands: Nauru - Political background', above n 4.

⁴⁶ Nauru Constitutional Review Commission, above n 32, 53.

difficult for the least-populated constituencies' Parliamentarians to ever hold presidential office. Additionally, the costs attached to having this system are problematic as both countries are not as financially advanced as Kiribati. However, this system is unique as it hinders politicians from moving motions of no confidence because it puts them at risk of losing their seats when elections are held after the dissolution.

Samoa

Context

In Samoa, Parliament consists of the Head of State together with the Legislative Assembly, which is unicameral with at least 47 seats. Members of Parliament are elected by popular vote. The Parliament serves a five-year term. The Head of State is known as *O le Ao o le Malö*. From 1 January 1962, there were two traditional kings, nominated by the Constitution, who held the office jointly. Subsequent Heads of State are to be elected by a majority of the members of the Legislative Assembly for a five-year term. The Head of Government is the Prime Minister who is appointed by the Head of State, being a Member of Parliament who has the confidence of a majority in the Parliament. Samoa has a Cabinet of Ministers usually consisting of 8 to 12 Ministers appointed by the Head of State on the advice of the Prime Minister, responsible to Parliament. The Executive Council consists of the Head of State, the Prime Minister and the Cabinet. Samoa has many political parties such as the Human Rights Peoples Party, Christian Democratic Party, Samoa National Party, Samoa Labour Party, Samoa All Peoples Party, Samoa Democratic United Party and the newly established Tautua mo Samoa Party.

Samoa has many well-established political parties, although the Human Rights People's Party is dominant. In Samoa, only *matais* or chiefs are allowed to be Members of Parliament. The legislative provision that has been selected as a legal control applies to political parties which neither Tuvalu nor Nauru has, but it is the idea of having a penalty for Parliamentarians who change sides during the life term of a Parliament. Nonetheless, it should be noted that 'a negative implication of parties is its divisive impact on institutions associated with these collectivist values.'⁴⁷

Rights issues or concerns

It should be noted however that the legislative provision does conflict with the right to associate or form an association which is enshrined in the Constitutions of both countries. In Nauru, the right to freedom of association is stipulated in s 13 (1); Tuvalu has expressly provided the right to form and belong to political parties in s 25 (2). Although this right is not absolute, it is still vital for the proper functioning of a democratic country such as Nauru⁴⁸ or Tuvalu.⁴⁹ Hence, it will be up to the legislature in both countries to debate and decide whether it is more important to have political instability for public order purposes or to have the right to form political parties/associations upheld.

⁴⁷ Asofou So'o, 'From Consensus politics to party politics' in *Democracy and custom in Samoa an uneasy alliance* (2008) 71–129.

⁴⁸ 13.-(1.). 'Persons have the right to assemble and associate peaceably and to form or belong to trade unions or other associations'.

⁴⁹ Section 25(2). 'For the purposes of this section, freedom of assembly and association includes- (b) the right to form or belong to political parties...'

Nauru's context

Given that Nauru only has 18 Members of Parliament it would be impractical to have political parties such as Samoa for many reasons. One of the main reasons is that political parties do not even exist in Nauru. Further, even if political parties were to be registered in Nauru it would be less likely those politicians would pass a Bill to insert a similar provision, the reason being that there is very little loyalty amongst the politicians as noticeable through the many different political groupings formed within one life term of Parliament. Too much emphasis has been placed on actually strengthening political parties because it is a core player in a Westminster parliamentary system. In Nauru, this provision would be beneficial—not the exact words, but the purpose of this section could definitely be used as a guide. For instance, once a government is formed if a Member of Parliament is in government as a Minister or a backbencher or a member of Opposition that person must remain on that side or in that position throughout the life term of Parliament unless there is a successful motion of no confidence leading to the formation of a new government.

Tuvalu's context

In Tuvalu, the legislative provision poses the same problem as already stated in Nauru's context. Nevertheless, it could also be amended to suit Tuvalu's parliamentary system by having a legislative provision inserted into the Electoral Act or by amending the Constitution. In s 25 the right to freedom of association regarding political parties is expressly stated. However, there is an exception which this legislative provision falls into, which is that it be reasonably required for the interests of public order. Last year, Tuvalu saw the first political protest of the community of Nukufetau demanding that the current Minister of Finance join the opposition so that the opposition could form government.⁵⁰ There were threats to his family and the police force had to guard his private residence and official residence for a week. This is a rare act for Tuvaluans and in politics as well: instead of politicians crossing the floor, the electorate demanded that he cross the floor. Therefore, this legislative provision could be seen as reasonably justifiable in a democratic society as s 15 of the Constitution stipulates.

Summary

All in all, the legislative provision from Samoa's Electoral Act is a guideline and a good example of anti-party-hopping legislation whereas in Nauru and Tuvalu's context anti floor crossing law. It is noted that this provision conflicts with the right to associate which politicians are supposed to exercise freely and it is important that this right be protected for the proper functioning of a democracy. On the contrary, it is also noted that this legislative provision could reduce or end the continuous floor-crossing politicians do which have serious implications on the country. Thus, it will be up to the politicians themselves to decide for the future of politics in Nauru and Tuvalu whether such provision is suitable and should be adopted as law.

⁵⁰ Robert Matau, 'Tuvalu Opposition goes to court to contest legality of order' *Islands Business International Magazine* 18 January 2011 http://www.islandsbusiness.com/news/index_dynamic/container_NameToReplace=MiddleMiddle/focusModuleID=130/focusContentID=22157/tableName=mediaRelease/overrideSkinName=newsArticle-full.tpl?PHPSESSID=11fd313b576c3b9dd231f742092a1beb (Accessed 24 October 2012).

Papua New Guinea

Context

Papua New Guinea's national central government consists of Parliament, a single-chamber legislature of 109 members elected every five years. There are 18 Ministers of the Legislative Assembly unless the Prime Minister declares otherwise according to the *Organic Law on the Number of Ministers* s 2. Currently, there are 27 Ministers serviced by 27 national departments and host agencies and 19 provincial departments. Like all other countries addressed in this paper, the Ministers are appointed by the Head of State on the advice of the Prime Minister.⁵¹ However, there is another special constitutional provision that could prevent a Member of Parliament from being appointed or holding a Ministerial portfolio.⁵² In its 32 years of independence Papua New Guinea has had seven Prime Ministers, three of whom arrived through votes of no confidence.⁵³

Rights issues or concerns

Nevertheless, the *OLIPPAC Act* has been declared unconstitutional as most of its provisions are contrary to fundamental rights. The case of *Special Reference by Fly River Provincial Executive Council; Re OLIPPAC*⁵⁴ declared that the limits placed on the freedom of expression and opinion of Members of Parliament are unconstitutional and therefore declared the legislation null and void. In Tuvalu and Nauru this freedom is also enshrined in both constitutions. Thus, if Parliament is going to place limitations on certain freedoms then there would need to be a Constitutional Amendment Act regarding section 24 of Tuvalu's Constitution and section 12 of Nauru's constitution.

Nauru's context

It will be very difficult to amend the Constitution with regards to restricting who can vote on motions of no confidence as it is obvious that Nauru politicians prefer to have them to easily switch allegiances. Nonetheless, it would be practical and probable that Nauru's Constitution is amended to have a provision such as that in Papua New Guinea's Constitution relating to when a motion of no confidence can be tabled.⁵⁵

⁵¹ Section 144. 'Other ministers. ... (2) The Ministers, other than the Prime Minister, shall be appointed by the Head of State, acting with, and in accordance with, the advice of the Prime Minister'.

⁵² Ibid. (4). 'A Minister other than the Prime Minister– (a) shall be dismissed from office by the Head of State if the Parliament passes, in accordance with Section 145 (motions of no confidence), a motion of no confidence in him; and (b) may be dismissed from office– (i) by the Head of State, acting with, and in accordance with, the advice of the Prime Minister; or (ii) in accordance with Division III.2 (leadership code). (5) An Organic Law made for the purposes of Subdivision VI.2.H (Protection of Elections from Outside or Hidden Influence and Strengthening of Political Parties) may provide that in certain circumstances a member of the Parliament is not eligible to be appointed to or hold the office of Minister'.

⁵³ 'Operation of the OLIPPAC And its impact on Parliamentary Democracy in PNG' (Paper presented at the Executive Power and the Battle for Parliamentary Confidence Conference, Port Vila Vanuatu, September 2007).

⁵⁴ [2010] PGSC 3.

⁵⁵ Section 145. '... (2) A motion of no confidence in the Prime Minister or the Ministry– (a) moved during the first four years of the life of Parliament shall not be allowed unless it nominates the next Prime Minister; and (b) moved within 12 months before the fifth anniversary of the date fixed for the return of the writs at the previous general election shall not be allowed if it nominates the next Prime Minister. ... (4) A motion of no confidence in the Prime Minister or in the Ministry may not be moved during the period of eighteen months commencing on the date of the appointment of the Prime Minister'.

Tuvalu's context

In Tuvalu's context, such restrictions on who could vote on motions of no confidence will be unlikely to be passed for the same reasons stated in Nauru's context. However, s 145 (4) of the Constitution of Papua New Guinea is definitely a control that could be adopted and suitable in order to allow new governments the time to make some changes or development.

Summary

Using legislation to mandate a party system and party solidarity – it only has a prospect of being effective in a country that has already organically developed some kind of party system. It is not a viable approach for a place such as Nauru where parties do not exist at all. Legislation might be used to artificially strengthen and enforce a party system, but it cannot sensibly be used to artificially create a party system where none exists.⁵⁶

On the other hand, the provision can still be adopted in the form of a constitutional amendment instead of passing it as legislation. It would be nonetheless difficult to pass given that voting on motions of no confidence has been one of the favourite ways politicians have used to gain access to ministerial portfolios in both Nauru and Tuvalu.

CONCLUSION

On a final note, although Kiribati is politically stable compared to Nauru and Tuvalu, its political system of electing the President could be the least suitable option. Since Nauru and Tuvalu's electorates vote according to their island or district, this legal reform leads to a problem of equity: Member of Parliament from the most populated island/district will always be in the office of President. Moreover, the huge financial burden attached to such a political system is a major setback as both countries are not as financially advancing as Kiribati is. On the other hand, this system is unique because it hinders politicians from moving motions of no confidence as it puts them at risk from losing their seat when elections are held after the dissolution.

On the other hand, Nauru and Tuvalu also face the problem of having constant motions of no confidence tabled without any control. This problem is addressed by the *OLIPPAC Act* provision. Conversely, the Papua New Guinea legislation has been declared unconstitutional as it prevents MPs from voting on motions of no confidence. Therefore, what is proposed is that there be a limit placed on when motions of no confidence can be tabled such as that found in the Constitution of Papua New Guinea as already discussed.⁵⁷ This would require a constitutional amendment to the freedom of expression in both Nauru and Tuvalu as it limits the free exercise of an MP's ability to table a motion of no confidence. Nevertheless, it is still a practical legal reform for both countries.

Overall, this paper asserts that the most suitable legal control regarding the problem of political instability would be that of Samoa's *Electoral Act*. Even though the provision conflicts with the right to form associations, this right could be restricted in both Nauru and Tuvalu's Constitutions under public order, safety and morals. This constitutional amendment would ensure that politicians do not cross the floor during the life term of Parliament; otherwise they automatically have to contest their seats through a bye-election, keeping

⁵⁶ Scotty, above n 1.

⁵⁷ *Constitution of Papua New Guinea* s 145.

stability at a maximum. Furthermore, the provision will strengthen loyalty and unity of a government and opposition. Such an amendment is more likely to be passed as the government of the day holding majority in Parliament would desire for their government to stay in power. In addition, this provision is not so much of a radical change to the existing systems as the other two options introduce nor is it impractical.

As discussed, Nauru and Tuvalu have the number problem where the slim majority that forms government is at risk of losing their majority. Therefore, it is more practical to adopt the provision.