

PUBLIC ACCOUNTABILITY, PUBLIC ACCOUNTS COMMITTEE AND CONSTITUTIONAL DESIGN: A CASE STUDY OF FIJI

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ABSTRACT

This paper discusses the constitutional provisions relating to Fiji's Public Accounts Committee (PAC). While many Pacific jurisdictions have inherited the British Westminster system, there is variation in their constitutions with regards to PACs -- specifically the mandate, composition, and leadership of the PAC. Most research and international best practice recommends that PACs must be chaired by a non-government member and should also be dominated by non-government members. Such a structure is argued to enhance the independence of PACs, which will in turn lead to a more effective scrutiny of government spending. While some Pacific Island Countries (PICs) have PAC provisions stipulated in their constitutions, the authority of PACs in Fiji stems from Parliamentary Standing Orders. The differences in the constitutional authority of PACs provides greater discretion to Fiji's Parliament, and other countries in the Pacific with similar structures, to change aspects of PACs. In 2014, the Fiji Parliament made an unprecedented move to amend Standing Orders, which allows a Government member to chair the PAC. Fiji's case highlights post-colonial states' growing awareness that the "rules of the game" can be changed and may be a catalyst for other PICs to circumvent parliamentary oversight systems and institutions.

Keywords: *Public Accounts Committees, Public Accountability, Constitutional Design, Parliament, Fiji, Pacific*

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INTRODUCTION

At a nation's foundation, constitutions represent the beliefs and values of the people it governs. One may also argue that constitutions are used to introduce and instil certain beliefs and values in the nation it governs. This notion could be illustrated in Westminster-styled constitutions of post-colonial nations.

The term 'Westminster system' describes shades of the British system of parliamentary government that the British Empire introduced to its colonies.² It generally includes: an executive, legislature or parliament, and judiciary, which are (at least in theory) independent of each other; an elected house or houses of parliament, in which the executive or cabinet is selected from and responsible to parliament; and a head of state who is neither a member of nor elected from parliament.³

As the representative arm of government in a democracy,⁴ parliament is generally considered the most representative institution of the Westminster system and the cornerstone of democracy per se.⁵ The parliamentary system allows for the establishment of parliamentary committees mandated to aid parliament in carrying out its functions.⁶ This is evident in the formation of a Public Accounts Committee (PAC), generally tasked to examine public accounts and produce parliamentary reports that hold government accountable for its use of public funds and resources.⁷

Extensive focus on PACs reflects its vital role in enhancing parliamentary oversight of government's financial operations. The committee contributes to parliamentary democracy

² Kate Jones and Kerry Jacobs, 'Governing the Government: The Paradoxical Place of the Public Accounts Committee' (2006) 21 (1) *Australasian Parliamentary Review: Journal of the Australasian Study of Parliament Group* 63, 72.

³ *ibid.*

⁴ Graham Hassall, 'Governance, Legitimacy, and the Rule of Law in the South Pacific', in Anita Jowitt and Tess Newton Cain (eds), *Passage of Change: Law, Society and Governance in the South Pacific* (2003). It is acknowledged that there are different approaches to democratic structure and procedure. Discussing these multiple approaches, however, is beyond the scope of this paper.

⁵ Graham Hassall, 'Pacific Island Parliaments: Developmental Aspirations and Political Realities' (2012) 27(1) *Australasian Parliamentary Review* 213.

⁶ World Bank Institute, *PAC in Commonwealth Small Country Parliaments: A Comparative Analysis*, Parliamentary Strengthening Program. <http://siteresources.worldbank.org/PSGLP/Resources/parliament.pdf> One of the three core duties of any parliament is overseeing the implementation of government policies and programs using its accountability function.

⁷ David McGee, *The Overseers: Public Accounts Committees and Public Spending* (2002) 55. Its terms of reference can be expressed narrowly by concentrating on financial probity and regularity or its terms of reference can be expressed more widely by being conceived in performance audit terms, with the PAC being charged with examining the effectiveness of programmes in achieving their objectives.

and, in turn, assists in protecting the nation and peoples' interests as a whole.⁸ The ability of parliaments to deliver effective oversight, however, has greatly fluctuated due to either insufficient parliamentary resources or as a result of leaders circumventing laws to protect personal political interests.⁹

This paper explores whether constitutional provisions (or lack thereof) affect public accountability in relatively young Westminster-styled democracies. It particularly examines how laws, such as the constitution, could be used to empower or curtail PACs' mandate, composition, and independence (or at least the public's perception of such independence).

Most parliaments that are inheritors of a Westminster system of government include a form of PAC in their structure.¹⁰ Amongst former British colonies in the Pacific, Fiji and Solomon Islands have adopted such Westminster parliamentary practices. The former has generally maintained the British practice of authorising PACs solely through parliamentary rules, whilst the latter has also incorporated constitutional provisions safeguarding the institution's mandate. Focusing on Fiji, this paper discusses whether fluctuations in the mandate and composition of Fiji's PAC could be ignited or exacerbated by a lack of substantive constitutional authority that provides an enabling environment for the PAC to function effectively in a young and diverse democracy. The issue of express constitutional provisions for PAC's composition and mandate is worth discussing as a possible avenue for strengthening Fiji's PAC. Whether or to what extent such conventions may impact or be influenced by the peoples' belief systems, however, is beyond the scope of this paper.

LITERATURE REVIEW

Global research indicates that PACs are predominantly chaired by an opposition member. A World Bank Institute study stated that '[w]hile a majority of PACs, independent of size, reported that the PAC chair was a member of the opposition, this was more likely to be the case in small states (78%) vis-à-vis their large state counterparts (54%). The reason behind such tendency is unclear; however, it could be attributed to the size of the majority party and

⁸ World Bank Institute, above n 5. At this juncture, it is important to note that parliaments' accountability functions more broadly because PACs do not operate in isolation. Rather, these oversight committees are embedded in a given accountability environment that impacts -either directly or indirectly- on its performance. Although such 'operational context' may be a significant predictor of PAC capacities, thorough discussions of all possible operational factors is beyond the scope of this paper.

⁹ Graham Hassall, above n 3.

¹⁰ Rick Staphenurst et al, 'Scrutinizing Public Expenditures: Assessing the Performance of Public Accounts Committees' (Policy Research Working Paper No. 3613, World Bank, 2005).

their capacity to chair oversight committees or the strength of political parties in larger parliaments and the influence party discipline may have on determining who chairs.¹¹ In over two thirds of Commonwealth countries, the PACs are chaired by non-government members.¹² While opposition forces control, on average, only 41.2% of the seats in Pacific PACs, they control 50% of the PAC chairpersons.¹³ In Australia and New Zealand, PACs' independence is questioned because about 80% of their PACs have government chairs (albeit the Australian Capital Territory's (ACT) PAC is led by the Opposition and Tasmania's by an Independent member), 70% have a government majority (except New Zealand, Tasmania and ACT) and, despite most jurisdictions with a government chair having a corresponding opposition deputy, some (New South Wales, for example) have a government chair, a government deputy chair and a majority of government members.¹⁴

Given that the committee's independence is interwoven with its effectiveness, it could be argued that having a government chair hinders PACs' independence and limits the scope of its inquiries.¹⁵ PACs chaired by the opposition are believed to be more effective than PACs chaired by government. These conclusions, first advanced by McGee¹⁶ and reiterated by Stapenhurst,¹⁷ reflect perceptions of PAC chairpersons who were asked to indicate what they regarded as important for the success of their committee. PACs require an opposition chair because the opposition has the ideal political interest required to critique government's use of public funds and resources.¹⁸

Recent research, however, indicates that an opposition chair does not ensure PAC effectiveness. Pelizzo's correlation analysis reveals that contrary to what [surveyed] PAC chairpersons had suggested and to what previous studies had assumed, the activity of a PAC committee is not enhanced by the fact that the PAC chairperson belongs to the opposition.¹⁹ Some studies also report that opposition chairs actually result in 'fewer committee meetings,

¹¹ World Bank Institute, above n 5.

¹² David McGee, above n 6.

¹³ Riccardo Pelizzo, 'Public Accounts Committee in the Pacific Region' (2010) 38(1) *Politics and Policy* 117-137.

¹⁴ Rick Stapenhurst et al, above n 9.

¹⁵ *ibid.*

¹⁶ David McGee, above n 6.

¹⁷ Rick Stapenhurst et al, above n 9.

¹⁸ This argument is linked to Kolberg's instrumentalist-relativist theory, which states that politicians are more likely to implement policies that the people feel strongly about because it ensures that their political power remains intact. Critically questioning government spending helps the opposition argue it would make a better governor than the current government.

¹⁹ Riccardo Pelizzo, 'Public Accounts Committees in the Commonwealth: Oversight, Effectiveness, and Governance' (2011) 49(4) *Commonwealth & Comparative Politics* 528, 544.

fewer inquiries, and fewer reports'.²⁰ Since a government member has greater access to government ministers, having a PAC chaired by a government member ensures PAC recommendations are heard and effectively implemented by government.²¹

Furthermore, there is a wide variety in terms of the authority under which PACs operate. Some jurisdictions utilise parliament's standing orders alone whilst others provide express constitutional provisions and legislations outlining the mandate and composition of the PAC.

CONSTITUTIONS AND THE PAC IN THE PACIFIC

Pacific Island Countries have similar as well as distinct constitutional spheres. Many have grappled with post-colonialism and its accompanying practices and conventions. Fiji and Solomon Islands, for example, are no exception – particularly in regard to challenges associated with politics in a multi-cultural democracy permeated by diverse traditional custom.

Since independence, Fiji has journeyed through four Constitutions following coup d'états and political unrests. Solomon Islands, on the other hand, had generally upheld the Constitution that established its independence but, following ethnic unrests, is currently discussing a new federal constitution.

The Pacific Islands' Constitutions generally echo a Westminster system inherited from colonisers, United Kingdom. Both have constitutional provisions for the legal authority and composition of a legislature or parliament. Accordingly, Fiji and Solomon Islands' parliamentary systems follow the beaten path of establishing PACs to ensure government accountability, transparency, and good governance. Differences, however, lie in the legal authorities under which their respective PACs operate.

A glance at the legal backbone of Fiji's PAC

Fiji's Constitution lays the foundational blocks for government oversight systems and institutions. Section 1(f) and (g) of the 2013 Constitution states the sovereign democracy is 'founded on the values of – ...good governance, including the limitation and separation of powers [and] transparency and accountability'. These provisions are somewhat similar to those of the 1970, 1990, and 1997 Constitutions; which all have established variants of

²⁰ Riccardo Pelizzo, above n 13, 129.

²¹ Rick Staphenurst et al, above n 9.

parliamentary authority and composition geared towards upholding such norms of governance.

As aforementioned, PACs are a vital oversight institution in assisting parliament's role in ensuring good governance.²² It provides checks and balances that guarantee the executive's transparency in reporting government's financial expenditures and helps to hold government accountable to the legislature for such expenditures. The PAC, in turn, is also important for maintaining a separation of powers –or at least the public perception of such independence.

Despite these important factors, the 2013 Constitution does not expressly provide for the mandate and composition of a PAC. Instead, under sections 70 and 71, the Constitution generally authorises Parliament to formulate its own rules concerning parliamentary committees such as the PAC. Thus, Fiji's parliamentary oversight systems are authorised and limited by Parliament's Standing Orders. This has been the practice since Fiji's independence.

Fiji's PAC operates under Parliament's Standing Orders alone with no express constitutional or legislative authority. This may be due to the direct transplant of British oversight systems; as the United Kingdom's PAC was established by its Parliament's Standing Orders and continues to operate under it. The British parliamentary system, however, has amassed centuries' worth of substantial legal norms and traditional culture that safeguard parliamentary democracy in a sovereignty that has an unwritten Constitution. Fiji's parliamentary oversight system, on the other hand, is still finding its footing in a uniquely diverse post-colonial setting that has evolved through four Constitutions.

A Potted History of Fiji's PAC

Fiji's PAC is dynamic – 'dynamic' in the sense of its fluctuations fuelled by four coup d'états and multiple political and social unrests.²³ Over the years, the PAC's composition has greatly changed. Parliament Standing Orders prior to the 2006 political upheaval stated the Committee must: consist of twelve members nominated by the Prime Minister and Leader of the Opposition; have a quorum of eight members; and maintain a Chairperson from the

²² Usman Chohan and Kerry Jacobs, 'A Parliamentary Budget Office in Fiji: Scope and Possibility' (2016) 31(2) *Australasian Parliamentary Review* 117.

²³ However, this paper only discusses the PAC between the years 2006-2016. The PAC's functions and composition prior 2006 exceeds the scope of this paper. Shortcomings of such discussions and opportunities for further research on the matter are noted.

Opposition.²⁴ This structure was relatively followed when the Committee resumed its functions -- somewhat, in the political context -- during Bainimarama's military rule by decree.²⁵ After the 2014 General Elections, however, the PAC's composition was drastically reduced to less than half of the previous number.

At its first sitting, the newly elected Parliament adopted the 2014 Standing Orders.²⁶ This replaced the 1999 Standing Orders that governed previous PACs.²⁷ Although the Opposition was guaranteed leadership of the Committee,²⁸ PAC membership was reduced from twelve to 'no fewer than five and no more than seven members'.²⁹ The Committee now comprised of two Opposition members and three Government members.³⁰

Later, following its 11 February 2016 sitting, Parliament approved a motion brought by the Attorney-General to remove the provision in Standing Order 117 that guaranteed the Opposition leadership of the PAC.³¹ The Opposition, unsurprisingly, protested that such amendments prevented effective scrutiny of Government's finances and hindered democratic parliamentary debate.³²

The content and manner of this amendment stirred much debate, outcry, and criticism. It forms the genesis of this paper's discussion question – that is, whether Fiji's 2013 Constitution provides an enabling environment for an effective parliamentary oversight system through the PAC.

The Fijian Context: Amendments to PAC Standing Orders

For Fiji's PAC, extant literature should not be applied without taking the Fijian context into account. Wehner argues that, despite its importance in the structure of parliamentary scrutiny, the committee's usefulness and status are also dependent on external factors such as

²⁴ Riccardo Pelizzo, above n 13.

²⁵ *ibid.*

²⁶ Parliament of the Republic of Fiji, Hansard 6 October 2014 www.parliament.gov.fj (Accessed 27 August 2016).

²⁷ *ibid.*

²⁸ *ibid.*; Standing Order 117(2)(a) states 'the Standing Committee on Public Accounts may only elect an opposition member as chairperson'.

²⁹ Parliament of the Republic of Fiji, above n 25; Standing Order 114 (1).

³⁰ Parliament of the Republic of Fiji, Committee Members www.parliament.gov.fj (Accessed 17 August 2016).

³¹ Parliament of the Republic of Fiji, Hansard 11 February 2016 www.parliament.gov.fj (Accessed 27 August 2016).

³² *ibid.*

resourcing levels and political environments.³³ This discussion, however, particularly focuses on Fiji's political context and its impact in shaping Fiji's current PAC.³⁴

In contextualizing relevant amendments, one must briefly consider the PAC's activities leading up to the amendments. In May 2015, the PAC produced a consolidated report on the Auditor General's 2007-2009 report. It outlined 29 systematic issues and recommendations for Government.³⁵ This was the first substantial test of new accountability systems for Fiji's return to parliamentary democracy after the 2014 General Elections under the new 2013 Constitution.

Subsequently, the PAC commenced an inquiry into the allocation of funds from Head 50 in Government's budget. The Deputy Auditor-General advised the PAC that Head 50 was mainly for contingency matters that are not covered in the budget and it caters for unforeseen circumstances during the year.³⁶ From this contingency fund, ministries are able to obtain funds through a small grant scheme, which is where ad hoc funds received by the Finance Ministry are deposited into a consolidated account and released to ministries accordingly.³⁷ The Office of the Auditor General highlighted that these funds were used without the provision of acquittals and that the Finance Ministry continuously released funds despite such poor practice.³⁸ A series of exchanges between the former PAC chair, Professor Biman Prasad and the Attorney General (who is also the Finance Minister) followed via traditional and social media.³⁹ These inquiries were amongst the most controversial activities of the PAC since its reestablishment after the 2014 Elections.

³³ Joachim Wehner, 'Principles and Patterns of Financial Scrutiny: Public Accounts Committees in the Commonwealth' (2003) 41(3) *Commonwealth & Comparative Politics* <http://personal.lse.ac.uk/wehner/pacs.pdf> (Accessed 2 October 2016).

³⁴ Thorough discussion on the extent of PAC resourcing and its impact on PAC effectiveness is beyond the scope of this discussion; room for further analysis is acknowledged.

³⁵ Parliament of the Republic of Fiji, 'Consolidated report on the Auditor General's report 2007-2009', *Committees – Standing Committee on Public Accounts* www.parliament.gov.fj (Accessed 1 October 2016).

³⁶ Vuniwaqa Bola-Bari, 'No Answers for \$100m Question' *The Fiji Times* (Suva, Fiji) 06 August 2015 <http://www.fijitimes.com/story.aspx?ref=archive&id=316658> (Accessed 12 August 2016). It is interesting to note that verbatim reports of these 2015 PAC inquiries are not available on the Fiji Parliament website, which only provides verbatim transcripts of recent PAC meetings held in 2016. Thus, discussions on these inquiries heavily rely upon secondary sources such as newspaper articles and the Parliament Hansard.

³⁷ Vuniwaqa Bola-Bari, above n 35.

³⁸ *ibid.*

³⁹ *ibid.*; The Fijian Government, 'Attorney-General And Minister For Finance, Public Enterprises, Public Service And Communications Aiyaz Sayed-Khaiyum Transcript Of Remarks To The Press On Media Reporting Of \$100 Million Funds', *Fiji Government Portal Media Centre*, 23 September 2015 <http://www.fiji.gov.fj/Media-Center/Press-Releases/ATTORNEY-GENERAL-AND-MINISTER-FOR-FINANCE,-PUBLIC-.aspx> (Accessed 5 October 2016); Litia Cava, '\$100m Not Missing, Stresses A-G', *Fiji Sun Online* (Suva, Fiji) 23 September 2015 <http://fijisun.com.fj/2015/09/23/100m-not-missing-stresses-a-g/> (Accessed 5 October 2016).

In 2016, the Government then sought to amend Parliament's Standing Orders on the PAC. Standing Order 117 was amended to remove provisions that guaranteed the Opposition PAC leadership.⁴⁰ Government argued the PAC had become very political and thus, was acting beyond its jurisdiction.⁴¹ It justified such changes were needed to realign the PAC with its proper mandate.⁴² According to the Attorney-General, the Committee was not doing its job properly because its Chairperson was politically motivated.⁴³ The Minister retracted earlier election's manifesto that guaranteed Opposition PAC leadership because, according to Government, the PAC Chair had failed to follow proper oversight conventions by meddling into speculations and giving arbitrary rulings and political rants via the media.⁴⁴ Government reiterated that Parliament needed to focus on the actual specific mandate of various committees and thus, Standing Orders on the PAC had to be amended accordingly.

Government also clarified that the amendment does not impact the PAC's independence to choose its own Chairperson.⁴⁵ Standing Order 117 states the 'Committee shall vote' a Chairperson.⁴⁶ Thus, an Opposition member is still able to chair the PAC if supported by majority PAC members. Moreover, Government justified amendments were in-line with Australia and New Zealand parliamentary practice –where PACs are chaired by government members without outcry from the opposition and public.⁴⁷

Comparative analysis,⁴⁸ however, is not as simple as the Government presents it. Fiji's PAC and parliamentary system may not be directly comparable to larger systems like Australia and New Zealand. A global PAC survey noted that PACs in larger states had more available

⁴⁰ Parliament of the Republic of Fiji Hansard, above n 30.

⁴¹ Avinash Kumar, 'Fiji's New Parliament and Democracy' (2016) 14 *State Society & Governance in Melanesia*, The Australian National University In Brief <http://bellschool.anu.edu.au/sites/default/files/publications/attachments/2016-05/ib-2016-14-kumar.pdf> (Accessed 12 August 2016).

⁴² Parliament of the Republic of Fiji Hansard, above n 30.

⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ *ibid.*

⁴⁶ Parliament of the Republic of Fiji, Revised Sanding Orders with track changes www.parliament.gov.fj (Accessed 17 August 2016).

⁴⁷ Parliament of the Republic of Fiji, Hansard 12 February 2016 www.parliament.gov.fj (Accessed 27 August 2016).

⁴⁸ Comparative analysis in this regard includes the concept of comparative law, which is 'the study of, and research in, law by the systematic comparison of two or more legal systems; or of parts, branches or aspects of two or more legal systems'; W.J. Kamba, 'Comparative Law: A Theoretical Framework', (1974) 23(3) *The International and Comparative Law Quarterly*. Kamba explains the dangers of taking law/policy from one jurisdiction and applying it to another without considering the social, cultural, economic, and political context in which the law/policy functioned in.

resources to effectively perform their oversight role compared to PACs in smaller states.⁴⁹ It is noted that where a PAC has a government chair, there are other transparency and accountability mechanisms that ensure proper scrutiny of public funds.⁵⁰ Economist, Neelesh Gounder, stated that there is no comparison between the Australian context and the Fijian context as Australia has other accountability mechanisms, freedom of information laws, a strong and competitive media, and many specialised NGOs ensuring the Committee's independence and effectiveness – which is vastly different from Fiji's civil service, information laws and governance machinery.⁵¹ Australia's PAC is also governed by the Public Accounts and Audit Committee Act (1951) whereas Fiji's PAC has no similar legislative authority.

Additionally, the Fiji Government holds absolute majority of Parliament (32/50 seats) and the PAC (3/5 members).⁵² Voting results, therefore, are likely to go in Government's favour. A result in favour of the Opposition is also challenging due to the unlikelihood of voting against party-lines. This is because members may risk suspension or vacation of their seat if they vote against their political party's mandate. Section 63(1)(g) and (i) of the 2013 Constitution empowers party leaders to effectively remove a member from Parliament by expelling such member from the political party. Subsection (h) further allows political parties to remove members who vote against party policies without first obtaining the party's consent. These provisions place substantial pressure on members to vote in favour of their party's mandate. Thus, given the Constitution's supremacy, it is arguable that Standing Order 117 merely encompasses the letter and not the spirit of PAC independence.

Furthermore, many Opposition members were also concerned with the way such amendments were brought to Parliament. They argued that the Attorney-General's motion to amend Standing Orders should have been brought by the Standing Orders Committee, as stated in Standing Order 128.⁵³ Opposition member Hon. Ratu Tikoca protested that Parliament's procedures clearly stipulated proposed amendments needed to be referred to the Standing

⁴⁹ World Bank Institute, above n 5.

⁵⁰ *ibid.*

⁵¹ Neelesh Gounder, 'Leadership of PAC', *The Fiji Times* (Suva, Fiji) 20 February 2016 <http://fjitime.com/story.aspx?id=342309> (Accessed 15 August 2016). Neelesh Gounder is a faculty member of the School of Economics at the University of the South Pacific, where he teaches economics of governance.

⁵² Avinash Kumar, above n 41.

⁵³ Parliament of the Republic of Fiji, Standing Orders www.parliament.gov.fj (Accessed 26 August 2016); Parliament of the Republic of Fiji, Hansard, above n 46.

Order Committee (of which he is a member of), and the Committee then deliberates on the matter after extensive public consultations before advising Parliament.⁵⁴ Since these processes were not followed, the Opposition labelled PAC amendments as a totalitarian tactic signifying the lack of true parliamentary democracy in Fiji and ‘virtually entrenching parliamentary dictatorship’.⁵⁵ These sentiments were shared by other commentators who reasoned such practice was possible because Government held absolute majority of Parliament.⁵⁶ Thus, it is arguable that Government holds the pen that writes the rules for Fiji’s Parliamentary oversight systems; as amendments to Standing Orders, generally, do not require stringent processes compared to legislative or constitutional amendments.

DISCUSSION

From studying Fiji’s PAC, the possible impact of constitutional provisions detailing parliamentary oversight systems is highlighted. Lack of express provisions for Fiji’s PAC in its 2013 Constitution may have indirectly enabled various changes to the Committee’s mandate and composition. This is coupled with a political context that empowers the Executive to determine the rules of Parliament - largely due to its ability to influence majority Members of Parliament (MPs) and regulations that principally aids this dominance in Parliament. Such regulations not only include those provided by Parliament’s Standing Orders but also provisions in the Constitution that protect political parties’ interests in Parliament. Section 63(h) of the Constitution, for example, states that a member’s Parliamentary seat becomes vacant if the member ‘votes or abstains from voting in Parliament contrary to any direction issued by [the member’s] political party...without obtaining the prior permission of the political party’. This provision, in effect, could contribute to significant pressures on Government MPs to support the Executive’s proposed amendments to Standing Orders concerning the PAC – even if, in the MPs’ personal opinions, such amendments may contradict values of good governance, accountability and

⁵⁴ Parliament of the Republic of Fiji, Hansard, above n 46.

⁵⁵ *ibid.* It is worth noting that Opposition members boycotted the debate by either failing to be present or walking out of the Parliamentary session before the amendment was voted on. Amendments to Standing Order 117 were therefore unanimously passed.

⁵⁶ Avinash Kumar, above n 41; Tess Newton Cain, ‘Now You See It ... Now You Don’t: How to Make Democracy Disappear’ *Vanuatu Daily Post* (Port Vila, Vanuatu) 17 February 2016 http://dailypost.vu/news/now-you-see-it-now-you-don-t-how-to/article_022e54b8-2fef-5de6-8adc-28a119f6748d.html (Accessed 12 August 2016).

transparency stated in section 1(f) and (g) of the Constitution.⁵⁷ Moreover, Standing Orders prescribing the PAC's mandate and composition could be easily amended.

One may argue that such amendments would have been subject to challenge if the PAC's mandate and composition was expressly provided by the Constitution – similar to provisions in Solomon Island's Constitution or those outlined in the Ghai Commission's 2012 Draft Constitution. This is because procedures for amending the 2013 Constitution, outlined in section 160, provide several hurdles to overcome. Any amendment⁵⁸ to the Constitution requires that: a special designation of a Bill must be presented for such amendments, which is read three times in Parliament; a special majority of three-quarters of MPs should support proposed amendments at the Bill's second and third readings; a special report must be presented to the Legislature; and a referendum should be conducted by the Electoral Commission, the outcome of which 'is that [a special majority] of three-quarters of the total number of the *registered* voters have voted in favour of the Bill' [emphasis added]. These procedural requirements may be challenging to follow given Fiji's political environment, electorate characteristics, and resourcing levels.⁵⁹

As such, without any constitutional provisions expressly concerning the PAC, Standing Orders governing the PAC have undergone various amendments. This is not to say, however, that implementing such constitutional provisions would prevent any amendment to standing orders per se. Rather, it is submitted that having constitutional provisions on the PAC's mandate, membership and leadership would mean that the Executive (with majority seats of Parliament) cannot use Standing Orders to circumvent parliamentary oversight systems and principles of good governance, transparency, and accountability entrenched in the Constitution.

As aforementioned, recent Standing Order amendments include the removal of the requirement for an Opposition Chair of the PAC. Although recent literature favour a government chair,⁶⁰ this may negatively affect public perception and faith in a PAC that is led by a government chairperson with a government deputy chair and a majority of government members. Fiji's NGO Coalition on Human Rights says accountability is key to realising

⁵⁷ Which, in turn, further blurs the separation of powers between the Executive and Legislature.

⁵⁸ Section 160(7) further states the term "amendment" should be interpreted as also applying to proposals to repeal, replace, revise, or alter any provision of the Constitution.

⁵⁹ Further discussions on the subject is beyond the scope of this paper. .

⁶⁰ Riccardo Pelizzo, above n 19.

human rights and public perceptions and faith in the PAC's independence and credibility is gravely undermined with the appointment of a government member as PAC chair.⁶¹ Agreeing with a Tebbutt Times Poll where the majority of those surveyed had said Government should give the Opposition more input and opportunity to help in the running of the country, the Leader of Opposition stated 'there is almost no process of inclusion between the Government and the Opposition.'⁶²

Nevertheless, it is possible for a government member to effectively chair Fiji's PAC without hindering its independence and credibility. To ensure such effectiveness and independence, however, the PAC should have a larger proportion of opposition members than government members. Currently Fiji's PAC comprises of three Government members and two Opposition members. The Committee Chair and Deputy Chair are both Government members, whilst the second Opposition member is yet to be decided⁶³ after the removal of the Opposition chair and his subsequent resignation from the committee.⁶⁴ Pelizzo states '[i]f the productivity of PACs in the Pacific region is to be enhanced, it is better to have smaller committees, with a larger proportion of opposition members and with government chairpersons than having, as previous studies had claimed, bigger committees and opposition chairpersons'.⁶⁵ Fiji currently satisfies two of these elements with its small Committee chaired by a Government member. With that said, Fiji should consider increasing Opposition members to provide for effective scrutiny of public funds without being pressured by the Government's demands.⁶⁶

However, some argue Fiji's context is not conducive for an independent PAC chaired by Government. This is because additional amendments made to the PAC's functions may hinder effective scrutiny. Standing Order 109(2)(d) now includes '[t]he committee must only examine how public money has been dealt with and accounted for in accordance with the written law and must not examine the merits of the underlying policy that informs public spending'.⁶⁷ Some critique that while Government has felt the need to adopt the Australian

⁶¹ Losalini Bolatagici, 'Fiji NGOs Concerned Public Accounts Committee Lacks Independence', *The Fiji Times* (Suva, Fiji) 24 May 2016 in Pacific Islands Report <http://www.pireport.org/articles/2016/05/23/fiji-ngos-concerned-public-accounts-committee-lacks-independence> (Accessed 12 August 2016).

⁶² Nasik Swami, 'Poll sets tone for inclusion', *The Fiji Times* (Suva, Fiji) 6 August 2016 <http://www.fijitimes.com/story.aspx?ref=archive&id=365561> (Accessed 12 August 2016).

⁶³ Parliament of the Republic of Fiji, Committee Members www.parliament.gov.fj (Accessed 17 August 2016)

⁶⁴ Nasik Swami, 'Prasad voted out as Public Accounts Committee chairman', *The Fiji Times* (Suva, Fiji) 12 May 2016 <http://fijitimes.com/story.aspx?id=353488> (Accessed 12 August 2016).

⁶⁵ Riccardo Pelizzo, above n 19.

⁶⁶ Avinash Kumar, above n 41.

⁶⁷ Parliament of the Republic of Fiji, above n 47.

system of having a government chair, it has chosen to not adopt the same powers awarded to Australian PACs.⁶⁸ Section 8(1) of the Australian PAC Act describes the Committee's specific duties as being to 'report to both Houses of the Parliament, with such comment as it thinks fit, on any items or matters in those accounts, statements and reports, or any circumstances connected with them, that the committee thinks should be drawn to the attention of the Parliament'.⁶⁹ This provision is somewhat similar to Solomon Islands' Parliamentary Standing Orders mandating its PAC. The PACs' of New Zealand and the United Kingdom also scrutinises the value for money, economy, efficiency and effectiveness of public spending.⁷⁰

In Fiji, the Opposition argues amendments hinder the PAC's ability to conduct a merits review of Government's policies and its benefits for nation building.⁷¹ Some argue 'if a government policy is spending money badly, then it is the role of PAC to scrutinise that policy and bring the issues to Parliament...what use is it for the PAC to say "all the money was spent as the rules required" if the spending rules are bad in the first place'.⁷² Conversely, others state PACs should not determine policy itself but rather focus only on the implementation of that policy.⁷³

According to the Commonwealth Parliamentary Association (CPA), curtailing PACs' oversight powers and limiting the input of opposition members is not in-line with parliamentary best practice.⁷⁴ The opposition must be able to actively contribute and participate in the committee in order to ensure an effective PAC.⁷⁵ Pacific Island parliaments are also encouraged to create an enabling environment for robust, constructive debates between the government and opposition, particularly in regards to PACs.⁷⁶ Thus, a localised

⁶⁸ Neelesh Gounder, above n 51.

⁶⁹ Rick Stapenhurst et al, above n 9.

⁷⁰ Riccardo Pelizzo, above n 19.

⁷¹ Parliament of the Republic of Fiji, Hansard, above n 23.

⁷² Neelesh Gounder, above n 51.

⁷³ Rick Stapenhurst et al, above n 9.

⁷⁴ In 2002 David McGee, Clerk of the New Zealand Parliament reported on a survey of public accounts committees which had resulted from a Commonwealth Parliamentary Association commitment to 'furthering the ability of members and branches to move towards the adoption of locally utilisable systems of good governance and to continue to contribute to the strengthening of Parliament' (McGee, above n 6). Work by the CPA between 1997 and 2001 on parliamentary committees and the relationship between the parliament and the executive resulted in the formation of a Study Group 'to assess how PACs are working in practice and whether they are fulfilling expectations as important guarantors of good government; (McGee, above n 6). The Commonwealth Parliamentary Association includes more than 170 parliaments in its membership, and the Study Group included 70 as respondents.

⁷⁵ Riccardo Pelizzo, above n 19.

⁷⁶ Graham Hassall, above n 3.

approach is needed to improve Fiji's parliamentary democracy and strengthen its oversight systems.

Fiji needs a collaborative effort from Government and the Opposition to move Parliament forward toward a true democracy. As the peoples' representatives in Parliament, the Opposition (and Government Backbenchers) should perform the oversight function by questioning the Executive.⁷⁷ This function is the hallmark of parliamentary democracy.⁷⁸ Discussions on the type of collaborative effort required and its possible incentives and challenges, however, are beyond the scope of this paper.

Nevertheless, the challenge for PAC members, both in Government and Opposition, is to constrain the Executive.⁷⁹ This, however, may be difficult considering limitations stipulated in the 2013 Constitution. As such, apart from identifying the powers and resources needed by Parliament and the PAC, the competence and skills of individual committee members are also crucial for the Committee's success. The CPA Study Group identified three main priorities for action: 1) Capacity building; 2) Independence; and 3) Information exchange.⁸⁰ There is a crucial need to improve institutional capability by enhancing the ability of Parliament, the PAC, and its members to carry out their functions with sufficient resources, adequate training and access to required expertise. PACs need to have the means to exchange information and ideas so as to keep up-to-date with important developments, changing standards and best-practices as they emerge.⁸¹ Finally, it is also essential that PAC members are free from political or legal constraints that could inhibit them from performing their duties diligently and impartially. As aforementioned, section 63(1)(g)(h) and (i) of Fiji's 2013 Constitution, for example, may effectively discourage government PAC members from diligently and impartially critiquing Government expenditure because of political pressure to appease their political party leaders to safeguard their parliamentary membership.

If PAC members are to achieve the objective of scrutinising government expenditure, members need to be able to distinguish between their roles as members of political parties, and their role as a Committee member. The latter role is to represent the Parliament as an

⁷⁷ Avinash Kumar, above n 41.

⁷⁸ Riccardo Pelizzo, above n 19.

⁷⁹ Riccardo Pelizzo, above n 19.

⁸⁰ David McGee, above n 6.

⁸¹ Rick Staphenurst et al, above n 9.

entity, and the public generally, in holding Government to account.⁸² While it would be ideal for politicians and members of Government to act in the interests of the public, section 63(1)(g)(h) and (i) of Fiji's 2013 Constitution make it more likely that MPs would act in their political parties' interests.

The PAC in Fiji has become an increasingly public arena where members of the Government and the Opposition debate over public spending. Meetings of PACs in Fiji have received unprecedented media coverage on television, newspaper and on social media sites since the 2014 General Election. The digital revolution in Fiji facilitated by recent ICT infrastructure developments and Fiji's growing youth bulge has created a new online space for political discussion on social media sites.⁸³ The Government as well as members of the Opposition are leveraging social media to manage public impression and in some cases to engage with the public.⁸⁴ Arguably, such increased visibility and public scrutiny on both traditional and emergent forms of media may have compelled the Government to change the Standing Orders to allow a Government member to Chair the PAC. Such an option is not available in the case of Solomon Islands as the PAC's mandate is expressly stipulated in the Constitution. Any amendments to the PAC would, therefore, need to be consistent with such Constitutional provisions.

The Fiji PAC's experience after the 2014 General Election highlights how, although the rules of the "game" were inherited from colonial powers, the Fiji Government is cognisant of its power to change these rules where necessary. While governments of Fiji always had such power, this is the first time (in recorded history) that any Fiji Government has used constitutional provisions (or lack thereof) to circumvent rules and processes pertaining to parliamentary oversight systems such as the PAC. This could indicate that Bainimarama's Government is more attuned to its constitutional powers.

⁸² Peter Loney, 'Beware the Gap! — Parliamentary Oversight or Parliament Overlooked?' (Conference paper presented at the Association of Public Accounts Committees Conference, Nelspruit South Africa, 4 October 2004) https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwic-dTQju_YAhXLVbwKHVSbDecQFggnMAA&url=http%3A%2F%2Fgopacnetwork.org%2FDocs%2FBeware%2520the%2520Gap_Peter%2520Loney%2520article_EN.pdf&usg=AOvVaw2-lioFwEEAK0Z403kDxCJj (Accessed 12 August 2016).

⁸³ Glen Finau et al, 'Social Media and E-Democracy in Fiji, Solomon Islands and Vanuatu' (Conference paper presented at the 20th Americas Conference on Information Systems, Savannah GA, August 7-10 2014) <http://repository.usp.ac.fj/7796/> (Accessed 4 October 2016).

⁸⁴ Jope Tarai et al, 'Political Social Media Campaigning in Fiji's 2014 elections' (2015) 35(2) *The Journal of Pacific Studies*, 89.

CONCLUSION

Fiji's 2013 Constitution includes provisions for parliamentary oversight systems as it empowers Parliament to establish parliamentary committees tasked with ensuring that Parliament upholds the values of democracy, good governance, accountability and transparency stipulated in the Constitution. Within a few years into its return to democratic rule, however, the Fiji Government amended Parliamentary Standing Orders to remove requirements for an Opposition chair of the PAC and curtail the Committee's mandate to investigate Government expenditure. Many have voiced their concerns, via traditional and social media, that such amendments are inconsistent with the principles of democracy, good governance, accountability and transparency enshrined in the Constitution.

This paper has highlighted how constitutions may be used to empower or curtail parliamentary oversight systems, such as the PAC. It has sought to generate further discussions on developing a localised oversight system that strengthens the Committee's institutional capacity to safeguard parliamentary democracy in Fiji. Although this paper merely discusses whether fluctuations in Fiji's PAC mandate and composition could be ignited or exacerbated by a lack of substantive constitutional authority alongside related Standing Order amendments, it has briefly stated some possible recommendations that may interest further research and discussions. These include increasing the Opposition's inclusion and participation in the Committee.

It is conceded that discussions solely focused on constitutional provisions and the Opposition's role in an effective PAC. The paper does not address other contributing factors such as increased PAC resources and capacity building. It also solely focuses on the PAC's operations with the Executive from 2006 and fails to analyse the PAC's relations with other oversight institutions such as the Auditor General, including how constitutional provisions may strengthen effective and constructive relations. These limitations provide possible areas for further research in Fiji and the Pacific.

Moreover, the implementation of identified recommendations, with further research and discussions on the matter, may ultimately assist Parliament in becoming the 'bastion of

democracy it was established to be'.⁸⁵ All in all, Fiji's experience explores how different laws, including nations' constitutions, could be used to empower or constrain parliamentary oversight systems and institutions like the PAC.

⁸⁵ Graham Hassall, 'Democracy in the Pacific Tensions: Tensions Between the System and Life-world' in Andreas Holtz, Matthias Kowasch, and Oliver Hasenkamp (eds), *A Region in Transition: Politics and Power in the Pacific Island Countries* (2016).