

THE CONSTITUTIONAL IMPORTANCE OF PARLIAMENTS AND SUPREME AUDIT INSTITUTIONS IN ACHIEVING GOOD GOVERNANCE OUTCOMES FOR PACIFIC ISLAND COUNTRIES

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INTRODUCTION

The 17 Sustainable Development Goals (SDGs) were adopted by United Nations resolution in 2015, establishing a set of indicators to measure progress toward sustainable human development. Goal 16 of the SDGs relates to promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels.¹ SDG 16 has a number of targets, including for the development of effective, accountable, and transparent institutions. The global community sees well-functioning Public Financial Management (PFM) systems as being central to any effort aimed at achieving this target.

PFM systems are the institutions, rules, regulations, procedures and processes through which financial decisions are made and implemented. In other words, PFM is a system for raising and for controlling the use of public financial resources. Its components include strategic planning, budget planning, budget execution, accounting and reporting, and external audit

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¹ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1 <https://sustainabledevelopment.un.org/post2015/transformingourworld> (Accessed 1 June 2017)

and scrutiny.² This paper focuses specifically on the external audit and scrutiny phase of the national budgeting process.

The national budget is a key component of a PFM system. It is also one of the most powerful development tools at a country's disposal. In Pacific island countries (PICs), the allocation and implementation of public resources are crucial for citizens to understand their government's plans for development and attainment of the SDGs. Enhanced transparency, participation and accountability around the budget process are essential components of any sound PFM system and allow the community to ensure public resources are being directed towards addressing national development challenges.

Most commonly, the performance of PFM systems is measured using the Public Expenditure and Financial Accountability (PEFA) framework. A closer examination of the data available for PICs shows that the region faces challenges in providing effective external oversight of the development and implementation of the national budget.

This paper considers the dimensions that influence the independence and effectiveness of the public institutions responsible for executing the external audit and scrutiny function of a country's PFM system. It makes recommendations as to how PICs can adapt global norms to the unique Pacific context in order to strengthen the independence and effectiveness of external audit and scrutiny institutions. It also highlights how those institutions can work together to enhance their respective independence, and thus strengthen financial oversight and the broader accountability of governments for their use of public resources.

The paper focuses on the two primary institutions responsible for the external audit and scrutiny function, namely the parliament³ and the national auditing institution, which is commonly referred to as the Supreme Audit Institution (SAI).

² *see* Public Expenditure and Financial Accountability (PEFA) Framework www.pefa.org (Accessed 1 June 2017)

³ The generic term *parliament* is used in this paper to refer to a representative assembly or body, at the provincial, state, or national level, that is composed of members who are either elected or appointed in accordance with the laws of a sovereign state, and that convenes to debate and vote on proposed laws and provide oversight of government decision making. Although "parliament" is used internationally to refer to all national representative assemblies, parliaments in different jurisdictions might be referred to as the congress, legislature, assembly, house, senate or diet. For the most part these terms are interchangeable. This should be compared to the distinction between parliamentary (i.e. Westminster) and presidential (i.e. Congressional) systems, which refers to the means by which the executive is appointed in different governance systems. This paper acknowledges the diversity of models among PICs (and that most northern PICs refer to their parliaments as "Congresses").

Well established international norms dictate that the authority to tax citizens and to authorise public expenditure should rest with the parliament, and that the executive branch of government should consequently be accountable to the parliament for its actual expenditure of the appropriated budget and for its performance in doing so. Such norms can be traced back to the roots of the Westminster and civil law systems of government⁴, but are also widely accepted in other systems of government around the world. They are typically recognised in constitutional provisions that allocate the authority for approving public expenditure to the parliament, the responsibility for implementing it to the executive, and the roles of scrutiny and oversight to (respectively) the parliament and an independent office-holder such as an Auditor-General or Public Auditor as the head of the nation's SAI. In order to perform their component of this role, parliaments usually task a parliamentary committee to scrutinize the national audited accounts and oversee the implementation of the budget. This committee is often referred to as the Public Accounts Committee (PAC). Although not all PIC jurisdictions have a specific PAC, they nonetheless have parliamentary committees that perform this responsibility.

Parliaments and SAIs are central to any PFM system and, consequently, to any effort aimed at achieving the SDGs through appropriate and accountable public budgeting and expenditure. However, parliaments and SAIs continue to face challenges when seeking to exercise the independent mandates conferred on them whether through the constitution, enabling legislation, or other means. Institutional, resourcing, and political constraints can also hamper their ability to reach their potential as the watchdogs of the public purse. This is a significant development challenge in many PICs.

This paper proceeds in four parts. First, the concept of authority, oversight, and accountability in the context of external audit and scrutiny will be examined. Second, efforts by the SAI community to reinforce their independence so as to be able to play their watchdog roles, including by strengthening their constitutional status and improving the systems by which they get access to resources, will be explored and the particular implications for SAI performance in the Pacific will be outlined. Third, global efforts to establish parliamentary benchmarks and assessment frameworks along with PAC good practice principles will be explored. Drawing on a recent World Bank survey of PACs in the region, the paper will

⁴ In the United Kingdom, the Bill of Rights of 1688 established that “levying money for or to the use of the Crown ... without grant of Parliament, is illegal”. In France, the Declaration of Human and Civil Rights of 1789 said in article 15 that “society has the right to ask a public official for an accounting of his administration”.

outline prevailing practice in PICs and the implications for the independence of both the PACs and SAIs. Finally, the paper explores the practices which have been emerging across the region to strengthen the interactions of PACs and SAIs in the area of budget scrutiny and accountability, and the impact on SDG recognition and achievement.

THE CONSTITUTIONAL CONTEXT: AUTHORITY, OVERSIGHT AND ACCOUNTABILITY

The effectiveness of accountability institutions such as PACs and SAIs relies on them having clear mandates, legal powers, access to information, and independence from the stakeholders they are scrutinizing. The mandates and legal powers exercised by these institutions arise from numerous sources, whether that be the constitution, legislation, regulations, parliamentary rules of procedure, or judicial procedures. In addition, the performance of these institutions is informed by commonly held standards and conventions. Conventions are practices which, although not legally binding, inform how institutions perform their mandates. It is important, when exploring whether accountability institutions have been effective in executing their mandates and what strategies they can implement in order to maintain their independence, to examine both formal powers and parliamentary mandates as well as conventions and practices within and between the institutions.

The parliament has a responsibility to exercise oversight over the executive in order to hold it and its agents accountable for their policies and actions. The notion of accountability involves two distinct stages: answerability and enforcement.⁵ *Answerability* refers to the obligation of the executive, its agencies, and public officials to provide information about their decisions and actions and to justify them to the public and to the institutions of accountability tasked with providing oversight. *Enforcement* suggests that the public or the institution responsible for accountability can sanction the offending party or remedy the contravening behaviour.⁶ Different institutions of accountability might be responsible for either or both of these stages. This is particularly the case when examining external oversight of the budget and the role played by different committees across different parliamentary systems and different SAI models.

⁵ Andreas Schedler, Larry Diamond, and Marc Plattner, (eds.) *The Self-Restraining State: Power and Accountability in New Democracies*.(1999)

⁶ Mitchell O'Brien, Rick Stapenhurst, and Niall Johnston. (eds.) *Parliaments as Peacebuilders*. World Bank. Washington DC (2005)

Much of the power exercised by parliaments stems from their control over financial resources required to implement governmental policy decisions. A parliament has an obligation to ensure “[that the] spending measures it authorizes are fiscally sound, [that they] match the needs of the population with available resources, and [that] they are implemented properly and efficiently.”⁷ In some jurisdictions there has been a historical tendency for the executive to draft the budget without input from the community or the parliament; therefore, the first opportunity for the budget process to be open and accountable occurs when the budget is tabled and becomes a public document. Increasingly, though, parliaments are using the time between when the draft budget is tabled and when it is enacted to scrutinize the draft budget in specialized finance, budget or estimates committees, as well as through sectoral committees. Meanwhile, specialized committees of parliaments, such as PACs, review government spending after the fact, to ensure that actual government expenditures are in line with those approved by the parliament.

A 2015 study by the Pacific Association of Supreme Audit Institutions (PASAI) confirmed that in most PICs the national budget process is not the subject of any external controls or accountability. The study recommended that SAIs work with their governments to explore means of strengthening the process, for example by enabling the SAI or the PAC to provide information to budget officials from previous years’ audited government accounts.⁸

In general PACs are parliamentary standing committees of the lower house. However, there are some exceptions to this general trend. In Australia and in India, for example, the PAC is a bicameral committee. PACs may be institutionalized in different ways. A PAC may be established by a country’s constitution. This is the case in Antigua and Barbuda⁹; Bangladesh¹⁰; the Cook Islands¹¹; Kiribati¹²; the Seychelles¹³; Saint Vincent¹⁴, Trinidad and Tobago¹⁵; and Zambia.¹⁶ There is a second group of countries in which PACs are institutionalized by the standing orders of the assembly. PACs were instituted by

⁷ Joachim Wehner, *Back from the Sidelines? Redefining the Contribution of Parliaments to the Budget Cycle*. World Bank Institute Working Paper No.37230. World Bank (2004), 3.

⁸ Pacific Association of Supreme Audit Institutions, *Leading by example: Accountability and Transparency in the Pacific* (2015), chapter 3.

⁹ Art 98 *Constitution of Antigua and Barbuda 1981*

¹⁰ Art 76 *Constitution of Bangladesh 1972*

¹¹ Art 71(3) *Constitution of the Cook Islands 1965*

¹² Art 115 *Constitution of Kiribati 1979*

¹³ Art 104(1a) *Constitution of the Republic of Seychelles 1993*

¹⁴ Art 76 *Constitution Order of Saint Vincent and the Grenadines 1979*

¹⁵ Art 119 *Constitution of the Republic of Trinidad and Tobago 1976*. It is worth noting that the PAC in Trinidad and Tobago is established by both art. 119 of the Constitution and art. 72 of the Standing Orders.

¹⁶ Art 103(5) *Constitution of Zambia 1991*

parliamentary standing orders in Guyana¹⁷; Tanzania¹⁸; Uganda¹⁹; Canada²⁰; Malta²¹; Jamaica²²; India²³; Niue, Tonga, Vanuatu, and the Solomon Islands.²⁴ There is a third group of countries, which includes Australia and the United Kingdom, in which the PAC is instituted by an Act of Parliament – respectively the Public Accounts and Audit Committee Act 1951 in Australia (consolidated on November 6, 1997) and the National Audit Act in the United Kingdom (1861). Irrespective the legal basis for the formation of the committee, each of these PACs in their respective jurisdictions is able to draw upon the audit reports prepared by the SAI in order to scrutinize the performance of public officials in implementing the executive's budget.

For this reason, PACs often view their relationship with their SAI as being central to their ability to perform their own functions. This also gives the potential for the PAC to act as an advocate for the SAI's independence. We will return to this theme in the last section of this paper.

SUPREME AUDIT INSTITUTIONS

The United Nations General Assembly has recently recognized in two resolutions that, in order to operate effectively, a nation's SAI should be independent of the executive and that this should be enshrined in an appropriate and effective constitutional, statutory, and legal framework.²⁵ The resolutions, in summary:

- noted the role that strong, properly resourced and independent SAIs play in improving transparency, accountability and value for money to ensure that public funds are appropriately spent; and
- encouraged member states to apply the principles of independence in a manner consistent with their national institutional structures.

The resolutions were promoted by the work of the International Organisation of Supreme Audit Institutions (INTOSAI) over a number of years, aimed at strengthening the acceptance

¹⁷ Art 70(2) of the Standing Orders of the Parliament in Guyana.

¹⁸ Art 89 of the Standing Orders in Tanzania.

¹⁹ Art 122 (1) of the Standing Orders in Uganda.

²⁰ Art 108(3) of the Standing Orders in Canada.

²¹ Art 120E of the Standing Orders in Malta.

²² Art 69 of the Standing Orders in Jamaica.

²³ Articles 308 and 309 of the Rules of Procedures in India.

²⁴ PaNPAC Public Accounts Committee Powers, Mandates and Functions Survey (August 2015)

²⁵ A66/209, 22 December 2011, and 69/228, 19 December 2014.

by nation states of the importance of a strong and independent SAI to any national PFM system. A particular objective of the first resolution (in 2011) was to achieve greater constitutional recognition of SAIs globally, including the need for a full public sector auditing mandate²⁶ to recognise their role as accountability institutions in a national setting and by guaranteeing their independence under the law, where it is lacking. A constitutional reform in Vietnam in the immediate aftermath of the resolution has been held up as a major achievement for both the Asia-Pacific region and internationally.²⁷ The objective of the second resolution in 2014 was to restate the first but in the particular context of the SDGs.

Origins of the Principles of SAI Independence

The principles of SAI independence have been accepted internationally for many years. They have parallels with the professional independence of accountants who audit the accounts of companies and other entities in the private sector. But they go much wider, in recognition of the public sector context. Their origins can be traced back to the IX Congress of INTOSAI in Lima, Peru, in 1977. This produced what is known as the *Lima Declaration of Guidelines of Auditing Precepts*²⁸. In a 1998 republication of the *Declaration* the then Secretary-General of INTOSAI remarked²⁹:

The chief aim of the Lima Declaration is to call for independent government auditing. A Supreme Audit Institution which cannot live up to this demand does not come up to standard. It is not surprising, therefore, that the issue of the independence of Supreme Audit Institutions continues to be a theme repeatedly discussed within the INTOSAI community. However, the demands of the Lima Declaration are not satisfied by a SAI just achieving independence; this independence is also required to be anchored in the legislation. For this, however, well-functioning institutions of legal security must exist, and these are only to be found in a democracy based on the rule of law.

Rule of law and democracy are, therefore, essential premises for really independent government auditing and are the pillars on which the Declaration of Lima is founded ...

²⁶ Comprising not only annual financial audits of the accounts of the government and its component entities but also audits of compliance and what are known as performance audits (examining the use of public resources in terms of economy, efficiency, and effectiveness). See ISSAI 100, *Fundamental Principles of Public Sector Auditing*, www.issai.org

²⁷ Josef Moser (Secretary-General of INTOSAI): *Recent Developments in INTOSAI*, speech to the 15th PASAI Congress (2013).

²⁸ Republished as ISSAI 1 by the Professional Standards Committee of INTOSAI: see www.issai.org

²⁹ Foreword to ISSAI 1, *Lima Declaration*, www.issai.org

The *Lima* principles are thus significant from a constitutional and legal perspective. Besides stating the fundamental concepts of public sector auditing (including the purpose of audit, the types and methods of audit, and the competencies of auditors), they establish general principles regarding independence, the relationship of the SAI to the parliament, government, and the government administration, the SAI's powers, and, importantly, its power to report.

In relation to independence, the following principles establish the constitutional significance of SAIs and provide a touchstone for their institutional development:

Independence of Supreme Audit Institutions

1. Supreme Audit Institutions can accomplish their tasks objectively and effectively only if they are independent of the audited entity and are protected against outside influence.
2. Although state institutions cannot be absolutely independent because they are part of the state as a whole, Supreme Audit Institutions shall have the functional and organisational independence required to accomplish their tasks.
3. The establishment of Supreme Audit Institutions and the necessary degree of their independence shall be laid down in the Constitution; details may be set out in legislation. In particular, adequate legal protection by a supreme court against any interference with a Supreme Audit Institution's independence and audit mandate shall be guaranteed.

Independence of the members and officials of Supreme Audit Institutions

1. The independence of Supreme Audit Institutions is inseparably linked to the independence of its members. Members are defined as those persons who have to make the decisions for the Supreme Audit Institution and are answerable for these decisions to third parties, that is, the members of a decision-making collegiate body or the head of a monocratically organised Supreme Audit Institution.
2. The independence of the members, shall be guaranteed by the Constitution. In particular, the procedures for removal from office also shall be embodied in the Constitution and may not impair the independence of the members. The method of appointment and removal of members depends on the constitutional structure of each country.

3. In their professional careers, audit staff of Supreme Audit Institutions must not be influenced by the audited organisations and must not be dependent on such organisations.

Financial independence of Supreme Audit Institutions

1. Supreme Audit Institutions shall be provided with the financial means to enable them to accomplish their tasks.
2. If required, Supreme Audit Institutions shall be entitled to apply directly for the necessary financial means to the public body deciding on the national budget.
3. Supreme Audit Institutions shall be entitled to use the funds allotted to them under a separate budget heading as they see fit.

Also significant for this paper are the principles established concerning the SAI's relationship to the parliament and the executive:

Relationship to Parliament

The independence of Supreme Audit Institutions provided under the Constitution and law also guarantees a very high degree of initiative and autonomy, even when they act as an agent of Parliament and perform audits on its instructions. The relationship between the Supreme Audit Institution and Parliament shall be laid down in the Constitution according to the conditions and requirements of each country.

Relationship to government and the administration

Supreme Audit Institutions audit the activities of the government, its administrative authorities and other subordinate institutions. This does not mean, however, that the government is subordinate to the Supreme Audit Institution. In particular, the government is fully and solely responsible for its acts and omissions and cannot absolve itself by referring to the audit findings – unless such findings were delivered as legally valid and enforceable judgments – and on expert opinions of the Supreme Audit Institution.

The normative evolution of SAI independence has continued since the *Lima Declaration*. As the Secretary-General of INTOSAI remarked in his introduction to the republished *Declaration* in 1998:

The experiences made with the Lima Declaration since [1977] have exceeded even the highest expectations and proven how decisively they influence the development of government auditing in the given context of each individual country. The Lima Declaration is equally significant for all Supreme Audit Institutions grouped in INTOSAI, no matter to what region they belong, what development they have undergone, how they are integrated into the system of government or how they are organized.

The success of the declaration is above all due to the fact that it contains a comprehensive list of all goals and issues relating to government auditing, while simultaneously remaining remarkably significant and concise, making it easy to use, with its clear language ensuring that focus does not wander away from the main elements.

A further and more specific declaration of the principles of SAI independence was adopted at the XIX Congress of INTOSAI in Mexico in 2007. What is now widely known as the *Mexico Declaration on SAI Independence*³⁰ articulated eight principles of independence:

1. The existence of an appropriate and effective constitutional/statutory/legal framework and of *de facto* application provisions of this framework
2. The independence of SAI heads and members (of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties
3. A sufficiently broad mandate and full discretion, in the discharge of SAI functions
4. Unrestricted access to information
5. The right and obligation to report on their work
6. The freedom to decide the content and timing of audit reports and to publish and disseminate them
7. The existence of effective follow-up mechanisms on SAI recommendations
8. Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources.

The first thing to be noted from the *Mexico* principles is the importance of institutional recognition of the SAI (principle 1) and the independence of its head or members (principle 2). But the principles go far wider than this, confirming the *Lima Declaration's*

³⁰ Since adopted as ISSAI 10 by the INTOSAI Professional Standards Committee, see www.issai.org

characterisation of independence as a multi-faceted concept. The principles can be grouped into three broad elements of independence: the constitutional and/or legal status of the SAI and its Head, including the SAI's legal mandate and powers; the reporting and follow-up of audit findings and recommendations (which may be achieved through interaction and communication using a mix of legal and practical measures); and ensuring that the SAI is sufficiently resourced and has financial independence and operational autonomy.

Independence in Practice: the SAI's Constitutional Position and Importance

Further examination of the *Mexico* principles establishes the importance of understanding where the SAI sits within a nation's constitutional and legal framework referred to in principle 1. Relationships, as noted by the *Lima Declaration*, are critical to effective auditing. Thus:

- The head or members of the SAI should be appointed by a process that ensures their independence from the executive (principle 2). The associated guidance establishes that the appointment process is a matter for the parliament.
- The SAI should be free from direction or interference from the parliament and the executive in the selection of audit issues (principle 3).
- The SAI submits its reports to the parliament (or other equivalent body), as well as the auditee, and has mechanisms to monitor and issue follow-up reports (principle 7).
- The executive should not control or direct the SAI's access to resources; rather, the parliament is responsible for ensuring that the SAI has the proper resources to fulfil its mandate and the SAI should have direct access to the parliament if the resources provided are insufficient (principle 8).

These statements demonstrate the importance of the SAI's relationship with the parliament (including a PAC where it exists), as well as its protection from direction or interference by the executive (which is also the primary audit client). The relationship with the parliament is critical, being the body the SAI which, under international good practice, should be the appointer of its head or members, the source of its funds, and the recipient of its reports; and which the SAI should consult over its auditing intentions – while at the same time remaining

free from politically-motivated direction or interference (the right to say “no” being the fundamental protection).³¹

Public Sector Auditing in the Modern Context: Demonstrating Value and Relevance

In parallel with these developments is the evolving nature and sophistication of both modern government and its forms of oversight. Modern PFM places increasing emphasis on budgeting, planning, and accountability in both financial and non-financial (e.g. performance) terms, with reference not only to what governments do (outputs) but what they achieve (outcomes). The trend in public sector accounting has been to move away from simple cash-based systems to the more transparent accrual-based approach (or a combination thereof). In many countries there is also an emphasis on the measurement and reporting of non-financial results (known as service performance information), as well as the production of financial accounts.

The demands on SAIs have also expanded to include considerations of how well government bodies perform their work. In some countries, this includes the auditing of service performance information as part of an annual audit. But more commonly it also extends to auditing the economy, efficiency, and effectiveness of service delivery (known as performance auditing). Citizens and their elected representatives increasingly demand that their SAI goes beyond judgments of compliance and accuracy in the government’s accounts, to also evaluate government performance and the value for money obtained through government transactions.³²

While this has happened, auditing as a professional activity in the general sense has also evolved from an approach characterised by transaction-based checking, to one involving a risk-based and increasingly system-focused form of oversight and reporting. In the private sector, the risk-based approach to auditing is now reflected in the International Standards on Auditing (ISAs) developed by the global accounting profession.³³ The concept of auditor

³¹ This is explored further in the final section of the paper.

³² Albert van Zyl et al. *Responding to the Challenges of Supreme Audit Institutions: Can Parliaments and Civil Society Help?* U4 Issue 2009: 1 Norway: Anti-Corruption Resource Center (2009). <http://internationalbudge.org/wp-content/uploads/Responding-to-the-Challenges-of-Supreme-Audit-Institutions-Can-Parliaments-and-Civil-Society-Help.pdf> Quoted in *Leading by example: Accountability and Transparency in the Pacific region* above n 8, 17. See also ISSAI 100, above n 26.

³³ see www.iaasb.org

independence, in a professional sense, is also recognised in the profession’s global code of ethics.³⁴

In past decade the SAI community (under the auspices of INTOSAI and its Professional Standards Committee) has adapted the ISAs for public sector use and developed a parallel code of ethics for public sector auditors, placing them within a comprehensive framework of standards known as the International Standards for Supreme Audit Institutions (or ISSAIs).³⁵ The ISSAI framework thus provides the basis for a fully professionalised approach to public sector auditing, although this is still very much a “work in progress” in many countries.

This theme was addressed at the 2016 Congress of INTOSAI held in the United Arab Emirates, with reference to SAIs both as professional institutions and in relation to the people who work for them, including in the context of SDG achievement.³⁶

As PFM increasingly focuses on understanding the value and benefits of public expenditure (i.e., outcomes as well as outputs), so the SAI community has sharpened its focus on understanding the value and benefits that SAIs themselves bring through their public auditing work. In a sense this involves auditors as instruments of public accountability “practising what they preach”. In a ground-breaking standard adopted in 2013 entitled *ISSAI 12: The value and benefits of Supreme Audit Institutions – making a difference to the lives of citizens*, SAIs express their value and benefits in the widest possible sense³⁷:

Public sector auditing, as championed by [SAIs], is an important factor in making a difference to the lives of citizens. The auditing of government and public sector entities by SAIs has a positive impact on trust in society because it focuses the minds of the custodians of public resources on how well they use those resources. Such awareness supports desirable values and underpins accountability mechanisms, which in turn leads to improved decisions. Once SAIs’ audit results have been made public, citizens are able to hold the custodians of public resources accountable. In this way SAIs promote the efficiency, accountability, effectiveness and transparency of public administration.

³⁴ *ibid.* Examples of auditor independence in the professional sense include ensuring regular rotation of partners responsible for a firm’s auditing work, avoiding carrying out other engagements for the entity that could result in self-audit (for example, asset valuations), etc.

³⁵ see www.issai.org Note that the ISSAI framework includes 4 “levels”, of which the highest include the fundamental precepts of public sector auditing as outlined above, down to detailed auditing standards and guidelines which are derived largely from the ISAs.

³⁶ See for example PASAI’s Regional Paper: *Theme II Professionalisation* (INCOSAI XXII, 2016).

³⁷ ISSAI 12, 4 (footnote omitted): see www.issai.org

An independent, effective and credible SAI is therefore an essential component in a democratic system where accountability, transparency and integrity are indispensable parts of a stable democracy.

The standard articulates 12 principles “constructed around the fundamental expectation of SAIs making a difference to the lives of citizens”, recognising that this depends on the SAI:

- strengthening the accountability, transparency and integrity of government and public sector entities;
- demonstrating ongoing relevance to citizens, the parliament, and other stakeholders; and
- being a model organisation through leading by example.³⁸

These principles can be seen as the culmination of the evolution of public sector auditing, from the fundamental precepts established in the 1970s through to the modern context of auditing of public resources to achieve transparency and accountability that exists today. Together, this body of norms and principles formed the basis for the 2011 and 2014 General Assembly resolutions referred to at the start of this section.³⁹

Applying this Context to Pacific Constitutions

Why is this context important for constitutional reform in PICs? Five propositions can be stated.

First, as the preceding analysis has shown, the parliament’s powers to tax, authorise public expenditure, and hold the executive to account are matters of constitutional significance. Similarly, a constitutional system based on the rule of law requires authority to use public resources and mechanisms for those with that authority to be accountable for doing so. These matters go to the heart of the separation of powers and democratic processes.

Secondly, Pacific SAIs work in some of the smallest and most remote nations on earth. Public auditing in the region has advanced substantially, due in large part to the regionally-based development efforts of PASAI (and its development partners⁴⁰) since 2008. But

³⁸ *ibid*, 5. The application of the principles, as grouped in this way, is illustrated by a useful diagram at Annexure A of the standard.

³⁹ *see above* n 25.

⁴⁰ Including the Asian Development Bank, the Australian and New Zealand aid programs, the INTOSAI Development Initiative, and the World Bank.

sustaining these improvements is inherently difficult in small countries – not least because auditing in tight-knit social and cultural environments involves significant political, professional, and personal pressures.⁴¹

Thirdly, most, if not all, PIC constitutions have provisions about public finance and accountability. Many also establish either a SAI or a public office holder with responsibility for auditing and reporting on the government accounts. Constitutions are designed to stand the test of time. But it is axiomatic that those provisions should be reviewed from time to time for their currency and relevance.

Fourthly, the emergence of a strong, internationally based set of norms about SAIs, including their place in a governmental system and their relationships with other institutions of government, provides a benchmark for assessing the relevance and sufficiency of a SAI's constitutional recognition, responsibilities, and protections. Diversity of practice, derived in part from the different systems of government found across the region, provides a further basis for comparison.

And fifthly, such reforms are now a matter of imperative in development terms (recognising the SDGs and in particular goal 16 relating to country governance) – if not a matter of international obligation (as a result of the General Assembly resolutions).

As the regional representative body of Pacific SAIs, PASAI has taken a strong interest in independence and constitutional/parliamentary reform since 2008. PASAI's Charter, adopted in 2009 and revised in 2016, asserts that:⁴²

Developing the capacity and independence of Pacific SAIs through regional initiatives is essential to enhancing and stimulating economic growth, sustainable development, good governance, and security, and to combating corruption, in the Pacific.

PASAI's mandate includes a role of advocating the interests of good governance, including transparency and accountability, and the need for strong and independent SAIs, to

⁴¹ Asian Development Bank, *Strengthening Governance and Accountability in Pacific Island Countries (Phase 2)* (2008) www.adb.org/sites/default/files/project-document/67647/42454-reg-tar.pdf

⁴² *Charter of the Pacific Association of Supreme Audit Institutions* (2009, 2016), Preamble. www.pasai.org

governments and others in the Pacific region.⁴³ Promoting and assisting its member SAIs to enhance their independence is also one of the pillars of PASAI’s current strategic plan.

PASAI has conducted numerous surveys of its members’ constitutional and legal status and independence since 2008. A 2011 study of accountability and transparency in the region included an in-depth study of a number of SAIs’ independence, with particular reference to their constitutional and legal status and the procedure for appointing the Head of the SAI. This produced contrasting results, as set out in the following Table⁴⁴:

Table: *SAI Independence under different Parliamentary Frameworks*

Jurisdiction	Legislation	Independence
Federated States of Micronesia	Article XII of the Constitution Public Auditor Act 1982	Constitutional office. Public auditor appointed by the President with the advice and consent of the Congress. Public Auditor serves a four year term. Public auditor can be removed by Congress by a two-thirds vote. SAI staff appointed as classified employees.
Guam	Title 1 Chapter 19 Guam Annotated Code	Independent office under the Guam Annotated Code. Public Auditor is an elected position, and is non-partisan. Public Auditor serves a four year term. Removal from office is by the Governor. SAI staff appointed as classified employees.

⁴³ Article 1, s 3(b).

⁴⁴ Reproduced from Pacific Association of Supreme Audit Institutions, *Accountability and Transparency in the Pacific Region 2011* (published in 2012), 27. www.pasai.org. Note that the reference to the Regional Assistance Mission to Solomon Islands (RAMSI) is understood to refer to a number of consultants appointed through the RAMSI administration and using RAMSI funds,

New Caledonia	Chamber of Accounts	<p>Independent of the parliament, part of the Court of Accounts.</p> <p>President of the Territorial Chamber of Accounts appointed by the Court of Accounts.</p> <p>President has the same protection against removal from office as members of the judiciary.</p> <p>SAI staff appointed through Court of Accounts.</p>
Samoa	Article 97 of Constitution	<p>Constitutional office.</p> <p>Auditor-General appointed by the Head of State on the advice of the Prime Minister.</p> <p>Auditor-General appointed for a three year term.</p> <p>Appointment and removal only done through a warrant of appointment and a cabinet directive.</p> <p>SAI staff appointed by Public Service Commission.</p>
Solomon Islands	<p>Constitution</p> <p>Public Finance and Audit Act [1978, as amended]</p>	<p>Constitutional office.</p> <p>Auditor-General appointed by the Governor-General on the advice of the Public Service Commission.</p> <p>SAI staff appointed by Public Service Commission and Regional Assistance Mission to Solomon Islands.</p>

Tonga	Public Audit Act 2007 Public Audit Amendment Bill	Statutory Office. Auditor-General appointed by the Prime Minister in consultation with the Speaker. Auditor-General appointed for a 5 year term. Auditor-General can be removed by a two-thirds majority vote. SAI staff appointed by Public Service Commission.
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Similar appointment provisions are found in other PIC constitutions, for example that of Vanuatu, where the Constitution requires Parliament to provide for the office of Auditor-General, who “shall not be subject to the direction or control of any other person or body in the exercise of his functions”, but who is to be appointed by the Public Service Commission – with no input from the Parliament.⁴⁵

Noting that international benchmarks suggest that methods of appointment operating free from influence by the executive branch of government provide the highest level of confidence and assurance to citizens about the independence of the SAI, PASAI’s report stated that:⁴⁶

In the parliamentary and congressional models of government, it is good practice for the head of the SAI to be appointed either by the parliament or by the head of state on the recommendation of the parliament. In the congressional system, direct election of the SAI head is another form of good practice which ensures the SAI’s independence from the executive.

⁴⁵ *Constitution of the Republic of Vanuatu*, Article 25(4) to (6).

⁴⁶ *ibid.*, 28. Note the different use of the term “parliamentary” from that used in this paper: see note 3 above. Since the report was published, the bills referred to in the extract have been enacted in Samoa (Audit Act 2013) and Tonga (Public Audit Act 2012). The Solomon Islands bill still awaits introduction. An interesting account of the path to independence of the Tonga SAI can be found in PASAI’s independence resource kit at www.pasai.org/shared-learnings-intro.

Several of the Pacific jurisdictions that use the parliamentary model have not yet achieved the good practice standard, and retain involvement by the executive in the appointment process (often through the Prime Minister). This is the case, for example, in Samoa, Tonga, and the Solomon Islands. During the in-depth studies, the appointment process in these jurisdictions was questioned by the public, and was not seen as independent of the executive branch particularly because the Prime Minister was involved in the appointment process. All three SAIs have recognized this negative perception, and have proposed bills to strengthen the independence of the process and to meet other aspects of the Mexico Declaration principles.

The report also noted that the age of the constitutional provision or other legislation establishing the SAI is often a major determinant of the extent to which it meets international and regional benchmarks, including in respect of the appointment process for the SAI Head. It reported that more than half of the SAIs that responded to the study questionnaire had reviewed, or planned to review, their governing legislation. This showed a need for organisations such as PASAI to provide support to their member SAIs, and their governments, to understand the importance of SAI independence.⁴⁷

The 2011 findings in relation to the appointment of SAI heads were reinforced in a further study carried out by PASAI in 2015.⁴⁸ The focus of this study was on the financial and operational independence of the region's SAIs – using principle 8 of the *Mexico Declaration* as a benchmark. The report articulated the principles in the following terms:

True independence means that an independent SAI is one that has the necessary financial means and human resources to enable it to perform its mandate and hold the executive and other agencies to account for their stewardship over, and use of, public resources. This means that the SAI's budget should not be under the control of the executive. SAI Heads should also be able to manage the SAI's budget and human resources, allocate them as they see fit, and be accountable to the parliament for doing so.

The findings of the report were disturbing. They found that:

⁴⁷ *ibid.*, 28-29.

⁴⁸ *Leading by Example: Accountability and transparency in the Pacific region* (December 2015), Chapter 2. www.pasai.org The quotes in the succeeding text are all from chapter 2 of the report.

- Of the 17 SAIs surveyed for the study, six said they had insufficient resources to undertake their work, with staff recruitment and retention being the major challenges.
- Only just over half of the SAIs reported the existence of a specific parliamentary provision for setting its budget (the implication that the process was implemented administratively in other cases).
- Of those reporting such a provision, most said that it does not guarantee any specific level of budget or security of funding. Only four SAIs reported that they had the benefit of parliamentary provisions ensuring either sufficiency of budget or a specific level of funding.⁴⁹

The report included this commentary:

The study found that most Pacific SAIs are subject to the same financial budgeting processes as government ministries. The most commonly found model is:

- The SAI prepares its budget proposal in accordance with a budget circular, or other instructions, developed and issued by the ministry of finance or equivalent agency of the executive.
- The starting position for budget proposals is the previous year's funding levels. This is often referred to as the SAI's "budget ceiling". However, additional funding may be requested.
- The budget proposal, along with those of government ministries and other agencies, is considered by a budget committee comprising senior ministry of finance personnel and other senior officials. This committee makes recommendations to the Cabinet, or relevant Cabinet committee.
- The Cabinet, or Cabinet committee, makes the final budget decision in relation to the SAI.

⁴⁹ Two of these involve funding formulae: the Commonwealth of the Northern Mariana Islands, where the Constitution provides a minimum budget for the SAI; and the Republic of the Marshall Islands, where the budget is fixed under a formula that gives it a set percentage of certain elements of the government's revenue. The other two are more aspirational in nature: the Constitution of the Republic of Fiji, which provides that Parliament is to ensure that adequate funding and resources are made available to the Auditor-General; and Tonga, where the Public Audit Act requires the parliament to appropriate "sufficient moneys to enable the effective administration of this Act".

- The SAI's budget is included in the budget submitted by the government to the parliament, containing the full budget, which is scrutinized by a committee of the parliament and subsequently debated by the full parliamentary body before being formally approved or enacted into law.

All SAIs reported that they take their annual work plans into account when determining their budget proposals. This includes consideration of the numbers of audit staff, the numbers of audits to be completed, the numbers (and cost) of audits to be contracted out (where applicable), and the resources needed for training and development activity.

However, the practical outcome of the process just described is that the SAI's budget proposal, and the annual work plan intentions underlying it, are open to review and scrutiny directly by the government officials and then the Cabinet.

A number of SAI Heads expressed concern about this state of affairs, which does not meet the standard of independence and freedom from executive control or direction that has been established by the *Lima* and *Mexico* Declarations.

A similar position exists in respect of operational autonomy. For example, although the Constitution of the Republic of the Marshall Islands an independent appointment process for the Auditor-General (by the President with the approval of the Nitijela (parliament), it has no recognition of the SAI as an institution – instead providing that the Auditor-General is to “exercise his responsibilities ... either in person or through officers of the Public Service who are subordinate to him”.⁵⁰ In effect, that makes the Auditor-General entirely dependent on the country's public service commission for all staffing matters.

The 2015 report found these types of constitutional provisions understandable in historical terms, but unacceptable with reference to the international benchmarks since established by the various INTOSAI declarations and standards, and the General Assembly resolutions. It noted many SAIs in the Pacific region were originally established as government agencies to audit and report on government accounts. Under this model, the SAI Head is legally independent, but the SAI as an organisation is an instrument of the executive government. The SAI's staff are civil servants (as in the Marshall Islands example), and its budget is determined in the same way as for other executive government agencies. This model is

⁵⁰ *Constitution of the Republic of the Marshall Islands*, art VIII, ss 13(1), 15(2).

reflected in many of the constitutions and other legislation of Pacific states, especially those which achieved their independence from colonial rule from the 1960s and 1970s.⁵¹ It was developed on the basis, also reflected in the PFM legislation dating from that era, of the largely transactional-based approach⁵² that was suitable for government officials to undertake. Public sector auditing in the modern era, as described in the preceding analysis of this paper, bears little resemblance to that approach.

Opportunities for Progress

The picture in the Pacific is not without opportunity. PASAI has been increasing its work to make the international picture visible to PIC governments and legislators.⁵³ This is taking advantage of further international developments, such as the launch of a strategic management framework for SAIs and a comprehensive model for assessing SAI performance – including in relation to their independence.⁵⁴ PASAI has also provided bilateral support to a number of its members to review their governing legislation and state of independence, and to develop proposals for constitutional and/or parliamentary reform for discussion with their governments and PACs.⁵⁵

This work has now resulted in the introduction of a Bill to reform the law on public sector auditing in Tuvalu, which includes a comprehensive auditing mandate and a parliamentary-based procedure for funding of the SAI. Bills are under development, or awaiting introduction, in a number of other jurisdictions.

While mostly in the form of enabling legislation rather than constitutional change, these reforms when achieved will have constitutional significance – particularly in their statements about the status of the SAI and its head, the SAI’s role and place in the broader system of

⁵¹ The report noted that a similar model exists for the Australian SAI and most state audit offices: see *Independence of Auditors-General: A 2013 update of a survey of Australian and New Zealand legislation*, commissioned by the Victorian Audit Office, 2013. The same model also existed in New Zealand until the enactment of the *Public Audit Act 2001* in that jurisdiction in 2001, although a system of parliamentary-based funding of the SAI had existed since 1989.

⁵² see above n 33.

⁵³ For example, through a program of workshops with PACs across the region, explaining the importance of SAI independence and interaction with the PAC; the dissemination of communication materials from its 2015 report; and the development of an “independence resource kit” for SAI heads which is also generally accessible: see www.pasai.org/introduction. The resource kit notes that enhancing a SAI’s constitutional or statutory independence can be a long-term project which requires planning and persistence over time.

⁵⁴ This work is being led globally by the INTOSAI Development Initiative (IDI): www.idi.no. The IDI is also currently preparing a new guide on SAI independence, which it expects to publish in early 2017.

⁵⁵ PASAI, *Annual Report for the year ended 30 June 2016*, 13 www.pasai.org.

government, its relationships with other institutions including the executive and parliamentary branches of government, and its contributions to country outcomes.

Opportunities for constitutional reform are rarer, and take longer to achieve. A constitutional convention in the Republic of the Marshall Islands in 2017 included a proposal to modernise the institutional form of the SAI, and set the basis for further parliamentary reform involving the SAI's enabling legislation. Unfortunately the proposal failed to proceed.

Any constitutional reform process depends on public and community involvement for both its legitimacy and its success. That should be no different for a reform involving the country's accountability institutions.

PUBLIC ACCOUNTS COMMITTEES

Institutional independence is the concept that specific institutions need to be kept separate from other actors' control in order to ensure they can operate without any improper influence or from private or partisan interests. As outlined above, INTOSAI has identified conditions that it sees as being essential for SAI independence. The *Mexico Declaration on SAI Independence* speaks to having an appropriate legal framework that is applied, security of tenure and immunity for heads of SAIs in the discharge of their duties, full discretion within their mandate, access to information, the freedom to decide the content and timing of audits, effective follow-up mechanisms, and financial and administrative autonomy.

The global parliamentary community has also made strides in identifying key standards, including around the independence of parliament. Over the last decade several parliamentary associations and organizations, such as the Inter-Parliamentary Union (IPU), Assembly of Parliamentarians from Francophone Countries (APF), and the Commonwealth Parliamentary Association (CPA) have developed benchmarks and assessment frameworks for parliaments. Although there is no single standard, a comparison of prevailing international benchmarks and frameworks shows a consensus around a number of aspects pertinent to the independence of a parliament.⁵⁶ These include:

⁵⁶ Mitchell O'Brien, Rick Stapenhurst and Lisa von Trapp (eds.), *Benchmarking and Self-Assessment for Parliaments*: World Bank, Directions in Development - Public Sector Governance. (2016).

- Preservation of parliamentary immunity for speech undertaken during the course of a legislator's duties.⁵⁷
- Provision of proper remuneration and reimbursement of expenses, to promote quality candidates running for office and diminishing incentives for public officials seeking external sources to cover the cost of performing parliamentary duties.
- Adequate physical infrastructure, ICT facilities, and nonpartisan professional staff support.
- Sufficient control of the parliamentary service and terms of employment, including that the parliament has adequate resources to recruit staff sufficient to fulfil its responsibilities, that the rates of pay for parliamentary staff are broadly comparable to those of the civil service, and that recruitment be based on merit.⁵⁸

All frameworks recognize that a parliament should be able to determine and approve its own budget, although they differ on the funding model. This standard complements additional benchmarks that recommend that the approval of the parliament be required for the passage of all legislation, including the appropriations for the national budget. Unsurprisingly, parliamentary benchmarks and standards pertaining to financial and administrative autonomy and the availability of appropriate human and material resources echo those that the SAI community has enshrined in Principle 8 of the *Mexico Declaration*.

There is also broad consensus that only the parliament may adopt and amend its rules of procedure. Similarly, there is agreement that the parliament meet regularly at intervals sufficient to fulfill its responsibilities and that the parliament have clear powers and processes for calling itself into extraordinary or special session.

Another area relevant to a discussion around independence is the consensus view that parliaments should have a right to form permanent and temporary committees.⁵⁹ Committees are the 'engine room' of the parliament and are among the most effective tools available to a parliament to perform its legislative and oversight functions. Any restriction on a parliament forming committees can be viewed as a restraint on the parliament being able to act on its

⁵⁷ NDI and the APF recognize the power to lift immunity as exclusive to the Parliament itself.

⁵⁸ The CPA Study Group referred to their Zanzibar Study Group on the financing administration of Parliament's recommendation that 'The Corporate Body should ensure that the parliamentary service is properly remunerated and that retention strategies are in place'.

⁵⁹ CPA benchmark 2.4.2, NDI standard 2.3.2 and APF criteria 2.1.5.6 also cover elected legislators' right to initiate legislation and offer amendments to proposed legislation.

own agenda. In terms of powers, the parliamentary frameworks also address committees' right to summon persons, papers and records, and to consult or employ experts. In terms of organization, the standards call for committee membership to reflect the political composition of the parliament.⁶⁰

Differences across frameworks can also be found at the regional level. Regional benchmark discussions have affirmed existing benchmarks and standards, while developing new, and sometimes regionally specific, standards.

The Pacific is one of the regions that has sought to build on the global benchmarks in order to ensure they respond to specific regional norms and challenges. In 2008, the Forum Presiding Officers and Clerks Conference mandated its Secretariat to work with CPA, the UNDP Pacific Centre and others on a Pacific version of *Benchmarks for Democratic Parliaments*. Pacific legislators subsequently participated in a June 2009 workshop on benchmarks in Brisbane and benchmarks self-assessments were undertaken by the Parliaments of Kiribati, Nauru, Tuvalu and Niue. Finally, in cooperation with the CPA, the 2009 Conference of the Pacific Parliaments for Population and Governance⁶¹ adopted the *Pacific Islands Benchmarks for Democratic Parliaments*. Among the major additions to the original CPA Benchmarks (on which the *Pacific Island Benchmarks* are based) are the following:

- 1.5.2 An independent body should determine the appropriate remuneration, benefits and other statutory entitlements of legislators.⁶²
- 7.1.1 The Parliament shall have appropriate legislation or a constitutional provision that clearly determines the size of cabinet which should not exceed one third of the total membership of the Parliament.⁶³
- 7.1.5 The oversight authority of the Parliament shall include meaningful oversight of compliance with international human rights instruments and national constitutional rights, including consideration of gender and socio-economic impact.

⁶⁰ Very small parliaments may choose to work through a "Committee of the Whole".

⁶¹ Formerly the Forum Presiding Officers and Clerks (FPOC).

⁶² For example, in Samoa, an independent Salaries Tribunal decides on the remuneration of parliamentarians (and government officials). In Fiji and Kiribati, an independent body recommends salaries, but the final amount awarded has to be approved by Parliament.

⁶³ Tuvalu Parliament's oversight function was considered ineffective, as the cabinet includes more than half of the Parliament's total membership.

- 7.1.6 The oversight authority of the Parliament shall include meaningful and timely oversight of accountability institutions, such as election commissions, human rights commissions, anti-corruption commissions, ombudsmen, information commissions and offices of auditors–general.
- 7.2.2 The Parliament shall have clear procedures requiring government to provide timely responses to parliamentary committee reports and recommendations.

Following on from this initiative, the recently formed Pacific Network of Public Accounts Committees (PaNPAC) has agreed to move forward with a process specifically aimed at distilling PAC good practice within the region. As a starting point the Kingdom of Tonga, Niue, New Zealand, Vanuatu, Solomon Islands and Fiji were surveyed to ascertain the PAC landscape in the Pacific, including the extent of the PAC’s independence. The PAC Chairs and Clerks from each of the six jurisdictions were asked to self-assess the powers, functions, and practices so as to better understand the way in which their respective jurisdictions operate. The practices relevant to the independence of PACs include the functions of the PAC, membership and leadership of the committee, and agenda-setting within the committee. A summary of the results is outlined below.

Functions and Responsibilities of the Public Accounts Committee

There is a wide variety in terms of the authority under which the PAC operates. In Vanuatu and Solomon Islands the PAC operates under both the Constitution and Regulations; in New Zealand and Fiji the PAC operates under the Standing Orders of the respective parliaments; in the Kingdom of Tonga the PAC operates under the Rules of Procedure of the Parliamentary Assembly of Tonga; and finally, in Niue, the Terms of Reference for the PAC operations are passed by the Assembly.

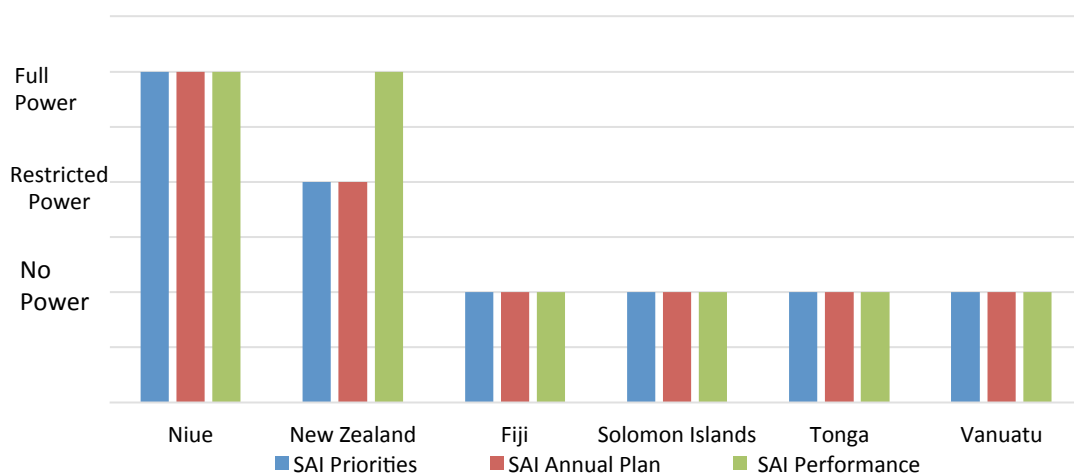
In examining the use of public monies, such as in examining accounts, contracts and/or financial management, there is a diverse array of organizations and offices to which PACs have the right of access. Except for Vanuatu, most of the countries have access to Ministers’ accounts and agencies and public enterprises. Half of the countries have access to local government expenditure, including Fiji, Solomon Islands and Tonga – this is not the case for Vanuatu, New Zealand and Niue. All PACs have access to the parliament itself and its expenditure records. Interestingly, in Fiji the committee also has access to the Armed Forces

accounts, a right traditionally disputed by Commanders of the Fiji Military Forces going back to first military coup-d’etats in 1987.

The survey examined largely the functions and responsibilities of the PAC in relation to government accounts and operations, SAI reports and SAI operations (see **Chart 1**). Relative to government accounts and operations, all PACs except for that in New Zealand have a role in the examination of budget estimates (although the New Zealand committee retains oversight of the process). PACs in countries like Tonga, Niue, New Zealand and Solomon Islands have additional powers in considering budget estimates (other than those for the SAI) and in the efficiency of government policy.

When it comes to the efficiency and economy of policy implementation (i.e. value for money), most PACs do have considerable power, except for Vanuatu where the PAC has no power and in both Fiji and Tonga where this power is restricted. Interestingly, with the exception of Fiji where restrictions are applied and Niue without any power, all PACs have the power to undertake self-initiated inquiries. Moreover, there is an overwhelming commonality among PACs relative to SAI reports, where almost all PACs have the power to examine SAI compliance audit, financial audit and performance audit reports. In all countries PACs also have the right to refer matters to the SAI for investigation.

Chart 1. PAC Functions/Powers Relative to SAI Operations

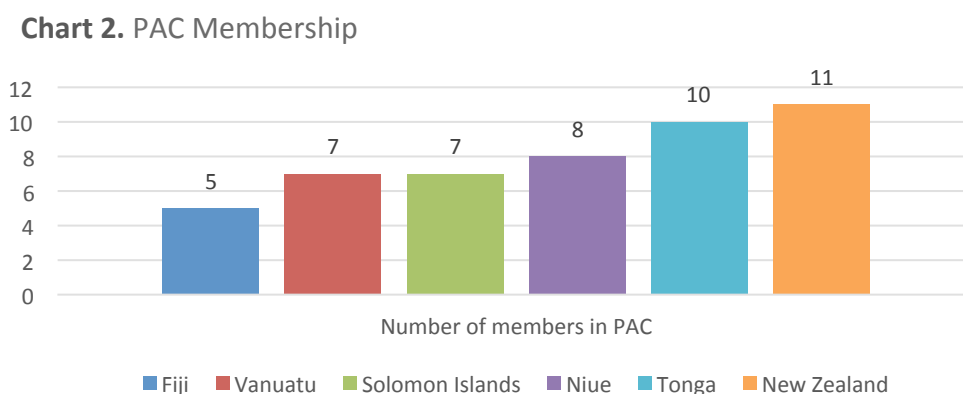


It is worth mentioning that for functions mentioned in the survey where the PAC has no or limited power, in most cases no other parliamentary committee was empowered to undertake those functions. In the Solomon Islands, however, the Public Expenditure Committee is empowered to undertake the reviewing of the annual budget estimates. It also assesses the

expenditure performance in view of the policy intentions and the budget estimates, and undertakes value for money assessments to ascertain the quality of public expenditures. The SAI is an independent body, hence neither the government nor the Committee determine its priorities or the development of its annual plan. In Tonga, the Committee has a strong focus on the review of budget measures through its role under the Rules. However, usually due to limited capacity, there is a weakness in the PAC carrying out its oversight roles such as scrutinizing the Annual Estimates and ex-post reviews through assessment of agency annual reports and reports of the Auditor-General. In New Zealand, the PAC (known as the Finance and Expenditure Committee) is empowered by Standing Orders to refer annual financial reviews, reviews of Estimates and of the SAI’s reports to other select committees if it considers that this material is more relevant to their remits.

Membership and Leadership of the Committee

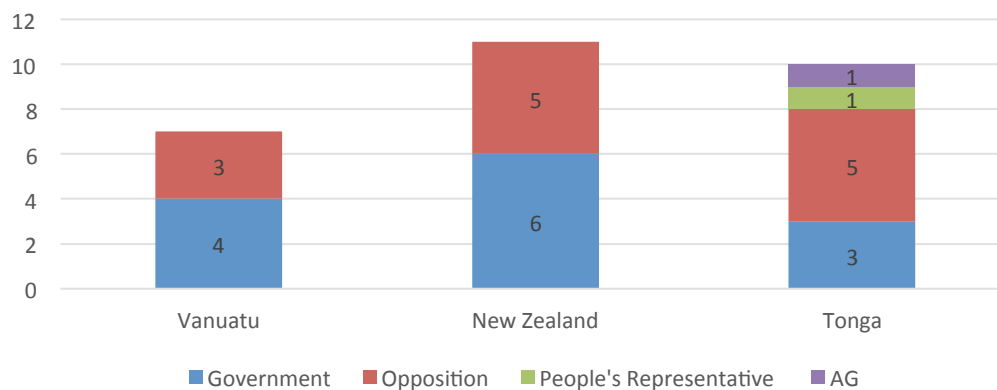
Who leads and makes up the membership of the PAC has a direct impact on whether the committee is seen to be, and able to operate, independent of executive influence. It is critical that the PAC has sufficient members to not only tackle its workload but also ensure multiparty representation. Pacific PACs have currently between 5 and 11 members: Fiji (5), Vanuatu (7), Solomon Islands (7), Niue (8), Tonga (10) and New Zealand (11) (**Chart 2**).



Committees also reflect a very mixed representation of government, opposition and minority parties in their current membership (See **Chart 3**). In Solomon Islands, the selection of the members to the committee (commission) does not really reflect a given set proportion but is more reflective of a bipartisan spirit. In Vanuatu, there are four members from the

government and three from the opposition – they are representing proportionally the political parties present in the Parliament. In New Zealand, six members come from the government or supporting parties and five members come from opposition parties. In Tonga, there are three cabinet ministers, five Nobles’ Representatives, one People’s Representative and the Auditor-General. In Fiji, the members of the Standing Committee on Finance and Public Accounts are nominated by the Speaker and approved by the Parliamentary Assembly – committees are a microcosm of the House and are proportionate as far as possible to reflect the composition of the House pursuant to Standing Order 114(4).

Chart 3. PAC Government/Opposition Membership



Selection of Members

The same applies for the mechanism by which members are selected. For example, in Vanuatu members of the PAC are appointed by the Prime Minister and the Leader of the Opposition. In New Zealand, members are selected by their parties and confirmed by the Business Committee. The membership must, so far as is reasonably practicable, be proportional to party membership in the House. Appointments to the committee are made by the Business Committee. In Niue, members are selected by the Assembly. In Tonga the members of the Standing Committee on Finance and Public Accounts are nominated by the Speaker and approved by the Parliamentary Assembly. Finally, in Fiji members are selected from among the elected MPs.

PAC members across the region serve in the committee for almost the life of the parliamentary mandate. In Solomon Islands, the duration of the committee corresponds with

the duration of the parliament; committees dissolve only once the House comes to a dissolution. The duration of an electoral term is 4 years. The same applies in Vanuatu. In New Zealand all committees are established for the life of a Parliament. However, there may be membership changes during that Parliament. The House or the Business Committee can remove a member from a committee and replace them with another member at any stage during the life of a Parliament.

In Niue the parliament has three-year terms, whereas in Tonga a parliamentary term is 4 years. In most parliaments, the PAC Chair is from the Opposition – only in New Zealand and Tonga the Chair comes from the Government.

Appointment of the PAC Chair

The responsibility for the appointment of the Committee Chair varies across the region – the surveys also asked if the Chair can be revoked and if so, for what reasons. In Solomon Islands, the Speaker of Parliament is responsible for the appointment of the Committee Chair. The MP appointed can be revoked from their chairmanship if they lose their seat or if they are convicted or petitioned. Other reasons include imprisonment for more than 3 months or if they take up a ministerial portfolio with the executive. In Vanuatu, the committees elect their chairman themselves. They can be revoked if they are from the Government and have decided to sit with the Opposition or vice versa. In New Zealand the committee elects its chairperson at its first meeting in a new Parliament (in practice the party has probably decided which of its committee members will be nominated for this office. The chairperson can be removed from office by the committee at a meeting of which at least 7 days' notice is given of the intention to move a motion seeking removal. The members of the committee appoint the Chair in Niue as well – he/she can decline the nomination. The same goes for Fiji [Standing Order 117(1)] – “the Chair can be removed by simple majority vote but only after serving at least 12 months [Standing Order 117(3)]”. Finally, in Tonga the PAC Chair is appointed by the Speaker. In practice, the Chairmanship is only revoked if that member is incapable of becoming a Member of Parliament – e.g., if they are unseated. During the last term, the Chair withdrew when he was appointed Minister of Finance and National Planning towards the end of the last parliamentary term.

Chair Selection Process

In Solomon Islands, the duration of the Committee chairmanship ends with the dissolution of the House. But there are instances whereby the chair can be revoked upon their own resignation, or shifted sides or special situations such as health related. In Vanuatu, the Prime Minister appoints the chairmen except the Chairman of the Public Accounts Committee which is appointed by the Leader of the Opposition – then each committee elects its chairman. In New Zealand, nominations are called at the first meeting of a committee in a new Parliament. The election is chaired by the committee clerk. If there is one nomination, that person is declared elected and immediately takes the chair. If there are two or more nominations a vote is held. If one member obtains the votes of an absolute majority of those voting, he or she is elected; otherwise the lowest polling member drops off the ballot until there are only two candidates remaining at which time the vote is between those two. In Niue, after the first meeting of the assembly and appointment of committees, the Clerk of the Assembly calls the first meeting of the committee to elect the Chair and deputy Chair for three years. In Tonga, the Speaker appoints the Chairman of each committee for the duration of the parliamentary term. Lastly, in Fiji, the election is held at the first meeting by members presided over by the Secretary-General to Parliament [Standing Order 117(1) and 116(1)].

Setting the PAC Agenda

Opening the work of the PAC to the community by requesting public submissions, publishing hearing schedules in advance, allowing the public to view committee hearings (either in person or digitally), and publishing committee reports improves the legitimacy of the committee by showing that it is working in the interests of the community. Here again the landscape amongst Pacific PACs is divided, with most PACs still not allowing the public to attend their hearings, including Niue, and Tonga. In other countries, hearings are public except in certain circumstances. For example, in Fiji, hearings are open to the public pursuant to Standing Order 111(1)(a), but are limited by (a) national security; (b) third party confidential information; (c) personnel or HR; or (d) final Committee deliberations for report compilation. In New Zealand, only hearings of evidence are open to the public, and in Vanuatu the public is not allowed in an *in camera* hearing.

Most Committees extend their formal planning processes for the entire parliamentary term (Vanuatu, New Zealand and Niue). In New Zealand, however, while the committee is aware of standing items that it will manage throughout the life of the Parliament (for example annual reviews and Estimates), its specific and detailed work program is set only

approximately 3 months in advance. It is always subject to change as other items of business are referred to it. Any work program is therefore clearly identified as “indicative”. In Fiji, the planning process extends from adjournment of one sitting period to the convening of the next (roughly 60 days/2 months); whereas in Solomon Islands the committee work plans are drafted to cater only for a 12 month period commencing January and ending in December. The calendar year time period also applies in Tonga.

THE INTERDEPENDENCE OF PACS AND SAIS

The responsibility for overseeing the activities of the executive is a massive undertaking that requires extensive resources and often specialized knowledge. Parliaments are able to turn to a number of autonomous accountability institutions for aid in providing oversight of executive agencies and public officials. Parliaments should not only champion the establishment of these institutions, but also exercise their oversight function to ensure the institutions’ successful performance. The external accountability institution that the parliament and, in particular the PAC, relies on heavily in the exercise of their oversight of the government is the SAI. Furthermore, the SAI is often reliant on the parliament to ensure its independence, receive its reports, and to follow-up on its unresolved audit findings. In this way, the PAC and SAI are interdependent.⁶⁴

Consistent with the nature of the relationship, some countries in the Asia-Pacific region (notably New Zealand and Australia) have taken the step of designating the SAI head (along with other significant office-holders such as the ombudsman) as “Officers of Parliament”. A key aspect of an interdependent relationship is that, although the parties remain autonomous, they are reliant on and responsible to each other⁶⁵:

The aim of a robust and effective [officer of parliament] system should be to achieve the best balance, or degree of interdependence, in the relationship between [officers] and parliament ... But to be effective, [officers of parliament and their institutions] need the commitment and active support of parliamentarians.

⁶⁴ Robert Buchanan, *Officers of Parliament in Australia and New Zealand: Building a Working Model*, in *Parliament’s Watchdogs: At the Crossroads*, UK Study of Parliament Group, the Constitution Unit (2008) 88-89 www.ucl.ac.uk/constitution-unit

⁶⁵ Constitution Unit (University College of London), *Officers of Parliament: Transforming the Role* (2003) 11. www.ucl.ac.uk/constitution-unit

While originally symbolic in nature, the concept of an officer of parliament has in more recent times been given substance through institutional arrangements for the SAI's funding, audit planning, and reporting which have reinforced its independence from the executive.⁶⁶

Aside from Niue, PACs generally do not exercise any formal power to determine SAI priorities or annual plans. For instance, in Fiji, Solomon Islands, Tonga and Vanuatu, the PAC has no power to do so. In New Zealand, the PAC has some restricted powers⁶⁷, whereas in Niue it has a broader role.

Recently PaNPAC convened a focus group of PAC Chairs from Cook Islands, Fiji, Nauru, Samoa, Solomon Islands, Tonga, and Tuvalu during their 2016 PaNPAC Annual Meeting to reflect on the independence of SAIs in the region.⁶⁸ The group agreed that there is a strong interdependence between SAIs and PACs, and strongly supported the operational independence of the SAIs. They defined operational independence as the SAI conducting its work-planning independently of both the parliament and the executive. However, there is an assumption that a financial audit will be conducted on the use of all public funds.

The group agreed that, although SAIs should have operational independence, they should consult the PAC on its work plan so as to ensure appropriate buy-in by the PAC for the work being undertaken by the SAI. If there are particular departments or projects that the PAC would like to see audited, they should be able to request that the SAI accommodate the additional audit in their work plan. If resourcing is insufficient the PAC should recommend to parliament that additional resources be provided. If the SAI seeks to accommodate additional audits that were not funded in its annual budget the PAC should ensure that resources are provided to the SAI to conduct the additional audits. Finally, when appearing before the PAC to present the audit report, it should be customary for the PAC to ask the Auditor-General on the record whether she or he has been provided sufficient resources to perform their responsibilities.

⁶⁶ For example, in New Zealand the budget of the SAI (and the other offices of parliament) is considered by the Officers of Parliament Committee, and is then the subject of a recommendation to the House. The resolution adopting the recommendation is then conveyed to the Crown for inclusion in the Government's Budget proposal: *Public Finance Act 1989*, s26E.

⁶⁷ The SAI head must refer a draft of each year's annual to the Speaker, and must consider (but is not bound to act on) any comments of the Speaker or a committee of the House relating to the SAI's "work plan priorities": *Public Audit Act 2001*, section 36. The provision is tailored to preserve the SAI head's power to accommodate requests for audits, but also to decline, which is one of the Mexico Declaration principles discussed in Part 2 of the paper. In practice, the draft annual plan is considered at the same time as the budget proposal referred to in the previous footnote.

⁶⁸ Focus Group on PAC and SAI Independence (2016 PaNPAC Annual Meeting, Honiara, 7-9 November 2016)

The group also agreed that, although the SAI should have operational independence, the institution needs to be accountable for its performance and use of public resources. In order to achieve the appropriate balance between independence and accountability, the SAI should report on its activities annually, directly to parliament and no other institution. When external providers are used to provide auditing services, they should be hired and managed through the SAI. Furthermore, the Auditor-General should determine the auditing standards that are to be used for such audits, and either sign off on or oversee the signing of all the resulting audit reports before they are submitted to parliament. The parliament would then hold the SAI to account for the quality of audits conducted either directly by the office or by external auditors.

Perception of independence was seen to be as important as real independence. As such, it was considered important that parliament also be involved in the appointment process of the Auditor-General even if parliament does not make the formal appointment (the usual practice being for the head of state to make the appointment with the approval, or on the recommendation, of the parliament). The legal authority/ mandate for the SAI should be anchored in the constitution and/ or legislation, and the legal framework should make provision for the SAI to have the power to obtain information from any entity that uses public funds.

It is encouraging to see these types of practices favoured by parliamentarians in the Pacific region. They are all consistent with the *Mexico Declaration* principles and their associated guidance, including principle 3 (concerning discretion in the discharge of the SAI's functions, which refers to the SAI accommodating requests for audits subject to the power to refuse); and principle 8 (concerning financial and administrative autonomy and access to sufficient resources, which speaks of the SAI's annual budget being determined by the legislature without executive interference, and a right of appeal to the legislature if the funding is insufficient). A process enabling the SAI's budget to be reviewed by a committee of the parliament, together with its annual draft work plan, provides the opportunity for engagement that is consistent with an interdependent relationship.

The SAI community now broadly accepts that accountability to the parliament is an essential *quid pro quo* for a funding mechanism that sees the SAI's funds determined by the legislature without executive interference. SAIs also value the contributions which PACs and legislators

can make in determining the most appropriate matters for audits (especially performance audits) and in considering, and giving prominence to, the resulting reports.

Gaining constitutional and legal independence is a long process. It has been described as a “project”, something that “rarely happens by accident”.⁶⁹ If gains can be made in strengthening the constitutional and legal independence of SAIs and PACs, as argued in this paper, they will lay the foundations for continued development of the relationship between these two essential accountability institutions – to the good of citizens.

⁶⁹ Commonwealth Auditors-General, *Making SAI Independence a Reality: Some Lessons from Across the Commonwealth* (2015) 7.