



# Supreme Court • The Judiciary Republic of Palau

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## **A Judiciary's Tribute to the late Carlos H. Salii, Esq.**

Mr. Salii was the Chairman of the Judiciary Committee of the Constitutional Convention of 1979. He oversaw the passage of what would become Article X of the Constitution establishing the Judiciary Branch of the national government.

Article X creates a unified and independent court system. It includes four unusual and important constitutional provisions that ensure the independence of the Palau Judiciary.

First, unique to the Palau Constitution, is the selection of judges. The Constitution calls for a Commission with three members appointed by the President and three selected from the Palau Bar Association. The Chairman is the Chief Justice of the Palau Supreme Court.

In case of any judicial vacancy, the Commission, after advertising and vetting applicants, selects the seven best candidates and submits the list to the President. The President appoints who he (she someday) thinks is the best of the seven nominees. The process is efficient and focused on the merits of nominees; politics neither delays nor determines the selection process.

Second, all judges hold their offices during "good behavior," meaning for life, but judges can be removed for a variety of reasons. In the United States, critics of life tenure assert that it allows judges to stay on the bench even after they become old, senile, and unable to do their jobs.

In fact, the first US Federal Judge to be impeached and convicted was Judge John Pickering. His only problems were that he was going insane and he was also a drunk. Because grounds for impeachment under the US Constitution are confined to treason, bribery, and high crimes and misdemeanors, it was difficult to impeach Judge Pickering

(although the Senate of the US Congress eventually convicted Judge Pickering of “misdemeanors” and he was removed).

To address senility problems or a proclivity for alcohol and other things, the Palau Constitution expands the grounds for impeaching a judge. In addition to treason, bribery, and high crimes, the Constitution allows impeachment for “...improper practices...” and “...inability to discharge the functions of his office...”

One of these additional grounds has already been invoked by the OEK. Without commenting on the merits of the impeachment, a Justice of the Palau Supreme Court resigned his office in the face of an impeachment bill that had passed the House of Delegates and was about to be acted upon by the Senate. The charges against the Justice included “improper practices.”

Life tenure of judges ensures the independence of the Judiciary, and yet a judge who engages in “improper practices” or is unable to do his job because he likes his so-chu (rice wine) too much should not be entitled to remain a judge for life. The Palau Constitution provides a balance that ensures both the independence and the integrity of the Judiciary.

Third, the powers of the Judiciary are broad. Unlike the US Federal Courts, whose constitutional powers are limited to “cases and controversies,” the Palau “judicial power” extends to “all matters in law and equity.” The doors of the Palau Courthouse are therefore open to the wide range of cases that people wish to bring. We try to do our utmost best.

Fourth, the Palau Constitution vests the Judiciary with the power to make its own rules governing the administration of the courts, the legal profession, and civil and criminal procedure. The US Federal Courts do not have such constitutional rule making authority and instead depend on Congress to create rules for them.

We believe this constitutional rule-making is important. If it is your house, you have to clean it yourself. If you allow someone else to clean your house, he may not clean it the way you want or he may make it look like his own house.

We have seen bills from the OEK which we think are attempts to have Congress clean the Courthouse. We resist these attempts. We prefer to clean the Courthouse ourselves, as we are sure the other two Houses prefer for themselves.

Chairman Salii and his Judiciary Committee studied the US Constitution, learned some of the challenges faced by the US Federal Courts, and boldly included in Article X of the Palau Constitution these provisions to protect the independence of the Palau Judiciary.

In the early history of this young Republic, there were challenges to the independence of the Judiciary. However, with the strong leadership of Chief Justice Mamoru Nakamura and the solid constitutional foundation, the Judiciary met its responsibilities and maintained its independence for those of us who came later.

It is proper that we pay tribute to Carlos H. Salii, Esq., as the James Madison of Article X of the Palau Constitution, which is the bedrock upon which our independent Judiciary rests. Thank you, Carlos.



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