



El agua en las **Constituciones de Oceanía**



En el marco del proceso constitucional que actualmente se desarrolla en Chile, presentamos un especial sobre “Agua y Constitución”, en que identificaremos cómo el tema del agua se recoge en las Constituciones del mundo.

Este número está dedicado a Oceanía, revisando la situación de los 14 países que integran este continente. Para visualizar de un modo más comprensivo e integral la materia que nos convoca, nos focalizaremos en tres grandes ámbitos: agua propiamente tal, saneamiento y referencias explícitas y generales a los recursos naturales, de modo de detectar las principales disposiciones que, a su respecto, tienen los textos constituciones vigentes en Oceanía. Se excluyen de esta enunciación las menciones y regulaciones relativas al medio ambiente, por exceder la extensión y el carácter más acotado y particular de este documento.

Se han utilizado las versiones oficiales y algunas traducciones de las respectivas Cartas Fundamentales, incluyéndose un hipervínculo en cada caso.

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I. Presentación esquemática de la regulación del agua en las Constituciones de Oceanía

La siguiente tabla muestra los aspectos más relevantes detectados en el análisis de la regulación constitucional del agua en Oceanía. Para facilitar la sistematización de las disposiciones que luego se transcriben literalmente, hemos categorizado nuestros hallazgos, distinguiendo los países cuyas Constituciones:

- i) no tienen ninguna referencia específica al agua;
- ii) incluyen el agua, normalmente de modo implícito, en preceptos más genéricos sobre recursos naturales;
- iii) precisan la naturaleza jurídica del agua;
- iv) aluden al carácter o función territorial del agua (integrante del territorio del Estado);
- v) contienen mandatos o prescripciones sobre el uso racional, sostenible, sustentable, equitativo o equilibrado del agua;
- vi) reconocen explícitamente el acceso al agua para uso personal y doméstico y/o saneamiento como derechos humanos;
- vii) consagran la propiedad privada sobre los derechos de aprovechamiento de aguas; y,
- viii) otras alusiones relacionadas.

País	Sin menciones específicas al agua	Preceptos genéricos sobre recursos naturales	Naturaleza jurídica del agua	Carácter o función territorial del agua	Uso racional, sostenible, equitativo o equilibrado del agua	Reconocimiento explícito de derechos humanos al agua y/o saneamiento	Propiedad privada sobre derechos de aprovechamiento de aguas	Otros
Australia					<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
Fiji		<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		
Islas Marshall								<input checked="" type="checkbox"/>
Islas Salomón	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
Kiribati	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
Micronesia		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>
Nauru	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
Nueva Zelanda (sin Constitución escrita)								
Palau		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>
Papúa Nueva Guinea		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>
Samoa								<input checked="" type="checkbox"/>
Tonga	<input checked="" type="checkbox"/>							
Tuvalu		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>				
Vanuatu	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						

Fuente: elaboración propia, en base a la Constitución de cada país.

II. Tratamiento del agua, saneamiento y recursos naturales (en general) en las Constituciones de Oceanía

1. Australia

Constitution of Australia

“51. Legislative powers of the Parliament. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

[...] x) fisheries in Australian waters beyond territorial limits; [...]”

“100. Nor abridge right to use water. The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.”

2. Fiji

Constitution of the Republic of Fiji

“30. Right of landowners to fair share of royalties for extraction minerals

(1) All minerals in or under any land or water, are owned by the State, provided however, that the owners of any particular land (whether customary or freehold), or of any particular registered customary fishing rights shall be entitled to receive a fair share of royalties or other money paid to the State in respect of the grant by the State of rights to extract minerals from that land or the seabed in the area of those fishing rights. [...]”

“35. Right to housing and sanitation

(1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to accessible and adequate housing and sanitation.

(2) In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.”

“36. Right to adequate food and water

(1) The State must take reasonable measures within its available resources to achieve the progressive realization of the right of every person to be free from hunger, to have adequate food of acceptable quality and to clean and safe water in adequate quantities.

(2) In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.”

“40. Environmental rights

(1) Every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures.

(2) To the extent that it is necessary, a law or an administrative action taken under a law may limit, or may authorise the limitation of, the rights set out in this section.”

“41. Rights of children

(1) Every child has the right-

[...] b. to basic nutrition, clothing, shelter, sanitation and health care; [...]”

3. Islas Marshall

Constitution of the Republic of the Marshall Islands

“ARTICLE IX. LOCAL GOVERNMENT

SECTION 1. RIGHT TO A SYSTEM OF LOCAL GOVERNMENT

1. The people of every populated atoll or island that is not part of an atoll shall have the right to a system of local government which shall operate in accordance with any applicable law.

2. The system of local government shall in each case extend to the sea and the seabed of the internal waters of the atoll or island and to the surrounding sea and seabed to a distance of 5 miles from the baseline from which the territorial sea of that atoll or island is measured.

3. The whole of the land and sea areas to which any system of local government extends shall lie within the jurisdiction of a local government; and, where there is more than one local government, the land and sea boundaries of their respective jurisdictions shall be as defined by law.”

4. Islas Salomón

The Constitution of Solomon Islands

“Protection from deprivation of property

8. *[...] 2. Nothing contained in or done under the authority of any law should be held to be inconsistent with or in contravention of this section-*

a. to the extent that the law in question makes provision for the taking of possession or acquisition of any property-

[...] vii. for so long only as may be necessary for the purposes of an examination, investigation, trial or enquiry or, in the case of land, the carrying out thereon-

A. of work of soil conservation or of conservation of other natural resources; or

B. of work relating to agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; [...]”

5. Kiribati

Constitution of Kiribati

“8. Protection from deprivation of property

[...] 2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section-

a. to the extent that the law in question makes provision for the taking of possession or acquisition of any property-

[...] vii. for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon-

A. of work of soil conservation or of conservation of other natural resources; or

B. of work relating to agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out; [...]”

6. Micronesia (Estados Federados de)

Constitution of the Federated States of Micronesia

“ARTICLE I. Territory of Micronesia

Section 1. *The territory of the Federated States of Micronesia is comprised of the Districts of the Micronesian archipelago that ratify this Constitution. Unless limited by international treaty obligations assumed by the Federated States of Micronesia, or by its own act, the waters connecting the islands of the archipelago are internal waters regardless of dimensions, and jurisdiction extends to a marine space of 200 miles measured outward from appropriate baselines, the seabed, subsoil, water column, insular or continental shelves, airspace over land and water, and any other territory or waters belonging to Micronesia by historic right, custom, or legal title.”*

“Article IX. Legislative

[...] Section 2. The following powers are expressly delegated to Congress:

[...] (m) to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines; [...]

“Article XIII. General provisions

[...] Section 4. A noncitizen, or a corporation not wholly owned by citizens, may not acquire title to land or waters in Micronesia.”

7. Nauru

Constitution of Nauru

“Protection of person and property

9.- [...] (2.) *Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the provisions of clause (1.) of this Article to the extent that that law makes provision-*

(a) that is reasonably required in the interests of defense, public safety, public order, public morality, public health, the development or utilization of natural resources or the development or utilization of any property for a purpose beneficial to the community; [...]”

8. Nueva Zelanda

Nueva Zelanda no tiene una Constitución escrita. A pesar de ello, la Ley constitucional de 1986 es el documento clave en su estructura, y es la principal declaración formal de los acuerdos constitucionales del país¹. Este texto no contiene ninguna referencia al agua o a los recursos naturales.

Constitution Act 1986

9. Palau

Constitution of Palau

“ARTICLE I: TERRITORY

Section 1. *Palau shall have jurisdiction and sovereignty over its territory which shall consist of all of the islands of the Palauan archipelago, the internal waters, the territorial waters, extending to two hundred (200) nautical miles from a straight archipelagic baseline, the seabed, subsoil, water column, insular shelves, and airspace over land and water, unless otherwise limited by international treaty obligations assumed by Palau. The straight archipelagic baseline shall be drawn from the northernmost point of Ngeruangel Reef, thence east to the northernmost point of Kayangel Island and around the island to its easternmost point, south to the easternmost point of Helen's Reef, west from the southernmost point of Helen's Reef to the easternmost point of Tobi Island and then around the island to its westernmost point, north to the westernmost point of Fana Island, and north to the westernmost point of Ngeruangel Reef and then around the reef to the point of origin.”*

“ARTICLE VI: RESPONSIBILITIES OF THE NATIONAL GOVERNMENT

The national government shall take positive action to attain these national objectives and implement these national policies: conservation of a beautiful, healthful and resourceful natural environment; promotion of the national economy; protection of the safety and security of persons and property; promotion of the health and social welfare of the citizens through the provision of free or subsidized health care; and provision of public education for citizens which shall be free and compulsory as prescribed by law.”

¹ <https://www.newzealandnow.govt.nz/living-in-nz/history-government/our-constitution>

“ARTICLE IX: OLBIL ERA KELULAU

[...] **Section 5.** *The Olbiil Era Kelulau shall have the following powers:*

[...] 12. *to regulate the ownership, exploration and exploitation of natural resources;*

13. *to regulate navigation, shipping, and the use of navigable waters; [...]*”

“ARTICLE XII: FINANCE

[...] **Section 6.**

a. *Each state shall be entitled to revenues derived from the exploration and exploitation of all living and non-living resources, except highly migratory fish, and fines collected for violation of any law within the marine area extending from the land to twelve (12) nautical miles seaward from the traditional baselines.*

b. *The national government shall be entitled to all revenues derived from the exploration and exploitation of all living and non-living resources, except highly migratory fish, and fines collected for violation of any law beyond the areas owned by the state.*

c. *All revenues derived from licensing foreign vessels to fish for highly migratory fish within the jurisdictional waters of Palau shall be divided equitably between the national government and all the state governments as determined by the Olbiil Era Kelulau.”*

“ARTICLE XIII: GENERAL PROVISIONS

[...] **Section 8.** *Only citizens of Palau and corporations wholly owned by citizens of Palau may acquire title to land or waters in Palau.”*

10. Papúa Nueva Guinea

[Constitution of the Independent State of Papua New Guinea](#)

“PART I: INTRODUCTORY

2. THE AREA OF PAPUA NEW GUINEA

1. *The area of Papua New Guinea consists of the area that, immediately before Independence Day, constituted what was then known as Papua New Guinea, together with all internal waters and the territorial sea and underlying lands, and, subject to disclaimer by resolution of the Parliament at or before the end of its next meeting, includes such neighbouring waters and such lands underlying any such waters, and such additional lands and waters, as are declared by the Head of State, acting with, and in accordance with, the advice of the National Executive Council, to be part of that area.*

2. *The sovereignty of Papua New Guinea over its territory, and over the natural resources of its territory, is and shall remain absolute, subject only to such obligations at international law as are freely accepted by Papua New Guinea in accordance with this Constitution.”*

“PART XIV: BOUGAINVILLE GOVERNMENT AND BOUGAINVILLE REFERENDUM

278. INTERPRETATION

1. In this Part, unless the contrary intention appears-

."Bougainville" means-

[...] b. the areas of sea extending to three nautical miles from the low water mark of the areas of land referred to in Paragraph (a); [...]"

290. FUNCTIONS AND POWERS AVAILABLE TO THE BOUGAINVILLE GOVERNMENT

[...] 2. The functions and powers available to the Bougainville Government in and in relation to Bougainville are the following:-

[...] zd. land and natural resources

[...] zzc. water and sewerage;

zzd. water resources; [...]"

11. Samoa

[Constitution of the Independent State of Samoa](#)

"PART II.

FUNDAMENTAL RIGHTS

14. Rights regarding property

[...] (2) Nothing in this Article shall be construed as affecting any general law:

[...] (k) providing for the carrying out of work on land for the purpose of soil conservation or for the protection of water catchment areas."

"PART IX. LAND AND TITLES

104. Land below high-water mark-

(1) Subject to the provision of any Act, all land lying below the line of high-water mark shall be public land.

(2) For the purposes of this Article, the term "high-water mark" means the line of median high tide between the spring and neap tides."

12. Tonga

[Constitution of Tonga](#)

13. Tuvalu

Constitution of Tuvalu

"2. THE AREA OF TUVALU

1. Subject to subsections (3) and (4), the area of Tuvalu consists of the land areas referred to in subsection (2), together with-

a. the territorial sea and the inland waters as declared by law, the land beneath them, and the air space above; and

b. such additional lands and waters as are declared by law to be part of the land area of Tuvalu.

[...] 4. Nothing in this section prevents a law from proclaiming the jurisdiction of Tuvalu, complete or partial, over any area of land or water or airspace above, or prevents a law from having extra-territorial effect in accordance with section 84 (vesting of the law-making power). [...]"

"20. PROPERTY RIGHTS

[...] 9. Nothing in or done under a law shall be considered to be inconsistent with this section-

a. to the extent that the law makes provision for deprivation of property-

[...] viii. in the case of land - for so long only as is necessary for the carrying out on it of-

A. work of conservation of natural resources; or [...]"

14. Vanuatu

Constitution of Vanuatu

"7. Fundamental duties

Every person has the following fundamental duties to himself and his descendants and to others-

[...] (d) to protect the Republic of Vanuatu and to safeguard the national wealth, resources and environment in the interests of the present generation and of future generations; [...]"

***Selección, sistematización y revisión de textos: Daniela Rivera, Amalia Octavio y Nicole Ávila**

Boletín Huella Hídrica
N°23. Enero, 2021

Av. Libertador Bernardo
O'Higgins 340, Santiago. Chile

Edición general: Centro de
Derecho y Gestión de Aguas UC
(CDGA)

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