



## **National Integrity Systems**

## **Transparency International**

## **Country Study Report**

# **Tonga 2004**

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A number of people have contributed to the development of this report by way of comment on its drafts.

### **Acknowledgements:**

Many individuals and organisations within Tonga gave their time and effort to help provide the information on which this report is based. We would like to thank them for their help and, in every case, their enthusiastic support of the project.

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### **First published 2004 by Transparency International Australia**

P.O. Box 41 Blackburn South Victoria 3130 Australia

<http://www.transparency.org.au>

ISBN 0 9752277 0 X

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This research was funded by AusAID.

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## Abbreviations

ADB	Asian Development Bank
IDI	Industrial Development Incentives
IMF	International Monetary Fund
MLCI	Ministry of Labour, Commerce, and Industries
NIS	National Integrity System
SBA	Small Business Association
SOE	State-owned Enterprise
TANGO	Tonga Association for Non-Government Organisations

## Executive Summary

The Polynesian Kingdom of Tonga is an archipelago located south of Fiji and Samoa in the Southwest Pacific. It has a resident population of less than 100,000. Its small open economy, based on agriculture, fisheries, and tourism, relies on remittances from Tongan communities overseas and external development assistance for much of its development. The government takes the form of a highly centralised constitutional monarchy. The 1875 Constitution provides for Westminster-style institutions of Cabinet, Parliament, Electorate, and Judiciary, but lacks the conventions that limit the powers of sovereigns in other modern day constitutional monarchies, such as those of Britain, Scandinavia or Japan. It preserves the ultimate power of the Tongan Crown, and the status of 33 hereditary noble landed titles. The rest of the 98,000 people are commoners. The highest executive authority is Privy Council, which comprises the 'King in Council' at the head of the 12 members of Cabinet whom he appoints from any walk of life for as long as he pleases, usually for life. Throughout the King's long reign, begun in 1965, the country has been essentially stable, despite moves from people wanting more representation in Parliament or protesting Government decisions into which they have had little input.

In the unicameral Legislative Assembly, the nine Nobles' Representatives, installed in their titles by the King and elected to Parliament by their peers, tend to vote with the Cabinet. Given the numbers, these two blocs can together outvote legislation proposed or supported by the nine People's Representatives, elected from a common roll to represent the 98,000 commoners. Hence, privilege is entrenched socially, culturally and politically. As a result, so, too, are the practices of patronage and clientalism.

The various components of the NIS are in place and work reasonably well together, despite clashes between the Executive and Judiciary in recent years. The implications of the constitutional amendments to Clause 7, which guarantees freedom of the press, in 2003, and legislation that resulted, have yet to be fully comprehended. Corruption is dealt with by the Criminal Offences Act 1924 and the criminal provisions in various other acts.

Respect relations run from the bottom of the society to the top. They require the presentation of a gift when making a request of another person, especially a social superior. Educated people are now aware that in certain situations such gifts can be construed as bribes, and that nepotism, cronyism and favouritism lead to conflict of interest and other forms of corruption. Few official guidelines exist, however, until practice breaches the criminal code.

The Pro-Democracy Movement of the 1980s, became, in 1998, the Tonga Human Rights and Democracy Movement. It has brought issues of transparency and accountability in Government to public attention but has made no headway regarding the issue of greater commoner representation in Parliament.

In 2002, the Government and its overseas development partners instituted a wide-ranging Economic and Public Sector Reform Programme aimed at private sector growth and greater efficiency in the public sector. The opportunities for finagling and mismanagement that exist have cost the country millions of *pa`anga* a year in lost revenue, primarily from the failure to collect or adequately account for trade taxes (TOP\$=US\$0.44/AUD\$0.85).

### Priorities and Recommendations

Tonga might consider the formulation of an anti-corruption strategy, with appropriate education and training for civil servants, law and order personnel, NGOs, including mainstream churches, the business sector, and schools. At present, people can 'hide behind the culture' because there are no guidelines in place to distinguish between cultural practice and corruption. The provisions of the Code of Conduct for Public Servants currently being drafted by the Public Service Commission Secretariat, formed in 2002, might be made widely available as a model for other institutions in the civil society. Within the activities of the Economic and Public Sector Reforms now underway, a Code of Leadership could be considered also.

The anti-corruption measures now in place need support and strengthening. The Commissioner for Public Relations (the Ombudsman), and the Auditor-General require more power to make them truly effective. Police integrity and community relations initiatives might be considered, given the social changes that have occurred and Tonga's popularity as a drug transit. Public procurement procedures require adjustment with a view to the establishment of a Procurement Board. The media, recently the focus of Government attention and new legislation (2003), needs recognition and support of its watchdog capacity within society.

## Country Overview

Tonga is an archipelago of 171 islands spread out on a NNE to SSW axis approximately 400 miles southeast of Fiji and southwest of Samoa, and 2,000 miles north of Auckland. The 1996 Census recorded 98,000 inhabitants, most of whom are under the age of twenty. There are almost as many Tongans again living overseas. Two-thirds of the resident population, roughly 66,000 people, live on the main island of Tongatapu, and about half of these live in or around the capital in the Greater Nuku`alofa Area.

Administratively, Tonga consists of three main island groups: Vava`u in the north, Ha`apai in the middle, and Tongatapu in the south. The tiny northern outliers, Tafahi, Niufo`ou, and Niuatoputapu, are referred to collectively as the Niuas. `Eua, a large island adjacent to Tongatapu, is not included with Tongatapu for electoral purposes. The society is linguistically and culturally homogeneous. Previously prone to warring chiefly rivalries, it was united in 1845 under the future Tupou I, the founder of the present ruling dynasty.

In 1875, Tonga proclaimed its own Constitution, which set it on a path quite different from that of its nearest neighbours, Fiji and Samoa. In 1882, the distinctive system of individually held land tenure was set forth in a series of Land Laws. In 1900, Tonga became a British Protectorate with regard to fiscal matters and foreign affairs. It regained full independence in 1970 under the present king, Taufa`ahau Tupou IV, who succeeded to the throne in 1965 upon the death of his mother, Queen Salote Tupou III.

Tonga is a constitutional monarchy in which the monarch both reigns and rules. In terms of the Constitution of 1875, Tonga has 'a constitutional government under His Majesty' (1875, Cl.34; Powles, 1990:155n47). The constitutional provisions combine English and Tongan chiefly codes (see national integrity system (NIS) sections on the Executive and Judiciary below). In addition to his extensive powers as expressed in the Constitution, the Tongan monarch has significant traditional authority through his chiefly descent, the respect given to him as King and symbolic head of the nation, and that which he has earned as a modern leader who has sought the promotion of his people by selective change throughout a forty-year reign.

Thirty-three estate-holding noble titles, hereditary according to the principle of male primogeniture, have been created since 1875. Only about 28 nobles are installed in office at any one time, due to the attrition of lines through the lack of a male heir, or the holding of multiple titles by one person. The king's youngest son, the present Prime Minister, HRH Prince` Ulukalala Lavaka Ata, holds three titles.

The nine Nobles' Representatives are elected by their peers in an election held just before the triennial general election. Nobles receive an annual government allowance, which was granted to them by Tupou I in return for giving up some of their traditional authority over their people. There are matters concerning the monarch and the nobility that only the monarch and nobles can discuss. In these ways, nobles are privileged.

Nowadays, however, titleholders vary in education, wealth, estate management, and in their relations with the people on their estates. Once allotments of land from a noble's estate have been registered by individual commoner land holders, the noble has no further power over them unless plots of land revert to him through failure of the registered land holder's hereditary male line. Only a small number, six, or seven, nobles, who combine high birth rank and marriage, with wealth and/or powerful public office, are significant forces in the land. Others have been politically marginalised, although they remain central to ceremonial functions as formal etiquette demands.

Almost half of the 98,000 or so commoners are of voting age (21 years). Both men and women are entitled to vote from the common rolls (women gained the right in 1959). The large Tongan population resident overseas, estimated at 100,000, does not have voting rights (`Utoikamanu, 2002b:7).

The Privy Council—the 'King in Council'—together with a judge of the Supreme Court as advisor, also forms the Court of Appeal from the Lands and Titles Court. Since the Privy Council consists of Cabinet members who are the monarch's personal appointees, the level

of disagreement with the monarch's views tends to be minimal. He may dismiss ministers at will and effectively did so, in 2001 (see Executive section).

The Judiciary is independent in theory and in practice. It comprises the Court of Appeal, the Supreme Court, and the Magistrates Court. The Court of Appeal consists of the Chief Justice of the Supreme Court and at least two other judges appointed by the Privy Council. The Supreme Court comprises the Chief Justice and the Pusine Judge. All judges are expatriates. The Magistrates Courts use locally appointed overseas-trained magistrates and are run under the Tongan Minister of Justice and Attorney-General. Magistrates reside in all island groups and the Supreme Court travels on circuit to hear cases when necessary.

There are no political parties. In 1994, the Pro-Democracy Movement formed the 'People's Party', but it failed soon afterwards because of internal dissension. A rival, the Kotoa Movement, supports the monarchy and the establishment status quo. Each has its media support.

Anti-government criticisms are voiced mostly in *Taimi 'o Tonga*, a bilingual newspaper produced in Auckland, which the Government recently sought to ban, and *Ko e Kele'a*, a local newsheet. Criticism also appears from time to time in local newspapers produced by mainstream churches. *The Tongan Star* supports the monarchy. The Government owns and runs a bilingual newspaper, *The Tonga Chronicle (Kalonikali)*, a radio station Radio Tonga A3Z, and Television Tonga. The other TV channel, OBN, is a Christian broadcasting unit owned by an overseas company which beams out mostly US material.

The economy relies heavily on remittances and public sector employment. The private sector is relatively small and depends mostly on agriculture, fisheries, and tourism, which require further large inputs of overseas investment to develop their potential. Government still retains interests in printing, tourism, airlines, shipping, and other activities that compete with the private sector, and has only recently ceased commercial activities in areas such as sawmilling, machinery hire, and other activities that also competed directly with it.

Commoners can be successful in the private sector. Ten or so are millionaire businesspeople with diversified interests. Members of the royal family have business holdings that include ownership of Tongasat, the company that rents out Tonga's orbital satellite slots, and Shoreline, a company that produces and distributes the country's electricity and has, among its holdings, a communications company that competes with the government-owned and operated Tonga Communications Corporation. Royal business interests add to the perception of a small ruling class at society's apex, which is tightly bounded in terms of kinship, business and political interests.

The Government is highly centralised, and all essential services and most educational and employment opportunities are found in the capital, Nuku'alofa, on the main island, Tongatapu. Branch offices operate in the outer islands. The Office of the Governor represents the Executive in each of the main island groups, Vava'u and Ha'apai. The two Niua and 'Eua each have resident Government Representatives.

The small number of people in the outer islands leads to a more personal approach: people directly meet officials, there is greater transparency, and fewer opportunities for corrupt practice. The face-to-face situation also imposes greater strains on police and magistrates in their quest for impartiality than are faced by their counterparts in the more populous centres. Similarly, police in the outer islands tend to lack modern training and are not as closely monitored by their superiors. Offices vital to the NIS, such as that of the Commissioner for Public Relations (the Ombudsman), and Auditor-General, are not represented there at all.

The Civil Service has 4,000 employees. It accounts for 45 per cent of the total employed workforce and its salaries for 57 per cent of the recurrent budget (IMF, 2002:49; Civil Service List, 2003). Bureaucrats have become increasingly skilled as the increasingly technical nature of modern government demands. The new technocracy can sit uneasily with the traditional leadership. In 2002, the Government, with Asia Development Bank and other aid donor assistance, instituted a series of economic, public sector, and private



sector reforms in Tonga. The Economic and Public Sector Reform Programme is designed to build capacity in the public sector and energise the private sector. Its Chairman, the Minister of Finance, proclaimed in his statement to open the programme, that, 'Nothing less than a revolution is needed in the public sector, with the emphasis on performance-based management' ('Utoikamanu, 2002a:2). It is believed that enhanced public performance will promote good governance, a stand that is supported by all aid donors. Only one set of papers regarding the proposed reforms is as yet available. It is referred to throughout this report as (ADB, 2002), with individual authors and section headings cited where appropriate.

# Corruption Profile

## Definitions and Scope

In the absence of a civil code, practices that transgress the ideals of good governance are unchecked until they become criminal. This situation provides wide scope for corruption, which has occurred in the Executive, among police, in businesses, and in non-government organisations (NGOs), including mainstream churches.

The Criminal Offences Act 1924 imposes prison sentences for bribery of government servants (sects.50,51), and extortion (sect.52), fraudulent conversion (sect.53), and false receipt (sect.54) by government servants. It deals also with offences against property: theft (sect.143), taking things according to Tongan custom (sect.147), extortion (sect.156), embezzlement (sect.158), falsification of records (sect.159), fraudulent conversion of property (sect.162) and forgery (sects.170–75).

In legal terms, the point at which a traditional gift becomes a bribe is hazy. It would involve proof of intent to pervert the course of justice or to gain direct personal benefit from the gift, which is difficult to produce legally. Corrupt behaviour also lacks a clear popular definition. People commonly assert that 'everybody knows when they have stepped over the line' and become *angakovi* (of bad character, badly behaved, unkind (Churchward, 1959:10)). Discussions with a wide range of people in the course of the study made it clear, however, that the line between socially acceptable and unacceptable behaviour varied widely among individuals, could shift according to context, and allowed for a range of behaviour from moral to that verging on the criminal.

## Causes

People may break laws because they are ignorant of them or because they choose to break them. The Christian churches have become so identified with social life in Tonga that they are regarded as being part of the country's traditions, thus a strong sense of individual responsibility appropriate to Christianity might be expected. Most people, however, continue to live in extended family groups where other sets of behaviours, including obedience to superiors, are expected (Taumoepeau, 2003:15). These and other factors will be discussed in the next three sections.

## Cultural Practice

People are reluctant to brand others as criminals in a small-scale society because of the shame to the family involved, damage to the social fabric, and the breaking of relationships. For example, when a young clerk was shown to have taken money from church school funds, her father was so ashamed that he gave over his entire pension to repay the money. He then waited for three years while his daughter worked in New Zealand to repay him the T\$40,000 she had taken from the school. The principal of the school reasoned that had he taken the girl to court, she would have been punished (and the family and school publicly shamed), but he would not have recovered the money. In other cases, people may take the law into their own hands with less than desirable results.

Embezzlement is a criminal offence (Criminal Offences Act 1924 sect.158). It is frequently the subject of court action and has occurred in the public service, the private sector, and the churches. The temptation of proximity to large amounts of money coupled with insufficient audits of accounts of people in positions of trust provides a rich field for it.

The ethos of caring and sharing (*fetokoni`aki*) remains strong in Tongan society. Applicants unfamiliar with bureaucratic procedures frequently request relatives in the civil service to facilitate applications through formal channels. Issues of corruption arise when social obligations conflict with bureaucratic regulations and people may be strongly pressured to break rules to help relatives.

As noted above, the term *angakovi* can also mean 'unkind', which can be applied in this context. The ethos of caring for relatives as well as the shame involved has led in some cases to people not pressing criminal charges. In one case, a man decided not to bring a

charge of manslaughter against another who had brought about the death of a member of his own close family because, 'if he went to prison, I would have to look after his children since I am his wife's closest male relative' (personal communication, Nuku`alofa, 1998).

### **Political and Social Hierarchies**

Differences of power and authority exist within nuclear and extended family structures which bear upon the actions of junior members. When people are given an order by a superior, especially a senior male authority figure, it is impolite to refuse the request or command, even if the person knows it involves behaviour that is questionable or wrong. The nexus of respect and support relationships must be kept in mind as a cause of people acting corruptly, or turning a blind eye to people who do.

This holds true in the bureaucracies of church and state from the lowest rank to ministerial level. Thus, when attributing responsibility for individual actions, the chain of command that exists in Tongan society would need to be considered. In some cases, it is very difficult and extremely disadvantageous for a junior or lowly person not to accede to the perceived wishes, let alone the express orders, of their superiors. People in lower ranks may cut corners to meet their boss's demands. Other structural factors can create 'pressure points' or 'danger points' in the society at which opportunities for corruption are created or corruption most commonly occurs (see next section).

### **Bureaucratic and Regulatory Inefficiencies**

The Government, long complacent about procedures, has now instituted a review of the role of the Civil Service, whose service delivery is ineffective as a result of highly centralised reporting and decision-making procedures (Kilisimasi, 2002:14). The excessive degree of regulation and a lack of predictability in the administration of policy lead to bottlenecks. People pay officials to expedite matters, such as land registration or the registration of a business. The amounts are usually small: TOP\$10 here, and TOP\$20 there, but they mount up over a long process in which people have to go to various places to pay fees to further one matter. Proposed changes to make regulations transparent and set up a 'one-stop shop' for licensing, will minimise the compliance cost to the private sector and administrative costs to Government (Kautoke, 2002:22)

As part of the reforms, a new Public Enterprises Act will establish for the first time a uniform governance code for state-owned enterprises (SOEs), which include the Tonga Communications Corporation, and the Tonga Development Bank. Strict requirements on reporting are intended to fully integrate the financial needs of the SOEs into the budgetary process (Eke, 2002a:11). Recently, SOEs have hit hard times and are not doing well financially. Transfer to public enterprises from the central government budget, as well as loan guarantees, have increased significantly, placing increased pressure on the budget balance. For example, the Tonga Communications Corporation owes Government TOP\$8.5 million and the Tonga Development Bank TOP\$12.5 million ('Utoikamanu, 2002b:6).

SOEs operate as private companies and are not required to present their books for public audit, or table their accounts for discussion in the House nor are the salaries paid to their employees subject to the same review as Government salaries. Their operations constitute a drain on public finance, and yet their operations are neither transparent nor accountable to Parliament.

Plans for public enterprise reform include the privatisation of activities considered marginal to the core business of Government. The Ministry of Finance's Government Investment Unit will examine the corporatisation of the Tonga Post Office and look at the future of Royal Tongan Airlines. These are sensitive political issues, given the criticisms voiced by NGOs and members of the public when privatisation of public assets appears to benefit particular individuals within the country or foreign interests, and transparency in this is essential (Hawker, 2002:39).

Other causes of corruption involve rules and regulations that are out of date, are no longer adequate for changes that have taken place, are inappropriate, overlap, or leave gaps that people may exploit. A major example of this in Tonga can be seen in relation to revenue administration. The current taxation system relies heavily in trade taxes, especially those

on imports, which form 68 per cent of total major tax collections, and less on income generated tax, which amounts to 23.5 per cent of collections. The system is inequitable. It has exemptions, allowances and 'holes', which mean that only some segments of the community bear the tax burden. In 1998, 21.5 per cent of the value of non-government imports and 32.6 per cent of quasi-government imports were exempted (Eke, 2002:19).

Inevitably, people seek to have their businesses categorised as 'development enterprises' to gain advantage of 'tax holidays' under the Industrial Development Incentives (IDI) Act 1978, under which only certain sectors such as manufacturing, tourism, commercial farming, and fisheries, qualify for incentives. At the end of the five or seven-year exemption period granted, many operators just change the nature or the name of the business to gain another tax holiday, or move their enterprise to another tax free haven in another country. Others seek to have import goods recategorised so as to make them exempt from the heavy duties imposed. In one case, a Customs official who questioned the removal of a shipping container from the wharf before inspection was abused by a fellow Customs officer and, later, badly beaten by an employee of the man who owned the container (Ward, 2001).

The Ministry of Labour, Commerce and Industries is seeking the repeal of such import licenses and of the Industrial Development Incentives Act 1978, which discriminates in favour of particular sectors of the economy in the ways mentioned above. 'The Act has been the subject of fraud and tax evasion and has had no significant impact on diversifying the economy towards the sectors targeted (manufacturing and tourism)' (Kautoke, 2002:22, 23).

The Development License that at present regulates the entry of investment, especially foreign investment, into particular economic sectors, will cease to have validity with the introduction of new foreign investment legislation and amendments to the Business Licensing Act 1922, which have yet to be drafted. The Government is committed to make these changes to bring its laws and regulations into conformity with the World Trade Organization (WTO) and complete its accession to the WTO (Kautoke, 2002:23)

All major taxes lack sufficient administrative powers and appropriate sanctions to provide for effective administration by the authorities. This is particularly apparent with respect to record keeping, penalties, and powers to collect outstanding taxes. In the case of sales tax, the law is demonstrably deficient and, in some cases, poorly drafted. It uses inappropriate income tax concepts that make it very difficult to administer the legislation (Eke, 2002b:19).

Tonga's proposed tax reform shifts from the present excessive reliance on duties, taxes, and charges on imports to a broad-based consumption tax. The Consumption Tax Act 2003, the first of the legislation needed to accomplish the goal, 'to improve the taxation system of Tonga and stimulate the development and fostering of business in an environment in which all taxpayers are treated fairly and equitably' (Eke, 2002b:18), was passed as this country study was being completed and awaited only the King's signature to become law.

The proposed new tax system is probably the most complicated of the new reforms. Were taxes to be simplified, it would reduce the opportunities for corruption and many of the current problems would take care of themselves. Others of the wide-ranging changes cut into the fabric of a society in which there are no institutional social security arrangements (see NIS Civil Service section below).

Significantly, the tax proposal is said to be the outcome of initial discussion with the major business organisations and Government of Tonga, which shows a welcome degree of input, however small, from the wider community into national decision making. An even wider participatory approach, involving the private sector and civil society, would build a broader base of support for the reform process. This is perhaps necessary because the changes proposed will in any case be difficult to implement (Communique, ADB 2002:ii-iii). For example, Tonga, like many other small Pacific Island nation states, has become a transit for drugs, especially cocaine, which is run from the United States through Hawaii, then through Tonga, for distribution in New Zealand and Australia. The Police are aware of the problem but, as the drugs are getting in through family networks and there are

insufficient resources of policing, stronger border controls and community relations programmes are clearly needed (Reti, 2002:57).

### **Levels**

Corruption occurs in all societies and at all levels of society. Tonga is no exception. Pro-democracy spokesmen first publicly alleged, in 1986, that members of the Executive were abusing overtime payments and other uses of public monies, and their considerable power, in the radical newssheet *Ko e Kele`a*. Since then, there have been several more such allegations made, some of which have resulted in defamation cases (James, 1994). In 1996, the Legislative Assembly made moves to impeach a Cabinet Minister who left the House while it was in session without permission and while taking salary. This resulted in a Parliamentarian, who leaked word of the impeachment motion before it was tabled, and two journalists, who published the leaked information, being gaoled by order of the House. The impeachment action was voided in 1997 (see NIS, Judiciary, below). Petty corruption and 'white collar crime' has become accepted practice in areas of the Public Service, business, NGOs, and churches, as will become clear under the relevant sections of the report.

### **Costs**

The costs of corruption to Tonga are heavy, both financially and morally. With limited computerisation, an inadequate level of staff experience and training, and a lack of a comprehensive appropriate set of legislative provisions to enforce compliance, the administration cannot effectively administer either the current legislation or the proposed system of taxes. Currently, there is almost TOP\$10M in outstanding taxes. Possibly, a great deal more missing money would be found through an effective audit program (Eke, 2002b:20).

The situation has led to a loss of public confidence in Government procedures. Officials in some parts of the administration do not know the rules under which they are meant to operate and have been able to do things their own way for years (personal communication, high-ranking government official, 2003). Officials may have the attitude of performing favours instead of their job, and expect payoffs for performing routine tasks. One reason that the informal economy flourishes is because people can avoid officialdom and the panoply of bank loans, formal registrations, fees, fines, and penalties for default.

### **The Impact of Change**

Education has had an impact on corrupt or 'bad practice.' Younger and highly educated Cabinet Minister and civil servants apply principles of risk management before they are on the statute books; for example, they exclude companies belonging to relatives or friends of government officials from contracted Government or aid funded work although rules concerning conflict of interest, disclosure of assets or interests, are nowhere to be found in Tongan statutes, making it moot as to whether or not an offence has been committed (personal interview, government official, Nuku`alofa, 2003). The impact of the Economic and Public Sector Reform Programme instituted in 2002 is hardly yet felt but is designed to encourage the principles of good governance in the financial and public sectors.

On the down side, the large number of Civil Service employees (4,000) and the creation of numerous NGOs give more people more access to money and positions which they might use corruptly to obtain benefit.

# The National Integrity System

## Executive

The Privy Council is the highest executive arm of government and the final appeal tribunal in issues concerning land and title. The law regarding the monarch's status has remained largely unchanged since 1875. The following description relies heavily on Powles (1990). The constitutional references in the text show the current clause number in brackets after the original number. However, in the case of other Acts, only the date of the original Act will be cited and it shall be understood that these Acts have been amended from time to time.

The constitutional pre-eminence of the sovereign arises first from the fact that the source of authority which gave the Constitution has secured perpetual succession (like the British, the Tongan monarchy is a corporation sole in perpetuity), and is immune from impeachment, under a charter that cannot be changed without sovereign consent (1875:44,70,82 (41,67,79)). Secondly, the monarch may act unilaterally and is not bound by constitutional convention to act on the advice of Ministers in respect of the following powers: to appoint and dismiss Ministers including the Prime Minister (1875:55; 1882:55 (51)); to summon and dissolve the Assembly (Parliament) at any time (1875:41,62,80 (38,58,77))—otherwise it would sit at regular intervals, and appoint its Speaker (1875:65(61)); to refuse to assent to any bills passed by Parliament (whereupon it may not debate the matter further until the following session (1875:71; 1882:71 (68)); to appoint nobles and grant *tofi`a* (hereditary lands) (1875:48; 1882: 109 (44,104)); suspend *habeus corpus* (1888:9 (9)); proclaim martial law (1875:50 (46)); make treaties (1875:42 (39)); command the military forces short of declaring war (1875:39 (36)); and control the marriages of the royal family (1875: 36 (33)).

In practice, Cabinet manages the day-to-day government. However, the monarch may dominate the Privy Council and may delegate to his Prime Minister and Ministers what matters he chooses. These are the laws in conformity with which the sovereign, on coronation, swears to govern (1875:37(34)). He may also decide to allow the institutions of parliamentary and cabinet government to operate in the Westminster manner.

The monarch is seldom called upon to exercise residual power, and the formalities of consultation and delegation are generally preserved. However, the expression 'He governs the land, but his Ministers are responsible' (1875:44 (41)) renders the Ministers responsible to him rather than to Parliament. Although the Assembly may impeach Ministers for cause (1875:55 (51)), examples of which are given below, the monarch may dismiss without reason (Powles 1990:154). For example, in 2001, the then Ministers of Justice and of Finance were both asked to resign from office because of their failure to exercise proper care over the administration of money in the Tonga Trust, which had been divested of funds by a US investment advisor (see Civil Society below; also James 2002:316).

Cabinet consists of ten Ministers of the crown and the two Governors of the outer islands, Ha`apai and Vava`u. Portfolios change hands from time to time and new ones, such as Tourism, Fisheries and Food, and Environment, are created; but change is not regular or frequent. The former Minister of Education, Civil Aviation, and Public Works for example, was in office for 34 years. He was Deputy Prime Minister for the last 10 of those years and resigned on the grounds of ill health in 2001. In 1996, the former Minister of Health stepped down at the age of 73, after 49 years in public service.

The Cabinet Ministers were once all men of noble title. Since 1966, commoners of skill and education have joined cabinet ranks. The present Cabinet comprises four men with noble title (one holds three), one who has a *matāpule* (chiefly herald) title with *tofi`a* (landed estate), and seven men without title. Of those without title, however, several have aristocratic connections or close genealogical links to noble titles. It should also be noted that once a commoner is appointed as a Minister of the Crown, he is accorded the same status in Parliament as a noble.

All the Cabinet Ministers have one or more tertiary educational qualifications. Thus, they are all educated men with experience of life overseas. Because of the highly centralised nature of Government, these twelve Cabinet Ministers are, quite simply, the most powerful men in the land, after the King. Each of the Ministers tends to run his Ministry as a personal bailiwick, binding senior officials to him with bonds of personal loyalty and reciprocal favour.

The tendency to perceive ministries in ways vaguely reminiscent of former chiefdoms has not always made for ease of communication or ready cooperation between their areas of jurisdiction. Overseas development consultants have commented unfavourably on this parallel pyramidal ministerial structure as being one of the barriers to the successful implementation of projects that require the input of two or more Ministries. It also means that personal bonds are important: Ministers who get on well with one another are more likely to cooperate than those who do not.

The Prime Minister holds the portfolios of Civil Aviation and Communications, Foreign Affairs, and Defence. As Prime Minister, he holds no particular power and is best seen as the first among peers. In this particular case, however, he derives additional power (as distinct from the authority adhering to his office), as the son of the Monarch.

The Executive has shown considerable political will in protecting the current regime, sovereignty of state, and governing while instituting change from the top. For example, following an unfavourable judicial review of the manner in which Privy Council had attempted to ban the import of an anti-government newspaper, *Taimi `o Tonga*, Cabinet proposed amendments to Clause 7 of the Constitution, which provides for 'freedom of speech and of the press forever'. These passed in October 2003 by a narrow margin in the Legislative Assembly. Clause 7 had been restricted in its application in relation to three matters: defamation, official secrets, and protection of the King and Royal Family. Now, it is restricted by law in relation to six additional matters: public interest, national security, public order, morality, cultural traditions of the kingdom, and privileges of the Legislative Assembly. Government also enacted laws 'to regulate the operation of the media' (see Media below).

### **Legislature**

The Legislative Assembly is a unicameral House comprising 30 members: the twelve Cabinet Ministers appointed by the King, nine Nobles' Representatives, elected by their peers, and nine People's Representatives, who represent 98,000 commoners divided into electorates by island groups. Voters registered on the electoral rolls for Tongatapu, the largest and most populous island, elect three representatives, voters for Ha`apai or Vava`u each elect two parliamentary representatives, and the small northern outliers, the Niua, and `Eua, the island lying adjacent to Tongatapu, each elect one representative. The voting is usually on the basis of the first past the post, although people can vote for two or three candidates in order of preference.

Parliamentarians have always been able to present bills but were discouraged from doing so until 1994 when one of the People's Representatives, a lawyer, finally presented a private member's bill in the House. As the Cabinet and Nobles' Representatives mostly vote in concert, however, their combined votes easily outweigh those of the commoner People's Representatives who attempt to put forward reforms. The House has consistently rejected structural reform, specifically, proposals put forward by People's Representatives for the election of all 30 members of the House from whom the monarch can select ministers. Nobles need not vote with Cabinet. In the recent passage of the bills amending Constitutional Clause 7, all members of the Cabinet voted en bloc for the move, three nobles voted against the amendments, and one of the nine People's Representatives voted for it.

The House also on occasion has rejected legislation that reflected narrow elitist interests and promoted public protest; for example, in 1987-88, the proposal to dump toxic waste in the outer islands and, soon after, a proposal to create an offshore casino, were defeated after church condemnation and public protests that used the media to good effect (Benguigui, 1989:461; James, 2003:318).

Members of the House can impeach Ministers of the Crown. This rarely invoked privilege almost succeeded in 1996, when a motion was brought to impeach the then Minister of Justice and Attorney-General, who had gone without permission while the House was in session to attend the Olympic Games in Atlanta while receiving salary. In the event, the House accepted the Minister's apology. But the fact that Parliament can hold Ministers accountable for their actions was noted. The question of the relative power of the Legislature and Judiciary emerged again in 2003 (see under Executive and Judiciary for details).

### **Electoral Commission**

There is no independent electoral commission. The Prime Minister appoints a Supervisor of Elections whose responsibility includes registration of commoner voters. The nobles have their own roll made up exclusively of title holders. The proportion of Noble Representatives for the different island groups is the same as for the Peoples' Representatives: three for Tongatapu, two each for Ha`apai and Vava`u, and one each for the Niua and `Eua.

Candidates for Parliamentary office can be rendered ineligible if they have not paid their taxes or fines to the Government or have been imprisoned (Constitution Cl.65; Electoral Act 1989; Ward, 2002). Allegations of electoral malpractice are few or non-existent. The common roll is gazetted six months before a general election so that people can correct it, but it can fall out of date in that time owing to the high degree of overseas travel and migration among Tongans.

People are elected partly on their political platform, but also on the bases of particularistic ties; that is, they are supported by church congregations they belong to or because of commercial enterprises they run which benefit members of their electorate. Voting seems to be based on a mixture of political and 'big man' principles.

### **Political Parties**

There are no political parties. In 1992, the former Prime Minister, Baron Vaea of Houma, at the behest of Cabinet sought to form a Christian Democratic Workers of Tonga Party aimed at clarifying the differences in ideas of democracy that existed between the Government and radical parliamentarians. Church leaders did not rally behind the move and it was set aside (Moala, 2002:105). In 1994, members of the Pro-Democracy Movement began 'The People's Party', but it foundered because of personal differences between the members and over the name, which did not contain the term 'democracy.'

Political parties do not get off the ground because Tongans are not generally joiners of organisations. They spend their resources in traditional particularistic obligations to family, church, and village or chief, and tend not to get wound up about 'universalistic' issues for any length of time. They vigorously protest, for example, the sale of passports (1991), the impeachment of a minister (1996), or changes to Constitutional Clause 7 (2003), then disperse and get on with their daily activities which take up much of their time and resources (see also James, 2003:329ff.).

### **Supreme Audit Institution**

According to the Public Audit Act 1984, the Prime Minister, with the consent of Cabinet, appoints a qualified chartered or certified accountant to be Auditor-General during good behaviour, who can be removed by Cabinet on the advice of the Prime Minister. The Auditor-General audits the public accounts and is empowered to make such examinations and inquiries as he considers necessary for him to report to the Prime Minister for subsequent submission to Privy Council and Parliament.

Dutifully, the Auditor-General has reported annually to Parliament, but he has been unable to audit the government ministries for the past three years because Treasury has not provided him with departmental accounts. The Government has recognised the need for and drafted amendments to the Public Audit Act 1984 to empower the Auditor-General to impose financial compliance and performance audits on ministries and public enterprises. The draft amendments will be put into effect when other new tax and fiscal reforms supporting them are in place.



## Judiciary

The independent Judiciary is comprised of the Court of Appeal, the Supreme Court, and the Magistrates Court. The Court of Appeal consists of the Chief Justice of the Supreme Court and at least two other judges appointed by the King in Council. There have been increased and largely successful attempts to further the training and skills of the all-Tongan magistrates with aid-funded workshops, programmes, and overseas training.

The Judiciary's application of a legal model based on English law, as laid down by the Civil Law Act 1966, has led to much-publicised clashes in recent years with both the Legislature and the Executive. In 1996, following the motion to impeach a Cabinet Minister (see above, Legislature) the Legislative Assembly ordered the arrest and imprisonment of three men: the populist People's Representative, 'Akilisi Pōhiva, who leaked the information, Kalafi Moala, the editor of *Taimi 'o Tonga*, the newspaper that published it before the motion had been tabled and discussed, and the paper's deputy editor. After repeated appeals, the Chief Justice in the hearing on a writ of *habeas corpus*, released the three on the grounds that due procedure had not been followed by the House in their arrest and imprisonment (*Matangi Tonga*, January–March 1997; James, 1998:236–8). This caused further furore, during which the Speaker of the House asserted publicly that the Legislature held superior power to the Judiciary in such matters concerning its internal affairs. A major debate on the relative powers of the Legislature and Judiciary might have ensued but for the fact that the King closed the Parliamentary Session a little earlier than usual.

In early 2003, the Privy Council decided to ban *Taimi* newspaper as a prohibited import. Again, after appeals, the Chief Justice, on judicial review, found in favour of the newspaper on the basis that due procedure had not been followed in banning it. His judgement distinguished between the inherent power of the monarch that is not limited by the Constitution (and therefore exercisable as royal prerogative), and the power granted by the Constitution to be exercised by the monarch 'in council' (in his capacity as head of the Executive) and, thus, subject to judicial scrutiny (Ward, 2003).

The judicial review was seen by many people as an act of disrespect towards the King, and an attempt was made to impeach the Chief Justice. The Cabinet then amended Constitutional Clause 7 (see Legislature above) and passed several media bills (see Media below), which give the Government considerably more residual power over the freedom of the press and regulation of media, particularly newspapers.

It also removed from the application to Tongan law of the English statutes of general application. This has caused consternation among lawyers because the removal of these statutes, used in cases in which no Tongan law existed, has left lacunae with regard to laws regulating a wide range of commercial transactions, including contract law, sale of goods, and bankruptcy, and the family issues of adoption and guardianship. If the King gives assent to the change, approved by Parliament in October 2003, before new laws are made to cover these situations, human distress and legal chaos could result (Hill, ABC interview, 28 October 2003).

As it is, Tongan law has not evolved as an indigenous body of knowledge and experience as has law in other countries. Instead, it has continued as a curious amalgam of English common law and elements of Tonga's former chiefly system that has become regarded as being thoroughly 'traditional and Tongan'. As a result, custom is not recognised as having any significant role to play in the courts (see also Powles, 1990:145). This has led the Solicitor General to say that, 'we will differ because they [foreign law] would advocate the right of the individual, whereas the Tongan way of life is not based in the right of the individual but that of the extended family, the church, and the whole country', and the right of the 'King to govern', (Taumoepeau, 2003:17).

The Solicitor General's statement reflects the conflict between customary values that lie outside the law and the legal model Tonga chose to follow in 1966, almost 40 years ago, because, in point of law, individual rights is precisely what Tongans do have (viz. Land Laws 1882). The extended family has not become a legal entity in Tonga in the same way as the *'aiga* in neighbouring Samoa or the *mataqali* in Fiji. Similarly, the churches, while

respected and influential, have little specific or direct influence on government decisions. The lack of fit shows clearly the social nature of law. When one adopts the law of another country, one also unconsciously or consciously accedes to the culture and traditions by which that law was shaped.

### **Civil (Public) Service**

With 4,000 employees, the Civil Service currently comprises 45 per cent of the total formally employed workforce and accounts for 57 per cent of the recurrent budget expenditure. Its ESTACODE (Establishment Code), drafted nearly 30 years ago, fails to address contemporary management needs and will be replaced by regulations developed to support the new Public Service Act 2002. This Act establishes a Public Service Commission under the Prime Minister (sect.5). The Prime Minister, with the consent of Cabinet (see Executive section above), appoints all three members of the Commission to serve for a term of five years (re-appointable).

The Public Service Commission, with the consent of Cabinet, may set its own procedures. It acts as an advisor to the Government on the management of the Public Service, sets the guiding principles for the Service, standards for performance, monitors efficiency, sets salaries, and reviews internal controls of each Ministry. It will gazette a Public Service policy manual (Public Service Act 2002, sect.23) and formulate a code of ethics and standards of behaviour and conduct in the Public Service (sect. 6). The code should be in place by April 2004, but its details were not available at the time the country study was completed.

The reforms basically remove the Civil Service from the direct control of Cabinet Ministers and give it a measure of independence. Accordingly, Heads of Departments are to be placed on contracts of up to five years, at the end of which their performance will be assessed by an independent authority (comprising three Cabinet Ministers), which will then advise the appropriate Minister whether or not to renew the contract (Public Service Act 2002 sects. 13, 26). A performance-based remuneration policy will replace the current annual salary advancement procedures, which tend to reward seniority and long service rather than merit.

Reforms also include downsizing and it is expected that 800 people could leave the service in the next three–five years. Public Service employment has lent prestige to employees and, through salaries, small as they are, spread cash to a much larger number of unemployed or underemployed people (Tonga has a dependency ratio of 80). The loss of employment is expected to have social repercussions for which it is difficult to find immediate solutions. Retraining is one possibility, but the struggling private sector is hardly likely to absorb the number of people released. Downsizing has gender implications because females make up a higher proportion of lower salaried than higher salaried people, and are more likely to be let go as a result of reform measures (Tupoulahi-Fusimalohi 2002:31–32).

Civil servants have complained about a lack of career paths, favouritism in the making of appointments, and a 'glass ceiling' due to considerations of rank or connection to powerful people. It is still true to say of many offices in the public sector, including the Defence Force, that, all other things, such as educational qualifications and experience, being equal, people prefer to see people of high-birth rank in positions of leadership. While powerful connections might get applicants considered for jobs, however, they must have the qualifications and skills necessary to carry them out. The new Public Service Commission's emphasis on merit and performance will make this quite mandatory.

### **Police and Prosecutors**

The Tongan Police Force, comprising men and women, work under the Police Act 1968, which effectively grants great power over the force to the Minister of Police and Prisons, who is solely responsible for the efficiency of the Force and responsible only to Cabinet for his actions and decisions (Police Act 1968, sect.10; see Executive section above). There is no office of Commissioner of Police: the equivalent position, created in 1989, is that of Commander of Police. The incumbent is appointed by the Minister of Police and can, likewise, be removed by him with the approval of Cabinet.

The Minister can discipline police officer by means of internal tribunals on all matters falling short of criminal offences. There is provision for four tribunals. The first may be appointed by the Prime Minister to be a public tribunal where a magistrate and two other persons may be involved; another may be conducted by the Minister of Police; a third by the Superintendent of Police; and a fourth by an officer of Inspectorate rank (Police Act 1968, sect.45). Police criminal offences go to court in the usual way under the Criminal Offences Act of 1924. The police have a Criminal Investigation Department and a Special Branch but lack a Police Integrity Commission, Fraud Squad, or other means of internal investigation into ethical behaviour.

In general, policing is not considered to be a highly valuable occupation, since except for the senior positions the pay is low and conditions spartan. Police are subject to great temptation in the matter of bribes or being paid not to see infringements of the law. They can also tend to overuse corporal punishment, a customary method in Tongan culture of dealing with obstreperous social inferiors or recalcitrant people under one's authority, when dealing with suspects or prisoners (see, for example, Finnegan 2000). Roughing up people, including school pupils, is no longer allowable social practice. Attitudes take time to change, however, while people in authority find more acceptable alternate methods of discipline.

### **Public Procurement**

There are no regulations, and no public procurement officers. Tenders for public works are called for and advertised in newspapers. The choice is made according to best practice. The successful bid is not advertised but may be found from the appropriate authority (usually the Ministry of Works). Parties who feel they have been unfairly treated can take the matter further by asking the government department or departments that have been involved about the tender process and can find the reasons for the choice.

At present, there is little purchasing in-country. Departments do their own purchasing or overseas agencies get what is wanted. It is to be hoped that the public sector reforms now in progress will address this matter and lead eventually to the establishment of a Procurement Board.

### **Ombudsman**

The Ombudsman's Office was established under the Commissioner for Public Relations Act 2001 to deal with public complaints on official actions or decisions. Prior to this, there was the Interim Government Committee on Public Complaints, established in 1999 to provide a forum for dealing with public complaints and with allegations of corruption and official high-handedness in government departments and related bodies.

The Commissioner for Public Relations has three tasks: to improve the image of the Public Service; to raise the importance of dealing with corruption in Government, human rights violations, and the promotion of good governance; and to establish an Ombudsman system that will facilitate the principles of accountability and transparency (Commissioner for Public Relations, 2001:4).

The establishment of the Office of Commissioner was greeted by effusive parliamentary and public approval, but has so far made only little impact on the anti-corruption scene. The Commissioner for Public Relations operates from a small Nuka`alofa office. He has only a senior investigator, one other investigator, and clerical staff to help him. There is no office in either of the other main island groups. Thus, the office remains small, understaffed, and underexposed in terms of awareness and accessibility. In the first year of operation, the Commissioner dealt with only 16 cases (Commissioner for Public Relations, 1998:14).

### **Investigative/Watchdog Agencies**

Apart from the Commissioner for Public Relations, other relevant agencies are few. The voices of the radical People's Representatives would be one of the more effective heard in society as well as in Parliament.

Most of the latter belong, at least nominally, to the Pro-Democracy, now the Tonga Human Rights and Democracy, Movement. The movement has made headway in making public officials more aware of their responsibilities with regard to transparency and accountability through exposure of alleged abuses in the media, public protests, petitions to the King, Parliamentary proposals, and through court cases. These court cases have been ongoing since 1981 when one of the most outspoken of their number, `Akilisi Pohiva, the No.1 People's Representative for Tongatapu since he first entered Parliament in 1986, successfully sued the Government for unfair dismissal from the Ministry of Education over his radio programme that broadcast radical or, at least, reformist, material. Pohiva claims he has paid over TOP\$100,000 in libel and defamation cases, but that is because the people he accuses of wrongdoing have the right to sue him (Pohiva, personal communication, 29 October 2003). It should be noted that Pohiva has won as many cases as he has lost (see above).

From 1986, the Pro-Democracy Movement has subjected several Ministers to criticism in its newssheet, *Ko e Kele`a*, and threats of legal action for alleged irregularities, particularly in their disbursement of public finances. It protested the lack of transparency and of accountability by government officials.

The series of court cases had several significant effects. It drew public attention to government excess and pointed the way to the creation of a separate court of appeal, formally instituted in 1988. Previously, the Privy Council had served as the highest court of appeal but it could no longer do so when its members were among the accused (Campbell, 1992:86-7).

The mainstream churches have committees that also attempt to act as watchdog agencies. For example, the largest church, the Free Wesleyan, has a committee called Taulama (lit., 'to keep a look out for'), of which the radical Parliamentarian, `Akilisi Pohiva, is a member. It sends letters to government, for example protesting the proposed legislation to amend the Constitution in 2003. In our experience, however, the impact of church disapproval has had little effect on government decisions over the last 40 years. The wave of church disapproval over a proposed offshore casino, in the late 1980s, however, did probably influence the House's decision against it. The protests came from the Free Wesleyan Church Standing Committee, made up of about 50 of the highest ranking members of the church, and not merely from the Taulama Committee. Other mainstream churches also lent their weight to the general protest over the casino and used the media to good effect to debate the issue.

## Media

The Government owns and operates a weekly newspaper, *The Tonga Chronicle*, the radio station Radio Tonga A3Z, and one television channel, Television Tonga. A second TV station, the privately owned OBN, broadcasts mostly religious programmes. The independent, foreign-owned and operated (out of Auckland) *Taimi `o Tonga* is critical of Government policy. A pro-establishment paper is *The Tonga Star*. The locally produced periodical *Matangi Tonga* provides balanced and informed views. There are also various church-based newspapers. Overall, the Tongan media are dull and lacking in good, investigative reporting.

The media in Tonga appear muzzled, either by Government interference or self-censorship. For example, the retired General Manager of the Government-owned Radio and Television Tonga gave unchallenged evidence during the case over *Taimi* (see Judiciary section for further details) that, during the time he worked for the Government media, any expression of independent editorial opinion would have 'been more than [his] job was worth' (quoted in Ward, 2003:20). *Taimi*, on the other, had in fact run articles critical of the Government and leading politicians and public figures for years before the Government decided to ban it (Ward, 2003:15).

Failing attempts to ban *Taimi*, the Government passed two pieces of legislation, in October 2003, based on amendments to Constitutional Clause 7, that further regulate the media, especially newspapers. Because of reaction overseas, particularly in New Zealand (ABC

Pacific Beat, 2003), they will be discussed below. At the time of writing, the King had not yet signed either of these acts so as to make them law.

The Newspapers Act 2003 provides a scheme in which the printing, publishing, sale, distribution, content, and standards of Tongan newspapers are sought to be regulated through a licensing system (sects. 9, 10, 12). The scheme gives the Minister responsible (most likely to be the PM as Minister of Communications) extremely wide discretionary powers in addition to restrictions contained in the Act itself, with regard to conditions he may impose or require to be met before a licence to publish, sell or otherwise operate a newspaper may be granted (sects. 9, 10). In its aims to emphasise a commitment to honesty, fairness, independence and respect for the rights of others, the Minister is likewise given wide discretionary powers to revoke any licence with respect to a newspaper which he deems not to comply with those commitments (sect. 11). Dealings with foreign newspapers, which do not measure up to the standards prescribed or which interfere with domestic politics, are prohibited, including subscribing to such newspapers (sects. 11, 14). Heavy fines and/or imprisonment are prescribed for offences committed under the Act (sect. 17).

The Media Operators Act 2003 is a companion Act to the Newspapers Act 2003. It requires that licences are to be issued to entities first before they are allowed to print, publish, sell, distribute, or otherwise operate a newspaper. It provides the category of entities to which such licences may not be issued (sect. 3). In effect, it restricts the issue of licences under any Act, including the Newspaper Act 2003, required for newspaper operation in Tonga, to Tongan subjects or companies which have 80 per cent of their shares held by Tongan subjects (sect. 3). Again, heavy penalties of fines and/or imprisonment are prescribed for contravention of the Act (sect. 5).

The 2003 amendment to Constitutional Cl.7 (see sections above on Executive and Judiciary) and the Newspapers Act 2003 and Media Operators Act 2003 that swiftly followed, appeared to many people, including the most vocal People's Representatives, to have pulled the last remaining teeth of the media watchdog. People are divided, however. The pro-establishment Kotoa Movement asserted that *Taimi* went too far, even attempting 'bringing down the sanctity of the King and his family' (quoted in Ward, 2003:32), but the Chief Justice found in his judgement declaring the Privy Council's ban of *Taimi* illegal that 'the overriding concern of the Ministers was that Taimi had a political agenda that opposed the present political arrangements in the country' (Ward, 2003:33). It still remains to be seen, however, how the discretionary powers granted by these two Acts will be used with regard to existing or proposed newspapers, or future media content.

### **Civil Society**

If civil society is conceived as an aggregate of lobby groups, independent interest groups, political parties, trade unions, powerful spokespersons and watchful NGOs, as represented in Western countries, then Tonga's remains poorly developed (James, 2003). Instead, Tongan civil society is dominated by traditional groups and NGOs with no real political cutting edge (see next section, Traditional Organisations).

The largest social movement to appear in recent times is the Pro-Democracy Movement, which, in 1998, became the Tonga Human Rights and Democracy Movement. It operates out of a small central office in Nuku'alofa, conducts kava sessions and seminars in villages to discuss political and social issues, and has drawn up a series of reforms to the electoral and representative system that it would like to see debated in the House. Most of these focus on the need for the monarch to choose Cabinet ministers from among elected candidates. These reforms have not yet been achieved.

The proposed changes to the Constitution in 2003 caused the largest public protests yet seen in the kingdom, and led to Cabinet Ministers and Parliamentarians using the media and even going out into the countryside to explain the proposals to the people (see also Taumoepeau, 2003:15-18). Despite the efforts, and despite various consultative committees that contain representatives of the private sector and the churches, the voices of the people rarely influence ministerial decision making. It is widely felt that people remain too awed by their lowly position in the social hierarchy to express their true

feelings against Government moves (personal interviews, Tongatapu and Vava`u, October 2003).

### **Traditional Organisations**

The most immediate influences on people's lives remain those of the family, church, chiefs and locality. Families are based on bilateral extended kindreds hierarchically organised into extended families under the leadership of the most senior male. This organisation is tending to break down and become more narrowly focused as a result of migration and other social change, but its mores and obligations still exert profound influence over people's conduct.

The local village level of organisation is dominated also by mainstream churches, especially the Free Wesleyan Church, which accounts, at least nominally, for 41 per cent of the 99 per cent of the church-going public (Census 1996). There are other Wesleyan churches, the Catholic Church, the Church of the Latter-day Saints or Mormon, Seventh-day Adventist, smaller evangelical groups, and the Salvation Army. The older mainstream churches are hierarchically organised internally, as are all major organisations in Tonga.

In the absence of the traditional chiefs or nobles, many of whom prefer to live in the nation's capital or overseas, the local churches exert great influence over the people, who donate their time and labour, items of traditional wealth, food, and money to the churches for feasts, fundraising for halls and church buildings, church conferences, and annual public displays of 'free gifting'. People also give generously to traditional chiefs and nobles, especially for family or national ceremonial occasions.

### **Private Sector and NGOs**

The small private sector requires development to drive change and to take up the slack from the proposed downsizing of the Civil Service. Tonga's GDP growth of around 2.2 per cent per annum in the seven years preceding 2001 compared well with those of surrounding small island nation-states, but recently it has stagnated ('Utoikamanu, 2002b:4). A Private Sector Reform Team has been established as part of the Economic and Public Sector reforms to simplify regulations and coordinate other reforms (Kautoke, 2002:22-25).

The notion of bringing back talented people from the Tongan diaspora has been floated ('Utoikamanu, 2002c:65). While their absence constitutes a heavy brain drain on the small kingdom, their private remittances in 2001-02 of around TOP\$81 million were estimated to be 56 per cent of foreign exchange earnings, equivalent to nearly 40 per cent of GDP and more than the 30 per cent contributed by agricultural exports ('Utoikamanu, 2002b:5).

The expectation with regard to privatisation and corporatisation has been that Government provides the initial funding for institutions that are later shed and managed, controlled, and run privately to become self-sustaining. While everyone has a right to build up business interests, some people possess more social and cultural competitive advantage than others (Helu, 2002:15; James, 2002:319). Criticisms of cronyism and monopolisation by powerful people in this regard are issues that need sensitive handling (see above, Corruption Profile, Causes of Corruption).

The private sector is not highly organised internally, but recent positive moves will encourage further organisation. The Government has established a Government-Private Sector Consultative Committee to provide a medium for businesses and relevant interest groups to participate in the process of policy development. The committee is open in the sense that organisations drawn from NGOs or business relevant to the issues are invited to participate (Kautoke 2002:23). In 1999, only 16 business associations had registered with the Tonga Association of Non-Government Organisations (TANGO, 1999:74ff.). There has been some increase since then, especially in the number of growers' associations (see below).

The Chamber of Commerce and Industry has over 100 registered members (91 business owners in 1999 (TANGO, 1999:75)). Many of these are expatriates, as Tongans appear to

be reluctant to see the strength that might lie in joining with others of similar interests. Instead, they tend to remain competitively individualistic in their business, as in their wider family lives.

The Chamber of Commerce promotes international ties and training for its members and their employees, but does not have a powerful political voice or strength as a lobby group. In 1996, the same year in which the Ministry of Labour, Commerce and Industries produced a list of commercial enterprises that foreigners may *not* invest in, the Chamber of Commerce appealed to the Government to consider carefully its position with regard to foreign business people established in the country, many of whom have invested a great deal of money and effort in their ventures. The action drew attention to anomalies in the Immigration Act 1969 and the need to establish clear policy guidelines and create new visa categories. Little else of political note has emerged since from the Chamber (James, 1997:252–53).

A Small Business Association (SBA) seeks to help any Tongan citizen who runs a business with capital below T\$50,000. In 1999, it had 68 members (TANGO, 1999:76). It now has 71 members and runs regular meetings and workshops (personal communication, President SBA, Nuku`alofa, October 2003).

There are also hundreds of smaller businesses—bakeries, village stores, handicraft producers, bingo game operators, and the like, most run part-time by women or retired men—which fluctuate and for that reason are not always registered with the Ministry of Labour, Commerce, and Industries (MLCI) (personal communication MLCI officer, Vava`u, 1996).

In the last five years, growers' and fishers' associations have been created in all the island groups. The Government welcomes such organisational moves as they facilitate liaison between producers and Government. Officials in the Ministry of Agriculture, Fisheries, and Food help them seek overseas funding and prepare proposals. Aid donor agencies increasingly prefer to work directly through NGOs than Government. The recently formed Vava`u Farmers' Association shows promise insofar as it seeks to transport produce as well as encourage and inform members (personal communication, Office of the Governor of Vava`u, October 2003). Growers' associations have positive consultative roles with Government, except perhaps the Squash Association in Tongatapu, which is comprised mostly of exporters, who complain about the export quotas to Japan.

In 1990, the Tonga Association for Non-Government Organisations (TANGO) was established. In 1993, it was incorporated as a non-profit, charitable organisation under the Charitable Trust Act 1993, and adopted a constitution. It acts as the umbrella for NGOs in Tonga. Its objectives include the provision of technical assistance and services to NGOs to help NGOs achieve required standards of accountability.

NGOs have proliferated over the last two decades. There are estimated now to be between 300 and 400 non-government organisations. These vary widely in size, aims and membership. For example, the Women's Department of the Free Wesleyan Church has enumerated its membership at 20,000. The majority, however, are small, with between five and twelve members, organised at village level, and concerned with purely local problems (TANGO, 1998:3; 1999:101). Most NGO groups are managed democratically but remain weak in terms of finance, human and other resources, management, planning, organisational development and communication (TANGO, 1998:vii–viii). A small study in 1998 showed that less than 50 per cent had a constitution but that 53 per cent had a connection with a church.

Despite the commendable aims of the umbrella organisation, TANGO, only about 100 groups, or less than half of the NGOs estimated to exist, are registered with it. Many groups do not understand that TANGO can put profitable projects and funding their way, and still more have the notion that the organisation exists for the benefit of only a few people: a common notion in Tonga where organisations are concerned. The present executive uses media and informal meetings to try to convince people otherwise.

NGOs are not compelled to be registered with Government, but any organisation set up exclusively or primarily for charitable purposes may be incorporated and registered under

the Charitable Trusts Act 1993, which was enacted to provide for the incorporation and registration of religious, educational, and other charitable trusts and societies (sects. 3 and 4 of the above Act). An incorporated or registered society is governed by its constitution or rules, which are required to be submitted to the Registrar of Charitable Trusts upon application for incorporation and registration.

### **Regional and Local Government**

There are no village councils responsible for the general administration of villages. Local government is not provided for by law. All powers are concentrated in the central government where rules and regulations governing society in general and towns and villages in particular are made. These are administered in the various districts and towns through officials, called District Officers and Town Officers, elected every three years under sections 4 and 5 of the District and Town Officers Act 1930.

Duties of these District Officers and Town Officers are spelled out not only in the said District and Town Officers Act but also in various other legislations. They are required to report on a regular basis to the Prime Minister on the various aspects of life of the people in their district or towns (villages), including the degree of compliance with the provisions of the Town Regulations Act 1903 and the village regulations made under sections 26 and 27 of the Government Act 1903.

Villages play a role in the administration of water supply. Under the Public Health Act 1916, the Minister of Health has made the Water Supply Regulations 1963, which provide for villagers and townspeople and Town Officers to take control, administer, and manage the production and distribution of village water supply.

On 1 July 2003, District Officers and Town Officers received a long overdue pay rise. District Officers' pay was raised from TOP\$1,489 to TOP\$2,000 per annum, with an annual travel allowance of TOP\$200 and an allowance of 59 seniti (cents) per person aged 20 years and over for whom they had responsibility as shown by the figures of the last census (1996). Town Officers' pay was raised from TOP\$693 to TOP\$2,000 per annum, with an annual travel allowance of TOP\$200 and 90c per person aged 20 years and over in the area for which they are responsible.

To the degree that local government exists, it consists of locally elected District and Town Officers, who vary widely in terms of personal capacities and local standing, receive orders from the Government and relay them to the people when necessary. There is no legal barrier to their election, but, traditionally, governmental authority is the prerogative of men, so that women are not selected and do not stand for election as District or Town Officers. The Prime Minister's Office is currently making efforts to improve District and Town Officers' skills, but the programme is confined as yet to the main island of Tongatapu. The system forms a potentially useful nationwide structure that could be utilised more to garner public opinion for input into Government decisions (see above, Private Sector and NGO section).

### **Progress with Government Strategy**

Apart from the institution of the Office of the Commissioner for Public Relations in 2001, and recent reviews directed toward strengthening the Auditor-General's role, the massive Economic and Public Sector Reform Programme underway since last year provides most means for the attainment of the ideal of good governance (ADB, 2002). Under this reform programme, the newly instituted Public Service Commission has to gazette a 'code of conduct for the Public Service' by April 2004 (Public Service Act 2002, sect. 19). Still at the draft plan stage, this code is expected to address issues of bribery and corruption but will not comprise a coherent risk and fraud-management scheme for the whole society.

### **Donor Anti-Corruption Initiatives**

Individual donors protect themselves against corruption, either by managing aid funds themselves or contracting to companies who do so. Following the devolution of more local duties from the Canberra desk, the Australian Agency for International Development (AusAID) has instituted a Risk and Fraud-Management Plan for its local office. The New



Zealand Overseas Development Aid (NZODA) section does not put money through the Tongan Government and manages its own projects. The People's Republic of China (PRC) contracts its own companies to run its aid projects and manage the risk components. The European Union (EU), responsible for Vava'u, the main northern island group, uses contracts drafted in Geneva which include clauses regarding corruption in its bilateral aid agreements with Tonga (personal interviews with resident representatives of aid donor agencies, July 2003, Tongatapu, and October 2003, Vava'u).

Apart from the way they manage their own funds and support training for police and magistrates, youth organisations, education, schools and the like, aid donor agencies have not initiated anti-corruption activities as such. All of them, however, are supporting to various degrees the massive Economic and Public Sector Reform Programme that is presently underway, which is designed to promote the ideals of good governance.

Through previous attempts at public sector reform, the Australian and New Zealand aid donor agencies, in particular, have attempted to support moves to improve efficiency and performance, which may be regarded as a wholesome part of anti-corruption initiatives. Australia, for example, has funded efforts to strengthen the court system, and New Zealand has funded a brief programme to raise awareness of the Ombudsman's role and functions, and funded the drafting of legislation that will give greater authority to the Auditor-General. Australia and New Zealand also encourage the participation of the wider community in decision making in their projects wherever possible to try to counteract the top-heavy and top-down approach typically used by the Tongan Government. New Zealand's recent press coverage of the need to convert Tonga to a democratic system, however, combined with calls for the same move within the NZ Parliament, provoked a formal rebuke which the NZ High Commissioner received from the Prime Minister of Tonga and was requested to convey to the NZ Government (Woods, 2003).

Without an anti-corruption strategy and few relevant offices within the Public Service, aid donors cover themselves by managing their funds or having the companies they hire audit activities. The fact that aid donors audit, request receipts, and demand that people keep account of money, question the hiring of close relatives in aid-funded activities, and the like, together with the increasing levels of education and awareness among public officials, are likely to have a salutary effect on the issue of corruption.

### **Future Research and Donor Support**

Aid donors to Tonga might help formulate and implement an explicit anti-corruption strategy to be included in the Economic and Public Sector Reform Programme. The fact that it has none means that no one has any guidelines as to what or what not to do. Educated people are well aware that gifts act as bribery, but this awareness has not been put into words in the statute books yet. As a result, if there is a need to pull people up for issues of conflict of interest and the like, there is no legal means by which it can readily be done. Other forms of corruption cannot be checked without recourse to criminal charges.

Constitutional lawyers might review the separation of powers between the Executive, Legislature and Judiciary. Other research could focus on the dissonance between Tongan culture and custom and the model of English law, which has informed judicial decisions since the Civil Law Act 1966, and is likely to become an increasing impediment to the smooth running of Government and an independent Judiciary (see Ward, 2003). The recent debate concerning the ban of the importation of a newspaper led to frustration at the very top of society and revealed, among other things, that by and large the criminal law has made no allowance for Tongan custom (Powles, 1990:166).

The links between corruption and custom might be explored further. Research could usefully be conducted into the meaning of traditional gifts and privileges in relation to modern Western rational-legal definitions of corruption.

# Anti-Corruption Activities

## Overview of Government Reforms

The comprehensive Economic and Public Sector Reforms were instituted only in 2002.

## Assessment of Progress

Little legislation as yet has been produced as a result of the reform programme, but the consultative groups are working in each of the areas of Financial Reform, Public Service Reform, Tax Reform, Encouraging the Private Sector, Prospects for Economic Development, and Mitigating the Economic and Social Impact of the reforms that are envisaged.

## Overview of Donor Anti-Corruption Initiatives

Donors have not initiated anti-corruption reforms except within their own systems of donating aid. They fully support the Government of Tonga's fiscal and public sector reforms. Overly strident or critical calls from advisors, such as New Zealand parliamentarians' cries that Tonga must adopt a democratic system of government, are seen as by the Government as interference with Tonga's sovereignty as a nation, and are counter-productive.

## Assessment of Priority Areas, Issues, or Activities

There are seven priority areas in which activities need to be undertaken

- formulation of an anti-corruption strategy
- legislation in accord with it
- education as to what the laws mean (and what corruption costs the country)
- support relevant implementing offices and institutions
- enforcement of existing rules and regulations
- identification of where these clash with the local culture and resolution of potential and actual 'trouble spots'
- use of role model figures to help change attitudes about corruption.

## Key Issues

### The National Integrity System (NIS)

The way the NIS has played out is that the hierarchical organisation typically makes it imperative for people to obey their superiors. This principle operates in family, church and bureaucratic contexts. Thus, a command from a minister has tended to be obeyed whether or not it leads to 'cutting corners'. The creation of a Public Service Commission (Public Service Act 2002, sects. 5–11) and the appointment of Heads of Department under contract subject to review by the Commission (sect. 13 of the above Act) are designed to break this link between individual Ministers and the Public Servants responsible for the administration of policy.

Gender is not a factor in corruption except for the fact that men outnumber women in public office. The 1882 Land Law prevents women from inheriting land but not from leasing it. Nevertheless, frustration over the lack of parity between genders in this matter can lead to complications in families and petty corruption over land transactions.

It is rather the small scale of the society that has the most profound implications for political organisation, the administration of Government, and the legal system. Because governments are expected to possess most of the political functions and administrative paraphernalia of the modern state, relatively few experienced personnel must fill multiple roles. The need to appoint aid donor counterparts as aid began to flow into Tonga in the 1970s multiplied this effect.

Public duties can conflict with kinship roles. The intensity of personal relationships is such that the political executive finds itself close to the Legislature, Judiciary and Public Service. Leaders are usually highly visible. In these circumstances, Western-style political and legal institutions operate under strain, and are modified in practice. Since people have to go on living with one another, traditional forms of recompense and reconciliation, although extralegal or even illegal, are preferred to litigation that will punish one but leave all concerned less well off. Research might explore the ways, if any, in which this factor could be used not to hinder but to further progress toward good governance.

### Effectiveness of Government and Donor-Supported Activities

It is too early to say how well the Economic and Public Sector Reform Programme will work.

### Priorities and Recommendations

There are seven priority areas in which activities need to be undertaken

- formulate an anti-corruption strategy
- legislate in accord with it
- teach all people what the laws mean (and what corruption costs the country)
- strengthen relevant offices and institutions to implement them
- enforce existing rules and regulations
- identify where rules and laws clash with culture and deal with these 'trouble spots'
- use role model figures to help change attitudes about corruption.

Research and understanding the best way to either tell or encourage people to take action in each of the seven areas would be helpful, and could be part of awareness raising and teaching processes.

The Government of Tonga has already embarked upon this long and difficult path to reform. Change in Tonga has always been most effective from the top down, but this does not preclude community involvement in reforms. Importantly, it is vital to get the churches behind the anti-corruption initiatives as they are among the greatest influences upon people at the local level. Nobles, chiefs, and high-ranking and well-respected people at different levels of society should also be employed in this general push toward reform and improved governance.

## Appendix 1 – Questionnaire

### Executive

#### Can citizens sue government for infringement of their civil rights?

*Formal or legal position*

The premise is regarded as a self-evident right that does not have to be spelled out.

*What actually happens*

There have been many cases in which citizens have successfully sued Government in the Magistrates, Supreme Court or Land Court. One of the most recent is that of the radical Parliamentarian, `Akilisi Pohiva, in one of many serious court battles he has fought since he first entered Parliament in 1986, in which he, his son, and an associate were cleared of the charges of forgery and sedition (Fonua, 2003c).

#### Are there procedures for the monitoring of assets, including disclosure provisions

- for cabinet and other government ministers?
- for high-level officials?

*Formal or legal position*

No, there are no such provisions at any level.

*What actually happens*

People might gossip about the real or supposed assets or interests of public officials but there is no legal means by which they can monitor or force disclosure of them.

#### Are there any differences in procedures and disclosure provisions between elected ministers, appointed ministers and high-level officials?

*Formal or legal position*

N/A

#### Are there conflict of interest rules

- for ministers?
- for high-level officials?

*Formal or legal position*

No

*What actually happens*

N/A

#### Are there rules and registers concerning gifts and hospitality

- for ministers?
- for high-level officials?

*Formal or legal position*

No

*What actually happens*

It is up to the individual as to whether they are going to take advantage of their position and of the culture and take proffered gifts. People may gain a reputation for being hungry for gifts or for being of unimpeachable integrity but it is only by word of mouth.

**If so, are these registers kept up to date? By whom?**

**Have they legal powers to enforce disclosure?**

**Have they staff to investigate allegations?**

**What powers of sanction are in place against ministers who are also parliamentarians? Have they ever been invoked?**

**What powers of sanction are in place against ministers who are not parliamentarians? Have they ever been invoked?**

**What powers of sanction are in place against high-level officials? Have they ever been invoked?**

N/A

**Are there restrictions on post-ministerial office employment**

- **by ministers?**
- **by high-level officials?**

*Formal or legal position*

No

*What actually happens*

Former high-level officials go into private sector or regional employment, or they retire. No instances of officials dismissed or asked to resign for failure to attend properly to their duties being reemployed by Government were reported during the preparation of this report.

**Are members of the executive obliged by law to give reasons for their decisions?**

*Formal or legal position*

No

*What actually happens*

No blanket provision is provided by law for members of the Executive to give reasons for their decisions, but there are certain situations in which they are required to do so that will be provided for under specific acts. For example, refusal by the Ministry of Labour, Commerce and Industry to register a company or a charitable institution might result in the Ministry having to provide an explanation to the applicant.

**Do ministers or equivalent high-level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?**

*Formal or legal position*

Yes

*What actually happens*

It is a highly centralised system of authority in which the authority of individual Ministers is likely only to be limited by specific legislation or by Cabinet, the meeting of all the

Ministers. For example, the Ministry of Labour, Commerce and Industries licenses businesses when they meet the conditions set down by legislation, and the Ministry of Works has the power to award contracts to construction companies. The authority given to the Ministry devolves either from relevant legislation or the Cabinet. There might be gossip about cronyism, but licensing businesses is mostly a matter of money and of paying various fees to the Ministry of Finance. Following media legislation just passed (The Newspaper Act 2003), however, licensing of newspapers and the ownership of media companies is likely to be more closely scrutinised by the Minister of Communications (the Prime Minister).

**Are there administrative checks and balances on decisions of individual members of the executive?**

*Formal or legal position*

Yes. Ministers can be removed by the sovereign who appointed them. Individual Cabinet Ministers can be impeached, or a judicial review can be conducted to see if the Minister or Privy Council has exercised power correctly. As impeachment can only be done by Parliament, it is not a strictly administrative check. Other than that, the Ministries tend to be self-regulating; that is, people go to others higher in the hierarchy to seek preferment or redress.

*What actually happens*

These measures are rarely resorted to. There was an aborted impeachment action against a Minister in 1996.

## Legislature

**Is the legislature required to approve the budget?**

*Formal or legal position*

Yes, by virtue of Constitutional Clause 19(a), which states that, 'No money shall be paid out of Treasury...but by the prior vote of the Legislative Assembly.' The Budget is debated in the Legislative Assembly and passed as law like any other piece of legislation.

*What actually happens*

The procedure is followed. If anyone spends money apart from that approved and passed in the Budget, they are liable for prosecution for unlawful spending of public money.

**Are there significant categories of public expenditure that do not require legislative approval? (Which departments does this involve, what is their expenditure and what percent does this represent of the government's annual expenditure?)**

*Formal or legal position*

Yes. The state-owned or partially state-owned enterprises (SOEs) are not part of the Government Budget and do not table their accounts in Parliament. The expenditure of the Tonga Trust monies also did not require legislative approval.

*What actually happens*

Not all revenue due to Government institutions is properly collected, reported, or accounted for.

In addition, the Tonga Trust Fund was depleted in 2001, allegedly by an overseas investment advisor. The two Cabinet Ministers in charge of the fund were asked to resign as a result.

The SOEs are not doing well and are a constant drain on the budget in terms of large transfers and loan guarantees. The recently instituted Economic and Public Sector Reforms will rationalise this process. SOEs that are marginal to Government purpose will be sold or closed down. Others may take years to either privatise or sell, because capital markets in Tonga are virtually non-existent and Government is understandably reluctant to sell essential services, such as transportation or communication, to foreign interests (Utoikamanu, 2002a:2).

**Are there conflict of interest rules for parliamentarians?  
Are there rules and registers concerning gifts and hospitality for parliamentarians?**

*Formal or legal position*

No

*What actually happens*

No record is kept.

**If so, are these registers kept up to date? By whom?  
Have they legal powers to enforce disclosure?  
Have they staff to investigate allegations?  
What powers of sanction are in place against parliamentarians?  
Have they ever been invoked?**

N/A

**Are there restrictions on post-legislature employment?**

*Formal or legal position*

No

*What actually happens*

People who were Parliamentarians are free to seek any type of employment. For instance, an educator and a solicitor now in practice both used to be Members of Parliament.

## **Elections**

**Is there an independent Electoral Commission (if not, are the arrangements for elections in the hands of agencies who are widely regarded as being non-partisan)?**

*Formal or legal position*

The Prime Minister issues writs of election under the Electoral Act 1989 (sect. 7) for a general election of representatives of the People in accord with Constitution Cl.65: 'Representatives of the people shall be chosen by ballot.' Elections are run by the Supervisor of Elections, who is appointed by and responsible to the Prime Minister. His function is governed under the provision of the Legislative Assembly Act 1915 (sect. 5) and the Electoral Act 1989.

*What actually happens*

Although the current officer works within a Ministry, he is not regarded as being partisan.

### **Who appoints the Head of the Commission?**

*Formal or legal position*

The Prime Minister of Tonga appoints the Supervisor of Elections according to the Legislative Assembly Act (sect. 5) and the Electoral Act 1989.

*What actually happens*

The procedure is followed. If candidates owe the Government fines or legal fees they may not stand, according to Constitution Cl.65. This rejection of candidacy has occurred, most recently in 2002 when the candidacy of two men was declared invalid by the Supreme Court (Ward, 2002).

## **Political Party Funding**

**Are there rules on political party funding?**

**Are substantial donations and their sources made public?**

**Are there rules on political party expenditures?**

**Are political party accounts published?**

**Are accounts checked by an independent institution, are they published and are they submitted to parliament?**

**Does that institution start investigations on its own initiative?**

**Who appoints the head of the institution?**

N/A, because there are no political parties.

## **Supreme Audit Institution**

**Is the national auditor general independent?**

**That is, is the appointment of the general auditor required to be based on professional criteria/merit?**

*Formal or legal position*

Yes

*What actually happens*

The Auditor-General complains that he does not look to be independent because he is under the Prime Minister. He hopes a forthcoming review of the Public Audit Act 1984 and its functions (to be conducted with New Zealand Overseas Development Aid) will alter this view. The Auditor-General said, 'As far as my professional expertise is concerned, no one has ever tried to interfere with what I have to do, not even the Prime Minister to whom I am responsible, but the legislation does not make it appear so because I am responsible to the PM and, so, I want the forthcoming review to reflect this in the legislation itself.' (Personal interview, July 2003)

**Is the appointee protected from removal without relevant justification?**

*Formal or legal position*

Only so far as he is appointed on 'good behaviour' (Public Audit Act 1984, sect. 3).

*What actually happens*

The procedure would be to remove him by Cabinet decision. This means the Auditor-General is not protected from removal without justification.



**Is the office of Auditor General adequately resourced?**

*Formal or legal position*

He receives an annual Allocation under the Government Budget.

*What actually happens*

The Auditor-General says there is not enough money, and that he does not have the authority to demand that departments make their accounts available. This will be redressed shortly. The legislation is formulated, but cannot be implemented until other legislation coming out within the Economic and Public Sector Reform Programme is in place. There is the additional problem throughout all of the finance departments of insufficient numbers of skilled people and/or of computerised files to work with.

**Are all public expenditures audited annually?**

*Formal or legal position*

Yes

*What actually happens*

The Auditor-General reports, but has no accounts to audit as they are not made available to him by Treasury (see next question).

**Is reporting up to date?**

*Formal or legal position*

Yes, his reports have been issued annually as ordered (and sighted by the authors of this report).

*What actually happens*

For the last three years—2000, 2001, and 2002—he has not been able to audit public accounts as the Treasury has not made the current accounts available to him in a form he can use. This state of affairs will probably emerge as an issue in the forthcoming Parliamentary discussions in 2003 or in 2004.

**Are reports submitted to a Public Accounts Committee and/or debated by the legislature? Are they acted on by the government?**

*Formal or legal position*

Yes, the reports are tabled in the House, discussed, and should be acted on.

*What actually happens*

There has been no official monitoring of official Government expenditure for three years.

**Are all public expenditures declared in the official budget?**

*Formal or legal position*

Yes

*What actually happens*

They may not be adequately audited.

## Judiciary

### **Have the courts the jurisdiction to review the actions of the executive (that is, Presidency, the Prime Minister or other ministers and their officials)?**

#### *Formal or legal position*

The Supreme Court has the inherent jurisdiction to conduct judicial review of the actions of the Executive, including the Prime Minister, but not to interfere with the royal prerogative (Supreme Court Act 1903, sect. 4)

#### *What actually happens*

The Judiciary is active in reviewing the actions of the Executive. See the introductory narrative section for the most recent case, concerning the newspaper *Taimi `o Tonga*. Judicial review upheld an appeal against its banning as an import (Ward, 2003). This went against the actions of the Privy Council, which is Cabinet with the King in Council.

### **Are judges/investigative magistrates independent? That is,**

- **are appointments required to be based on merit?**
- **are the appointees protected from removal without relevant justification?**
- **are recruitment and career development based on merit?**

#### *Formal or legal position*

Constitutional Clauses 85 and 86 provide for the appointment of judges to the Court of Appeal, and of the Chief Justice and other judges of the Supreme Court by the King with the consent of Privy Council.

Clause 85 provides that the judges be appointed on merit. The additional limitation that the judge has been qualified to practice as such for not less than ten years was added by an amendment (No.13) in 1966. There is no evidence to suggest that appointments and/or promotions are made on grounds other than merit.

The Constitution, Clause 87, provides that judges 'hold office during good behaviour', which inherently contains protection from removal without relevant justification.

#### *What actually happens*

The judges are appointed according to the procedure outlined above. In 2003, a Parliamentarian suggested the Chief Justice be impeached following the judicial review over the *Taimi* appeal that went against the wishes of the Privy Council. Following Cabinet's deliberation, he was given a further term of contract, as his judgement, though unpalatable to some people and against the grain of Tongan custom, was legally unimpeachable.

### **Have there been instances of successful prosecutions of corrupt senior officials in the past three years?**

#### *Formal or legal position*

No

#### *What actually happens*

Other punitive measures are usually taken. For example, in 2001 two Cabinet Ministers (the then Minister of Justice and the then Minister of Finance) who had been placed in charge of the Tonga Trust were asked to resign because they had failed in the duty to look after the US\$20 million invested.

In 1996, there was an attempted impeachment (voided in 1997) of the Minister of Justice for leaving the House during session to travel overseas without permission.

In 1998, however, the then Minister of Lands, Honourable Fakafanua was removed from office and charged with eight counts of fraudulent conversion and other matters to do with his illegal handling of land issues. At his jury trial, the jury let him off to the amazement of the expatriate judge. It is said in Tonga: 'Go to jury if you are guilty,' presumably because jury members can be influenced through personal and patron-client relationships. In this case, Fakafanua is a noble and a rentier of substance (James, 1999). In a small-scale society, the jury system can be a major vexation to prosecutors because jury members are subject to diverse cross-cutting ties (Solicitor General, personal communication, Tonga Update session, Nuku`alofa, October 2003).

## Civil (Public) Service

### **Are there laws establishing criminal and administrative sanctions for bribery?**

#### *Formal or legal position*

The Criminal Offences Act 1924 (sects. 50, 51) makes bribery of civil servants illegal, as the Legislative Assembly Act 1915 (sect. 9) had also made it an offence for public officials to accept bribes.

#### *What actually happens*

There are few cases of prosecution and none in recent years. Charges of bribery where gifts are concerned require evidence of intent, which is difficult to establish. Giving small amounts of money and/or gifts to get public servants to carry out their duties has become established practice in some departments, especially lands, customs, licensing, etc. Indeed, one Minister told us that department heads often augment the salaries of their low-paid staff from their own pockets in order to encourage them to come to work, work on time, or carry out their functions efficiently (personal communication, Nuku`alofa, October, 2003). As a result, one has to conclude that bribery is not adequately policed and is often accepted practice.

### **Are there rules requiring political independence of the civil service?**

#### *Formal or legal position*

No

#### *What actually happens*

Trouble-makers, such as reformists, incipient union leaders and pro-democracy activists are discouraged from service and may be dismissed on flimsy pretexts. Pohiva won a court case against just such a dismissal as a teacher in the civil service in 1981. Members of the civil service have said they will not welcome members of the Pro-Democracy Movement (now the Tonga Human Rights and Democracy Movement) among their ranks, but this is not official policy.

### **Are recruitment/career development rules based on merit?**

#### *Formal or legal position*

Rules contained in the Civil Service Regulations made under Section 25 of the Government Act 1903 require appointment and promotion to be made on merit.

*What actually happens*

In practice, in considering promotions, more weight may be given to seniority in terms of length of service. There have also been instances of political appointments or the shift of personnel sideways. At present, all other things being equal, preference is given to meritorious people of high-birth rank, especially for flagship positions in Ministries and departments such as Foreign Affairs, the Prime Minister's Office, and the Palace Office. Reforms and regulations to be made under and to support the new Public Service Act 2002 are expected to reinforce the principle of merit over service because the emphasis will be on performance criteria, and Heads of Departments will be on five-year (renewable) contracts to make sure this improves. The cultural preference for people of high birth rank to take positions of leadership will likely continue, but such people appointed will be appropriately qualified.

**Are there specific rules to prevent nepotism? Cronyism? (Note: rules discriminating positively in favour of marginalised or minority groups are not included in this description)**

*Formal or legal position*

No

*What actually happens*

It has been a feature of Ministries in the past in which Ministers commonly gathered about them people whom they could trust because they were personally loyal to them. Pockets of relatives still exist in particular Ministries, but now they must also be qualified for the positions they hold.

**Are there rules and registers concerning acceptance of gifts and hospitality?**

*Formal or legal position*

No

*What actually happens*

Officials may accept gifts and hospitality if they choose to do so.

**If so, are these registers kept up to date? By whom?  
Have they legal powers to enforce disclosure?  
Have they staff to investigate allegations?  
What powers of sanction are in place against public officials? Have they ever been invoked?**

N/A

**Are there restrictions on post-public service employment?**

*Formal or legal position*

No

*What actually happens*

Ex-public servants can and do take up other forms of employment.

**Are procedures and criteria for administrative decisions published (for example, for granting permits, licences, bank loans, building plots, tax assessments, and so on)?**

*Formal or legal position*

Yes, if procedures and criteria are contained in statutes or regulations they are a matter of public record and available.

*What actually happens*

Members of the general public frequently have difficulty seeking them out from the relevant authority. Public servants are generally unsure about what information is in the public domain and do not wish to get into trouble with their superiors for giving away information. For these reasons, people seek relatives in the civil service to help them through the maze through the use of their personal relationships. In a highly centralised system, superiors have a great deal of discretionary power and may make administrative decisions according to whim, but the Public Service Commission and performance-based goals should alter this situation.

**Are there complaint mechanisms for public servants and whistleblower protection measures?**

*Formal or legal position*

Yes, they can go to the Public Service Commission (formerly the Establishment Officer) with complaints.

*What actually happens*

There are few instances in which they have done so. This may be for fear of reprisals such as transfer, dismissal on some pretext, or the retribution of superiors, which may take various forms, including blocking the careers of close relatives etc.

**Are there means for complaints by members of the public?**

*Formal or legal position*

Yes, the Ombudsman (Commissioner for Public Relations Act 2001).

*What actually happens*

The Ombudsman's role is not widely understood, and people are unsure of procedures or the potential fall-out from making complaints, especially as the complainant is named. In his first year of office, the Commissioner for Public Relations dealt with only 16 cases, most of them relatively minor matters. There is a general fear in Tonga of 'rocking the boat' by formally complaining about Government, except in the case of one newspaper and one newsheet (now deregistered), and a few individuals, which include the reformist Parliamentarians.

**Are there administrative checks and balances on decisions of individual public officials?**

*Formal or legal position*

Civil Service Regulations according to Government Act 1903, sect. 25, provide checks on the decisions of individual officials.

*What actually happens*

Decisions of officials are most usually constrained and regulated by the management hierarchy; that is, the actions and desires of people higher up. This is an extremely strong principle. There are also numerous occasions of civil servants successfully suing government (see above, and also Fonua, 2003c).

## **Police and Prosecutors**

**Is the commissioner of police independent? That is,  
▪ are appointments required to be based on merit?**

*Formal or legal position*

In Tonga, the office is that of Commander of Police, who performs the same functions as a Commissioner of Police. The title of commander was introduced in 1989. Under the Police Act 1968, sect. 10, the Minister has the power to appoint the Commander of the force with the approval of Cabinet.

*What actually happens*

The Police Act 1968 effectively grants great power over the force to the Minister of Police, who is responsible only to Cabinet for his actions and decisions, and is solely responsible for the efficiency of the Force.

**Is the appointee protected from removal without relevant justification?**

*Formal or legal position*

Yes, under the Police Act 1968.

*What actually happens*

There has been no evidence of a dismissal due to political interference.

**Are public prosecutors independent?**

*Formal or legal position*

Public prosecutors are all Government lawyers, such as the Solicitor-General, who is married to the Minister for Justice, and others employed in the Crown Law Office, or they are police officers.

*What actually happens*

It is possible they are subject to hierarchical, political, or Government pressure.

**Are there special units for investigating and prosecuting corruption crimes?**

*Formal or legal position*

There are no units such as a Police Integrity or Fraud Squad which specifically investigate corruption.

*What actually happens*

The Police Criminal Investigation Department (CID) investigates crimes of all natures including 'corrupt' activities such as fraud or bribery.

**Is there an independent mechanism to handle complaints of corruption against the police?**

*Formal or legal position*

The Office of the Commissioner for Public Relations (Act 2001) can receive complaints. Criminal offences by police go through the court system in the usual way.

*What actually happens*

Not for general distribution

**Does civil society have a role in such a mechanism?**

*Formal or legal position*

Civil society has no defined role. Individuals can complain to the Ombudsman. Police are disciplined through public and internal tribunals. Courts deal with criminal offences committed by police. There is no agency independent of Government that has been set up specifically to watch the police.

*What actually happens*

If disciplined, it is generally done internally, and civil society plays no part in policing the police. Perhaps an increased emphasis on community policing, the legislation for which is in the wings but not yet placed before Parliament by the Minister, might see more effective linkages between the Police Force and the wider community.

**In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?**

*Formal or legal position*

Disciplined and dismissed, perhaps, but not prosecuted.

*What actually happens*

It is not possible to estimate the number of such cases that might have occurred as the reasons for dismissal may not be called charges of corruption. Other reasons may be given to protect the officers' families, other innocent persons, and the reputation of the Force, from the shame attached to dismissal for such wrongdoing.

**Are there any cases of corruption within the prosecuting agencies?**

*Formal or legal position*

Prosecuting agencies are the police or Government-employed lawyers, so we move in a circle.

*What actually happens*

Not for general distribution.

**Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of cases of corruption/bribery?**

*Formal or legal position*

Provision for these offences is contained in almost every act passed by Parliament, the major ones being found in the Criminal Offences Act 1924 as noted in the narrative section.

*What actually happens*

See below

**Is the law applied?**

*Formal or legal position*

Yes

*What actually happens*

Not for general distribution

**Is private-to-private corruption punishable by law?**

*Formal or legal position*

Yes, Criminal Offences Act 1924, contains various sections that deal with obtaining credit fraudulently, false statement, embezzlement, misappropriation of funds, theft, extortion and even taking things according to Tongan custom (sect. 147). This is detailed in the corruption profile.

*What actually happens*

There have been many cases of prosecution in Government, business, and the churches over these matters concerning property, usually money.

**How many cases of prosecution have been undertaken in the past years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?**

*Formal or legal position*

No cases, because the police mostly discipline themselves through internal tribunals. There is provision for four tribunals. One can be appointed by the Prime Minister to be a public tribunal where a magistrate and two other persons may be involved. The majority of cases, infringements and so on, are determined within police disciplinary institutions, that is, the other three tribunals, which comprise the Minister of Police, the Superintendent of Police and an officer of Inspectorate rank (Police Act 1968, sect. 45). Other criminal offences go to court in the usual way under the Criminal Offences Act of 1924.

*What actually happens*

Police discipline occurs as a decision of the Minister of Police and tribunals do occur.

## **Public Procurement**

**Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?**

*Formal or legal position*

There are no legal rules.



*What actually happens*

Tenders are invited publicly and one is chosen according to the rules of best practice.

**Are the rules laid down in documents publicly accessible?**

N/A as there are no rules.

**Are there strict formal requirements that limit the extent of sole sourcing?**

*Formal or legal position*

No

*What actually happens*

There is more competitive bidding as more companies have been formed in Tonga but a great deal of public procurement also takes place by Government agents overseas.

**Are all major public procurements widely advertised to the private sector?**

*Formal or legal position*

Yes, in local newspapers.

*What actually happens*

As the newspapers are readily available, they are seen.

**Are procurement decisions made public?**

*Formal or legal position*

No, there is no requirement that procurement decisions be made public.

*What actually happens*

People can find out by asking around or by enquiries to the relevant procuring agent.

**Is there a procedure to request review of procurement decisions?**

*Formal or legal position*

No, there is no set procedure.

*What actually happens*

N/A

**Can an unfavourable decision be reviewed in a court of law?**

*Formal or legal position*

Yes, anyone can take the executive actions of Government to judicial review.

*What actually happens*

The right to judicial review over contract decisions has not been exercised by private businesses that have lost out.

**Are there provisions for blacklisting of companies proved to have bribed in a procurement process?**

*Formal or legal position*

No, there are no blacklisting rules.

*What actually happens*

If they believe that it has occurred, people take into account cases of bad practice in their subsequent dealings with the companies and the Government departments.

**Are there rules and procedures to prevent nepotism/conflict of interest in public procurement?**

*Formal or legal position*

No, there are no rules or procedures concerning nepotism or conflict of interest.

*What actually happens*

Aid agencies, educated and aware people, including Government Ministers and lawyers, are bringing in these considerations de facto although they are not on statutes.

**Are assets, incomes and life styles of public procurement officers monitored?**

*Formal or legal position*

No, there is no effective monitoring of the assets, incomes and lifestyles of any officials concerned in the public procurement process.

*What actually happens*

There may be gossip, but nothing is done because there are no rules. Not too many procurement officers exist in any case. Agencies abroad buy, or other means are used and individual departments do their own purchasing. Problems here will be addressed in public sector reforms currently being undertaken with ADB funding and assistance.

## **Ombudsman**

**Is there an ombudsman or its equivalent (that is, an independent body to which citizens can make complaints about maladministration)?**

*Formal or legal position*

The Ombudsman is also called the Commissioner for Public Relations

*What actually happens*

The office was established by the Commissioner for Public Relations Act 2001.

**Is the ombudsman independent? That is,**

- **are appointments required to be based on merit?**
- **is the appointee protected from removal without relevant justification?**

*Formal or legal position*

The Commissioner for Public Relations Act 2001 provides for appointment on merit and on good behaviour, which precludes termination without relevant justification.

*What actually happens*

There is little doubt he is independent but his authority is limited and his functions are poorly understood among members of the public. The office has limited impact in society.

**Is the office of ombudsman adequately resourced?**

*Formal or legal position*

No. The Commissioner hopes that New Zealand ODA will give a small grant to place TV ads to raise public awareness. He has only one senior investigator and one other investigator plus clerical staff. The office is located only in Nuku`alofa, Tongatapu, and is not represented in the other island groups.

*What actually happens*

Few people use the office. There were only 16 cases in the year 2001-02. Not enough people know about the office or have sufficient trust in going forward with complaints to use it.

**Has an ombudsman been removed without relevant justification in the last five years?**

*Formal or legal position*

N/A

*What actually happens*

The Act creating the position was passed only in 2001. Its first aim is to hear people who have been offended by the high-handedness of officials (Commissioner for Public Relations, 2001:4). Hailed by Parliamentarians as a great move heralding much better relations between people and Government, little has been heard of this office. It is said not to get at the root of troubles because the office has no authority or executive power to effect change (personal interviews, Nuku`alofa, July 2003).

**Can petitioners complain anonymously if they fear possible reprisals?**

*Formal or legal position*

No

*What actually happens*

In a small country, the lack of anonymity is a major stumbling block where everything seems to leak from official sources. On the other hand, so are malicious anonymous accusations and allegations of official misconduct.

**Are reports of the ombudsman published?**

*Formal or legal position*

The Office of the Commissioner for Public Relations must produce an annual report.

*What actually happens*

Only the 2001 report was available to the country study because of printing delays.

**Does the government act on the ombudsman's recommendations?**

*Formal or legal position*

A response is required from Government.

*What actually happens*

There are long delays on the part of Ministries in responding to the Ombudsman's enquiries (Commissioner for Public Relations, 2001; personal interview, July 2003). In one case, because of his intervention, the head of a Government department has reduced overpricing of services. It is too early to tell what effect on corruption in society the office will have. At the moment, the effect is minimal, and the office clearly should have greater awareness of it in the community and institutional strengthening.

## **Investigative/Watchdog Agencies**

**Are there special investigative or watchdog agencies?**

*Formal or legal position*

There are no legally constituted watchdog agencies besides the institutions discussed above.

*What actually happens*

The radical reformist People's Representatives in Parliament, the membership and committee of the Human Rights and Democracy Movement of Tonga, church sub-committees or standing committees, which write or complain to Government about public issues, and one or two newspapers that criticised Government policy and the actions of public officials, can be seen to have attempted the watchdog role with varying success. Apart from the Office of the Ombudsman and the Office of the Auditor-General, there is nothing that could effectively constitute an anti-corruption strategy.

**What are their main responsibilities**

- **investigation?**
- **prevention?**
- **education and awareness?**
- **prosecution?**

*Formal or legal position*

N/A

*What actually happens*

These bodies try to find the facts, discuss issues and raise awareness of them among members of the public. They stage public protests and may petition both Government and the King with requests for action.

**Are they independent? That is,**

- **Are appointments required to be based on merit? Are appointments generally based on merit?**
- **Are the appointees protected from removal without relevant justification?**

- **Are they adequately resourced?**
- **Are their reports published (other than when criminal charges are pending)? Are they acted on by the government?**

N/A in the case of committees of churches and a social movement.

**Do they report publicly to the legislature on the general scope of their work?**

*Formal or legal position*

No

*What actually happens*

The Parliamentarians have a direct voice in the Legislative Assembly; the others write letters and may stage public protests. After 1994, private members' bills have been presented for consideration by the Tongan Parliament. There was nothing preventing them from doing so before, but they were not encouraged to or perhaps did not know that they could exercise this right, and not all People's Representatives are sophisticated or highly educated (James, 1997:248).

**Can people complain to the agency without fear of recrimination?**

*Formal or legal position*

N/A

*What actually happens*

There is no law that protects protesters who break the law from recriminations. Moreover, militant and outspoken reformists allege unjustifiable harassment by police. Indeed, Pohiva has fought many court cases as a result of his activities (Fonua, 2003; James, 1997).

## **Media**

**Is there a law guaranteeing freedom of speech and of the press?**

*Formal or legal position*

The Tongan Constitution 1875, Clause 7, guarantees these freedoms. The clause was amended in 2003 by the Act of the Constitution of Tonga Amendment Bill (2003) to clarify the parameters of freedom of speech, enable the making of laws for regulating the media, and provide the appropriate remedy for any breach of the Constitution. Regulation of the newspapers will be by licensing and setting of standards.

***What actually happens***

The clause is always applied within the limits of authority provided in the Constitution. In 2003, following attempts to ban a newspaper produced overseas, the Government amended Constitutional Clause 7 by adding six more restraints that can be applied to this freedom. This resulted in public protest but the amendments were passed in October 2003 and, since then, the Media Operators Act 2003 and the Newspapers Act 2003 have been passed. This legislation has been discussed in detail in the narrative. It regulates newspapers more thoroughly than formerly and restricts to 20 per cent overseas ownership of media in Tonga.

**Is there censorship of the media?**

*Formal or legal position*

The Communications Act 2000 set up a licensing system and standards for broadcasting and television. Sections 72 and 78 of the Act set out matters for content standards and censorship. There are also provisions (sections 80–84) relating to religion, national interest, education, national emergency, political and controversial content. Section 84 provides that, 'Subject to the approval of His Majesty in Council, the Minister may determine the extent and manner in which a licensee may provide political or controversial content.' In the amendment, the existing constitutional limitations on the freedom of speech and expression are retained. Added to these exceptions is the important concept of deference to cultural traditions. The Newspapers Act 2003, passed just after the Amendment Bill 2003, puts in place regulations concerning content which exclude indecency and obscenity, excessive violence, blasphemy, treasonous or seditious material, invasion of privacy of an individual without that individual's consent, defamatory statements, and reportage that is not honest, fair, independent and does not respect the rights of others, or contravenes the laws of the kingdom (Newspapers Act 2003, sect. 12).

*What actually happens*

Government-employed media people have censored their own activities for fear of losing their job (witness statement, reported in Ward, 2003). Journalists, including the editor of *Taimi 'o Tonga*, a newspaper critical of Government policy, have been charged with libel and defamation for printing information about Government (James, 1997).

The year 2003 saw *Taimi 'o Tonga* banned as a prohibited import by decision of the Privy Council, a decision then reversed by judicial review. The Government chose then to amend Clause 7 (Constitution of Tonga) as described above, and produced two bills that impose further limitations on the freedom of the press.

Independent media people have been distressed and incensed by the 2003 legislation, but it is not yet known how the Minister of Communications will invoke these new restrictions and the new powers given to him. It is believed that this new restrictive regulatory legislation will be challenged legally.

**Is there a spread of media ownership?**

*Formal or legal position*

The only limits on media ownership are business licensing, which is a requirement for all businesses in Tonga, and broadcasting license requirements, which now disallow more than 20 per cent overseas ownership. This new requirement need not necessarily hinder the spread of media ownership.

*What actually happens*

There is some spread of media. At present, there is a Government-owned and operated newspaper (*The Tonga Chronicle*), radio station (A3Z), and TV station (TV Tonga); an independent, US-owned TV channel (OBN), newspapers (*Taimi* and *The Tonga Star*), a radical newsheet (*Ko e Kele 'a*), a quarterly news magazine (*Matangi Tonga*); and several church-owned and produced newspapers. There are also three FM radio stations. This is a substantial amount for a resident population of fewer than 100,000.

**Do any publicly owned media regularly cover the views of government critics?**

*Formal or legal position*

The Government-owned media have a mandate to present news accurately.

*What actually happens*

The Government-owned media tend not to give much coverage to critical views for fear of losing their jobs, it would seem; but the independent newspapers (including *Taimi 'o Tonga*) and church-owned media do. *Matangi Tonga*, a quarterly magazine, also covers

critical views without necessarily agreeing with them or promoting them in the way that *Taimi* regularly did.

**Have journalists investigating cases of corruption been physically harmed in the last five years?**

*Formal or legal position*

N/A

*What actually happens*

In 1996, the editor and deputy editor of *Taimi* were imprisoned for 30 days by order of the Legislative Assembly under the provision Clause 70 of the Constitution, for allegedly leaking information about the proposed Parliamentary impeachment of the then Minister of Justice and Attorney General. This decision was overturned by the Chief Justice, and the prisoners were released after serving 20 days, during which time they suffered from allergies in the prison conditions (see Moala, 2002:149–224; James, 1997).

**Does the media carry articles on corruption?**

*Formal or legal position*

The media has freedom under Clause 7 of the Constitution and can and does carry articles on corruption.

*What actually happens*

It does not cover all instances of corruption that occur or necessarily report them thoroughly. In the case of the Government-owned newspaper, this may be as a result of self-censorship, because of fear of reprisals from criticism of Government officials, or a decision not to report such matters. In the case of church-owned newspapers; for instance, a priest was rebuked by his Catholic Church hierarchy for an article critical of Government (and arguing for democracy and social justice) and told not to use the church paper as a vehicle for political argument (personal communication, Nuku`alofa, 1989). *Taimi*, the independent paper published in Auckland, was banned as an import by Privy Council in February 2003. In his judicial review of the Privy Council decision, the Chief Justice found that the attempt to ban the paper was motivated not by the paper's poor standards of reporting, which frequently involved inaccuracies and personal attacks on public figures, particularly the Minister of Police, but rather by its criticisms of the form and policies of Government (Ward, 2003). Since the amendment to Constitutional Clause 7 and the passage of two Acts on media and, specifically, newspapers, in October 2003, it remains to be seen how much corruption is reported in future.

**Do media licensing authorities use transparent, independent and competitive criteria and procedures?**

*Formal or legal position*

The Government of Tonga is the media licensing authority. The criteria for media licensing are laid out in legislation, the most recent being the Media Operators Act 2003 and the Newspapers Act 2003, both available to the public.

*What actually happens*

Newspapers have been licensed as businesses. The judicial review found in favour of the distribution of *Taimi* in Tonga because it was registered locally as a business. In light of the recent media legislation and amendment to the Constitutional Clause 7, the future of local media people's licences seems uncertain.

**Are libel laws or other sanctions (for example, withdrawing of state advertising) used to restrict reporting of corruption?***Formal or legal position*

The Defamation Act 1923 is not used to restrict reportage but can be brought to bear when individual citizens feel they have been defamed. The law is particularly strict on matters involving libel or defamation of public figures (Act, sect. 5). If the monarch is mentioned in a demeaning way, the charge of sedition may be employed. Members of the royal family and Cabinet Ministers at different times have filed charges of defamation, mostly against the radical newsheet *Ko e Kele`a* and outspoken reformist Parliamentarian Pohiva, since the pro-democracy campaign began in the late 1980s (James, 1995:165).

**Civil Society****Does the public have access to information and documents from public authorities?***Formal or legal position*

Yes, when the information and documents are in the public domain.

*What actually happens*

Departmental reports may be delayed at the Government Printery and, due to the high costs of printing, are not produced in the same number as before. As a result, copies may be difficult, though not impossible, to obtain. In addition, many of the less senior civil servants seem unsure of what is secret and what is in the public domain and thus tend not to hand reports to the public. This is another reason that people tend to use relatives as intermediaries in their dealings with officialdom.

**Do the public authorities generally cooperate with civil society groups?***Formal or legal position*

Yes

*What actually happens*

It may depend on who belongs to the civil society group in question, who it is led by, and who they know, since communication between Government and civil society easily becomes personal or political. The Government has been autocratic in its approach to community relations, especially with the business community, but with greater stress being placed on private sector development and aid agencies increasingly funding NGOs, consultation is becoming more common. For example, recently, the yachtpeople in Vava`u were consulted before Government mooring fees in the Port of Refuge Harbour were imposed. This type of consultation on the part of the Government has been unusual. Other examples of the development of a climate of consultation are the formation of a Government-Private Sector Consultative Committee, formed by the Ministry of Labour, Commerce, and Industries, the Ministry of Agriculture's efforts to help members of growers' associations prepare proposals to obtain funds from overseas NGOs, and the Ministry of Finance's consultations with members of the public before drafting new tax legislation (as discussed in the Country Report).

**Are there citizen's groups or business groups campaigning against corruption?***Formal or legal position*

Yes



*What actually happens*

The Tonga Human Rights and Democracy Group and mainstream church committees inveigh against corruption.

**Are there citizen's groups monitoring the government's performance in areas of service delivery, and so on?**

*Formal or legal position*

There are no citizen's groups whose main focus is the monitoring of Government's performance in service delivery.

*What actually happens*

Non-government groups do exert a function in this area; for example, the Rotary Club of Tonga has helped the hospital and takes an interest in health service; Parents and Teachers Associations and church groups do the same in education. In politics, human rights, legislative issues and the like, there is the Tonga Human Rights and Democracy Movement. Mostly these groups are concerned less with careful monitoring than with protesting or making up the shortfall in Government provisions of services.

**Do citizen's groups regularly make submissions to the legislature on proposed legislation?**

*Formal or legal position*

No

*What actually happens*

Taulama, the committee of the Free Wesleyan Church; the Tonga Council of Churches; and, also, the Tonga Human Rights and Democracy Movement (THRDM) do comment, and also any individual who cares to may make submissions on proposed legislation. There is also a Law Reform Committee whose members may comment on proposed legislation.

**Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?**

*Formal or legal position*

No

*What actually happens*

These are not widely canvassed issues in either church or Government education.

## **Traditional Organisations**

**To what extent are traditional organisations, such as councils of chiefs, subject to the National Integrity System? And to what extent are they part of the National Integrity System?**

*Formal or legal position*

There is no legal mechanism for incorporating traditional organisations into the NIS.

*What actually happens*

In their localities and among their people, traditional chiefs, whether or not their titles were ennobled, may exert influence over the village and people according to the respect they have retained over the generations. There are other pre-constitutional positions, such as the *tauhi fonua*, very roughly translated as 'elders', who influence people at the local level. The churches in Tonga are highly traditional organisations. The extended family is not a legal entity but is also part of the control system. If Government or others really want something to be done, it is to these people that they turn on a personal basis; however, they are not incorporated into the NIS. The Town Officers and District Officers, instituted by the District and Town Officers Act 1930, regularly send reports on their areas to the Government, however the functions of gathering grassroots information and relaying it to Government need to be strengthened.

**Is their funding and staffing subject to external review and audit?**

*Formal or legal position*

The District and Town Officers' salaries are paid by Government. The mainstream churches, regarded as thoroughly traditional organisations, make their own financial arrangements. The largest, the Free Wesleyan Church, employs an external auditor. The other positions mentioned are not subject to review or audit.

*What actually happens*

The majority church, the Free Wesleyan has recently appointed a tertiary trained and experienced 'money man', as Business Manager. Ministers who may raise funds overseas for themselves rather than the church are expected 'to get the message' and reform or disappear over time.

Other churches, including the Free Church of Tonga and the Constitutional Church (two other old Wesleyan churches), are run like family firms, with nepotism and the devolution of presidency from father to son being frequently alleged.

Since churches have taken over much of the ceremonial and potency of the old religion and chiefly style, people give large gifts of money and food to churches and their ministers in regular Sunday feasts and displays, during church conferences, and at a vast annual 'free gifting', which also occurs in the Catholic and Mormon Churches, despite active policies inveighing against it. It will be difficult if not impossible in the near future to abolish this practice, which is actively encouraged on the part of most congregations as an act of piety, love, and respect, and also as an act that will bring a return from God, in accord with the principle of reciprocity inherent in Tongan tradition.

**To what extent are they part of the NIS controlling corruption in other bodies?**

*Formal or legal position*

The traditional organisations have no legal control.

*What actually happens*

The churches are themselves regarded nowadays as being less transparent in their financial affairs than Government. On the other hand, the organisation of the Free Wesleyan Church is democratic insofar as decisions are put to and voted on by the whole body of ministers at each church conference. The internal workings of the committees, however, are opaque, as are the financial accounting systems. Records are available from the church office but they are not always transparently clear.

**What anti corruption measures, formal or informal, do they apply to their own members?**

*Formal or legal position*

The churches can apply the Criminal Offences Act 1924 in cases of theft, embezzlement and the like within their membership.

*What actually happens*

The Free Wesleyan and other churches have finance committees and do apply audits to their finances. In cases of misdemeanour, churches frequently decide to handle matters internally, in the name of prayerful compassion. There have nevertheless been cases in the last five years of demotions, dismissals, and exclusion of people from offices over alleged abuses of positions of trust.

**To what extent are their deliberations and decisions open to the public, and the media?**

*Formal or legal position*

There is no legal requirement for their deliberations to be made public.

*What actually happens*

The decisions reached by churches are reported in the media because they are big news, the churches being such significant social institutions. It is highly unlikely, however, whether the deliberations preceding the decisions will be apparent except to the initiated.

## **Private Sector and NGOs**

**What measures have private companies adopted to reduce corruption within their own activities?**

*Formal or legal position*

Companies are required to license their business and to lodge and annual report with the Ministry of Finance regarding their income and other matters.

*What actually happens*

Record keeping and the collection of company taxes are poor. The Consumption Tax Bill 2003, one of the first pieces of legislation to emerge as a result of the Economic and Public Sector Reform Programme instituted in 2002, provides for a 'value-added tax' to consolidate and replace the sales tax, fuels sales tax, and ports and services tax. The new tax's broad base is designed to limit distortions and provide for simpler compliance and administration, which should make for greater transparency.

**What measures have private companies, or Chambers of Commerce, adopted to discourage their members from corrupting public officials?**

*Formal or legal position*

N/A

*What actually happens*

The Chamber of Commerce has taken no corporate action in regard of its members. If business people corrupt public officials they are subject to penalties under the Criminal Offences Act 1924 which imposes prison sentences for bribery of civil servants (sects. 50,51), and extortion (sect. 52), fraudulent conversion (sect. 53), and false receipt (sect. 54) by civil servants as well as more general offences against property, such as theft (sect.

143), falsification of records (sect. 159), and forgery (sects. 170–175) that apply to all people.

**What has the impact of privatisation and outsourcing and increased use of NGOs in service delivery been on opportunities for corruption, and the control of corruption?**

*Formal or legal position*

N/A

*What actually happens*

NGOs have been used increasingly to implement aid projects, particularly those concerning protection of the environment and women’s groups, health initiatives, and agricultural groups. For example, much of the money directed to the Government’s Centre for Women and Development is diverted to the umbrella women’s organisation, *Langafonua*, for distribution to women’s groups that will undertake development or income-earning projects. The country’s NGOs may or may not be registered under the Charitable Trusts Act 1993. A 1998 survey showed that fewer than half of the two hundred or so organisations had constitutions, accountability, transparency or skill in records and bookkeeping (TANGO, 1998:vi-viii). In a society in which status competition is a central dynamic, the proliferation of funded NGOs can lead to competition for the rewards they offer in terms of office, travel, conferences, grants, training, workshops, emoluments and the like. This situation provides a climate and multiple opportunities for corruption just as much as it may provide a brake on government.

**What measures have NGOs or peak bodies adopted to reduce opportunities for corruption in their own activities?**

*Formal or legal position*

None

*What actually happens*

The Tongan Association of NGOs (TANGO) receives funds to help NGOs develop human resources and reach standards of accountability (TANGO, 1998, 1999).

**What measures have Churches adopted to reduce opportunities for corruption in their own activities?**

*Formal or legal position*

N/A

*What actually happens*

Churches employ financial controls and monitor the behaviour of their personnel. Because ministers are so highly regarded in the community, there is considerable opportunity for them either to abuse their social power or use it for good.

## **Regional and Local Government**

**Are there, at regional and local level, rules and disclosure provisions similar to those operating at national level on nepotism, conflict of interest, gifts and hospitality, and post-public office employment?**

*Formal or legal position*

No such rules exist at any level.

*What actually happens*

People do as they please as long as their behaviour does not contravene the Criminal Offences Act 1924.

**What public offices at regional and local level are appointed by the national government?**

*Formal or legal position*

The central Government appoints all public officials except the District Officers and Town Officers, who are elected by the people in the localities.

**Is there a legal requirement that meetings of city/ town councils be open to the press and public?**

*Formal or legal position*

No

*What actually happens*

Anyone can attend. It would be a courtesy to ask permission of the community leaders before doing so.

**Are there clear criteria restricting the circumstances in which city/town councils can exclude the press and public?**

*Formal or legal position*

N/A

*What actually happens*

There are no village councils. There are committees made of local people to oversee the provision of water, health services, electricity and whatever else the villages and their leaders decide to do.

**Do national agencies with a remit to deal with corruption (anti-corruption agencies, ombudsmen, supreme audit institutions, and so on) work at regional or local levels and are there specific agencies with regional and local responsibilities?**

*Formal or legal position*

There is no legal provision that prevents the Ombudsman and the Auditor-General from operating at regional (outer island) and local level. The Offices of the Governors of Vava`u and Ha`apai have specific responsibilities for their island groups. There also exists a Vava`u Development Committee and a Ha`apai Development Committee with local island responsibility. Town Officers and District Officers also have local responsibilities to report to Government on various aspects of the life of the people in their districts and villages (towns) including the degree of compliance with the provisions of the Town Regulations Act 1903 and the village regulations made under sections 26 and 27 of the Government Act 1903. They also relay Government orders to the villages.

*What actually happens*

Neither the Office of the Ombudsman nor the Office of the Auditor-General is represented in the outer islands. Distance and limited resources make it difficult for people to use their services and/or consult them personally. Police exist in all islands to keep law and order; Magistrates' Courts are held regularly, and the Supreme Court goes on circuit to hear cases. The Offices of the Governor of Vava`u and of Ha`apai have executive responsibilities for their island groups. The Development Committees of each island group decide on aid projects and other initiatives. Town Officers and District Officers are regularly appointed for three-year terms under sections 4 and 5 of the District and Town Officers Act 1930 and perform their functions with varying degrees of skill, efficiency and the cooperation that the respect locally afforded them makes possible.

## Progress with Anti-Corruption Strategy

### **Has the government announced an anti-corruption strategy and a timetable for implementation?**

#### *Formal or legal position*

The Government has not announced an anti-corruption strategy as such.

#### *What actually happens*

The Economic and Public Sector Reform Programme, instituted in 2002 by the Government with a loan from the ADB and other aid donor assistance, is designed to promote a more effective and equitable tax system, improve fiscal policies, accountability, administration and compliance with regulations in accordance with the ideals of good governance. Part of the reform includes the formation of a Public Service Commission, which, by April 2004, must have in effect a code of conduct for public servants (Public Service Act 2002, sect. 19). This code within the reform programme as a whole may begin to address the issue of corruption and provide a model for the wider community.

### **How much of the strategy has been implemented?**

#### *Formal or legal position*

N/A

#### *What actually happens*

The reform process has been begun and the first pieces of legislation passed. As yet, only the Office of the Commissioner for Public Relations, who might be thought of as an Ombudsman, and the Office of the Auditor-General exist. One tax bill has been passed. All else is on the drawing board.

### **Is the strategy at national level or regional/local level?**

#### *Formal or legal position*

There is no specific anti-corruption strategy, which is a main part of the problem. The Economic and Public Sector Reforms will engage at national and regional levels.

#### *What actually happens*

Improvement of fiscal policies and tax laws should help in administration and compliance and remove or reduce opportunities for corrupt activities.

### **Is the government meeting its own timetable?**

*Formal or legal position*

It is being done as quickly as possible. The Government is making its own timetable; although the ADB-funded public sector and economic reforms are hastening it along the path to changes toward good governance.

*What actually happens*

A great deal of fiscal reform and legislation is required to end stagnation in the public service, computerise files, and train people to deal with the new financial regulations and tax collection.

## **Donor Anti-Corruption Initiatives**

### **Which bilateral and multilateral donor agencies are based in the country?**

*Formal or legal position*

N/A

*What actually happens*

Australia, mostly through AusAID, provides the most aid to Tonga. New Zealand Overseas Development Aid, People's Republic of China, and the EU also donate significantly. Japan also donates money and skills, and maintains an overseas volunteer programme.

### **What types of anti-corruption initiatives have they supported?**

*Formal or legal position*

N/A

*What actually happens*

Aid donors support a wide range of activities that improve the NIS and thus anti-corruption activities. Australia is assisting the Ministry of Finance to implement program budgeting and providing support for court administration. It may also give support in the reform areas of customs and tax administration and statistics (AusAID Country Brief, 2004:2). Australia holds primary aid responsibility for the Ha`apai Group to the north of the main group of Tongatapu and `Eua. Here, the aid aims at the provision of basic infrastructure, training programmes, and community development activities. Also, AusAID has instituted within its own local office a Fraud and Risk Management Strategy as more duties have devolved from the Canberra office to Tonga. New Zealand supports the Ombudsman (the Office of the Commissioner for Public Relations), and also a review of the Public Audit Act and its functions. New Zealand also hold primary aid responsibility for the Niuas, the small northern outlier islands. The EU holds primary aid responsibility for the development of Vava`u, the main northern group.

### **Are there any examples of donors cooperating or coordinating their programmes?**

*Formal or legal position*

N/A

*What actually happens*

There is no formal aid donor cooperation. The Government's Development Coordination Committee should see that projects do not overlap or replicate one another. Donors may cooperate on an informal basis. This frequently depends on individual personalities and how well resident agents communicate with one another.

## Future Research and Donor Support

**Can key areas or issues be identified in terms of corrupt activity that the research for the report has demonstrated as requiring immediate attention, and which are they?**

Areas of administrative and regulatory inefficiency, notably customs and treasury, decision-making bottlenecks, and spheres in which regulations are inadequate, out of date, overlap or leave gaps, open the way for corruption. In the absence of an anti-corruption strategy or awareness campaign, there is a general lack of understanding or concern as to what constitutes bribery, corruption and the like. Immediate attention should be given to the formulation of a policy in this regard and the training of appropriate personnel to implement such a policy.

**Is there a particular aspect of corrupt activity either particular to the country concerned, or significant in terms of effect or impact, that would require more in-depth research?**

The system of rank and entrenched privilege which runs from the top of society to the bottom, including Government and the hierarchies of church and state, is conducive to activities that can only partly be explained in terms of Western legalisms such as bribery, fraud and corruption. The small scale of society means that bureaucratic transactions easily become personal and the personal easily becomes political. People are not particularly loyal to formal rules when they conflict with the intense particularistic ties they have to family, church, chiefs, and localities.

**Is there a particular approach or initiative to combating corruption that may be considered for further research or study as an example of best practice?**

Priorities to combat corruption would include anti-corruption strategising and policymaking, education and awareness, further training of police officers and magistrates, encouragement of the wider community to have a more positive involvement in the system of law and order, supporting the supreme audit system and the Office of the Ombudsman, creating or strengthening independent watchdog agencies in civil society, and supporting the new initiatives of the Public Service Commission. A study of the relationship between culture and corruption would be an instructive think-tank exercise, but it would have to be kept in mind that in the modern context Tongans are required to compromise their traditional culture every day, and must work out their own solutions to the issue of corruption in practice following legislative and attitudinal change.

**Can key areas or issues relating to possible anti-corruption initiatives be identified as requiring donor support?**

In all of the following areas programmes need to be developed and monitored over a considerable period

- awareness of corruption and what it costs people in material and moral ways
- education about the National Integrity System as a cooperating set of individual parts, that is, social science
- ways to improve NIS coordination
- cooperation between church and state
- development of 'community policing', enhancement of policing as a profession and as a positive social role model, and enhancing the ideal of integrity within the police force.

**Can key areas or issues relating to anti-corruption initiatives be identified in terms of forming the basis for potential donor prioritisation, sequencing, cooperation and coordination?**



First, policies must be formulated. Second, implications for the various Government departments and also NGOs must be identified across the board. Third, these implications must be divided into tasks such as training, workshops, publicity, setting up Ombudsman and Auditor-General Offices in the outer islands, providing further support to both these offices, training civil servants and so on. Fourth, the needs and plans of aid donors must be identified, keeping in mind that the EU holds major responsibility for the Northern Island Group, Vava`u, Australia for the middle group, Ha`apai, and New Zealand for the Niuas (the northern islands of Niuatoputapu and Niuafu`ou) and `Eua (adjacent to the main island of Tongatapu).

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