



NAURU

Introduction

Nauru is a small independent democratic republic consisting of a single elevated oval shaped coral island remotely located in the mid-Pacific. It has a population of about 12,000 people. The ‘accidental’ discovery of phosphate at the turn of the 19th century by Albert Ellis (later Sir Albert) propelled Nauru into the modern world of trade and commerce. The political and economic history of Nauru is not complete without the phosphate industry. Political independence, which was achieved on 31 January 1968, was followed by the control of the phosphate industry in 1970.

The *Constitution of Nauru* is the supreme law that provides for a unicameral Parliament, an executive Cabinet and an independent judiciary. The parliament consists of 18 members, elected by all persons of twenty years and over. It in turn elects a Speaker, Deputy Speaker and a President.

The President is Head of State and Head of Government. The President chairs the Cabinet which consists of Ministers whom he appoints and allocates portfolios. The President and Ministers are collectively responsible to Parliament. The President in the current term is Marcus Stephen, who first assumed the presidency in December 2007, following a successful ‘Vote of no confidence’ against the incumbent government. The Government, led by Stephen, was re-elected in April 2008 following an early general election.

The Chief Justice heads the judiciary, which consists of the Supreme Court of Nauru (a court of superior record) and other subordinate courts. Appeals from the Supreme Court go to the High Court of Australia, except in matters concerning the interpretation of the Constitution and land appeals from the Nauru Lands Committee (NLC).

Traditional leadership gave way to new formal constitutional leadership in Nauru at independence. Its place in Nauruan society has taken a secondary role as a result of the dominant cash economy of the phosphate industry. Some aspects of customs and traditions are still practiced today.

Leadership, by definition, extends to include those persons with ex officio legal powers, functions or recognition. The definition also includes church, community and business leaders, and those who have an impact on people’s lives. The capacity of a leader to understand the rule of law and the system of government is important to the definition of leadership.



Section 1:

Principle 1 – Respect for the Law and the System of Government

- i) Respect for upholding of democratic processes and institutions, the rule of law and the independence of the judiciary and the legislature to:
 - a) Allow for peaceful and lawful transfer of power;

The Constitution provides for general elections to be held every three years, and within two months of dissolution of parliament.¹ The elections are conducted under the *Electoral Act 1965-2007*. Voting is compulsory for citizens of 20 years and over. Persons incarcerated in the penitentiary system are also required to vote. Recently added electoral features that were applied during the 2008 general election were proxy voting and a mandatory monetary deposit imposed on candidates for election.

An early election was called in 2008, within eight months of the 2007 general election. The election was called as a result of an impasse with the Speaker of Parliament. The emergency provisions of the Constitution were invoked to dissolve Parliament. Specific laws were decreed to enable the election to take place.² Two electoral petitions filed in court to contest the validity of the election were dismissed, as the petitioners did not identify any breaches of any law.³ The 2008 election was observed by the Pacific Islands Forum Observer Team to be professionally managed. The Team also noted an increase in transparency of the electoral process, with the display to the public of the breakdown of voting preferences cast by the electors. However, they expressed concerns that the eight-day period in which the election was conducted was too short.⁴ The transition of power at the election was peaceful and uninterrupted.

A change in government may also take place during a term of parliament. Article 24 of the Constitution provides that at least nine members of the House must approve a motion of 'Vote of no confidence' before a government is removed from office. Parliament may only then proceed to elect a new President.

In March 2008, a group of Opposition Members of Parliament, led by former President Rene Harris, attempted a 'vote of no confidence motion against the Government led by Stephen. The Opposition group was able to suspend the Standing Orders, which would enable a vote of no confidence motion, but further moves were blocked when the Speaker Riddell Akua resigned. His resignation letter, which was read to Parliament, challenged the Opposition to first fill his vacant chair. Three nominated people declined the position, which meant the vote of no confidence motion failed to pass. The failure of the Opposition's vote of no confidence motion was due to its lack of numerical support. The resignation of the Speaker was prompted by the Opposition's assertion that government has lost support of the House. The Opposition mustered the support of nine MPs while the Government had the support of eight MPs. The resignation of the Speaker balanced the number (nine each) and left Parliament without a Speaker.



¹*Constitution of Nauru 1968* art 39.

²Presidential Orders 1 and 2, 28 April 2008.

³*Civil Case* (2008) Nos. 2-3.

⁴*Report of the Pacific Islands Forum Election Monitoring Mission to Nauru, April-May 2008* <[http://www.forumsec.org.fj/UserFiles/File/NAURU_ELECTIONS_REPORT_FINAL_1may08\(1\).pdf](http://www.forumsec.org.fj/UserFiles/File/NAURU_ELECTIONS_REPORT_FINAL_1may08(1).pdf)> at 1 September 2008.





The House practice had been for the Government to provide a Speaker, and the challenge was put to the Opposition by the resignation of the Speaker. Eventually, the Opposition provided a Speaker but it was unable to suspend Standing Orders to move a vote of no confidence since it did not have the required number of MPs to move the motion.

Following this, the new Speaker of the Parliament, Opposition MP David Adeang, suspended all nine Government MPs claiming that he was forced to impose disciplinary measures due to ‘unruly and shameful behaviour’ during his delivery of a statement on a Supreme Court decision. The decision came in response to a session of Parliament called by the Opposition. Government MPs allegedly received no notification of the session and controversial amendments were made to the *Citizenship Act* in their absence. The Chief Justice declared that these amendments had no validity.⁵ Following these events, the President declared a state of emergency and dissolved Parliament. General elections were held on 26 April 2008. The results of the elections gave the incumbent government a clear majority to run the country for the next three years. In addition, the Opposition lost three sitting members and could only count on six supporting members following the election.

- b) **Respect and promote the separation of powers by ensuring the financial autonomy of the judiciary and Parliament and ensure that the judiciary and Parliament are free from unlawful interference by the executive;**

The Constitution clearly defines the sphere of influence of the executive, legislature and judiciary in Nauru. The three arms of Government are equally subject to the Constitution. The doctrine of separation of powers under the Constitution is essential for the rule of law.⁶

The office of the judge of the Supreme Court is funded out of the Treasury Fund, which is separate from the annual budget appropriation passed by Parliament. The salaries of judges are regulated under the *Statutory Salaries Act 1974*. Changes to the salaries are made under regulations approved by Cabinet. The present Chief Justice is on a contract that governs the terms and conditions of appointment, including remuneration. The current Resident Magistrate is also on contractual appointment.

The *Parliamentary Salaries & Allowances Act 2008* provides for the regulation of parliamentary salaries and allowances. The law substantially capped the salary and allowance levels of the MPs to manageable economic levels. The MPs’ superannuation entitlements were changed in 2008 to move control from Parliament over to Government. The *Parliamentary Pensions Act 2008* replaced the *Parliamentary Superannuation Act 1991* and the Superannuation Trust Fund established a new scheme under that Act. The former scheme was controlled by Parliament, under a Trust Fund with monies from the Republic and interests earned on investments. The new scheme charges the Treasury fund to cover pension payments at the rate set down in the legislation. The scheme is non-contributory and any change to the pension rate requires Parliament’s approval.

⁵Radio New Zealand International, 11 and 20 April, 2008.

⁶Constitutional Review Commission (CRC), 2007, 110.



ii) Upholding a just, fair and honest government through:

a) Respect for and enforcement of the decisions of courts and independent tribunals;

In *Constitutional Reference No. 1 of 2008*,⁷ the Supreme Court of Nauru ruled that the lack of a quorum in parliamentary proceedings held during a March 2008 meeting ‘were a nullity’. The central issue before the Court was whether the Constitution was flouted by the Speaker in conducting a meeting of Parliament without the mandated requirement for a quorum under Article 45 of the Constitution. The Court found as a fact that there were eight MPs in the House when the proceedings took place. Article 45 of the Constitution required nine MPs to make a quorum. The Speaker expressed in public his disagreement with the Court’s opinion, but the Government accepted it. The Speaker justified his response on parliamentary precedents and a previous ruling of the Court that the House determines its own proceedings and the Court does not inquire into the internal business of Parliament. In this particular case, the Court specified that the previous decision was wrongly decided. The Court was satisfied on proven fact that there was no quorum in the House. The circumstances of the parliamentary deadlock were summarised in the Court’s opinion.

In the latter part of 2008, a MP was suspended from the House by resolution of Parliament for misbehaviour. The suspended MP was allowed to resume his place in the House pending an apology to the Speaker. A question arose as to whether, by his long absence from Parliament, the MP had vacated his seat and that a by-election should be held. The Speaker referred the matter to the Supreme Court under Article 36 of the Constitution. The Court decided that the MP had not vacated his seat by his absence. The absence was mandated by Parliament itself.⁸ The Speaker accepted the opinion.

Another example of disrespect for a Court’s decision was the refusal of the Curator of Intestate Estate to pay Court costs in a probate matter ordered by the Court in March 2008. The Curator has yet to comply with the Court’s order.⁹

b) Enforcement of lawful instructions and lawfully created policies;

Parliament makes laws for the ‘peace, order and good government of Nauru’. The enforcement of lawful instructions and policies within the public sector is the responsibility of the Chief Secretary. Secretariat Circulars are issued regularly to all Government departments and State Owned Enterprises (SOEs) outlining Cabinet decisions. Enforcement of public order is the responsibility of the Nauru Police Force (NPF), which has been called upon periodically to enforce Government directives in situations where order is needed to be restored.

Leaders in general adhere to policies and instructions issued to public officials. For instance, during 2008, the media’s freedom to publish and edit contents of news and other items for publication were respected. Another instance was where a junior officer by-passed his head of department to see a leader. He was instructed promptly to go through the proper channels of communications with the leader’s office.¹⁰



⁷*In the Matter of Article 55 & 45 (and Article 36 & 40) of the Constitution* [2008] NRSC 7 Constitutional Reference No. 1 of 2008 (7 April 2008).

⁸*In re Article 36 of the National Constitution* [2008] NRSC 13 Constitutional Reference No. 2 of 2008 (20 December 2008).

⁹*Harris v Curator of Intestate Estates* (2002) [Misc. Cause No. 3]

¹⁰Interview.





In April 2008, a policy was issued to ensure the proper care and management of public vehicles. The enforcement of the policy instructions was delegated to the Department of Transport and the Police. Public vehicles found on the road after hours would be impounded and returned to the Department of Transport. The exception to this policy was for vehicles required during an emergency and those vehicles given exemption.¹¹

A 'zero tolerance' policy is strictly applied to public officers who misuse their offices. The policy was enforced in about seven cases of misconduct by officers during 2008. Two Treasury officers were found guilty by the District Court and subsequently dismissed from the public service for mishandling public funds.

There was (and still is) a policy on social services, that is contrary to law, which was developed and enforced in 2008. A system of social services entitlement, including child endowment, was established under Section 54 of the *Social Services Ordinance 1956-1967*. The child endowment was replaced in 2008, by a new policy which only requires a single payment of a 'birth allowance'. The one that it replaced provided for a weekly endowment, until the child reached school-leaving age. The birth allowance is not recognised by law but by policy only.

- c) **Compliance with the letter and spirit of the laws, which are made for the benefit of the public;**

Refer to instances reported in section b) above.

- d) **Disclosure of fraud, corruption and mal-administration, of which the leader has become aware;**

Under the zero tolerance policy, acts of fraud, corruption or mal-administration are to be reported. In 2008, police investigated the role of a former Minister who was alleged to have sold Nauru passports. The investigation was announced publicly.

In 2008, seven public service disciplinary cases were reported, investigated and prosecuted. These included investigation into activities of officers in the Department of Treasury and the Department of Foreign Affairs. The latter case is still under investigation. Currently, several cases of alleged offences under the *Anti Money Laundering Act 2008* involving police officers are before the District Court. Prosecution is pending.

- e) **Refraining from exertion of pressure, and abuse of persons carrying out their lawful duties;**

In 2008, several incidents of pressure and abuse of offices came to public attention. In one instance, a leader allegedly became involved in the appointment of a public officer to a position in his department. The leader is alleged to have reviewed the short-listed candidates for the position and allegedly added one more name, that of a person from his constituency, to the list and who subsequently became the successful appointee.¹²

A matter involving abuse of an office during the latter part of 2008 was the suspension of a public officer by a head of department following receipt of a complaint from a member of the public. The officer was not given an opportunity to be heard. No disciplinary charges were laid against the officer and no report was sent to the Chief Secretary recommending disciplinary action.¹³

¹¹Pool Vehicle Circular (2008).

¹²Interview.

¹³Interview.



- f) **Refraining from using any legal immunity or privilege as a cloak or shield for behaviour of a lower ethical standard than that reasonably expected of the leader by citizens;**

In general, political leaders, except for MPs, have limited immunities or privileges under the Constitution. There was no occasion in 2008 where a claim of privilege or immunity was invoked by a MP. The *Parliamentary Powers, Privileges and Immunities Act 1976* provides for the privileges and immunities of MPs. The Act prohibits, among other things, the execution of legal processes within the precincts of Parliament and the arrest of members going to and coming from parliament to attend meetings.

Breaches of parliamentary privilege in 2008 were addressed by the Privileges Committee of the Parliament. One such occasion happened during a session of Parliament in March where the House passed a resolution against the President for an alleged breach of parliamentary privileges. The resolution was part of the proceedings that were subsequently declared by the Court as unconstitutional.¹⁴

In a court case in late 2008 involving a parliamentary leader on a minor offence charge, no claim of privilege was made by the accused. He accepted the ruling of the court. Members of the public were puzzled by the outcome of this case and questioned the prosecution's conduct of the case.¹⁵

- g) **Establishing and empowering bodies, such as an Ombudsman Commission, to independently investigate public complaints against government actions;**

Nauru does not have an Ombudsman Office. Complaints against Government action at present can only be made under due process of the law. Complaints of a criminal nature against a leader or public officer may be made to the Director of Public Prosecution's office or the Nauru Police Force. No complaints against Government action were made in 2008.

- h) **Ensuring that the Auditor General reports directly and in a timely manner to Parliament/Congress;**

The office of the Director of Audit is established under Article 66 of the Constitution. The Constitution does not provide for the Director of Audit to report directly to Parliament. The Director of Audit reports to the Minister responsible for audit who, by established practice of allocation of ministerial portfolios, is the President. The public accounts of Nauru are tabled by Cabinet before Parliament. The Director of Audit can only be removed from office by a resolution from Parliament of two-thirds of the total number of MPs in Parliament on the grounds of misconduct or incapacity.

The *Audit Act 1973* sets out the powers and functions of the Director of Audit. The Minister for Finance is required, under the Act, to transmit within three months, at the end of each financial year, the 'Yearly Statement of Accounts' to the Director of Audit. The Director of Audit then has two months to report on his examination and audit of all accounts and send his report with certified copies of the annual statements to the Minister (s 11). Thereafter, the Minister tables the audited report and accounts in Parliament.

¹⁴Constitutional Reference No. 1, above n 6.

¹⁵*Republic v Akua* (2008).





The last audited report on the public accounts of Nauru tabled in Parliament was for the year ending June 1998. Thereafter, no audited reports have been tabled in Parliament.¹⁶ At the end of the financial year 2007 – 2008, an unaudited budget outcome, which is a financial analysis of the budget, was tabled in Parliament in lieu of the yearly statements of accounts. Section 11(3) allows the Director of Audit to make a special report to the Minister. No report was made in 2008.

SOEs and the Nauru Phosphate Royalties Trust (NPRT) are also subject to audit by the Director of Audit. Most SOEs and the NPRT have not tabled annual reports and audited accounts in Parliament for the financial year ending June 2008 within 3 months, as required by law.

iii) Protection of fundamental human rights:

Part II of the Constitution provides for the protection of certain fundamental rights and freedoms in Nauru. Whatever the race, place of origin, political opinion, colour, creed or sex, individuals have the freedom to life, liberty, security, enjoyment of property and protection of law. Individuals also have the freedom of conscience, of expression, peaceful assembly and association, as well as for respect for privacy and family life. Most are qualified by listed exceptions.¹⁷ Nauru has signed (and ratified) some of the human rights treaties and conventions. They include:

- *International Covenant on Civil and Political Rights (ICCPR)*;¹⁸
- *Optional Protocol to the ICCPR*;¹⁹
- *International Convention on Elimination of Racial Discrimination (ICERD)*;²⁰
- *Convention Against Torture (CAT)*;²¹
- *Convention on the Rights of the Child (CoRC) (Ratified)*;²²
- *CoRC (Optional Protocol AC)*;²³ and
- *CoRC (Optional Protocol SC)*.²⁴

An example of the application of international human rights instruments arose in 2008. The Family Court had rejected an adoption application in respect of a Nauruan child by a non-Nauruan. The application was prohibited under the *Adoption of Children Ordinance 1965*. The matter was taken up in the Supreme Court which granted the application by applying the CoRC, even though the Convention was not part of the municipal laws of Nauru. The Court judged that ratification of the Convention indicated intent on the Government to introduce it into domestic law. There were no records of complaints, allegations and abuses of human rights in 2008.

¹⁶CRC, above n 5, 131-136.

¹⁷CRC, above n 5, 17.

¹⁸*International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

¹⁹*International Covenant on Civil and Political Rights: Optional Protocol*, opened for signature 16 December 1966, 999 UNTS 302 (entered into force 23 March 1976).

²⁰*International Convention on the Elimination of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969).

²¹*Convention Against Torture*, open for signature 4 February 1985, 1465 UNTS 85 (entered into force 26 June 1987).

²²*Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 530 (entered into force 2 September 1990).

²³*Convention on the Rights of the Child: Optional Protocol on the Involvement of Children in Armed Conflicts*, 2220 UNTS 161 open for signature 25 May 2000, (entered into force 12 February 2002).

²⁴*Convention on the Rights of the Child: Optional Protocols on the Sale of Children, Child Prostitution and Child Pornography*, opened for signature 25 May 2000, 39 ILM 1285 (entered into force 18 January 2002).

²⁵*Akepae v Detenamo*.

²⁶*Custom and Adopted Laws Act 1971* (Nauru) s 3.

Section 2:

Principle 2 – Respect for Cultural Values, Customs and Traditions

Customs and traditions are subject to the Constitution, and to the laws enacted by Parliament.²⁵ They take precedence over the adopted and applied laws from outside Nauru, including the common law and rules of equity of England.²⁶

i) Respect for cultural values, customs, traditions and indigenous rights and observation of traditional protocols in the exercise of power:

The Constitutional Review Commission (CRC) in its 2007 Report²⁷ noted that the Court is ambivalent towards the enforcement of customs and traditions.



A customary institution established in the 1920s is the Lands Committee which consisted of Chiefs from the Districts of Nauru. The Committee was replaced by the Nauru Lands Committee (NLC) that was established in 1955 (under the *Nauru Lands Committee Ordinance 1955*). The NLC has the same jurisdiction as the erstwhile Lands Committee, particularly on landownership and succession.

The Committee's proceedings are normally held *in camera* with only the interested parties in attendance. Determinations of the Committee are published in the Government gazette and aggrieved parties can appeal the decisions to the Supreme Court. The appeals are open to the public and the Committee's decisions are invariably set aside for jurisdictional reasons or for breaches of natural justice, lack of fairness and or error of facts. The appeals are heard afresh by the Court through oral and/or documentary evidence including evidence of customs and traditional practices to land.

The Court's acceptance and enforcement of customs becomes part of the laws of Nauru. The doctrine of precedent then cements the customs and traditional practices as part of the laws of the country. There was no record or incident of any disrespect for the traditions and customs of the people during 2008.

Section 3:

Principle 3 – Respect for Freedom of Religion

i) Respect for religious belief and practice:

The right to religious beliefs and practices is protected under Article 11 of the Constitution. The right is not absolute and is subject to the exceptions set out in Clause 4 of the Article. The leaders of different religious denominations may register under the *Births, Deaths and Marriages Ordinance 1957-1966*, in order to perform their religious rites under the law. Concerns were expressed in interviews on the proliferation of new religions in light of the smallness of the population of Nauru. People expressed concern that too many religious bodies might divide a small place like Nauru. No incident of disrespect for religious beliefs and practices was reported in 2008.

Section 4:

Principle 4 – Respect for People on whose behalf Leaders Exercise Power

The leaders are cognisant of their responsibilities and do exercise their official powers on behalf of their people.²⁸ In a closely integrated society like Nauru, with a land area of 21 square kilometres and population of 12,000 people, leaders and the people interact at all levels on a daily basis and accord mutual respect for each other. Occasional disagreements and differences in opinion arise, but in 2008, these did not detract from the general peace and harmony that existed in Nauru society nor gave rise to significant problems.

²⁸Marcus Stephen, President of Nauru, 'Nauru' (Statement delivered at the 63rd United Nations General Assembly, 14 September 2008).





i) Proper use of official powers:

There were no reports or cases of improper use of official powers involving MPs in 2008, except for some unsubstantiated allegations of abuse of power.

The 2008 amendment to the *Nauru Phosphate Royalties (Payment and Investment) Act 1968-2001* was another example of proper use of power, at least for the recipients who receive the benefits. The amended law increased the cash royalty payments to landowners by 200%, despite its impact on the fragile financial position of public funds.

The MPs in 2008 passed the *Prices Regulation Act 2008* to place a cap on prices of specific food items to make them more affordable for people. The distribution of free rice from a donor government was another example of proper use of official powers in 2008. In the past, rice donated by donors was available at price. Other examples included the payment of outstanding salaries, prioritising health issues on non-communicable diseases and increasing the supply of electricity to more homes.

Some improper use of official powers, including unjust policies, came about in 2008. For example, children's endowment from birth to school leaving age was terminated.²⁹ Allegations of nepotism, favouritism and political affiliation continue to exist. This included appointments on the Boards of Government bodies based on political affiliation, instead of following set procedures, including Cabinet oversight of the appointment process.

There were no prosecutions under the Criminal Code in 2008 for bribery of or by a leader.

ii) Honesty in dealing with the people and Parliament, with any misleading information corrected at the earliest practical opportunity:

There were no reports of dishonesty in the way information is disseminated to the people by MPs. To improve dissemination of information from Government, the Government Information Office (GIO) was established in 2008 in the Office of the President. The GIO provides information to the public on a regular basis through the print, radio and internet services.

Throughout 2008, the President and Ministers issued statements on all meetings of the Parliament and included a statement on the progress on the distribution of income to the beneficiaries of the People's Trust Fund in February 2008.

Since 2005, a foreign government has funded MPs with money also referred to as the 'grassroots payment'. This practice continued in 2008. *The Parliament of Nauru (Register of Interest) Act 2004* requires political leaders to register all financial payments they receive with the Clerk of Parliament.³⁰ Many people claim that MPs do not declare receipt of the so-called 'grassroots payment' in this register. The Supreme Court was asked by the people, against the opposition of MPs, to inquire into the matter under the Act. The Court however found that the two sections of the Act were not valid under the Constitution and were struck out. The Court found that MPs' failure to register financial payments did not bring adverse legal consequences.

²⁹See above Section 1(ii)(b).

³⁰Ibid.



iii) Publicising information on legal wrongdoing, ethical lapses and false or misleading statements:

Freedom of expression is guaranteed under the Constitution. However, there were no independent news organisations in Nauru in 2008. The media outlets (television, radio and news bulletin) are operated and controlled by Government and these outlets are used to release information from Government. MPs also elaborate and provide additional information.

Information on legal wrongdoing, unethical behaviour or misleading statements by leaders is not usually published in the media in Nauru, but the public was informed through television and radio about investigations by Police into the alleged sale of Nauru passports by a former Minister. The outcome of the investigation is not available. A ministerial statement issued in 2008 reported that an independent audit on the customs and immigration department discovered serious fraudulent practices by officials of the department in collusion with some importers. A review of the department commenced in late 2008. Notice about the dismissal of some public officers was published in the Government gazette in 2008 without any explanations.

iv) Giving priority to official duties over private interests:

Nauru is a small and cohesive society and conflicts of interest are a daily challenge to all leaders at all levels, inside or outside of Government. There is no leadership code and the *Parliament of Nauru (Register of Interest Act) 2004* provides for a limited code of conduct for MPs. The Act requires MPs to ensure their public duties do not conflict with their private interests and that their conduct does not bring Parliament into disrepute. Disclosure of financial or pecuniary interests was required to be registered.

A policy on leadership introduced in 2008, required public officers to resign once they became MPs. In accordance with this policy, a senior public officer resigned from the public service following his election as a MP at the April 2008 polls. However, the policy has no basis in law.³¹ It also does not prevent public officers who have resigned or retired from returning to work for the Government. In early 2008, a retired senior public officer was invited to head a state entity, which he accepted. There was no official record of any incident during 2008 whereby the private interest of leaders overrode public interest.

v) Performance of public duties uninfluenced by fear of personal cost or any hope of personal benefit:

MPs swear an oath prescribed in the Constitution to do the right thing for the people they serve according to law, without fear or favour. The *Public Service Act 1998* also requires a public officer to 'render true and faithful service' to the Republic. Heads of department are found to maintain a professional approach to their duties including their relations with MPs. Independent and technical advice is tendered to MPs by senior public officials.

During the impasse in Parliament in April 2008, a senior police officer attempted to remove an MP on the orders of the Speaker. Those orders had been countermanded by the Minister of Police and the Police Commissioner. It was not

³¹ *Clodumar v the Chief Secretary* (1985) LRC (Const) 1123.





clear whether personal benefits were to be gained by the officer or that he carried out the Speaker's order out of fear. The officer was suspended and then dismissed for insubordination of lawful orders issued by the Commissioner. A parliamentary committee was established in late 2008 to inquire into the dismissal of the officer. The committee's report is pending debate in Parliament.

vi) Public and private conduct that does not lead to a conflict of interest, or in which the fair and impartial exercise of duties might be compromised:

Several cases of conflict of interest occurred in 2008. One case involved the appointment of a chief executive officer of a state entity as executive director of another entity. The areas of operations of both entities converged vertically under his leadership and while the appointment was considered as an economical executive deployment, it does not exclude the potential for conflict of interest.

The policy on leadership regarding public officers elected to Parliament³² was intended to avoid conflicts of interest.

During the 2008 election, two candidates were alleged to have tried to deliberately interfere with the electoral roll by attempting to transfer voters to their electorates. Electoral officers prevented the attempts of these candidates, who tried to register transfer applications without the knowledge of the voters or going through the normal procedures of the electoral office on transfer of voters. Under the *Electoral Act (Amendment) Act 2007*, voters who want to transfer to another electoral roll are required to personally lodge their applications, including payment of a fee of \$10.00.

vii) Ensuring that public facilities are used only for public purposes and not for personal purposes unless authorised by legislation or by a public decision of Cabinet:

No report of abuse of public facilities by leaders occurred in 2008. *The Public Service Act 1998* requires public officers to take appropriate care of all public properties in their possession, custody or care; to preserve the property of the Republic and to ensure its economical use. The use of public vehicles by public officers, including officials from SOEs is a perennial problem with minor infractions occurring occasionally. In April 2008, a new policy was issued to bring these infractions under control with the Department of Transport to execute and administer the policy, with help from the Police. This policy provides that unless exempted, no public vehicle is to be used outside of working hours. Interviews conducted to ascertain compliance with this policy indicate a mixture of reactions with no specific illustrations of abuse which could be established in 2008.

Section 5:

Principle 5 – Respect for Members of the Public

i) Treatment of members of the public honestly and fairly with proper regard for their rights and obligations:

A case of honest and fair treatment in regard to people's rights during 2008 was the payment of the full value of rents on lands leased from the people by the

³²See above Section 4(iv).



Government and State entities. Previously, the payments were capped at 35%.³³ Further, aerodrome compensation payments were also restored to 100% value to landowners.³⁴ These are legal obligations under the *Aerodrome (Acquisition of Land) Act 1952-1968* and *Lands Act 1976*, respectively.

Another example was the decision to restore payment of annual income earned on phosphate royalties invested on the people's behalf by the NPRT. These payments are authorised under Section 19 of the *Nauru Phosphate Royalties Trust Act 1968-2009*. No payments were made to the beneficiaries of the trust funds from 2002 to 2007 by previous administrations.

Conversely, the withdrawal of the weekly child endowment and its replacement by a one-time payment of birth allowance³⁵ was not a fair administration of Government's obligations under the law.

Leaders were sometimes selective in applying established policies. An example was the application of the overseas medical referral policy, where patients are sent overseas to seek medical care at public expense. The selection process is the responsibility of the Ministry of Health, as well as Cabinet. However, MPs sometimes intercede on behalf of their constituents. One such case occurred in 2008, where one patient was given priority over another, following active lobbying by an MP. The medical basis for the choice was less clear.

The unpaid salaries of former employees of the State and its entities can be referred to as an example of disrespect. By the same token, the fact that some payments were made during 2008 was an indication of concern on the part of the MPs. The failure to comply with court orders to pay successful litigants' financial claims and costs against the State, and its entities, was a black mark on leadership. The leadership however was constrained by financial difficulties.

Section 6:

Principle 6 – Economy and Efficiency

The current leadership is committed to sound policies to strengthen the economy and address social problems. A range of financial, economic and governance reforms were put in place during 2008. However, inefficiencies still exist in some areas of the economy.

According to the Asian Development Bank, the country's economic situation has deteriorated over the past years as a result of 'poor management' of the country's offshore assets and public expenditure. However, in 2008, economic reforms undertaken by the Government began to take effect. In particular, some SOEs and utilities have seen a marked improvement in performance. In addition, the finance industry may see a revival, now that Nauru has been removed from the Financial Action Task Force on Money Laundering blacklist.³⁶

The Government of Australia provided assistance in several areas, with the aim of working with Nauru to restore essential infrastructure and services, in addition to fostering greater economic self-sufficiency. For the 2008-09 financial year, Australia provided up to US\$27 million in areas such as economic and

³³ 2008-2009 Budget Paper (Nauru).

³⁴ Public Notice on Aerodrome and Government Land Rent Payment, 19 January 2009 (Nauru).

³⁵ See above Section 1(ii)(b).

³⁶ Radio Australia, 23 February 2008.





financial management, public sector capacity-building, education and health. This assistance also factors in the closing of Australia's Offshore Processing Centre in March.³⁷

In 2005, the Government sought regional assistance through the Pacific Islands Forum which led to the establishment of the Pacific Regional Assistance for Nauru (PRAN). It is a collective regional assistance mission, coordinated by Pacific Islands Forum Secretariat, to assist the rebuilding process of Nauru. One outcome of PRAN is the development of the National Strategic Development Strategy for Nauru. PRAN also provided assistance in the establishment of an Aid Management Unit (AMU) to coordinate all external funding assistance in Nauru. It also provided personnel to the AMU, the Department of Justice and the Judiciary in 2008.

There were no banking and insurance services during 2008. Banking services were removed from the Bank of Nauru to a Directorate of Payments with the Treasury Department in late 2008. The payments directorate does not offer normal banking services. The Nauru Insurance Corporation had been dysfunctional for several years.

i) Ensuring that public resources are not wasted, abused, or used improperly or extravagantly:

In 2008, the *Treasury Fund Protection Act 2004* was amended to extend to SOEs the authorisation policy on mortgage of public property and guarantees provided by the government. The policy reflected in the law provides for oversight of Parliament over government management of public funds and assets. The approval of Parliament for government loans or guarantees was mandatory under the policy during 2008.

Public expenditure is tightly controlled by the Treasury. All payments to Government were collected by the revenue office. Improved revenue collection was put in place during 2008 in the energy sector and import tariffs regime. Training of customs officers continued in 2008 to provide the officers with better skills and knowledge of customs revenue collection and border control issues.

Policies regarding the use or misuse of public properties such as the zero tolerance policy towards financial mismanagement and misuse of public vehicles,³⁸ are further examples under this category of leadership practice.

According to the Budget Paper for 2008-2009,³⁹ other efficiency measures undertaken in 2008 included:

- (a) working with the ADB on the establishment of a national trust fund,
- (b) work on a new landowners' trust fund that is distinct from the national trust fund,
- (c) a review of human resources needs and requirement in the public sector, and
- (d) discussions with a foreign investor to establish a fish processing plant on Nauru.

Damage caused by arsonists in 2008 to the phosphate industry infrastructure caused a setback in Government's effort to consolidate and rebuild the economy. The cantilever that delivers phosphate to ships from storage bins was partly damaged. Parts of the industry's drying units were also affected. As a result, the tailings or fall-out of dust was alleged to cause health problems to nearby residents. Outstanding land rental payments to landowners where the phosphate infrastructure is situated also further compounded efforts in improving economic

³⁷Radio New Zealand International, 31 July 2008.

³⁸See above Section 1(ii)(b) and 4(vii).

³⁹2007-2008 Budget (Nauru).



efficiency. The underutilisation of equipment which could draw in foreign exchange, such as the efficient use of two long liner fishing boats, which sat idle at the Nauru Fisheries and Marine Resources Authority, is an example of public resources being wasted.

Section 7:

Principle 7 – Diligence

In 2008, in general, leaders in Nauru strove to honour the principle of diligence.

i) Exercise of proper diligence, care, and attention:

There was no recorded lack of diligence, care and attention to management of the country by the leaders during 2008. The *Public Service Act 1998* mandates that public officials must be devoted to their duties. Further under the *Parliament of Nauru (Register of Interest Act) 2004*, Cabinet Ministers are expected to devote their time and talents to the carrying out of their public duties (s 4). In 2008, Cabinet met 67 times and deliberated on 361 items.

MPs, in particular Ministers, were concerned to ensure the schedule of work was on time and undertook a hands-on attitude, which is often misinterpreted to be interfering with a department's administration. For example, the Chairman of the NPRT frequently updated the Minister on all developments in the industry and operations. Similarly but at another level, the Chief Secretary chairs the meeting of Heads of Departments held once every month. Heads of Department also hold regular meetings with their officers.

ii) Always seeking to achieve high standards of public administration:

The *Public Service Act 1988* requires high standards of administration. Officers who are not efficient, capable, fit or competent are retired from the service by the Chief Secretary (s.55). In 2008, no public officer was forced to retire as stipulated by this Act.

In terms of strengthening human resource skills for the public service, training courses were conducted in accounting and financial management in 2008 for several departments on the MYOB program. Other training programs in the year were for the areas of health and education, and security and police for the Nauru Police Force. The latter was provided by the Australian Federal Police. Also, in partnership with Nauru Island Association of NGOs (NIANGO), members of the public and officials undertook several workshops on human rights advocacy and awareness.

Section 8:

Principle 8 – National Peace and Security

Nauru is comparatively a peaceful and secure place. Its size and isolation are both an advantage and disadvantage in terms of security. The Nauru Police Force, whose duties are defined in the *Nauru Police Act 1972*, is responsible for preserving public peace, preventing offences, injury to life and property, as well as a host of





other duties which cover immigration, quarantine, port and maritime regulations. There were several incidents and disturbances in 2008. The major disturbances to national peace were the damage to the phosphate cantilever infrastructure by arsonists, and the burning down of the police station and prison buildings, which were handled by the Nauru Police Force and MPs.

i) Promotion of peace, security and harmony:

Nauru leadership has introduced several items of legislation aimed at promoting and strengthening peace. These include the *Proceeds of Crime Act 2004*, the *Anti Money Laundering Act 2004*, *Illicit Drugs Control Act*, *Counter Terrorism and Transnational Organised Crimes Act 2004*, the *Proceeds of Crimes Act 2004*, and the *Mutual Assistance in Criminal Matters Act 2004*, amongst others. In December 2008, Nauru signed the Convention on Cluster Munitions and joined international action against manufacture and trade in munitions, weapons and land mines. In terms of building capacity, a Financial Intelligence Unit (FIU) was established to monitor the movement of money in and out of Nauru. Financial institutions in Nauru are required to report to the FIU on extraordinary monetary transactions. Sanctions for non-compliance are heavy. The registration of offshore banks has ceased and the Registrar of Banks no longer issue banking licences. The NPF is responsible for law enforcement. The national disaster coordinator is located with the police. Nauru does not have a military or paramilitary force.

ii) Refusal to give or obey an illegal order to use force against another citizen:

The Nauru Police Force has a policy of consultation and negotiation first before enforcing the law when dealing with a situation affecting peace and security. Education was a key part of the policy. Engaging the citizens in assisting the police in law enforcement was central to policing in Nauru throughout 2008.

An example of obeying an order whilst disregarding another occurred during the impasse in Parliament in March 2008. The police were ordered by the Speaker to remove two Ministers from the Parliament chambers. The Speaker's order was countermanded by the Commissioner of Police following consultation with Government. The police took no action in response to the Speaker's order, except for a Senior Commissioned Officer. The Officer was disciplined for disobeying the Commissioner's order not to intervene in the parliamentary proceedings and was subsequently dismissed from the Nauru Police Force.⁴⁰

Section 9:

Principle 9 – Respect for Office

There were no reported cases of disrespect for office.

i) Exercise authority and interact with people in a manner that is open, transparent, accountable, participatory and decisive but fair and equitable:

There are many examples of interaction of MPs with people in 2008. However, educating people to be aware of the review of the Constitution which commenced in 2006 and continued in 2008 is a special one because of its legal and historical significance to Nauru. In December 2008, the people were encouraged to seek out their MPs to discuss aspects of proposed changes to the Constitution.⁴¹

⁴⁰ *Parliamentary Select Committee Report* (Nauru) (December 2008).

⁴¹ *Government Media Release* (Nauru) December 2008.



With improvements in media services in 2008, through the establishment of an FM radio station and the enhancement of television programmes and contents, MPs and public officers including executives of SOEs were frequently interviewed on television during 2008, where they provided information on areas of their administrations and operations.

However, one instance of a policy being introduced without a legal basis is the measure to deduct a small amount from the salary of the head of a household towards payment of power bills. The selection process of heads of household was arbitrary and not consultative. In one particular case, a person who lived and worked overseas was selected without consultation with him and the head of the house where the person previously resided prior to going overseas.

ii) Seek to strengthen the integrity of a leader's Office and its effectiveness:

Instances of strengthening a leader's office in 2008 include the appointment of a new Resident Magistrate/Registrar of the Supreme Court. A new Secretary for Justice was also appointed in 2008 as well as a Director for Public Prosecutions, with the assistance of donors, to strengthen the administration of law and justice. In early 2009, a public defender was appointed to represent accused persons in court. The defender is a public officer employed by the Government. A Director of Audit was also recruited in mid 2008.





BIBLIOGRAPHY

I. Articles/Books/Reports

2007-2008 Budget (Nauru)

2008-2009 Budget Paper (Nauru)

2008 Government Media Releases (Nauru)

Budget Policy Statement 2009 (Nauru)

Charan, Ram, *Leadership in the Era of Economic Uncertainty* (2009)

Constitutional Review Commission (CRC), 2007

Ellis, Albert Fuller, *Ocean Island and Nauru: Their story* (1935)

National Sustainable Development Strategy 2005-2025 (Nauru) <http://www.forumsec.org/UserFiles/File/Nauru_National_Sustainable_Development_Strategy_2005_-_2025_Draft_Nov_2005.pdf> at 5 February 2008

Report of the Pacific Islands Forum Election Monitoring Mission to Nauru, April-May 2008 <[http://www.forumsec.org.fj/UserFiles/File/NAURU_ELECTIONS_REPORT_FINAL_1may08\(1\).pdf](http://www.forumsec.org.fj/UserFiles/File/NAURU_ELECTIONS_REPORT_FINAL_1may08(1).pdf)> at 1 September 2008

Lamour, Peter and Barcham, Manuhaia, *National Integrity Systems: Transparency International Country Study Report: Nauru 2004* (2004) Transparency International <<http://transparency.org/content/download/1678/8473/file/nauru.pdf>> at 15 August 2008

MacSporran, Peter H, *Nauru: The Constitution* (2007)

Parliamentary Select Committee Report (Nauru) (December 2008)

Public Notice on Aerodrome and Government Land Rent Payment, 19 January 2009, (Nauru)

Report of the Commonwealth Commission of Inquiry 1961

Report of the Select Committee on Constitutional Amendment Bills (Nauru) (2009)

Stephen, Marcus, President of Nauru, 'Nauru' (Statement delivered at the 63rd United Nations General Assembly, New York, 14 September 2008)

National Sustainable Development Strategies: National Assessment Report (2006) <http://www.un.org/esa/sustdev/natinfo/nsds/pacific_sids/nauru_nar.pdf> at 5 July 2008



2. Case law

Akepa v Detenamo Land Appeal No. 07 of 1977

Clodumar v the Chief Secretary (1985) LRC (Const) 1123

Eobob v Adimim Civil Action No. 16 of 2005 [2005] (unreported)

Harris v Curator of Intestate Estates (2002) [Misc. Cause No. 3]

In re Article 36 of the National Constitution [2008] NRSC 13 Constitutional Reference No. 2 of 2008 (20 December 2008)

In the Matter of Articles 11 & 12 of the Parliament of Nauru (Register of Interest) Act 2004 [2006] NRSC 11 Misc Cause No. 01 of 2006 (20 December 2006)

In the matter of Article 55 of the Constitution Constitutional Reference No. 1 of 2003

In the Matter of Article 55 & 45 (and Article 36 & 40) of the Constitution [2008] NRSC 7 Constitutional Reference No. 1 of 2008 (7 April 2008)

Republic v Akua (2008)

3. Legislation

Adoption of Children Ordinance (Nauru)

Aerodrome (Acquisition of Land) Act 1952-1968 (Nauru)

Anti Money Laundering Act 2008 (Nauru)

Audit Act 1973 (Nauru)

Births, Deaths and Marriages Ordinance 1957-1966 (Nauru)

Constitutional Convention Act 2007 (Nauru)

Constitution of Nauru 1968

Constitutional Review Committee Act 2004 (Nauru)

Constitutional Review Committee (Amendment) Act 2007 (Nauru)

Counter Terrorism & Transnational Organised Crime Act 2004 (Nauru)

Counter Terrorism & Transboundary Organised Crimes (Amendment) Act (Nauru)

Custom and Adopted Laws Act 1971 (Nauru)

Customs and Adopted Laws Act 1971-1976 (Nauru)

Customs Tariffs (Amendment) Act 2007 (Nauru)

Electoral Act 1965-2007 (Nauru)

Facilitation of Australian Assistance Act 2004 (Nauru)

Food Safety Act 2005 (Nauru)

Illicit Drugs Control Act 2004 (Nauru)

Illicit Drugs Control (Amendment) Act 2008 (Nauru)

Lands Act 1976 (Nauru)

Long Term Investment Fund (Sequestration) Act 2004 (Nauru)

Mutual Assistant in Criminal Matters Act 2005 (Nauru)

Naoero Citizenship Act 2005 (Nauru)

Nauru Lands Committee Ordinance 1953-1963

Nauru Phosphate Royalties (Payment and Investment) Act 1968-2001

Nauru Phosphate Royalty Trust (Amendment) Act 2009

Nauru Phosphate Royalty Trust (Payment & Investment) Act 2008

Parliament of Nauru (Register of Interest) Act 2004

Parliamentary Pensions Act 2008 (Nauru)

Parliament Salaries & Allowances Act 2008 (Nauru)

Price Control Act 2004 (Nauru)

Prices Regulation Act 2008 (Nauru)

Proceeds of Crime Act 2004 (Nauru)

Public Accounts Committee Act 1992 (Nauru)

Public Service Act 1998 (Nauru)

Republic of Nauru Proceedings Act 1972

Social Services Ordinance 1965-1967 (Nauru)

Treasury Fund Protection Act 2004 (Nauru)

Treasury Fund Protection (Amendment) Act 2008 (Nauru)

4. Treaties

Convention on the Rights of the Child, Convention Against Torture, open for signature 4 February 1985, 1465 UNTS 85 (entered into force 26 June 1987)

Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 530 (entered into force 2 September 1990)

Convention on the Rights of the Child: Optional Protocols on the Sale of Children, Child Prostitution and Child Pornography, opened for signature 25 May 2000, 39 ILM 1285 (entered into force 18 January 2002)





Convention on the Rights of the Child: Optional Protocol on the Involvement of Children in Armed Conflicts, 2220 UNTS 161 (open for signature 25 May 2000, (entered into force 12 February 2002)

International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

International Covenant on Civil and Political Rights: Optional Protocol, opened for signature 16 December 1966, 999 UNTS 302 (entered into force 23 March 1976)

International Convention on the Elimination of Racial Discrimination, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969)

The Convention on Cluster Munitions, opened for signature 3 December 2008

5. Other Sources

'Nauru Parliament Meets in Torchlight', ABC <<http://www.abc.net.au/ra/news/stories/200803/s2197957.htm>> at 27 March 2008

'Nauru Declares State of Emergency and Fresh Elections', ABC <<http://www.abc.net.au/ra/news/stories/200804/s2220808.htm?tab=latest>> at 15 July 2008

Frankel, Jon, 'Pros, Cons of Political Party Legislation in Pacific' (Address at seminar on Land, Politics and Development in Melanesia, Honiara, Solomon Islands, 29 July 2008)

Gimein, Mark, 'Hell in the Pacific', *The Big Money*, 30 April 2009 <<http://www.thebigmoney.com/articles/money-trail/2009/04/30/hell-pacific>>

Kirby, Justice Michael, 'Public Funds and Public Power Beget Public Accountability' (Speech delivered at Corporate Governance in the Public Sector Dinner, High Court of Australia, Canberra, 9 March 2006)

'Police Call on Kids to Help Quell Violence in Nauru', *News.com.au* <<http://www.news.com.au/story/0,27574,23346655-401,00.html>> at 5 April 2008

Mercer, Phil, 'Nauru President Calls Snap Polls', *BBC News, Sydney* <<http://news.bbc.co.uk/2/hi/asia-pacific/7353783.stm>> at 14 July 2008

'Pacific Paydirt', *Landline Report*, 8 December 2008 <<http://www.abc.net.au/landline/content/2006/s2176130.htm>> at 5 January 2009

Micronesiandyssey99, <http://www.micronesiandyssey99.com/?page_id=74> at 10 December 2008

'Nauru Police Station Attacked', *Pacific Magazine*, 10 March, 2008

Radio Australia, 23 February 2008

Radio New Zealand International, 4 March, 2008

Radio New Zealand International, 11 and 20 April, 2008

Radio New Zealand International, July 31, 2008

Seneviratne, Kalinga, 'Oceania: Nauru turns to dust', *Asian Times Online*, May 26 1999 <www.atimes.com/oceania/AE26Aho1.html> at 15 October 2008

'Nauru: A Failed State', The Hive, 3 February 2008 <<http://wellingtonhive.blogspot.com/2008/02/nauru-failed-state.html>> at 10 July 2008

