

PALAU

Introduction

For the recent period, Palau has had a rather complicated political history. The Palau archipelago is made up of one atoll and four major islands. Palau has about 20,000 people (including non-citizen foreign workers). Having been a Spanish, German, and Japanese colony, Palau became part of the first and only strategic United Nations Trust Territory of the Pacific Islands (TTPI) in 1947 under the administering authority of the United States (U.S). With the adoption of a home-grown constitution by the island people in July 1980, the Republic of Palau became a semi-self-governing entity (still officially a U.N. trust territory), subject to the authority of the High Commissioner of the TTPI. Since November 1980, separate legislative and executive offices have been popularly elected at the national level every four years, with 2008 being the latest. A separate judiciary was established as required by the Constitution in early 1981, giving Palau a presidential form of government of separate executive, judicial, and legislative branches. After the ratification of the Compact of Free Association agreement (the ‘Compact’) between Palau and the U.S. in 1993, Palau declared its independence and regained its sovereignty in 1994 with the signing of the Compact and an official Declaration of Independence.

Palau’s Compact with the U.S. establishes government-to-government free association, a political status recognised by the United Nations. The Compact provides Palau with economic assistance in exchange for options on land for U.S. military use and a 50-year denial right, whereby the U.S. has unrestricted authority to exclude any foreign military forces from entering Palau’s territorial waters or air space. As a result of the Compact, Palau declared its independence in 1994 and in that same year gained admission to the United Nations as its 185th member. Palau’s constitution-writing experience, the regularity of elections to national offices, its numerous referendums on the Compact, its new political status of free association, and its relations with other foreign nations since independence have been keen expressions of self-determination and nation-building.

A number of corrupt activities took place during this period prior to independence (1981-1993) such as the IPSECO pay-offs and lately, the Pacific Savings Bank (PSB) collapse of 2006, but generally the years between 1980 and 2004 have been relatively free of major corruption scandals, or corrupt practices have been well hidden and escaped public attention, as was the case for some years by the PSB Board and officers. Nonetheless, the Republic of Palau’s new challenge has been the establishment of good leadership, good governance, transparency and greater economic self-sufficiency. These goals have, on occasion, been jeopardised by instances of corruption at local and national levels, as well as within the police force and civil service. Each time, however, *“the canoe has been turned right-side up”* – an expression of both traditional and current values.



The Palau legislature, the *Olbiil era Kelulau* (OEK), is bicameral, with 16 Congressman in the House of Delegates and 13 Senators in the Senate. Palau has a Presidential system of Government.

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:

a) Allow for peaceful and lawful transfer of power;

The transfers of political power after the 2008 election were without trouble.

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 Judiciary is independent and has a strong reputation for fairness and impartiality.¹ The Palau Judiciary is modelled on the US system, where members of the Judiciary are selected by the Judicial Nominating Commission which then presents their names to the President for action.² The Judiciary is fearless and effective in issuing justice. Many leaders, including police officials, senior officials and members of the OEK charged with various corruption offences have been convicted and jailed.³ Justices can be impeached for ‘the commission of treason, bribery, other high crimes, or improper practices, or on the grounds of his inability to discharge the functions of his office’ by a vote of the OEK.⁴ In practice however, this has not happened.

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

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

The judgements of the courts are respected by Palau’s leaders. Both the Supreme Court and lower court have a respected reputation for being honest, impartial and fair. Renown cases from the past, which lend support to the fearless reputation of the court include the assault by the high chief of Koror (Ibedul) on an American lawyer in 2003, which later ended in a conditional presidential pardon, and the 2007 case where two Senators who were found guilty of assault.

b) Enforcement of lawful instructions and lawfully created policies;

In general, leaders seek to enforce lawful instructions and lawfully created policies, including preventing laws promoting transparency and accountability from being repealed.

For example, the attempt in 2007 by a former President of Palau in proposing a law to deny Palauans their right of access to reports, documents and work products of the Compact Review Commission, the CRC.⁵ This right to access official information is provided in the Constitution. Article IV, Section 12 of



¹Shuster, Donald R, *National Integrity Systems Transparency International Country Study Report Palau 2004* (2004) 14.

²Ibid, 30.

³Ibid.

⁴*Constitution of the Republic of Palau* art X, s 10.

⁵*Tia Belau* (Koror), 22-28 June 2007, 1.





the Constitution states that “A citizen has the right to examine any government document and to observe the official deliberations of any agency of government”. The proposed amendment to deny citizens this right was based on the notion of the ‘Republic’s national interests’. The proposal was passed by the House of Delegates but soundly defeated in the Senate.

Another example of a leader in not complying with the law and where relevant authorities enforced the law, is the alleged unauthorised loans made by a former Palau Head of Mission to the U.S. These loans were first revealed by *Tia Belau* newspaper in August 2008,⁶ and again in December 2008.⁷ The loans were alleged to have been arranged with the Riggs Bank and Hong Kong Shanghai Banking Corporation (HSBC) in Washington, D.C. The first loan of some \$160,000 was arranged in 2002 and the second loan estimated to be \$20,000 was arranged in 2007. These loans were discovered by the Palau Public Auditor who determined that they were unauthorised and were outstanding. The Senate’s Committee on Ways and Means and Financial Matters of the National Congress conducted an investigation and concluded that the diplomat’s action violated Chapter 17 of the Palau National Code. They found that the diplomat had “No authority to exceed appropriations, no authority to take loans and no authority to act extra-legally”. Charges are pending.

Government authorities also ensure and uphold lawfully created policies irrespective of a leader’s office or position, as was the case of a President of Palau and others who were alleged to have breached the country’s environmental law.⁸ The Palau Environmental Quality Protection Board (EQPB) on 12 August 2008, issued the President and others a notice of violations of the country’s environmental law in constructing the President’s new two-story house in Choll, Ngaraard State, without obtaining permits for moving earth, installation of toilet facilities and a waste disposal system, and the use of an outdoor latrine without permit.⁹

Palau’s most publicised case of corruption was the collapse of the Pacific Savings Bank (PSB) in November 2006. Because of the complicated nature of bank failures and the reported intentional destruction of documents by bank insiders prior to the collapse, action against the former bank board members and officers was delayed for months. An independent counsel from Houston, Texas was hired by the government to investigate this matter and an interim report was submitted on 30 May 2008. The interim report found that the responsibility for the bank collapse was caused by ‘the criminal, improper, illegal and fraudulent activities of its directors and officers through insider and related party loans, dubious investments, expenses and other allowances.’ The independent counsel filed charges against a former President and Chairman of the Bank’s Board of Directors, the Minister for Finance, and a member of the House of Delegates, other officers of PSB, and members of the Board of Trustees of Palau’s Civil Service Pension Plan. The charges were ‘in relation to the Pension Plan’s placement of US\$1 million into the Bank prior to its collapse in September 2006’.¹⁰ The Pension Plan Board is accused of knowingly failing to safeguard and ensure the preservation of the US\$1 million of pension plan funds and thereby ‘enabling the PSB directors and officers to continue to deceive the public with regards to its financial condition.’

⁶ *Tia Belau* (Koror), 15-21 August 2008, 1.

⁷ *Tia Belau* (Koror), 1-7 December 2008, 6.

⁸ *Tia Belau* (Koror), above n 6.

⁹ ‘EQPB Cites TR for Violation of Environmental Law’, *Tia Belau* (Koror), 15-21 August 2008, 1, 14.

¹⁰ *Tia Belau* (Koror), 15-21 February 2008, 1.



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

The former President's administration allegedly ignored procurement regulations and allegedly subverted the Public Service System by hiring some 30 employees for his office, of which 28 of them were on special contracts so that they could be paid at rates above what the Public Service System allowed. A second special contract was issued to a security company to provide security for the National Capitol complex. This was allegedly done without announcement or open bidding, in violation of the Government's procurement procedures. The contract has since been terminated by the current President. Policemen now provide security for the National Capitol in Melekeok.

Another case of alleged violation of the law happened on 19 December 2008, when President Remengesau issued Directive No. 08-04 in awarding a contract to the Belau Airport Security Company (BASCO) for border control, airport screening and security services. The awarding of this contract is alleged to violate the Government procurement regulations because it was not publicly advertised or opened to competitive bidding.¹¹

In his 'Progress Report' of 20 April 2009, the President explained the alleged wrongdoings of the former administration that violated Palau's Public Service System on recruitment of individuals on special contracts.¹² He reported that:

Approximately 1,820 of the employees are employed by the Executive Branch. Of those, about 1,570 were regular civil service employees and about 160 were contract employees, a ratio of about 10 to 1. In other words, contract employees made up about 9 per cent of the National Government workforce. The Executive Branch payroll for its 1,820 employees totalled about \$23.3 million. Of that sum, regular civil service employees received \$19.1 million in wages and the contract employees received about \$4.1 million in salaries, a ratio of about 4.5 to 1. In other words, contract employees, despite their much smaller number, received about 18 per cent of the total Executive Branch payroll.

Contract employees were paid higher compared to the Public Service employees. The President went on to report:

While I am sure that many of these contract employees are properly employed as contract employees by reason of their nationality or profession, I suspect that many were not and that they were employed as contract employees merely to avoid the limitations of the civil (public) service law or the regular civil service pay scale.

Many were political appointees.¹³

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

Refer to instances reported in section c) above.

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

Palau is, in general, a consensus seeking and forgiving society. Leaders rarely engage overtly in oppressive behaviour. Senior Government officials on some occasions do exert some influence in the general "island" way, especially if they have supervisory power over a person or a number of officials. An example of this is alleged to have occurred in 2005, when the President and his staff gathered signatures for his five initiatives. These initiatives were to change five areas of



¹¹ *Tia Belau* (Koror), 5-11 January 2009, 1-15.

¹² Johnson Toribiong, 'President's 2009 Progress Report' (delivered to the Senate and House of Delegates of the Eighth Olbiil Era Kelulau, Melekeok, Republic of Palau, April 20 2009).

¹³ Interview.





the Palau Constitution relating to citizenship, a one or two house congress, term limits for congressmen, a method to compensate congressmen, and a joint ticket for presidential and vice presidential candidates. The President's staff revealed that the signatures were highly sought after and essential, especially if one was a government employee.

- 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;**

Article 9, Section 9 of the Constitution states that:

No member of either house of the *Olbiil Era Kelulau* shall be held to answer in any other place for any speech or debate in the *Olbiil Era Kelulau*. The members of the *Olbiil Era Kelulau* shall be privileged in all cases except treason, felony or breach of peace, from arrest during their attendance at the sessions of the *Olbiil Era Kelulau* and in going to and from the sessions.

Two senators were allegedly involved in a fist-fight after hours with a third party and were charged, arrested, found guilty and fined. They did not resort to a claim of immunity.

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

Palau has an Ombudsman, but it is not an Ombudsman's Office in the traditional sense. Instead, the position resides within the Office of the President, with responsibility 'to receive grievances regarding services, programs and activities provided by the Government and its agencies; to review the merits(s) of each grievance and promptly seek to resolve and assist in the resolution of said grievances.' The office is not independent of the President and this does raise questions about its independence. The office was established on 5 December 1994, through the Fourth Addendum to Executive Order Number 116. Since then, the post of Ombudsman itself has not always been occupied. The Office of the Special Prosecutor has a long and successful history of acting as an accountability institution. The Ombudsman meets regularly with the Special Prosecutor, the Attorney General and the Chief of Police.

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

The Public Auditor is required by the *Public Auditor Act, 40 PNCA*, Section 201-280 to submit annual reports to the OEK, normally at least a year after the closing of books for any particular year. Copies of all audits are regularly forwarded to the President, the presiding officers of the National Congress, the Special Prosecutor, the Chairman of the Senate Ways and Means Committees, and other relevant Congressional committees. The Public Auditor also provides copies of its reports to the media, Public Library and Chamber of Commerce. Sometimes, audit reports are published in the local media.¹⁴ This process of publishing audit reports in the media has helped raise the level of public awareness and led to the filing of criminal charges against government officials for corruption. However, despite this the OEK does not usually debate the Public Auditor's reports unless there are major irregularities. Nonetheless, even if reports are not debated by the OEK, this does

¹⁴ADB-OECD, *Palau's Measures to Implement the Anti-Corruption Action Plan for AsiaPacific* (2007) 3.



not mean that action cannot be taken against individuals, should there be evidence of wrongdoing. The Public Auditor thus has powers to instruct government investigating agencies to perform activities considered necessary, by making requests to the office of Ministry of Justice or to the office of the Special Prosecutor. If criminal matters are found during the course of the investigation, then the Public Auditor, acting through the office of the Attorney General or Special Prosecutor, may initiate criminal action.¹⁵ In 2008, the Public Auditor carried out audits on the States of Aimeliik, Ngaraard, Airai, and Kayangel and found several weaknesses. The weaknesses ranged from lack of internal controls, non-compliance and poor record keeping and management systems. The timeliness of the audits is reasonable, given that the agencies being audited may not have all their documents in order.

iii) Protection of fundamental human rights:

Article IV of the Constitution protects the following fundamental human rights as summarised below.

- freedom of conscience or of philosophical or religious belief;
- freedom of expression or press. No bona fide journalists are protected from disclosing information obtained in their work;
- right to peaceful assembly, to petition the government for redress of grievances and association including the right to organize and to bargain collectively;
- right to be secure in his person, house, papers and effects against entry, search and seizure;
- equality under the law and to equal protection without discriminate on the basis of sex, race, place of origin, language, religion or belief, social status or clan affiliation;
- right to life, liberty, or property without due process of law ...including presumption of innocence until proven guilty and natural justice;
- compensation as a victim of a criminal offence as prescribed by law or at the discretion of the court;
- right of Palau citizen to enter and leave the country and to migrate within Palau;
- Prohibition of torture, cruel, inhumane or degrading treatment or punishment, and excessive fines, including slavery, involuntary servitude and exploitation of children;
- right of citizen to examine any government document and to observe the official deliberations of any agency of government; and,
- right for marital and related parental rights, privileges and responsibilities on the basis of equality between men and women, mutual consent and cooperation. Parents or individuals acting in the capacity of parents shall be legally responsible for the support and for the unlawful conduct of their minor children as prescribed by law.

In general, there were “no documented” abuses of human rights in 2008. This is consistent with the U.S. Department of State’s assessment wherein¹⁶ the government of Palau generally respected the human rights of its citizens, although there were problems in some areas. They include discrimination between persons on the basis of social status and sex, domestic violence and child neglect, and discrimination, including abuse of foreign workers from the Philippines. Foreign workers accounted for nearly 30 per cent of the population and 73 per cent of the paid work force. The high number of foreign workers also raised prospects for human trafficking involving persons from the People’s Republic of China (PRC), the Philippines, and Taiwan.¹⁷



¹⁵Public Auditor, Government of Palau, <<http://www.intosaiitaudit.org/mandates/writeups/palau.htm>> at 20 December 2008.

¹⁶U.S. Department of State, 2008 *Human Rights Report: Palau. Bureau of Democracy, Human rights, and Labor*, (2009) <<http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119052.htm>> at 1 April 2009.

¹⁷Ibid.



Principle 2 – Respect for Cultural Values, Customs and Traditions

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

The Constitution supports this Principle in several ways. The first is through the Preamble, which tasks Palauans to “renew their dedication to preserve and enhance their traditional heritage”. The second is according traditional law with authority comparatively equal status to statutes. The third is the integration of tradition law into modern governance, not only of traditional leaders’ position in relation to consulting with elected officials, but to structure organisation of government, including state governments, along Palauan traditions.

In respect of traditional leadership and the relative importance of traditional law, Article V of the Constitution provides the following:

Section 1. The government shall take no action to prohibit or revoke the role or function of a traditional leader as recognized by custom and tradition which is not inconsistent with this Constitution, nor shall it prevent a traditional leader from being recognized, honored, or given formal or functional roles at any level of government.

Section 2. Statutes and traditional law shall be equally authoritative. In case of conflict between a statute and a traditional law, the statute shall prevail only to the extent it is not in conflict with the underlying principles of traditional law.

In respect of matters of traditional law, Article VIII (s.6) of the Constitution states:

A Council of Chiefs composed of a traditional chief from each of the states shall advise the President on matters concerning traditional laws, customs and their relationship to this Constitution and the laws of Palau. No person shall be a member of the Council of Chiefs unless he has been appointed and accepted as a chief in a traditional manner, and is recognised as such by the traditional council of chiefs of his state...

All Presidents of Palau, except for one, have actively engaged with and sought the counsel of the Council of Chiefs.

The Constitution protects, recognises and guards a traditional system of government that is centuries old and which may seem complicated to non-Palauans. According to Smith (1990), *Kelulau* refers to important secret or sensitive political matters.¹⁸ *Kelulau* arranged and established the *kebekull* and *teleuechel* chiefly titles, made them sacred and empowered them. *Kelulau* installed them as the *klobak* (village governing council) of the various *beluu* (villages) of Palau and entrusted them with aspects of *kelulau* to enable them to preserve Palau. The basic traditional principles of respect and honour, praise or appreciation, compassion, cooperation and communication, good or right conduct, and unity were preserved, protected, practiced, pursued, and followed by all people. These principles are fundamental Palau values that still inform and make up the Palauan ethos.

Several authoritative studies have been published on Palauan traditions and customs, but these are not widely available. For some reason, traditions and customs are no longer taught in Palau’s public schools. Palauan language is however, constitutionally recognised as the national language. Palauans generally are unaware of the more esoteric features of tradition and custom, but are extremely knowledgeable on many common practices surrounding birth, death,

¹⁸DeVerne Reed Smith, *Traditional Laws and Principles of Palau* (1990) (unpublished).



and titles. Since 1980, disputes over chiefly titles have been brought before the court. One case was settled recently after being before the court for eight years. The chiefly title in dispute was the Ngatpang chiefly title.¹⁹ Some of the disputes over chiefly titles in recent times have led to confrontations between disputing parties, including, physical fights erupting at funerals and the squandering and taking of donation money.²⁰

Section 3:

Principle 3 – Respect for Freedom of Religion

i) Respect for religious belief and practice:

The last sentence of the Preamble of the Constitution says, “In establishing this Constitution of the sovereign Republic of Palau, We venture into the future with full reliance on our own efforts and the divine guidance of Almighty God”.

However, in respect of religious freedom, Article IV, Section 1 of the Constitution says:

The government shall take no action to deny or impair the freedom of conscience or of philosophical or religious belief of any person nor take any action to compel, prohibit or hinder the exercise of religion. The government shall not recognise or establish a national religion, but may provide assistance to private or parochial schools on a fair and equitable basis for nonreligious purposes.’

Unsuccessful attempts had been made in the past to limit the number of religious groups in Palau. The Roman Catholic Church, the Emmaus Mission (Evangelical), the Seventh-Day Adventist Church and the *Modekngei* (Palau’s indigenous religion) are the main religious groups practising in Palau. Eleven other religious faiths are active in Palau, including Islam. The proliferation in different religious faiths is consistent with the respect for freedom of religion and fundamental rights as set out in Article IV (s.5) of the Constitution which reads, in part:

The government shall take no action to discriminate against any person on the basis of sex, race, place of origin, language, religion or belief, social status or clan affiliation except for the preferential treatment of citizens, for protection of minors, elderly, indigent, physically or mentally handicapped, and other similar groups, and in matters concerning intr[a]state succession and domestic relations.’

The small Islamic community of 400 from Bangladesh continue to conduct prayers and the employers of some of these Bangladeshi workers do not see it inhibiting their work or the work of the company. There is no mosque in Palau where prayers are held.

Section 4:

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

i) Proper use of official powers:

The Constitution and legislations set out the official powers. In terms of governmental powers, Article II (s.3) of the Constitution on sovereignty and supremacy allows for the delegation of powers. This delegation of powers, which is not limited to defence, security, or foreign affairs, may be effected by:

“treaty, compact, or other agreement between the sovereign Republic of Palau and another sovereign nation or international organization, provided such treaty, compact or agreement shall be approved by not less than two-thirds (2/3) of the

¹⁹Ngatpang Chief Title Dispute Resolved’, *Tia Belau* (Koror), 22-28 September 2008, 1, 15.

²⁰Funerals are Out of Control’, *Tia Belau* (Koror), 1-7 August 2008, 8.



members of each house of the Olbiil Era Kelulau and by a majority of the votes cast in a nationwide referendum conducted for such purpose”.

In the case of testing, storage or disposal of nuclear, toxic chemical, gas or biological weapons intended for use in warfare, not less than three-quarters (3/4) of the votes cast in a referendum are required. The national government may also delegate powers to state government, as defined in Article XII of the Constitution. These powers include imposition of taxes, to borrow money to finance public programs and to settle public debts.

The official powers of the President are set out in Article VIII, Section 7 of the Constitution. They include but are not limited to the following:

- (1) to enforce the law of the land;
- (2) to conduct negotiations with foreign nations and to make treaties with the advice and consent of the Olbiil Era Kelulau;
- (3) to appoint ambassadors and other national officers with the advice and consent of the Senate;
- (4) to appoint judges from a list of nominees submitted to him by the Judicial Nominating Commission;
- (5) to grant pardons, commutations and reprieves subject to procedures prescribed by law and to suspend and remit fines and forfeitures, provided this power shall not extend to impeachment;
- (6) to spend money pursuant to appropriations and to collect taxes;
- (7) to represent the national government in all legal actions; and
- (8) to propose an annual budget.

In an emergency period such as civil rebellion, external aggression or natural catastrophe, the President may declare a state of emergency, including invoking necessary legislative powers to bring relief to the affected population.

The collective official powers of elected leaders in the *Olbiil Era Kelulau* are set out in Article IX, Section 5 of the Constitution. These are:

- (1) to levy and collect taxes, duties and excises, which shall be uniformly applied throughout the nation;
- (2) to borrow money on the credit of the national government to finance public programs or to settle public debt;
- (3) to regulate commerce with foreign nations and among the several states;
- (4) to regulate immigration and establish a uniform system of naturalization;
- (5) to establish uniform laws on the subject of bankruptcy;
- (6) to provide a monetary and banking system and to create or designate a national currency;
- (7) to ratify treaties by a vote of a majority of the members of each house;
- (8) to approve presidential appointment by a vote of not less than two-thirds (2/3) of the members of the Senate;
- (9) to establish diplomatic immunities;
- (10) to regulate banking, insurance, and issuance and use of commercial paper and securities, and patents and copyrights;
- (11) to provide for a national postal system;
- (12) to regulate the ownership, exploration and exploitation of natural resources;
- (13) to regulate navigation, shipping, and the use of navigable waters;
- (14) to regulate the use of air space;
- (15) to delegate authority to the states and administrative agencies;
- (16) to impeach and remove the President, Vice President, and Justices of the Supreme Court by a vote of not less than two-thirds (2/3) of the members of each house;
- (17) to provide for the national defense;



- (18) to create or consolidate states with the approval of the states affected;
- (19) to confirm or disapprove a state of emergency declared by the President;
- (20) to provide for the general welfare, peace and security; and
- (21) to enact any laws which shall be necessary and proper for exercising the foregoing powers and all other inherent powers vested by this Constitution in the government of Palau.

On actual reports of improper use of official powers by the President, refer to allegations regarding government procurement procedures and regulations and the recruitment of public servants on special contracts.

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

An example not exactly about correcting misleading information and not exactly about it being corrected at the earliest opportunity but which has not been left unaccounted is the case of some US\$7,000 which went missing from the National Treasury in 2006. The missing money was exposed by the press in July and September 2008 by national congressmen when several senators requested a report on this incident.²¹ The money remains to be recovered.

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

President Toribiong tries to address this situation by providing regular 'Progress Reports', which included alleged violations by the previous administration. Such information included the alleged contract recruitment scandal.²² Article VIII (s.13) requires the President to make an annual report on the progress of his administration.

iv) Giving priority to official duties over private interests:

The 2008 national election in many ways tested the priority of government officials on official duty over private interests. Government employees are required by Palau's electoral laws (Title 23, ch 11, s 1103) to resign from employment within two weeks of declaring their candidacy and also prohibited by law from using their office, influence, or authority to interfere with or affect the result of the elections.²³ Some official were alleged to have disregarded this requirement and openly and blatantly used government vehicles, time, duty travel, or facilities to campaign.

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

As the examples above show, some government officials do use public office for private gain.

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:

There were no examples to illustrate this case however the examples on election campaign by government officers and use of government resources as well as the failure of the Pacific Savings Bank in many ways gave rise to conflict of interest.²⁴



²¹ *Tia Belau* (Koror), 25-31 July 2008, 10; 1-7 September 2008, 1.

²² Johnson Toribiong, above n 12.

²³ *Tia Belau* (Kororo), above n 6.

²⁴ *Ibid.*





- 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:

In 2008, a criminal case was filed by the Palau Office of the Special Prosecutor (OSP) against the Governor of Melekeok State for allegedly misusing public funds. OSP charged the governor with 302 counts of criminal complaints for conversion of public funds and misconduct in office. It was alleged that the Governor received Melekeok state funds for 'official expenses.' The charges also alleged that most of the cheques issued to the Governor between 2002 and 2005, which amounted to over US\$190,000, and which were drawn from the defunct Pacific Savings Bank, lacked justification and were lacking proper documentation. Between 2002 and 2005, over US\$190,000 was falsely acquired.²⁵ The charges were withdrawn before the OSP resigned and departed Palau to take up an overseas appointment.

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:

Discrimination on the basis of race is legislated against in the Constitution, however in 2008, the election campaign was tainted with racial overtones. The example is the alleged rumour over the Chin/Seid ticket as Chinese and Jewish, against a pure Palauan ticket of Toribiong and Mariur, but this type of election campaign using race is uncommon in Palau.²⁶

One of the many official powers of the members of the *Olbiil Era Kelulau* is to provide for the general welfare, peace and security of the people. The public hospital is alleged to be chronically short of money to buy medicine that can easily prevent death and has over 20 medical practitioners for 14,000 people.²⁷

Palau's new president, Johnson Toribiong (who took office 15 January 2009), stated that he likes to remind his congressional colleagues that the National Capitol building is the 'People's House,' meaning they should truly act as public servants. A Palauan in an article in the *Tia Belau* also called on leaders to respect the people:

As Palauans, ordinary Palauans, grassroots Palauans, we can't allow our government to take us 'on a ride' that we can only achieve social progress only through political means... The issue of transparency is an issue of ultimate accountability to the people that you serve. It is alarming when we hear leaders say, 'it is okay because people have short memories.' Palau is a society that needs social re-incarnation, political repentance and cultural reconciliation. *This means that Palau must re-think about what it is losing socially, it must be politically transparent and deal clearly with the corruption that we see on a daily basis* (emphasis added)²⁸

Corruption and illegal practices include: attempted violation of a basic constitutional right, an ambassador who allegedly and without authorisation took out US\$180,000 of loans, Remengesau's violation of environmental law, the illegal BASCO and national capitol contracts, the missing US\$7,000 from the national treasury, and the Pacific Savings Bank collapse.

Palauans participate freely in the democratic process and at the national level voter participation ranges between 75 to 90 per cent. Elections at the national and

²⁵Palau Horizon (Koror), 5 March 2008.

²⁶Interview.

²⁷Interview, Dr. Ueki.

²⁸Tia Belau (Koror), 28 March – 3 April 2008, 9).



state levels are held regularly without fail and the Palau Constitution protects fundamental and traditional rights. Those State Constitutions that were not democratic in membership of their state congress had their congresses dominated by non-elected traditional chiefs – Airai, Melekeok, and Ngatpang. Each of these states was ordered by the Supreme Court to make changes. Melekeok and Ngatpang are still struggling with this issue. An aspiring politician stated that US\$20,000 is insufficient to finance one’s campaign at the national level and that vote buying is a practice that exists in many villages. Palau has a good Code of Ethics law but it has fallen into disuse of late, according to the new Special Prosecutor, Michael Copeland.

Section 6:

Principle 6 – Economy and Efficiency

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

Economic development expanded rapidly soon after Palau established its Compact relationship with the United States in October 1994. Tourism and its associated business has become the mainstay for Palau, with some 80,000 tourists visiting the country annually. Many Palauans work for the government as it pays better than the private sector. The population of foreign workers from the Philippines, Bangladesh and the Peoples Republic of China has increased correspondingly with the booming compact-driven economy. Palau has 3 independent newspapers. Palau imports far more than it exports and has an annual budget of about US\$56 million.

President Toribiong revealed an unfortunate example of lack of economy and efficiency in his 2009 Progress Report. He stated ‘On January 15th, as has become apparent in the last month, our Republic was suffering from years of inept and inefficient management of its Public Utilities Corporation. The lack of maintenance and the operational problems that were allowed to accumulate over the last several years have resulted in the inadequate supply of electricity and the blackouts that our Nation is suffering from today.’²⁹

Section 7:

Principle 7 – Diligence

- i) Exercise of proper diligence, care, and attention;

A number of actions lacking diligence by the previous administration in 2008 reported by the current President in his Progress Report, included the payment in 2008 of some US\$4.1 million to service debts incurred since 2002, which caused a shortfall for the new administration in 2008,³⁰ failure to pay some US\$400,000 for the country subscription fees in several international organisation,³¹ and defaulting on a loan repayment to the Mega Bank of Taiwan for some US\$2 million for a loan of US\$28 million, which jeopardised availability of future grants to Palau.³²

An example of lack of care, as well as a breach of the Constitution by a leader, was circumstances surrounding the disappearance in November 2008 of a high-



²⁹Johnson Toribiong, above n 12, 3.

³⁰Johnson Toribiong, above n 12, 3.

³¹Ibid.

³²Ibid 4.





powered rifle, allegedly in the trunk of then President Remengesau's vehicle. Article XIII, Section 12 of the Constitution prohibits private citizens, except armed forces personnel and law enforcement officers to have possession of firearms. It is a serious criminal offence with a jail term of not less than 15 years (see legal case *Ngemaes v. Republic of Palau* [1994] PWS 5; SC Crim A No.3-94 (11 August 1994)). According to the *Tia Belau*, 'The rifle [an M-14] and two magazines [21 bullets each] were allegedly placed in the trunk of the President's [Remengesau] Lexus Sedan when it was returned and exchanged with [the] AR-15 rifle either on November 17 or the day after on the 18th and that was supposed to be the last time the rifle was seen.'³³ The M-14 is yet to be found.

ii) **Always seeking to achieve high standards of public administration.**

The current administration in reviewing the practices of the previous administration, seeks to achieve high standards of public administration.

Section 8:

Principle 8 – National Peace and Security

i) **Promotion of peace, security and harmony:**

Palau has no armed force in the form of an army or navy.

Palau has diplomatic relations with over 40 countries. Recently, Palau established diplomatic relations with Indonesia, the world's fourth largest nation and a close neighbour to the south. Palau is a member of a number of international organisations such as the UN, the IMF, the World Bank, the Asian Development Bank and the Pacific Islands Development Bank.

It has cooperative relations with regional neighbours like the Federated States of Micronesia (FSM), the Republic of the Marshall Islands (RMI) and Australia in monitoring fishing vessels in its Exclusive Economic Zones. Palau has also provided policemen and policewomen for service in East Timor, Darfur, Solomon Islands (RASMI) and with the United Nations.

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

There were no instances of this kind of abuse of power in Palau in 2008.

Section 9:

Principle 9 – Respect for Office

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

Article IX (s.12) of the Constitution under fundamental rights, provides citizens with the right to examine any government document and to observe the official deliberations of any agency of government. Public hearings of the Congress have declined in the period 2004-2008, compared to other years. Citizens in Palau do have a constitutionally provided provision to participate in making of laws under Article XIII (s.3), which allows for citizens to enact or repeal national laws, except appropriation, by initiative. The petition however must be signed by 10% of the

³³*Tia Belau* (Koror), 12-18 January 2008, 6.



registered voters and would take effect if it is approved at the next general election by a majority of persons voting on the initiative. A law enacted by initiative cannot be vetoed by the President and can only be amended, repealed or re-enacted by another initiative.

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

Refer to current President's overall effort to improve the integrity of leaders' service to the people of Palau.

BIBLIOGRAPHY

1. Articles/Books/Reports

Palau National Code (1986)

Toribiong, Johnson, 'President's 2009 Progress Report' (delivered to the Senate and House of Delegates of the Eighth Olbiil Era Kelulau, Melekeok, Republic of Palau, April 20 2009)

2. Legislation

Constitution of the Republic of Palau

Public Auditor Act (Palau)

3. Other Sources

ADB-OECD, *Palau's Measures to Implement the AntiCorruption Action Plan for AsiaPacific* (2007) 3

'EQPB Cites TR for Violation of Environmental Law', *Tia Belau* (Koror), 15-21 August 2008, 1, 14.

'Funerals are Out of Control', *Tia Belau* (Koror), 1-7 August 2008, 8

'Ngatpang Chief Title Dispute Resolved', *Tia Belau* (Koror), 22-28 September 2008, 1, 15

Palau Horizon (Koror), 5 March 2008.

Public Auditor, Government of Palau, <<http://www.intosaiitaudit.org/mandates/writeups/palau.htm>> at 20 December 2008.

Shuster, Donald R, *National Integrity Systems Transparency International Country Study Report Palau 2004* (2004)

Smith, DeVerne Reed, *Traditional Laws and Principles of Palau* (1990) (unpublished)

Tia Belau (Koror), 22-28 June 2007, 1

Tia Belau (Koror), 12-18 January 2008, 6

Tia Belau (Koror), 15-21 February 2008, 1

Tia Belau (Koror), 18-24 July 2008, 1

Tia Belau (Koror), 25-31 July 2008, 10

Tia Belau (Koror), 15-21 August 2008, 1

Tia Belau (Koror), 1-7 September 2008, 1

Tia Belau (Koror), 1-7 December 2008, 6

Tia Belau (Koror), 5-11 January 2009, 1-15

'Traditional Court Should Be Set Up', *Tia Belau* (Koror), 6-12 October 2008, 8

U.S. Department of State, 2008 *Human Rights Report: Palau. Bureau of Democracy, Human rights, and Labor*, (2009) <<http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119052.htm>> at 1 April 2009

