

TONGA

Introduction

The Kingdom of Tonga consists of 169 small islands scattered over 640,050 square kilometres of Exclusive Economic Zone (EEZ). The total population is 101,134 with the majority (about 70% of total) residing on the main island, Tongatapu.¹ Tonga's economy depends on four major sources: agriculture (dominated by squash pumpkin exports to Japan); fisheries; tourism; and remittances (approximately 45 per cent of Tonga's gross domestic product). Remittances from Tongans abroad have sustained the Tongan economy over the past ten years against corresponding demands from government services and infrastructure, employment creation, and social problems, such as crime.

Tonga is a Constitutional Government under the King. The Constitution of Tonga passed in 1875 is one of the oldest written constitutions in the world.² The Government, under Part II of the Constitution, comprises of three branches; the King in Privy Council and Cabinet, the Legislative Assembly (LA) and the Judiciary. The fundamental structures of the Constitution formalise and strengthen the traditional authority of the King through land ownership, succession, and as Head of Government. The King also has power to dissolve the Legislative Assembly, sign treaties, veto legislation and declare martial law. The King is the Head of State chairing the Privy Council (highest Executive branch), consisting of the Prime Minister, 14 Cabinet Ministers and the Governors of Vava'u and Ha'apai. The term of Ministerial and Governorship appointments is at the discretion of the King. The Cabinet, chaired by the Prime Minister, runs the daily activities of Government.

The LA comprises 16 members of Cabinet, nine elected representatives of the Nobles, and nine elected People's Representatives. National elections are held every three years. The latest election was held in April 2008. Tonga is currently reforming its political system with particular focus on the number of People's and Noble's Representatives in the LA. Reforms to the political system are being considered and it is anticipated that the 2010 election will be held under a new constitutional arrangement.

The Judiciary consists of the Court of Appeal (Privy Council), the Supreme Court, the Magistrates' Court, and the Land Court. The judiciary is independent of the King and Privy Council although all Judges in the Privy Council are appointed by the King. The Chief Justice and High Court Justices are commonly foreigners (i.e., non-Tongans) recommended to and approved by the King in Privy Council. The Privy Council (Court of Appeal) deals with appeals in all cases except criminal cases, titles of nobles and disputes over estate. The Supreme Court exercises jurisdiction in major civil and criminal cases. Other cases, heard in the Magistrate's

¹Tonga Department of Statistics, *Tonga 2006 Census of Population and Housing* (2006).

²With subsequent major revisions in 1948 and 1967.



Court or the Land Court, may be appealed to the Supreme Court and then to the Court of Appeal.

Tonga is the only surviving monarch in the Pacific. Since King Taufa'ahau Tupou I united Tonga in 1845, four consecutive monarchs have acceded to the throne; King Siaosi Tupou V has been King since September 2006. Tonga's modern leaders are predominantly based upon traditional chiefly systems dated back to 950 AD, to the first Tu'i Tonga, 'Aho'eitu. The Tongan chiefly system has evolved through centuries of civil wars and Western influences shaping the power and structure of the Tongan constitutional monarchical system today. As a result, the highly stratified Tongan society, with the authority of the King (as the highest rank, is derived from highly respected traditional chiefly heritage) in the centre, reflects the socio-political and economic ways of life for many Tongans today.

Leadership in the Tongan context is generally understood as persons who hold political or public authority, which are respected by the general public. Good leadership is traditionally understood as being undertaken by leaders, accorded with traditional authority and power, respecting and observing the six Tongan core communal values of mutual love and generosity (*fe'ofa'aki*), respect (*faka'apa'apa*), reciprocity, consensus and cooperation (*feveitokai'aki*), loyalty and commitment (*mamahi'i me'a*), humility (*lototoo*), and sharing and fulfilment of mutual obligations (*fetokoni'aki*). These leadership values permeate through Tongan society.

However, over the past three decades, social development processes, intensified by globalisation and higher education for Tongans, coupled with the recent developments on political reform, have emphasised the adaptation and incorporation of Westernised leadership and democratic principles into the Tongan cultural context. These leadership principles focus on accountability, transparency, human rights, equality and integrity.

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 the peaceful and lawful transfer of power;

The Constitution³ provides for general elections to be held every three years. Elections are held only for the nine Nobles and nine People's Representatives respectively. The 14 Cabinet Ministers are appointed by the King. Elections are conducted in accordance with the *Electoral Act 1989 (and Amendments 2000)*. Voting is compulsory for every Tongan subject aged twenty-one or over.⁴ Voters (male or female) must be paying taxes, able to read and write, and must not be insane or disabled.

The latest election was held in April 2008. Seventy one candidates registered, including 28 in Tongatapu, 22 in Vava'u, nine in Ha'apai, eight in 'Eua and four between the two Niuas (Niuafu'ou and Niuatoputapu). The 2008 election was significant for three reasons. First, eight candidates were women, which constituted the highest number of women candidates ever to stand for elections.

³Constitution of Tonga clause 77.

⁴Constitution of Tonga clause 64.





Second, some 68,000 people registered to vote in 2008, which was the highest number of voters ever registered. Third, the political agenda was diverse, perhaps indicating a strong desire amongst aspiring politicians to be law-makers with a reformist agenda. The political process was peaceful and uninterrupted with many incumbent MPs retained by voters.

The Nobles of the realm are elected through the process of casting lots amongst themselves. They are not elected by universal suffrage. The Nobles of Tonga also cast their votes for their nine representatives to the Legislative Assembly. All 29 Nobles voted for three representatives to Tongatapu, two respective votes for Vava'u and Ha'apai and one each for the two Niuas and 'Eua. The majority of the incumbents were re-elected with some exceptions, (the former Speaker of the House) including two re-elected members for Tongatapu.

Two academics invited by the Government as electoral observers, in their report to Government, noted, amongst other things, problems with the electoral roll that could be considered for 2010.⁵ Their report found that the electoral roll was out-dated, had names of voters who had emigrated or were deceased. Moreover, a substantial number of registered voters also did not turn up at all.

The coronation of King Siaosi Tupou V took place in August 2008, when he was formally crowned as the 23rd King of Tonga. Following King Taufa'ahau Tupou IV's death in September 2006, transition of power to the new King was marked with traditional ceremonies and official celebrations. During the transition period, the Prime Minister held Executive power granted under the *Government Act 1988 (Cap 3)*, Section 3 until the 'coronation of the successor to the throne'.

The King, under Clause 51 of the Constitution, appoints the Prime Minister, the Minister for Foreign Affairs, the Minister for Lands, the Minister for Police and any other ministers he wishes to appoint. There is no other domestic legislation that specifically grants power to any other legal entity except the King, to remove or change the Government of the day.⁶

- 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 financial autonomy of the Judiciary and Legislative Assembly is not specified under domestic legislation. There is no evidence of Government policies implemented in 2008 that may have undermined the autonomy of the Judiciary and Legislative Assembly respectively.

The Minister of Finance, as prescribed by Section 7 of the *Public Finance Management Act 2002*, prepares and submits the expected public budget revenue and estimated expenditures for the new financial year to Privy Council through Cabinet for approval. The approved estimates are submitted thereafter to the Legislative Assembly.

The official budget expenditure for the Judiciary is covered under the Ministry of Justice annual expenditure budget. The Judiciary is independent of the Legislature and in recent years, has undertaken reforms to handle cases in a timely manner. These reforms in processing and handling cases have been recognised by the World

⁵Tonga Broadcasting Commission.
⁶*Constitution of Tonga* clause 38 and clause 76.



Bank, which awarded the Supreme Court of Tonga the World Bank Reformer of the Year Award in June 2008. This award is believed to be the first of its kind that has been granted to a court anywhere in the world. It recognises the effort of an organisation, institution or country in reforms that efficiently improve service delivery. The Tonga Supreme Court struck out 100 per cent of inactive cases, placed others on a strict timetable, introduced mediation and increased the jurisdiction of the Magistrate Court. About 178 economies around the world were surveyed by the World Bank.

In 2008, the King appointed the Judicial Committee of the Privy Council, consisting of four Law-Lords-in-Waiting, to advise him on the powers of the Monarch on the appointment of judges and His Majesty's counsel, clemency and commuting of sentences.⁷ Lack of public awareness on the role and function of these Law-Lords led one People's Representative to see it as potentially interfering with the independence of the Judiciary, its funding and remuneration.⁸ A *Judicial Services Act (revised 2007)* also addresses the remuneration of judicial officers, including employment of Supreme Court judges under contract. It also strengthens judicial education and deals with issues affecting more than one court.

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

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

In 2008, the decisions of courts and their independence were respected and upheld. The Supreme Court issued two judgments that involved Government,⁹ and a quasi-Government institution.¹⁰ In both cases, Government and the Ports Authority were defendants to their cases. Regarding the first case, the Supreme Court ordered the Government to pay the plaintiffs a total of TOP\$4,450 for damages claimed for false imprisonment and assault by senior police officers on the plaintiff during the November 2006 riot. In the case between a private maritime company and the Ports Authority, the private maritime company sought damages for negligence (TOP\$360,945.00) resulting in the loss of its vessel, although judgment was given in favour of the Ports Authority. Further, five judgments were issued by the Court of Appeal in 2008, which involved Government or Government-related institutions.¹¹ All were upheld by relevant Government institutions.

b) Enforcement of lawful instructions and lawfully created policies; and

Clause 56 of the Constitution provides powers to the King and the Legislative Assembly to enact laws. Bills are submitted for the Legislative Assembly's deliberation, and must be voted for by a majority three times before they are submitted to the King for his sanction and signature to enact it as law. The *Appropriation Act 2007/2008 of 2007* is an example.

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;

Clause 75 of the Constitution provides for the Legislative Assembly to impeach

⁷Minister of Finance, Parliament of Tonga, (translation of speech given 22 June 2009, parliamentary minutes).

⁸Ibid.

⁹Nifai Tavake v Kingdom of Tonga (2008) CV 296 of 2007.

¹⁰Walter Trading Company Ltd v Ports Authority (2008) CV 203 of 2006.

¹¹Walter Trading Company Ltd v Ports Authority (2008) AC 6 of 2008; Walter Trading Company Ltd v Ports Authority (2008) AC 6 of 2007; Olive Mangisi v Minister of Lands and MBf Bank Ltd (2008) AC 05 of 2007; Siosaia Fonua v Tonga Communications Corporations Limited (2008) AC 04 of 2008; Tonga Water Board v Pua mo Levuka Likiliki (2008) AC 11 of 2008.





any Privy Councillor, Minister, Governor, or Judge for breach of laws or resolutions of the LA, maladministration, incompetence, destruction or embezzlement of Government property. The process is also outlined for the accused.

Tonga passed the *Anti-Corruption Commissioner Act 2007* in September 2007. The law granted powers¹² to the Commissioner to investigate (s.10(1)) public officials including Ministers, MPs, LA employees, Judges, Magistrates or Judicial employees, Public service employees, Police Force and estate holders, for alleged corrupt practices, in accordance with the definitions of Section 6 – Corrupt Conduct. The Commissioner has four main functions under the Act (s.10(2), a-d). First, the Commissioner is granted the power to examine the practices and procedures of Government ministries and departments and other public authorities for the purpose of revising the practices to minimise potential corrupt practices. Second, the Commissioner is tasked to instruct and to provide advice to any person of a public entity on ways to reduced potential corrupt conduct. Third, is to educate the general public about the ‘evil’ of corrupt conduct. Fourth, is to encourage the general public to support programs on eliminating corrupt conduct.

The Commissioner does not have the power to prosecute, but has powers to investigate and submit reports of findings to the appropriate public entity. The King in Council appoints the Commissioner (s 5(1)) and in the case of Commissioner’s position being vacant or absent, the Cabinet shall appoint an Acting Commissioner (sch 1, s.2(1)).

An Australian barrister was appointed Acting Commissioner in June 2008, but has vacated office as of June 2009. Since beginning operation, the Office has yet to investigate any alleged corruption case in Government. The Anti-Corruption Commission was ‘dismissed as useless’ by a People’s Representative, ‘because it can’t investigate the King’.¹³ However, the establishment of the Anti-Corruption Office coupled with Government’s commitments on tackling corruption improved Tonga’s ranking in Transparency International’s 2008 Corruption Perceptions Index, moving Tonga from the 10th most corrupt country to 138th out of 180 countries in 2008.

A particular incident which prompted the Pro-Democracy Movement to call for the resignation of the Minister of Tourism was for his alleged misappropriations of public funds in January 2008. An investigation report by the Auditor-General, which was released two months later, confirmed that the Minister’s action were contrary to the relevant law. The Auditor-General’s investigation report found that a cheque for TOP\$3,000 from a foreign mission was deposited directly into the Minister’s personal bank account in breach of Section 16 of the *Public Finance Management Act 2002*. The Minister of Tourism was subsequently ‘disciplined’ by the Prime Minister and was ordered to ‘forfeit his salary for three months, severely reprimanded and issued with a final warning’. The Prime Minister explained that the Minister ‘had no ill intention to defraud Government and in fact no money was lost’ and therefore did not agree that it warranted resignation or dismissal.

In May 2008, a political party, *Langafonua Tu’uloa Party* submitted a letter to King Siaosi Tupou V challenging the legality of the four Cabinet Ministers who were appointed by the late King Taufa’ahau Tupou VI in 2005. The public proclamation stated that tenure of office of these four ministers¹⁴ should not be longer than the

¹²Section 13 – Incidental powers: The Commissioner has the power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of his functions. Sections 14-22 also indicate specific powers for the Commissioner.

¹³Radio New Zealand International.

¹⁴This includes the: Prime Minister, Minister of Tourism, Minister of Works and Minister of Youths and Sports.



period that they were elected to Parliament. These four Ministers did not stand down and no further action was taken.

Allegations of corruption were also reported by the local media in the Legislative Assembly. In November 2008, the Legislative Assembly discovered that a sub-clause that had not been passed by the House had appeared in a Gazetted Amendment to the *Constitutional and Electoral Commission Act 2008*. The effect of the new sub-clause was to bind Privy Council to appoint the Commissioners for political reform in a short (7 days) and fixed timeframe. There was confusion and finger-pointing inside the Legislative Assembly, but the House corrected the error without further investigation on the matter.

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

The Constitution in Clause 4 under the Declaration of Rights provides for every individual in Tonga being subjected to the same laws, which include freedom of press and petition.

For MPs, the *Constitution of Tonga (Amendment) Act No 18 of 1999* on Clause 70 covers offences against the Legislative Assembly. It lists the following - 'interference with, obstructs or impedes any member or officer of the Legislative Assembly in the discharge of his duty and the Legislative Assembly in the performance of its functions. Defamation of the Legislative Assembly and threats against MPs or their property as well as rescuing a person whose arrest has been ordered by the Legislative Assembly.'

The Minister of Finance in February 2008 was asked by the Government to step down. The *Matangi Tonga Online*,¹⁵ reported that 'the Minister of Information told the Tonga Broadcasting Commission that the former Minister of Finance was made to resign because he was 'out of step with the Prime Minister on numerous issues', including disagreements over the role of a new Expenditure Review Committee, established to advise on the budget for the next financial year. The Minister of Finance maintained that his Ministry held the sole authority and responsibility to draft public budget,¹⁶ while the newly established Committee saw it differently.¹⁷

Clause 51 of the Constitution states it is the prerogative of the King to appoint the ministers and on their length of service. Clause 15 empowers the Treasurer (Minister of Finance) to present an account of all moneys which have been received and expended in the year. The *Appropriation Act 2007/2008 (Act No 1 of 2007)* empowers the Minister of Finance to issue and make funds available according to this Act and in accordance to the cash-flow forecast agreed between the Head of the entity responsible for the Vote and the Minister of Finance. The Constitution provides further powers in Clause 19 and the *Public Finance Management Act 2002* sets out the responsibilities of the Minister of Finance covering financial management, budget and appropriations, public money, funds and trusts, borrowings, loans and guarantees and financial reporting.

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;

The Constitution (Clause 73) prescribes immunity to members of the Legislative

¹⁵*Matangi Tonga Online*, 3 March 2008.

¹⁶Section 7, 1-5 of the *Public Finance Management Act 2002* grants the Minister of Finance the power to prepare estimates and submit to the Legislative Assembly.

¹⁷No public information available for this Committee, however the establishment of the Committee may be an internal public reform initiative by Government established as a matter of Government Policy.



Assembly. MPs shall be free from arrest and judgment during sessions, except for indictable offences, as set out under Clause 11. There was no occasion in 2008 where a claim of privilege or immunity was invoked by a MP in the Legislative Assembly for behaviour of lower ethical standard than that reasonably expected of the leader by citizens.

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

In 2001, the Government passed the *Commissioner for Public Relations Act 2001* 'to investigate any decision or recommendation made, or any act done or omitted retrospectively relating to a matter of administration and affecting any person or group by any department defined by the Act by a public servant'. It seeks to address complaints from the general public towards public institutions and employees in public institutions.

The Commissioner for Public Relations can be removed or suspended by the King in Council for 'disability, bankruptcy, neglect of duty or misconduct'.¹⁸ The Commissioner also requires prior approval of the Attorney-General for summoning any persons to provide evidence crucial to an investigation.¹⁹ Certain exceptions are granted to the Attorney-General to withhold evidence including evidence that might prejudice national security or disclosure, deliberations and proceedings of Cabinet and Privy Council.²⁰ The Commissioner's investigations, reports, findings and recommendations are sent directly to the Minister or public authority involved for appropriate action.²¹ If no action is taken, the Commissioner may submit the report to the Prime Minister who shall table it to the Privy Council.²²

Section 18(3)(g) states that if the Commissioner is of the opinion that 'any practice on which the decision, recommendation, act, or omission was based should be altered'; he can submit his recommendations to the appropriate Department or Minister to follow. In June 2004, a Tongan Magazine publisher lodged a complaint to the Commissioner for Public Relations claiming that the *Media Operators Act 2003* gazetted on 27 November 2003 was not released to the public until after 24 December 2003. A regional media reported that when the Tongan Magazine eventually released the gazette online on 4 February 2004, a Government press release on 12 February 2004 labelled the online release as incorrect. However, when the Tongan Magazine publisher submitted his supporting evidence to the Information Unit of the Prime Minister's Office, it was ignored. The Commissioner for Public Relations requested the Chief Secretary and Secretary to Cabinet to apologise to the Tongan Magazine publisher for failing to respond to the publisher's complaints about her office. The Chief Secretary and Secretary to Cabinet ignored this request.

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

The *Constitution and the Public Audit Act 1988 (Cap 66)* prescribe the authority for the Prime Minister with the consent of Cabinet to appoint an Auditor-General to audit all public accounts. The Auditor-General examines public accounts and

¹⁸ *Commissioner for Public Relations 2001* (Tonga) s 6.

¹⁹ *Commissioner for Public Relations 2001* (Tonga) s 15(2)(c).

²⁰ *Commissioner for Public Relations 2001* (Tonga) s 16(1)(a-c).

²¹ *Commissioner for Public Relations 2001* (Tonga) s 18(3)(a-g).

²² *Commissioner for Public Relations 2001* (Tonga) s 18(4).



submits reports to the Prime Minister for subsequent submission to the Privy Council. The Auditor-General is accountable to the Prime Minister, and the Prime Minister can remove the Auditor-General by law.

The *Public Audit Act 1998* has since been replaced by the *Public Audit Act 2007*. Unlike the earlier Act, the 2007 Act empowers the Auditor-General to report by 31 March of each year to the Prime Minister, as well as the Speaker of the Legislative Assembly, annual reports, reviews and audits of public accounts.²³ The Speaker presents the report to the Legislative Assembly.²⁴ Moreover, the Auditor-General may publish and disseminate any annual report or any special report that has been presented to the Legislative Assembly. Section 26 of the *Public Audit Act 2007* also specifies and provides for the Legislative Assembly to appropriate sufficient funds to enable the effective and efficient administration of the Act.

According to the National Integrity Systems 2004 country report for Tonga, it was reported that the audit reports are produced on an annual basis and on time. However, in 2000, 2001 and 2002, auditing of certain Government institutions was not possible as 'the Treasury has not made available the current accounts to him in a form he can use'. There were reports of certain Government institutions' audit reports not being made available to the Legislative Assembly for a long while.

In October 2008, a decision by the Legislative Assembly followed a resolution from a People's Representative that the Auditor-General was to audit the spending of TOP\$5 million on the Coronation of King George Tupou V. The media reported that MPs and People's Representatives said there was some doubt about how the funds for the Coronation were used. To date, no reports or Government statements have been released on the outcome of that audit. The Government however, had put in place appropriate measures to cap expenditures at TOP\$5 million. The Tonga Broadcasting Commission²⁵ reported that 'more than 20 subcommittees for the Coronation will have to submit all their expenses to the Finance Committee who has oversight of all the financial expenses for the celebrations'. The 20 subcommittee members also agreed not to get paid for work rendered in order to minimise financial expenditure and also diversifying the overall public financial burden by sourcing the total expenditure budget (TOP\$5 million) from two consecutive financial years (TOP\$3 million from 2008/09 and TOP\$2 million from the 2009/10).

The Auditor-General's report into the investigation of alleged misappropriation of funds by the Minister of Tourism has not been disclosed to the public.

iii) Protection of fundamental human rights:

Part 1 of the Constitution provides for the Declaration of Rights. These rights consist of the Declaration of Freedom (Clause 1); Prohibition of Slavery (Clause 2); Application of law on every individual irrespective of status and nationality (Clause 4); Freedom of Worship (Clause 5); Freedom of the Press and Speech (Clause 7); Freedom of Petition to the King and the Legislative Assembly on laws (Clause 8); undeniable right or Habeas Corpus (Clauses 9-15); Freedom against forceful entry of premises (Clause 16); Governance without discriminating public benefits (Clause 17); and Protection of life, liberty and property for which citizens are taxed (Clause 18).

²³Public Audit Act 2007 (Tonga) s 24(1).

²⁴Public Audit Act 2007 (Tonga) s 24(2).

²⁵Tonga Broadcasting Commission, 14 April 2008.





In 2008, there was no legislation or Government policy on the right to information. Provisions of information are made available mainly from the Ministry of Information (see previous discussions) and websites created by Government departments. The Legislative Assembly disseminates legislations and more recently, since May 2009, the minutes of some parliamentary sessions are placed online through its website.²⁶ The Public Service Commission also permits members of the public access to information on vacancies, appointments and retirements of civil servants, as well as all its regulations and policies on public civil servants online.²⁷ Copies of Acts of Parliament, legislation and regulations are sold by the Government Printing Office. Information on civil servant recruitment, retirement and dismissal are also published in the Gazette. Members of Parliament are accessible to the general public at the MP's Legislative Office during session breaks.

The media in Tonga is relatively free. Despite a small market, Tonga has a diverse range of media. There are: three major private newspapers and two state-owned newspapers, one independent news website – *Matangi Tonga*, two television stations (one state-owned) and one private cable television company. There are three private radio stations and one state-owned radio station.

Freedom of expression is protected by the Constitution, although there have been reports of Government attempts to interfere with press freedom. Since September 2006, the Government has continued to extend 'Emergency Law' on certain parts of Nuku'alofa. The law basically deters social gatherings in the zoned area and also censors political programs on TV Tonga.

It was alleged that Government attempted to crack down on media freedom in January 2007, by temporarily closing the pro-democracy newspaper *Kele'a* without explanation. The editor at the time was charged with sedition and criminal defamation. However, claims were made by another private newspaper's (*Taimi o Tonga*) editor, Kalafi Moala, who stated that no Government crackdown on media took place in 2007 and that the *Kele'a* was temporarily closed down because it operated on Sundays in breach of the law. Kalafi Moala is now of Manager of the state-owned newspaper, *Kalonikali Tonga*.

In December 2008, the manager of a television station reportedly launched legal action against the Government, claiming 'destruction of its studios' by members of the Tongan Defence Services during the riots of November 2006.²⁸ The manager claimed that when they gained access to the TV station offices at the end of November 2006, 'much of their equipment had been destroyed'. The TV station is seeking compensation of TOP\$10 million. The Minister for Information however 'denied any knowledge of the alleged destruction and thought that the soldiers had camped outside the studios'. There is no report available on the progress or outcome of this legal proceeding.

Unlimited freedom of press was later qualified to allow for laws on such freedom to be enacted if it was considered necessary or expedient in the public interest, national security, public order, morality, cultural traditions of Tonga, privileges of the Legislative Assembly or to provide for contempt of Court or the commission of an offence. Clause 7(2) of the *Constitution of Tonga (Amendment) Act 2003* Sub-clause 3 also empowered the LA 'to enact laws to regulate the operations of the media'.

²⁶Parliament of Tonga, <<http://parliament.gov.to/>> at 1 June 2009.

²⁷Public Service Commission (Tonga) <<http://www.psc.gov.to/>> at 1 June 2009.

²⁸OBN TV was a popular station that aired programs supporting the pro-democracy movement debates and the 2005 civil servant strike.



During the 2008 election, allegations emerged of pro-democracy movement candidates' radio and television campaigns being censored by the Board of Television Tonga. Radio New Zealand International reported that the pro-democracy candidates said they were being denied access to public television and radio. 'Not only myself but of course there are other candidates whose radio programmes and television programmes were not allowed to be broadcast, and that is terrible. We strongly feel that the freedom of the press and the freedom of speech is very much affected, because of the emergency law and the restriction imposed by the Prime Minister's office'.²⁹ Radio Australia reported that the Government removed a series of paid political announcements from the TV station's schedule, less than two weeks before elections, which some candidates saw as censorship.³⁰ The Minister for Information contended that while they support freedom of speech '...it has to be done within guidelines', aside from the inexperience and poor interview skills of some Tonga Broadcasting Commission journalists.³¹

Other laws that cater for specific rights include the following: *Divorce Rules 1991*; *Guardianship Act 2004*; *Nationality Amendment Act 2007*; *Maintenance of Deserted Wives (Amendment) Act 1989*; *Maintenance of Illegitimate Children (Amendment) Act 1989*. Tonga has also acceded to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1972,³² and the Convention on the Rights of the Child (CRC) in 1995.³³

There were no reports of political prisoners, politically motivated disappearances, or the Government or its agents committing arbitrary or unlawful killings in 2008.³⁴ There were allegations by a MP in 2008 of alleged abuses of prisoners in jail by Tonga Defence Services following the November 2006 riot. Government denied these allegations and there are no reports available on any internal investigations of the alleged incidents.

Section 2:

Principle 2 – Respect for Cultural Values, Customs and Traditions

Tongan customs and traditions are closely knitted into the fabric of its Constitution, in particular, the Tongan patrimonial structure with three main classes of King, Nobles and Commoners. The Constitution provides clear distinctions of the powers and rights of the King as head of Government and owner of all land in Tonga. The King and the Nobles (Clauses 59, 60, 63) are defined in the Constitution as rulers, in line with Tongan values and cultures. The King and Nobles are not only seen as traditional leaders, but also guardians and providers for the common people.

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

The King is the traditional leader or '*Hau*' of the Tongan society. The Constitution reflects this traditional power and authority accordingly. For instance, the King has the power to appoint or remove the Prime Minister and Ministers (Clauses 50 and 51). The King can confer titles (Clause 44) and command the national armed forces (Clause 36). All land in Tonga is the property of the King (Clause 104). The King

²⁹Radio New Zealand International, 7 April 2008.

³⁰Radio Australia, 11 April 2008.

³¹Radio New Zealand International, April 14, 2008.

³²*International Convention on the Elimination of all forms of Racial Discrimination*, opened for signature 21 December 1965, 60 UNTS 195 (entered into force 4 January 1969).

³³*Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 530 (entered into force 2 September 1990).

³⁴U.S. Department of State, *2008 Human Rights Reports: Tonga*. Bureau of Democracy, Human Rights, and Labor (2009)

<<http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119060.htm>> at 3 April 2009.





may grant Nobles and talking chiefs (*matapules*) hereditary estates. Succession to hereditary estates and titles prescribes that only children lawfully born in wedlock may inherit, and the eldest male child shall succeed. Commoners are represented in the Legislative Assembly through general elections every three years (Clause 77).

In July 2008, the Coronation of King Siaosi Tupou V began with a mixture of modern and traditional ceremonies. The traditional ceremony of the *Taumafa Kava* was held in Nuku'alofa of which all the Chiefs and *matapules* in the whole of Tonga gather for the traditional ceremonial installation of the King. In addition, there was the unique traditional torch lighting ceremony, *Tupakapakanava*, for which students from most colleges in Tonga lined the Nuku'alofa foreshore in the evening to light bark torches, creating a 'line of fire' according the traditional honour to the King after installation.³⁵

Patrimonial values dictate that inheritance, in terms of rights to land, is passed down through male lineage. Section 111 of the Constitution prescribes that the eldest male child shall inherit land from his father. Further, the *Land Act 1988 (Cap 132)* also provides for rights of every Tongan male to be granted a tax and town allotment free of charge. Increasing population growth in recent times has put pressure on the capacity of Government to fulfil this legal obligation in a timely manner. This Section of the Constitution was amended to state that Tongan males over the age of 16 years 'may' be granted town and tax allotment, thereby removing the legal obligation. Chiefs' estates are required by law to grant tax or town allotments to subjects.

The political reform process also highlights respect for Tongan cultural values and traditions. In 2005, the pressure on Government for political reform intensified. The first significant move towards reform took place in the March 2005 election, when the late King Taufa'ahau Tupou VI appointed two elected Nobles and two elected Peoples' Representatives as Ministers. One of the two elected Peoples' Representatives is the current Prime Minister (the first commoner to become Prime Minister). The pressure for political reform continued from 2005 and 2006, with strikes and protest marches in Nuku'alofa reaching unparalleled levels. A National Committee for Political Reform (NCPR) report discussed in some detail, the importance of Tongan traditional class structures and history, Tongan way of life and values being maintained, and peace and prosperity being enhanced through dialogue.³⁶ The *Matangi Tonga* reported that the ancient practice of *Hu Lou Ifi* – people dressed in black wearing green *ifi* leaves on their necks and around their waist as a traditional way of apologising to the King, was enacted by the people from the village of Tatakamotonga.³⁷ It was reported that the people wanted to show their allegiance and support to the King and to 'apologise for their inability to prevent the burning down of the King's residence – *Uoleva*.' The Legislative Assembly established a NCPR in October 2005. The NCPR toured Tonga and also consulted with a majority of Tongans overseas in New Zealand, Australia and the United States. The NCPR submitted its recommendations on the views of Tongans consulted on the political future of the country in September 2006. It is the foundation of this report that recognised Tongan values and cultures as the cornerstones for a future reformed political system. The November 2006 riot had derailed the progress of the NCPR, which was eventually replaced by a new Tri-

³⁵*Matangi Tonga* (Tongatapu), 31 July 2008.

³⁶National Committee of The Kingdom of Tonga on Political Reform, Report (31 August 2006).

³⁷*Matangi Tonga*, 4 March 2008.



partite Committee in 2007, but the essence of the NCPR report on Tongan values on the traditional leadership system remained at the core of discussions.

There was no record or incident of any disrespect for the traditions and customs of the people by leaders in 2008.

Section 3:

Principle 3 – Respect for Freedom of Religion

i) Respect for religious belief and practice:

Respect for religious beliefs and practice is protected by the Constitution. This protection is found in Clause 5 'Freedom of Worship' under the 'Declaration of Rights' wherein individuals are 'free to practice their religion and to worship God as they deem fit in accordance with the dictates of their worship, consciences and to assemble for religious service in such places as they may appoint'. The qualification to this right is that it should not be used 'to commit evil and licentious acts' or 'do what is contrary to the law and peace of the land'.

Until the Act of 1971, the Constitution dictated that the Sabbath Day be kept holy. No person was allowed to practice his or her trade or profession or to conduct any commercial undertaking, except according to law (Clause 6).

The latest national population census (2006) shows that there are fifteen religious denominations in the country, with the Free Wesleyan Church continuing to dominate congregation numbers, accounting for 37 per cent of the total population. Six religious congregations were new inclusions to the 2006 census, including the Constitutional Church of Tonga, Gospel, Baha'i Faith, Hinduism, Islam and Buddhism whose followers all constituted less than one per cent of the total population.³⁸

There is no state religion in Tonga, although the Free Wesleyan Church has been the traditional church attended by the Monarch and the Royal Family. The main denominations, namely the Free Wesleyan Church, Roman Catholic Church and the Church of Jesus Christ and Latter Day Saints (Mormon) also provide primary and secondary education services.

There is no specific legislation that involves religion in Tonga, with the exception of two specific legal provisions. The first is the *Births, Deaths and Marriages Registration Act 1988* (and subsequent amendments). The Act grants legal rights to any religious ministers to solemnise marriages as part of the legal requirements under the Act. Second, Clause 6 of the Constitution states that Sunday is to be kept 'holy' – with no business conducted on this day, with some exceptions for national emergency, security and tourist regulations.

The Government generally respects religious freedoms, although the state-owned Tonga Broadcasting Commission (TBC) which operates Television Tonga (TV Tonga) and Radio Tonga follow certain guidelines towards the broadcasting of religious programs aired on TV and radio. The guideline sets boundaries that maintain preaching 'within the limits of the mainstream Christian tradition'. Private TV and radio stations operate freely, including broadcasting non-Christian religious programs.

³⁸Statistics Department, Government of Tonga, (2009) <<http://www.pmo.gov.to/tongastats/>> at 1 June 2009.



The Ministry of Education however, intervened and stopped the visit of the Scientology Church to Tonga.³⁹ Other non-Christian religions, such as Islam and Buddhism, are allowed to be practiced in Tonga. No public incident involving disrespect for religious beliefs and practices was reported in 2008.

Section 4:

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

i) Proper use of official powers:

The powers of the King in Clause 41 of the Constitution, define the King as ‘the Sovereign of all the Chiefs and all the people’. The person of the King is sacred. The King governs the country but ministers are responsible and the laws passed by the Legislative Assembly become law once it is signed by the King’. In discharging his functions, the King is assisted by the Privy Council, which is comprised of the Cabinet, Governors and others whom His Majesty sees fit (Clause 50 of the Constitution). In order for an Ordinance (Act) to be considered and passed by the King and Privy Council, the responsible Minister must sign it before it is tabled before the Legislative Assembly. The King and the Legislative Assembly have powers to enact laws (Clause 56). The Acts of the Legislative Assembly further define the powers of the Ministers, who are responsible for overseeing the implementation of these Acts. Regulations also help Ministers enforce the Acts. Governors cannot enact laws but are responsible for ensuring that the laws are enforced in their jurisdictions (Clause 55 of the Constitution).

Powers of the Judiciary are also set out in the Constitution (Clauses 84, 88, 89, 92, 101 and 103).

Following the November 2006 riot, the Government introduced Emergency Regulations in most parts of Nuku’alofa. As of June 2009, the Emergency Regulations have been extended over 30 times, although the area covered by the regulations has been reduced significantly over the last two years.⁴⁰ The Emergency Regulations provide powers for the Police Force to stop and search any vehicle without warrant and also give wider authority to make arrests.

There were reports that some international and local human rights organisations, as well as several MPs, criticised the Government’s extensions of the Emergency Powers as an ‘abuse of power and an attempt to frustrate the pro-democracy movement’. The Prime Minister, when interviewed on November 2008, stated that ‘there have been petitions from people particularly in those town areas that were devastated [by the November 2006 riot], asking that this [emergency regulations] be maintained’⁴¹, although some disagree with its imposition.

Recruitment, retirement and dismissal of civil servants is carried out in accordance with the *Public Service Commission Act 2002* (and subsequent amendments), the *Public Service Commission Code of Conduct 2003 Regulations* and the Public Service Commission Policy Manual 2006. The Chief Executive Officers (Head of Departments and Ministries) and staff are subject to these regulations. Information on retirements and dismissals is available to the public from the Public Service Commission.

³⁹Television Tonga, ‘Civil Servants Prayer Day’ 19 Friday 2009.

⁴⁰By law, the timeframe is 30 days and therefore must be extended every month.

⁴¹The Prime Minister’s Office website published on 16th September 2008 that the Town Officer of Kolofono’ou, Mr. Tevita Manu Fasi delivered a petition letter to the Prime Minister expressing their support for the extension of the emergency regulations.



Section 13(1) of the *Public Service Commission Act 2002* provides for the Commission with the consent of Cabinet to make all appointments for heads of department. Essentially, this empowers a Cabinet Minister to consent to an appointment of a CEO. All Cabinet Ministers are appointed and accountable to the King. On the other hand, the Public Service Commission's *Policy Manual 2006*, Section 6 – Recruitment point 6.2, states that 'all appointments shall be based on the principles of merit.' The principles of merit as set out in point 6.3 of the manual, includes technical and professional skills, leadership and administrative skills, work experience, academic qualifications and others. The Public Service Commission (PSC) recruits contracted CEOs in accordance with these policy guidelines, although there is widespread knowledge of nepotism and favouritism being prevalent, especially when the law provides Cabinet Ministers the discretion to approve the candidate recommended by the PSC. For example, the PSC procedure for recruitment of CEOs involves the short listing of the suitably qualified candidates, conducting interviews and recommending the names to Cabinet. The practice of nepotism and favouritism is also alleged to be widespread, including in the selection and appointment of board members of Government instrumentalities.

There were no prosecutions during 2008 for bribery.

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

There was no recorded case regarding dishonesty on dissemination of information to the general public in 2008. The Information Unit under the Prime Minister's Office was established as the central information hub of the Government in 1990. In July 2007, the Information Unit evolved to become the Ministry of Information with a new Minister appointed to oversee its functions and responsibilities. The long term vision of the Ministry of Information is that all public information and media needs of the Government are consolidated.⁴² Another Government website which effectively disseminated Government information was the 'Tonga-Now' website, but it has since closed and its activities incorporated into the Ministry of Information. The main objective of the new Ministry of Information is the provision of accurate information on a timely and balanced manner to the general public.

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

The case of the Minister of Tourism's misappropriation of public funds in 2008 was dealt with by Government in a transparent manner. The Auditor-General's investigation was made public, except for the outcome. The Prime Minister acted upon the findings of the Auditor-General to discipline the Minister of Tourism. These proceedings were made public and the Prime Minister announced his decision on TV and radio.

In September 2008, the Prime Minister announced that Tongasat, a business operation chaired by a prominent member of the Royal Family⁴³ had 'settled all of its outstanding debts to Government'. The company, which signed an exclusive licensing agreement with the Government to operate satellite communication

⁴²Ministry of Information, 2009.

⁴³A Satellite Telecommunications Company which leases satellite orbital slots. For more information, visit <<http://www.tongasat.com/>>





services, had attracted much attention and was frequently questioned by People's Representatives in the Legislative Assembly for its financial status and monies paid as dividends to the Government. Through its operations, the company was required to pay Government a share of its revenue. The company had regularly been audited since its establishment in 1988 and found to have contributed to Government more than TOP\$40 millions. In addition, the Government and Tongasat terminated the agency agreements (to pay a share of the revenue to Government) and also Tongasat's exclusivity rights. Nevertheless, Tongasat's website still claims exclusivity to providing its services (Viewed 14 June 2009).

iv) Giving priority to official duties over private interests:

The conduct of public civil servants is guided by the *Code of Conduct for Public Service Regulations 2004*. The Code of Conduct provides guidance to civil servants on the standards of behaviour required, based on lawful and honest performance of duties; respecting the rights of the public; and not bringing the Public Service into disrepute.

The Code of Conduct contains three principal obligations for civil servants. The first is the obligation of the employee to the Government in the performance of their official duties, which requires impartiality and competence, loyalty to Government, and maintaining 'confidentiality about dealings with any Minister or employees of a Department and the proper use of public resources and public money'. The second is the obligations of the employee to the general public, requiring respect for the rights of the public and refraining from conduct that might lead to conflicts of interest or integrity; most notably not asking for or accepting gifts from any persons for services rendered. The third is the general obligations of employees to respect the rights of the Government. This obligation requires employees to be accountable, non-discriminatory and recognise the diverse background of employees.

There was no official record of any incident during 2008 whereby private interest overrode public interest.

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

The authority and responsibility of Government is highly centralised. The Constitution provides executive authority to the King over Government. As such, Privy Council Members, Cabinet Ministers, Legislative Assembly and Civil Servants are required by their respective legislation and regulations to take an oath of 'loyalty' to the Monarch.

The *Rules for Proceedings and Standing Orders and Duties of the Legislative Assembly 2004* state that new Cabinet Ministers, Nobles or elected People's Representatives are required to take an oath of loyalty to the King in the Legislative Assembly. In March 2005, the current Prime Minister, Hon. Feleti Sevele was appointed by His Majesty King Taufa'ahau Tupou IV as Minister of Labour, Commerce and Industries. The procedure required his resignation as a People's Representative. The same process was observed in February 2006, when he was appointed as Prime Minister.



There is no specific or separate leadership code in existence in Tonga. The Constitution, in Clause 17, states that the 'King shall govern on behalf of all his people and not so as to enrich or benefit any one man or any one family or any one class but without partiality for the good of all his people of the Kingdom'. Members of Parliament are regulated by the Legislative Assembly rules whereas civil servants follow the *Code of Conduct for Public Service Regulations 2004* and the *Public Service Policy Manual 2006*.

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:

Clause 24 of the Constitution (*Public officer not to engage in trade*) states that it is not lawful for anyone holding any office under the Government to engage in economic activity without first obtaining permission from the King. While there was no public report of conflict of interest on this in 2008, numerous examples are alleged of civil servants engaged in trade (e.g., running of private businesses or involved with private sector for fees outside business hours). Moreover, there is no legal requirement for MPs and civil servants to disclose business interests. Nonetheless, the *Code of Conduct for Public Service Regulations 2004* clearly states that the obligations of the employee to the general public requires respect for the rights of the public and to refrain from conduct that might lead to conflicts of interest or integrity; most notably not asking for or accepting gifts from any persons for services rendered.

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:

The case on the misappropriation of funds by the Minister of Tourism in 2008 allegedly highlighted other allegations, in particular, the use of public facilities for personal purposes. Media reports alleged that the Minister used a Government vehicle and driver for 7 days for personal purposes in November 2007. Another allegation was that the Minister directed that a whale watching licence be issued to an applicant, against the recommendations of his officers, as the application did not comply with the requirements for such a licence. In response to these allegations, the Government, in a press release, challenged proponents to take legal action against the Prime Minister through the impeachment provision of the Constitution. No legal action was taken against the Prime Minister in 2008.

The *Public Service Commission Policy Manual 2006* provides limited privileges to the Chief Secretary and Secretary to Cabinet and Head of Departments. The privilege is specifically for the use of public transportation. The Head of Departments are authorised to use public transportation after office hours for their personal use. In addition, public housing is prioritised to Cabinet Ministers and Head of Departments first before other civil servants.

There was no other substantiated report of abuse of public facilities by leaders in 2008.



Principle 5 – Respect for Members of the Public

Code of Conduct for Public Service Regulations 2004, as discussed above, specifically obliges civil servants to respect the rights of the public, refrain from conduct that might lead to conflicts of interest or loss of integrity. In general, in 2008, the Government respected members of the public, although there were few reported exceptions. Tonga became the first Pacific Island State to take part in the United Nations Human Rights Council's Universal Periodic Review Process in May 2008. The United Nations Universal Periodic Review Working Group adopted Tonga's Report on 19 May 2008, in which Tonga committed itself to accede to core human rights conventions and treaties.⁴⁴

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

Clause 1 of the Constitution provides the declaration of freedom stating that 'people of Tonga... be free forever. And all men may use their lives and persons and time to acquire and possess property as they will'. Respect for human rights therefore is guaranteed by the Constitution. Further, civil servants are required under the *Code of Conduct for Public Service Regulations 2004*, amongst other appropriate conduct, to respect the rights of the public.

In November 2008, an MP and also an opponent of the Emergency Regulations alleged that some soldiers from the Tonga Defence Services 'beat up several persons who were meeting in a private home'. The *Public Order (Preservation) Act 1988* states that under Emergency Regulations, it is prohibited for public meetings of more than five people in a private or public place within an emergency regulated zone. No available report was found on the exact number of people apprehended and the place of gathering. By the end of 2008, no prosecution or reported disciplinary action against any Tonga Defence Services personnel on this particular instance was registered. The case of *Nifai Tavake vs Kingdom of Tonga* highlighted evidence of potential ill treatment of several people apprehended immediately after the November 2006 riot.⁴⁵

Non-Governmental Organisations are flourishing, with over 50 groups focusing on human rights, rights of women and children, and community development.⁴⁶ The National Centre for Women and Children focuses on domestic abuse and implements work programs that improve the socio-economic conditions of women in the community. The Government, through its office of Women within the Ministry of Education, Women and Culture, facilitates development projects for women and assists community development programs that focus on empowering women. In 2008, there was only one woman in Government, holding a position as Cabinet Minister (she resigned in 2009). Others include the new Minister of Information and Communications, Chair of the Public Service Commission, and several high ranking Government officials.

⁴⁴Foreign & Commonwealth Office, (2009) <<http://www.fco.gov.uk/en/>> 15 February 2009.

⁴⁵See above Section 1.

⁴⁶For full listing, visit <<http://civilsocietytonga.org/members.htm>>



Principle 6 – Economy and Efficiency

The National Strategic Development Plan 8 (SDP8) sets out the socio-economic development plans for Tonga for 2008/2009. In 2008, the Government continued to implement public and economic reform programs initiated in 2000. The overall results show positive economic progress and improvements. Reforms in the Judiciary were recognised by the World Bank, who in June 2008 awarded Tonga the 'World Bank Reformer of the Year Award 2007'. Reforms in the telecommunications sector in opening it to competition in 2003 has increased the number of subscriptions, lowered prices and improved the quality of services. Tonga had the cheapest mobile tariff calls throughout the Pacific Region.⁴⁷ The introduction of the Consumption Tax as part of the Government's tax reform initiatives in 2006 had minimal revenue disruption. Internationally, Tonga was ranked 47th on a total of 178 economies by the World Bank's 'Ease of Doing Business Survey' for 2008. Tonga ranked 2nd among 10 Pacific Islands States included in the 2008 survey. Tonga had been ranked 85th in the United Nations Human Development Index (HDI) 2006 (revised again in 2008 but rankings remain the same), the highest rank of any Pacific Island State. The HDI index measures socio-economic development of people based on three major aspects: economic wellbeing, education level and health wellbeing.

Nevertheless, improvements in key public sector services such as education, health, and maritime transportation need to be done. An Asian Development Bank survey conducted in 2004 found that hardship, rather than poverty, best described the condition in Tonga since everyone seemed to have access to food.⁴⁸ Hardship due to limited access to markets, poorly maintained (or lack of access to) roads in rural areas, inadequate medical supplies and trained staff, and the high cost of water tanks and education services are some factors which hinder improvement in the overall quality of life of many Tongans. The public service was considered oversized, costly and unproductive. The overall economy has been underperforming in the last ten years. Only a handful of new businesses invested and the existing ones slowed to a standstill.

Furthermore, the year 2008 suffered two critical shocks, which hampered prospects for growth. First, the Government was recovering from two fiscal shocks caused by the civil servant strike in 2005 and the November 2006 riots. The civil servant wage settlement cost the Government an estimated TOP\$20 million,⁴⁹ whereas the November 2006 riot was estimated to cost around TOP\$112 million or roughly around 20 per cent of the gross domestic product.⁵⁰ These fiscal shocks placed immense pressure on the Government's coffers. Second, the global financial crisis impacted negatively on remittances from Tongans overseas, with the budget statement for 2007/2008 reporting a decline in remittances.

The Minister of Finance predicted a growth of 0.5 per cent for 2008/2009. Foreign direct investments and local business participation to the China Development Scheme Loan are cautious, due to the uncertainties in the political reform process.

Given this scenario, some observers cautioned the creation of new Government institutions, such as the establishment of a Law Commission and the appointment

⁴⁷ AusAid, *Pacific Economic Survey 2008* AusAid <http://www.ausaid.gov.au/publications/pubout.cfm?ID=8406_1805_1698_743_1462> at 1 June 2009 46.

⁴⁸ Asian Development Bank, *Priorities of the people: hardship in Tonga* (2004).

⁴⁹ Heather Young Leslie, 'Tonga Country Profile' (2007) 19(1) *The Contemporary Pacific*, 262-275.

⁵⁰ Ministry of Finance, Government of Tonga, *Budget Statement for Year Ending 30th June 2008: Budget Paper no.1 – Review of the Tongan Economy & Outlook 2007/2008* (2008) 15.





of four Law Commissioners in 2008, and a Land Commission. Moreover, the Office of the Prime Minister recruited four expatriate advisors to advise him on key capacities including politics, economic, reconciliation and civic education, especially when qualified nationals were available. A pay increase for Ministers and Civil Servants (10 per cent increase) and Heads of Departments (7 per cent increase) was passed in 2009 which may cost TOP\$77.4 million.⁵¹

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

The Government aligned its fiscal policies with SDP8, implementing the following policies to maintain macroeconomic stability:

- Completion of the revenue reform program;
- Reconstruction of Nuku'alofa;
- Implementing pro-poor policies; and
- Continuing the public sector reform program.

The Government however, re-prioritised its goals to reflect the fiscal challenges of the November 2006 riot, with the most urgent reforms in the short-term focused on social stability through law and order and political reform, productive sectors to be treated equally with social sectors and investment on infrastructure.⁵²

The *Public Management Act 2004* provides authority to the Minister of Finance to manage public funds, the procedures for handling public funds, and reporting mechanisms. The *Public Enterprise Act 2002* established the objectives, rules and procedures for managing state-owned enterprises. Clause 19 of the Constitution states that 'no money shall be paid out of Treasury nor borrowed nor debts contracted by Government by the prior vote of the Legislative Assembly'. The clause provides accountability on public expenditure to the Legislative Assembly. The Legislative Assembly however does not have in place a specific public accounts committee to deal directly with the appropriate management of public funds. The *Public Audit Act 2007* was passed by the Legislative Assembly, thereby protecting the independence of the Public-Auditor to submit annual audit reports and accounts to the Legislative Assembly and the Prime Minister. The Act gave opportunities to Members of Parliaments to comment on any audit report and recommendations.

Inefficiencies in budget expenditures and revenue collections are areas that need strengthening and improvement.

Section 7:

Principle 7 – Diligence

In 2008, leaders generally performed their duties with diligence, care and attention.

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

The *Public Service Code of Conduct Act 2004* and the *Rules for Proceedings and Standing Orders and Duties of the Legislative Assembly* provide required workplace values and behaviours expected of Head of Departments and Members of Parliaments respectively. However, a particular act of excessive diligence and care of Government leaders created internal conflict in a Government Ministry. In this

⁵¹Ministry of Finance, Government of Tonga, *Budget Statement for Year Ending 30th June 2009, Budget Paper 1-3* (2009).

⁵²Ministry of Finance, Government of Tonga, *Budget Statement for Year Ending 30th June 2008: Budget Paper no.1 – Review of the Tongan Economy & Outlook 2007/2008* (2008).



case, a former CEO stated that his Minister was responsible for policy making as well as administration (the Chief Executive Officer's job). Such attention and care to minor details of administration of the Department evenly, led to internal conflict between the CEO and Minister. Consultation between Cabinet Ministers and their CEOs are frequent. Departmental meetings between CEOs and senior staff are held at least once a week and for all staff; at least once a month. The frequency of meeting schedules tends to vary among Departments.

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

The Public Service Commission, mandated by its laws and regulations, oversees the recruitment and administration of human resources matters such as retirement, promotion and dismissal. A major recruitment process of Head of Departments took place in December 2008, when posts for five CEOs were advertised in several media outlets including internet, newspaper and radio. The requirements in terms of competency and experience were listed for each post. These posts were previously occupied, but their contracts were no longer renewed. No explanations were provided by the Public Service Commission on the need for new contracts.

In 2008, many civil servants undertook several professional and academic programs ranging from 2 weeks to 12 months, as part of the capacity building effort of the Government; many were supported and funded by donor countries, regional and international institutions. However, high staff turnover in public service continues to plague and affect capacity levels.

Section 8:

Principle 8 – National Peace and Security

The Emergency Regulations were extended throughout 2008, and peace and security were maintained throughout the year. The *Police Act 1988 (Cap 35)* authorises the Tonga Police Force to maintain 'law and order, preserve peace, protect life and property, prevent and detect crime and enforce all laws and regulations with which it is directly charged with'. The public's trust and confidence on the Tonga Police Force suffered significantly in its handling of the November 2006 riot, including allegations of police brutality on people detained in relations to the riots. The Government promised to conduct an internal inquiry but to date, no report has been released. Nevertheless, the Supreme Court, in December 2008, stated that it did not condone Police 'torture' and judged in favour of a plaintiff for claims of false imprisonment and assault. A 'Tonga Police Development Program' was signed between Tonga, New Zealand and Australia in July 2008, to review and reform the institution to better perform its public duties. Donors have pledged more than TOP\$4 million to the development program. The Tonga Police Force is responsible for peace and security in the country, although with the Emergency Regulations in place, the Tonga Defence Services can assist the Police Force if the needs arise.

i) Promotion of peace, security and harmony:

As reflected in the Ministry of Finance Budget Statement for 2007/2008, peace and security and political reform are the short-term priorities for the Government.





The imposition of the Emergency Regulations since November 2006 is aimed at maintaining peace and security in Nuku'alofa, however others have interpreted these extensions differently.⁵³

In the wake of criticisms of its poor handling of the November 2006 riot, the Police Force has undergone a reform program supported by the Governments of New Zealand and Australia. In April 2008, a New Zealand citizen was appointed as the Commander of Police Commander, a post left vacant since the resignation of the previous Tongan Police Commander shortly after the November 2006 riot. The Minister of Police sees the new appointment as 'essential for the community to be able to trust and [have] confidence in their police'. Since taking office, the new Police Commander has implemented several new initiatives and has been a positive influence on achieving Government's short-term goal of peace and stability.

The political reform has progressed cautiously since the riots of November 2006, testing the patience of some Tongans who desire to see the reforms, including political overhaul, speedily completed before the 2010 election. In closing the Legislative Assembly in 2006, the King reaffirmed his committed to the political reform. In pursuing this commitment, the Legislative Assembly passed the *Constitutional and Electoral Act 2008* in July 2008, which also established a Constitutional and Electoral Commission (CEC). Its mandate is to consider specific constitutional and electoral aspects for reform, and submit recommendations to the Legislative Assembly and Government. Five commissioners were nominated, chaired by former Tongan Chief Justice Gordon Ward. The key aspects of the Constitution reviewed included the roles of the Monarch, Privy Council, Cabinet, Legislative Assembly and the electoral system. Public submissions were invited to encourage communal participation on framing the best possible political structure.

The CEC submitted its interim report to the Privy Council and Legislative Assembly on the fifth of June 2009.⁵⁴ The major thrust of the recommendations recognised the wish from the majority of the people for greater representation in Government. The report also emphasised the need for further public consultation on the Commission's proposed changes and its impact on communities. In particular, it raised the question of how a change to the composition of the Legislative Assembly could result in establishing a new government with ministers that have no 'governing' experience. A new electoral system is expected to be implemented by 2010 election.⁵⁵

The *Anti-Corruption Commissioner Act 2007* was an important piece of legislation passed to investigate and tackle corruption. Tonga was ranked 138th out of 180 countries in Transparency International's – Corruption Perceptions Index 2008. Tonga was ranked 5th out of 6 Pacific Islands States included in the survey.

The Constitution authorises the King to make treaties with foreign countries. Tonga has signed and ratified several international treaties covering international trade, environment and the protection of children. In 2005, Tonga signed the multilateral trading agreement at the World Trade Organisation, which was ratified in July 2007.

⁵³See above section 4 i.

⁵⁴Office of the Constitutional and Electoral Commission, Government of Tonga, *Interim Report 2009* (2009).

⁵⁵The most significant and perhaps consensus can be drawn upon from all sides was, all members of the Legislative Assembly be elected (17 People's representatives initially proposed). A Prime Minister will be nominated by the House to the King to appoint and the Prime Minister may appoint his Cabinet Ministers from the elected representatives.



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

The Tonga Police Force is mandated by the *Police Act 1988 (Cap 35)*. The main function of the Police Force is ‘the maintenance of law and order, the preservation of the peace, the protection of life and property, the prevention and detection of crime and the enforcement of all laws and regulations with which it is directly charged’. There was no reported incident of illegal orders or refusal to follow orders for 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:**

Leaders in Government generally interact with the general public through limited channels. Most Government policies are communicated to the general public through press releases via television, radio or the Ministry of Information and Communication’s website.

Since 2006, the political reform process has provided opportunities for communities to participate. In June 2008, the Legislative Assembly passed an Act to establish the Political Reform Commission. The process of appointments of Commissioners was transparent and participatory, as the Chair was to be nominated by the Privy Council, one member to be nominated by Nobles, one member to be nominated by the elected People’s Representatives, and two members to be nominated by the Judiciary.

Following the November 2006 riot, the Government signed the ‘Reconciliation and Civic Education Project’ with the European Union in November 2007. This project focused on providing support through communal dialogue for people affected by the riots to overcome the experience. Extensive campaigns emphasising Tongan values were delivered through television and radio programs (twice weekly) and various district workshops. It covered five district workshops in the main island, Tongatapu and also five in the outer islands – Vava’u, Ha’apai and ‘Eua. The advisor to the Prime Minister and Head of the Reconciliation and Civic Education Project reported that in general, many people lack knowledge and awareness of the contents of Constitution, their rights under the Constitution, and how the Government operates.⁵⁶

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

Many initiatives have been undertaken to strengthen the integrity of a leader’s office. Perhaps, the greatest effort at the political level and in the political history of Tonga is the work that would follow-on from the report of the Constitutional and Electoral Commission, as it will impact on the quality of political leadership that will emerge to take the country forward. In this case, it seems that the extensive powers of the King may be reviewed and perhaps transferred to a political leadership, elected from a new electoral system to work under a new political system – one that has not been tested before in Tonga. Schedule 2 of the *Constitutional and Electoral Commission Act 2008* requires the Commission to

⁵⁶V P Afeaki, ‘Concluding Remarks’ (Speech delivered at the National Conference of Reconciliation and Civic Education, Tongatapu, 26 February 2009’, <<http://www.civiced.gov.to/pdfs/afeakiclosing.pdf>> at 15 June 2009.





enquire and report on two of the three branches of Government – the Executive and the Legislature as well as the electorate. Under review are the roles, functions, powers, duties and relationship between the Monarch, the Privy Council, the Prime Minister and Cabinet, as well as the composition, method of election and term of the Legislative Assembly. Also under examination, is the relationship between the Executive and the Legislature and the functions of the King in law-making processes, accountability, appointment of Prime Minister and ministers of Cabinet, motions-of-no-confidence and the electoral system. At the time of writing, the Commission had released its final report and recommendations. New integrity institutions such as the Anti-Corruption Commissioner and the Public Relations Office, as well as the independent Auditor-General, will serve to strengthen the integrity of leaders and enhance greater accountability.



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