

TUVALU

Introduction

Tuvalu consists of eight small main islands and has a population of around 11,000 people, with a land area of 21 square kilometres. It gained independence from Britain in 1978, after almost a century under colonial rule.

Tuvalu has a modified Westminster system of ministerial government, governed by a written constitution.¹ The Prime Minister and the Speaker are elected by a 15-member Parliament; there are no organised political parties. Individual qualities, and personal and community relationships are the main determinants in elections. Local related island issues dominate parliamentary debate. The political system itself encourages parochialism over national interest as Members of Parliament (MPs) are elected for the islands rather than at a national level.²

The return to traditional rule followed the enactment of the *Falekaupule Act of 1997* which gave statutory recognition for the *Falekaupule* and vested in the *Falekaupule* greater control over the activities and affairs of the islands.³

Tuvalu's economy is limited by its natural resources and relies heavily on external development assistance. Heavy dependence on external assistance has led to a degree of complacency in fiscal and financial management. This has led the Auditor-General to report that 'non-compliance with procedures set out in the Financial Instruction Manual' and '[a]dequate controls not being maintained on a continuous basis throughout the year' requiring serious attention.⁴

In 2009, the major sources of revenue included taxation revenues (AUD\$7m); fisheries licensing (AUD\$6m); sale of the domain name 'dot.tv' (AUD\$2m), miscellaneous sources (AUD\$4m), and aid grants (AUD\$9m)⁵. The disparity between total expenditure estimates and revenue sources is made up by reserves from the Consolidated Investment Fund (Government of Tuvalu, 2008).

The Tuvalu Trust Fund, established in 1987, is an essential component of the country's financial landscape. At the end of September 2008, both the total market value and the maintained value stood at AUD\$95 million and AUD\$109 million respectively. The current global economic crisis has affected the performance of the Fund. The international agreement setting up the Tuvalu Trust Fund (TTF) was signed on 16 June 1987, but the Fund itself was established some two months later on 21 August 1987, with an initial value of AUD\$27.1 million. New Zealand, Australia and Britain, collectively contributed just under AUD\$25 million, while Tuvalu invested about AUD\$1.6 million. Japan and South Korea made modest contributions. The striking success in the performance of the Fund led to the establishment of *Falekaupule* Trust Funds (FTF) for each of the main eight islands.

¹*The Constitution of Tuvalu 1986.*

²T Taafaki, 'Tuvalu' (unpublished draft paper presented for publication by the School of Political Science, Victoria University of Wellington, Wellington, 2009).

³*Ibid.* 'Falekaupule' literally means the house from where chiefs make decisions.

⁴Office of the Auditor-General, Government of Tuvalu, *Auditor-General's Report: Tuvalu Government Whole of Government Accounts, Year Ending 31 December 2007* (2009).

⁵Taiwan contributes about AUD\$6m.





The FTFs were designed to underwrite the costs of island local governments, encourage decentralisation, enhance capacity, and achieve a significant level of development finance for island communities.⁶

The Constitution provides for the operation of a judiciary and for an independent public service. It guarantees protection of all fundamental rights and freedoms and provides for the determination of citizenship.

Section 1:

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

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

Free, fair and open national elections are held every four years. Legislative provisions exist for addressing objections during any part of an election. Appointed officials from agencies such as the Police, Judiciary, Home Affairs, *Kaupule*, and the Prime Minister's Department assist to ensure the proper conduct of elections. Once known, the election results are immediately broadcast on national radio. The last national elections were held in August 2006; the next one will be held in 2010.

There are no organised political parties, however those not with the Government form an unofficial "opposition" group. Cabinet Ministers dominate debates in Parliament, mainly because of their privileged access to information and government resources, including support from appointed officials.

Tuvalu has a history of unstable government, with MPs frequently changing affiliation in order to form new coalitions. Currently, there are no sanctions for politicians who change sides. In 2008, the Constitution was amended to increase the total number of ministers from five to seven in a bid to avoid MPs changing sides too often and therefore ensure political stability. Previous governments had tried to establish a similar arrangement, albeit illegally, with the appointment of Special Ministerial Advisors (SMA). It did not work. The three Prime Ministers who governed under the SMA system prior to the High Court ruling on the illegality of the practice were all removed by a vote of no confidence, resulting primarily from parliamentarians, including a number of special ministerial advisors, crossing the floor.

The Constitution provides for the appointment of the Governor-General on the advice of the Prime Minister after the Prime Minister has consulted in confidence with all MPs. The northern islands of Tuvalu are concerned about a perceived regional imbalance between the northern and southern islands, regarding appointments to the post of Governor-General and elections to the Prime Minister's portfolio. In order to address these concerns, the Government has agreed to rotate the 'appointed' position of Governor-General with a time limit of four years for each appointment around each of the islands. The eighth island would have to wait for 28 years before its turn.

⁶T Taafaki, 'Stresses of governance in Tuvalu' (unpublished).



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

The Constitution is the supreme law of the country. It sets out clearly the separate responsibilities of the executive, judicial, and legislative arms of Government. The Tuvalu High Court is responsible for ensuring that the Constitution is consistently interpreted and applied in such a way as to achieve the aims of fair and democratic Government. Special constitutional provisions exist for the appointment, tenure, and removal of members of the senior echelons of the Judiciary.

While the Constitution does not guarantee the financial autonomy of the Judiciary and of the Legislature itself, it does provide special constitutional provisions for the remuneration of certain officers which include, among others, Judges of the High Court and MPs. As for all other annual departmental budget estimates, including ones for the Judiciary and Parliament, Cabinet determines the budget estimates for the Legislature's final appropriation.

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

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

Section 119 of the Constitution on the judicial system recognises tribunals and Schedule 3 provides for the function of 'certain tribunals' to investigate the removal from office of a Judge of the High Court, the Governor-General, Ministers, MPs and Public Officers. In general, leaders respect court decisions and independent tribunals. One notable exception was the case of a former Minister and current MP who had an outstanding tax issue, but had to be pursued in court for disrespect for the original court decision and inordinate delay in final settlement.

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

MPs make laws and policies. Implementation and enforcement predominantly rests with public officials. Within the public sector, policies are conveyed through Cabinet minutes (limited circulation) and circulars and cover an extensive range of issues. The Secretary to Government, who, under Section 78 of the Constitution of Tuvalu, has constitutional responsibility for coordinating all the functions and offices of Government, and acts as Cabinet's principal advisor, provides the link between policy-makers and implementation. The Secretary to Government chairs the National Development Committee (NDC) which comprises of all Secretaries of Ministries. Proposed new policies, legislation or major project proposals are initially submitted to the NDC for scrutiny before they are put to Cabinet. The NDC provides a mechanism to assist the Secretary to Government coordinate his constitutional function.

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

There was no reported occasion in 2008 where the letter and spirit of the laws, made for the benefit of the public, were abused or not respected.





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

Financial Regulations and General Administrative Orders provide adequate clarification for the disclosure of fraud, theft or the misappropriation of public assets and the process for dealing with such matters and personnel who may be involved.

In recent legal proceedings instituted against a former Prime Minister for reported double payment of travel allowances (double dipping), the High Court ruled for the full recovery of the principal sum, including interest.⁷

The *Leadership Code Act 2007*,⁸ under Section 17(1), obliges Leaders to respect and uphold democratic processes and institutions, the rule of law and the independence of the judiciary.

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

The *Leadership Code Act 2007* essentially sets out to govern the conduct and behaviour of leaders. The Act includes the Head of State, Head of Government, Ministers, MPs, judicial officers, member of the *Kaupule*, public servants and traditional leaders, including their spouses. Tuvalu's Act is one of the few leadership codes that is based on the Pacific Islands Forum's Forum Principles of Good Leadership and requires its leaders to comply with most sections of it. Under 'undue influence', Leaders are not to exercise or to bring pressure to bear on others performing their lawful duties. Instances of pressure being exerted on public servants happen when funds are to be approved for reimbursement of travel allowances; scholarships for overseas study; or public funding for overseas medical treatment.

In 2008, claims by a senior Minister for travel expenses considered as 'doubtful' were declined by Treasury. The case escalated to Cabinet level and the Prime Minister intervened and decided that the claim should not be accepted as it did not meet financial rules and regulations.

Two of the country's MPs made requests for the reimbursement of per diems for periods of overseas travel that included visits of a private nature. The Government officials handling the request came under pressure from the MPs concerned. In the first case, the claim was denied and in the second case, negotiations were still ongoing.

Public concerns were evident in 2008 at the appointment, without open advertisement of the position, of an individual from outside of the public service to a senior position in the Department of Foreign Affairs. Criticisms were to some extent mitigated when officials in the Department of Personnel amended the terms of the appointment from a permanent position to a temporary engagement for a period of 12 months. Even this amendment contravened the Public Service Regulations on temporary appointments, which are only for periods of three months, with a further extension by three months.

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;

⁷Tuvalu High Court Case No 4/08. The Chief Justice ruled that a former Prime Minister and Minister of Finance, was liable to pay to the Government of Tuvalu the sum of AUD\$7,429.27 plus interest with effect from 22 May 2008.

⁸*Leadership Code Act 2007* (Tuvalu).



Section 114 of the Constitution provides for privileges and immunities of Parliament and MPs, wherein no civil or criminal proceedings may be instituted against MPs for words said or written in a report to Parliament or its committees. Moreover, no process issued by a court shall be served within the precincts of Parliament. In 2008, there was no reported occasion where a claim of privilege or immunity was made by an MP.

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

The *Leadership Code Act of 2007*, Section 37, stipulates the creation of the Ombudsman Commission. However, the Ombudsman Commission, empowered by law to enjoy independence from control or direction from any person or authority, is yet to be established. At present, no mechanism, apart from the courts, for independently investigating public complaints against government actions exists.

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

The Office of the Auditor-General is established under Section 170 of the Constitution. The Auditor-General is an independent office whose performance of his or her functions is protected by the Constitution. The Auditor-General reports directly to Parliament through the Office of the Speaker of Parliament. The *Audit Act 2007*⁹ established the Tuvalu National Audit Office (NAO) and sets out the functions and responsibilities of the Auditor-General and the NAO. Under its rules of procedures, Parliament's Accounts Committee meets from time to time to scrutinise the reports of the Auditor-General and report back to Parliament.

The audit report on the 2008 annual accounts of the Government was being finalised in May 2009. This was a considerable improvement from the past when audit reports were delayed for a number of years. Part of the problem in the timely submission of audit reports is the delay in the time Treasury takes to finalise the annual accounts and produce completed annual financial statements for audit. The Government believes that the *Audit Act 2007* provides independent and sufficient ammunition for Parliament's chief watchdog on the public accounts to conduct its legal functions and, to some extent, covers a gap in the lack of an Ombudsman to 'police' the *Leadership Code Act 2007*.

iii) Protection of fundamental human rights:

The Bill of Rights¹⁰ provides for the protection of the basic fundamental human rights of the individual. These rights are extensive and cover the right not to be deprived of life and personal liberty; security; the protection of the law; freedom of belief; freedom of expression; freedom of assembly and association; protection for the privacy of home and property; and protection from unjust deprivation of property.

However, the anti-discrimination provisions of the Tuvalu Constitution fail to recognise freedom from discrimination against sex or gender. As a result, a number of laws still discriminate against women in Tuvalu, e.g., laws relating to inheritance of land, adoption of children, marriage, custody of children, or

⁹*Audit Act 2007* (Tuvalu).

¹⁰*The Constitution of Tuvalu 1986* pt II.





domestic violence. There are calls on the Government to review all relevant laws which discriminate negatively on women. These claims include the demand to change policies and practices which perpetuate the discrimination and marginalisation of women, so as to bring them into line with international human rights standards.

At the international level, Tuvalu is neither a party to the *International Covenant on Civil and Political Rights* (ICCPR),¹¹ nor the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).¹² It has, however, ratified the *Convention on the Rights of the Child* (CRC),¹³ on 22 September 1995 and the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW),¹⁴ on 6 October 1999.

Tuvalu has been asked by other international bodies, including the Legal Literacy Project (Tuvalu National Council of Women) to consider ratification of ICCPR and ICESCR, and in addition to these two Conventions, to accede to the other core human rights treaties, as well as putting into effect the necessary domestic legislations.¹⁵

There are some inconsistencies between Tuvalu's international obligations under the treaties that it has signed and ratified and the domestic laws. The Tuvalu High Court has indicated that where there are inconsistencies between the two, the domestic law will apply until Tuvalu's international obligations are reflected in the domestic laws through the appropriate parliamentary process. The delay to incorporate obligations from international treaties into domestic laws means that there may be people who may have not been treated fairly.

Section 2:

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 Preamble in the Constitution and further emphasised in Section 29 of the Constitution acknowledges Tuvalu as an independent State based on Christian principles, Tuvaluan values, culture and tradition. The key values include traditional forms of communities, and the support and discipline of the family. In guiding Government and social affairs, values like agreement, courtesy and search for consensus in accordance with traditional procedures are sought after and not those that are confrontational and divisive. Under the *Leadership Code Act 2007*, every leader must recognise that the stability of Tuvaluan society and the happiness and welfare of the people of Tuvalu, both present and future, depend largely on the maintenance of Tuvaluan values, customs and tradition. There have been no reported violations of the Act in 2008.

¹¹*International Covenant on Civil and Political Rights*, opened for signature 16 December, 999 UNTS 171 1966, (entered into force 23 March 1976).

¹²*International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

¹³*Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 530 (entered into force 2 September 1990).

¹⁴*Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

¹⁵United Nations Human Rights Council, *Summary Prepared by the Office of the High Commissioner for Human Rights in Accordance With Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 – Tuvalu*, (2008) UNHCR

<<http://www.unhcr.org/refworld/docid/4923e5cbd.html>> at 25 April 2009.

Section 3:

Principle 3 – Respect for Freedom of Religion

- i) Respect for religious belief and practice:

The Constitution of Tuvalu provides for freedom of individuals to practice their



religious beliefs.¹⁶ However, the Tuvalu *Leadership Code Act 2007* omitted the Forum Principle of Good Leadership relating to respect for freedom of religion.

Although the *Ekalesia Kelisiano Tuvalu* (EKT) is declared by law to be the State church, this has in fact few ramifications other than to afford it 'the privilege of performing special services on major events.' The Constitution provides for the separation of church and state. That said, the EKT – formerly the London Missionary Society – has the largest number of followers; about 90 per cent of the total population.

For a number of years, Tuvaluan society has witnessed tensions between culture, traditions and religious freedom. On some islands, island chiefs have issued formal and informal bans on other religious groups practising their missionary work in the islands. It seems clear that freedom of religion is only possible to the extent that it does not interfere with cultural and traditional practices, and the requirement that the rights of others who may be affected by the enforcement by another group of their rights should be safeguarded.

In June 2006, despite a High Court injunction against such action, the Nanumaga council of elders passed a resolution, which was implemented, that dismissed without proper notice five council workers who were members of the Brethren Church, a charismatic Protestant group.¹⁷ This was the direct result of an earlier council resolution that banned all new churches and threatened local civil servants with dismissal if they worshipped with the Brethren Church. Legal action subsequently resulted in a judgment that the local government was liable for compensation to the dismissed workers.¹⁸

In June 2006, the Funafuti Island council of elders issued a resolution prohibiting the establishment or practice of 'any new religion'. The ban was primarily aimed at the Brethren Church, in spite of the fact that a couple of prominent Funafuti elders are members of the Church. The High Court issued a temporary injunction prohibiting any further action against the Brethren Church and its missionary work. This case is pending hearing by the High Court. At the height of tensions between the Island of Nanumaga and the Brethren Church, the Government of Tuvalu was asked to assist to defuse the tensions. The Government decided that it was best to leave the community to resolve the matter with the Brethren Church.

Section 4:

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

i) Proper use of official powers:

'Official' powers are set-out and specified in the Constitution of Tuvalu. They include the powers of the legislature to make laws and Acts of Parliament, to delegate powers to make regulations; the powers of certain tribunals, the courts, the Attorney-General, and so forth. There were no reported major cases of abuse of power in 2008.

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

¹⁶*The Constitution of Tuvalu* s 23(2)-(6).

¹⁷United States Department of State, 2008 *Report on International Religious Freedom: Tuvalu*, (2008) UNHCR <<http://www.unhcr.org/refworld/docid/48d5cbcf64.html>> at 11 March 2009.

¹⁸See *Lamese v Nanumaga* [2008] TVHC 7: Case No. 3 of 2006 (28 August 2008).





The people of Tuvalu can readily access parliamentary debates as sessions of the House of Parliament are broadcasted live on national radio. At the first sitting of Parliament of each year, or immediately after the formation of a new government, a statement of Government policies is delivered, setting out Government's intentions and plans for the future. The Government also uses the radio as a means of disseminating information to the people and listeners are able to seek clarification on an issue disseminated over radio from the source or through their leaders.

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

Information on legal wrongdoing, ethical lapses and false or misleading statements are not usually available to the public. More serious disciplinary measures against public officials are dealt with by the Public Service Commission and the outcome conveyed in official communications. The courts are also open to members of the public where a case against a leader's legal wrongdoing, ethical lapses or misleading statements, is dealt with at that level. There were no reported cases before the Public Service Commission in 2008.

iv) Giving priority to official duties over private interests:

There have been incidents of leaders giving priority to official duties over private interests in Tuvalu.

A High Court hearing is currently pending against a former Prime Minister and former Minister of Finance (and Minister responsible for Customs and Excise Duties) for allegedly releasing private goods that belong to him, without payment of customs duties.

In another case, the Chief Justice ruled against a former Minister and MP for non-payment of income tax from the operations of his privately-owned business.¹⁹

Similarly, a private business owned by several ministers engaged in the export of sea cucumber has not been paying taxes to the Government. The Department of Fisheries noted that the operation is illegal, and represents a conflict of interest for one or more of the Ministers who are involved in the enterprise.

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

The annual allocation of overseas scholarship awards, traditionally done by a committee of officials for endorsement and approval by the Minister responsible, has now become an item for debate at the highest level.

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:

The *Leadership Code Act 2007* provides a comprehensive definition of 'conflict of interest'.

Two cases of conflict of interest arose in 2007, where a senior public official, through holding positions of influence with private firms, was able to use these positions to derive benefits. In one case, the officer was a member of the Board of Directors and in another case, the officer dealing with the company was also an

¹⁹Togoland v Attorney General [2004] TVHC 7; Case No 13 of 2000 (29 January 2004).



executive in that firm. In the case of Air Fiji, the benefit was free flights awarded to the National Soccer Team, and in the case of the Tuvalu Ship Registry, cash donations were solicited for the National Soccer Team on two occasions. The same officer was sent at Government expense to Geneva to pursue Tuvalu's FIFA membership ambitions with the governing body, and the trip was not budgeted appropriately.

Board members are not allowed to use their power, influence or relationships on any Board to derive personal benefits, or benefits for groups or associations of which they are a member. In the absence of an Ombudsman, it is difficult to determine whether or not such conflicts of interest give rise to criminal proceedings.²⁰

Another senior public servant went on an external donor scholarship award for graduate long term training, accompanied by his family. The policy of the award did not include payment for his family accompanying him. A decision, considered as a break from normal rules and a conflict of interest, was made to pay the family's airfares from Government funds.

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:

There was no reported case of public facilities being used for private purposes by a leader in 2008.

Section 5:

Principle 5 – Respect for Members of the Public

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

The Constitution safeguards the human rights of all individuals in Tuvalu and provides that all persons are entitled to personal liberty, personal security, and to protection for the privacy of his home and other property under law. Leaders generally respect these constitutional provisions. However, in 2008, a senior ministry official exercised improper influence to pressure Air Fiji personnel to ensure that his children were given seats on a charter flight from Suva to Tuvalu.

Section 6:

Principle 6 – Economy and Efficiency

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

There is insufficient parliamentary oversight of public expenditure and not enough time is allowed to discuss private members' business. Parliament sits twice, or sometimes, three times a year, with each session lasting for five days. The Public Accounts Committee, under the chairmanship of an Opposition MP, which also has members from the private sector, has been effective in its scrutiny of the public

²⁰Office of the Auditor-General, Government of Tuvalu, *Auditor General's Report: Tuvalu Government Whole of Government Accounts, Year Ending 31 December 2007 (2009)*.





accounts. This is a marked change from the previous arrangement where all MPS sat on the PAC.

According to the Auditor-General's reports, unlawful appropriations totalling AUD\$90,196 during 2007 have been spent. The items of expenditure were never presented to Parliament as required by the *Public Finance Act 1982*, through inclusion in a Supplementary Appropriation Bill. They therefore remain as unlawful expenditure during the year. The amount in 2007 was significantly less than the unlawful expenditure in 2006 (AUD\$747,045), but is still evidence of financial irresponsibility.²¹

Under Schedule 5 of the Constitution of Tuvalu and the *Public Finance Act 1982*, contingency warrants are only to be issued for urgent and unforeseen expenditure, where the expenditure cannot be deferred without detriment to the public interest. The nature of most expenditure is not considered as 'unforeseen' and should have therefore been appropriated by other means including more accurate initial budgeting, or through a mini-budget.

In 2007, AUD\$3.24 million was overspent on expenditure line items without proper application for transfers within Votes (virements) or advances, in accordance with financial instructions representing a gross breakdown of expenditure processing controls.²²

In 2009, about AUD\$2 million worth of outer island projects in the Budget bypassed normal budget scrutiny by the Budget Office. Capacity at the island level is unlikely to be able to implement these projects. Although included in the budget submission to Parliament, they were very 'unusual' project expenditures (to be met by central government funds) such as the funding of housing for church pastors, private housing units for island chiefs, church buildings, and community meeting houses.²³

The 2006 and 2007 accounts of most State-Owned Enterprises (SOEs) have been audited. The accounts are however kept separate and not consolidated into the financial position of Tuvalu. The assets and liabilities of SOEs are material to Tuvalu's accounts and the country's financial position is incomplete without them.

There is no assets inventory for the Government or a register of procurement of major plant and equipment items. Furthermore, there is no central government contracts register.

Given the large balances of un-acquitted travel advances by government officials, the Government has enforced the system where no new travel advance is issued unless previous ones have been fully settled. On return of an officer from travel, a travel advance that is not settled promptly is appropriately deducted automatically from salaries. In spite of the appointment of two additional new Ministers, Ministers' travel expenditure has decreased by 26 per cent in 2007 compared to 2006.

In a number of material areas (dot. tv, Air Fiji, fishing licences), insufficient information has been forthcoming from the relevant ministries to enable the auditor to form an opinion on the completeness of revenue from these investments. The company that manages dot.tv (Verisign) said that it could not release sales figures for audit as it could only deal through the Secretary for

²¹Ibid.

²²Ibid.

²³Traditional community meeting houses are the pride of any community and very seldom would external assistance be sought to establish them. If this were the case, then the donors would be free to use and speak at any community gathering in that meeting place.



Communications and Transport. But when the Secretary took up the matter with them, it changed tactics and said that such information was confidential. The marketing agreement allows the Government the right of inspection up to four times per year of sales and other accounting data related to dot. tv. The Government is reported to be in negotiations with Verisign to amend the contract.

A Medical Treatment Policy is essential to provide adequate care for patients because of the increasing costs associated with treatment and accommodation for patients. Internal control systems in Treasury and at the departmental levels are in need of improvement. The absence of an adequate, consistently applied control structure does not sufficiently protect Government resources from fraud, waste, abuse and mismanagement.

Section 7:

Principle 7 – Diligence

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

The Government provided a guarantee for an overdraft facility of AUD\$600,000 for Air Fiji Ltd with the National Bank of Tuvalu, contrary to the *Government Borrowing and Guarantee Ordinance 1973*²⁴, which stipulates that parliamentary approval, a prerequisite to the Minister's approval of a guarantee, must be sought. The Constitution²⁵ provides that the Government shall not borrow money except in accordance with the provisions of law. In his report, the Auditor-General pointed out that no prior analysis was undertaken on the financial consequences of this guarantee. Furthermore, no adequate security was taken over the assets of the airline, and no assessment was made on the continuing viability of the airline prior to the Minister giving his approval.

A further disregard for legal requirements is the approval by the National Development Committee (comprising of all Secretaries of Ministries) on 1 July 2008, for the Government to guarantee an increase in the Tuvalu Electricity Corporation's overdraft from AUD\$400,000 to AUD\$900,000. Such a recommendation from a committee of officials is misplaced since parliamentary sanction, as required by Section 6(2) of the *Government Borrowing and Guarantee Ordinance 1973*, is mandatory before the Minister responsible (or the Government) approves an increase in the overdraft. The National Development Committee itself was established by administrative arrangements and therefore has no legal mandate or authority to decide on the matter.

The inclusion of 'extraordinary' outer island projects in the final submission of the Budget to Parliament, without having been previously vetted by the Budget Management Office is also an example of a lack of attention to diligence and care.

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

In 2008, the Government of Tuvalu decided to open an embassy in Brussels, and appointed the acting Secretary to Government to head this Mission. The incumbent left to take up the appointment in Brussels but without relinquishing his constitutional appointment to the position of Secretary to Government. An acting appointment for Secretary to Government was made and filled. The effect is

²⁴*Government Borrowing and Guarantee Ordinance 1973* (Tuvalu).

²⁵*The Constitution of Tuvalu* s18.





that there are two people in the position of Secretary to Government, albeit one of them in an acting capacity. There is also the question whether it is lawful for both of them to draw salaries at the level of Secretary to Government.

The Tuvalu Maritime Training Institute (TMTI) upgrade project, which began in 2003 continued to 2008. The project exceeded initial cost estimates and a supplementary loan was approved by the Government but no Parliamentary endorsement was sought in accordance with the *Government Borrowing and Guarantee Ordinance 1973*. Furthermore, funds dedicated for other activities were redeployed to the TMTI upgrade project and a number of additional inputs related to the project had not been budgeted. Oversight of the project has been poor. It was reported that project management decisions were confined only to a few people.²⁶

Concerns regarding an apparent decline in transparency and accountability in some Government decision-making processes were expressed in the *National Summit for Sustainable Development*.²⁷ Poor record keeping hampers effective public administration. Key policy and strategy documents are often unavailable. Files are lost, misplaced and not always up to date. The widespread use of personal computers has also affected record keeping.

In 2008, an employee was dismissed for poor performance. The Prime Minister as Minister responsible intervened and sought to have the employee reinstated but the Chairperson of the Board disagreed and refused to comply. In the end, the Chair of the Board resigned in protest. This case was raised in Parliament by a member of the Opposition.

Section 8:

Principle 8 – National Peace and Security

i) Promotion of peace, security and harmony:

The country has enjoyed relative peace, security, and harmony, both internally and with its neighbouring Pacific Island countries. Tuvalu has a small police force and operates a patrol boat. The patrol boat is used for maritime surveillance and in special circumstances, for search and rescue operations. Two members of the police force are currently serving time with the Regional Assistance Mission in the Solomon Islands (RAMSI).

Tuvalu is heavily dependent on imports, including processed food products. Increasing influx of people from the outer islands to the capital of Funafuti also reduces the number of available able-bodied people to tend to the gardens and grow food crops. Food security is a security issue in the long term.

For many years, Tuvalu has been vocal in the international scene on the effects of climate change and has been especially vocal in its statements against the main polluters of the world's environment. Tuvalu's vulnerability to adverse climatic conditions is the most critical threat to national security.

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

There are no reported cases of political or detained prisoners. There was also no reported case on the use of force against another citizen in 2008.

²⁶Office of the Auditor-General, Government of Tuvalu, *Auditor General's Report: Tuvalu Government Whole of Government Accounts, Year Ending 31 December 2007* (2009).

²⁷Government of Tuvalu, *Te Kakeega II, National Strategies For Sustainable Development, 2005-2015* (2004).



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:

A weakening in good governance standards stems from political instability caused mainly by frequent changes in Government. In the 14 years between 1994 and 2008, Tuvalu had eight changes in its political leadership. Regarding the exercise of authority, the Preamble in the Constitution calls on leaders to follow traditional procedures of agreement, courtesy, and search for consensus. In addition, they need to show a spirit of mutual respect and cooperation with other authorities such as Government, traditional authorities and religious organisations.

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

The *Leadership Code Act 2007* is perhaps the substantive Act that, aside from regulating the conduct and behaviour of leaders and their office, also seeks to strengthen the integrity of leaders' office and effectiveness. However, the Government needs to appoint an Ombudsman as stipulated in this Act to make this happen.





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3. Legislation

Note:

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