



# **KINGDOM OF TONGA**

## **COUNTRY REPORT**

32<sup>nd</sup> Pacific Islands Law Officers' Network Meeting  
(PILON)

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5 - 6 November 2013  
Nuku'alofa, Kingdom of Tonga

## **I INTRODUCTION**

Malo e Lelei,

1 On behalf of the Attorney General's Office of the Kingdom of Tonga, I have the distinct pleasure of presenting to distinguished colleagues of the 32<sup>nd</sup> Pacific Islands Law Officers' Network Meeting, the Kingdom of Tonga's Country Report for 2013.

2 You will see in this report that the year 2013 was again a busy one. The Office continued to face challenges such as a heavy workload in litigation, legal advice and legislative drafting, and developing the limited experience of legal staff, managing Government priorities, handling of high profile and complex litigation.

3 The workload however was successfully dealt with by the Solicitor General and the 11 Crown counsel employed in the office, with the guidance and direction of the Attorney General, Mr Neil Adsett.

4 It is hoped that this report will provide a clear insight to the work of the Office, and that it may offer some ideas as to how to deal with these challenges.

5 We hope that the discussions and activities both within this Network and also individually will continue to reap success for you all in the provision of legal services to your people.

6 We also would like to highlight how much it has been an honour and distinct privilege for the Attorney General's Office to host PILON 2013.

7 I wish you all a Very Merry Christmas, and may you all receive many more blessings for the New Year 2014!!!

Malo 'aupito

'Aminiasi Kefu  
**Solicitor General**

5 November 2013

## **II TONGA'S LEGAL SECTOR**

- 8 Tonga's legal sector is projected in the diagram set out in **Annex 1**.
- 9 Since the last Country Report, there was a change in the structure of the legal sector.
- 10 The Office of the Registrar General, which was normally held by the Chief Justice, and was the legal authority over the vital statistics regarding births, deaths and marriages, was made an entirely separate office.
- 11 The justification was that the law regarding births, deaths and marriages provided an appeal provision from any decision made by the Registrar General to the Supreme Court. Accordingly the appeal provision created a legal dilemma in the Lord Chief Justice not being able to deal with such appeals when he was also the Registrar General. This issue had never arisen before until recent applications.
- 12 The Minister for Justice is now currently the Acting Registrar General, until a final decision on appointing a substantive office holder for the post is made by Cabinet. As a result, the office of the Vital Statistics Division has been moved from the direct supervision of the Supreme Court to the Ministry of Justice.

## **III MAJOR LAW AND JUSTICE SECTOR ACHIEVEMENTS**

- 13 The major law and justice achievements in 2013 were:
- (1) Legal Reform
- Passing of the Family Protection Act by the Legislative Assembly, to provide legal powers to effectively respond to violence against women and children;
  - Passing of the Trans-organised Crime and Counter-Terrorism Act, to modernise framework dealing with trans-organised crime and counter-terrorism;
  - Passing of a Food Act, to set food safety standards;

(2) Judicial Reform

- Enhanced jurisdiction for some magistrates to deal with minor or simple indictable offences such as simple housebreaking, simple bodily harm and possession of small volume of illicit drugs, such as cannabis;
- Introduction of paper committals of indictable offences from the Magistrates Court to the Supreme Court;
- Separation of the office of Registrar General from the Chief Justice.

#### IV SIGNIFICANT COURT DECISIONS

14 The following are some of the significant Court decisions in 2013:

(1) Ministry of Prisons v Telefoni, CV 44/12

This was a judicial review case of a ruling made by the Prisons Tribunal regarding accomplice evidence that was presented in the hearing of a disciplinary case against a prisons officer.

The respondent prisons officer was charged with four counts of unprofessional and discreditable conduct under the Prisons Act. It was alleged that he had, amongst others, smuggled contraband to prisoners and helped some prisoners to escape.

During the prosecution of the disciplinary charges, the prosecution called prisoners who gave evidence of the unlawful conduct by the respondent. The Chairman of the Prisons Tribunal however held that the evidence of the prisoners amounted to being accomplice evidence, and under section 126 of the Evidence Act, an accused person cannot be convicted based on the evidence of an accomplice. The respondent was then acquitted of the charges.

The Crown then filed, on behalf of the Ministry of Prisons, a judicial review application, against the Tribunal's ruling on accomplice evidence. The Crown claimed that it was wrong in law for the Tribunal to apply section 126 of the Evidence Act to disciplinary processes. The Supreme Court accepted this argument, and held that section 126 of the Evidence Act applies only to criminal proceedings, not disciplinary or civil proceedings.

The application was therefore allowed. The matter was then remitted to the Prisons Tribunal to reconsider its decision, and continue the disciplinary charge against the prisons officer.

(2) Sevele and anor v Pohiva and ors, CV 87/12

This was a judicial review case by a former Prime Minister against a Special Parliamentary Committee established by the Legislative Assembly for making certain prejudicial comments against the former Prime Minister and another Minister in their report on the work carried out by Government in relation to the reconstruction of Nuku'alofa after the 2006 riots.

The main issue before the Court was whether the report of the Special Parliamentary Committee was immune from judicial review on the ground of privilege.

The Supreme Court reconfirmed that the position in Tonga was clear that what is done in the course of proceedings in the Legislative Assembly cannot be examined outside parliament for the purpose of supporting a cause of action. He also added that the Supreme Court has the power to consider whether what has been done in the Assembly is in accordance with the Constitution and statute and that no claim for privilege can remove the power.

The Supreme Court then held that so far as proceedings of the Assembly and its committees are concerned, an alleged breach of the rules of natural justice which does not directly result in the breach of a discrete provision of the constitution does not afford jurisdiction basis upon which the Supreme Court can intervene. The Court then concluded that if there was any breach of natural justice, although regretted, that was a matter for the Assembly to make right, not the Supreme Court.

The application for leave to file judicial review was therefore refused.

The matter was not taken further to the Court of Appeal.

(3) Schaumkel and ors v Vakameitangake and ors, AC 14/12

This case was a family dispute over family land. The plaintiff and the first defendants are first cousins. The plaintiff's mother and the first defendant's father were brother and sister, and they were the only children of the last land holder, the grandfather of the parties to the case. The first defendant's father was the heir to the land, but he had

allowed the plaintiff's mother to stay on the land with her husband to look after their parents. The plaintiff's father developed the land with the apparent permission of the first defendant's father, and the plaintiff's family lived there for more than 20 years.

When the first defendant's mother died, the plaintiff claimed that the first defendant's father had promised to surrender the land for the plaintiff. Unfortunately, the first defendant's father had already died by then.

Unbeknownst to the plaintiff, when the first defendant's father died, the land was transferred by the Minister of Lands directly by consent, past the heir, who was the eldest son, to the first defendant, who was the second son.

The plaintiff and his father then filed a claim in the Land Court, on the basis that the transfer of the land directly from the father to the first defendant, as the second son, was unlawful, and that the Minister had failed to give notice and offer the plaintiff the opportunity to claim the land because the plaintiff's family were already living on the land.

The Land Court decided that the plaintiff's claim could not be accepted because, if there was a promise by the first defendant's father to pass the land to the plaintiff, that promise did not give the plaintiff any legal title or standing over the land, and that it had expired when the first defendant's father died. The Land Court was therefore of the view that it did not need to decide whether the transfer of the land to the first defendant was lawful or not. The plaintiff appealed to the Court of Appeal.

The Court of Appeal however approached the case differently. It had to decide whether the direct transfer from the father, past the heir, directly to the first defendant as the second son, was lawful and consistent regarding devolution of land through the family. The appellant argued that the transfer breached the Land Act, and that the land should have been surrendered to the Crown, and the Minister should have made inquiries whether the land was available, and not occupied, before he granted the land to the first defendant.

The case hinged on statutory construction of the devolution of land. The Court of Appeal held that the provisions had to be interpreted to work, and to avoid causing arbitrary results regarding land. The Court recognised that inheritance of land descended based on seniority in the male line, and that provision must be given priority over the other

provisions providing for devolution of land. Therefore the land devolved from the father, past the heir, because he had surrendered his rights, and so the first plaintiff, as the next person in line, inherited the land.

In relation to the second issue of whether the plaintiffs had a legal right to be on the land, the Court held that all the plaintiffs had was a licence which was not a legal right, and such licence could be terminated on reasonable notice. Accordingly, the Minister was not required under the law to invite the plaintiffs to express a view on the transfer of the land to the second plaintiff.

Accordingly, the plaintiffs' claims were dismissed, and the first defendant was given possession of the land. The matter was remitted to the Land Court to determine the issues for possession and any issues on compensation.

(4) Rex v Veimau Leone, CR 202/11

The accused in this case was a Tonga Police inspector. He was the most senior police officer who has ever been prosecuted in the Kingdom. The accused was the officer-in-charge of Tonga Police in the island of 'Eua. As such he was entitled to rations of petrol for use of a police vehicle. The accused however, over a period of some time, used portions of the petrol rations to be filled into his private motor vehicle.

The accused was charged with one count of fraudulent conversion by a Government servant. He was convicted by the Lord Chief Justice. He was sentenced to 18 months imprisonment, but six months was suspended for two years, and so he was only required to serve 12 months imprisonment.

The accused has appealed both his conviction and sentence to the Court of Appeal.

(5) Rex v Bloomfield & Fakava, CR 212-213/10

This was the largest fraud case ever prosecuted in Tonga, in the amount of more than \$300,000 pa'anga, embezzled by two accused persons, who were employed as travel consultants, working for the travel agency that was the exclusive agent in the Kingdom for Air New Zealand.

After some internal audit, it was discovered that the travel consultants had significant shortages for their daily pay-in for purchased tickets. After further investigation, the real

extent of the embezzlement was discovered in thousands of pa'anga being defalcated from the travel agency.

It was discovered that the fraud was committed in three methods. First, by the issuing of false invoices to genuine customers, to pay for tickets for passengers, who either paid for the tickets already to the travel agency, through the accused, or who had not paid at all, and the accused had given them free tickets to travel. The second method was that the tickets were cancelled after they were paid for and issued, and then the money was either used to pay for other tickets, or pocketed by the travel consultant. The third method was that the consultants simply did not pay-in the daily cash they collected from revenue, and that they had used several excuses that the money was going to be paid.

One accused pleaded guilty on the day of trial to embezzling around \$80,000 pa'anga. He was sentenced to 3 years and 3 months imprisonment, 1 year was suspended for 2 years, and so he was required to only serve 2 years, 3 months imprisonment.

The other accused maintained a not guilty plea, and put the Crown to proof before a jury. The total amount of the defalcation against that accused amounted to over \$204,000 pa'anga. The trial ran for three weeks, and the accused elected not to give any evidence or call any evidence at all. The accused however submitted through her counsel that the Crown had not proven the whole amount of the fraud charged. That submission however was not the law, as the Crown only had to prove a part of that amount.

The jury was convicted for one count of embezzlement. She was then sentenced on the basis that the full amount was proven based on the Crown's evidence, but in her favour, she was allowed mitigation for being a first time offender, and the impact on her 5 children and diabetic husband would have been significant.

The Supreme Court adopted a starting point of 5 years, from the 7 years maximum sentence for embezzlement, and reduced it to 4 years and 4 months imprisonment. The Court then suspended 12 months for 2 years, and so the accused is to serve only 3 years, 4 months.

Both accused have not appealed to the Court of Appeal.

## **V LAW REFORM: LEGISLATIVE PROGRAMME**

### **A The 2013 Laws**

15 In 2013, the legislative programme continued to be busy.

16 The Bills and draft regulations are first approved and cleared by Cabinet to be drafted or processed. They are then referred to the Office and the Ministry for final drafting, before they are submitted to Cabinet's Law Committee for vetting in accordance with policy and legislative drafting style. Once cleared at the policy and legislative drafting level, the proposed Bills and regulations are re-submitted to Cabinet for final approval for tabling before the Assembly or referral to the executive authority to issue subsidiary legislation.

17 [Annex 2](#) sets out the laws that the Office processed for enactment.

18 The legislation enacted in 2013 are summarised as follows:

- the Legislative Assembly passed 26 Acts;
- 16 Acts have been granted Royal Assent and have been promulgated to come into force;
- 10 Acts are before His Majesty awaiting Royal Assent;
- There are 14 Bills yet to be finalised by the Assembly; and
- Certain executive authorities made 12 subsidiary legislation.

19 During the Assembly's session there was one significant Constitution amendment proposed by a private member that proposed significant Constitutional amendments. These included the direct election of the Prime Minister by the people from the 26 members elected from the electoral constituency, the removal of the right of a Prime Minister to appoint 4 non-elected Cabinet Ministers, the limiting of the powers of a caretaker Government, which exists after a general election up to the time a new Prime Minister and Cabinet is appointed. There was heavy debate on the private bill, however it was not approved.

### **B Legislative Drafting in the Office**

20 The Office's legislative drafting team is led by the Attorney General and supported by the Solicitor General and one Crown Counsel and two translators.

- 21 There have been 8 Crown counsel in the Office who have undergone the legislative drafting training for the Post-Graduate Diploma in Legislative Drafting, offered by the University of the South Pacific. There are two more Crown counsel to take the course. Due to the current workload from criminal prosecution, only one Crown counsel is able to work in processing the legislative programme.
- 22 The Office continues to benefit from the efficiency and effectiveness of its electronic legislative template developed for drafting Tongan laws. All the laws are published in the website [www.crownlaw.gov.to/cms](http://www.crownlaw.gov.to/cms), in both final and draft form.
- 23 The public and relevant stakeholders are notified of new laws through the relevant Ministry and through email notifications from the Office. Where necessary, the Office has published in the local newspapers the new laws that are being processed or have been enacted for public submissions or dissemination.
- 24 However, the main challenges in the Office's legislative drafting programme continue to be the time required to translate laws into Tongan, and also meeting Government's changing legislative priorities.
- 25 Often in the Assembly, the Tongan translation is used as a political platform to either to criticise Government's proposed Bills or delay it. This is one of the drawbacks of not having an Attorney General in Cabinet.
- 26 Work continues on the finalisation of the consolidation of the laws of Tonga up to 2011, which is led by the Attorney General, with the assistance of a number of Crown counsel and support staff. The consolidation has been held up due to the Tongan version, again because of the complexities of the Tongan language. It is anticipated that the final version of the consolidated Tongan laws will be proof read in the next few months, and then finalised for publication, mainly through electronic means, especially on the Office's website, in the first half of next year.

## **VI LEGAL SECTOR ISSUES**

- 27 The challenges faced by the Tongan legal sector are as follows:

### The Judiciary

- (1) The Tongan judiciary continues to operate in a challenging environment.

- (2) The facilities are basic and limited, especially with regards to Court administration space, public facilities, and also the Magistrate's Court
- (3) The Court staffing is also limited in number and training, especially the number of translators available. The issue is further compounded when third language translation is required, especially in the Asian languages.
- (4) In September, the Lord Chief Justice had to cancel the second session of the Court of Appeal due to a shortage of staff to prepare for the appeal hearings, especially with the transcription of evidence from the lower Courts.
- (5) The judiciary however continues to work on training its Magistrates and also support staff.

#### Registrar General's Office

- (6) The Vital Statistics Division of the Supreme Court was transferred to the Ministry of Justice to administer. As explained above, the concern was with regards to separating the Registrar General's Office from the Chief Justice, in order to allow appeals from the Registrar General's Office to be made to the Chief Justice.
- (7) The Registrar General's Office is coping with the transition, however vital statistics information and certification are still maintained properly, and the public is enjoying a more efficient service.
- (8) The main challenge for the Registrar General's Office is the storage of vital statistics information, especially from old register books that are nearly a century old, and also the costs of issuing certificates.

#### Attorney General's Office

- (9) The Attorney General's Office continues to face the same challenges of training its young and inexperienced Crown counsel. The Office continues its programme on expediting experience for its Crown counsel through internal law presentations, assigning two person prosecution teams to criminal trials, on-the-job training, especially regarding drafting legal documents and thinking strategically. Crown counsel are also benefitting when allocated to represent the Office and Government in national, regional and international trainings, and also official meetings.

- (10) Remuneration also continues to be a challenge for the Office. Budgetary constraints is an obstacle for offering better remuneration to reflect the workload, the complexity of the issues, and the pressure of the working environment to meet dates and address all issues. The Office however is awaiting a recommendation from the Remuneration Authority on the appropriate scale of remuneration for the Solicitor General and Crown counsel.
- (11) In the last year, two Crown counsel have resigned. One migrated overseas with her family, and the other is taking up a role in the Legislative Assembly support staff. It is hoped that better remuneration will be offered in the next financial year in order to encourage Crown counsel to continue their legal careers in the Office, once the recommendation from the Remuneration Authority is approved by Cabinet
- (12) With regards to criminal prosecution, the Office continues to enjoy a high conviction rate of around 80%. The number of cases being dealt with by the Office is however dwindling because of the enhanced jurisdiction of the Magistrate's Court has resulted in a number of cases deferred to the Magistrate's Court. The prosecutions in the Supreme Court are mainly serious violent cases, indecent assault cases and more serious and heavy illicit drugs cases. Criminal prosecution is led by an Assistant Crown Counsel with a team of six Crown counsel, and the Solicitor General supporting in complex and most serious criminal prosecution.
- (13) In the area of legal advice, the Solicitor General issues most of the legal advice, with the Attorney General being referred legal advice matters when necessary. All the 11 Crown counsel are called upon when necessary to conduct research and provide legal advice when required. There remains a challenge of access to electronic legal databases due to costs, and also office space for the law library. The Office is contemplating hiring further office space above its current office premises in the Taumoepeau Building, for a proper law library and more offices for its Crown counsel.

#### Tonga Police

- (14) It has been another challenging year for Tonga Police with regards to the disciplining of Police officers, and maintaining public confidence. There have been a number of Police officers who have been either prosecuted in the Courts for various offences from common assault to theft, or disciplined before the Police Board for disciplinary action.
- (15) Tonga Police however continues to be developed through the tri-partite development programme offered by the three Governments of Australia, New Zealand and Tonga. The

Attorney General's Office has also made significant contributions in three trainings of investigators and prosecutors. It is hoped that this training will be conducted at least twice every year.

#### Tonga Law Society

- (16) The private bar continues to face challenges in the lack of licensed law practitioners, and also very limited time and resources for the conduct of continued legal education. Most law practitioners cannot afford to conduct pro bono work because they have a few paying clients. There continues to be a need for training for law practitioners, especially in drafting of pleadings and ethics. There are a few cases of disciplinary cases against law practitioners, which the Society is slowly dealing with. One recent case has seen the suspension of a senior law practitioner for misconduct towards his client, but he has now turned to politics.

## **VII PILON LEGAL POLICY AGENDA: UPDATE**

### **A Corruption and Proceeds of Crime**

- 28 The Kingdom enacted anti-corruption legislation in 2007, in the form of the Anti Corruption Commissioner Act. The Kingdom also has a Public Relations Commissioner Act, enacted in 2001, which is Tonga's version of the Ombudsman. Tonga also has the Money Laundering and Proceeds of Crime Act 2000, which is the legal mechanism available to seize and recover proceeds of crime.
- 29 The Government has issue a freedom of information policy to allow the public to formally seek information from the Government, except for any information that may be exempted, such as information relating to the defence of the State.
- 30 The Anti Corruption Commissioner Act sets out the functions of the Anti Corruption Commissioner to conduct preliminary investigations, compulsory examinations, investigate matters referred to it, or to refer matters to a public authority. The Act also provides for offences relating to failure to provide accurate or honest information to the Commissioner, and contempt of the Commissioner. The Commissioner also has a role to conduct public awareness programmes. The Commissioner recommends to the Attorney General, when he believes there is sufficient evidence of a corruption offence being committed, to consider criminal prosecution for such corruption offences.

- 31 The Government has yet to appoint an Anti Corruption Commissioner due to various reasons. Development partners have offered to provide support for the set up of the office.
- 32 There has been no prosecution of any high ranking public official for corruption related matters in the recent year. A former Speaker of the Legislative Assembly was prosecuted in 2012 for illegal ammunition offence but he was eventually acquitted by the Court of Appeal.
- 33 There has been no proceeds of crimes recovery in relation to corruption.
- 34 The Attorney General's Office and the Tonga Police are the de facto anti-corruption agencies, with the support of related agencies such as the Public Service Commission and Audit Office.
- 35 The Government is still considering ratification of the UN Convention against Corruption. Assistance is being provided by the UNDP to assist the Kingdom to consider the ratification of UNCAC.

## **B Sexual and Gender based Violence**

- 36 The Family Protection Bill was passed by the Legislative Assembly in September 2013, after three years from its conceptualisation. The Act provides for protection orders to be issued by Tonga Police as first responders. The Act also provides for referral of domestic violence cases by relevant stakeholders such as medical practitioners, Tonga Police and counsellors.
- 37 The Women's Division of the Ministry of Internal Affairs and civil society organisations, together with the Attorney General's Office, are finalising an implementation plan, aimed at bringing into force the Act by 1 July 2013, and that training and budgetary provisions are provided to implement the Act in 2014.
- 38 The Solicitor General is a member of the Pacific Island Forum Secretariat's Reference Group on Sexual and Gender based Violence. The Office has participated in missions of the Reference Group to Federates States of Micronesia and the Republic of the Marshall Islands.

## **C Illegal Fishing**

- 39 Since 2009, the Kingdom has yet to detect or seize any illegal, unregulated and unlicensed fishing vessels.

- 40 Maritime surveillance continues to be provided by the Tonga Navy of the Tonga Defence Services, with support from the Australian Defence Forces, and through a shipriding agreement with the United States. Surveillance by the Fisheries Division of the MAFFF is also conducted on the coastlines but only to a limited extent.
- 41 Illegal fishing has been closer to the land with regards to the fishing of sea cucumber and the processing into bechdemer. This is a multi-million dollar industry, and the availability of quick money at enormous amounts to Tongan fishermen, has resulted in illegal fishing by Tongans using illegal equipment, the commission of related crimes such as the kidnapping and unlawful imprisonment of competitors, armed robbery, bodily harm and other unlawful activities, motivated by competing Chinese companies. There has also been corruption from the Fisheries officers, with one receiving a free trip to China for medical treatment and other favours, in exchange for preferential treatment offered to a Chinese business.
- 42 The Attorney General's Office is of the view that there should be a whole of Government approach to this threat to law and order, generated by the sea cucumber industry, and even perhaps a regional approach, such as intelligence and information sharing to determine who the actual investors are and how much the industry is worth.

## **VIII INTERNATIONAL LAW**

- 43 The Attorney General's Office has been heavily involved in international law matters for Government. The following are the pertinent international law matters:

(1) Asia Pacific Group on Money Laundering

The Office represented the Kingdom in the Annual General Meeting that was held in Shanghai, PRC. Tonga is co-leading two typologies projects on transshipment of illicit drugs through the Pacific with Vanuatu and the recovery of proceeds of crimes from corruption with Papua New Guinea. The Office is leading the coordination of anti money laundering and terrorist financing agencies activities, in order to ensure compliance with the Revised FATF standards. Tonga is on expedited reporting process on compliance with the old FATF standards, and will submit its further detailed progress report by 31 January 2014.

(2) Universal Periodic Review

The Office led the Kingdom's preparation of its second universal periodic review report, together with the Prime Minister's Office and the Ministry of Foreign Affairs and Trade, which was presented to the UPR Working Group in January 2013. The Office is also leading and coordinating the implementation of the recommendations accepted from its UPR review. This includes promotion of the rights of persons with disabilities and consideration for the establishment of a human rights institution.

(3) World Trade Organisation

The Office assisted the Ministry of Foreign Affairs and Trade in the review of the Kingdom's trade policy under the WTO framework, and also the formulation of the review. Tonga's report will be presented to the WTO in February 2014.

(4) International Committee of the Red Cross

The Office sought the assistance of the International Committee of the Red Cross in drafting of a policy paper to Cabinet proposing the ratification of the Rome Statute on the International Criminal Court. The paper is being discussed with relevant agencies before it is finalised to Cabinet for policy decision. One important consideration is the approach to be given to domesticating specific legislation for the Rome Statute. This includes costs and the extent of the actual legislative review.

(5) International Federation of the Red Cross

The Office is pursuing technical assistance for the drafting of regulations to deal with international disaster responses to states of emergency. Tonga's international disaster response law was completed in October 2013, and will be submitted to Cabinet in the next few months for approval. Following obtaining of such approval, draft regulations will be processed for approval. A staff member from the Office will be attending IDRL training .that will be provided by the International Federation of the Red Cross in Sanremo, Italy

(6) UN Convention against Corruption

The Office is considering technical assistance that is being offered by the United Nations Development Programme to assist the Kingdom accede to the UNCAC.

(7) Council of Europe Convention on Cybercrime

The Cabinet considered a recommendation to apply to the Council of Europe to be invited to accede to the Budapest Convention. If approved by Cabinet, and the Council

invites Tonga, then Tonga will be the first Pacific Island country to be invited to accede to the Budapest Convention. The Commonwealth Initiative on Cybercrime has also been requested to provide technical assistance and training to strengthen the Kingdom's cybercrime framework and legislation.

## VIII LEGAL SECTOR INITIATIVE/PROJECTS

44 The following were the legal sector initiatives for 2013:

(1) Digitisation of Vital Statistics Records

The Commonwealth Secretariat funded a project to digitise the vital statistics records of the Registrar General's Office. An expert archivist was engaged to scan vital statistics records, and also organise the Courts and the Ministry's archives.

(2) Tonga Counter Terrorism Desktop Exercise

In March 2013, the Office took the initiative to conduct a counter terrorism desktop exercise for relevant agencies. This was modelled on the Ready Pasifika desktop exercise that was conducted by New Zealand Police and partner organisations in Fiji and New Zealand. Participants were from Tonga Police, Customs, Tonga Defence Services and the Office. The participants were divided into groups and were given scenarios to plan strategies, highlight legislative powers to use in the investigation and apprehension of terrorist offenders. The scenarios were terrorist situations at the airport, in a maritime scenario, on land and also a money laundering and terrorist financing situation. The exercise was supported by the Australian Department of Foreign Affairs and Trade, and co-led by the Office, Australia Federal Police and New Zealand Police. It is hoped that a similar training will be conducted in 2014, and to be continue annually.

(3) Training for Police Prosecutors

In April and October 2013 the Office assisted Tonga Police in the training of its prosecutors, with first basic training, and followed up with practical training. The training was also supported by Magistrates. The training covered preparations for trial, opening addresses, evidence in chief, cross examination, voir dire, closing submissions, sentencing, bail applications, and Court etiquette.

In the practical training, Police prosecutors performed the various roles of prosecution, and were critiqued and offered feedback for their performances.

(4) Training of Police Investigators

In July 2013, the Attorney General's Office and Tonga Police, with support of New Zealand Police, provided investigation training for investigators. The office focussed on providing training on Police investigation powers, criminal law, evidence, bail, and other police procedures regarding the questioning of witnesses. It was also an opportunity for the Office to provide feedback on the issues that they faced in criminal prosecutions regarding Police investigations and the state of Police files.

(5) 7<sup>th</sup> Annual Law Week 2013

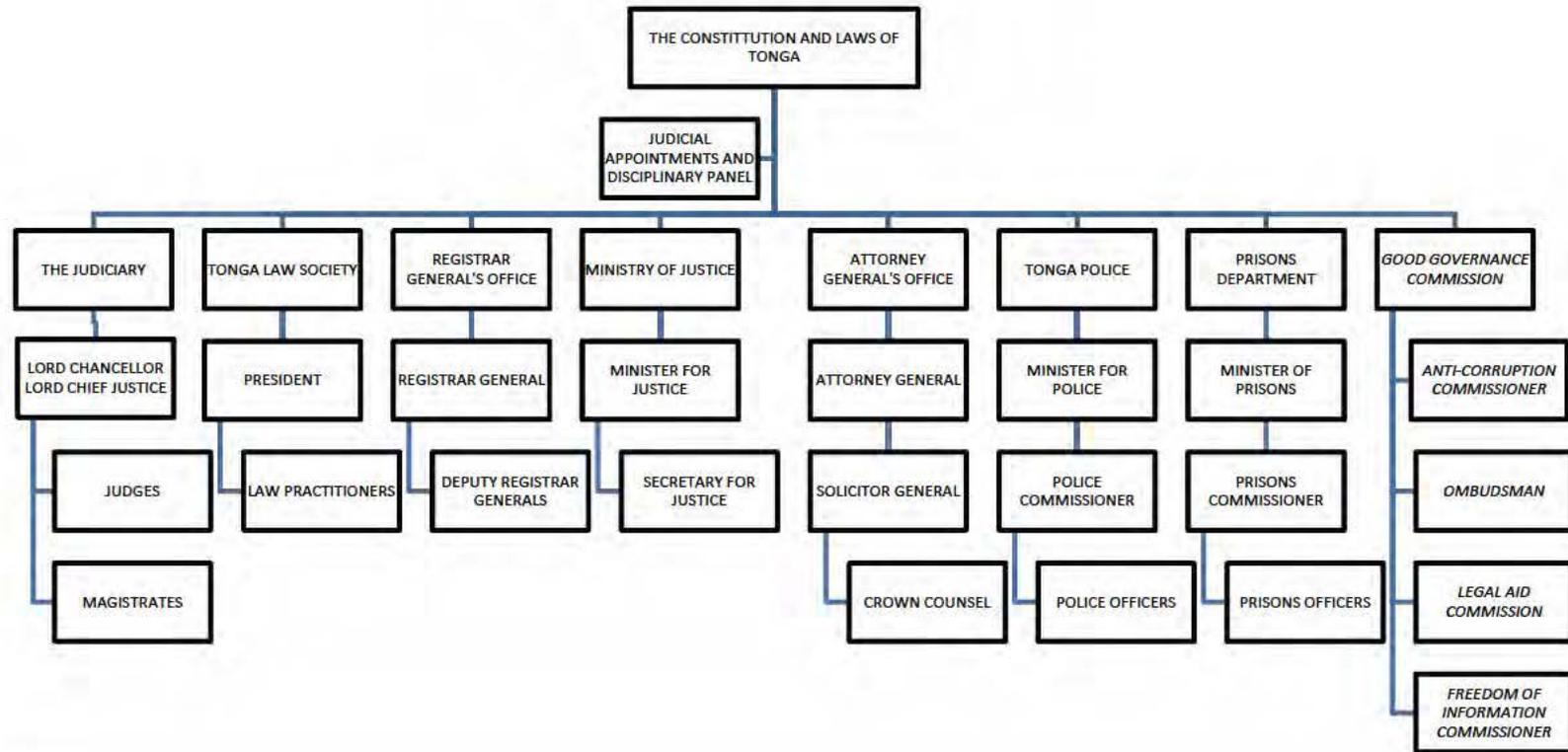
At the end of November 2013, the Attorney General's Office will hold the 7<sup>th</sup> Annual Law Week, with a theme of "Village Laws". The objective is to raise awareness of the laws that are applicable and relevant directly to life at the village levels, especially with animal enclosures, powers of town officers and district officers, community policing, village councils, village fonos (meetings), and offences in public places. It will also be an opportunity to discuss the new Family Protection Act and its application.

(6) International Criminal Cooperation Workshop

The Office was pleased to co-host together with the Australian Attorney General's Department, an international criminal cooperation workshop on extradition and mutual assistance requests. There were 10 jurisdictions represented, including New Zealand and Australia. The workshop discussed the respective legal frameworks on extradition and mutual assistance, and discussed challenges and best practices in strategising, drafting, receiving and implementing mutual assistance and extradition requests.

ANNEX 1

TONGA'S LEGAL SECTOR



**ANNEX 2**  
**2013 LEGISLATION**

**2013 ACTS**

- (1) Pacific Games Organization Act 2013
- (2) Constitution (Amendment) Act 2013
- (3) Land (Amendment) Act
- (4) Legislative Assembly (Amendment) Act
- (5) Income Tax (Amendment) Act
- (6) Revenue Services Administration (Amendment) Act
- (7) Revenue Administration (Amendment) Act
- (8) Customs and Excise Management (Amendment) Act
- (9) Consumption Tax (Amendment) Act
- (10) Excise Tax (Amendment) Act
- (11) Customs (Amendment) Act
- (12) Public Holidays (Amendment) Act
- (13) 2013/2014 Appropriation Act
- (14) Legislative Assembly Retirement Benefits Scheme (Amendment) Act
- (15) Tonga Tourism Authority (Amendment) Act
- (16) National Retirement Benefits Scheme (Amendment) Act
- (17) *Public Health (Amendment) Act*
- (18) *Counter Terrorism and Transnational Organised Crime Act*
- (19) *Family Protection Act*
- (20) *Tonga Defence Services (Amendment) Act*
- (21) *Registration of Business Names Act*
- (22) *Income Tax (Amendment) (No. 2) Act*
- (23) *Revenue Services Administration (Amendment) (No. 2) Act*
- (24) *Food Act*
- (25) *Education Act*
- (26) *Rehabilitation of Offenders Act*

## **2013 SUBSIDIARY LEGISLATION**

- (1) District and Town Officers (Election ) Regulations 2013
- (2) Income Tax (Amendment) Regulations
- (3) Revenue Services Administration (Amendment) Regulations
- (4) Whale Watching and Swimming Regulations
- (5) Customs Duty (Amendment) Order
- (6) Consumption Tax Order
- (7) Retirement Fund (Administration) (Amendment) Regulations
- (8) Tonga Defence Services Pensions (Amendment) Regulations
- (9) Tonga Defence Services (Operations Benefit) Regulations
- (10) Waste Management (Plastic Levy) Regulations
- (11) Customs Duty (Amendment) (No 2) Order
- (12) Excise Tax (Amendment) (No. 2) Order

## **BILLS WITH THE LEGISLATIVE ASSEMBLY**

- (1) Act of Constitution (Amendment) Bill 2012
- (2) Good Governance Commission Bill 2012
- (3) Anti-Corruption Commissioner (Amendment) Bill 2012
- (4) Commissioner for Public Relations (Amendment) Bill 2012
- (5) Legal Aid Bill 2012
- (6) Water Resources Bill 2012
- (7) Constitution (Amendment) (No. 2) Bill 2013
- (8) Receivership Bill 2013
- (9) Income Tax (Amendment) (No. 3) Bill 2013
- (10) Revenue Services Administration (Amendment) (No. 3) Bill 2013
- (11) Therapeutic Goods (Amendment) Bill 2013
- (12) Nurses (Amendment) Bill 2013
- (13) Revenue Services Administration (Amendment) (No. 4) Bill 2013
- (14) Ozone Layer Protection (Amendment) Bill 2013

**ANNEX 3**  
**NATIONAL AND OVERSEAS TRAINING**

<b>DATE</b>	<b>TRAINING</b>	<b>VENUE</b>	<b>AGO PARTICIPANT</b>
4 March	APG Workshop on the Revised FATF Standards and Pacific Typologies	Brisbane, Australia	‘Aminiasi Kefu, Solicitor General
11 March	Workshop on Deep Sea Mining Law and Contract Negotiations	Nuku’alofa, Tonga	James Lutui, Crown Counsel
19-20 March	Tonga Counter-Terrorism Desktop Exercise	Nuku’alofa, Tonga	‘Aminiasi Kefu, Solicitor General ‘Elisapeti Lavakei’aho, Crown Counsel Leotrina Macomber, Assistant Crown Counsel
15-26 April	Tonga Police Prosecution Workshop	Nuku’alofa, Tonga	‘Aminiasi Kefu, Solicitor General Sione Sisifa, Assistant Senior Crown Counsel James Lutui, Crown Counsel
22-24 April	Tonga Inter-Agency Border Protection Workshop	Nuku’alofa, Tonga	Juliana Lafaialii Lutui, Assistant Crown Counsel Marina Moa, Assistant Crown Counsel
23-25 April	Regional Workshop on Trafficking in Persons and Child Sex Tourism	Nadi, Fiji	Sione Sisifa, Assistant Senior Crown Counsel
6-10 May	Workshop on Contemporary Maritime Issues in the Western and Central Pacific	Auckland, New Zealand	Joan Puloka, Assistant Crown Counsel
20-21 May	Workshop on Effective International Cooperation in the Area of Cybercrime Investigation and Prosecution, 20-21 May 2013, Tokyo, Japan	Tokyo, Japan	‘Aminiasi Kefu, Solicitor General

	Tonga Police Investigators Training	Nuku'alofa, Tonga	'Aminiasi Kefu, Solicitor General Sione Sisifa, Assistant Senior Crown Counsel James Lutui, Crown Counsel 'Elisapeti Lavakei'aho, Crown Counsel
10-13 June	SPC/RRRT Sub-Regional Consultation and Progress and Review on Violence against Women Legislation	Nadi, Fiji	'Aminiasi Kefu, Solicitor General
17-19 June	UNODC Pacific Islands States Workshop on Trafficking in Persons	Nadi, Fiji	Sione Sisifa, Assistant Senior Crown Counsel
1-29 July	DSM Project Legal Trainee Placement with the International Seabed Authority	Kingston, Jamaica	Rose Kautoke, Assistant Crown Counsel
October	Tonga Police Prosecution Practical Workshop	Nuku'alofa, Tonga	Sione Sisifa, Assistant Senior Crown Counsel James Lutui, Crown Counsel 'Elisapeti Lavakei'aho, Crown Counsel

#### **NATIONAL, REGIONAL AND INTERNATIONAL MEETINGS**

<b>DATE</b>	<b>MEETING</b>	<b>VENUE</b>	<b>AGO PARTICIPANT</b>
21 January	2 <sup>nd</sup> Universal Periodic Review for Tonga, Human Rights Council	Geneva, Switzerland	'Aminiasi Kefu, Solicitor General
11 March	Meeting of Working Group of Commonwealth Experts on Cybercrime	London, UK	'Aminiasi Kefu, Solicitor General
3-6 June	Pacific Command Military Operations and Law Conference	Bangkok, Thailand	'Aminiasi Kefu, Solicitor General

5-6 June	Forum Regional Security Committee	Suva, Fiji	Rose Kautoke, Assistant Crown Counsel
4-7 July	Operation Ika Moana Planning Conference	Rarotonga, Cook Islands	Joan Puloka, Assistant Crown Counsel
7-10 July	ICPD Beyond 2014 Conference on Human Rights	The Hague, Netherlands	'Akanesi Katoa, Assistant Crown Counsel
15-19 July	16 <sup>th</sup> APG Annual General Meeting and Capacity Building	Shanghai, PRC	'Aminiasi Kefu, Solicitor General
2-3 September	Pacific ACP States Preparatory Meeting for the 9 <sup>th</sup> WTO Ministerial Meeting	Port Vila, Vanuatu	Rose Kautoke, Assistant Crown Counsel
9-10 September	Scoping Mission to the Samoa International Finance Authority	Apia, Samoa	Juliana Lafaiali'i Lutui, Assistant Crown Counsel
9-11 September	Senior Officials of Law Ministries Meeting	London, UK	'Aminiasi Kefu, Solicitor General Susana Faletau, Secretary for Justice
12-13 September	Meeting of Commonwealth Law Ministers and Attorneys General of Small Commonwealth Jurisdiction	London, UK	Neil Adsett, Attorney General 'Aminiasi Kefu, Solicitor General Susana Faletau, Secretary for Justice
16 September	Pacific Islands Forum Reference Group on Sexual and Gender Based Violence	Suva, Fiji	'Akanesi Katoa, Assistant Crown Counsel
23-27 September	Joint APG/EAG Typologies and Capacity Building Workshop	Ulaanbaatar, Mongolia	'Aminiasi Kefu, Solicitor General
3-25 October	Economic Partnership Agreement Related Meeting	Brussels, Belgium	Rose Kautoke, Assistant Crown Counsel
7-11 October	Annual Human Rights Consultation	Suva, Fiji	'Akanesi Katoa, Assistant Crown Counsel

**ANNEX 4**

**LEGAL SECTOR CONTACT INFORMATION**

<b>JUSTICE AGENCY</b>	<b>CONTACT PERSON AND POSITION</b>	<b>CONTACT DETAILS</b>
Ministry of Justice and Registrar General's Office	Ms Susana Faletau, Secretary for Justice and Deputy Registrar General	(676) 25 678 <a href="mailto:sfaletau@justice.gov.to">sfaletau@justice.gov.to</a>
Supreme Court of Tonga	Mr Feleti Tuita, Registrar	(676) 23 599
Attorney General's Office	Mr 'Aminiasi Kefu, Solicitor General	(676) 24055/24007 (676) 25347 (Direct) <a href="mailto:sg@crownlaw.gov.to">sg@crownlaw.gov.to</a> / <a href="mailto:aminiasi@kalianet.to">aminiasi@kalianet.to</a>
Tonga Police	Mr Grant O'Fee, Police Commissioner	(676) 23233 <a href="mailto:grantofee1@gmail.com">grantofee1@gmail.com</a>
Prisons Department	Mr Sione Falemanu	(676) 37342 <a href="mailto:commfalemanu@kalianet.to">commfalemanu@kalianet.to</a>
Tonga Law Society	Mr Laki Niu SC	(676) 23654 <a href="mailto:lakiniulaw@gmail.com">lakiniulaw@gmail.com</a>