



KINGDOM OF TONGA

COUNTRY REPORT

33rd Pacific Islands Law Officers' Network Meeting
(PILON)

11-12 November 2014

Tarawa, Kiribati

I INTRODUCTION

Malo e Lelei and Mauri,

- 1 On behalf of the Attorney General's Office of the Kingdom of Tonga, I have the distinct pleasure of presenting the Kingdom of Tonga's Country Report for 2014 to distinguished colleagues attending the 33rd Pacific Islands Law Officers' Network Meeting here in Betio, Tarawa, Kiribati.
- 2 First of all I would like to offer the gratitude of the Tongan delegation to our gracious host, the Office of the Attorney General of Kiribati, for their warm hospitality, and generous arrangements offered to my delegation during our stay here in Kiribati. It has been a unique experience, and one that we will treasure and never forget.
- 3 Tonga has experienced a number of changes in its legal structure with the appointment of a Director of Public Prosecutions, the resignation of the Attorney General, the appointment by His Majesty in Council of an Acting Attorney General, the resignation of the Lord Chief Justice, the appointment of the first Tongan to the Court of Appeal, and the appointment of 20 Justices of the Peace.
- 4 Another highlight in this Country Report is the significant constitutional and judicial reform relating to the appointment authority for judicial officers, the Attorney General and the new Director of Public Prosecutions. The relevant Acts were passed on the last sitting of the Tongan Legislative Assembly, and are now awaiting Royal Assent.
- 5 The judiciary also played its vital role in dispensing justice and protecting the Tongan Constitution and the laws made under it. This role is performed by the Court of Appeal on two sessions, and daily by the Supreme Court and the Magistrate's Court.
- 6 The Office again had a heavy legislative programme for 2014, with the drafting of 32 Acts and 4 subsidiary legislation.
- 7 With regards to issues facing the legal sector, the effects of limited resources and sub-standard resources continue to challenge the sector, especially retention of qualified legal staff.
- 8 With regards to PILON's priority legal issues, there was no investigation or prosecution of any corruption related cases, and the Tongan Government has yet to appoint an Anti-Corruption Commissioner despite legislation being passed in 2007. Tongan authorities are actively

implementing the Family Protection Act which came into force on 1 July 2014, and also continuing public awareness to discourage domestic violence being committed against women and children. Illegal fishing continues to be of major concern, especially with the illegal fishing of sea cucumber and other related crimes, which are motivated by competing companies, untrained fishermen and corrupt Fisheries officers.

- 9 The Office continues to provide legal support to other Government Ministries and Agencies with their internal law commitments, especially with the World Trade Organisation. Of significance, Tonga has been invited to accede to the Budapest Convention on Cybercrime, the first Pacific nation to be invited to do so.
- 10 Finally, the Office played an instrumental role in the establishment of the Tonga Law Enforcement Agencies Committee, which is a forum for police, customs, immigration, immigration, and business authorities and regulators, and prosecutors, meet to share information and collaborate and cooperate on the investigation and prosecution of serious crime. The Office also continued to provide the annual national Law Week in the first week of November to commemorate the granting of the Tongan Constitution on 4 November 1875. This year the theme was the Law and Elections, in order to concentrate on electoral offences.
- 11 It is hoped that this report will provide useful information
- 12 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.
- 13 I wish all distinguished colleagues a very Merry Christmas, and may you all receive many more blessings for the New Year 2015!

Malo ‘aupito and korapa,

‘Aminiasi Kefu

Acting Attorney General and Director of Public Prosecutions

12 November 2014

II TONGA'S LEGAL SECTOR

14 Tonga's legal sector is projected in the diagram set out in **Annex 1**.

15 Since the last Country Report in 2013, there have been a change in the structure, and also the personnel in office.

A The Attorney General, Solicitor General and Director of Public Prosecutions

16 In April 2014 the Attorney General, using his Constitutional powers of independence to administer his office, created the role of Director of Public Prosecutions. This was endorsed by His Majesty in Privy Council and also His Majesty's Cabinet. Accordingly, all criminal prosecutions are now the responsibility of the Director of Public Prosecutions, rather than the Attorney General. Mr 'Aminiasi Kefu was appointed to this role, after completing 5 years appointment as Solicitor General.

17 In June 2014, the Attorney General, Mr Neil Adsett, resigned from his post based on personal reasons. His Majesty the King in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel, then appointed Mr 'Aminiasi Kefu, Director of Public Prosecutions, as the Acting Attorney General.

18 On 31 October 2014, the Public Service Commission appointed Mr Sione Finau Sisifa, Assistant Senior Crown Counsel, as the new Solicitor General. Mr Sisifa will be responsible, under the Acting Attorney General, for the provision of legal advice to Government Ministries and Agencies, the representation of the Crown in civil and land cases, legislative drafting, community legal literacy, and as Chief Executive Officer, for the corporate services for the Attorney General's Office.

19 Due to the limited number of Crown counsel, the Director of Public Prosecutions is housed in the Attorney General's Office, and so the Crown counsel also perform the role of Crown prosecutors.

B New Commissioner for Public Relations

20 In October 2014, His Majesty's Cabinet appointed Mr 'Aisea Havea Taumoepeau SC, a former Attorney General and Minister for Justice, and a former Solicitor General, as the new Commissioner for Public Relations.

C New Court of Appeal Judge

21 Also in October 2014, His Majesty in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel, appointed Lord Tupou, a former Attorney General and Minister for Justice, and a former Crown Solicitor, as the first Tongan to be appointed to the Court of Appeal of Tonga. Lord Tupou first sat on the Court of Appeal during its Second Session from 20 to 31 October 2014.

D Recruitment of New Police Commissioner

22 In December 2014, the Police Commissioner Mr Grant O'Fee will be stepping down from his role. The Judicial Appointments and Discipline Panel are in the process of recruiting a replacement to recommend to His Majesty the King in Privy Council.

E Recruitment of New Lord Chief Justice

23 In December 2014, the Lord Chief Justice, Michael Dishington Scott, will also be stepping down from his role, however he will continue as a non-resident part time Supreme Court Judge. His Majesty in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel, has appointed a new Chief Justice, from New Zealand, however employment arrangements are being finalised before a public announcement will be made in January 2015.

F Appointment of Justices of the Peace

24 In June 2014, His Majesty the King appointed, upon the advice of the Lord Chief Justice, 20 persons as Justices of the Peace. There can only be 20 Justices of the Peace at one time, and they hold their warrant for 1 year. They were appointed from different areas in Tonga to provide services for the entire public. These services include: (a) to witness documents and take oaths, and the powers of Commissioners of Oaths to take affidavits and declarations; (b) grant bail; (c) issue search warrants; (d) issue subpoenas; and (e) such other powers that are assigned to them by any Act or by regulations made under subsection (5). The Justices of the Peace are allowed to collect a small fee only for certifying documents, and administering oaths or affirmations. They also receive an honorarium of \$1,000.00 per year.

G Legal Sector Reform

- 25 In August 2014, the Legislative Assembly passed legislation will make further changes to Tonga's legal sector. First was an amendment to the Constitution to remove the Judicial Appointments and Discipline Panel, and to replace it with a Judicial and Legal Services Commission. The office of Lord Chancellor will also be removed, and the Lord Chief Justice will remain the sole head of the Judiciary, and the administration of the Courts would remain with the Ministry of Justice.
- 26 The Attorney General will then be appointed by His Majesty in Privy Council, upon the advice of the Judicial and Legal Services Commission. The office of the Director of Public Prosecutions was also created to be appointed by His Majesty in Privy Council, upon the advice of the Judicial and Legal Services Commission.
- 27 The other amendment was the passing of the Judicial and Legal Services Commission to be responsible for the recruiting and advising His Majesty the King in Privy Council, as to the appointments of judicial officers, the Attorney General and Director of Public Prosecutions. The Commission will be chaired by the Lord Chief Justice, and the members will include the President of the Tonga Law Society, the Chairperson of the Public Service Commission and two members from the community appointed by the Minister for Justice.
- 28 These laws are currently with His Majesty the King for consideration of granting Royal Assent.

III MAJOR LAW AND JUSTICE SECTOR ACHIEVEMENTS

29 The major law and justice achievements in 2014 were:

(1) Legal Reform

- Coming into force of the new Family Protection Act 2013 on 1 July 2014;
- Enactment of Seabed Minerals Act 2014, which came into force on 25 August 2014;
- Passing of Anti-Corruption Commissioner (Amendment) Act 2014;
- Passing of Commissioner for Public Relations (Amendment) Act 2014;

(2) Judicial Reform

- Passing of the Act of Constitution of Tonga (Amendment) Act 2014, awaiting Royal Assent;

- Passing of Judicial and Legal Services Commission Act 2014, awaiting Royal Assent;

IV SIGNIFICANT COURT DECISIONS

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

(1) Taione v Tu'ivakano and ors, CV 2/13

This was an application for judicial review heard in the Supreme Court. The applicant is a member of parliament, who sought public law remedies against the Cabinet and the Crown on an allegation that Cabinet had unlawfully paid lease rental payments in advance to hereditary estate titleholders for the continuation of leases in the airport, contrary to the Constitution, the Land Act and the Public Finance Management Act. Cabinet and the Crown has paid the rent in advance to secure long term leases for the airport authority over the airport land part of hereditary estates, so that the World Bank could commit a multi-million project to upgrade Tonga's two main airports on Tongatapu and Vava'u. The Lord Chief Justice held that the plaintiff could not prove that the respondents had acted contrary to the Constitution, the Land Act or the Public Finance Management Act, and so dismissed the application, with no costs.

(2) Rex v Hala'ufia and ors, CR 35, 36, 91-93/13 and Rex v Manu, CR 37/13

The accused were charged with the manslaughter of Tongan born New Zealand police officer, Kali Fungavaka, in August 2012, in the Nuku'alofa Central Police Station. The five accused were all police officers who were on duty on the night as the Tactical Response Group, and who had arrested the deceased from outside a nightclub. The elected a trial by judge alone, which was heard before Cato J in April 2014. Another accused, a civilian detainee, who was also charged with manslaughter of the deceased when he punched the deceased after the deceased was put in the police cells. That accused was tried separately before a judge and jury, following the first trial.

The five police officers were charged on a joint enterprise basis, to have caused separate injuries that all materially caused the death of the deceased. Justice Cato did not accept that there was a joint enterprise, however he convicted two officers for manslaughter for two separate assaults on the deceased which he held were each a "material cause" of the death, and one police officer was convicted for common assault on the deceased.

One officer who was an inspector, was sentenced to 11 years imprisonment, with one year suspended for one year. The other officer who was convicted of manslaughter was sentenced to 10 years imprisonment, with one year suspended for one year. The officer who was convicted of common assault was sentenced to 8 months imprisonment, which was fully suspended for 2 years, and he was also ordered to perform 110 hours of community service.

The civilian accused was acquitted by the jury of manslaughter, but the jury convicted him for grievous bodily harm. The jury seemed to accept that the accused's punch had exacerbated the deceased's brain haemorrhages, which was first caused by the police officers. The civilian accused was sentenced to 18 months imprisonment, but fully suspended on good behaviour.

The police inspector appealed to the Court of Appeal against his conviction and sentence for manslaughter. He claimed that Justice Cato was wrong to accept evidence of the one witness who saw him hit the deceased with a torch on the top of the head, which was not seen by anyone else, and that the trial judge had failed to give himself sufficient warning to be cautious with the witness' evidence because the witness was the father of the civilian accused. For the sentence, the police inspector claimed that more of his sentence should have been suspended because he was a first time offender and of his previous good behaviour.

The Court of Appeal dismissed both appeals. The Court held that the trial judge had given himself sufficient warning, and that the trial judge was fully aware of the circumstances of the witness's relation to the other civilian accused. As for the suspension, the Court held that the suspension of one year for a period of one year was appropriate given the severity of the offending.

(3) Public Service Commission v Fukofuka, AC 7/13

This was an appeal by the Public Service Commission against the decision of the Lord Chief Justice that the employment of the respondent, as a former chief executive officer of education, was unlawfully terminated. The respondent was employed on a five year employment contract as a chief executive officer for education in 2007. In the lead up to the national elections in 2010, the Legislative Assembly amended the Public Service Act to provide that any public servant who registered to be a candidate in the national elections, would cease to be a public servant on the date of registration. The respondent argued that

this amendment was not part of his original employment contract, and so the amendment could not be applied against him. He also argued that the amendment was retrospective and therefore against the Constitution, and so the respondent claimed that he remained a public servant and chief executive officer after the national elections, which he did not result in his election.

The Lord Chief Justice had agreed with the respondent, and held that the amendment did not apply to the respondent. However on appeal by the Public Service Commission, the Court of Appeal held that the amendment applied, and that the Public Service Act applied to contracts as far as it was amended. Furthermore, the Court held that the amendment operated to the future, to affect public servants if they register as a public servant, therefore and was not retrospective.

(4) Tapueluelu and anor v Attorney General, AC 18/13

This was an appeal against fines imposed by the Lord Chief Justice on an editor and publisher of the Kele'a newspaper, for committing contempt of court by printing an article criticising the judgment of a magistrate in a criminal defamation case, alleging that the magistrate was controlled by Government and was bias. The Lord Chief Justice held that parts of the article scandalised the magistrate, and convicted both appellants for contempt. He then imposed a fine of \$2,500.00, on each of the accused, and required them to pay the fine within one month, in default they would be imprisoned for one month.

The appellants appealed against their sentence only. The Court of Appeal held that the Lord Chief Justice failed to consider the circumstances of the appellants when imposing the fines, and also to recognise that the responsibilities of the editor and publisher are different and so they have different levels of culpability. The Court then refused the appeal of the editor and accepted that the fine was appropriate, but accepted the appeal of the publisher, and reduced her fine to \$500 only. Costs were then ordered to be borne by each party.

(5) Manu and anor v Rex, AC 1-2/14

This was an appeal to the Court of Appeal by a police officer and a co-accused against conviction for importing Contact NT, with a Chinese co-accused. The appeals against conviction were based on procedural unfairness, the lack of evidence of knowledge of the presence of Contact NT that was concealed inside the base of small kitchen bowls, and

that the packages were interfered with before receipt by the accused. The appeals against sentence was based on the grounds that imprisonment sentence for the accused police officer was excessive, and that the trial judge should have imposed a fine as an alternative sentence to imprisonment.

There was an earlier importation which was received by the accused police officer, however that was intercepted by New Zealand Customs in Auckland, and replaced the Contact NT with placebo. The appellants were charged with attempted importing for that first importation, but they were acquitted on that charge because the prosecution could not call the New Zealand Customs officer who had intercepted that first shipment. The police officer was sentenced to 5 years and 4 months imprisonment, and the Chinese co-accused was sentenced to 10 months imprisonment, for his lesser involvement.

The Court of Appeal dismissed the appeals on convictions by holding that there was no procedural unfairness. Further, there was sufficient evidence that both accused knew of the presence of the Contact NT in the kitchen bowls. Evidence that the package was tampered with before receipt was not proven, nor was it raised in the trial.

The Court of Appeal also dismissed the appeals on sentence. The Court held that fines were not appropriate for drugs importation with a commercial aspect. Further, the mitigation factors were fully considered by the trial judge, and that the terms of imprisonment imposed were appropriate.

(6) Tu'akalau v Rex, AC 13/14

This was an appeal by the appellant against the refusal of leave by the Lord Chief Justice to appeal against her conviction and sentence for forgery, using a forged document knowing it to be forged and interference with the course of justice.

The appellant was had received a complaint from a complainant involved in a traffic incident. She did not register or pursue the complaint, because she knew the accused. The complainant later complained to the Deputy Police Commissioner for the lack of action on her complaint. When the Deputy Police Commissioner asked for the file, the complainant then wrote out a statement purportedly made by the complainant, and included a statement that the complainant would settle the complaint if the complainant was paid some money as compensation. She then went to the complainant and gave her money as compensation. The complainant refused the money.

The appellant was convicted on all charges after trial before a judge and jury. The appellant was then sentenced for the forgery and using forged documents to 18 months imprisonment, which was fully suspended, and for the interference with the course of justice case, she was sentenced to 6 months community work.

The appellant claimed that the decision of the jury was unreasonable given the totality of the evidence. The Court of Appeal held that the jury was entitled to reach their verdict that the appellant had created the forged statement in order to deceive the Deputy Police Commissioner. This was because she knew the person who was being complained against, and that she was trying to get the complainant to withdraw her complaint. The application for leave to appeal was therefore refused.

(7) Kaufusi and anor v Rex, AC 14-15/14

This was an appeal against conviction and sentences for embezzlement and falsification of accounts. Both appellants, a male and female employee, were employees of the Westpac Bank of Tonga, who were tried with 6 others for the same offences. One appellant pleaded guilty after the Crown closed its case, and the other appellant was found guilty after trial. The other 6 co-accused were also convicted and sentenced, but did not appeal. The female employee was charged in relation to 19 separate transactions from 22 January 2011 to 3 January 2012, amounting to \$30,917.60. The male appellant was charged with 48 occasions from 17 January 2008 to 30 June 2011, amounting to \$41,301.03.

The male appellant, who pleaded guilty, was sentenced to 2 years and 8 months imprisonment, with 9 months suspended for 2 years. The female appellant who was convicted after trial, was sentenced to 2 years and 3 months imprisonment, with 6 months suspended for 2 years.

The sole ground of appeal against convictions was that the indictment was defective because it was duplicitous in containing a number of offences in one charge of embezzlement, and therefore the indictment breached section 160 of the Criminal Offences Act, which required that an indictment can only contained 5 counts of embezzlement for trial. The appeal against sentence was that it was excessive.

The Court of Appeal held that it was an accepted exception to the rule against duplicity when there is a case of “continued taking” or general deficiency”, for the Crown to lay an

indictment containing an aggregate count of the offences. In this case, it would have caused injustice to present evidence on all the transactions, but conviction can only be made on 5 transactions. Accordingly, in a case where there is a continued transaction, the Crown can lay an aggregate count.

With regards to the appeal against sentence, the Court of Appeal held that, in relation to the male appellant, the trial judge did not err in recognising the impact of payment of compensation, and also the length of suspension, based on the late guilty plea. In relation to the female appellant, the Court held that the trial judge did not err in the suspension period he gave. Therefore there was no error in principle, nor was the sentence manifestly excessive.

Both appeals by the appellants against conviction and sentence were therefore both dismissed.

(8) Mokofisi v Minister of Lands and anor, AC 23/14

This was an appeal against the decision of the Lord Chief Justice to strike out the appellant's claim in the Land Court because it was time barred. The appellant claimed that he was the rightful heir to the land of his great grandfather, and that land was wrongly registered in his great granduncle back in 1929. The appellant applied to the Land Court that it should direct the Minister of Lands to use his inquiry powers under the proviso to section 82, which sets out the succession to land. The proviso provides that if a male land holder had failed to register the land, the heir could request the Minister to make inquiries and then register the land posthumously in the deceased male heir in order to allow the heir to succeed to the land.

The Court of Appeal however held that the claim by the appellant, who was not the heir of the last male deceased landholder, but rather is the great grandson of the last male deceased landholder, and therefore he could not use the proviso. Equally important was that section 170 of the Land Act provides a statutory limit for claims to be made within 10 years of the right accrued to sue. The claim should have been made before 1939. The appeal was then dismissed with costs.

(9) Ve'ehala v Kingdom of Tonga, AC 25/14

This was an appeal against the decision of the Lord Chief Justice to strike out the claim of the appellant on the basis that it was a public law claim, and that it was filed without leave of the Court. The appellant, a former police officer, claimed that his claim was of private law for unlawful dismissal as a police officer under the repealed Police Act.

The Court of Appeal held that the appellant's claim was properly filed as a private claim, and although based on statute, it did not bar private claims to be made based on statute. The statute provided the terms of employment, and the dismissal processes required fairness and natural justice to be applied. The appellant's claim was reinstated for the pleadings to be closed. The appellant was granted costs in the Court of Appeal and the Supreme Court.

(10) Pedras v Prime Minister and ors, AC 26/14

This was an appeal against the decision of the Lord Chief Justice dismissing the application by the appellant for judicial review, against a removal order to remove him from the Kingdom, issued by the Immigration authorities under the Immigration Act. The Immigration authorities had issued the removal order on the basis of information received from the US Government that the appellant was subject of an arrest warrant and indictment for wire fraud. The appellant however claimed that the Immigration authorities had not fully complied with the procedures set out by the Immigration Act, because he was denied a right to appeal against the declaration that he was an undesirable immigrant, although he did appeal against his removal order. The appellant also claimed that the Crown should not have used the removal process but should have used the extradition process.

The Court of Appeal agreed with the appellant in so far that the Immigration authorities did not comply with the Immigration Act. It held that after the Acting Prime Minister declared the appellant as an undesirable immigrant, making the appellant a prohibited immigrant under the law and his presence unlawful, the Immigration authorities should have made another declaration that the appellant was a prohibited immigrant, rather than removing him after the Acting Prime Minister's declaration. That declaration allowed the appellant a first right of appeal. If he failed that first appeal, then he could be removed, subject to a second appeal. The Court of Appeal however refused the argument that the extradition process should have been used, because that was an entirely different process

initiated by a request for extradition, and it was up to the authorities as to what process was applicable.

The appellant's appeal was allowed, and costs in the Court of Appeal and the Supreme Court were awarded to the appellant. His claim for damages will continue in the Supreme Court. The Crown is waiting for an extradition request from the United States authorities.

(11) Tupouniua v Supervisor of Elections and ors, CV 80/14

This was an urgent judicial review by the applicant for the refusal by the respondents to allow him to register as a candidate to the upcoming national elections on 27 November 2014.

Under clause 65 of the Constitution no person who has an outstanding Court order against him for the payment of money can be nominated and registered as a candidate. Section 9 of the Electoral Act then adds a requirement that written clearances must be provided from the Supreme Court and Magistrate's Court to confirm that a candidate is not disqualified under clause 65. Section 9 of the Electoral also provided that nominations will close at 3pm on the date or dates for nominations.

The applicant had an outstanding Court order to pay to the ANZ Bank a debt since 2008. The applicant was disqualified from standing as a candidate for the 2010 national elections due to the non-payment of this debt. The applicant paid a portion of his debt which the ANZ Bank accepted as satisfaction for the debt. A letter was then given to the applicant to take to the Supreme Court to obtain his written clearance. The written clearance from the Supreme Court was not issued until around 3.30pm. Around 3.05pm however the applicant went to the respondents and requested that he be registered late. The respondents refused because the applicant had not complied with the statutory requirements.

The Supreme Court however held that such refusal was wrong, and that under the exceptional circumstances, the respondent knowing that the applicant had paid his debt, should have accepted the late nomination.

The respondents have decided to appeal this ruling on the basis that the statutory provisions do not give the respondents any room for discretion to accept late registrations.

V LAW REFORM: LEGISLATIVE PROGRAMME

A The 2014 Laws

31 The year 2014 continued to be a busy legislative year. This was the last year of the 4 year term of the Legislative Assembly since 2011, and so this was the last opportunity for the Government to pass all their laws before the session ended at the end on 29 August 2014, in preparation for the 27 November 2014 national elections.

32 **Annex 2** sets out the laws that the Office processed for enactment on behalf of Government.

33 The legislation enacted in 2014 are summarised as follows:

- the Legislative Assembly passed 32 Acts;
- 18 Acts have been granted Royal Assent, and have been promulgated to come into force;
- 14 Acts are before His Majesty for Royal Assent;
- Certain executive authorities made 4 subsidiary legislation.

34 During the year, significant legislation passed was a new Civil Aviation Act 2014 to provide a new and modern regulatory framework for the civil aviation industry. A new Fire and Emergency Act 2014 was also passed to provide for new fire services and emergency response services. Both Acts were provided with technical assistance to the relevant ministries from the World Bank and Australian counterparts, respectively. A new Food Act 2013, passed by the Legislative Assembly in 2013, was finally enacted after receiving Royal Assent in 2014, to provide for a regulatory framework to ensure food safety.

B Legislative Drafting in the Office

35 The Office's legislative drafting team was led by the Attorney General and supported by the Solicitor General and one Crown Counsel, one Assistance Crown Counsel and one translators.

36 One Crown counsel completed the legislative drafting training for the Post-Graduate Diploma in Legislative Drafting, offered by the University of the South Pacific, making it 9 Crown counsel now.

- 37 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, in both final and draft form. 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.
- 38 The Office has also utilised social media through a Facebook page and a twitter account to provide updates on new laws, and other activities of the Office.
- 39 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. Often in the Assembly, the Tongan translation is used as a political platform to either to criticise Government's proposed Bills or delay it.
- 40 Work continues on the finalisation of the consolidation of the laws of Tonga up to 2011. Since the resignation of the Attorney General, he has agreed to continue to drive the consolidation process. We are now hoping that the consolidation would be completed by end of 2015.

VI LEGAL SECTOR ISSUES

- 41 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 staff 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) The Supreme Court will have a new Lord Chief Justice in January 2015, and the only other judge is Justice Charles Cato. A new Registrar of the Supreme Court was appointed being a former Magistrate and Vital Statistics officer.

- (5) With amendments made in 2012, most of the criminal workload is now handled by the enhanced jurisdiction of the Principal Magistrate, who is the only legally qualified Magistrate. The jurisdiction of the Magistrate's Court is to deal with criminal cases with a maximum sentence of not more than 3 years imprisonment or a fine of not more than \$10,000.00. The Magistrate's Court (Amendment) Act 2012 created an enhanced jurisdiction where a magistrate can deal with offences beyond its jurisdiction but not impose sentences beyond 7 years imprisonment or a fine of more than \$50,000.
- (6) The main challenge is for the enhanced jurisdiction being used for dealing with the workload of criminal cases.
- (7) The Supreme Court, Land Court and Magistrate's Court continue to serve the whole of the Kingdom by circuit, but this depends on there being cases to be dealt in the remote island groups of the Niuas, 'Eua and the Ha'apai Islands.

Attorney General's Office

- (8) The Attorney General's Office continues to face the same challenges of training its young and inexperienced Crown counsel.
- (9) 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. **Annex 3** sets out the training and international meetings that the Office attended.
- (10) One Crown Counsel, Ms 'Elisapeti Langi, Crown Counsel, is currently completing a Master's degree in criminology in the University of Sydney, New South Wales, Australia. Another Crown counsel, Ms Leotrina Macomber, Assistant Crown Counsel, is currently with the Australian Attorney General's Department as the 2014 Pacific Legal Twinning Program.
- (11) In the last year, two Crown counsel resigned. One took up a role in the Legislative Assembly support staff. The other migrated with her new family overseas. We have however been fortunate to recruit four new Crown counsel who recently completed professional legal training. Throughout most of 2014 the office had a total of 12 Crown

counsel, including the Acting Attorney General and Director of Public Prosecutions and the Solicitor General.

- (12) In June 2014, the Remuneration Authority issued its recommendations on the appropriate remuneration for the Attorney General, the Solicitor General and all Crown counsel. Government approved the recommendations to come into force on 1 July 2015.
- (13) With regards to criminal prosecution, the Office continues to enjoy a high conviction rate of around 80%. The number of cases being dealt with will now be heard in the Magistrate's Court, and so Crown prosecutors will now be prosecuting more in the Magistrate's Court. The prosecutions in the Supreme Court will be serious cases of violence, sexual offending and illicit drugs. The Director of Public Prosecutions and the Solicitor General were responsible for and led the prosecutions.
- (14) Due to the shift of the criminal workload to the Magistrate's Court, the Director of Public Prosecutions and the Police Commissioner are now considering housing all criminal prosecutions in the Magistrate's Court and Supreme Court under the Office of the Director of Public Prosecutions.
- (15) 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.
- (16) In the area of civil and land litigation, the Acting Attorney General and Director of Public Prosecutions has handled all the civil and land litigation. The
- (17) 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. Furthermore, the Office is considering technical assistance to establish an electronic case management system.
- (18) With regards to law reporting, the Office is working on updating the availability of the Tonga Law Reports. The Office has recently produced the 2012 Tonga Law Reports, and hope to print the 2013 Tonga Law Reports early in 2015, and the 2014 Tonga Law Reports in mid-2015.

Tonga Police

(19) The year 2014 continued to be a challenging year for Tonga Police especially internally with the prosecution of police officers for various criminal offences from manslaughter, to theft to common assault. Training and maintain professional standards are the main challenge. Resources are being provided for the development of Tonga police under the Tri-partite development programme with Australia, New Zealand and Tongan governments.

Contact Details

(20) **Annex 4** contains contact details for officers in the Ministry of Justice, the Attorney General's Office and the Director of Public Prosecutions.

VII PILON LEGAL POLICY AGENDA: UPDATE

A Corruption and Proceeds of Crime

42 There has been no prosecution of any high ranking public official for corruption related matters in the recent year.

43 There has been no proceeds of crimes recovery in relation to corruption.

44 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.

45 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

46 The Family Protection Act 2013 came into force on 1 July 2014. Tonga Police are successfully implementing the law enforcement aspects of the Act and issuing Police Safety Orders and also prosecuting offenders for domestic violence. There have been no Protection Orders issued yet by the Courts. The Ministry of Internal Affairs have established a Family Advisory Council to advise the Minister for Internal Affairs on the development of strategies to combat domestic violence.

47 The Acting Attorney General and Director of Public Prosecutions continues to be a member of the Pacific Island Forum Secretariat's Reference Group on Sexual and Gender based Violence.

48 The Acting Attorney General and Director of Public Prosecutions chaired the meeting of the PILON Working Group on sexual and gender based violence and will report on the work of the Working Group on the implementation of domestic violence legislation.

C Illegal Fishing

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

50 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 ship riding agreement with the United States. Surveillance by the Ministry of Fisheries is also conducted on the coastlines and local fishing markets and fishing establishments.

51 Illegal fishing has been closer to the land with regards to the fishing of sea cucumber and their processing into bechdemer. This is a multi-million dollar industry, which provides quick money at enormous amounts to Tongan fishermen, and which has resulted in illegal fishing by Tongans using illegal equipment, and 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.

52 The Attorney General's Office is working with law enforcement agencies to address this growing criminal concern from the sea cucumber industry.

VIII INTERNATIONAL LAW

53 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 Macao China. 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 Acting Attorney General and Director of Public Prosecutions continues to be the chairman of the Cabinet Committee on Money Laundering and Terrorist Financing Activities. The Office contributed to

(2) Office of the High Commission on Human Rights

The Office is working with the Prime Minister's Office, the Ministry of Internal Affairs and the Ministry of Foreign Affairs and Trade, with the assistance of the Human Rights Advisor of the Pacific Islands Forum Secretariat and the RRRT of the Secretariat of the Pacific Community in preparation for the next round of the Universal Periodic Review in 2016. A national human rights consultation process was held in June 2014, and work is now focussed on signing the core human rights conventions, submitting the first state report under the convention on the rights of the child, and consideration for the establishment of a human rights desk and human rights institution. The Office is working with the Ministry of Internal Affairs the final proposals for ratifying the Convention on the Elimination of Discrimination against Women.

(3) World Trade Organisation

The Office assisted the Ministry of Foreign Affairs and Trade in the review of Tonga's trade policy in February 2014. The Office is also assisting with the negotiations of Pacific Islands Countries Trade Agreement and the PACER Plus negotiations with Australia and New Zealand.

(4) International Committee of the Red Cross

The Office is finalising a draft policy paper to Cabinet proposing the ratification of the Rome Statute on the International Criminal Court. The Office will submit this to the new Government in 2015, and hopefully it will ratify the Rome Statute in 2015.

(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 from the IFRC. The Office is awaiting the final proposal of IDRL regulations for Tonga.

(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 Council of Europe has invited Tonga to be the first Pacific Islands to sign the Council of Europe Convention on Cybercrime. As a result the Acting Attorney General and Director of Public Prosecutions has been invited to attend the 12 Plenary Meeting of the Cybercrime Convention Committee, and also the Global Action on Cybercrime Project (GLACY Project) Steering Committee Meeting, to be held on 1 – 3 December 2014 in Strasbourg, France. Tonga will receive technical assistance and training on cybercrime initiatives.

IX LEGAL SECTOR INITIATIVE/PROJECTS

54 The following were the legal sector initiatives for 2014:

(1) Tonga Law Enforcement Agencies Committee

In July 2014, His majesty’s Cabinet approved the signing of the Memorandum of Understanding for the Tonga Law Enforcement Agencies Committee to provide for information sharing, and the collaboration and cooperation in the investigation and prosecution of serious crimes, particularly economic crimes such as money laundering and serious fraud, and transnational crimes such as illicit drugs trafficking, illegal fishing, human trafficking and people smuggling.

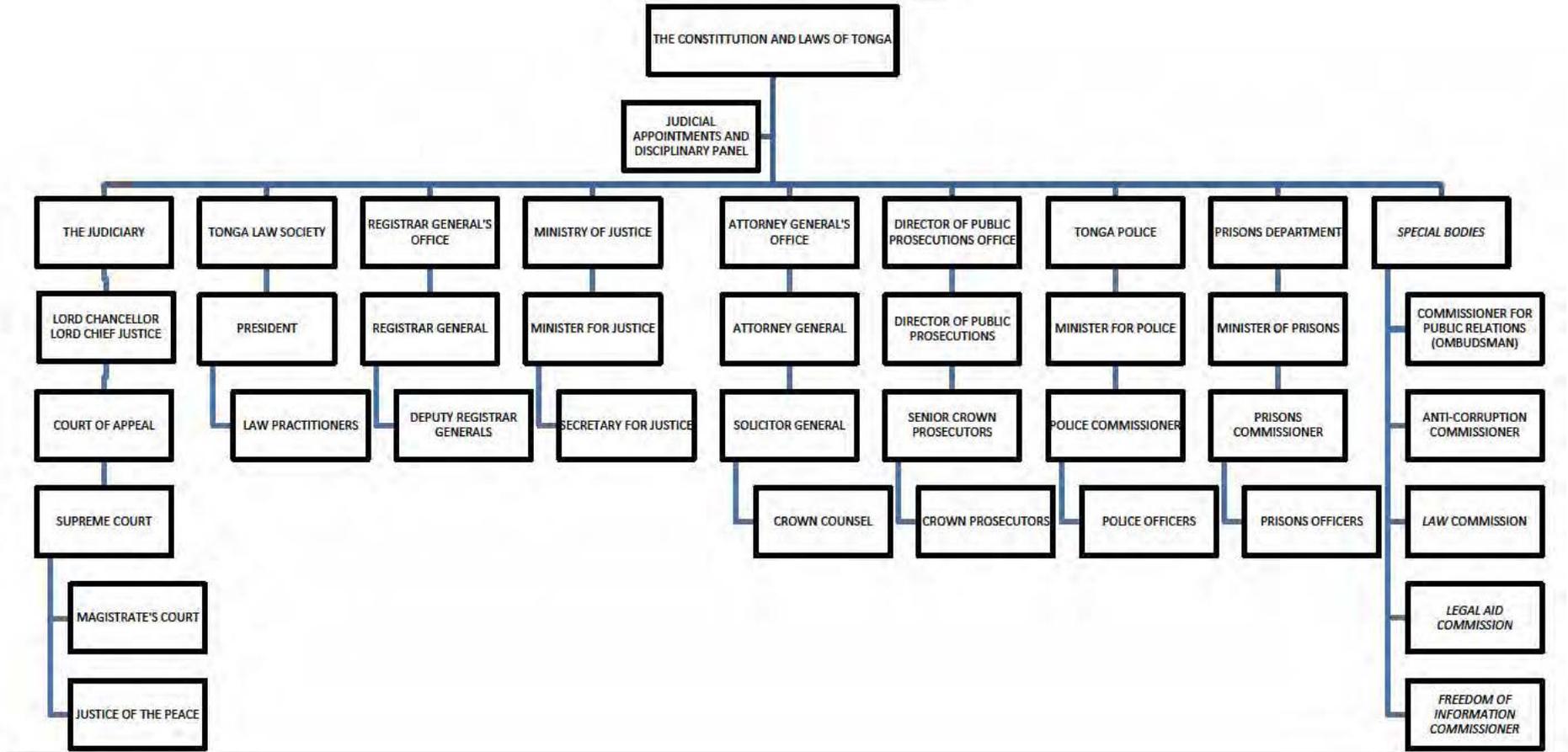
(2) Tonga Law Reports

In September 2014 the Office released the 2012 Tonga Law Reports for purchase by the legal profession and the public. The Office hopes to complete the 2013 Tonga Law Reports in early 2015, and then print the 2014 Tonga Law Reports in mid-2015. Thereafter, it is hoped that the Tonga Law Reports will be printed annually.

(3) 8th Annual Law Week 2013

In the first week of November 2014, the Office conducted the 8th Annual Law Week, with a theme of “Law and Elections”. The focus was on educating and reminding the public of the electoral offences prohibited by the electoral laws, especially election bribes. The Office published in the main newspapers a list of the electoral offences, and also conducted radio talkback during the week which proved very popular with listeners, although most of the questions sought clarification on titles to land and succession, and also adoptions and guardianships. The programmes were funded with assistance from the New Zealand High Commission head of Mission Fund.

ANNEX 1
TONGA'S LEGAL SECTOR



ANNEX 2
2014 LEGISLATION

2014 ACTS	
(1)	Therapeutic Goods (Amendment) Act 2014
(2)	Ozone Layer Protection (Amendment) Act 2014
(3)	Nurses (Amendment) Act 2014
(4)	2014/2015 Appropriation Act 2014
(5)	Electoral (Amendment) Act 2014
(6)	Electoral Boundaries Commission (Amendment) Act 2014
(7)	Legislative Assembly (Amendment) Act 2014
(8)	Tonga Development Bank (Amendment) Act 2014
(9)	Seabed Minerals Act 2014
(10)	Public Health (Amendment) Act 2014
(11)	Public Service (Amendment) Act 2014
(12)	Waste management (Amendment) Act 2014
(13)	Financial Institutions (Amendment) Act 2014
(14)	National Reserve Bank of Tonga (Amendment) Act 2014
(15)	Tonga Fire and Emergency Services Act 2014
(16)	Order in Public Places (Amendment) Act 2014
(17)	Food Act 2013
(18)	Legislative Assembly Retirement Benefit Scheme (Amendment) Act 2014
(19)	<i>Emergency Management (Amendment) Act 2014 *</i>
(20)	<i>Anti-Corruption Commissioner (Amendment) Bill 2014 *</i>
(21)	<i>Tobacco Control (Amendment) Act 2014 (Royal Assent Deferred)*</i>
(22)	<i>Intoxicating Liquor (Amendment) Act 2014 *</i>
(23)	<i>Manufacturing of Intoxicating Liquor (Amendment) Bill 2014 *</i>
(24)	<i>Commissioner of Public Relations (Amendment) Act 2014 *</i>
(25)	<i>Mental Health (Amendment) Act 2014 *</i>
(26)	<i>Civil Aviation Act 2014 *</i>
(27)	<i>Judicial and Legal Services Commission Act 2014 *</i>
(28)	<i>Act of Constitution of Tonga (Amendment) Act 2014 *</i>
(29)	<i>Magistrate's Court (Amendment) Act 2014 *</i>

(30)	<i>Tonga Police (Amendment) Act 2014 *</i>
(31)	<i>Public Service (Amendment)(No.2) Act 2014 *</i>
(32)	<i>National Spatial Planning and Management (Amendment) Act 2014 *</i>

* Awaiting Royal Assent

2014 SUBSIDIARY LEGISLATION	
(1)	Income Tax (Amendment) Regulations 2014
(2)	Electoral (Amendment) Regulations 2014
(3)	Electoral Boundaries Regulations 2014
(4)	Magistrate's Court (Justice of the Peace) Regulations 2014
(5)	Fisheries Management (Conservation)(Amendment) Regulations 2014

ANNEX 3

NATIONAL AND OVERSEAS TRAINING

DATE	MEETING	VENUE	AGO PARTICIPANT
March 2014	International Law Course	Singapore	Leotrina Macomber, Assistant Crown Counsel
June 2014	International Judicial Training Workshop on Cybercrime and Electronic Evidence	Romania	Leotrina Macomber, Assistant Crown Counsel
23 – 27 June 2014	Regional Legislative Drafting Seminar	Auckland, New Zealand	Rose Kautoke, Assistant Crown Counsel
13 October – 5 December 2014	The Australian Government Attorney – General’s Department Pacific Legal Policy Twinning Program	Canberra, Australia	Leotrina Macomber, Assistant Crown Counsel
6-7 November 2014	Professional Legislative Drafting Compulsory Workshop	Suva, Fiji	Marina Moa, Assistant Crown Counsel

NATIONAL, REGIONAL AND INTERNATIONAL MEETINGS

DATE	MEETING	VENUE	AGO PARTICIPANT
25-27 March	ADB Pacific and Caribbean Conference on Effective and Sustainable Regulation of Power and Water Services	Nadi, Fiji	Rose Kautoke, Assistant Crown Counsel

11-13 February	Tonga's WTO Trade Policy Review for	Geneva, Switzerland	'Aminiasi Kefu, Solicitor General
26-27 February	APGML High Level Mission to Samoa	Apia, Samoa	'Aminiasi Kefu, Solicitor General
9 – 11 April	Legislative Drafters' Technical Forum	Suva, Fiji	'Akanesi Katoa, Assistant Crown Counsel
28-30 May	Australasian Law Reform Agencies Conference	Apia, Samoa	Neil Adsett, Attorney General Rose Kautoke, Assistant Crown Counsel
3 June	Pacific Islands Forum Working Group on Counter-Terrorism	Suva, Fiji	Marina Moa, Assistant Crown Counsel
4 -5 June	Forum Regional Security Committee Meeting	Suva, Fiji	Marina Moa, Assistant Crown Counsel
15-18 July	17 th Annual Meeting of the Asia Pacific Group on Money Laundering Annual Meeting	Macao China SAR	'Aminiasi Kefu, Acting Attorney General and Director of Public Prosecutions
18 – 22 August	Pacific Island Law Officers' Network Sexual Gender Based Violence Working Group Meeting	Suva, Fiji	'Aminiasi Kefu, Acting Attorney General and Director of Public Prosecutions 'Akanesi Katoa, Assistant Crown Counsel
30 September – 2 October	APG Trans - Pacific Drug Trafficking Project Experts' Meeting	Sydney, Australia	'Aminiasi Kefu, Acting Attorney General and Director of Public Prosecutions Tevita 'Aho, Assistant Crown Counsel
5 – 7 November	Pacific Prosecutor's Conference	Nadi, Fiji	Sione Sisifa, Solicitor General
11 – 12 November	Pacific Island Law Officers' Network Meeting	Tarawa, Kiribati	'Aminiasi Kefu, Acting Attorney General and Director of Public Prosecutions

			Sione Sisifa, Solicitor General
17 -21 November 2014	Regional Consultation on Gender and the Law	Nadi, Fiji	‘Akanesi Katoa, Assistant Crown Counsel Halaevalu Aleamotu’a, Assistant Crown Counsel

ANNEX 4

CONTACT INFORMATION

JUSTICE AGENCY	CONTACT PERSON AND POSITION	CONTACT DETAILS
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	Mr. Sione Sisifa, Solicitor General	(676) 24055/24007 ssisifa@crownlaw.gov.to
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