



KINGDOM OF TONGA

COUNTRY REPORT

Pacific Islands Law Officers' Network 2010
(PILON)

8 – 10 December 2010
Brisbane, Australia

I INTRODUCTION

On behalf of the Government of the Kingdom of Tonga, I would like to submit Tonga's PILON Country Report for 2010.

First I would like to apologise for not being able to attend PILON 2010. As you may appreciate Tonga has just concluded a historical and significant constitutional and political process, culminating in the general elections of 25 November 2010, and the appointment of the first ever elected Prime Minister and Cabinet Ministers in the next few weeks.

As one of the elected Representatives of the People, I am therefore required to be present during this crucial time of the selection of the new Prime Minister, and also the equally important stage of formation of a Government.

May I thank the Australian Attorney General's Department for hosting PILON 2010. The continued support of the Australian Government towards our progress in the Pacific region, particularly in the legal and justice sector, continues to be warmly welcomed and gratefully appreciated.

2010 has been a historically profound year for Tonga. We are recovering from the tragedies of the sinking of the MV Princess Ashika and also the September 2009 Pacific Tsunami, and also slowly minimising of the effects of the global economic downturn. But most of all, this year the Tongan legislature enacted all the laws that amended our 135 year old Constitution to establish for the first time a fully elected Executive Government. These new laws not only changed the structure of our three branches of Government, but most importantly strengthened constitutionalism, the guarantee of freedoms and the Rule of Law in the Kingdom. As a Government and a country, we are proud of this historical achievement. This is the start of what we hope will be another successful long period of peace and stability in our Kingdom, under our Constitution.

In closing I hope the discussions in this PILON 2010 will be fruitful for all delegates. I hope there will be positive and constructive dialogue, and look forward to learning of achievable outcomes to better our work as the custodians of the rule of law in our region.

May I take this opportunity to wish all the delegates an Enjoyable Christmas and a Prosperous 2011!

Malo 'aupito.

Hon Samiu Kuita Vaipulu
Minister for Justice and Acting Attorney General

II GENERAL

The Legal Sector of the Kingdom currently consists of:

- The Judiciary, with the Lord Chief Justice as the professional head, and the Lord Chancellor as the administrative head;
- The Minister of Justice and Acting Attorney General, providing the administrative support to the Judiciary, and head of the legal services for His Majesty's Government;
- the Ministry of Justice, responsible for the administration of the Courts, headed by the Acting Secretary of Justice;
- the Crown Law Department, headed by the Solicitor General, responsible for the provision of legal services to His Majesty's Government and the public; and
- The Tongan Law Society, consisting of licensed law practitioners, headed by the President of the Tonga Law Society.

The Legal Sector underwent profound reforms, particularly to the judiciary and measures to guarantee judicial independence and the rule of law. At the same time, the legal sector faced a number of challenges in 2010, and also achieved significant milestones.

Overall, the legal sector is still in need of resources, both financial and personnel, and political will to allow it to achieve its objectives of provision and administration of justice in the Kingdom.

III DEVELOPMENTS IN 2010

The developments that occurred in 2010 were as follows:

A The Judiciary

- (1) In September 2010 Chief Justice Anthony Ford and Justice Warwick Andrew both left the Supreme Court. The Chief Justice's contract expired and was soon after appointed as a Judge of New Zealand's Employment Court. Justice Andrew resigned to take up a judicial post in Australia. This left the Supreme Court of Tonga operating for a number of months with only one resident Supreme Court judge.
- (2) In September 2010, the Tongan judiciary suffered the unexpected loss of the life of the Chief Magistrate Samiuela Palu. Chief Magistrate Palu was a towering figure in the Judiciary, not only domestically, but and also highly respected by his colleagues in the region.
- (3) The Magistrates Court also loss the service of a number of magistrates due to study leave and retirement. Relieving Magistrates were then appointed from senior staff in the Ministry of Justice and also recalling retired Magistrates.
- (4) In October 2010 His Majesty appointed the Hon Michael Dishington Scott as the new Lord Chief Justice. His Honour was a former Justice of the Fijian High Court and the Fijian Court of Appeal, and also a Justice of the Supreme Court of the Solomon Islands.

- (5) In October 2010, for the first time the Court of Appeal sat twice in the year to deal with the number of appeals emanating from the Supreme Court and also the Land Court. It is intended that the Court of Appeal will in future be sitting twice a year. The Court consists of Justice James Burchett of Australia, Justice Peter Salmon of New Zealand and Justice Michael Moore of Australia.
- (6) In November 2010, the Constitution was amended to provide for the establishment of the office of the Lord Chancellor as the administrative head of the Judiciary, while the Lord Chief Justice will be the professional head of the Judiciary. The amendment also included the appointment of a Judicial Appointment and Discipline Panel that replaced the Judicial Services Commission, as the body that will recommend to His Majesty the King the appointment of judges, and also determine their terms of employment and also disciplining judges.
- (7) His Majesty's Government also enacted legislation to increase Court fees in order to meet the revenue demands for services of Government.

B Government

- (8) In March 2010 the Royal Commission of Inquiry into the sinking of the MV Princess Ashika submitted its final report to His Majesty and also the Legislative Assembly. The Final report has yet to be officially released, however copies of the report has been already widely disseminated in the public, both domestic and international. As a result of the Inquiry, His Majesty's Government has given priority to developing its shipping industry.
- (9) In April 2010, Tonga's submission on its claims under the United Nations Convention on the Law of the Sea for an extended continental shelf was presented to the Commission on the Limits of the Continental Shelf. Work is now continuing on preparation for negotiations with neighbouring States on the delimitation of maritime boundaries;

C Office of Attorney General

- (10) In April 2010 the first independent Attorney General of Tonga, Mr John Cauchi SC, resigned from his role due to a difference of views regarding constitutional and legal matters within Government.
- (11) As a consequence of the resignation of Mr Cauchi, the role of Attorney General was given to the Minister of Justice, Hon Samiu Kuita Vaipulu, as a temporary measure before the Constitution was amended to provide for an independent office of the Attorney General appointed directly by His Majesty the King. Now that the Constitution has been amended to expressly provide for the office of the Attorney General, an appointment is expected to be made soon.
- (12) The office of the Attorney General was given express recognition in the amendments made to the Constitution. A provision in the Constitution was also included requiring the principles of the rule of law and the judicial independence to be maintained at all times.

- (13) Tonga was represented by the Solicitor General to the Meeting of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions held in Marlborough House, London in October 2010. The keynote paper was presented on “The Role of the Attorney-General: Establishing an Independent Attorney General’s Office in Small Commonwealth States”. The presentation was very pertinent to Tonga, and we would commend it to interested jurisdictions. One of the main issues that were also raised in this meeting was the value of having a separate meeting of Law Ministers and Attorneys General for small Commonwealth jurisdictions. This will be discussed in the Commonwealth Law Ministers meeting in Sydney in July 2011.

D Criminal Prosecutions

- (14) Crown Prosecutions continued to be administered by the Crown Law Department under supervision of the Solicitor General and the authority of the Attorney General. The conviction rate continues to be very high at the 80% range, due to high volume of guilty pleas.
- (15) Criminal Prosecution was again very challenging in 2010. Salient prosecutions included:
- conviction of the first ever drug offender caught in possession of around 17 kilograms of methamphetamine diluted in red liquid concealed in red wine bottles;
 - conviction of a father killing his young son;
 - conviction of a husband for killing his wife;
 - first ever prosecution of people smuggling (Chinese persons);
 - prosecution of a high profile political person for perjury arising from a hearing of a Royal Commission of Inquiry;
 - prosecution of a high ranking person for grievous bodily harm;
 - Continued prosecutions of domestic violence.
- (16) Crown Law and the Tonga Police are currently conducting a pilot programme, from November 2010 to June 2011, where Crown Law will deal with Police prosecution of criminal offences in the Nuku’alofa Magistrate’s Court only, except traffic matters. The objective is to raise the standard of criminal prosecutions in the Magistrate’s Court.

E Transnational Crimes and International Cooperation

- (17) In July 2010, Tonga’s Mutual Evaluation Report on money laundering and terrorist financing was approved in Singapore by the Annual General Meeting of the Asia-Pacific Group on Money Laundering. This was Tonga’s first assessment, and is the first step to start Tonga’s committed fight against money laundering and terrorist financing. The next step is now to implement the recommendations of the report in order to strengthen Tonga’s anti-money laundering and terrorist financing framework.
- (18) In 2010 Tonga did not receive any formal mutual assistance requests or applications for extraditions. Agency to agency co-operation however did occur, mainly between police, customs and immigration authorities.

- (19) Tonga was represented by the Solicitor General in the 2010 Meeting of Senior Officials of Commonwealth Law Ministries, held in Marlborough House, London in October 2010, in preparation for the upcoming Commonwealth Law Ministers meeting to be held in Sydney in July 2011. Issues that was very useful for Tonga, included presentations on juvenile justice system, alternative sentencing programmes and overcrowding in correctional facilities, e-judiciary, prosecution disclosure obligations, assistance for legal projects, such as legislative drafting and delimitation of maritime boundaries, and also learning of developments in other Commonwealth jurisdictions. Tonga is also closely monitoring the proposed changes to the Commonwealth's Harare Scheme on mutual assistance in criminal matters, which will be discussed in Sydney in 2011.

F Legislative Drafting

- (20) 2010 marked the first year where Crown Law provided legislative drafting services solely on an electronic basis. Legislation is now available under Crown Law website and will be regularly updated once laws are enacted.
- (21) Work also continued on the revision of Tonga's laws with a view to publishing a consolidated version in English and Tongan by November 2011. The English revision is basically complete, and work is now continuing on the Tongan version.
- (22) A total 48 Acts were enacted this year, including three amendments to the Constitution. A total of 24 subsidiary legislations were also enacted in 2010, which included 21 sets of regulations and three ordinances. **Annex I** sets out the list of Acts and subsidiary legislation, and copies can be downloaded from the Crown Law website <http://www.crownlaw.gov.to/cms/>.
- (23) The workload was challenging especially the translation of laws into the Tongan language which all had to be completed by 25 November 2010. The work of the Legislative Drafting Unit in the Crown Law Department, consisting of two legal drafters and three translators was highly commendable and appreciated by His Majesty's Government.

G Law Reform

- (24) The main law reform programme was implementing the constitutional and political reform process which had the following significant features:
- Transfer of His Majesty's executive powers to Cabinet;
 - Retention of Head of State executive powers for His Majesty such as power to veto legislation, granting of Royal Pardons, heading the security sector, including emergency powers, and oversight of foreign relations;
 - Replacing Privy Council with Cabinet as the highest executive authority in the Kingdom;
 - Establishment of an elected Cabinet, limited to 12 Cabinet ministers, including the Prime Minister;
 - Prime Minister appointed by the King on recommendation of the elected representatives;
 - Cabinet Ministers appointed by the King on advice of the elected Prime Minister;

- Enabling the Prime Minister to appoint four non-elected Ministers to Cabinet, if required;
- the electoral system was changed to create 17 small electoral constituencies for election of representatives of the people;
- maintaining the 9 seats for nobles representatives;
- Expanding the term of the Legislative Assembly, and Government, from 3 to 4 years;
- Establishment of an independent Electoral Commission; and
- Establishment of an independent Electoral Boundaries Commission.
- Introduction of a process for “Motions of Votes of No Confidence”;
- Establishing an independent judiciary under His Majesty; and
- guaranteeing judicial independence and rule of law in the Constitution;

(25) His Majesty’s Government also introduced significant law reform to:

- Establishing a remuneration authority to recommend the appropriate remuneration for high offices of state;
- change the governing and administration of the Tonga Police, with legislative drafting assistance from Australian Attorney General’s Department;
- change the governing and administration of prisons;
- new legislation for a national identity card;
- a national retirement scheme for all private sector employees;
- significant amendments to the public service, mainly to guarantee a politically neutral public service that is effective and efficient; and
- new alcohol legislation to tackle the harms of abuse of alcohol. Legislation was introduced to strengthen the alcohol licensing regime, limit the availability of alcohol outlets, increase the standards and responsibility of alcohol retailers and wholesalers, reduce opening hours, increase licence fees and introduce alcohol breath testing to eliminate driving under influence of alcohol.

G Community Legal Literacy

(26) The Crown Law Department was able to conduct for the fourth consecutive year the Law Week 2010 programme, using a theme of Good Governance, as preparation for the general elections of 25 November 2010. The activities carried out involved radio talkback, school visits, village visits, poster, poem and speech competitions and also presentation of television programmes answering questions taken randomly from persons on the streets. Funding was available from AUSaid, Commonwealth Pacific Governance Facility and NZaid.

(27) The Tonga Law Reports are now close to being up to date, with the 2009 Tonga Law Reports now expected to be released around February 2010, and then the 2010 Tonga Law Reports aimed to be issued around mid 2011.

H Continued Legal Education

(28) One Crown prosecutor was enrolled in the Commonwealth sponsored criminal prosecution mentoring programme, and successfully completed the training.

- (29) One Crown Law officer completed the Post Graduate Diploma in Legislative Drafting, making three graduates from Crown Law, to date.
- (30) Two Crown Law prosecutors attended the PILON Litigation Skills programme held in Vanuatu in December 2010.
- (31) Crown Law continued to benefit with the Law Library Twinning Programme with the Australian Attorney General's Department. Crown Law has finally been able to develop a law library and assistance is still pending. One Crown Law staff will be attending a law librarian's workshop which will be held next year in Samoa, organised by the Australian Attorney General's Department.
- (32) Crown Law continued be registered in the Commonwealth Prosecutor's Exchange Program but it has yet to avail itself of the opportunity to use the program.

IV CURRENT ISSUES

The current issues for Tonga are as follows:

A Limited Resources

Increase of budget resources depends on the priority given by political masters to the legal sector, and we are competing with the economic, health, education and environment sectors.

B Infrastructure

The Tongan judiciary continues to suffer from sub-standard facilities, and delays of building new Court buildings. The Crown Law Department is currently sharing one building with the Ministry of Justice, which is an uncomfortable arrangement due to risk of portraying an image of bias or influence or interference by Crown Law in the workings of the Courts.

C The Judiciary

Increasing the quality and qualification of Magistrates is a difficult issue to overcome due to the inability to offer remuneration to attract qualified law practitioners to the Bench.

There is also a dire need to increase the efficiencies of the Courts by increasing staff and improving facilities.

D Increased Criminal Sophistication

Detection, investigation and prosecution of transnational crimes, such as people smuggling, people trafficking, drugs smuggling is a challenge to our limited law enforcement resources. Joint operations with law enforcement agencies in the region are therefore vital. For example, patrolling maritime areas, and detection of cash couriers.

E Increased criminal offending

Particularly medium and high financial fraud in financial institutions; drug offending; domestic violence; sexual offences; and arms smuggling for private use.

F Work Experience

This applies both to obtaining work experience for legal staff, particularly in Crown Law. The areas of concern are legislative drafting and prosecution experience, and so attachments to Australian and New Zealand prosecution or legislative drafting offices would be beneficial in expediting increased work experience.

V CONCLUSION

In conclusion, the road ahead for Tonga's legal sector again will be a challenging one.

Most of all, the legal sector will be a significant player in ensuring the current peace and stability in the Kingdom continues under the new constitutional framework, particularly maintaining judicial independence and the rule of law.

This is equally the situation with regards to provision of legal services to Government (criminal prosecutions, legislative drafting, legal representation, and legal advice), continued legal education, developing legal and judicial infrastructure and capacity, and most of all being innovative and introducing new measures to develop the administration of justice in the Kingdom.

Crown Law Department and Ministry of Justice
Government of the Kingdom of Tonga
Nuku'alofa
3 December 2010

ANNEX I

LIST OF ACTS OF 2010

- 1 Public Finance Management (Amendment) Act 2010
- 2 Consumption Tax (Amendment) Act 2010
- 3 Customs and Excise Management (Amendment) Act 2010
- 4 Excise Tax (Amendment) Act 2010
- 5 Income Tax (Amendment) Act 2010
- 6 Customs (Amendment) Act 2010
- 7 Revenue Services (Administration) (Amendment) Act 2010
- 8 Probate (Amendment) Act 2010
- 9 Nationality (Amendment) Act 2010
- 10 Public Holidays (Amendment) Act 2010
- 11 Electoral Commission Act 2010
- 12 Legislative Assembly (Amendment) Act 2010
- 13 Electoral (Amendment) Act 2010
- 14 Act of Constitution of Tonga (Amendment) Act 2010
- 15 Electoral Boundaries Commission Act 2010
- 16 2010-2011 Appropriation Act 2010
- 17 Remuneration Authority Act 2010
- 18 Judicial Services Commission (Repeal) Act 2010
- 19 Fatal Accidents (Amendment) Act 2010
- 20 Act of Constitution (Amendment) (No. 2) Act 2010
- 21 Legislative Assembly (Amendment) (No.2) Act 2010
- 22 Government (Amendment) Act 2010
- 23 Ozone Layer Protection Act 2010
- 24 Court Fees (Amendment) Act 2010
- 25 Births, Deaths and marriages Registration (Amendment) Act 2010
- 26 Stamp (Repeal) Act 2010
- 27 Environment Management Act 2010
- 28 Hazardous Wastes and Chemical Act 2010
- 29 Methylated Spirits (Amendment) Act 2010
- 30 Order in Public Places (Amendment) Act 2010
- 31 Traffic (Amendment) Act 2010
- 32 Money Laundering and Proceeds of Crime (Amendment) Act 2010
- 33 Personal Property Security Act 2010
- 34 Public Service (Amendment) Act 2010
- 35 Police Act 2010
- 36 National Identity Act 2010
- 37 Electricity (Amendment) Act 2010
- 38 Renewable Energy (Amendment) Act 2010
- 39 Act of Constitution (Amendment) (No. 3) Act 2010
- 40 Public Enterprises (Amendment) Act 2010
- 41 National Retirement Scheme Act 2010
- 42 Miscellaneous Amendments (Privy Council) Act 2010

- 43 Prisons Act 2010
- 44 Intoxicating Liquor (Amendment) Act 2010
- 45 Private Security Services Act 2010 (Awaiting Gazetting)
- 46 Miscellaneous Amendments (General) Act 2010
- 47 National Reserve Bank of Tonga (Amendment) Act 2010
- 48 Government (Amendment)(No.2) Act 2010

LIST OF SUBSIDIARY LEGISLATION IN 2010

- 1 Tonga Rugby Union Authority Ordinance 2010
- 2 Tonga Defence Services (Amendment) Regulations 2009
- 3 Electoral Boundaries Regulations 2010
- 4 Customs Duty (Amendment) Order 2010
- 5 Excise Tax (Amendment) Order 2010
- 6 Electoral Regulations 2010
- 7 Electoral (Elections of Representatives of Nobles) 2010
- 8 Fisheries Management (Processing and Export) (Amendment) Regulations 2010
- 9 Business Licenses (Amendment) Regulations 2010
- 10 Companies (Amendment) Regulations 2010
- 11 Incorporated Societies (Amendment) Regulations 2010
- 12 Industrial Property (Amendment) Regulations 2010
- 13 Money Laundering and Proceeds of Crime Regulations 2010
- 14 Pharmacy Regulations 2010
- 15 Environmental Impact Assessment Regulations 2010
- 16 Public Procurement Regulations 2010
- 17 Immigration (Amendment) Regulations 2010
- 18 Tonga National Qualifications and Accreditation Regulations 2010
- 19 Customs and Excise taskforce Ordinance 2010
- 20 Royal Town of Nuku'alofa Ordinance 2010
- 21 Royal Town of Neiafu Ordinance 2010