

COUNTRY Report
of the
Office of the Attorney General
Tuvalu



October 2015

Office of the Attorney General

Delivering Excellence in Legal and Justice Services to the
Government and People of Tuvalu

TABLE OF CONTENTS:

Office of the Attorney-General.....	3
Structure and Personnel.....	3
Roles and Functions	4
Advisory	4
Civil litigation.....	4
Criminal Prosecutions	4
Court of Appeal.....	5
Court of Appeal Case of Peiatoa Palota case number 1 of 2015.....	5
Court of Appeal Case of Kamuta Latasi case number 2 of 2015.....	5
Registrar of Births, Deaths and Marriages; Registrar of Citizenship; Registrar of UK Patents and Trademarks	5
Participation in international and national meetings, conferences and workshops	
5	
Office of the People’s Lawyer	6
Structure and Personnel.....	6
Roles and Functions	6
Office of the Ombudsman Commission	6
Structure and Personnel.....	6
Roles and Functions	7
Office of the Judiciary	7
Significant Court Decisions.....	8
<i>In the Matter of the Constitution and In the Matter of An application for interpretation and application of the Constitution and Orders Exparte Between Hon Kamuta Latasi and Others v Hon Enele Sopoaga and Others [2014] TVHC 1, Civil Case 1 of 2014 (7th July 2014)</i>	8
Parliament and Law making.....	9
Acts passed and Bills before Parliament.....	9
Conclusion	10

It is with pleasure that I present the Office of the Attorney General’s Annual Report for 2015. At the outset, I would like to thank the staff of the Attorney General’s Office for their dedication and commitment during this period and for their assistance in the preparation this report.

Office of the Attorney-General

Structure and Personnel:

The Office of the Attorney General has an organisational structure of 7 legal staff and 4 non-legal staff (support staff) as follows:

- Eselealofa Apinelu - Attorney General (currently on study leave);
- Laingane Italeli Talia – Senior Crown Counsel (Acting AG);
- Efren Jogia – Crown Counsel (currently on study leave);
- Nele Semu – Crown Counsel;
- Stella Irata - Crown Counsel;
- Corrina Ituaso – Crown Counsel;
- Asterio Takashi - Crown Counsel;
- Baniani Nia – Attachee;
- Kitele Tefoto – Registration Officer for Births, Deaths and Marriages;
- Malia Saumanaia - Trade Mark and Finance Officer
- Flosiu Kilisimasi – Clerical Officer

The office ex-patriate lawyer who was jointly funded by the government of Tuvalu and AusAID through PACTAM program, Daniel Gorman departed from office around December 2013, and he has since then, not been replaced.

There is no division of roles for legal staff within the office and all work is allocated to legal staff on the basis of legal complexity, knowledge of the Tuvaluan language and workload. All legal staff undertake civil, criminal advisory and counsel work. Senior lawyers carry out legislative drafting predominantly.

In relation to the movement of office personnel in this period, our Attorney General Ese Apinelu and Crown Counsel Efren Jogia are currently studying in Australia, AG for her PHD while Mr. Jogia for his Masters Degree.

The budgeted Government expenditure in respect of the Office of the Attorney General is \$249,743 for the year 2014, have increased, in progress.

Roles and Functions:

Advisory

Under the Constitution, the Attorney General is the principal legal adviser to the Government, and has such other functions as are prescribed. In Tuvalu, the Attorney General is a public officer and not a Minister or a Member of Parliament. The Attorney General sits in Parliament as the legal adviser to Parliament and is entitled to take part in proceedings in accordance with the Parliamentary Rules of Procedure but does not have a voting right.

The Office also has the function of advising Statutory Corporations and Local Governments when so requested. Currently this year (2015) September, the Office of the Attorney General was involved in Kaupule (Island Council) elections as an advisory body.

Civil litigation

The Office of the Attorney General represents the Government in all civil suits against the Government. There was a sitting of the High Court in February this year.

The Office also provides legal advice and representation to all State-owned Enterprises and Local Government's when requested. During this period the office has been particularly involved in assisting the Government and State-owned Enterprises to pursue outstanding debt recovery works.

Crown Counsels are occasionally called upon to represent private persons in civil claims between individuals. This occurs when the Office of the People's Lawyer cannot represent both due to conflicts of interest cases. Through this mechanism, Crown Counsels have advised and represented eight private individuals in superior court cases this year.

Criminal Prosecutions

Summary offences are heard and determined in the subordinate Courts and are prosecuted by Police Prosecutors. The Office of the Attorney General often reviews case files and provides advice to Police Prosecutors in relation to appropriate charges in the subordinate courts. Serious offences, which fall under the jurisdiction of the High Court, are prosecuted by the Attorney General's Office.

Court of Appeal

Court of Appeal Case of Peiatoa Palota case number 1 of 2015

Court of Appeal Case of Kamuta Latasi case number 2 of 2015.

Registrar of Births, Deaths and Marriages; Registrar of Citizenship; Registrar of UK Patents and Trademarks

The Attorney General performs the functions of Registrar of Births, Deaths and Marriages, Registrar of Citizenship and Registrar of UK Patents and Trademarks under relevant laws.

The Registrar of Births, Deaths and Marriages maintains the Register and issues certified extracts of the Registers upon application and when required to do so.

Participation in international and national meetings, conferences and workshops:

During this period (November 2014 – October 2015), the office has received invitations to participate in international and regional conferences, workshops and trainings. Below is a list of the meetings and courses attended by staff of the office:

- CEDAW report before CEDAW Committee, Geneva
- Sub-Regional workshop on Copyright and Development for Decision Makers in Port Vila, 19th - 20th January 2015.
- 28th Annual International Military Operations and Law (MILOPS), 17th - 21st May, 2015.
- Regional Seminar to support the implementation of the arms trade treaty for Asia and the Pacific, Manila
- OCHR Pacific Regional meeting on the rights of indigenous peoples and minorities
- SGBV working group meeting, Suva
- DSM policy and legislative drafting, Apia
- SOPAC attachment for DSM regulation and policy
- Train the trainers on treaty body reporting, Samoa.

Office of the People's Lawyer

Structure and Personnel:

The Office of the People's Lawyers has three staff members, two legally qualified lawyers and one clerical officer. The staffs consist of:

- Filiga Taukiei Niko – People's Lawyer;
- Lispea Peniu – Assistant People's Lawyer;
- Vaipuna Laoi – Assistant People's Lawyer (Temp);
- Palutu Tene – Clerical Officer.

Roles and Functions:

The Office of the People's Lawyer is established under the **People's Lawyers Act**. The Office of the People's Lawyer provides independent advice and representation to the people in Tuvalu regarding all civil and criminal matters. The Office of the People's Lawyer advocates alternative dispute resolution practices where appropriate.

Office of the Ombudsman Commission

Structure and Personnel:

The Office of the Ombudsman Commission is established under the Leadership Code Act. The office consists of:

- A Chief Ombudsman who is the head of the Ombudsman Commission; and
- Two other Ombudsman Commissioners.

Our former Senior Crown Counsel, Sa'aga Talu, has filled the Post of Chief Ombudsman. He was appointed on the 31st July 2014 to the post by the Governor General, acting on the advice of the Committee comprising of the Prime Minister, Chief Justice, Chairman of Public Service Commission and the President of the Ekalesia Kelisiano Tuvalu (Tuvalu Christian Church).

The available budget for this office for the year 2015 is \$115,000. The Ombudsman has a new office space on the capital and presently has another support staff namely a Professional Assistant. Given the newly established Office of the Ombudsman Commission, there is yet a need to recruit other personnel's to fill up the vacant positions within the office.

Roles and Functions:

The roles and functions of the Chief Ombudsman Commission Office are provided for under the Leadership Code as follows:

- To enquire into any complaints or allegation of misconduct on the part of any leader;
- To enquire into any defects in administrative practice appearing from any matter being enquired into;
- To enquire into any case of an alleged or suspected discriminatory practice by a leader;
- To give prior advice on potential breaches of this Code;
- To investigate and report on any complaints of any alleged breaches of this Code.

The existence of such an office is very significant in the eradication of corruption within the executive arena. The initiative of establishing the office was one that had existed for sometime but the unavailability of resources was a barrier that slowed the establishment of the office over the past years.

Office of the Judiciary

The daily administration of the Office of the Judiciary is under the control of the Senior Magistrate who is a legally qualified lawyer and supported by two other staff. The staff consists of the following people:

- Simon Kofe – Senior Magistrate;
- Akoakoga Kalala – Court Registrar;
- Akoakoga Kalala – High court registrar
- Michael Latasi -Funafuti Island court Registrar,
- Galu O'Brien land court Registrar
- Kilei Amasone – Office Manager

The former Senior Magistrate, Mr Afele Kitiona retired in mid June 2014, and Simon Kofe, a legally qualified lawyer, recently filled this post. The Governor General appointed the new Senior Magistrate on 24th September 2014.

The Chief Justice of Tuvalu is Hon. Gordon Ward. Chief Justice Ward resides abroad, but generally visits Tuvalu twice yearly to hear pending High Court cases. However, early this year (2015) in February, a High court session was scheduled and was presided over by Acting Chief Justice Robin Millhouse due to some unresolved issues between CJ Ward and the Government of Fiji. The next High Court session for this year is still uncertain due to the Chief Justice's ban to transit through Fiji.

Negotiations are undertaken with authorities in Fiji to uplift the ban in order for the chief Justice to be able to travel to Tuvalu for the High Court session scheduled towards the end of this year (2015).

Despite the CJ has not been able to travel to Tuvalu, he has been hearing cases on paper in urgent ex parte applications.

The budgeted Government expenditure in respect of the Judiciary was \$162,215 for 2014, however the 2015 budget is still in progress.

Significant Court Decisions:

In the Matter of the Constitution and In the Matter of An application for interpretation and application of the Constitution and Orders Exparte Between Hon Kamuta Latasi and Others v Hon Enele Sopoaga and Others [2014] TVHC 1, Civil Case 1 of 2014 (7th July 2014)

The Applicants were current members of the opposition of Parliament and the Respondents are members of the present Government. The Applicants in this case sought the Court's interpretation of certain issues consisting of:-

- (1) That in pursuant with section 116(3) of the Constitution, the session of parliament held on 30 September 2010 is the first parliament session after the 2010 General Election; and
- (2) If the answer to the above question is 'Yes', the government at that time would automatically dissolve on the 30th September 2014.

With the evidence available, the Court found it inconceivable that the letter of the Clerk to Parliament to members of Parliament notifying them of a session of Parliament was sufficient proof that the Governor General has exercised his functions under section 116(1) of the Constitution, which is to proclaim a session of Parliament. If a copy of the proclamation was made available, it would have sufficed the Applicant's claim that the 30th September 2010 event was a session of parliament.

The court held that since there was no proclamation, the event of 29th or 30th September 2010 was not the first sitting of parliament, which then negates the second issue posed by the Applicants. The court held that the first session of parliament was on the 20th December 2010, where the Governor General issued a proper proclamation at that time.

The significance of this case is that it determines the time when the current Parliament dissolves, which then could be calculated to the time when Tuvalu would be able to hold its next General Election.

Parliament and Law making

Acts passed and Bills before Parliament:

As of November 2014 to date, there have been three sessions of Parliament. The first session was in November 2014, the second was in June 2015, and the third was in October 2015. The budget session will run from 16th December to 23rd December 2015.

The following are Acts passed and Bills that have been taken up to Parliament:

- (1) Adoption of Children Amendment Act 2015
- (2) Citizenship Amendment Act
- (3) Energy Efficiency Bill
- (4) Health Professional Bill
- (5) Legal Practitioners Bill
- (6) Marriage Amendment Bill
- (7) Pharmacy and Therapeutic Products Bill
- (8) Supplementary Appropriation Act 1 2015
- (9) Supplementary Appropriation Act 2 2015
- (10) Supplementary Budget 2015
- (11) Tuvalu Public Health Bill

Laws which are still in Bill stage had been taken up to Parliament for their First Reading and are in the public consultative stages. The other laws referred to as Acts had been duly passed by Parliament. However the Health Professional Bill and Pharmacy and Therapeutic Products Bill are still yet to be taken up to Parliament for their first reading as they are in their final drafting stages and will be ready soon to be taken up to Parliament.

In 2011, two private practices were established which increased the number of registered private practices in Tuvalu. Again in 2013 and 2014 another two private practices owned by Tuvaluan lawyers were also established. A lawyer owns one of the private practices from Fiji whilst the other local lawyers own the other three. However the private practice owned by a foreigner, had closed for unknown reasons and one owned by a local lawyer also closed down as he moved to Fiji.

The establishment of these firms had assisted the Office of the People's lawyer in representing and providing legal assistance to the people and companies in Tuvalu. However, due to the closure of two of the four law firms, there is a greater need for more private practice as the need for legal representation continues to increase as more people resort to the courts.

Conclusion:

In previous years, the institutions involved in upholding the rule of law in Tuvalu are mainly the Office of the Attorney-General, the Office of the People's Lawyer and the Office of the Judiciary which had performed and are still performing their roles at their best with the limited resources available.

Currently, there are only four lawyers in the Office of the Attorney General and three lawyers at the Office of the People's Lawyer, whom are all female lawyers. More legal personnel are needed to fulfil our mission in delivering excellence in legal areas and providing justice to the Government and the people of Tuvalu.