

**PILON Report**  
**of the**  
**Office of the Attorney-General**  
**Tuvalu**



October 2012

**Office of the Attorney-General**

---

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

## TABLE OF CONTENTS

1	Introduction .....	3
2	Office of the Attorney-General .....	3
2.1	Structure and Personnel.....	3
2.2	Roles and Functions .....	4
2.2.1	Advisory .....	4
2.2.2	Civil litigation.....	4
2.2.3	Criminal Prosecutions.....	4
2.2.4	Court of Appeal.....	5
2.2.5	Registrar of Births, Deaths and Marriages; Registrar of Citizenship; Registrar of UK Patents and Trademarks.....	5
2.2.6	Participation in international and national meetings, conferences and workshops.....	5
3	Office of the People’s Lawyer.....	6
3.1	Structure and Personnel.....	6
3.2	Roles and Functions .....	6
4	Office of the Judiciary.....	6
4.1	Significant Court Decisions .....	7
4.1.1	<i>Fiore Marine Ltd v Crown</i> [2011] TVHC 7; Criminal Appeal 02 of 2011 (12 July 2011).....	7
4.1.2	<i>Kaupule Nukufetau v Lotoala Metia</i> HC Civil Case No 2/11.....	7
5	Parliament and Law making .....	8
5.1	Bills before Parliament.....	8
6	Private Practice .....	9
7	Conclusion.....	9

## **1 Introduction**

It is with pleasure and on behalf of the Attorney-General of Tuvalu that I present the Office of the Attorney-General's Annual Report for the year 2012. This report covers the period January 2010 to October 2012. At the outset, I would like to thank the staff of the Office for their dedication and commitment during this period and for their assistance in preparing this report.

## **2 Office of the Attorney-General**

### **2.1 Structure and Personnel**

The Office of the Attorney-General has an organisational structure of 6 legal staff and three non-legal staff as follows:

- Eselealofa Apinelu - Attorney-General;
- Daniel Gorman - Legal Adviser;
- Sa'aga Talu – Senior Crown Counsel;
- Filiga Taukiei Niko– Crown Counsel;
- Laigane Italeli – Crown Counsel;
- Efren Jogia – Crown Counsel;
- Kitele Tefoto – Registration Officer for Births, Deaths and Marriages;
- Malia Paialii – Executive officer (on leave)
- Paileta Aluna - Executive Officer and
- Panapa Timoteo – Clerical Officer

One of the office's legal staff (Daniel Gorman) is a non-Tuvaluan citizen, jointly funded by the government of Tuvalu and AusAID through the PACTAM program to deliver technical assistance to the office.

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 undertakes civil, criminal advisory and counsel work. Legislative drafting is carried out predominantly by senior lawyers.

In relation to the movement of office personnel in this period, Senior Crown Counsel Sa'aga Talu who was on a study leave in 2010 and 2011 is back in office. Crown Counsel Filiga T Niko is now on study leave for a period of 12 months. Two new graduates from the University of the South Pacific, Crown Counsel Laigane Italeli and Efren Jogia were added to the Office of the Attorney-General in 2010 and 2011 respectively. Malia Paialii the in-house executive officer for Legal Services (Attorney-General's Office and the People's Lawyer Office) is on maternity leave and Paileta Aluna is currently in charge..

The budgeted Government expenditure in respect of the Office of the Attorney-General was \$ 244,816 (2010), \$219,644 (2011) and \$242, 731 (2012).

## **2.2 Roles and Functions**

### **2.2.1 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 accordance with the Parliamentary Rules of Procedure, in proceedings of parliament and committees of parliament, but without a vote.

The Office also has the function of advising Statutory Corporations and Local Governments when so requested.

In 2010, the Office of the Attorney-General involved in the General Election 2010 through advising the Commissioner of Election and the Election Committee, advocacy programs and consultation with electorates.

### **2.2.2 Civil litigation**

The Office of the Attorney-General represents the Government in all civil suits against the Government. Five civil cases listed for determination before the High Court involved claims against the Government.

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

Crown Counsels are occasionally called upon to represent private persons in civil claims between individuals, when cases are referred by the Office of the People's Lawyer due to conflicts of interest. Through this mechanism, Crown Counsels have advised and represented eight private individuals in Court cases this year.

### **2.2.3 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 or Crown Counsel. In

recent years, there has been an increase in the number of sexual offences being brought for prosecution in the High Court.

#### **2.2.4 Court of Appeal**

No Court of Appeal during this period (2010-October 2012). A court of Appeal sitting outside Tuvalu has been approved. The Office of the Judiciary is in the process of finalizing the arrangements for later this year if possible.

#### **2.2.5 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.

#### **2.2.6 Participation in international and national meetings, conferences and workshops**

During this period (2010-October 2012), the office has received invitations to participate in international and regional gatherings. Below is a list of the meetings and courses attended by staff of the office:

- EPA, Economic Partnership Agreement Preparation between the Pacific ACP countries, Nadi 2011.
- Conference of the Parties (COP 16), Cancun, Mexico, November/December 2010.
- Electoral Systems Training Brisbane, 2011.
- South Pacific Lawyer Association, July, 2011.
- Human Right Training with RRRT, Suva, Fiji, November 2011.
- ILO Maritime Labour Academy, Italy, June 2012.
- PIANZEA Meeting and Bridge Workshop 24<sup>th</sup> -28 September, Wellington, New Zealand.

Domestically, Crown Counsels are invited by various ministries to be a resource person for various workshops. The Office has participated in the 2010 election consultation and advocacy programs, Forum Fisheries Agency's workshops,

Parliamentary Training workshops, Tobacco Control and Human Rights awareness programs.

### **3 Office of the People's Lawyer**

#### **3.1 Structure and Personnel**

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

- Isala Isala – People's Lawyer;
- Matevaka Agaifo – Assistant People's Lawyer; and
- Palutu Tene – Clerical Officer.

Earlier this, three law students from the University of the South Pacific were given the opportunity to work in the Office of the People's lawyer for experience and capacity building. These students are likely to join the labour pool in Tuvalu in the next two years.

The budgeted Government expenditure in respect of the Office of the People's Lawyer was \$58,553 (2010), \$56,552 (2011) and \$58,588 for (2012).

#### **3.2 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 people in Tuvalu in relation to all civil and criminal matters. Alternative dispute resolution practices are advocated by the Office of the People's Lawyer where appropriate.

The People's Lawyers have accompanied the Senior Magistrate on circuit to the outer islands on four occasions in 2010 and 2011. The People's Lawyers were also involved in preparing cases for the High Court and for the Court of Appeal.

People's Lawyer's (Fees) Regulations had just been passed and effective on the 1<sup>st</sup> of January 2012. These regulations provided charges for the public who will be using the Office of the People's Lawyer from January 2013 onward

### **4 Office of the Judiciary**

The Chief Justice of Tuvalu is the Hon. Gordon Ward. Chief Justice Ward resides abroad, but generally visits Tuvalu twice yearly to hear pending High Court cases. The next High Court session for this year is scheduled for 13 - 27 November.

The daily administration of the Office of the Judiciary is under the control of the Senior Magistrate who is supported by one staff.

The budgeted Government expenditure in respect of the Judiciary was \$54,820 (2010), \$46, 866(2011) and \$52,968 for (2012).

#### **4.1 Significant Court Decisions**

##### *4.1.1 Crown v Ji Heejun, Fiore Marine Ltd and between Ji Heejun, Fiore Marine Ltd v Crown [2011] TVHC 7; Criminal Appeal 02 of 2011 (12 July 2011)*

On 26 February 2011, the fishing vessel K Camellia was arrested by the MTSS Mataili for fishing within the Tuvalu EEZ without a valid and applicable permit. The Master of the vessel, (the first defendant) and the owner, Fiore Marine Ltd, (the second defendant) were charged under section 13(6) (a) and (b) and the second defendant under section 13 (6) (b) and (7) of the [Marine Resources Act, 2006](#). On 7 April 2011, both defendants pleaded guilty before the Senior Magistrate and each defendant was fined \$200,000 and the vessel and all its fish, gear, equipment, stores and other appurtenances forfeited. The prosecution/Crown appealed that day on two grounds:

1. That the learned Senior Magistrate erred in law in finding that he was able to award less than the mandatory minimum penalty of US\$ 1 million prescribed by section 13 (6) of the [Marine Resources Act](#).
2. That the learned Senior Magistrate erred in law in interpreting the mandatory minimum penalty as applying only to section 13 (6) (c) of the [Marine Resources Act](#).

The appeal by the Crown is allowed and the sentence ordered against each of the defendants is quashed and the High Court ordered a fine of US\$ 1 million on each defendant.

##### *4.1.2 Kaupule Nukufetau v Lotoala Metia HC Civil Case No 2/11*

The plaintiff, theKaupule o Nukufetau sought the following orders from the High Court:

- 1) Declaration that the defendant has been banned from Nukufetau by the customary process known as falaesea;
- 2) Injunction to restrain the defendant from returning or seeking to return to Nukufetau;
- 3) Declaration that the defendant had lost the support and confidence of the electors of Nukufetau;
- 4) Declaration that the defendant has lost the effective capacity to represent Nukufetau in parliament;

- 5) Declaration that the defendant is not of good character or a fit and proper person to hold ministerial office or office as a member of Parliament;
- 6) Order that a copy of the court's reasons for judgment be delivered to the Governor General and the Prime Minister;
- 7) Costs.

## **5 Parliament and Law making**

### **5.1 Acts passed and Bills before Parliament**

The Parliament of Tuvalu has generally held two sessions in 2010 and 2011 and had its first session this year in March.

In 2010, Parliament passed the following Acts and Regulations:

- Public Enterprises (Performance and Accountability) Act 2009.
- Licences Act (Amendment) Order.
- International Monetary Fund and World Bank Group Membership Act 2010.
- Constitution (Recognition of Traditional Standards, Values and Practices) Amendment Act 2010.
- Religious Organizations Restriction Act 2010.
- Ozone Depleting Substances (ODS) Regulations 2010.

In 2011, the Parliament passed the following Acts and Regulations:

- Electoral Provisions (Parliament) Amendment Act 2011.
- Customs (Amendment) Regulation 2012.
- General Administrative Orders Leave Passage Entitlement (Amendment) Order 2012.
- Consumption Tax (Amendment) Regulation 2011

Earlier this year 2012, the Parliament passed the following Acts and Regulations:

- Merchant Shipping (Amendment) Act 2012.
- Maritime Zones Act 2012.
- Marine Resources (Amendment) Act 2012.
- Tuvalu Telecommunications Corporation (Amendment) Act 2012.

Currently before Parliament are the following Bills:

- Constitutional (Amendment) Bill
- Red Cross Society and Geneva Convention Bill
- Maritime Zones Bill
- Tuvalu Maritime Training Institute (Amendment) Bill
- Supplementary Appropriation Bill 2012

In accordance with the Rules of Procedure, the above Bills will be circulated to the traditional assemblies of each Island (the Falekaupules) for comment before being presented to Parliament for its second and third readings.



## **6 Private Practice**

In 2011, two private practices were established and that increased the number of registered private practices in Tuvalu to three. Two of these are owned by Tuvaluan lawyers and one is owned by a lawyer from Fiji. The establishment of these firms had indirectly assisted the Office of the People's lawyer in representing and providing legal assistance to the people and companies in Tuvalu. This is of course at the expense of those using their services.

## **7 Conclusion**

As in previous years, the institutions involved in upholding the rule of law in Tuvalu (the Office of the Attorney-General, the Office of the People's Lawyer and the Office of the Judiciary) have had to perform their roles as best they can with the limited resources on offer. Even though there is an increase in the number of private practices, there is still a severe shortage of practicing lawyers in Tuvalu.

During this period, the presence of an ex-patriate lawyer (funded through the PACTAM programme) has enabled Tuvaluan lawyers to complete much needed training in the areas of criminal prosecution, fisheries law enforcement, legislative drafting and undertaking further tertiary studies. There are now six lawyers in the Office of the Attorney-General and two in the Office of the People's Lawyer and there is still much work to do to fulfill our mission of delivering excellence in legal and justice services to the Government and people of Tuvalu.