

# Country Report

Tuvalu



Pacific Island Law Officers Network  
**(PILON)**

5 to 9 December 2008

Port Vila, Vanuatu

## TABLE OF CONTENTS

1	Introduction.....	3
2	Office of the Attorney-General.....	3
2.1	Structure and Personnel .....	3
2.2	Roles and Functions.....	3
2.2.1	Advisory.....	3
2.2.2	Civil litigation .....	4
2.2.3	Prosecutions .....	4
2.2.4	Referendum.....	4
2.2.5	Registrar of Births, Deaths and Marriages; Registrar of Citizenship; Registrar of UK Trademarks.....	4
2.2.6	Participation in international and national meetings, conferences and workshops .....	4
2.2.7	International Law .....	5
3	Office of the People’s Lawyer .....	5
3.1	Structure and Personnel .....	5
3.2	Roles and Functions.....	5
4	Office of the Judiciary .....	6
4.1	Significant Court Decisions.....	6
4.1.1	Tehumu Lamese & Ors v Kaupule of Nanumaga (Unreported, High Court of Tuvalu, Civil Case No 3 of 2006).....	6
4.1.2	R v Tima Teokila (Unreported, High Court of Tuvalu, Crim Case No 1 of 2008) .....	6
4.1.3	R v Sione Setaga (Unreported, High Court of Tuvalu, Crim. Case No 1 of 2008) .....	6
5	Parliament and Law making .....	7
5.1	Bills before Parliament .....	7
6	Conclusion .....	8

# **1 Introduction**

It is with pleasure that I present Tuvalu's Country Report for PILON 2008. This report covers the period December 2007 to date. At the outset, I would like to commend and thank the hosts for their efforts in organizing this event.

## **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 two non-legal staff as follows:

- Eselealofa Apinelu - Attorney-General;
- Daniel Gorman - Legal Adviser;
- Sa'aga Talu –Crown Counsel;
- Stephen Earl – Crown Counsel;
- Filiga Taukiei – Crown Counsel; and
- Simon Kofe – Crown Counsel.
- Kitele Tefoto – Executive Officer
- Tieni Iona – Clerical Officer

Two of the office's legal staff (Daniel Gorman and Stephen Earl) are non-Tuvaluan citizens funded through the PACTAM and VIDA programs.

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

### **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 proceedings in accordance with the Parliamentary Rules and Procedure.

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

### **2.2.2 Civil litigation**

The Office of the Attorney-General represents the Government in all civil suits against the Government.

The Office also provides legal advice and representation to all Statutory Corporation and Local Government's where requested.

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.

### **2.2.3 Prosecutions**

Summary offences are heard and determined in the subordinate Courts and are prosecuted by Police Prosecutors. Serious offences which fall under the jurisdiction of the High Court are prosecuted by the Attorney-General or Crown Counsel. In recent year, it appears there has been an increase in serious crime in Tuvalu, with a number of sexual offences being brought for prosecution in the High Court.

### **2.2.4 Referendum**

A referendum was held in Tuvalu in 2008 to solicit the community's views on whether Tuvalu should remain a Constitutional Monarchy or become a Republic. Although styled as a referendum a referendum, the exercise was not binding and was carried out under the Government's executive power, rather than any specific Act of Parliament. The result of the referendum was to retain the present system. However, the voting turnout was low as there was no real grass roots campaign either for or against the issue. The Office of the Attorney-General undertook a nationwide education campaign about the Constitution in connection with this referendum issue.

### **2.2.5 Registrar of Births, Deaths and Marriages; Registrar of Citizenship; Registrar of UK Trademarks**

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

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

In the past year, 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:

- Australian Commonwealth Office of the Attorney General, Legislative Drafting Course, January to March 2008
- University of the South Pacific, Professional Diploma in Legal Practice, Suva, January to June 2008.

- Forum Regional Security Council Meeting, Suva, May 2008
- Australian and Pacific Chief Prosecutors Meeting, Sydney, 23 – 26 June 2008
- Forum Secretariat, Anti-Money Laundering Workshop, Auckland 23 -27 June 2008
- Forum Fisheries Agency, Sub-regional Meeting, Tarawa, June 2008
- United Nations, Counterterrorism Workshop for Small Island States, Vienna, August 2008
- South Pacific Community, Regional Lawyers Training on Human Rights Conventions and Standards and their application to Domestic Law, Policy and Practice, Port Vila, 13 – 17 September 2008
- Japanese International Cooperation Agency, Marine Environment Protection for Senior Officials in Maritime and Law Enforcement Agencies, Okinawa, October 2008

Domestically, Crown Counsel are invited by various ministries to be a resource person for particular workshops. The Office has participated in Forum Fisheries Agencies workshops, Good Governance workshops and Human Rights awareness programmes.

### **2.2.7 International Law**

In the past year, the Government has ratified or acceded to the following international conventions:

- Pacific Island Countries Trade Agreement (**PICTA**)

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

### **3.1 Structure and Personnel**

The Office of the People’s Lawyers has only two personnel, one legally qualified and one clerical. The staff are:

- Joelle Grover – People’s Lawyer (funded through the PACTAM programme); and
- Maleta Saifoloi – Clerical Officer.

### **3.2 Roles and Functions**

The Office of the People’s Lawyer is established under the **People’s Lawyers Act** (Cap 3). 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.

## **4 Office of the Judiciary**

The Chief Justice of Tuvalu resides outside of the country, but generally visits Tuvalu twice yearly to hear pending High Court cases. In the past year, a session of the High Court was held in late May 2008 and another session is scheduled for 9 December to 15 December 2008. Details of significant High Court decisions are discussed below.

The daily administration of the Office of the Judiciary is under the control of the Senior Magistrate who is supported by two other staff. In 2008, a Resident Magistrate was appointed to assist the Senior Magistrate to clear up a backlog of cases and to visit the outer islands to hear minor criminal and civil cases.

### **4.1 Significant Court Decisions**

#### **4.1.1 Tehumu Lamese & Ors v Kaupule of Nanumaga (Unreported, High Court of Tuvalu, Civil Case No 3 of 2006)**

This case involved an assessment of damages for the wrongful termination of four Kaupule employees on the island of Nanumaga. Default judgment had previously been entered against the defendant. The reason for the termination of the plaintiffs was their disobedience to a decision of the Falekaupule (traditional assembly of the island), banning new religions from the island of Nanumaga. Each of the plaintiffs was considered to be a member of the Tuvalu Brethren Church. The High Court had previously issued an ex parte injunction restraining the Falekaupule from terminating the employment of any members of the Tuvalu Brethren Church. The High Court had also previously entered default judgment against the Kaupule. The High Court assessed damages on the basis of the plaintiff's salary for two years and one month's notice. The Court further awarded aggravated damages equivalent to one year's salary and awarded special damages for loss suffered in instigating the proceedings. The High Court ordered that four representatives of the Kaupule be summons to the next session of the High Court to show reason why they should not be committed or otherwise punished for contempt of Court in relation to an alleged breach of the interim injunction made restraining termination of the plaintiffs.

#### **4.1.2 R v Tima Teokila (Unreported, High Court of Tuvalu, Crim Case No 1 of 2008)**

In this case, the accused (a 21 year old male) was charged with defilement of a 6 year old girl, the daughter of his second cousin. The accused pleaded guilty and was sentenced to imprisonment for five and a half years.

#### **4.1.3 R v Sione Setaga (Unreported, High Court of Tuvalu, Crim. Case No 1 of 2008)**

In this case, the accused was charged with defilement of a girl under the age of 13 years. The accused was at the time of the alleged offence 13 years and 8 months old. The offence occurred in October 2003 and the accused was committed for trial before the High Court in April 2008. The defence applied to stay the case on the basis that it violated the defendant's rights under the Convention on the Rights of the Child and

amounted to an abuse of process under section 22 of the Constitution which requires trial within a reasonable time.

The Court considered section 14(2) of the Penal Code which requires the prosecution to prove in relation to persons under the age of 14 that at the time of doing the act, the person had the capacity to know he ought not to do the act. The Court found although there was evidence on which the Court could make a determination about the accused's knowledge under section 14(2) of the Penal Code, the effect of the delay was such that the defendant could not effectively make a defence in relation to this issue. The Court ordered that the case be stayed as an abuse of process.

## **5 Parliament and Law making**

### **5.1 Bills before Parliament**

The Parliament of Tuvalu has held two sessions in the past year. In the May 2008 session, Parliament passed the following Acts:

- Tuvalu Telecommunications Corporation (Amendment) Act 2008; and
- The 2008 Supplementary Appropriation Act 2008.

In the November 2008 session, Parliament passed the following Acts.

- 2008 Supplementary Appropriation Act (No 2) 2008;
- 2009 Appropriation Act 2008;
- The Passports (Amendment) Act 2008;
- The Income Tax (Amendment) Act 2008;
- The Customs (Amendment) Act 2008;
- The Tuvalu Consumption Tax Act 2008;
- The Tobacco Control Act 2008; and
- The Tuvalu National Provident Fund (Amendment) Act 2008.

Currently before Parliament are the following Bills which have passed their first reading only:

- International Companies Bill 2008

In accordance with the Rules of Procedure, the International Companies Bill 2008 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 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. There is a severe shortage of practicing lawyers in Tuvalu. In the past year, the presence of three ex-patriate lawyers (funded through the PACTAM and VIDA programs) has enabled Tuvaluan lawyers to complete much needed training in the areas of legislative drafting with the Australian Commonwealth Attorney-General's Office, to complete PDLP courses and to attend litigation skills courses. However, with only four Tuvaluan lawyers in practice (all with the Attorney-General's Office) there is still a long road ahead in fulfilling our mission of providing access to justice for all Tuvaluans.