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Executive Summary

Much of Tuvalu's current government structure was inherited from the British form of colonial government. Governing practices are often derived from significant conventions – such as the rule of law and the notion of a professional public service staffed on the basis of merit, serving the elected government of the day whatever its political persuasion – that have been tested in other more well developed democracies for many years. However, the strong Tuvalu traditional values of reciprocity, status, gift-giving, family ties, and community links sit nervously with these practices as Tuvalu leaders frequently perceive themselves as beyond the law, “despite exposure and condemnation” (Findlay, 2002: 116).

In terms of particularly pressing accountability issues in Tuvalu, then, despite Tuvalu having adopted the Eight Principles of Accountability formulated at the Pacific Islands Forum, the public service suffers from a lack of integrity, and accountability by ministers and officials is poor. There is no ombudsman, the option of using the court system is not always appropriate and the position of auditor-general is a little under siege. Oversight by Parliament of the national accounts and public expenditure is also weak and ineffective, and these factors indicate a level of contempt for the inherited parliamentary system of government. Further, Tuvalu is a small closely-knit society, where family connections and reciprocity provide the basis of social relations, and here notions of impartiality and independence can be blurred. These factors, combined with Tuvalu's small size, also mean that any future anti-corruption strategy will require broad participation by all sectors – the public and private, NGOs, churches and civil society. The development of such an overarching strategy must be made a pressing priority, and is one area where donor countries could help to promote a better NIS within the context of Tuvalu.

In terms of other aspects of future research and recommendations for supporting NIS measures in Tuvalu, the media is heavily regulated but a country that has a free press and recognizes the important role of the media in combating corruption can have enormous benefits for its citizens and political and economic development. These benefits require further research and officials need to be made more aware of them. Further, in the past little has been written about public service practices in Tuvalu, despite the fact that aid donors have sought good governance assurances in their programmes. This is being redressed to some extent, for example the ADB has launched a Pacific study series on economic and public sector reviews of each of the member countries involved including Tuvalu. Yet much remains to be done in order that issues of accountability and transparency in Tuvalu might be better understood and thereby supported. Further areas highly recommended for further research are therefore outlined in the paper – the most important of which is the overall need to provide a clearer accountability framework within which ministers and senior officials will function.

Country Overview

Tuvalu consists of nine small remote, low-lying atolls rising only a few metres above sea level. One of the nine islands is not permanently inhabited and the word 'Tuvalu' means a cluster of eight islands. The total land area of the country is about 26 square kilometres and the islands are dispersed over a million square kilometres of the Pacific Ocean with the most northern island and most southern one in the group separated in between by about 600 nautical miles.

Tuvalu is resource poor although its fisheries resources are promising and extend to an exclusive economic zone (EEZ) of 900,000 square kilometres. Tuvalu is extremely vulnerable to cyclones, tidal waves and storm surges, and its vulnerability may increase in the future if the greenhouse effect causes a rise in the ocean level. In 2001, the population of Tuvalu was estimated at around 10,339 people of whom about a third lives on the capital island of Funafuti. (Government of Tuvalu Quarterly Statistical Report September 2001). An estimated 2,000 Tuvaluans live in New Zealand (mostly in Auckland) and there are scattered Tuvaluan communities in Kiribati, Nauru, and Fiji (one of the Fiji Islands, Kioa, is inhabited by Tuvaluans from Vaitupu Island).

Tuvalu (which was formerly the Ellice Islands part of the then Gilbert & Ellice Islands) 'separated' from the joint administration and became an independent state on 1 October 1978 after over eighty years of British colonial rule. Secession from the Gilbert & Ellice Islands was the result of a referendum in which more than 90 percent of Ellice Islanders overwhelmingly voted in favour of 'separation'. Tuvalu is a member state of the Commonwealth and of the United Nations.

Tuvalu has a modified Westminster system of ministerial government, governed by a written constitution. Its Sovereign and Head of State is represented locally by a Tuvaluan Governor-General, appointed by the Head of State, on the advice of the Prime Minister. The Prime Minister is elected by a 15-member parliament, and advises the Governor-General on appointments to Cabinet. All members of parliament elect the Speaker of Parliament. There are no organised political parties. Individual qualities, personal and community relationships are the main determinants in elections, reflecting Tuvalu's small size and close-knit society. Island-level concerns dominate parliamentary debate reflecting the Tuvaluan psyche for the promotion of one's own island community, because of the pressure to conform, the perceived benefits of status, recognition or a re-election.

Among the most significant factors that shape political perceptions in Tuvalu, as is in other microstates, is the personalization of issues and ideas – what some political analysts term as 'exaggerated personalism' (Warrington, 1994: 119; and Taafaki, 2003: 33). According to Edward Warrington, '[t]he personalisation of politics encourages the use of political invective and the labelling of opposition as "traitors." Distinctions between principle and self-interest are blurred, a phenomenon which corresponds to the conflation of public and private roles and *personae*.' (Warrington, *ibid*) In the conduct of Tuvalu's political affairs, exaggerated personalism can have considerable influence in decision-making (Islands Business International, May 1997).

With regards to the electoral situation, there are eight electoral districts in Tuvalu, of which seven return two members each the last one returning one member. Since independence in 1978, parliament has operated on a slim majority for the government. Political greed and financial advantage drive members to cross the floor of Parliament and this has resulted in frequent changes in Tuvalu's political leadership. Indeed in the six years period from the end of 1996 to the May 2002, there were five changes in government and for nearly seven months from May 2002 to October/November 2003 the government suffered a constitutional crisis three months after the election of the Prime Minister when he lost his majority in parliament (Islands Business International August 2003: 30). Members changing their political allegiances have generally done so without sanction or discipline from political groups or from the electorate.

At present Parliament meets three times a year, with each session lasting roughly five days. There is a strong feeling that Parliament is not spending enough time to deal with problems of Tuvalu and that it should meet at least five or six times a year (Clements,

2000: 31). The situation means insufficient time for private members' business. Usually in parliamentary debates, members of Cabinet tend to dominate the discussions. The confrontational style of debating in the Westminster system runs directly opposite to the Tuvaluan search for agreement, consensus, value for respect and cooperation. The lack of an effective opposition is a common feature of the Tuvalu Parliament and the 'laid-back' attitude of members in general in discharging their over-sighting and legislative role over public finances is a cause for great concern.

In Tuvalu the executive consists of the Cabinet which is made up of the Prime Minister and four ministers who are appointed by the Governor-General on the advice of the Prime Minister. The ministries have traditionally been the Office of the Prime Minister, Ministry of Finance and Economic Planning; Ministry of Works and Communications; Ministry of Natural Resources; and the Ministry of Home Affairs. In 1997, the then Prime Minister established the unconstitutional practice of appointing non-Cabinet members of parliament as Special Ministerial Advisors (SMAs), partly as insurance against the tendency for members defecting to form another political grouping, and partly to gain political advantage/popularity for him from the appointed SMAs' constituencies (High Court of Tuvalu, 2003d: Judgment No.03/02). The practice entailed considerable resourcing from public funds and generated confusion in lines of communication and accountability in the public service.

The judiciary in Tuvalu is constitutionally independent of the executive. It comprises of the Sovereign in Council; the Court of Appeal; the High Court of Tuvalu; and such other courts (e.g. Magistrates Court, Island Magistrates Court, Lands Court, and Lands Courts Appeal Panel) and tribunals as are provided for or under Acts of Parliament. The High Court is presided over by an expatriate Chief Justice appointed by the Governor-General on the Prime Minister's advice and potentially other judges who may be appointed in the same manner and is expected to sit at least once a year (Knapman, Ponton, & Hunt, 2002: 42). A people's lawyer, currently an expatriate volunteer, is appointed to provide legal advice and technical assistance to the public. The resource-capacity of the people's lawyer to represent people's claims is limited. Legal affairs and the judiciary are components of the Prime Minister's portfolio and are administered through the Office of the Attorney General.

The Attorney General acts as the director of public prosecutions. Acts of Parliament, some English Acts, common law and customary law define the legal system. Legislation is very much influenced by the values that the Tuvaluan people seek to maintain which are their traditional form of communities, the strength and support of the family and family discipline. The Constitution explicitly states that the "life and laws of Tuvalu should therefore be based on respect for human dignity and on the acceptance of Tuvaluan values and culture, and on respect for them" (s.6 of Preamble to the Constitution). With a small and closely knit community, family connections and reciprocity provide the basis for social relations. It is not uncommon for people to feel that these often interfere in or greatly influence judiciary impartiality and independence.

With regards to one of the most interesting aspects of contemporary Tuvaluan politics, a public debate is currently underway as to future constitutional arrangements. One significant issue under consideration is the question as to whether or not changes should be made to the position of Head of State in the Constitution (Disney, 1998: Para. 3.1). This issue raises the possibility of Tuvalu becoming a republic, and also asks further questions relating to the type and manner in which the Head of State may be appointed.

The current debate leads on from 1998 when a constitutional committee comprising mainly of parliamentarians toured the islands to try and identify areas where constitutional change would be in Tuvalu's best interests in the longer term, or are of concern to them. Such an exercise would sharpen the focus of the significant issues involved and help the Government to plan the shape and form of the review itself. One topic that was raised was the need to better marry together provisions protecting the fundamental rights and freedoms of the individual with the guiding principles of Tuvalu life such as agreement, courtesy, and the need for mutual respect and cooperation. (In the past, debate on this topic had led to the Revised Constitution of 1986 permitting "legislation to regulate, for example, the exercise of the freedom of belief if that exercise was unsettling to people or directly threatened Tuvaluan values and cultures" (Disney, 1998: Para. 2.2). While that provision was designed expressly to control religious exploitation and to permit the

imposition of restrictions on religious sects (Disney, 1998: *ibid*), it served well the interests of the main church, *Ekalesia Kelisiano Tuvalu* (EKT), who accused new and smaller religious churches of 'taking' their people away from them (EKT commands nearly 90 percent of the total population and this instance highlighted the fear of politicians as to the possibility of losing votes).

The discussions that were held at this time also highlight the continuing dilemma being experienced by Tuvaluans as they seek a balance between Western and traditional values in the conduct of their affairs. Should a community for instance obstruct an effective new preacher from a small sect who, acting within his own personal and fundamental rights in the Constitution, seems to be gaining enormous receptivity from people, thereby drawing people away from the main EKT church, and possibly disrupting family and community life? Other issues also arise from the fact that village elders uphold customs and traditions, an arrangement that can lead to discrimination with respect to the role of women in traditional settings. The role of family and community can therefore not be neglected in this study.

At the core of society in Tuvalu are the family and respective island communities. Traditional leaders play an important role in the informal political leadership. Traditional leaders include chiefs (*aliki*), elders (*toeaina*), and the *falekaupule* system (the traditional assembly in each island which is composed in accordance with the Aganu (local customs and usages of an island). The *falekaupule* system exercises a powerful role in the political lives of Tuvaluans. It dominates political and policy processes at the island level and considerable influence over how formal leadership behaves and acts (Taafaki & Oh, 1995: 11). A traditional leader is never a complete one unless he is well connected to his community and an active participant in his community activities. Individual community groups are influential components of civil society and they have been able to undertake a number of projects with funding from national development aid funding. The likelihood of community projects being funded externally increases substantially if a Cabinet Minister comes from the same community.

In terms of important issues in this traditional setting, given the small size of available land, it is often a very precious and contentious matter. Government leased or acquired lands have seen large sums of funds being paid over to landowners as payment of leases. In monetary terms, this has been good for landowners. In real terms it has caused serious rifts within families as individual family members dispute the distribution of monies within their families. This had been quite unsettling for people as close family members take their disputes against members of their own clan to be settled by the courts – a practice that was unheard of before the Government raised the level of payments (in mid 1990s) in respect of leased or acquired lands. The level of consumption has also increased, as evidenced by the number of people buying such things like motorcycles, cars, and travelling abroad more. However the private sector within Tuvalu remains small.

Private sector development is described as embryonic, being concentrated on the capital island of Funafuti and comprising mainly of shops, small scale activities (e.g. selling cigarettes, homemade food, ice blocks, clothing items, and local alcoholic drink), fishing, and handicrafts. Its potential is somewhat limited and will need to be cautiously nurtured to enable it to play a more dynamic role in the development process. Government still retains interests in the hotel, travel agency, supply of stationery including school stationery, building construction, repair and maintenance, road works, stevedoring, wharfing and shipping. The role of business does have its own inherent limitation in Tuvalu as economic activities in Tuvalu must be seen to benefit the family and to meet obligations to the community (Bell & Yska, 1996:33). The Outer Islands are subsistence based, with cash employment restricted to local government, the Tuvalu Cooperative Society (TCS), community projects (e.g. Community Fishing Centers, construction labourers working on projects funded by remittances from seafarers) and central government employees working in the Outer Islands e.g. teachers and nurses. The Tuvalu Chamber of Commerce provides a lobby group for business but has yet to develop its management structures. It has difficulty in providing services for its members as there was a feeling that members were unwilling to pay members' fees because the Chamber was not meeting members' needs (Bell & Yska, 1996: 35). If it were better structured and adequately resourced, there may be a possibility in the future that the Chamber could be a liaison between business and the banks, sourcing development funding assistance, providing business advice,

training, networking, mentoring as well as technical assistance needed to develop the private sector (Bell & Yska, 1996: 35).

An important new development encompassing both these private and public interests which has helped revolutionise Tuvalu's economy and international image is the exploitation of Tuvalu's top-level Internet Domain (TLD), which the LA-based Internet Assigned Numbers Authority (IANA) assigned as 'dot tv'. (Ponton: 2001) The negotiations and the deals that were conducted with overseas companies in this area of internet technology demonstrate the gigantic disadvantages that a small developing country can encounter if it does not have the specialized knowledge and capability to deal effectively with manipulative foreign interests. Following many expressions of interests to help Tuvalu exploit the '.tv' asset, a New York-based private firm, NetNames Inc., was engaged but its performance was unsatisfactory and the management of .tv was subsequently tendered out. A Canadian company, 'information.ca', was selected and at the outset, the company proposed to make an upfront payment of \$50 million to the Government within seven months of being awarded the contract. It proposed to market dot tv for 50 years and that Tuvalu would receive 65% of total revenue on all second-level domain names. About four months into the contract, information.ca indicated that it could not raise \$50 million and wanted to renegotiate the contract though the agreement clearly stated if the company fails to pay the Government the US\$50 million by the due date, then the Government was entitled to terminate the agreement with immediate effect (Ponton, 2001: 5). Instead of terminating the agreement as per the agreement, a four-person delegation (comprised of a Cabinet minister, Attorney-General, and two other officials) went to Canada to see if the contract could be renegotiated. The delegation found that information.ca was only a shell company with no assets and had no chance of raising any money, let alone \$50 million. In spite of the weight of evidence against information.ca, the Government of Tuvalu extended the contract by another two months. During that time, information.ca sold the contract to a third party, keeping 30% for itself, and during this time the Prime Minister of Tuvalu (who signed the initial contract) was ousted from office by a motion of no confidence. The owner of information.ca and a new business partner owned the new contract. A second delegation comprising of the Attorney General and a new Cabinet minister went on a follow up visit and signed a new deal, details of which were shrouded in secrecy. In the meantime, an MP supporter of the government and Special Ministerial Assistant (later became Prime Minister) had taken over responsibility for dot tv matters.

Two years down the track since the original contract, on the eve of Tuvalu's 22nd anniversary of independence, the new company paid the Government of Tuvalu \$12 million as an independence anniversary gift. In reality this was not a present. It was part of the upfront payment of \$50 million that was supposed to have been paid. (The story was reminiscent of the company that used to manage Tuvalu's philatelic stamps in the mid 1970s. On the eve of Tuvalu's independence in 1978 it presented a cheque of \$0.5 million to the Government of Tuvalu as an Independence gift. It was only discovered later that this was actually Tuvalu's share of the dividends from Tuvalu stamps sales!). It then became clearer subsequently that the second delegation had agreed that the company was to pay \$1 million on a quarterly basis for the next 13 years until the total of \$50 million had been settled. In the new deal, the additional commitment to pay 65% of all dot tv revenues had been replaced by giving Tuvalu a 20% equity in the company.

Relatively substantial funds were involved in the deals that were made. It seemed that the negotiations were clearly hampered by the lack of knowledge and capability about the Internet industry, and exacerbated by the frequent changes of government in Tuvalu at the time. It is not possible to know whether there were bribes involved. It seems certain however that a number of things will remain unanswered as revenues from dot tv continue to drip feed the public purse. (See TTFAC, 2003, *Seventeenth Annual Report of the Trust Advisory Committee 13-21 November, 2003*, TTFAC, Funafuti, p.28, which shows revenues from the dot tv as 2000 (\$24.9 million); 2001 (1.5 million); 2002 (\$20.3 million); and 2003 (\$4.4 million) from the years 2000-2003.)

With regards to the role of aid donors in Tuvalu, there are five major bilateral donors active in Tuvalu. These are Australia (AusAid), France, Japan (JICA), New Zealand (NZAID) and Taiwan. Multilateral donors include the European Union (now the major donor overall), and various UN agencies (UNDP, UNICEF, WHO, UNFPA, UNV) and the Commonwealth Fund for Technical Cooperation (CFTC). There is also an active

engagement with regional organisations, including the Pacific Forum, South Pacific Geoscience Commission (SOPAC), Pacific Community (SPC), University of the South Pacific (USP), South Pacific Tourism Organisation (SPTO), and South Pacific Regional Environment Programme (SPREP). The regional organisations are a major source of development assistance. Tuvalu also receives significant support from the Asian Development Bank (ADB), especially for the newly established *Falekaupule* Trust Fund. There is a fairly active interaction between donors, made easier by the presence of all seven donor representatives in Tuvalu itself and/or in Suva. A joint NZAID/EU Aid Coordination Office was recently established in Tuvalu (Clarke, et.al, 2001: 22).

The public service in Tuvalu is highly centralized and the administrative culture is essentially bureaucratic, driven by top-down directives and procedural control rather than performance objectives and devolved authority. A striking feature of public administration in Tuvalu is the inability of the civil service (secretaries and head of departments) to stand up and have the courage to advise the Ministers of what they need to know including their role, rights and privileges, rule of law – whether the Ministers like to hear them or not, and whether the officials want to tell them or not. Senior officials are all too often too afraid to be frank with Ministers indicating what might be a cultural problem, or a misunderstanding of the role of Ministers vis-à-vis Secretaries and the management of the relationship between the two offices.

Political interference in the civil service especially in decisions relating to appointments, scholarships and training awards, preferences for transport, and transfers within the public service is a common occurrence. In addition, record keeping is poor, and an overall lack of in-depth analytical assessment of issues and problems prevails. Examples of political intervention in the civil service are plenty but one of the most unashamed example was in 1996 when one senior politician wrote several times to the Secretary to Government effectively telling the civil service to end its support for the then minority government (Taafaki, 2003: 26 & 29). Other examples include politicians' direct attempts to interfere with the work of the Public Service Commission and the Budget Committee, and interference in appointments to employment opportunities, including making veiled threats to the tenure of civil servants. Disruptions and uncertainties caused by regular changes in government have led "to frequent changes in ministers and movement of senior officials with inevitable inefficiencies in policy formulation and implementation" (Knapman, Ponton & Hunt, 2002: 45).

General Administrative Orders (GAOs) providing guidelines on the work and privileges of the civil service, and Public Service Commission Rules (PSC), issued under the Tuvalu Public Service Act 1979, were recently reviewed and published in 2000 (GoT, 2000). GAOs cover the whole range of issues relating to conditions of service for civil servants such as appointments, termination, discipline, salaries, increments, leave, allowances, rules of conduct, and housing. PSC Rules provide guidelines for the work of the PSC in efficiently managing and controlling the civil service and cover other matters such as appointments, transfers and promotions, discipline, retirement, termination and appointment. The PSC consists of a chairperson and three other members who are appointed on four-year terms by the Governor-General on the advice of the Cabinet. Traditionally, PSC members have been appointed on the basis of their links with the government of the day. A PSC member cannot be a member of Parliament, a candidate for election to Parliament, the holder of any other office or position established by the Constitution, or in a state service, or be employed in certain offices or positions before the end of two years after he ceased to be PSC member. However this does not necessarily rule out roles in NGOS – for example the current PSC chairperson is employed as the Executive Officer of the Tuvalu Family Health Association (TuFHA).

In this civil service setting there is no civil service code of conduct that provides a framework to assist civil servants in making judgments and everyday decisions about how they should behave, and requiring head of ministries/departments or directors of public corporations to ensure that all employees maintain proper standards of integrity, conduct and concern for the public interest. Such a code of conduct setting out minimum standards to help civil servants manage a variety of situations they may encounter in the course of their employment and to reduce uncertainty, misunderstanding and unnecessary stress would be exceptionally useful.

However, the office of the Attorney General is currently working on a draft Leadership Code that would cover the civil service and other sectors of public and private life in Tuvalu. The objective of the proposed Code is to guide and govern the conduct of leaders of the nation which would be inclusive of all those in the public and private sectors, falekaupule, church leaders, NGOs, etc. (Discussions between the author and the Secretary to Government, 28 July 2003). The Code is modeled from one which has been developed by the Forum Secretariat to be applied as a regional initiative to all Forum Island Countries. It sets out the values, principles and obligations of leaderships on which the Code is based, explains how the Code is to be interpreted, lays down the machinery provisions by establishing an ethics adviser and a leadership commission, establishes the procedures and effects of rulings, advice and ethical clearances, provides for investigation of breaches of this Code, and outlines prosecution of breaches of the Code. The integrity of the leadership code will rest on the ability to enforce it, and requires that the enforcement agency will be resourced properly. It needs to be operated to the fullest extent possible in an impartial manner but an insufficiently resourced enforcement agency will face similar constraints as the Office of the Auditor-General has been facing since independence in 1978. The proposed Code is aimed to include the public service but in its present form, it is not detailed enough for the purposes of the public service as a whole.

Indeed, the public sector is comprised of more than 800 employees (or about eight civil servants for every 100 people), and is relatively large by regional standards (Knapman, Ponton, & Hunt, 2002: 47). There are also another 268 employees who are in public sector corporations (National Bank, National Provident Fund, Development Bank, Electricity Authority, Hotel, National Fishing Corporation, Telecoms, Tuvalu Media, Philatelic Bureau, and Tuvalu Maritime Training Institute). The public sector corporations constitute a major component of the Tuvalu public sector and there is performance a critical factor in the performance of the economy and governance (Knapman, Ponton, & Hunt, 2002). Each public corporation is governed by its own Act and membership on the Board of Directors is often determined by one's personal or community links to the Minister responsible. The Secretary often provides the chairperson to the Minister who is responsible for that particular public sector corporation.

Public corporations are notorious in not complying fully with their accountability requirements, (OAG, 1999:11; OAG, 2003). For example, the Tuvalu Electricity Authority (TEC) and its successive Boards have consistently failed to meet their reporting and accountability duties as prescribed in the Act and, as of 2003, TEC's last report to Parliament was for the year 1993 (OAG, 1999: 10; TTFAC, 2003). These weaknesses are further underscored by Knapman, et.al. (2002) when lack of accountability was noted as "the most conspicuous weakness in the corporate governance environment, and reflects a failure to act under legislation that requires timely annual reports and financial accounts" (Knapman, Ponton & Hunt, 2002: 102). The Tuvalu Trust Fund Advisory Committee (TTFAC) recommended in its first half-yearly report for 2003 that the government continues to support the progress made in the auditing of accounts of state-owned enterprises to ensure their timely delivery to Parliament (TTFAC, 2003: 1). In one of its earlier reports, TTFAC noted, "concerns are regularly expressed by members of the public and persons in government, that the corporations are not sufficiently accountable for their actions and performance, and their standards of service delivery are too low" (TTFAC, 2002: 31).

In 1994 in response to these problems the Government funded a public sector review (Baker et.al. 1994) that became the foundation of the public sector reform program presented in the *Kakeega o Tuvalu* (GOT 1995). The program goal was "to define the set of functions that are best provided by the Government and to provide these services in the most efficient and cost-effective way to maximize the contribution of the public sector community welfare and economic growth" (Baker et.al. 1994). The reform program concentrated on four main components, namely, (1) commercializing, corporatising and contracting out service provisions; (2) improving public sector performance through corporate planning that encompassed formulating performance indicators, revising job descriptions, and training middle and senior management; (3) introducing output based budget to link outputs specified in corporate plans with budget allocations (starting with the 1997 budget); and (4) formulating appropriate pricing policies for Government services. In 1998, AusAid and UNDP provided technical assistance which led to the identification of a range of measures that could be taken by the Government to improve

the effectiveness, transparency and accountability of Tuvalu's public sector. These included measures "to enhance the accountability of Tuvalu's political and administrative leadership; improve management and oversight of Tuvalu's public corporations; and strengthen arrangements for policy coordination and implementation" (Mellors, 2000: 1).

The government endorsed a number of these measures. However, apart from a few important exceptions there has been no substantive action made since to progress further these initiatives. It seemed that there is almost a paralysis of political will whenever it comes to implementing measures, advice, reports, or recommendations to enhance transparency and accountability in public administration (e.g. the inordinate delays in implementing substantive queries in successive audit reports; delays in formalizing the Guide to Cabinet Rules and Procedures; and the delays in implementing the agreed recommendations that came out of the national workshop on accountability for leaders of Tuvalu in 1999).

Lastly, it is also important to consider the importance of the Tuvalu Trust Fund (TTF). The concept for establishing a Trust Fund was discussed by Tuvaluan leaders well before Tuvalu's 'separation' from the Gilbert & Ellice Islands in the mid 1970s. When Tuvalu became independent in 1978, it had no financial reserves and initial approaches to Britain to provide a one-time payment in trade-off for discontinuing their budgetary support were rejected (as were approaches made to Australia and New Zealand). But further refinement of the concept led to New Zealand's backing of the proposal, "indicating that it would contribute \$7.5 million but on the condition that other prospective donors also made a sizeable contribution" (GoT and European Community, 2001: 20). Australia and Britain subsequently joined New Zealand. The International Agreement setting up the Tuvalu Trust Fund (TTF) was signed on 16 June 1987 but the Fund itself was established on 21 August 1987 with an initial value of A\$27.1 million, of which New Zealand, Australia, and the United Kingdom together contributed just under \$25 million, and Tuvalu invested \$1.6 million. Japan and Korea also made modest contributions. Between 1993 and 1996, the government decided on a conscious policy of making regular contributions to the capital of the Trust Fund and has since invested more than twice the original individual contributions of the other founding TTF members (Tuvalu Trust Fund Advisory Committee First Half-Yearly Report April 2002: 21; and Tuvalu Trust Fund Advisory Committee Report for 2003 November 2003).

The TTF international agreement provides for a Board of Directors that governs the Fund and in which all powers of the Fund are vested (and exercisable). The Board consists of a director appointed by Tuvalu and who is the permanent chair, and one director appointed by each other original party to the agreement (New Zealand, Australia and Britain). In addition, the agreement sets up an advisory committee - Tuvalu Trust Fund Advisory Committee (TTFAC) - with the functions of advising the Government of Tuvalu on the progress of the economy and effect of the Fund socially and economically on Tuvalu, and submitting an interim report on all these matters to the Government of Tuvalu and to the Board. In the performance of its functions, the TTFAC considers and advises on Tuvalu's National Budgets and estimates, annual accounts and finances having regard among other things to the size of the Fund's capital and the returns available from it (Article 7 *Agreement concerning an international Trust Fund for Tuvalu*, Government of Tuvalu). Presently, the TTFAC's membership consists of representatives from each of the original member governments.

The TTF international agreement stipulated that the real capital value of the Fund would always be maintained. Professional managers are hired to manage day to day investments to ensure that the Fund's value would grow and fund monitors provides investment advice and supervises the various Fund investments that are made. The choice of fund managers and fund monitors is made by the Board through a competitive tendering process. The selection process appears to have been quite robust and transparent. (Pers. Comm.). The fund managers are paid a fee based on the funds under management. Performance is thus rewarded through higher fees under management. Contract appointments are subject to regular review with most contracts set for three years. The success of the TTF has been a major step in advancing Tuvalu's sovereignty (Finn, 2002: 19) and this has to some extent been due to the careful management of the Fund by the Board and the excellent advice provided by the TTFAC, all made more workable by the Government of Tuvalu's prudent financial management of the economy. The TTF has become a model for financial

sustainability and has allowed Tuvalu to manage its economy in a manner that has avoided major budgetary shortfalls and debt trap enveloping some other small island states (Finn, *Ibid*). Its substantive achievements in securing greater self-reliance and financial sustainability have yielded additional aid assistance from donors who are anxious to see their funds put to good use in a well-managed economy (Finn, *Ibid*).

The striking success of the TTF has therefore led the Government of Tuvalu to investigate the trust fund concept for community based outer island development (Nimmo-Bell, ADB, & GoT, March 1998: 1). Subsequently the Falekaupule Trust Fund (FTF), designed to underwrite the costs and projects of island local governments, was created with initial capital assistance of \$12 million provided by Asian Development Bank (ADB) with Tuvalu agreeing to match this loan from its own resources. The projects being funded under the FTF were to (i) support the process of decentralization; (ii) achieve a significant level of development finance for island communities; (iii) create an improved enabling environment for island development; and, (iv) support the Government through technical assistance for capacity building for island development project management (Tuvalu Trust Fund Secretariat, (June) 2001).

Within Tuvalu, then, it is clear that elements of the traditional and modern worlds are at times colliding, and at other times working together fairly successfully. There are difficulties in trying to apply the Western model of democratic and professional bureaucratic politics to the traditional Tuvaluan setting, but some new approaches are being tested in an effort to overcome these problems – as evidenced by the ongoing creation of a Leadership Code and by the implementation of the TTF concept. Yet issues to do with traditional values, charges of nepotism, and broader political accountability issues in Parliament and the civil service and so on continue to test this small country and more must be done to follow up words with deeds.

Corruption Profile

Definitions

In the absence of a national anti-corruption strategy, a code of conduct for ministers and the public service, definitions of corruption can be easily disputed. Moreover, there is still no comprehensive universally accepted definition as to what constitutes corrupt behaviour. There are instances of grand corruption, petty corruption, systemic corruption, syndicated and nonsyndicated corruption, and individual corruption (ADB, 1998:9-10). Despite the lack of a common definition, there is, however, a general acceptance that corruption destroys democratic processes, fosters additional inefficiencies within the public sector, leads to loss of confidence in government, undermines the merit system and compromises professionalism, and has a deleterious effect on society and the economy. And there are provisions in Tuvaluan Law for beginning to ascertain what corruption might mean in this particular instance.

In Tuvalu the Penal Code Act, (S85, Revised Edition 1978), describes the act of corruption as having been committed if a person who -

being employed in the public service, and being charged with the performance of any duty by virtue of such employment, corruptly asks for, solicits, receives or obtained, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office; or

corruptly gives, or procures, or promises or offers to give or confer, or to procure, or attempt to procure, to, upon, or for any person employed in the public service, or to, upon or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed (s85).

The Penal Code also further explains that corruption occurs when public officers receive property to show favour. Additional clauses in this Code include s87 which states that;

Any person who, being employed in the public service, receives property or benefit of any kind for himself or any other person, on the understanding, express or implied, that he shall favour the person giving the property or conferring the benefit or anyone in whom that person is interested, in any transaction then pending, or likely to take place, between the person giving the property or conferring the benefit, or anyone in whom he is interested, and any person employed in the public service

Similarly an 'abuse of office' occurs when;

Abuse of office is where any person who, being employed in the public service, does or directs to be done, in abuse of authority of his office, any arbitrary act prejudicial to the rights or another, provided that the act is done or directed to be done for the purpose of gain (S90, Penal Code Act, Rev. Ed. 1978).

"Corrupt practice" with respect to parliamentary elections is further defined in Section 47 of the Electoral Provisions (Parliament) Act of 1980 as:

- (a) any person who corruptly, by himself or by an other person, either before, during or after an election, directly gives, or provides, or pays, or promises to give, provide or pay, wholly or in part, the expenses of giving or providing any food, drink, entertainment or provision to or for any person, for the purpose of corruptly influencing that person, or any person to vote or refrain from voting at such election, or on account of that person or any other person having voted or refrained from voting at such election; and
- (b) any elector who corruptly accepts or takes any such food, drink, entertainment or provision.

However it is not clear when traditional practices such as gift giving and reciprocating that gift (e.g. the provision of food, drink, money, entertainment, promise or favour etc.) becomes a bribe. When a visiting Minister is accorded a sumptuous Island feast followed by lively traditional entertainment hosted by the island chiefs, it would be difficult in accordance with customs and traditions for the Minister not to reciprocate or to refuse a favour that the chiefs or the people might ask of him. Such requests are usually in the form of funding a pet project for the community and special preference to shipping requirements (e.g. a request to intervene in the shipping schedule so that their island's requirements are given preference). The economics of accepting these requests is a secondary factor. The situation becomes more problematic if the Minister was visiting his own constituency as he tries balancing out requests from his own island, his obligation to reciprocate, and the competing demands to national resources.

On the status of the chiefs, it is instructive to note the opinions of the Chief Justice on the matter of an Election Petition between *Tupou Alama as the petitioner and Telava Tevasa as the respondent and the Attorney-General as intervener*. The petition alleges that the respondent and/or his agents committed corrupt and illegal practices in connection with a parliamentary bye-election held on Nukulaelae Island in 1986 (Tuvalu High Court Case 1/86). The Chief Justice said:

I should make some observations on the position of the matais in relation to such an allegation. This requires a consideration of the status of the matais in Nukulaelae and, indeed all matais in Tuvalu. That status has been clearly defined by all witnesses who deposed as to it. The authority of the matais is founded in the values and cultures of Tuvalu. It is the linchpin of the life and laws of Tuvalu protected by the Constitution. The authority of matais requires them to make decisions to guide the people and foster their welfare. This means that in Nukulaelae and elsewhere in Tuvalu the matais necessarily and legitimately exert great influence and their decisions carry great weight. Their concern with politics and the way they expressed it in this case is consistent with their role as matais and...that what they did was in accordance with customs and traditions of Tuvalu (Chief Justice Donne, Tuvalu High Court Case 1/86: 11-12).

Scope

There has been a range of ministerial activity in Tuvalu that might be regarded as corrupt. These activities have included delays in clearing travel accounts, the location of a school in minister's constituency which might give him political advantage and setting priorities in road improvement which might benefit a minister's business interests. While corrupt activity occurs at these higher levels it also occurs in more petty forms of corruption such as small sums of misspent funds and nepotistic hiring practices.

Causes

The cause of fraud in Tuvalu is often found in the temptation arising from close proximity to large amounts of funds. Another major contributing factor is the increasing pressure to meet family, community and church obligations. Audits are effectively not imposed on people in positions of trust, especially in the private and civil society sectors but also including ministers, public officials in both government agencies and public corporations.

The dichotomy between traditional gift-giving and bribery is also well depicted in the 1987 election petition brought before the Supreme Court seeking an order invalidating the election on one of the electoral districts which was held in the previous year (Chief Justice Donne, Tuvalu High Court Case 1/86: 11-12). The grounds alleged by the petition were that the respondent and/or his agents committed corrupt and illegal practices in connection with the election contrary to Section 41(1) of the Electoral Provisions (Parliament) Act of 1980. The petitioner was a candidate at the said bye-election which was won by the respondent. The petition alleged that the respondent was guilty of "treating", exerting undue influence. It alleged that corrupt practices affected the result of the bye-election. The allegations were that the respondent had bribed the chiefs of the community by the provision of food, entertainment and gifts in the period leading up to the elections. The chiefs had in turn, it was alleged, influenced the electors present to vote for the respondent. The Court accepted that the feast held in honour of the respondent was in

accordance with customs and traditions and the people of the community as is customarily the case provided the food. The High Court found that the petitioner had failed to sufficiently establish the essential elements of "corrupt practices" by which the respondent may be found at fault under the law.

It should be noted that gift-giving, food presentation, and reciprocity is a two way process – the respondent, it was argued, was reciprocating the gift-giving and food presentations from the people of the island (electoral district) in accordance with traditions and customs.

Issues of nepotism and favourism are also difficult to avoid in a state with such a small population.

Levels

Corrupt practice appears to occur in all kinds of levels of Tuvaluan political and social life. For example, it is well known that the manager of a community-owned retail shop fled to New Zealand with all the cash and reserves this particular shop had and never made contact again with the community concerned. As a result, the shop was unable to meet its obligations to its shareholders in the payment of members' annual bonuses. Similarly, a senior minister of the EKT church along with another church official implicated in the matter were dismissed from the church after allegations involving church funds and overseas training. The minister concerned was further subsequently imprisoned for misappropriations of funds of an NGO, and the church official migrated overseas.

Costs

Social costs also arise in the form of no necessary connection existing between the factors of merit, hard work and rewards. Disunity can rise out of differing ideas as to what counts as corruption, and also from the fact that different people may be treated differently depending upon whether or not they are in favour with those with access to resources.

Types

In addition to the misuse or unaccounted use of government funds, embezzlement and other fraudulent acts occur at various levels of political and social life. Embezzlement of funds is a criminal offence under the Penal Code Act and has been the subject of court action. In most cases, court actions have been for embezzlement of funds in the public sector and to a lesser extent in civil society sector including the *Ekalesia Kelisiano a Tuvalu* (EKT- Tuvalu Christian Church). Corruption or embezzlement of funds occurring in the private sector or in community organisations have rarely been brought to court. Cases of embezzlement of funds within community groups and sometimes within EKT are normally dealt with internally, or the community may feel powerless to do something about it.

Other forms of corrupt practice are also readily apparent. Visits to Taiwan are high on the agenda of senior officials. One of the attractions is that in addition to their fairly high local allowances paid before their trips, Taiwan has a policy of paying out generous American dollars personally to the visitors. The 'per diem' mentality is also very much present in attendance of other meetings – e.g. regional meetings, in-country workshops – or other trips overseas. A former politician for instance used per diems received by him as one of the guarantees for obtaining a relatively large personal loan from the Tuvalu National Bank (Pers comm. with a former chairman of the National Bank of Tuvalu Board of Directors). Ministers have been suspected of overstaying and still receiving per diems and changing international travel itineraries for personal reasons.

The Impact of Change

Tuvalu is a small country that places great emphasis on family links and reciprocity. The advent of new forms of political controls present some challenges as to determining just what 'appropriate' behaviour might be with regards to favours and gift-giving. Challenges have also arisen by the flow of skilled workers offshore to New Zealand, and the pressures of a small economy. However, some responses to change have succeeded – such as in the case of the TTF outlined in the previous country overview section.

The National Integrity System

Executive

The executive authority of Tuvalu is vested in the Sovereign, and in the Governor-General as the representative of the Sovereign. The exercise of this executive authority is performed by the Governor-General which includes the Governor-General acting only in accordance with the advice of the Cabinet, or the Prime Minister or another Minister acting under the special authority of the Cabinet. In rare circumstances the Governor-General is required to act in his own deliberate judgment or where the Constitution obliges or specifically permits him to act in a particular way. The Governor-General is appointed or removed by the Sovereign who acts in accordance with the advice of the Prime Minister after the latter has consulted the members of Parliament.

In 1993, former Prime Minister Bikenibeu Paeniu advised the Sovereign to appoint Tomu Sione to the post of Governor-General during a time of much political uncertainty and against the wishes of the majority of members of Parliament. It was alleged that the appointment was made in return for the support of the two members of Parliament from Sione's constituency (Taafaki, 1996). Paeniu was succeeded by Kamuta Latasi who in 1996 advised the dismissal of Sione from being the Governor-General. In 2003, the minority government of Saufatu Sopoaga appointed Faimalaga Luka as Governor-General. The basis of the appointment was purely political and was to allow a parliamentary by-election and the possible return of a candidate who would support Sopoaga and give him the necessary majority. PACNEWS stated that "The balance of power has passed between the government and opposition for some months now, with the opposition's campaign to form government taking a serious blow – losing its one seat majority following the appointment of Faimalaga Luka as governor general last month. At the time of his appointment, Mr Luka was a member of the opposition and the speaker of the house." (PACNEWS 2: Monday 13 October 2003 and *Islands Business International* August 2003: 30).

The Cabinet consists of the Prime Minister and four other ministers. All members of Parliament elect the Prime Minister. The Governor-General in accordance with the advice of the Prime Minister appoints ministers. The Prime Minister is responsible for Cabinet and Parliament, constitutional and political matters, civil service, coordination of government activities, judiciary and legal matters, disaster and preparedness, broadcasting and information (a public corporation), police, prisons, fire service, immigration, religious matters, national elections, and foreign affairs. Cabinet ministers' responsibilities are broadly defined in a schedule to the Constitution and elaborated in some cases in Acts of Parliament, but it is clear that a redefinition of roles and responsibilities is required (Knapman, Ponton, & Hunt, 2002: xxi). For instance, forestry and mining are assigned as ministerial responsibilities when there are clearly no forests or mineral deposits as such in Tuvalu. Since independence in 1978, the Prime Minister has always been an elected MP from the southern islands and the tendency has been to appoint the deputy prime minister from the northern islands to maintain some regional balance. Similarly in the distribution of ministerial portfolios, care is taken to ensure there is regional consideration in the appointment of ministers.

In 1997, former Prime Minister Bikenibeu Paeniu began the illegal practice of appointing Special Ministerial Advisors (SMAs) from non-Cabinet members of Parliament who support the government to fill these positions (Knapman, B., Ponton, M., & Hunt, C. 2002). This was regarded as an attempt to lock in the support of these MPs for the government but it also meant that additional office space had to be found. Housing accommodation, salaries and allowances also had to be funded from the public purse. The role of SMAs clashed with the responsibilities of Secretaries to Ministries and created considerable confusion in the public service regarding channels of communications and accountability. This illegal practice continued with two subsequent prime ministers, Ionatana Ionatana and Faimalaga Luka. In a case brought to the High Court by one of the opposition members, Kamuta Latasi, the Chief Justice ruled that Paeniu (and the two subsequent Prime Ministers) had usurped their powers and found the practice unconstitutional and illegal (High Court of Tuvalu, 2003d: Judgment No.03/02).

A Guide to the Rules and Procedures for the Cabinet of Tuvalu was drafted in 1995 setting out guidelines on the conduct of Ministers on such matters as conflict of interests, favours and gifts, unfair use of information, general behaviour, and influence on the civil service; Cabinet Conventions and Principles (e.g. collective and ministerial responsibility, secrecy, the press, absences from Funafuti, custody of Cabinet documents); relations between the Minister and the Secretary (e.g. significant conventions, the role of the Minister, role of the Secretary, structure and means of approach, importance of consultation); business of the Cabinet; Preparation of Cabinet Documents, and the Duty of Senior Officials. The draft Guide has still not been formalized because of the alleged hesitancy of some Ministers and successive governments to be limited by the Rules and Procedures of sound governance and open accountability.

Legislature

Tuvalu adopted forms of parliamentary government that were based on the British model. The Constitution provides for a single chamber of Parliament comprising of 15 parliamentarians. There are eight electoral districts, seven of which return two members of Parliament each with the last one returning only one member. Most voters vote primarily on the basis of family relations, active participation in community activities although factors such as traditional status, good educational background and personal achievements (Taafaki & Oh, 1995: 2) are also important. Members of Parliament are elected under a system of universal, citizen, and adult suffrage and in all contested elections of members of Parliament the elections is held by secret ballot. The members of Parliament from among their own number elect the Speaker.

Although any Member of Parliament may introduce draft Bills in Parliament, in the past draft legislation has all been generated in Cabinet and sent to Parliament for debate. The debates are mostly dominated by Cabinet ministers and more especially the more eloquent members within Cabinet. As a measure of accountability and a means of consultation with the people, all Bills are referred to *Falekaupules* (local governments) for consideration and comment after their first reading in Parliament before they can be represented to Parliament for their second and third readings. The exceptions to this rule are those Bills that are certified by the Governor-General as urgent or not of general public importance. The Governor-General must act in this matter only in accordance with the advice of Cabinet. *Falekaupules* can propose amendments through their members of Parliament. However, these Bills are not only written in English but also in legal language and community leaders find it hard to comprehend proposed legislations. The acceptance of proposed Bills by *Falekaupules*, as is usually the case, should never be construed as total approval (Taafaki & Oh, 1995: 8).

Ministers can also pass subsidiary legislation, which does not have to be presented to Parliament until the session following its passage. An Opposition member is thus deprived of information on subsidiary laws until two parliamentary sessions after the law has been presented (Taafaki & Oh, 1995: 7).

Political Parties

Political organisations in Tuvalu are loosely ordered. There are no formal political parties, although there is an unofficial opposition group which comprises of members which are not in the government's side. In the last ten years years, Tuvalu has had several changes of government (six Prime Ministers). The major reason for the changes has been the defection of members of Parliament to form another group. Expectations of material well-being are high, but not sustainable. In late 2001 and only six months before the general elections, when former Prime Minister Faimalaga Luka was out of the country, a Cabinet Minister (Teagai Esekia) and three Special Ministerial Advisors (Koloa Talake, Saufatu Sopoaga and Samuelu Teo) withdrew their support of the government and joined other MPs to form a government (in the subsequent General Elections, Koloa Talake failed miserably and was not returned; Saufatu Sopoaga became Prime Minister and Teo a Cabinet Minister). Koloa Talake emerged as the Prime Minister, Sopoaga as the Minister of Finance and Teo as the Minister of Natural Resources (PACNEWS Friday 07 December 2001). An analysis of the allegiance of all past members of Parliament since independence indicates that all, except for two MPs, had defected from one group to another. The relative ease with which members of Parliament can cross the floor without appropriate

sanctions and chastisement from the electorate provides a continuing source of political instability for the country. However, despite frequent turnovers in government no significant shifts in policy have occurred – the current government will for instance continue with the policies initiated by its predecessors.

As there are no formal parties, funding especially for election campaigns becomes an individual matter and an area that has been the subject of previous court cases for alleged election bribery and corruption. It is customary in interactions with Tuvaluans, for example, when visiting a traditional meeting or meeting place to provide a sum of money (or large amounts of foodstuff) as a gift to the hosts – who may well be your relatives, a group of women, youth, or men from your village, or your own church group – in recognition of the hospitality and energy involved. At a higher level, gift giving becomes almost obligatory if one is invited by the elders of the island to a consultation meeting or to a welcome feast as is often the case when candidates in an election visit their constituencies before Election. They have to show their faces to the community and in doing so they would often give generously to the island community. This can be a large sum of money, large amount of food or tobacco, or in some cases, the candidate treats the whole island to a feast which would require financial and material resources. Professor Robert Hughes (2003) sums up the position well:

custom is a fluid set of practices that can enhance the possibility of corruption in many ways. Clever leaders can, and often do, manipulate the appeal to customary practices and obligations to achieve purposes which are foreign to them. In fact, the simple existence of introduced law alongside customary systems often creates what could best be term a confusion of authority, which frequently lends itself to exploitative practices, distortion and misrepresentation by leaders and public officials who are determined to achieve particular ends of their own. It is not the mere existence of custom as such but the duality of the system in which it operates which creates this particular confusion (Hughes, 2003: 47).

Family and community connections provide the material wealth that needs to be offered to voters. It is common for intending candidates to Parliament to offer money as a show of generosity and consideration to people from one's constituency in order to gain or maintain their support. On Election Day, it is common for intending candidates (and their families) to provide a relatively large feast and refreshments for voters. Once elected, reciprocity is the watch-word for the successful Member of Parliament and to give generously or to oblige would enhance one's chances of returning in the next elections.

Electoral Commission

No independent electoral commission exists in Tuvalu. The Secretary to Government is by law the electoral commissioner and because of the geography of the place, a number of people are often directly involved in the process of ensuring that voter registrations take place, that electoral officers are appointed on each electoral district, and security is ensured.

In the past there had been little complaint about the electoral process, although recently a case was brought before the High Court where a successful candidate had failed to register as a voter in his constituency within the time allowed. The Chief Justice ruled that the election was invalid and ordered another by-election.

Supreme Audit Institution

The office of the Auditor-General is established under the Constitution, and the Auditor-General is appointed by the Governor-General. In making an appointment, the Governor-General acts in accordance with the advice of the Public Service Commission, and because the Auditor-General is considered as an officer of Parliament, this is then conveyed to Parliament for final approval. In the performance of these functions and responsibilities under the Constitution and any other law, the Auditor-General is theoretically not subject to any external controls.

In his reports on the annual accounts of the government since independence in 1978, the Auditor-General has consistently argued that his responsibility to audit public accounts has

been severely frustrated by the lack of resources allocated by the government to his office. He reports on the public accounts for the years 2000 and 2001, stating that:

It is unfortunate that the Office of the Auditor-General has been ignored for the past twenty years, despite its continuous pleas to be provided with adequate budget and staff establishment that is required to carry out and fulfill its constitutional mandate (2003: 31).

Together with the problem of under-resourcing the Auditor-General's Office, a reading of his past reports on the public accounts indicate some disturbing features:

- Treasury reconciliation is often of poor quality;
- Unavailability of key documents;
- Poor adherence to standard, sometimes simple, financial instructions;
- Lack of any internal audit checks and management and internal controls completely ineffective;
- Budget limits are often significantly exceeded without sanctions; and,
- No attention whatsoever is being given to resolving serious errors and problems reported in any of the previous audit reports

The Public Finance Act, 1978, provides for audit reports to be submitted to Parliament in the first instance by the Prime Minister (as Minister administratively responsible for audit). The reports are then referred to Parliament's Public Accounts Committee (PAC) for scrutiny. PAC tables its report in Parliament, and it is left to the initiative of Members of Parliament to raise questions or motions for debate. There is no reference in the Constitution to the PAC and while Parliament's Rules of Procedure provides for the establishment and authority of the PAC, it has no power or authority in terms of prescribing penalties to enforce compliance (Clements, 2000: 33). In addition to giving the PAC more clout, it has been suggested that there should be legally enforceable timelines by which the government of the day must respond to issues raised in the reports of the Auditor-General otherwise it becomes, as is the case at the present, merely an information-reporting function. More important is Parliament's lack of concern for its watchdog on financial matters in the country. The Report of the *National Workshop on Accountability of Leaders of Tuvalu...* noted that many in Tuvalu believed that Parliament has failed miserably in seeing for itself whether the regulatory framework it provides was effective or adequate, and whether public institutions expend public resources as intended and in the best interests of the public" (Clements, 2000:11). The Report further stated that Parliament was not effective legislatively or in holding all officials and public institutions to account for the use of public resources in a timely manner (Clements, 2000:11).

It is of little surprise that Parliament is ineffective in holding officials to account for the use of public resources, when massive outstanding amounts (\$198,000 in 1999, \$129,900 in 2000, and \$284, 800 in 2001) are held against ministers' and senior civil servants' accounts for unaccounted expenses while on official travel (Auditor-General, 2003: 10). About five years prior, the figure of total outstanding special imprests stood at just over \$155,000.00 and the Auditor-General commented that "this was a sign of absolute abuse of trust and power" and that the amount should never be allowed to increase (OAG, 1997: 11). These amounts are kept in 'special accounts' and have yet to be charged to departmental budget lines. As a result these are not reflected in actual budget expenditures figures at the end of the year. Most of the present Ministers of Cabinet have outstanding accounts and one particular Minister has close to \$20,000.00 in unaccounted travel claims (Pers. comm. Taafaki/Auditor-General, and this is further supported by a *List of Outstanding Imprest Accounts as at 10 October 2003* maintained in the Office of the Auditor-General). Another very senior public official has had a consistently high and substantial unaccounted imprest account yet he has been allowed to travel overseas frequently.

It is clear that the capacity of Parliament needs to be enhanced urgently to restore and/or to establish integrity systems of good governance in the Parliament and between Parliament, government and civil society.

Judiciary

The judicial system of Tuvalu consists of the Sovereign in Council; the Court of Appeal; the High Court of Tuvalu; and other courts and tribunals as are provided for by or under Acts of Parliament. The Chief Justice of the High Court is a constitutional position and is appointed by the Governor-General acting in accordance with Cabinet's advice. If necessary, additional judges may be appointed for the proper performance of the functions of the High Court.

There is a local Magistrate for each of the eight island districts. All of these island magistrates could wear a number of other hats within their own communities, including being a church deacon, a landowner, traditional chief/leader, or a village committee member. A new local law graduate was recently appointed as the senior magistrate, a post which until this appointment was often held by retiring civil servants in good standing. From time to time, in-country training is provided for local magistrates.

Civil Service

The Tuvalu Public Service (TPS) is headed by the Secretary to Government and permanent secretaries (Finance and Economic Planning, Works and Communications, Natural Resources, Health, Education, Home Affairs, Foreign Affairs, Personnel and Public Service Commission, Ambassador in Fiji, and Ambassador in New York). The Constitution provides for a public service and specifies for the establishment of certain senior positions. Constitutionally the TPS is supposed to be neutral and impartial, with an implementation and advisory role, but in practice civil servants are often involved in policy and political decisions, and in a sense the TPS forms part of the informal political leadership (Taafaki & Oh, 1995: 9).

The TPS is a part of a much larger landscape and is both a reflection of and an integral part of Tuvalu society and economy. A range of factors influences the constraints and demands placed on it, and influence its capacity to deliver and perform. These factors include Tuvalu's geography, economy, budgetary situation, domestic investment; employment opportunities, and the cultural context, all which are compounded by the small scale of the country. These factors severely limit the type of public sector which can function in the country and which the country can afford, and a reminder that many features of larger or more developed public sectors may be simply inappropriate for Tuvalu (Baker, et.al. 1994: 19). Tuvalu's traditional culture places a high value on family, village or community, land ownership and other loyalties and traditions. On the other hand, the parliamentary system which exists in the country is premised on the impersonal rule of laws, policies and procedures, all directed to creating a government and public service which is efficient, merit-based and equitable. These two sets of cultural values and traditions do not and will not sit easily together and the Tuvalu public service operates in a way which tends to reflect both sets of values (Baker, et.al. 1994: 21).

Police and Prosecutors

The Commissioner of Police is a constitutionally established position and is appointed by the Governor-General, who acts in accordance with the advice of the Public Service Commission given after consultation with the Cabinet. His removal would occur through the same process. Apart from the Commissioner of Police, members of the Tuvalu Police Force (TPF) of or above the rank of Inspector may be appointed, removed and disciplined in the same manner, with any necessary modifications, as members of the public service. Other members of the TPF may be appointed, removed and disciplined by the Commissioner of Police, subject to appeal to the Public Service Commission in the case of removal or disciplinary action.

The Commissioner of Police reports to the Prime Minister, and for administrative purposes, also to the Secretary to Government. Some four years ago the Commissioner of Police was awarded a scholarship in Australia to pursue a master's course in public administration. The Commissioner of Police is also responsible for the prisons service and the patrol boat – *Te Mataili*.

Public Procurement

Tuvalu lacks a clear public procurement policy and legislation. All government procurement to date has to be carried out according to the general requirements of the Public Tenders Board Regulations but these may be relevant only to particular construction projects. The Regulations also fall short of providing a sound procurement system that functions according to international best practice. The regulations provide only a general legislative framework for contracting of works by the government and only the very basic requirements for tendering of building and works contract are outlined in the Regulations (Muller, 2000: 2).

Public corporations do their own procurement without a proper regulatory framework and detailed guidelines for effective implementation. The construction of the large Telecoms Building complex initially did not go through a proper tendering process and it was only through the intervention of the then Secretary for Finance and Economic Planning that the bids were called for and processed in the proper manner (Pers. comm. with the then Secretary of Finance and Economic Planning concerned, 24 February 2004). While there is more than sufficient in-country expertise to construct the complex, a Fiji based building contractor was chosen.

It is also not uncommon for public officials to leave Tuvalu with relatively large amounts of cash on purchasing trips overseas and with little accountability on return. A well-known case related to when the government vessel *MV Nivaga II* undertook its general overhaul maintenance work in New Zealand in 1998/99. The Master of the vessel, an expatriate Tuvaluan living in Australia, was entrusted with a substantial amount of money for the cost of the maintenance work. This money was alleged to have been deposited in a personal bank account and used for the payment of various bills and charges. It is also unclear whether quotes were obtained from various contractors to undertake the maintenance work although information obtained suggests that the officer concerned acquitted fully the funds involved. Questions of accountability, however, became so muddled and considerable suspicions ensued. Following a commission of inquiry in early 2003 into the handling of this particular matter, the Master was removed from his position (Per. comms. October 2002 with the officer (master) concerned).

Ministers, especially those with business interests, are also vulnerable to obtaining unfair advantage through their privileged positions and use of official information, particularly in an environment where accountability and review mechanisms are lacking.

Often there is no serious seeking of quotes before a decision is made to purchase goods and there is presently no established review mechanism for the procurement of goods and services in the Tuvalu public sector. Development expenditures are also not subject to a formal procurement regime. As a result, expenditure of development funds received from major donors is subject to their direct supervision.

Given the absence of proper rules and regulations and a high degree of decentralization and fragmentation, public procurement would benefit from a more structured, documented and coordinated public procurement system. Professional procurement practice should provide for better value for money.

Ombudsman

There is in Tuvalu currently no formal mechanism to check or review citizens' complaints against administrative decisions. The desirability of appointing an ombudsman was mooted in the mid 1990s and further discussed at some length in 2000 but has still not yet eventuated. In terms of other possible avenues for complaint, the judicial system is rarely, if ever used by individuals to resolve complaints against an administrative decision. The court process can be quite intimidating for most people and not always feasible for everyone.

Investigative/Watchdog Agencies

Aside from the Auditor General's office there are no other specific investigative or watchdog agencies in Tuvalu.

Media

The Tuvalu Media Corporation Act (Act 9 of 1999) established the Tuvalu Media Corporation (TMC) to provide a national broadcasting service and any other business carried on by the former Broadcasting and Information Division under the Prime Minister's portfolio. The charter of TMC states that it is to provide a national broadcasting service which informs, educates, and entertains the people of Tuvalu and, in doing so, reflects its commitment to the interests of Tuvalu. The Corporation and its Board are not subject, unless otherwise provided by any other Act, to the direction of or on behalf of the Government or any Minister. Further, freedom of expression, information and communication are fundamental rights that are enshrined in the Constitution.

In reality however, the government ruthlessly censors media news. TMC receives its major source of funding from the government and the Secretary to Government chairs the Board and it would be impossible for TMC to be critical of the hand that feeds it.

The functions of the media corporation as laid down by law (Tuvalu Media Corporation Act 1999 (Act 9 of 1999) are:

- (a) to make all reasonable endeavours to maintain broadcasting services to all regions of Tuvalu and seek financial assistance by way of grant or loan from any person if the cost of extension of such services to remote areas renders this expedient or necessary;
- (b) provide for adequate coverage of news and information from all parts of Tuvalu and from overseas sources, including the widest possible range of perspective and opinion in its broadcast and publications;
- (c) to make its broadcasting facilities available as a means of communication, if for any reason conventional telecommunications are unavailable;
- (d) to maintain a policy of social responsibility by having regard at all times to the interests of the people of Tuvalu and endeavour to accommodate or encourage these when able to do so; and,
- (e) to be accountable to the people of Tuvalu through their elected representative in Parliament.

The direct benefits of having a free press and its links to positive political and economic progress and its contribution to checking corrupt activities by public officials need to be researched and well publicized.

Civil Society

Civil society is sometimes regarded as any group, organisation or association which is not part of the government. Some of the most powerful actors in civil society are the churches and the church ministers, the traditional leaders/chiefs and individual community organisations, and certain NGOs such as the National Women's Council. There is no specific policy framework governing the activities and development of civil society and their relationship with the government. Registration on a Ministry-by-Ministry basis sometimes is required to receive support from the government.

The predominant church is the *Ekalesia Kelisiano a Tuvalu* (EKT) and church ministers exert political influence on public policies. In a similar vein, politicians also use the power of the church ministers and church numbers for political advantage. EKT churchgoers are expected to give generously to all church activities and especially in the upkeep of church ministers. Church ministers completing their tenure of service in any particular island often leave their post with huge sums of tax-free money donated by churchgoers on that island as a parting gift. As these are often made headline news on National Radio, there is a tendency for island communities to compete as to which island gives the most to its departing minister. Most Tuvaluans respect their church ministers and often officials working on customs and excise duties would find it disrespectful to inspect (or even to ask) church ministers' luggage whenever they return from overseas trips. (Pers. comm. 23 February 2004) EKT church ministers are some of the most mobile section of the community in terms of traveling abroad. In addition to church services, the EKT church also runs small commercial ventures such as a bookshop, a bus service, and a guesthouse.

The Tuvalu Association of NGOs (TANGOs) provides a national coordinating and umbrella structure for the country's NGO community, and in turn represents Tuvaluan NGOs within the Pacific Island Association of NGOs (PIANGO). About two dozen NGOs are members of TANGO. Most prominent amongst these are the Tuvalu Red Cross Society (RCS), the National Council of Women (NCW), the Tuvalu Family Health Association (TuFHA) and the National Council of Youth (Clarke, Taafaki, Paeniu & Grace, 2001: 69). TANGO receives most of its funding from external donors. There are risks of corruption in the use of NGO vehicles for private purposes and funding for 'pet projects' (Pers. conv. Taafaki/an NGO employee).

The women's organisations have established for themselves elaborate networks throughout the country. The National Council of Women claims a membership of around 90 per cent of Tuvaluan women and has a strong and regionally balanced representation in Funafuti. The government is aware of the importance of women and has pledged in its development plans to ensure women's participation in all facets of the development process (Taafaki & Oh, 1995: 12). Opportunities for unfair advantage and corruption appear minimal.

Traditional Organisations

The *Falekaupule* (traditional rule) Act 1997 which replaced the Local Government Act 1990 came into force on 1 January 1999. The *Falekaupule* traditionally consists of chiefs, head of family clans, and elders of the community who are 50 years of age or above. Four principal officers – the secretary, planner, treasurer, and community development officer – assist the executive arm of the *Falekaupule* (called the *Kaupule* - the rulers).

The *Falekaupule* Act gives comprehensive statutory recognition in the traditional rule to control and manage the activities of each respective Island, and allowing them more autonomy in the conduct of their affairs especially with regards to finance, selection and appointments of *Falekaupule* staff. The law also allows for more financial resources to the *Kaupule* e.g. the *Falekaupule* Trust Funds.

These *Falekaupules* are a major component of the economy and part and parcel of the country's National Integrity system. More than two-thirds of the populations of Tuvalu live in the areas under the jurisdiction of the various *Falekaupules*. This informal gathering of citizenry makes its own rules according to their traditions and customs. As a collective, they can be influential and have attracted external donor funding for their own projects and activities e.g. sporting facilities, home economics equipment, establishment of pre-schools buildings. The National Government relies totally on these collectives to provide traditional ceremonies when required.

Private Sector/NGOs

Private sector development is in its fledgling stages in Tuvalu. It is concentrated on the capital island of Funafuti and is largely comprised of shops, small scale activities, fishing, and handicrafts. Its potential is limited and requires support to grow. The Outer Islands especially are still largely subsistence based, with cash employment restricted to a few entities.

In terms of private sector organisations, the Tuvalu Chamber of Commerce provides a lobby group for business but it currently somewhat inactive as it is badly structured and under-resourced. NGOs have been mentioned above in the section on civil society.

Regional and Local Government

The formal local government system was introduced in the colonial days of the mid 1960s with the establishment of island councils, island courts and island land courts. This system marginalized the traditional form of governance at the island level and alienated traditional leaders from the elected councilors, removed areas of responsibility which for decades had been the responsibility of traditional elders to the jurisdictions of this imported model of the so-called councils. The bureaucrats who introduced the formal local system believed, albeit incorrectly, that there was a serious governance vacuum in the islands that needed to be filled. Since its introduction, then, formal local government had never gelled well with

the people. Island Councils would undergo tremendous efforts to mobilize human, financial or other resources on the island to undertake community projects on a voluntary basis whereas the traditional rulers would have no difficulties in mobilizing the same resources to build churches, classrooms, traditional public meeting houses, roads, village beautification, or any other community project activity on a voluntary basis.

The return to traditional rule was recognized with the passage of the Falekaupule Act 1997 (Act No. 8 of 1997) – nearly forty years since the local government councils were first established. The Falekaupule Act provided comprehensive statutory recognition for the “*Falekaupule*” and to vest in them greater control over the activities and affairs of the islands by transferring to them the functions of the local government councils and making them more responsible for each island’s affairs. The Act also conferred on the islands greater autonomy in the conduct of their affairs as regards their areas of authority, their role and functions, budget, staff and decision-making generally. The Minister can only exercise his powers in the Act after consultation with each Island Falekaupule.

In order to financially back up falekaupules’ greater autonomy to assist the development of each island, the Falekaupule Trust Fund (FTF) was created in 2002 with all the falekaupules as major shareholders. In 2001, the total assets of the FTF stood at \$12.2 million (EPOC, 2001: 18).

The Kaupule, on each island is the executive arm of the Falekaupule, and it performs most functions conferred by the Act on the Falekaupule except in the election of the Pule (Head) of the Kaupule, the approval of the Budget, approval of byelaws, and the appointment of Kaupule officers. The three main sources of Kaupule finances are (1) grants from central government; (2) dividends from the Falekaupule Trust Fund; and, (3) Kaupule tax. Kaupule now have funds for the first time to spend on projects of their choosing and two years ago for the Kaupule with the largest area (Funafuti), this amount was close to \$200,000.

In the days of the formal local government council system, cases of fraud and misappropriation of Council funds abounded. This seems to have lessened but it is hard to determine whether deterrence against fraud are now stronger and robust or simply that the auditing of Falekaupule accounts has not been as vigorous as it used to be. This is also the arena where the politicians often veil their politics of campaigning in the camouflage of ‘gift giving’. They would donate large amounts of gifts to the community as a whole, to prominent people in the community, or to groups within the community. Reciprocity is the basis of social relations, providing a safety net in times of natural disaster, economic hardship and social change (Clarke, et al., 2001: 68), and Findlay argues that throughout the Pacific, “gift giving cultures – exploited as they are by foreign interests – may help to obfuscate the insidious reality of corruption” (Findlay, 2002: 115). In this particular case, it is not foreign interests that are exploiting the culture but the elites of the country itself.

Progress with Government Strategy

As the executive summary, country overview and narrative above has shown, there has been little effort to implement an overarching national strategy to deal with corruption in Tuvalu despite the fact that the country has signed up to agreements such as the Pacific Island forum recommendations for good governance. Without any actual strategy, it is difficult to assess any possible progress. However, the Government is seriously looking at adopting a Leadership Code that has its origins from that same regional Pacific Forum initiative. Tuvalu is looking at adapting it to the circumstances of the country, with the intent of applying the Code not only to national leaders and high officials but to all those who at the island level as well.

Donor Anti-Corruption Initiatives

The Cotonou Agreement between the European Community on the one hand, and the Group of African, Caribbean and Pacific States (ACP) on the other, is replete with examples of good governance provisions that are directly relevant to anti-corruption. The major innovations of the new ACP-EU Agreement aim, among others, to explicitly address corruption. Cooperation between the EU and Tuvalu, however, puts greatest emphasis on

the promotion of the sustainable and social development of the partner country, and more particularly the most disadvantaged among them the smooth and gradual integration of the partner country into the world economy and the campaign against poverty (Office of the Prime Minister, 2002: 1). But the EU also supports in its development interventions in Tuvalu better governance that leads to economic growth, improved social services, and a fairer distribution of long-run investment returns.

Australia also funded a review of the public sector reform in 1994 and provided technical assistance to assist further development and implementation of public sector initiatives by the Government of Tuvalu.

The UNDP has run several in-country training workshops on good governance including a study of the public procurement profile of Tuvalu in 2000. It also facilitated a National Workshop on Accountability which generated considerable interest and support, including reiteration of support for some of the recommendations of the above AusAID funded study and for other measures to enhance transparency and accountability in public administration.

And the ADB recognizes the problem of corruption and the abuse of public office as an emerging issue in the Pacific and is working closely with Pacific Developing Member Countries (PDMCs) in assisting them in the implementation of financial sector reforms including for instance the ADB Pacific study series on each PDMCs' economic management and public sector reviews.

Future Research and Donor Support

In terms of future research and donor support, it is argued here that donors should insist on a strategic national anti-corruption strategy as a precondition to aid. Support for the initiation of additional institutional supports in the form of an Ombudsman or Electoral Office would help strengthen anti-corruption efforts. Donor support for a responsible media sector and for a free press, and greater participation and dialogue with partner countries would also promote a greater awareness of and openness to new anti-corruption measures.

Anti-Corruption Activities

Overview of Government's Reforms

Again there has been little to review in the case of government anti-corruption reforms, though if the Leadership Code is put into place this might signal a new government and political will to begin to take anti-corruption measures seriously.

Assessment of Progress

As addressed above in the previous sections. With no overarching anti-corruption strategy it is difficult to assess progress, though it is clear that there has not yet been any major achievements in setting up a comprehensive and robust NIS in Tuvalu.

Overview of Donor Anti-Corruption Initiatives

Donor countries have often not been overly involved in in-depth bilateral dialogue with Tuvalu in order to determine its governance needs. Though there have been some more concrete attempts to help accountability efforts in Tuvalu, such as AusAid's review of the public sector, donors have frequently not required concrete results in reaction to their efforts to promote accountability and transparency in Tuvalu.

Assessment of Priority Areas, Activities and Issues

In terms of anti-corruption needs, the government has had a strong hold on the media for many years and it believes that it is the government's prerogative to release information and news to the people only on a strict selective basis. Accessing of information by the people is severely limited. Successive governments have yet to appreciate the value of the free media and the role and functions of the media to political, social and economic development. Also having a free media is one of the surest ways of keeping a check on abuses of official positions for personal advantage. The correlation between having a free media and greater transparent and accountable democratic process needs to be researched further.

The clash of traditional culture and practices which by Western thought may be construed as corruption is a truly deserving area for further research. Rather than studying the whole spectrum of traditional practices, one approach is to take only a major facet of relevant traditional practice at a time. For instance, the subject of traditional gift-giving, and 'settling' family and communal obligations and not only how these practices clash with Western thought of corruption, but also how the two sets of cultures can be blended together could be an area of focus.

A further area which is deserving of further research and for want of greater clarity is the role of secretaries of ministries and their relationships with ministers, including other relationships (e.g. with the Auditor-General, other statutory corporations, the media and the public, ministry clients and specific interest groups, other Ministers, Members of Parliament, and other departments). Apart from a few legal requirements, secretaries must be made more accountable and required to produce yearly reports of their ministry/departments for submission to Parliament. In a way, this is also accountability for the Minister as it would be the Minister responsible who formally tables the report in Parliament.

Key Issues

The National Integrity System

Apart from public sector reform efforts and the current formulation of a Leadership Code there is at present no government anti-corruption strategy. This must be an urgent priority if Tuvalu is to have fully working National Integrity System.

In terms of what pillars are in place in Tuvalu at the present time, although some structures are in place (there is a legislature and competitive elections), others, such as an independent Electoral Commission, are not, and some (like the Auditor's office) are unable to complete the tasks ascribed to them. The recent constitutional crisis also highlights problems stemming from a lack of entrenched partisan politics, and the fact that the Westminster style of government currently in place does not sit too well with traditional customs where quiet consensus dominates.

Effectiveness of Government and Donor-Supported Activities

There have not been many government supported efforts to promote anti-corruption activities in recent years. The proposed Leadership Code has been mooted but its effectiveness can not yet be tested.

As to donor-supported activities, there also appears to be a lack of concrete anti-corruption activities emerging from donor sponsorship in that specific ends have not necessarily been a precondition of aid though some support for more transparent measures has been in evidence.

Priorities and Recommendations

In terms of priorities and recommendations, a crucially important factor required to bring about greater accountability is the political will which has been mentioned before but not discussed at some depth. Political will is fundamental to any public sector reform against corruption. The lack of political will for carrying through the implementation of many of the reports, recommendations and advice to enhance transparency and to promote good governance is a confounding problem. A study of the causes of this lack of will, what can be done to energize and activate it, what can be done to sustain and maintain, it would therefore also be an area worthy of further research.

Appendix One - Questionnaire

Executive

Can citizens sue the Government for infringement of their civil rights?

Formal or Legal position

The Bill of Rights is contained in the Constitution and enforcement of the Bill of Rights is stipulated in section 38 of the Constitution, 1986. The High Court of Tuvalu has original jurisdiction in determining any application for the enforcement of the Bill of Rights, or determining questions as to the Bill of Rights arising from subordinate courts (S40, Constitution of Tuvalu, 1986).

What actually happens

It is rare for citizens to sue the Government. The process is simply far too intimidating and people find it hard to articulate their grievances.

However, in the mid 1980s, four former Broadcasting & Information employees, dismissed by the government for mounting a media programme on the proceedings of Parliament without prior approval, sued the government for unfair dismissal. They lost the case in the Supreme Court.

Are there procedures for the monitoring of assets, including disclosure provisions?

- **For the Cabinet and other government ministers?**
- **For high-level officials?**

Formal or Legal position

None.

What actually happens

As there are no provisions for monitoring of assets and disclosure, Ministers and high-level officials are not obliged to do so. Some Ministers have very active private business interests.

Are there any differences in procedures and disclosure provisions between elected ministers, appointed ministers and high-level officials?

Formal or Legal position

There are currently no provisions and procedures for the disclosure by elected ministers, appointed ministers or high-level officials.

What actually happens

Ministers are primarily elected Members of Parliament and then are appointed as Ministers. Some Ministers and high-level officials have very active business interests but are not obliged to provide returns, apart from Income tax returns, on their assets and business interests. However, there is a longstanding on-going battle between the Ministry of Finance and a Cabinet Minister with private business concerns, for non-payment of income tax.

Are there conflict of interest rules?

- **For ministers?**
- **For high-level officials?**

Formal or Legal position

There no formal rules for Ministers. As members of Parliament, section 97 of the Constitution requires an MP who has an interest in a matter under consideration in Parliament to disclose his/her interest, and unless approved by Parliament will not participate in any proceedings in Parliament, or in a committee of Parliament, in relation to the matter. The Rules of Procedure of Parliament provides for a comprehensive guidance on the disclosure provisions as required by the Constitution (Parliament of Tuvalu, 1994, section 42).

There no clear conflict of interest rules for high-level officials.

What actually happens

In Cabinet deliberations, when a Minister discloses a conflict of interest, he or she withdraws from the discussions and abstains from a vote if this was required. But the onus rests on individual Ministers to express their conflict of interests. When policies are formulated that impact on their business concerns, conflicts of interests may occur. Conflicts may also occur in operational as well as policy matters. For example, a minister responsible for shipping might instruct the government vessel that cargo for his own business take precedence over any other cargoes.

Are there rules and registers concerning gifts and hospitality?

- **For ministers**
- **For high level officials**

Formal or Legal position

No rules for Ministers.

High-level officials (and all officials) are guided by the provisions of General Administrative Orders (GAOs) which prohibit officers to give or receive valuable gifts or presents (other than ordinary gifts from friends) whether in the form of money, goods, services, passages or manner of beneficial transaction and from giving presents or providing such benefits.

What actually happens

In practice, Ministers and high-level officers often receive (expensive) gifts and accorded hospitality. It is quite common for senior officials to wear expensive gold watches that have been gifted to them (Personal experience) Overseas investors often with dubious schemes have contributed to the problem by offering gifts as inducement for approval of their proposals. This may come in the form of goods and first or business class travel and expensive accommodation, often including the spouse. Or a foreign government may provide generous US dollars spending money to official visitors.

If so, are these registers kept up to date? By whom?

- **Have they legal powers to enforce disclosures?**
- **Have they staff to investigate allegations?**
- **What powers of sanction are in place against parliamentarians? Have they ever been invoked?**
- **What powers of sanction are in place against high-level officials? Have they ever been invoked?**

Formal or Legal position

There is no requirement to maintain registers.

What actually happens

N/a

Are there restrictions for post ministerial office employment?

- **For ministers?**
- **For high-level officials?**

Formal or Legal position

None, except for those who have served as members of the Public Service Commission - they are not eligible for appointment to any office or position in the public service before the end of the period of two years after the date on which he ceased, or last ceased, to be a member of the Commission (S148 Constitution of Tuvalu, 1986).

What actually happens

N/a as there are no restrictions to post ministerial office employment.

Are members of the executive obliged by law to give reasons for their decisions?

Formal or Legal position

Not unless required to do so by a Court of law or by a public inquiry. Cabinet meetings are held in secret but decisions are conveyed to secretaries to ministries as the main policy implementers.

What actually happens

Executive decisions have rarely if ever been challenged in court in the past. The public is probably unaware of their rights and if they do, the process of challenging executive decisions, let alone seeking a judicial clarification could be too daunting for most of them. Although Cabinet meetings are held in secret, decisions are often leaked out.

Do Ministers or equivalent high-level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?

Formal or Legal position

The Public Tenders Board (established under the Public Finance Act) advertises for the submission of tenders for government projects, appraise the tenders, and recommend the best offer to the Minister responsible for the project to make the final decision.

What actually happens

To date, the requirement for this process has been followed.

Are there administrative checks and balances on decisions of individual members of the executive?

Formal or Legal position

Yes, Acts of Parliament such as the Public Finance Act, or individual Acts which established the various public corporations.

What actually happens

An executive member can avoid the checks & balances by replacing the officer responsible with his own supporter, or in more serious cases, dispatch the officer concerned on a long-term scholarship award overseas. Otherwise, officials often waive the checks and balances in fear of being at odds with the Minister.

Legislature

Is the legislature required to approve the budget?

Formal or Legal position

Yes. S165 of the Constitution, 1986, states that the raising and spending of money by the Government (including the imposition of taxation and the raising of loans) is subject to the authorization and control of Parliament.

What actually happens

For each financial year, the National Budget (or supplementary Budgets and supplementary appropriations as are necessary) is/are prepared and submitted to Parliament in the format required by the Minister or by Parliament (Tuvalu Constitution, 1986: sections 165; Public Finance Act, 1978, section 4).

Are there significant categories of public expenditure that do not require legislative approval? (which departments does this involve, what is their expenditure and what percent does this represent of the government's annual expenditure?)

Formal or Legal position

Yes. Statutory expenditure does not require legislative approval (as they would have already been sanctioned by an Act of Parliament) and are not part of the appropriation bill. Most of the ministries/departments are involved as statutory expenditure cover Ministers' salaries and allowances, certain specified posts' salaries (e.g. Secretary to Government, Attorney General, Auditor General, Commissioner of Police, Public Service Commissioners' allowances)

What actually happens

In 2000, a Commission of Inquiry was appointed "to inquire into the procedure, manner and process of certain payments totaling about \$50,000." These were effected at the direct instruction and intervention of the then Minister of Finance. About \$30,000 of the funds was to pay for a solicitor in London who was personally tasked by the Minister to examine a telecom proposal agreed to by the previous Prime Minister. The balance was to pay for a number of bicycles intended for a group of people on another government Minister's home island. These disbursements were not budgeted for (there was not a budget line for them) and were clearly motivated politically. The Government never acted upon the Commission of Inquiry's findings, which included that total funds improperly disbursed should be recovered from the Minister concerned. (Pers Comm with the Chairman of the Commission of Inquiry)

Are there conflict of interest rules for parliamentarians?

Formal or Legal position

Yes, and these are specified in the Rules and Procedures of Parliament.

What actually happens

The conflict of interest rules are generally suspended when Parliament sit to consider a revision of their salaries and allowances.

Are the rules and registers concerning gifts and hospitality for parliamentarians?

- **Have they legal powers to enforce disclosure?**
- **Have they staff to investigate allegations**
- **What powers of sanction are in place against parliamentarians?**

▪ **Have they ever been invoked?**

Formal or Legal position

None.

What actually happens

Members of Parliament travel extensively abroad and are often presented with 'in kind' and 'in cash' gifts, and offered hospitality. They are not in any obligation to disclose these gifts or hospitality, and they may be tempted to try and avoid paying customs duties on them.

Are there restrictions on post legislature employment?

Formal or Legal position

None

What actually happens

N/a as there are no restrictions involved.

Elections

Is there an Independent Electoral Commission (if not, are the arrangements for elections in the hands of agencies who are widely regarded as being non-partisan?)

Formal or Legal position

No independent electoral commission. The Secretary to Government runs the elections but his responsibilities are often delegated.

What actually happens

N/a

Who appoints the Head of the Commission?

Formal or Legal position

There is not an Independent Electoral Commission as such.

What actually happens

The Electoral Provisions (Parliament) Act, 1980 provides for the Secretary to Government to exercise general direction and supervision over the administration of elections. Given the geography of the country, some of the functions and responsibility for the conduct and administration of elections are often delegated e.g. to Island Magistrates, Kaupule (Island Council) Secretaries, and Police Officers stationed on each respective Island.

Political Party Funding

Are there rules on political party funding?

Are substantial donations and their sources made public?

Are there rules on political party expenditures?

Are political party accounts published?

Are accounts checked by an independent institution, are they published and are they submitted to parliament?

Does that institution start investigations on its own initiative?

Who appoints the head of the institution?

There are no formal political parties in Tuvalu. There is an informal Opposition side which comprises mainly of Members of Parliament who do not side with the government. Members in the government or the informal Opposition sides make their own rules regarding sources of funds that they may be able to collect or to source. The sources or the use of these funds are not disclosed to the public and it is said that any funds that these groups may have are not significant.

Supreme Audit Institution

Is the national auditor general independent? i.e.

- **Is the appointment of the auditor general required to be based on professional criteria/merit?**
- **Is the appointee protected from removal without relevant justification?**
- **Is the office of the Auditor General adequately resourced?**

Formal or Legal position

In the performance of his functions under the Constitution and any other law the Auditor-General is not subject to the direction or control of any other person or body (S171 of the Constitution, 1986).

The removal of the Auditor-General is covered in the special constitutional provisions for the removal of prescribed officials from office, where the holder may be removed from office only –

- a) Inability to perform properly the functions of his office or position (whether arising from infirmity of body or mind, or from some other cause), or for misbehaviour; and
- b) Only when the question of his removal has been referred to an independent tribunal.

Are all public expenditures audited annually?

Formal or Legal position

S172 of the Tuvalu Constitution 1986, states that the Auditor-General "shall inspect and audit, and report at least once in every financial year to Parliament on –

- (a) the public accounts of Tuvalu; and
- (b) the control of public money and property of Tuvalu; and
- (c) all transactions with or concerning public money or property of Tuvalu."

What actually happens

Not all public expenditures are audited annually. Since 1995, Audit Reports have consistently reported the fact that because of lack of resources (staffing and funding), the auditing of some major components of the government including the audit of development projects had been left out. The Auditor General reports on the Government accounts for the years 2000 and 2001 that "...since the early 1980s, this Office has been performing only 50% of its constitutional and legislative obligations, due mainly to limited financial and manpower resources." As an indication of the lack of attention given by the Government to staffing the Audit Office, it is important to note that the post of Auditor-General was vacant for almost a decade from the mid 1980s to the early 1990s.

Is reporting up to date?

The Audit Office has done tremendous work to clear the arrears and backlog of work and was close to bring the audit of government accounts up to date at the time of survey. Where there had been serious delays in audit reporting, this has been mainly due to Treasury being unable to close the accounts or public corporations failing to submit their accounts for audit in a timely manner.

Are reports submitted to a Public Accounts Committee and/or debated by the legislature?

Are they acted on by the government?

Formal or Legal position

Yes they are supposed to be submitted under S33 of the Public Finance Act, 1978.

What actually happens

The PF Act requires that the Prime Minister (as Minister administratively responsible for audit submits audit reports to Parliament in the first instance. The reports are then referred to its Public Accounts Committee (PAC) for scrutiny. The PAC report is then tabled in Parliament (by the Speaker), and is essentially left to the initiative of Members of Parliament to raise questions or motions for debate. On 17 January 2000, the then chairman of the Public Accounts Committee wrote to the Secretary for Finance and Economic Planning declaring PAC's concerns that "serious and unsolved errors and problems that are prevalent in the government accounts for the years 1994, 1995, 1996 and 1997" as reported in audit reports continue to remain unattended to.

Are all public expenditures declared in the official budget?

No. More than \$280,000 was reported in the 2001 accounts to represent advances made to Ministers and officials in respect of their overseas travels and which had not been accounted for and therefore not charged to departmental votes. In the same year, more than \$2,470,000.00 representing personal loans and other expenditures incurred by various government departments had yet to be cleared to appropriate departmental expense. This treatment camouflaged the excessive costs incurred by the departments and erroneously understated departmental costs (OAG, 2003: 10-12). As a result Parliament is provided with an incomplete view of the Budget.

Judiciary

Have the courts the jurisdiction to review the actions of the executive (i.e. Presidency, the Prime Minister or other ministers and their officials)?

Formal or Legal position

As specified under the High Court Rules (Civil Procedure), for the Western Pacific, 1964, the Courts have the jurisdiction to review the actions or decisions of the executive – the Prime Minister, Cabinet and high-level officials.

What actually happens

The Supreme Court recently reviewed the following cases affecting executive decisions:

- Case 01/2003 the Chief Justice ordered that a directive issued by Cabinet on 10/07/2002 that members of the caretaker government and their spouses should continue to receive subsistence allowances on their return to their islands two weeks before the General Elections was in breach of the terms of the Prescription of Salaries Act and the Schedules thereto and was ultra vires and void (High Court of Tuvalu, 2003b: Judgment No01/03).
- Case 03/2002 the Chief Justice ordered that the appointments of Special Ministerial Advisers made by the Governments of Bikenibeu Paeniu, Ionatana Ionatana and Faimalaga

Luka were unconstitutional and ultra vires (High Court of Tuvalu, 2003d: Judgment No.03/02).

- Case 23/2002 the Chief Justice declared that the parliamentary election in the Nanumea electoral district to be void and the seat, hitherto filled by the second respondent- a government supporter - vacant and that there should be a bye-election (High Court of Tuvalu, 2003c: Judgment 23/2002).

Are judges/investigative magistrates independent? i.e.

- **Are appointments required to be based on merit?**
- **Are the appointees protected from removal without relevant justification?**
- **Are recruitment and career development based on merit?**

Formal or Legal position

Yes,

What actually happens

The judges and magistrates are appointed by the Governor-General by warrant under his hand with the advice of the Public Service Commission and subject to the general or specific approval of the Chief Justice (Magistrates' Courts Act, 1990: section 7).

Removal of these officers fall under the special removal provisions of prescribed officers in the Constitution.

Have there been instances of successful prosecutions of corrupt senior officials in the past 3 years?

None.

Civil Service

Are there laws establishing criminal and administrative sanctions for bribery?

Formal or Legal position

The principal law governing corruption and the abuse of office especially for the public service is the Penal Code Act, Rev. Ed. 1978; General Administrative Orders, 2000; and the Public Service Commission Rules, 2000.

Corruption and bribery in the private sector is also governed under the Penal Code Act.

Official corruption as defined in the Penal Code Act, Rev. Edn. 1978) occurs where any person who -

- being employed in the public service, and being charged with the performance of any duty by virtue of such employment, corruptly asks for, solicits, receives or obtained, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office; or
- corruptly gives, or procures, or promises or offers to give or confer, or to procure, or attempt to procure, to, upon, or for any person employed in the public service, or to, upon or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed (s85).

The Penal Code further explains that corruption occurs when public officers receive property to show favour. Any person who, being employed in the public service, receives

property or benefit of any kind for himself or any other person, on the understanding, express or implied, that he shall favour the person giving the property or conferring the benefit or anyone in whom that person is interested, in any transaction then pending, or likely to take place, between the person giving the property or conferring the benefit, or anyone in whom he is interested, and any person employed in the public service (s87).

Abuse of office is where any person who, being employed in the public service, does or directs to be done, in abuse of authority of his office, any arbitrary act prejudicial to the rights or another, provided that the act is done or directed to be done for the purpose of gain (s90).

What actually happens

Cases of criminal and administrative sanctions of bribery have been rare if at all.

Are there rules requiring political independence of the civil service?

Formal or Legal position

Yes, General Administrative Orders, 2000. Further, s150 of the Constitution (1990) states that in "personnel matters the Public Service Commission (PSC) shall comply with any general directions as to policy given by the Cabinet, but otherwise is not subject to direction or control by any other person or authority."

Similarly, authority in relation to personnel matters in respect of members of the Public Service shall be vested in the Public Service Commission (s155) and under the General Administrative (Participation in politics) Orders: No public officer may become actively involved in politics whether on his own behalf or on behalf of any individual or party (s1). Further, no public officer may nominate a candidate for election or campaign or seek support for any candidate (s3).

What actually happens

The concept of independence is a very difficult one in a small community such as Tuvalu. The primary premise of politics is family based and it is difficult to isolate politics with what is happening in the community. This applies everywhere whether one is in the public service, local government, or the private sector.

General Administrative Orders (GAOs) prohibit officers from actively taking part in any meeting concerned with any political matters, and discourages officers from actively participating in politics, and from becoming involved or from personally canvassing, sponsoring or supporting in any public way a candidate for election (GAOs 5.3.5) and PSC Rule 17 disallows any officer from seeking either directly or through another person the influence of Members of Parliament or other prominent persons as a means of enhancing that officer's prospects of appointment or promotion. However, there has been undue political interference in, or unfair pressure placed on the civil service in the areas of: Scholarships Awards (includes identification of venues of study); appointments to the civil service; posting and transfers of civil servants; travel schedules and free luggage; and procurement.

The Training and Scholarships policy requires that where courses are available in the region, students should attend those regional institutions. It is not uncommon however to find children of high public officials being awarded scholarships (even repeated scholarships) tenable in non-regional institutions, even though similar courses are available regionally (Pers. Comm. with official who deals with travel placements).

Are recruitment/career development rules based on merit?

Formal or Legal position

Yes. PSC Rules 22 requires that all vacancies be advertised and Rules 23 governs appointments. The rules also state that no officer shall be appointed to any permanent post that does not possess the minimum qualifications and/or relevant experience for the post. And PSC Rules 23(7) allows for tests to be held in order to establish an order of merit between a number of candidates applying for the post.

What actually happens

There is a need to maintain and develop an efficient service based on the recruitment of applicants adequately qualified for the requirements of the Service. Considerations for promotions take into account merit and ability, as well as seniority, experience and formal qualifications.

Appointments are made irrespective of sex, race, and place of origin, political opinions and religious beliefs except in cases where it is clearly relevant.

Are there specific rules to prevent nepotism? Cronyism? (Note: rules for discriminating positively in favour of marginalized or minority groups are not included in this description)

Formal or Legal position

None

What actually happens

This is hard to regulate, even more so in a small society. The remedy is to seek a court decision as the basis for fairness.

Are there rules and registers concerning acceptance of gifts and hospitality? If so, are these registers kept up to date?

By whom?

- **Have they legal powers to enforce disclosures?**
- **Have they staff to investigate allegations?**
- **What powers of sanctions are in place against public officials? Have they ever been invoked?**

Formal or Legal position

General Administrative Orders govern the receipt of gifts by officials but no registers are maintained.

GAOs (5.5.1) states that officers are forbidden in the course of their official duties, to give or receive valuable gifts or presents (other than ordinary gifts from personal friends) whether in the form of money, goods, services, passages or manner of beneficial transaction and from giving presents or providing such benefits.

What actually happens

GAOs 5.5.2 allows for presents from public bodies or personages received in the course of public duty which cannot be refused without giving offence may be accepted, but must be reported to the Secretary to Government. But this requirement has seldom been adhered to.

There is clearly a need for internal auditing systems and an increased sense of accountability.

A common event is when senior government officials travel overseas and are taken on a shopping spree, courtesy of some overseas company or personality.

Are there restrictions on post public servant employment?

No

Are procedures and criterion for administrative decisions published (e.g. for granting permits, licenses, bank loans, building plots, tax assessments, etc?)

Formal or Legal position

No

What actually happens

These are usually left to interested members to find out if they so wish.

Are there complaint mechanisms for public servants and whistleblower protection?

Formal or Legal position

What actually happens

GAOs cover complaint mechanisms, but protection provisions for whistleblowers do not exist. GAOs 5.8.1 provides that any public officer who has any representation to make on any matter relating to the public service must address them in the first instance to the officer's Head of Division. If this does not achieve satisfaction the officer may then address the Secretary of the Ministry through the Head of Division. If the Secretary or Head of Division is unable to settle the matter the officer will submit a full report to the Secretary to Government. If the matter is dealt with by the Head of Division or Secretary but not to the satisfaction of the officer concerned the latter may address the Secretary to Government through the Head of Division or Secretary. The Secretary to Government will, as appropriate, submit the matter to the Public Service Commission or to the Prime Minister, as the Secretary to Government considers appropriate.

Are there means for complaints for members of the public?

No. Members of the public are entitled to complain but there are no formal means for complaints for members of the public.

Are there administrative checks and balances on decision of individual public officials?

No.

Police and Prosecutors

Is the commissioner of police independent? i.e.

- **Are appointments required to be based on merit?**
- **Is the appointee protected from removal without relevant justification?**

Formal or Legal position

In the conduct of his work, he is supposed to be independent. He is however subject to budgetary and manpower restrictions like other Ministries and administratively reports to the Secretary to Government.

The Commissioner of Police is appointed by the Governor-General who acts in accordance with the advice of the Public Service Commission given after consultation with the Cabinet (Constitution of Tuvalu, 1990: section 159). Special provisions requiring an elaborate

process exist for his suspension or removal from office (Constitution of Tuvalu, 1990: section 162). He may be suspended or removed from office in accordance with the special provisions (section 162) relating to the removal of prescribed officials from office such as the Secretary to Government, Attorney General, Auditor-General, Commissioner of Police and Members of the Public Service Commission.

What actually happens

Traditionally, the Commissioner of Police is selected from the most senior officer and may not necessarily be the most suitable.

Are public prosecutors independent?

Not always.

Are there special units for investigating and prosecuting corruption crimes?

There are no specific special units as such.

Is there an independent mechanism to handle complaints of corruption against the police?

No. Certain laws make this difficult to carry through. For example, S34 of the Police Act, 1965: Every police officer empowered to make enquiry in relation to the discipline of another police officer shall have power to summon and examine witnesses on oath or affirmation and to require the production of all documents relevant to such enquiry and to adjourn any hearing from time to time. Evidence of the proceedings and evidence shall be recorded in writing.

S39 of the Police Act. The provisions of the Public Service Commission Rules apply to the retirement or discharge on a police officer of or above the rank of Inspector and any offence or misconduct committed by a police officer of or above such rank in regard to which criminal proceedings are not instituted before a court shall be dealt with and punished in accordance with such Rules.

Does civil society have a role in such a mechanism?

No

In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?

Yes

Are there any cases of corruption within the prosecuting agencies?

No

Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of cases of corruption/bribery?

The Penal Code Act.

Is the law applied?

Yes but very much depend on such cases being formally lodged with the police.

Is private-to private corruption punishable by law?

Yes

Is the law applied?

Rarely, as much depends on such cases being formally lodged with the police.

How many cases of prosecution have been undertaken in the past years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?

Nil

Public Procurement

Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?

Formal or Legal position

Tuvalu lacks a clear public procurement policy and legislation. The Public Tenders Board Regulation issued under the Public Finance Act, 1990, regulate current procurement processes in government. It provides a general legislative framework for contracting of works by the government. Unfortunately these regulations fall short of providing internationally recognized best practices for a sound public procurement system. Detailed guidelines for implementation are lacking. The Financial Regulations, 1990, do not relate directly to public procurement, but rather describe the responsibilities of civil servants and give guidance in financial practices.

What actually happens

Previously there was a centralized government system where all government ministries and offices could place an order with the government stores by way of an indent form. The total amount of the order was checked by Treasury and after approval the government store would follow up on the order, either by consolidating multiple orders for a bulk order placement, or placing a direct order. This system however was abandoned in 1993, because of presumed inefficiency and government's policy to outsource activities to the private sector.

Consequently, a local private company was selected to fulfill the procurement function commercially. Government was to submit its indent forms to the private firm, which was to consolidate orders to achieve higher efficiency and cost effectiveness. The contract with the private trader was suspended after less than two years when it appeared that efficiency and costs effectiveness were much worse than in the previous centralized government system of indenting.

Since 1998 all ministries effect their own procurement internally. Based upon the approved annual budget and supplementary appropriation, the relevant Secretary to the Ministry can approve any procurement of services or goods, subject to approval by Treasury, after review of the budget line. Staff of the relevant ministry effects all relevant procurement actions. After identification of the goods and price, a request/list/stating the proposed specified goods and price, is forwarded to the supplier. If goods are ordered from Fiji, the request is often passed to the Tuvalu Embassy in Suva who would in turn place the orders to the suppliers. In this case a financial warrant is passed to the Embassy to enable them make payment and charge the costs to the relevant department/ministry.

Are the rules laid down in documents publicly accessible?

Formal or Legal position

No.

What actually happens

The apparent lack of transparency is further exacerbated by the procurement actions without public disclosure. Tenders processed under the Public Tenders Board are not opened publicly and contract awards are not published.

Are there strict formal requirements that limit the extent of sole sourcing?

Formal or Legal position

No

What actually happens

Outsourcing of certain government activities depend on the discretion of the Minister.

Are all major public procurements widely advertised to the private sector?

Only the contracting of works is subject to more specific legislation. Public Tenders Board regulations state that the Board should put to public tender any building or works contract, which is not wholly undertaken by the Public Works Division (PWD). The regulations also stipulate broadly the board's duties and responsibilities in terms of direct negotiations with selected contractors, notification and advertising, reception, evaluation of tenders and recommendation of award to the responsible Minister.

Are procurement decisions made public?

No

Is there a procedure to request review of procurement decisions?

As stated the Public Tenders Board reviews certain construction projects. Procurement of equipment or services is not reviewed by any government body. The lack of clear legislative framework adds to the confusing division of responsibilities of the management in public procurement. In the procurement process the responsibilities of the management and board of corporations, the Ministry, Cabinet and review bodies like the Public Tenders Board are not well defined.

Can an unfavourable decision be reviewed in a court of law?

Yes

Are there provisions for blacklisting of companies proved to have bribed in a procurement process?

No

Ombudsman

This section is not applicable as there is no Ombudsman in Tuvalu.

Investigative/Watchdog Agencies (e.g. Anti-Corruption Bureau)

As there are no watchdog or investigative agencies other than the Auditor General this section is also not applicable.

Media

Is there a law guaranteeing freedom of speech and of the press?

Formal or Legal position

Yes, the Constitution guarantees the fundamental freedom of speech.

What actually happens

The government owns a paper and the only broadcasting radio and places strict censorship on what goes in the paper or on radio.

Is there censorship of the media?

Yes – the media is ruthlessly and heavily censored

Is there a spread of media ownership?

No – there is a government paper and a government owned radio service

Does any publicly-owned media regularly cover the views of government critics?

None whatsoever.

Have journalists investigating cases of corruption been physically harmed in the last five years?

As the government owns the paper and the radio, there is a complete lack of investigative journalism in the country.

Does the media carry articles on corruption?

No

Do media licensing authorities use transparent, independent and competitive criteria and procedures?

No

Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption?

Since the only paper and the only radio service are government owned, the government is often in a position to direct what should be reported and how news should be reported. The law that established the Tuvalu Media Corporation made it explicit that the Corporation is controlled and managed by a Board of Directors who is appointed by the Minister

including its General Manager whom the Board appoints only with the approval of the Minister.

Civil Society

Does the public have access to information and documents from public authorities?

Formal or Legal position

Not formally.

What actually happens

There is still a strong and powerful culture that official information and documents are for government authorities only and not for public use. It is very difficult for members of the public even to access documents that are tabled in Parliament. Not all government agencies required to submit reports to Parliament do so on time; in fact some are years in arrears, especially the annual reports of public sector organisations and government ministries do not submit annual reports to Parliament.

Do the public authorities generally co-operate with civil society groups

Formal or Legal position

In general, yes but only when the government wishes to legitimize its actions.

What actually happens

Civil society groups are often represented on boards of directors of statutory corporations. However, very often directorships tend to go to supporters of Ministers and not decided on merit. The government provides training and scholarships awards for employees of CSGs and CSGs are habitually invited to participate in various workshops and training seminars sponsored by the government or funded through the government.

Are there citizen' groups monitoring the government's performance in the areas of service delivery, etc?

Formal or Legal position

No

Do citizen's groups regularly make submission to the legislature on proposed legislation?

Formal or Legal position

No, not as specific members of citizen's groups.

What actually happens

Island communities however make their views on proposed legislation through their Members of Parliament. Most bills (except for those of an urgent nature) after their first reading are referred to island communities for views and comments before they are returned to the legislature for their second and final readings. Members of citizen's groups as members of their own respective island communities are part of this process.

Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?

No but it would be extremely beneficial if the system includes integrity issues and corruption/bribery matters in the schools curriculum and pays attention to them at the early stage.

Traditional Organisations

To what extent are traditional organisations, such as councils of chiefs, subject to the National Integrity System?

And to what extent are they part of the National Integrity System?

The Falekaupule (traditional rule) Act 1997 which replaced the Local Government Act 1990 came into force on 1 January 1999. The *Falekaupule* traditionally consists of chiefs, head of family clans, and elders of the community who are 50 years of age or are above. Four principal officers – the secretary, planner, treasurer, and community development officer – assist the executive arm of the *Falekaupule* (called the *Kaupule* - the rulers).

The Falekaupule Act gives comprehensive statutory recognition in the traditional rule to control and manage the activities of each respective Island, and allowing them more autonomy in the conduct of their affairs especially with regards to finance, selection and appointments of Falekaupule staff. The law also allowed for more financial resources to the *Kaupule* e.g. the Falekaupule Trust Funds.

These Falekaupules are a major component of the economy and part and parcel of the country's National Integrity system. More than two-thirds of the populations of Tuvalu live in the areas under the jurisdiction of the various Falekaupules. This informal gathering of citizenry makes its own rules according to their traditions and customs. As a collective, they can be influential including being able to attract external donor funding for their own projects and activities e.g. sporting facilities, home economics equipment, establishment of pre-schools buildings. The National Government relies totally on these collectives to provide traditional ceremonies when required.

Is their funding and staffing subject to external review and audit?

Formal or Legal position

The main funding (which includes funding for staff salaries) is provided by the Government in the form of grants. The Auditor-General has statutory responsibility to audit and to report on the results to each *Kaupule*. A copy of the Auditor-General's report is transmitted to the *Ulu o Kaupule* (Head of the Island Council) and to the Speaker of Parliament. The Speaker tables the report in Parliament and the report is subject to further scrutiny of the Public Accounts Committee (Falekaupule Act, 1997).

The Act provides for the Minister to exercise certain powers only in consultation with each Falekaupule in order that some consistency in such matters as salaries, rates, etc is maintained.

What actually happens

Communities can still own large amounts of assets that do not form part of the formal Falekaupule system. At this level, funding, staffing and resources are not subject to external review and audit.

To what extent are they part of the NIS controlling corruption in other bodies?

In so far as the Falekaupule accounts are subject to audit and inspections by the National audit office.

The informal collective would select a few people from among their members to oversee their financial affairs. Where there may be corruption, the usual practice would be

chastising those responsible in a community meeting (which by implication includes shaming the whole family), and require reimbursement and close the matter.

What anti corruption measures, formal or informal, do they apply to their own members?

- Check by the *Falekaupule*
- General oversight by staff of the Ministry of Home Affairs
- Scrutiny by the national audit office

The Ministry of Home Affairs prepared financial and staffing guidelines for the guidance of the *Falekaupule*, held separate training sessions for *Falekaupule* and *Kaupule* representatives, and set up a task force to monitor the practical application of the guidelines through regular visits to each *Kaupule* (Office of the Auditor-General, 1999:5).

To what extent are their deliberations and decisions open to the public, and the media?

The *Falekaupule* Act, 1997, provides that each *Falekaupule* (traditional rule) provides for its own rules and procedures for its deliberations in accordance with its own particular customs and traditions. For instance, there may be particular issues where the *Falekaupule* could agree that its discussions on certain sensitive issues be not open to the public. The law however encourages all *Falekaupule* discussions on matters such as the *Kaupule's* report on the activities and finances of the *Kaupule*, budget, development programmes and implementation plans, and appointments of *Kaupule* staff members be open to everyone aged 18years and over (*Falekaupule* Act, 1997: section 121).

The deliberations of the informal collective are confined to members only.

Private Sector and NGOs

What measures have private companies adopted to reduce corruption within their own activities?

Nil

What measures have private companies, or Chambers of Commerce, adopted to discourage their members from corrupting public officials?

Nil

What has the impact of privatization and outsourcing and increased use of NGOs in service delivery been on opportunities for corruption, and the control of corruption?

Because of the narrow base of the private sector and of NGOs involved in delivery, outsourcing tends to be captured by only a few companies. This is an area which is less researched.

Some NGOs receive funding from external donors and there are plenty allegations of corruption in the use of NGO assets by certain individuals.

What measures have NGOs or peak bodies adopted to reduce opportunities for corruption in their own activities?

To some extent, closer management controls have been adopted. One of the major difficulties encountered by NGOs or peak bodies is the limited capacity of individuals

appointed to governing councils/boards and/or the regular turnover of individuals serving on such governing councils or boards.

What measures have Churches adopted to reduce opportunities for corruption in their own activities?

Closer scrutiny by their executive committees and greater participation of church members in the affairs of the Churches.

Regional and Local Government

Are there, at regional and local level, rules and disclosure provisions similar to those operating at national level on nepotism, conflict of interest, gifts and hospitality, and post public office employment?

Formal or Legal position

On behalf of the *Falekaupule* and with its express approval, a *Kaupule* may accept any gift of real or personal property for any a public purpose or for the benefit of the inhabitants of the *Falekaupule* area or any part of it (S42, *Falekaupule Act 1997*).

On behalf of the *Falekaupule* and with its express approval, a *Kaupule* may enter into any lawful contract for the supply of goods or services necessary for the discharge of its statutory functions or those of the *Falekaupule* (S45, *Falekaupule Act 1997*).

What actually happens

In the absence of specific rules of disclosure, individual office bearers do not disclose their interests.

What public offices at regional and local level are appointed by the national government?

Formal or Legal position

None, however, the following four primary *Kaupule* officials are appointed by the *Falekaupule* but funded by the national government, and these are:

- Secretary to the *Kaupule*
- Development Planner
- Treasurer
- Community Development officer

What actually happens

N/a

Is there a legal requirement that meetings of city/town councils be open to the press and the public?

Formal or Legal position

The *Falekaupule Act, 1997*, provides that each *Falekaupule* (traditional rule) provides for its own rules and procedures for its deliberations in accordance with its own particular customs and traditions. For instance, there may be particular issues where the *Falekaupule* could agree that its discussions on certain sensitive issues be not open to the public. The law however encourages all *Falekaupule* discussions on matters such as the *Kaupule's* report on the activities and finances of the *Kaupule*, budget, development

programmes and implementation plans, and appointments of *Kaupule* staff members be open to everyone aged 18 years and over (S121, *Falekaupule Act, 1997*).

What actually happens

Where the public is allowed to attend *Falekaupule* discussions, this is strictly for people from the same island and it is very seldom that people from other islands will attend or be permitted to attend.

Do national agencies with a remit to deal with corruption (anti-corruption agencies, ombudsmen, supreme audit institutions, and so on) work at regional and local levels and are there specific agencies with regional and local responsibilities?

Formal or Legal position

Yes, the main funding (which includes funding for staff salaries) is provided by the Government in the form of grants. The Auditor-General has statutory responsibility to audit and to report on the results to each *Kaupule*. A copy of the Auditor-General's report is transmitted to the *Ulu o Kaupule* (Head of the Island Council) and to the Speaker of Parliament. The Speaker tables the report in Parliament and the report is subject to further scrutiny of the Public Accounts Committee (*Falekaupule Act, 1997*).

The Act provides for the Minister to exercise certain powers only in consultation with each *Falekaupule* in order that some consistency in such matters as salaries, rates, etc is maintained.

What actually happens

The Audit Office is continually under-resourced and has found it difficult to undertake his statutory functions satisfactorily.

Progress with Government Anti-Corruption Strategy

Has the government announced an anti-corruption strategy and a timetable?

No, but the Government is seriously looking at adopting a Leadership Code that have its origins from a regional Pacific Forum initiative. Tuvalu is looking at adapting it to the circumstances of the country. The Leadership Code is a guide to govern the conduct of the Leaders of the people of the nation and Tuvalu's intention is to apply the Code not only to national leaders and high officials but to all those who at the island level as well.

How much of the strategy has been implemented?

N/A

Is the strategy at national level or regional/local level?

The intended Leadership Code is for all levels.

Is the government meeting its own timetable?

N/A

Donor Anti-Corruption Initiatives

Which bilateral and multilateral donor agencies are based in the country?

The following bilateral and multilateral donor agencies have representatives located in Tuvalu:

- European Union (EU)
- Australian Agency for International Development (AusAid) In –Country administrator
- EU In-country adviser
- EU/New Zealand Agency for International Development (NZAID) In-Country Coordinator
- Republic of China on Taiwan (ROC) Charge d’Affaires, and First Secretary

Other bilateral and multilateral donor agencies (e.g. Japan International Cooperation Agency (JICA), United Nations Development Programme (UNDP), and Embassy of France) which have development programmes in Tuvalu are to be found mostly in Suva, Fiji. The Manila-based Asian Development Bank (ADB) is also funding some relatively large projects in Tuvalu.

What types of anti-corruption initiatives have they supported?

The Cotonou Agreement between the European Community on the one hand, and the Group of African, Caribbean and Pacific States (ACP) on the other, is replete with examples of good governance provisions that are directly relevant to anti-corruption. The major innovations of the new ACP-EU Agreement aim, among others, to explicitly address corruption (page 8 of the Courier).

Cooperation between the EU and Tuvalu puts emphasis on the promotion of the sustainable and social development of the partner country, and more particularly the most disadvantaged among them; the smooth and gradual integration of the partner country into the world economy and the campaign against poverty (Office of the Prime Minister, 2002: 1). The Community also supports in its development interventions in Tuvalu better governance that leads to economic growth, improved social services, and a fairer distribution of long-run investment returns.

AusAID funded a review of the public sector reform in 1994 and provided technical assistance to assist further development and implementation of public sector initiatives by the Government of Tuvalu

UNDP has run several in-country training workshops on good governance including a study of the public procurement profile of Tuvalu in 2000. It also facilitated a National Workshop on Accountability which generated considerable interest and support, including reiteration of support for some of the recommendations of the above AusAid funded study and for other measures to enhance transparency and accountability in public administration.

ADB recognizes the problem of corruption and the abuse of public office as an emerging issue in the Pacific and is working closely with Pacific Developing Member Countries (PDMCs) in assisting them in the implementation of financial sector reforms including for instance the ADB Pacific study series on each PDMCs’ economic management and public sector reviews.

Are there examples of donors cooperating or coordinating their programmes?

Tuvaluans have no doubts that the donors are always talking to each other (Mellor 2003: 16). As noted, some of Tuvalu’s international donors have in-country representatives, and can readily coordinate their activities directly. However, in Suva, there are a considerable number of representatives of Tuvalu’s international donors. In previous times, these donors would meet together on a regular basis, quite informally and usually over lunch, to share their knowledge and experiences with respect to the overall development efforts by the international community to assist Tuvalu.

New Zealand Agency for International Development (NZAID) and the European Union (EU) shares an office and a coordinator in Tuvalu. This coordinator shares the same premises with the AusAid In-Country administrator. Australia and New Zealand are trying to harmonize their programmes towards Tuvalu. Two UN agencies, WHO and UNFPA, tend to deal directly with the Ministry of Health in terms of their activities.

Future Research and Donor Support

Can key areas or issues be identified in terms of corrupt activity that the research for the report has demonstrated as requiring immediate attention, and which are they?

Yes

- The tendering process under public procurement.
- The actions of Governor-Generals, Ministers and high officials whereby they ignore procedures for their own benefit.
- The need for greater accountability by NGOs for donor-funded projects and the need for greater transparency of the use of donor-funded assets.
- The passive attitude of society towards corruption
- The importance of a free media in the fight against corruption
- The lack of effective parliamentary oversight and scrutiny over public accountability and use of public funds
- The dichotomy between traditional values and culture and corruption

Is there a particular aspect of corrupt activity either particular to the country concerned or significant in terms of effect or impact that would require more in-depth research?

Yes.

- Lack of accountability by public corporations
- Lack of transparency in public procurement
- Disregard and lack of accountability by senior government officials (Governor-General, Prime Minister, Ministers, and high-level officials)
- The role and importance of a free press in combating corruption

Is there a particular approach or initiative to combating corruption that may be considered for further research or study as an example of best practice?

Yes.

- The development of an anti-Corruption strategy and how to enforce its provisions.
- Changing the culture of the public service and developing a Code of Conduct that is enforceable and building a common public service ethos that complements the Code of conduct and builds a far greater sense of purpose amongst all public servants.
- Allowing more freedom of the press and generating greater public involvement of society in dealing with corruption.

Can key areas or issues relating to anti-corruption initiatives be identified in terms of forming the basis for potential donor participation, sequencing, cooperation and coordination?

- Donors should insist on having a strategic national anti-corruption strategy as one of the preconditions to aid.
- Insistence on adherence to accountability and ethics within the public sector.
- Greater donor support and assistance for a responsible media sector and for a free press.

- A collective donors' newsletter of their interventions in the country.
- Greater consultation with and participation of society in country-donor strategies.
- Increased direct donor dialogue with partner countries and less 'donor-ganging'.

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Appendix 3 - List of Persons Consulted

Hon. Saufatu Sopoaga	Prime Minister
Panapasi Nelesone	Secretary to Government
Simeti Lopati	Deputy Secretary to Government
Taukelina Finikaso	Ambassador, Tuvalu Embassy Suva
Kakee Pese	First Secretary, Tuvalu Embassy, Suva
Pita PolaPola	Assistant Secretary, Tuvalu Embassy, Suva
Lotoala Metia	Auditor-General
Italeli Itaia	Attorney General
Ionatana Peia	General Manager, National Bank
Paulson Panapa	Clerk of Parliament
Susie Kofe	Local Project officer, Poverty Reduction Through Access To Justice For All (PRAJA)
Melali Isaia	Senior Journalist, Tuvalu Media
Polau Kofe	Treasurer, Chamber of Commerce and businessman
Fakavae Taomia	Secretary Home Affairs
Luke Paeniu	Aid Coordinator, Ministry of Finance & Economic Planning
Limasene Tiaeki	Training Officer, Office of the Prime Minister
James Conway	EU In-Country Coordinator, Office of the Prime Minister
Semu Taafaki	Private sector, Businessman
Mainaaga Taape	Senior Customs Officer
Afelee Pita	former Secretary for Finance and Economic Planning (seconded to the Asian Development Bank, Manila)
Malcolm Ponton	former Trade Adviser, Government of Tuvalu