

HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION



CORRUPTION AND ANTI-CORRUPTION IN TONGA

QUERY

Could you please provide an overview of corruption and anti-corruption in Tonga?

PURPOSE

This paper will assist the work of the European Union Delegation to the Pacific

CONTENT

1. Overview of corruption in Tonga
2. Anti-corruption efforts in Tonga
3. References

CAVEAT

In-depth research on corruption and the impact of corruption on specific sectors in Tonga is limited. This paper is based on the few materials that are publicly available.

SUMMARY

Corruption is still a major problem in Tonga but the government has taken significant steps forward in recent years to fight corruption and improve the country's governance, making it move up the ladder of "clean" countries. Tonga is now situated around the global average in terms of its performance on governance indicators.

Political corruption and nepotism are prominent issues in Tonga which are rooted in the country's political and demographic structure, strong sense of kinship, and late democratic awakening.

Author(s)

Sofia Wickberg , Transparency International,
swickberg@transparency.org

Reviewed by

Finn Heinrich, Transparency International,
fheinrich@transparency.org

Date

Submitted : 21 December 2012

Responded : 14 January 2013

Number EU - 1

This document should not be considered as representative of the Commission or Transparency International 's official position. Neither the European Commission, Transparency International nor any person acting on behalf of the Commission is responsible for the use which might be made of the following information.

This anti-corruption Helpdesk is operated by Transparency International and funded by the European Union

1 OVERVIEW OF CORRUPTION IN TONGA

Background

Tonga's current state of corruption and governance is largely a consequence of its recent history, political development, geography and social and economic structure.

Tonga is a small and open economy that is geographically isolated. The country's main sources of income are agriculture, fishing and tourism. Tonga is significantly dependent on foreign aid, mainly from New Zealand, Australia, the European Union and, increasingly, China, as well as on remittances from Tongans living abroad. This economic profile made the country very vulnerable to the financial crisis which made Tonga enter a period of recession in 2009 (France Diplomatie, 2012).

It is a constitutional monarchy, former protectorate of the United Kingdom, which gained full independence in 1970. Different from its neighbours and despite its status as a protectorate, Tonga never had to give up its self-government. The Kingdom is composed of 171 islands, home to approximately 103 000 inhabitants (France Diplomatie, 2012). According to Freedom House, Tonga is an electoral democracy and the most recent elections, held in 2010, were seen as generally free and fair (US Department of State, 2011).

Political life in Tonga is highly dominated by the royal family and the nobles, who had a near to absolute power until the democratic reforms that were initiated in 2006. The country's pro-democratic movements have gained a stronger voice but one third of the parliament is still elected by the nobles. During the most recent elections, in 2010, pro-democratic parties won a majority of the popular vote but a member of the nobility was nominated to the position of Prime Minister.

Experts underline that the privileged position held by the royal family and the nobility contributes to the lack of social mobility in Tongan society and the limited transparency of government (US Department of State, 2011). Tonga was considered one of the world's most corrupt countries in the early 2000s, ranking 175th out of 179 on the Corruption Perception Index 2007. It has considerably improved its governance structure since.

Extent of corruption

Transparency International's 2011 Corruption Perception Index ranks Tonga 95th out of the 182 countries and territories assessed, with a score of 3.1 on a scale of 0 - 10, where 0 means that a country is perceived as highly corrupt and 10 means that a country is perceived as very clean. Tonga's score is similar to its neighbours, Kiribati scoring 3.1, Vanuatu scoring 3.5. Tonga ranks 17th out of the 35 countries in the Asia Pacific Region.

Similarly, the World Bank's Worldwide Governance Indicators (WGI) place Tonga in the lowest half of the percentile ranks, with a score of 47.9, on a scale from 0 to 100, in terms of **control of corruption**. Tonga score drastically improved between 2007 (11.7) and 2008 (30.6), potentially due to the government's anti-corruption efforts, such as the adoption of the *Anti-corruption Commissioner Act* in 2007. Tonga's score on **rule of law** places the country in the upper half of the percentile ranks. It has remained fairly stable in the last decade, ranging from 58.9 in 2002 to 68.4 in 2006, to go back to 57.3 in 2011.

Forms of corruption

Petty and bureaucratic corruption

The US Department of State Human Rights Report on Tonga indicates that bribery and corruption in the police reportedly occurred in the country during the year 2011.

Generally, petty bribery is not seen as a major obstacle for doing business. About 13% of business people polled by the World Bank Enterprise Survey in 2009 claimed it was expected to make gifts to civil servants to "get things done" or "grease the wheel" and 25% admitted paying a bribe in the last year. Similarly, the World Bank/IFC 2012 Doing Business report on Tonga do not indicate bribery as an extra cost for starting a business, securing a contract etc. Certain sectors however seem to be more prone to taking bribes; the World Bank Enterprise Survey reveal that, in 2009, almost 40% of surveyed business people expected to pay bribes to get a construction permit, 42% to get electrical connection and 60% to get water connection.

Grand corruption

Although petty bribery is not seen as a key impediment for doing business in Tonga, corruption more generally is considered a major constraint for

enterprises by more than half of the business people surveyed by the 2009 World Bank Enterprise Survey. In 2011, the US Department of State, in its Human Rights Report, communicated that government contracts were oftentimes unfairly awarded to businesses associated to the royal family, nobles or government officials.

Tonga adopted its *Public Procurement Regulations* in 2010, which apply to all procurement carried out by the Government. These regulations set out of the creation of a Government Procurement Committee composed, among others, by the Minister of Finance and the Secretary for Foreign Affairs. This committee is in charge of monitoring all public procurement in the Kingdom.

Political corruption

Political corruption in Tonga is widespread, according to Freedom House in 2012, with the royal family, the nobles and their cronies allegedly using their political and economic power for their own private gain. Experts report that public officials engage in corrupt behavior with total impunity (US Department of State, 2011). In 2011, a noble and member of the Parliament, Lord Tu'ilakepa, was accused of conspiracy to import illicit drugs after having allegedly received bribes from criminal groups trafficking drugs (Freedom House, 2012).

Nepotism and cronyism

The geographic situation and small population of many of the Pacific Islands creates a sense of smallness and lack of anonymity (Larmour, 2006) which requires looking at conflicts of interest and cronyism through a particular lens. Moreover, the close community ties result in reluctance to report people involved in suspicious transactions (APG on Money laundering, 2010).

Money laundering and organized crime

Tongan authorities say that the country is not considered as an important money-laundering and terrorist financing centre.

Tonga is vulnerable to organized crime, especially international drug trafficking, and has been used as a transition point for the shipment of drugs. Some cases of trafficking of counterfeit goods have also been reported. As mentioned previously, Tonga is dependent on remittances from Tongans abroad and the money transfer business has been used to transfer proceeds of crime to Tonga. Tonga's legal framework for criminalising money laundering is generally in line with international standards but the Tongan

authorities lack the necessary expertise and resources (APG on Money Laundering, 2010).

2. GOVERNANCE STRUCTURE AND ANTI-CORRUPTION EFFORTS IN TONGA

Legal framework

International Conventions

Tonga is not a state party to the United Nations Convention Against Corruption (UNCAC), nor is it a party to any other international convention on corruption. A CSO reporting to the United Nations General Assembly reported that Tonga was considering acceding to the UNCAC (UNGA, 2012). To coordinate its anti-corruption efforts, Tonga is part of the Pacific Islands Forum Secretariat which hosts the Political Governance and Security Programme, promoting good governance, election observance etc.

National legislation

Tonga's Criminal Offences Act criminalizes extortion as well as active and passive **bribery**. The law provides criminal penalties for official corruption. Tonga has however not criminalized foreign bribery (Global Integrity, 2008). Tonga's anti-corruption apparatus was strengthened by the adoption of the *Anti-corruption Commissioner Act* in 2007 which broadens the term "corrupt conduct" to the mismanagement and misuse of public funds or information for private gain. **Money laundering** was criminalized in 2002 by the *Money Laundering and Proceeds of Crime Act*.

In Tonga, regulations of **conflicts of interest** are very limited and their application is largely failing. There are no legal requirements for members of the executive, legislative and judicial branches of government to disclose their assets. In addition, there are no provisions governing the acceptance of gifts and hospitality or regulating post-employment activities, making the country vulnerable to the phenomenon of "revolving doors". Tonga's public service, on the other hand, is slightly more regulated, through the *Public Service Act* of 2002 and the *Code of Conduct for the Public Service* of 2004. High level public servants are also not required to disclose their assets but they are bound by regulations governing the acceptance of gifts and hospitality. Civil servants are required to disqualify themselves from decisions where they may have a conflict of interest (Global Integrity, 2008).

Political financing is poorly regulated in Tonga where the identity of the donors does not have to be disclosed and where there are absolutely no bans on donations to political parties or individual candidates. The Electoral Act of 1998 requires candidates to report on their finances within 14 days after an election, and imposes a limit of USD 10 000 on electoral spending for political parties and candidates (IDEA, 2012). The Electoral Act also imposes a ban on the practice of vote-buying.

Whistleblowers are not protected in Tonga, neither in the public nor the private sector. There are no laws or mechanisms to protect whistleblowers from recrimination, which makes whistleblowing rare according to interviews conducted by Global Integrity in Tonga in 2008. The Anti-corruption Commissioner Act of 2007 has a section on the protection of witnesses and people assisting the Commissioner.

Tonga enacted its **Freedom of Information** Policy in June 2012, promoting transparency and openness in government agencies. A Freedom of Information Unit was established within the Ministry of Information and Communications to coordinate the dissemination of relevant information and to be the point of reference for requests from the public, journalists etc. A website was set up to provide citizens with public information and to facilitate the request process: <http://www.foi.gov.to/>, but still very little information has been published.

Institutional framework

Judiciary

The Constitution of Tonga provides for an independent judiciary and Tonga's judicial system is generally seen as functioning well and as being respected by the government (US Department of State, 2011). Experts however point to the influence that the executive power exerts on the affairs of the judiciary: the King and his office hold the power to appoint the judges ever since he abolished the Judicial Services Commission and repealed the Judicial Services Commission Act in 2010 (UNGA, 2012). Another example of the involvement of the executive in judicial affairs is the scandal known as "the tragedy of ferry Princess Ashika" that made the then Attorney-General quit his position after the government refused to support the appointment of two independent prosecutors to investigate criminal matters arising from this case. According to him, the authorities had tried to control the prosecution to make sure no member of the government was put in accusation (UNGA, 2012).

The judiciary in Tonga is understaffed, according to Freedom House in 2012, with a shortage of judges creating critical case backlogs. The introduction of electronic case management and mediation in 2007 was instrumental in improving the efficiency of the legal process. In one year, the Supreme Court cut the average time to enforce contracts from 510 to 350 days (Ford, 2008).

Anti-Corruption Commission

Tonga established its *Anti-corruption Commission* in July 2008 to investigate alleged wrongdoings and improve the state's level of governance. The Anti-corruption Commissioner Act of 2007 is the legal source of the Commission and it gives this institution the right to investigate and prosecute corrupt conduct in government branches; to examine and revise existing procedures and mechanisms that may lead to corrupt conduct; and to advice and educate civil servants and the public (IAACA, 2012).

Tonga's Anti-corruption Commission has however never been operational. After the initial opening of the office and the appointment of Neil Adsett as a Commissioner, the Commission has been inactive and no staff has been hired. The local press even said that the Commission had "fallen into oblivion" (Mantangi Tonga Magazine, 2012). In 2012, the government put the topic back on the agenda, in parallel to the discussion on a freedom of information policy (Radio Australia, 2012).

Supreme Audit Institution

In Tonga, the Auditor General plays the role of Supreme Audit Institution; (s)he heads the Audit Department. The *Public Audit Act* of 1984 created this institution, which was strengthened by the *Public Audit Act* of 2007. According to Global Integrity, the Auditor General is protected from political interference and cannot be removed from office without valid reasons. In 2012 nevertheless, a motion to dismiss the Auditor General was deposited to the House of Representatives after he unveiled a case of unaccounted aid funds and qualified New Zealand's Foreign Minister as "two-faced". The Audit Department of the Government of Tonga is adequately funded but lacks human resources (Global Integrity, 2008).

The Audit Office of Tonga is currently undergoing a review by an external auditor commissioned by the Speaker of the Legislative Assembly (Tonga Governmental Portal, 2012).

Tonga's Audit Department is part of the Pacific Association of Supreme Audit Institutions (PASAI) which gives its 25 member states a space to exchange and support each other with regards to their Supreme Audit Institution.

Office of the Ombudsman

Tonga's Commissioner for Public Relations holds powers equivalent to an ombudsman. Her/his powers are conferred by the *Commissioner for Public Relations Act* of 2001. The independence and protection from political interference of the institution is not guaranteed by law but Global Integrity indicates that, according to the various officials interviewed, the commissioner can execute his/her job without obstacles. As of 2009, there had been no case of arbitrary removal of a commissioner. The office of the Commissioner for Public Relations is funded adequately but is understaffed.

The Commissioner does not have the power to prosecute or impose sanctions. He refers unlawful cases to the attorney-general. His office produces an annual report that is made available to the public (Global Integrity, 2008).

Electoral Commission

The Electoral Commission Act of 2010 provided for the creation of the Tonga Electoral Commission. The Electoral Commission is responsible for the proper conduct of elections and the maintenance of records and rolls. It considers the need for reforms, makes recommendations regarding changes to the law on elections, recommends prosecutions for election offences, and regulates the use of media before elections as well as election finances. The Chairman of the Commission is appointed by the king; a fact which could present a challenge for the independence of the commission. The most recent elections, held in November 2010, were considered generally free and fair (US Department of State, 2011).

Other actors

Media

Tonga's Constitution guarantees freedom of the media and freedom of speech. Freedom House upgraded Tonga from Partly Free to Free with regards to Freedom of the Press because of the government's efforts and commitments to strengthen freedom of the press and to reduce harassment and intimidation of journalists. The recent democratic efforts created an environment favourable to a more

open and robust media (Freedom House, 2012). Global Integrity indicates that it is rather easy for citizens to find a media outlet, especially for print media, and the government does not interfere or harass journalists that report on corruption. Finally, internet access is not restricted in Tonga.

Civil society

The right to assembly and of association is guaranteed in Tonga, even though it is not specified in the Constitution. The US Department of State Human Rights Report on Tonga says that both national and international civil society organisations operate in a free and open environment without government restrictions. According to Global Integrity in 2008, civil society engagement in Tongan politics has historically been fairly low but the government increasingly seeks civil society's input. The US Department of State says the Tongan government is fairly cooperative with civil society and is responsive to its views.

3. REFERENCES

ABC News, *Tongan Attorney-General resigns amid corruption scandal* (2010), <http://www.abc.net.au/pm/content/2010/s2886887.htm>

Asia Pacific Group on Money laundering, Mutual Evaluation Report Tonga (2010), <http://www.apgml.org/documents/docs/17/Tonga%20ME1%20-%20final.pdf>

France Diplomatie, *Présentation du royaume des Tonga* (2012), <http://www.diplomatie.gouv.fr/fr/pays-zones-geo/tonga/presentation-du-royaume-des-tonga/article/presentation-13382>

Freedom House, *Freedom in the world Tonga* (2012), <http://www.freedomhouse.org/report/freedom-world/2012/tonga>

Freedom House, *Freedom of the press Tonga* (2012), <http://www.freedomhouse.org/report/freedom-press/2012/tonga>

Ford Anthony, *Electronic Case Management and Mediation - Drastic Improvement for the Courts in Tonga* (2008), World Bank, <https://openknowledge.worldbank.org/handle/10986/10622>

Global Integrity, *Tonga Country Report* (2008), <http://report.globalintegrity.org/Tonga/2008/>

Government of Tonga, *Government Procurement Regulations* (2010), http://www.finance.gov.to/sites/default/files/PPR_English_2010_0.pdf

Heritage Foundation, *Index of economic freedom* (2013), <http://www.heritage.org/index/country/tonga>

International Association of Anti-corruption Authorities (IAACA), *Tonga Anti-corruption Commission* (2012), http://www.iaaca.org/AntiCorruptionAuthorities/ByCountrysandRegions/Tonga/201202/t20120215_805351.shtml

Larmour Peter, *Interpreting Corruption: Culture and Politics in the Pacific Islands* (2012), http://repository.usp.ac.fj/4953/1/Interpreting_Corruption.pdf

Larmour Peter, *Culture and corruption in the Pacific Islands: Some conceptual issues and findings from studies of National Integrity Systems* (2006), The Australian National University, http://www.crawford.anu.edu.au/degrees/pogo/discussion_papers/PDP06-05.pdf

Matangi Tonga Magazine, *Tonga to revive anti-corruption commission* (2012), <http://pidp.eastwestcenter.org/pireport/2012/February/02-20-07.htm>

Radio Australia, *Tonga developing FOI policy and Anti Corruption Commission* (2012), <http://www.radioaustralia.net.au/international/radio/on-airhighlights/tonga-developing-foi-policy-and-anti-corruption-commission>

Tonga Government Portal, *External Audit of the Tonga Audit Office: Call for Bids* (2012), <http://www.mic.gov.to/public-notices/3982-external-audit-of-the-tonga-audit-office-call-for-bids->

Tonga Government Portal, *Tonga launched its Freedom of Information Policy* (2012), <http://www.pmo.gov.to/news-today/press-releases/3879-tonga-launched-its-freedom-of-information-policy>

US Department of State, *Human Rights Report – Tonga* (2011), <http://www.state.gov/j/drl/rls/hrp/hsrpt/humanrightsreport/index.htm?dliid=186313>

World Bank/IFC, *Doing business report Tonga* (2012), <http://espanol.doingbusiness.org/~media/fpdkm/doing%20business/documents/profiles/country/TON.pdf>

World Bank, *Enterprise Survey Tonga* (2009), <http://www.enterprisesurveys.org/data/exploreconomies/2009/tonga/>