

**CONSTITUTIONAL STABILITY AMID PRESSURES FOR
CHANGE**

**UNITED NATIONS DEVELOPMENT PROGRAMME
LEGISLATIVE NEEDS ASSESSMENT
KINGDOM OF TONGA**

FEBRUARY 2001, MISSION REPORT

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EXECUTIVE SUMMARY

The Kingdom of Tonga is a constitutional monarchy. Sovereign power in both theory and practice rests with the monarch and the Privy Council. Tonga has a unicameral parliament composed of appointed Cabinet ministers, representatives of the nobility and representatives of the people or commoners. There is a limited form of democracy with the direct election every three years of nine people's representatives to the Legislative Assembly by a franchise restricted to commoners. Nine representatives of the nobility are elected every three years to the Legislative Assembly by a franchise restricted to the 33 nobles in the Kingdom. Elections are also held every three years for town and district officers by a universal franchise. The constitutional role of the Legislative Assembly is to enact laws in conjunction with the monarch, scrutinise the expenditure and revenue measures of the government and consider a limited range of amendments to the Constitution.

The Constitution of Tonga came into effect in 1875 and is modelled on nineteenth century European best practice. Its aim was to formalise the relationship between the monarch and the hereditary chiefs or nobility and legitimatise the unification of the island communities into the Kingdom of Tonga. The Constitution codifies the transformation of traditional society into a modern nation-state modelled on a nineteenth century European monarchy.

The ultimate responsibility for good governance lies with the monarch and the Privy Council. However, in terms of its constitutional role to monitor the government's financial management and enact legislation for the good governance of the Kingdom, the Legislative Assembly has an important role to play in assisting the Government of Tonga in adopting best practices of good governance and in implementing the Forum's "Eight Principles of Accountability." The effectiveness of the Legislative Assembly's role is, however, limited because of a number of weaknesses.

Weaknesses

The weaknesses of the Legislative Assembly of Tonga are a product of the nature of Tonga's political system together with the problems it experiences as a small island state. Tonga is a physically small country with limited resources and a small population divided into island communities. Problems specific to small island countries are present in Tonga. These problems include communication and transportation difficulties and a limited pool of specialised skills to draw upon. In addition, Tonga is undergoing processes of social change from a socio-political structure modelled on a nineteenth century European monarchy to a twentieth century version of the nation-state and market economy, and is no longer isolated from the forces and impact of globalisation. There is internal pressure for reform of the political system to increase the participation of the people in the processes of governance, to make these processes more transparent, and to increase the accountability of government to the people.

In terms of its history and political system Tonga is unique among Pacific Island countries. An assessment of the Legislative Assembly of Tonga, therefore, must take into account both the limited role of the Legislative Assembly within the political system and the fact that legislative reform cannot occur without reform of the political structure generally. A more effective Legislative Assembly would require reform that would alter the existing political structure. Proposals for such reform are outside the ambit of this legislative needs assessment. Many in Tonga argue that major constitutional reform is not desirable if it comes at the expense of the overall stability provided by the existing system. Successful constitutional rule is underpinned by extra constitutional agreement and in Tonga it is clear that, whilst it is not universally understood, the Constitution is well integrated¹. With these caveats in mind this Report provides an assessment of the Legislative Assembly and makes recommendations to improve its capacity for the limited role it currently has.

The main constraints faced by the Legislative Assembly of Tonga are:

- ? The dominance of the Executive over the Legislature, and the resulting perception of the Legislative Assembly as part of the government;
- ? The limited development of available human resources, both within the Department of the Legislative Assembly and Tonga generally. Tonga suffers from a lack of specialised skills among its available human resources, in particular skills needed for an effective Legislative Assembly such as legal, financial and research skills;
- ? The limited availability of and access to information about the political system generally, the role of government and the role of the Legislative Assembly in particular;
- ? A limited general understanding of the role of the Legislative Assembly by many Members of the Legislative Assembly and the public;
- ? The poor performance of Members of the Legislative Assembly in fulfilling their responsibilities, particularly in not consulting with their constituents on a regular basis; and
- ? The lack of participation by women in the Legislative Assembly – only three women have been Members of the Legislative Assembly and there are no female members of the current House.

¹ Peter Larmour 2000. *What's the Problem with Westminster in the South Pacific? A 'Policy Transfer' Approach*. Paper for CDI Series on Democratisation. National Centre for Development Studies, The Australian National University, p. 13.

Strengths

Despite its weaknesses the Legislative Assembly has one notable strength – its autonomy from the Executive in financial and human resources.

Principles of Best Practice

The autonomy of the Legislative Assembly of Tonga in terms of its financial and human resource needs should be considered as a model for other Pacific Island legislatures and for adoption as a key principle of best practice.

RECOMMENDATIONS

Key Legal Documents

1. A review of all key legal documents to ensure the elimination of gender biased language which implies exclusion of women from the decision-making process;
2. The development and implementation of a Code of Ethical Conduct for Members of the Legislative Assembly and other constitutional officeholders;
3. That the Oath of Office for Members of the Legislative Assembly and other constitutional officeholders be revised to incorporate reference to the standards outlined in the Code of Ethical Conduct;
4. That a Register of Interest for Members of the Legislative Assembly be established and that each member of the Legislative Assembly be required to provide a statement of their pecuniary interests to the Clerk of the Legislative Assembly within one month of taking the oath of office and annually thereafter;
5. That an independent statutory body with sufficient legal authority and resources be established to regulate the Code of Ethical Conduct, to investigate complaints, to refer offences to the courts, and to perform an educative role for both leaders and the public;
6. That the Legislative Assembly establish a Standing Committee on Ethics, comprised of Members of the Legislative Assembly and members of the public, to assist in developing the code of ethical conduct for leaders, to revise the Oath of Office, to review any code introduced, and to carry out the educative work in relation to ethical standards applying to Members of the Legislative Assembly as well as providing advice on the standards;

7. That a review of the Rules for Proceedings of the Legislative Assembly by the Standing Committee on Bills be undertaken to incorporate reference to the code of ethical conduct for members and the establishment of a third Standing Committee on Ethics;
8. That the code of ethical conduct be made available to and widely distributed to public officers and members of the public; and
9. That induction programs and ongoing educative seminars and workshops for Members of the Legislative Assembly and other constitutional officeholders be held and include an ethics component.

Parliament-constituency relationship

10. That a workshop to consider the recommendations of the legislative needs assessment of Tonga be held and involve all Members of the Legislative Assembly including the Prime Minister and Cabinet Ministers, church and other non-government organization leaders, other constitutional office holders and members of the public;
11. That a community consultation model and supporting guidelines and principles for the Legislative Assembly be prepared and disseminated among Members of the Legislative Assembly and the community;
12. That the Standing Committee on Bills or a select committee of the Legislative Assembly inquire into the possibility of co-opting members of the public onto Legislative Assembly standing and select committees and of revising the Rules for Proceedings to incorporate this change; and
13. The publication of a Handbook containing information on the structure and role of the Legislative Assembly and related information for both Members of the Legislative Assembly and members of the public.

Law-making procedures

14. That the Legislative Assembly provide Private Members with access to independent legal advice and assistance in the drafting of bills as a resource entitlement;
15. That a review be undertaken in relation to the co-ordination between individual agencies of the legislative program of the government to develop greater efficiency and simplify the law-making procedures; and
16. That a consolidation of the Laws of Tonga be undertaken, that such consolidations occur on a more frequent basis, and that access to the

consolidated Laws of Tonga for members of the public be improved via the provision of additional copies in publicly accessible places.

Oversight role of Legislative Assembly

17. That amendments be made to the relevant Acts and provision be made in the Rules for Proceedings for the Legislative Assembly to have recourse to legal sanctions in addition to impeachment to ensure compliance;
18. That consideration be given to the establishment of an independent Office of the Auditor-General reporting directly to the Legislative Assembly on all government accounts including those of statutory authorities;
19. That the existing provisions in the *Public Audit Act 1984* for the appointment, conditions of service, and removal from office, of the Auditor-General be reviewed in order to remove ambiguities in the legislation;
20. That members of the Standing Committee on Finance receive training in terms of the committee's role and in understanding the material on which they are required to report;
21. That the Rules for Proceedings be revised to provide clear terms of reference for the Standing Committee on Finance; and
22. That consideration is given to extending question time to each sitting day for a minimum of one hour.

Human Resources

23. That the House consider the appointment, rather than election, of permanent staff and providing security of tenure to experienced and qualified Legislative Assembly officers;
24. That a parliamentary research unit is established and that its task involves producing briefing papers on proposed legislation and other issues Members need information on;
25. That priorities for public sector leadership be set and that a workshop/orientation module be prepared and conducted for new Members of the Legislative Assembly – inviting a relevant person from one of the regional, New Zealand or smaller Australian legislatures and/or public sector/academia to prepare and conduct the workshop in conjunction with the Department of the Legislative Assembly of Tonga;

26. That staff and Members of the Legislative Assembly are provided training in technical courses such as computer skills including internet use, management and financial/accounting skills;
27. That newly appointed staff, Speakers and committee Chairs be sent on short-term attachments to other legislatures of similar size and/or the smaller Australian legislatures; and
28. That professional development and mentoring networks for both staff and Members of the Legislative Assembly, particularly women, be established and maintained with small regional or Australian legislatures such as the ACT or Northern Territory Legislative Assemblies.

Women's Participation

29. That the strategic objectives and action plans of the Women and Development Centre, in particular the Draft National Policy on Gender and Development, be supported;
30. That every bill introduced to the Legislative Assembly should include a gender impact analysis;
31. That concerted efforts are made to raise the standard of debates within the Legislative Assembly in terms of both tone and quality;
32. That training courses for women be conducted in leadership skills, communication, presentation and writing skills and in understanding the Constitution and laws of Tonga and the legislative process; and
33. That women's groups should be supported financially and technically in undertaking political education activities to encourage women to stand as candidates for election to Legislative Assembly and to encourage people to vote for female candidates, thereby changing the popular perception that 'politics is not a suitable pursuit for women'.

1. INTRODUCTION

This report provides background information on and a comprehensive needs assessment of the Legislative Assembly of Tonga in order to serve as the basis of a support programme to strengthen the role of the Legislative Assembly in Tonga. In addition, the report will assist in the generation of key generic principles of best practice for Pacific legislatures based on the notions of parliamentary democracy, participation, equity, accountability, transparency, efficiency, representation, integrity and fair elections. The report is divided into two sections:

- ? Section One forms the introduction to the report, describing the context in which the mission took place, and provides background information on Tonga and its political system; and
- ? Section Two details the current situation within each area identified for institutional and capacity strengthening and provides a number of recommendations in these areas.

The Mission Terms of Reference, program undertaken by the consultant, and information on the consultant are outlined in the appendices.

1.1. Context of the Visit

The Speaker of the Legislative Assembly, Honourable Veikune, was travelling abroad during the period in which the legislative needs assessment mission was undertaken. The Legislative Assembly was not in session. The Clerk of the Legislative Assembly and other parliamentary officers were on annual leave. A number of Members of the Legislative Assembly were absent from Nuku'alofa, and other key individuals in terms of the assessment were unavailable. As parliamentary staff were on leave, no program had been prepared in advance of the mission and it proved difficult to arrange meetings with key individuals at such short notice during the mission itself. Access to secondary information was hampered. As a result the legislative needs assessment was restricted in its scope.

1.2. Background

The Kingdom of Tonga is composed of three main island groups – Tongatapu/Eua/Ata in the south, Ha'apai in the centre, and Vava'u in the north - with the islands of Niuatoputapo and Niufo'ou further north. There are 170 islands in the Tonga group, of which 43 are inhabited.

The table below shows the total population and annual growth rate from the Kingdom of Tonga's 1996 Census Report.

Total Population and Annual Growth Rate 1996 Census Report				
	MALE	FEMALE	TOTAL	Annual Growth Rate 1986-96
TOTAL	49,616	48,169	97,784	0.3%

The table below shows the Kingdom of Tonga's population by electoral division from the 1996 Census Report.

Division	Population
Tongatapu	66,979
Vava'u	15,715
Ha'apai	8,138
Eua	4,934
Niua	2,018
TOTAL	97,784

1.2.1. Form of Government

Section 31 of the Constitution describes the form of government in Tonga as a 'Constitutional Government under His Majesty King Taufa'ahau Tupou IV, his heirs and successors'. Section 2 of the *Government Act 1903* provides that the 'King in Council shall be the highest executive authority in the Kingdom and the Prime Minister shall be responsible for carrying out the resolutions of the Privy Council'.

Under Section 30 of the Constitution the Government of Tonga is divided into three bodies:

- ? The King, Privy Council and Cabinet;
- ? The Legislative Assembly; and

? The Judiciary.

Under Section 50 of the Constitution, the King appoints a Privy Council to assist him with his functions. The Privy Council is composed of the Cabinet, the Governors of Ha'apai and Vava'u, and any others whom the King appoints. The Privy Council serves as the court of final appeal. Under Section 51 of the Constitution, the Cabinet consists of the Prime Minister, Minister of Foreign Affairs, Minister of Lands, Minister of Police and other ministers the King may appoint. All members of the Cabinet are appointed by the King for a period specified by the King. The ministers are members of the Privy Council and of the Legislative Assembly as nobles. HRH Prince 'Ulukalala Lavaka Ata is Prime Minister of Tonga, having been appointed by the King on 3 January 2000. The Cabinet currently has 11 members including the Governors of Vava'u and Ha'api. Under Section 54 of the Constitution, the King appoints Governors of Ha'apai and Vava'u island groups for periods determined by the King. The two Governors hold seats in the Legislative Assembly and are members of the Privy Council.

The Judiciary is independent and respected by the other arms of government.

1.2.2. The Legislative Assembly

Tonga has a unicameral Parliament. Under Section 59 of the Constitution, the Legislative Assembly is composed of the Privy Councillors, the Cabinet ministers who sit as nobles, the representatives of the nobles and the representatives of the people. All three groups sit as one House. Section 60 of the Constitution provides for the separate elections to the Legislative Assembly of a specific number of representatives from the nobles and the people. The 33 Nobles of the Kingdom elect nine representatives from among their ranks. Nine representatives of the people are elected in general or by-elections by qualified voters. The first-past-the-post system of voting is used in elections for both groups, although elections for peoples' representatives are via secret ballot and for nobles via open ballot.

Under Section 7 of the *Legislative Assembly (Election of Representatives of the Nobles) Regulations 1948* nobles can only elect representatives from their own electoral district. There are no campaigns or parties among the nobles for election to the Legislative Assembly. There are no female nobles.

The number of representatives for each electorate from both groups is as follows:

Electorate	Number of Representatives	
	Nobles	Peoples
Tongatapu	3	3
Ha'apai	2	2
Vava'u	2	2
Eua	1	1
Niufo'ou & Niuatoputapu	1	1
Total	9	9

In the case of the electorate of Eua, the representative of the nobles is elected from the nobles of Tongatapu (Section 3, *Legislative Assembly Act 1915*).

There are presently 28 Members of the Legislative Assembly. The 28 members are divided as follows:

- ? The Speaker, Hon. Veikune;
- ? The Government comprising the Cabinet and the Governors of Vava'u and Ha'apai;
- ? Seven Nobles' Representatives; and
- ? Nine Peoples' Representatives.

Sessions

Section 58 of the Constitution provides that the Legislative Assembly shall meet at least once every 12 calendar months, but it can be summoned at any time. The Legislative Assembly generally sits from May to October every year. Rule 15 of the Rules for Proceedings of the Legislative Assembly provide that the House sits from Monday to Friday for 2 hours each in the morning and afternoon. The House does not sit when the Privy Council is in session.

Committee of the Whole House

Under Rule 152 of the Rules for Proceedings the Legislative Assembly can resolve to constitute itself into a Committee of the Whole House. In this event, the Speaker vacates his seat for the Chairman of the Committee of the Whole House. The Committee of the Whole House is an extension of the Chamber of the House. Under Rule 129 of the Rules for Proceedings if, after the second reading but prior to the vote of the House, a Member requests debate on any provisions of a bill, it will be committed to the Committee of the Whole House for debate. Under Rule 140, following consideration of the bill, the Chairman of the Committee of the Whole House reports to the House with any amendments to the bill. All members of the House are members of the Committee of the Whole House and are eligible to participate in its meetings. Under Rule 149 of the Rules for Proceedings, the House elects a Member as Chairman of the Committee of the Whole House for the duration of each parliamentary term. The Chairman's authority is specified in Rule 69 of the Rules for Proceedings. All matters considered by the Committee of the Whole House are reported back to the House by the Chairman.

Committees

There is no constitutional provision for parliamentary committees. The power of the House to appoint committees is not in doubt but the source of this power cannot be stated precisely. The legal authority for the House to set its own rules and procedures are Section 62 of the Constitution and Section 18 of the *Legislative Assembly Act 1915* respectively. The legal framework in which Legislative Assembly committees, therefore, are established and operate are parts 26 and 27 of the Rules for Proceedings of the Legislative Assembly. The Legislative Assembly has two types of committees, standing and select.

Part 26, rules 158-168 of the Rules for Proceedings provide for the establishment of select committees as necessary. Rule 159 outlines the number of members on a select committee, not less than five or more than seven Members, unless the House directs otherwise. The motion of appointment of a select committee specifies the terms of reference for the committee. Under Rule 160 the House elects the members of select committees. Under Rule 162 the committee members elect a Chairman from among themselves. The Clerk usually acts as Clerk to any select committee. There are no select committees operating at present.

Part 27, rules 169-175 of the Rules for Proceedings provide for the establishment of standing committees. The House elects the members of standing committees. Rule 170 outlines the number of members on a standing committee, not less than nine or more than twelve Members, unless the House directs otherwise. There is a parliamentary convention that the membership of standing and select committees must include representation from each group of parliamentarians - nobles' representatives, peoples' representatives and ministers. Members serve for a full term of the Legislative Assembly. Under Rule 171 the Chairman of each standing committee is appointed by the Speaker. The members of select committees elect a Chairman from among themselves.

Members of the Executive can be appointed or elected as Chairman of committees. Honourable Cecil Cocker, Minister of Works, is Chairman of the Standing Committee on Finance, and Honourable Clive Edwards, Minister of Police, is Chairman of the Standing Committee on Bills.

There are two Standing Committees stipulated in Rule 169 of the Rules for Proceedings, and others may be established as required. These are:

- ? Standing Committee on Finance; and
- ? Standing Committee on Bills.

Under Rule 172 the Standing Committee on Finance is responsible for examining government revenue and expenditure, including the national budget. The House may also refer specific matters to the Committee for examination.

Under Rule 173 the Standing Committee on Bills is responsible for examining all draft legislation referred to it by the House and Private Members' Bills referred to the Committee under Rule 125. The Standing Committee on Bills is also responsible for reviewing the Rules for Proceedings and Standing Orders of the Legislative Assembly and for any resolution of the House to be referred to the government.

Each standing committee presently have as members four nobles' representatives, four peoples' representatives and four ministers. There are no provisions in the Rules for Proceedings or the *Legislative Assembly Act 1915* to enable the co-option of members of the public onto Legislative Assembly standing and select committees.

The Parliament House

The Parliament House building was built in 1876-88 from materials pre-cut in New Zealand before shipping to Tonga for fabrication. The building was moved in 1935 to its present location in the business/government district of Nuku'alofa. The building is used by the Supreme Court when the House is in recess. The Parliament office is housed in an adjacent building which also houses the Statistics Office. The space occupied in this building includes the Speaker's office, a committee room and areas for parliamentary staff to work. Members of the Legislative Assembly do not have individual offices or access to secretarial support and technical resources such as telephones and computers. There is an office for the use of Nobles' Representatives and another office for the use of Peoples' Representatives.

In 1984, a motion for the construction of a new Parliament House, by Noble's Representative No. 2 from Vava'u (Noble Luani), was tabled and passed in the House. A Planning Committee for the New Parliament House was established in 1984. The Committee produced a comprehensive architectural brief for the proposed new Parliament House. Since the production of the architectural brief, the project has not proceeded primarily due to financial constraints.

2. AREAS FOR INSTITUTIONAL AND CAPACITY STRENGTHENING

2.1. Review of Existing Key Legal Documents

The key legal documents covering the Legislative Assembly are:

- ? Part II, sections 56-83 of the Constitution;
- ? Rules for Proceedings and Standing Orders and Duties of the Legislative Assembly;
- ? The Legislative Assembly Act 1915; and
- ? The Electoral Act 1989 (No. 22 of 1989)

All four documents and the Gazette are written in both Tongan and English.

Tonga does not have a Leadership Code of Conduct or an independent body such as an Ombudsman or Leadership Code Commission to regulate a code of conduct. The Legislative Assembly does not have a code of conduct or comprehensive accountability mechanisms for Members of the Legislative Assembly, although there are provisions in the Constitution (sections 69, 71 and 75) and the Rules for Proceedings (rules 39-48 for impeachment, and Rule 114 for conflict of interest) concerning the behaviour of Members of the Legislative Assembly and other constitutional officeholders. There is no parliamentary Standing Ethics Committee that could prepare a draft code of conduct for Members of the Legislative Assembly, review any code introduced, and carry out the educative work in relation to ethical standards applying to Members of the Legislative Assembly as well as providing advice on the standards.

Section 83 of the Constitution and rules 9 and 10 of the parliamentary Rules for Proceedings outline the oath taken by new members and the associated procedures. Members of the Legislative Assembly, including ministers read the oath in the presence of the Legislative Assembly and sign their names to the oath. In the oath members of Legislative Assembly swear loyalty to the monarch and promise to adhere to and protect the Constitution and perform the duties of a member of the Legislative Assembly.

2.1.1. Constitution

The Constitution of Tonga is the oldest constitution in the Commonwealth. The Constitution of Tonga dates back to 1875 when His Majesty King George Tupou I brought the Constitution into effect on 4 November 1875. The basic structure of Constitution has not been altered since its inception in 1875 but there have been amendments of specific clauses. The political structure provided in the Constitution has served Tonga well in delivering peace and stability.

The Constitution is divided into three parts:

1. Declaration of Rights – Sections 1-29;
2. Form of Government
 - ? Sections 30-49 - The King
 - ? Section 50 - Privy Council
 - ? Sections 51-55 - Cabinet
 - ? Sections 56-83 - The Legislative Assembly
 - ? Sections 84-103 - The Judiciary;
3. The Land – Sections 104-115.

Section 38 of the Constitution provides for the relationship between the King and the Legislative Assembly. The King has the authority to ‘convoke the Legislative Assembly at any time and may dissolve it at his pleasure and command that new representatives of the nobles and people be elected to enter the Assembly’. It is, however, ‘unlawful for the Kingdom to remain without a meeting of the Assembly for a longer period than one year’. Section 38 also states that the Assembly must always meet at Nuku’alofa except in time of war. Under Section 41 of the Constitution, all Acts of the Legislative Assembly require the King’s signature before they become law

Under Section 56 of the Constitution, the King and the Legislative Assembly have the power to enact laws. Section 9 of the *Government Act 1903* provides that all regulations, rules and orders passed by the Privy Council, Cabinet, Prime Minister or Minister must be submitted to the Legislative Assembly for ‘confirmation, amendment or rescission’. The Legislative Assembly has the authority under Section 51 of the Constitution to impeach ministers ‘if their administration is not in accordance with the law’. A Governor can also be impeached by the Legislative Assembly. The ministers are required to provide annual reports of their departments to the King who forwards these annual reports to the Legislative Assembly. Under Section 51 ministers are required to answer all questions from the Legislative Assembly concerning their departments. Under Section 53 of the Constitution the Treasurer presents the national budget to the Legislative Assembly.

Section 62 of the Constitution provides the legal authority for the Legislative Assembly to set its own rules and procedures.

2.1.2. Legislative Assembly Act 1915

The *Legislative Assembly Act 1915* is divided into three parts:

- ? Part 1 - Elections;

- ? Part 2 - Gratuities for Members and Staff of the Legislative Assembly; and
- ? Part 3 - Sessions.

The *Legislative Assembly Act 1915* (Section 2) outlines the life of each Assembly, three years. General elections for representatives of the nobles and representatives of the people are held at the same time. The Prime Minister sets the date for general and by-elections, and is responsible for the management of elections. There are five electoral districts. The *Legislative Assembly Act 1915* (Section 3) sets the number of representatives from each group, nobles and the people, for each electoral district. Section 5 of the Act sets out the procedures for the conduct of general elections, including the qualifications of electors, appeal mechanisms, and the method of voting. Section 6 of the Act sets out the procedure for the conduct of by-elections. Section 6 (i) of the *Legislative Assembly (Election of Representatives of the Nobles) Regulations 1948* sets out the procedures for the conduct of elections for Nobles' representatives.

Sections 10 to 13 of the Act establish the benefits and entitlements for members or their families upon retirement or death, and the benefits to staff upon retirement or death. Sections 14 to 19 provides for the determination of Legislative Assembly sessions by the Privy Council, the appointment of the Speaker by the King, the appointment of an Acting Speaker by the King, and the opening and closing of the Legislative Assembly. Section 18 of the Act provides the authority of the Legislative Assembly to determine the benefits and entitlements of members and the resources available to the Assembly during sessions. Section 19 of the Act provides for the enforcement of compliance with the provisions of the Act.

2.1.3. Rules for Proceedings and Standing Orders and Duties of the Legislative Assembly

The legal authority for the Legislative Assembly to set its own Rules and Standing Orders are Section 62 of the Constitution and Section 15 of the *Legislative Assembly Act 1915*. The Rules and Standing Orders are published together as one document, *Rules for Proceedings and Standing Orders and Duties of the Legislative Assembly*. The *Rules for Proceedings and Standing Orders and Duties of the Legislative Assembly* is written in both Tongan and English. A review of the Rules and Standing Orders was completed in July 1992, and a preliminary review was undertaken between the 1995 and 1996 sessions. The Rules and Standing Orders were most recently reviewed and revised by the Standing Committee on Bills between 1997 and 1998. The 1997-98 review became necessary because of developments in the House over the 1992-1997 period for which there were no provisions in the existing Rules and Standing Orders, and the need to reword specific clauses to improve clarity and tighten financial management of the House. The present Rules and Standing Orders were approved by the Legislative Assembly on 24 June 1998.

There are 179 Rules in the *Rules for Proceedings*. The Rules cover all aspects of the Legislative Assembly's procedures, ranging from *Interpretation* (Rule 2) to *Suspension*

of these Rules (Rule 179). The *Standing Orders and Duties of the Legislative Assembly* contains 47 Orders. The Standing Orders focus on administrative matters such as benefits and entitlements for members, and the election of staff of the Legislative Assembly, their functions and their conditions of employment.

2.1.4. Electoral Act 1989 (No. 22 of 1989)

The *Electoral Act 1989* outlines the provisions for the organisation of elections. Under Section 77 of the Constitution and Section 2.1 of the *Legislative Assembly Act 1915* elections are held for new representatives of the people and the nobles every three years, although the King may dissolve the House and order new elections as he sees fit. There is no independent, statutory electoral authority. The Prime Minister has overall responsibility for the conduct and management of elections. Under Section 3 of the Act the Prime Minister appoints a Supervisor of Elections, currently Mr Simi Tekiteki. The Supervisor of Elections, with the approval of the Prime Minister, appoints returning officers and assistants for each electoral district. The Supervisor of Elections, subject to the direction of the Prime Minister, has ‘general control over and supervision of elections, the preparation of the electoral roll’ and all other electoral matters (Section 3.3).

Under Section 64 of the Constitution, in order to qualify to vote electors must be a minimum of 21 years old, taxpayers, literate and not nobles. Candidates for election as people’s representatives must be qualified to vote and not subject to a court order concerning the payment of outstanding debts. Under Section 4.3 of the Electoral Act within three months of their 21st birthday every Tongan is required to enrol to vote for the district in which he or she is residing. The electoral roll is required to be published in the Gazette at least six months prior to an election. Section 6 of the Act provides for an Electoral Appeal Committee to be appointed by the King in each district.

Sections 7 to 18 of the Act outline the procedures for elections. Sections 19 to 24 of the Act provide for election offences and penalties. Sections 25 to 39 of the Act outline the procedures for election petitions.

Subsidiary legislation includes the *Electoral (Amendment) Act 1992* (No. 15 of 1992) and the *Electoral (Amendment) Act 1997* (No. 7 of 1997)

2.1.5. Ethics Regime

There are a number of provisions in the Constitution, the Legislative Assembly Rules for Proceedings and the *Legislative Assembly Act 1915* relating to the behaviour of Members of the Legislative Assembly and other constitutional officeholders. Section 23 of the Constitution provides that no person with a criminal conviction and having served more than two years imprisonment can hold public office or vote in an election or be elected to the Legislative Assembly unless pardoned by the King. Section 65 of the Constitution provides for the qualifications of representatives of the people. Section 65 also provides

that, except for ministers and the Governors, Members of the Legislative Assembly cannot be employed in the Public Service. Section 66 of the Constitution and Section 9 of the *Legislative Assembly Act 1915* make it illegal to use threats or bribery in elections. Any member of the Legislative Assembly found guilty of this will be unseated by the Assembly and prosecuted according to the law.

Section 69 of the Constitution provides for the quorum of the Legislative Assembly to be at least half of the total membership of the House. Either the King or the Speaker can order the presence of all members of the House following an adjourned meeting which failed to reach quorum. Failure to attend following the order of the King or Speaker to do so may result in penalties determined by the House. Section 7 of the *Legislative Assembly Act 1915* provides that any member absent from the Assembly for more than 12 consecutive months, or except on the ground of illness, for a period of two weeks during a session without leave of the Speaker shall have his seat declared vacant.

Section 69 of the Constitution also provides for the Legislative Assembly to 'pass judgement upon its members for their acts or conduct as Members of the Legislative Assembly'. Under Section 71 of the Constitution, if a nobles' representative is guilty of 'conduct unbecoming his position, he may be tried and deprived of his position as a member of the House by the nobles of the Legislative Assembly'. Under Section 70 of the Constitution, contempt of the Legislative Assembly is punishable by 30 days imprisonment. Section 75 of the Constitution provides for the impeachment of an Privy Councillor, Minister, Governor, or Judge by the Legislative Assembly for a range of offences including breaches of the laws or the resolutions of the Legislative Assembly, maladministration, and incompetency.

Rule 69 of the Rules for Proceedings provides the Speaker or the Chairman of the Committee of the Whole House with the authority to sanction Members who fail to comply with the Rules. A Member who has breached the Rules may, under Rule 69 (i) be named by the Speaker or Chairman; (ii) be suspended from the House for a specified period no longer than 14 days on the vote of the House; or (iii) be suspended at the Speaker's discretion for a period not exceeding five days. Under Rule 69 (iv) any Member ordered to be suspended who disobeys the order may be subject to the use of force to give effect to the order and will be suspended for 30 days. Under Rule 70 a Member who has been suspended from the House loses access to the Chamber and Legislative Assembly offices, and does not receive any entitlements during the period of the suspension.

Rule 114 of the Rules of Proceedings provides for disclosure of interest by Members of the Legislative Assembly. Rule 114 states that except for matters under Section 18 of the *Legislative Assembly Act 1915* relating to travel arrangements and expenses for members, 'no member is entitled to speak or vote on any question in which he has a direct pecuniary interest, personal or other benefits'. The Speaker or the Chairman of the Committee of the Whole House have the authority to prevent a member with an interest in a matter before the House from speaking on the matter or disallow any vote by the member.

Despite the existence of these various provisions relating to the conduct in office of Members of the Legislative Assembly and other constitutional officeholders, there is no formal, established source for advice and education on ethical issues and no comprehensive formal guidelines relating to their conduct in office². There is no pecuniary interest register for Members of the Legislative Assembly.

The main accountability mechanism for ensuring that Members of the Legislative Assembly do not have conflicts of interest is a pecuniary interest register. It is recommended that a Register of Interest be established. The Register of Interest should be compiled on an annual basis and a summary of the Register be available as a public document. It is recommended that each member of the Legislative Assembly be required to provide a statement of their pecuniary interests to the Clerk of the Legislative Assembly within one month of taking the oath of office and annually thereafter.

In order to promote integrity among Tonga's leaders and an effective, accessible and accountable political system a comprehensive set of standards, incorporating the existing provisions relating to the conduct of Members of the Legislative Assembly and other constitutional officeholders and additional provisions within one document, needs to be developed and implemented. A code of ethical conduct should be enacted in legislation, which leaders would have to subscribe to upon election to the Legislative Assembly or appointment to office. Adherence to the code of ethical conduct should be incorporated in the oath of office.

The proposed code of ethical conduct should at a minimum be comprised of three areas:

- ? An aspirational framework of reference for leaders in the course of their duties - a statement of ethical principles and an outline of the obligations imposed on leaders;
- ? An overview of the restrictions and obligations placed upon members including such matters as a Register of Members' Interests, bribery and advocacy, conflicts of interest, authorised use of allowances and misuse of confidential information; and
- ? The procedures for handling complaints concerning matters contained within the code³.

The purpose of the code of ethical conduct is to present relevant information concerning the obligations of leaders, together with specific guidelines for their conduct in office, in one document that is given to all leaders upon election or appointment to office and is

² For a comprehensive assessment of ethics regimes in the various Australian parliaments by way of comparison, see the New South Wales Legislative Assembly Standing Ethics Committee, *Report on Interstate Study Tour February 2000*, April 2000.

³ See Queensland Members Ethics and Parliamentary Privileges Committee, *Report on a Draft Code of Conduct for Members of the Queensland Legislative Assembly*, May 1998.

available to the public. This proposed code brings together in one document the current obligations and requirements of leaders presently dispersed in a number of documents.

In order for the code of conduct to be effective an independent statutory body with sufficient legal authority and resources, such as an Office of the Ombudsman, Integrity Commissioner or Leadership Code Commission, to regulate the code of ethical conduct, to investigate complaints and to refer offences to the courts needs to be established. The role of 'watchdog' of this body should be balanced by the role of 'reformer and educator' on public sector standards and leadership. This educative role is important because effective measures to prevent poor standards of leadership require a long-term view and governments are often tempted to look only to short-term results.

To support and complement this independent statutory body, the Legislative Assembly needs to establish a standing committee on ethics to assist in developing the code of ethical conduct for leaders, to develop an oath of office that incorporates adherence to the code, and to review any code introduced. The Committee would carry out the educative work in relation to ethical standards applying to Members of the Legislative Assembly as well as providing advice on the standards. Both members of the public and parliamentarians should serve on this Committee. The Committee should also have responsibility for monitoring the operation of the Register of Members' Interests.

The Clerk is responsible for organising, and often running, educative and induction programs for Members of the Legislative Assembly. These programs should also include an ethics component.

2.1.6. Recommendations

1. A review of all key legal documents to ensure the elimination of gender biased language which implies exclusion of women from the decision-making process;
2. The development and implementation of a Code of Ethical Conduct for Members of the Legislative Assembly and other constitutional officeholders;
3. That the Oath of Office for Members of the Legislative Assembly and other constitutional officeholders be revised to incorporate reference to the standards outlined in the Code of Ethical Conduct;
4. That a Register of Interest for Members of the Legislative Assembly be established and that each member of the Legislative Assembly be required to provide a statement of their pecuniary interests to the Clerk of the Legislative Assembly within one month of taking the oath of office and annually thereafter;

5. That an independent statutory body with sufficient legal authority and resources be established to regulate the Code of Ethical Conduct, to investigate complaints, to refer offences to the courts, and to perform an educative role for both leaders and the public;
6. That the Legislative Assembly establish a Standing Committee on Ethics, comprised of Members of the Legislative Assembly and members of the public, to assist in developing the code of ethical conduct for leaders, to revise the Oath of Office, to review any code introduced, and to carry out the educative work in relation to ethical standards applying to Members of the Legislative Assembly as well as providing advice on the standards;
7. That a review of the Rules for Proceedings of the Legislative Assembly by the Standing Committee on Bills be undertaken to incorporate reference to the code of ethical conduct for members and the establishment of a third Standing Committee on Ethics;
8. That the code of ethical conduct be made available to and widely distributed to public officers and members of the public; and
9. That induction programs and ongoing educative seminars and workshops for Members of the Legislative Assembly and other constitutional officeholders be held and include an ethics component.

2.2. Assessment of Existing Parliament-Constituency Relationship

A number of issues emerged from the assessment of the existing relationship between parliamentarians and their constituents. These issues were:

- ? Limited understanding by the public and Members of the Legislative Assembly of the role of the Legislative Assembly and its members;
- ? Limited consultation between Members of the Legislative Assembly and their constituents;
- ? The effect of tradition and culture;
- ? Social change and the pressure for political reform;
- ? Declining participation in the electoral process;
- ? The increasing role of the media; and
- ? Local level governance.

2.2.1. Limited Understanding

Interviewees pointed out that while some people understand how the Legislative Assembly works, there is a lack of uniformity in terms of understanding the role of the Legislative Assembly by both Members of the Legislative Assembly and members of the public. This limited understanding has resulted in unrealistic expectations being placed on Members of the Legislative Assembly by constituents, the popular perception of the Legislative Assembly as part of the Government, and consequently the failure of Members of the Legislative Assembly to properly scrutinise the activities of Government. It was the view of those interviewed that without addressing these areas the Legislative Assembly would not have the capacity to fulfil its constitutional role, in particular as a watchdog on government activity.

The President of the Tongan Association of Non-Government Organisations (TANGO), Mr Simone Silapelu, estimates that between 70 to 80 per cent of the population, including civil servants, have a very limited understanding of the role and functions of the Legislative Assembly. Most interviewees noted that people generally are eager to hear about the Legislative Assembly and want it to be accountable to them, they are aware of the budget process and want to know what their representative has done for them. According to Mr Semisi Kailahi, host of a local TV discussion program, more people are beginning to read Hansard transcripts of Legislative Assembly sittings. However, Mr Silapelu points out that the public's limited knowledge of the role of the Legislative Assembly means people lose interest in the Legislative Assembly and the political process generally. Given that informing constituents is an important part of their role, TANGO suggests Members of the Legislative Assembly inform constituents on what is happening in the Legislative Assembly.

People generally have negative views of the Legislative Assembly because members are popularly perceived to be overpaid. Although the Legislative Assembly determines its own salaries and entitlements some members are pushing for an independent tribunal to determine these and related matters. The public's 'low regard' for the Legislative Assembly, according to Honourable Fielakepa, Minister of Lands and Survey, is also due to the poor standard of parliamentary debates that are highlighted in summary form on radio every evening.

Despite the fact that Legislative Assembly elections are held every 3 years, it is, according to Mr Silapelu, only in recent years that have people begun to discover the role and responsibilities of the Legislative Assembly. Mr Silapelu also notes that in recent years people have increasingly tended to present their grievances to their respective peoples' representatives. There, however, remains a cultural tendency for people to petition the King through the Palace Office rather than one's elected representative when seeking redress for grievances.

During sessions of the Legislative Assembly, from May to early November each year, there are breaks to enable Members to undertake visits to different areas of the Kingdom as part of a general consultation process. Executive members of Legislative Assembly tend to miss these local visits due to ministerial commitments. According to Mr Silapelu,

despite local visits Members of the Legislative Assembly tend to focus on their political interests at the expense of community concerns. Mr Silapelu noted the concern of some NGOs that some Members of the Legislative Assembly lack knowledge of community issues. There is therefore a need to raise the awareness of Members of the Legislative Assembly on community issues. Some interviewees suggested an ongoing educative program aimed at developing public relations and community consultation skills for Members of the Legislative Assembly. The Clerk, Ms Fatai Pale, notes that people with higher educational qualifications are standing as candidates for Legislative Assembly elections and the educational levels and qualifications of Members of the Legislative Assembly has increased over recent elections.

Honourable Fusitu'a, former Speaker of the Legislative Assembly, noted that a major area requiring improvement is 'enlightening people about the political process and their rights'. However Hon. Fusitu'a is concerned that any educative process would simply be tokenistic, that is, to gather electoral support, rather than for the good of the people and the country. The Legislative Assembly has no awareness raising/educational program for the public. The only publications concerning the Assembly available to the public are copies of Hansard and the minutes available for purchase. The curriculums in primary and secondary schools do not include courses of study on civics. There is one course of study on Tongan culture in school curriculums but it does not include a detailed examination of Tonga's political system.

An important means of strengthening the relationship between Legislative Assembly and the public is to encourage Tongans to become active and informed citizens through developing an understanding of the political system generally and the role of the Legislative Assembly in particular. This can be achieved at a number of levels on a cost effective basis:

- ? Introducing a civics curriculum into primary and secondary schools;
- ? Establishing essay writing competitions and debates at primary and secondary schools on the role of the Legislative Assembly;
- ? Producing Fact Sheets and other pamphlets for schools and the public on the role of the Legislative Assembly;
- ? Holding workshops and seminars on the role of the Legislative Assembly for teachers, the public, and Public Servants; and
- ? Establishing fellowships for teachers and public servants to spend a full sitting week at the Legislative Assembly.

In addition to the above measures to improve the levels of political literacy, some interviewees suggested the role of the media in providing information should be improved. Greater collaboration is also required between the different groups in the Legislative Assembly in order to promote the role and importance of the Assembly.

Consideration should be given to the greater utilisation of Legislative Assembly committees and better promotion of their work. Committees take 'Parliament to the people' and allow direct contact between members of the public and Members of the Legislative Assembly. Committees enable Members to be better informed about community views and can promote public debate on issues under consideration by the Assembly. In respect of their formal proceedings committees are a microcosm of the House itself and their effective use can contribute to a better relationship between the Assembly and the public. Consideration should also be given to the co-option of members of the public onto Legislative Assembly committees. The all-group composition of the Legislative Assembly's committees, involving representatives from all three groups within the Assembly, is an important feature. This feature could be enhanced through the inclusion of members of the public on committees. The inclusion of members of the public would bring additional skills, knowledge and viewpoints to the work of committees, and generate a sense of ownership in the political process by the public.

2.2.2. *The Effect of Tradition and Culture*

Honourable Fusitu'a, former Speaker of the Legislative Assembly, points out that one needs to be born and bred in Tonga to understand how and why the system works as it does. Hon. Fusitu'a notes that the cultural norms of society are embedded within the political system. Religion is also a strong influence on the political and social infrastructure of Tongan society. Hon. Fusitu'a points out that the structure and cultural norms of Tongan society, with the prevailing ethos being to keep the peace and maintain stability, prevents constructive criticism of the present political system. Some interviewees noted that the people of Tonga are conditioned to conform to norms that place power with individuals who exercise this power through cultural customs rather than through electoral institutions. Mr Simione Silapelu, President of TANGO, notes that cultural norms also mean that people 'wait to be told what to do'.

2.2.3. *Social Change and the Pressure for Political Reform*

Tonga is in a period of transition from a nineteenth century socio-political structure to a twentieth century version. These transitory processes give rise to uncertainty and conflict between current ideology and interests and emerging ones. Globalisation and modernisation are also causing disruption to the normal process of enculturation and socialisation resulting in confusion and uncertainty among leadership because those in leadership positions are unable to control the forces of change. Uncertainty, conflict and confusion are also giving rise to challenges to the structure of the Legislative Assembly.

There are no political parties and no party system in Tonga, candidates run on an individual basis. However, during the past 12 years, peoples' representatives have begun to form groups in support of each other, either favouring constitutional reform or opposed to reform. In the current Legislative Assembly, seven people's representatives favour

constitutional reform and two peoples' representatives favour maintaining the constitutional status quo.

There is a perception among some interviewees that the Legislative Assembly is a 'puppet' of the ruling class. Consequently the King, ministers and nobles lack accountability. The ministers and nobles are perceived to be accountable to the King, not the people. The processes of law making are perceived as dominated by the Executive. The public does not participate in the process of decision-making. A number of interviewees believe it necessary to amend the Constitution to achieve greater participation by the people in the political process. There is some support for a motion amongst Members of the Legislative Assembly for the government to establish an independent commission to review the Constitution. Some interviewees suggested the Government is beginning to listen to proposals for constitutional change.

In 1991 a pro-democracy convention was held in Tonga and the pro-democracy movement office was established. The movement remains active today as the Tonga Human Rights and Democracy Movement. Akilisi Pohiva, Peoples' Representative No. One for Tongatapu pointed out that two options for change are being canvassed by the Pro-Democracy Movement:

- (a) The people and the Monarch would share power with the people electing all Members of the Legislative Assembly and the King appointing the Prime Minister and ministers from among the elected representatives; or
- (b) The people would elect all Members of the Legislative Assembly, but the King would appoint the Prime Minister and ministers from outside the Legislative Assembly.

Mr Semisi Kailahi, host of a discussion program entitled *Sio-amatalafo Kai* (Bystander) on local TV station, Channel 7, favours gradual reform of the political structure because of the stability and cohesion within society the structure creates. From Mr Kailahi's viewpoint evolutionary change is needed rather than forced change and it is important to maintain the cultural norms embedded in the established political structure. According to Mr Kailahi people are beginning to be more vocal on issues concerning them. Both Mr Kailahi and Honourable Fielakepa, Minister of Lands and Survey and former Governor of Ha'apai, suggest there be an increase in the number of peoples' representatives in the Legislative Assembly. Mr Kailahi suggested the number of peoples' representatives for Tongatapu should be increased to five to keep pace with the growth of the population. In addition, a number of interviewees believe that the people are not fairly represented in Legislative Assembly compared with the nobles.

NGO activities

There are 126 non-government organisations registered in Tonga and all are members of the Tongan Association of Non-Government Organisations (TANGO), the national umbrella organisation for NGOs in Tonga established in 1990. TANGO's members include other umbrella bodies and the four major churches - Methodist, Wesleyan,

Catholic and Anglican. TANGO's main objective is to represent NGOs to the government, participating in government committees and boards, and liaise with overseas aid organisations and diplomatic missions. TANGO provides training to group members on such areas as leadership, financial management and disaster preparation. The President of TANGO, Mr Simione Silapelu, points out that many TANGO members have an extremely limited understanding of the role and responsibilities of the Legislative Assembly and are unaware of legislation the Assembly may be considering during sessions. TANGO does not directly receive information on the government's budget. This lack of understanding extends to the role of Members of the Legislative Assembly. Mr Silapelu suggests that it is the responsibility of Members of the Legislative Assembly to better inform constituents of issues under consideration by the Assembly. Members of the Legislative Assembly visited the TANGO office during the 1998-99 recess, although only a few members attended and of those who did none have been in contact with TANGO since the visit.

2.2.4. Declining Participation in the Electoral Process

The last national election was held in 1999. The number of people registered to vote for peoples' representatives at this election was 54912, 56% of the total population. 27867 people, 51% of those registered to vote, 28% of the total population, voted at the 1999 election. In Tongatapu, the main island with the majority of the population, less than half of those registered to vote, 46%, voted in the 1999 election. Voter turnout at the 1996 national election for peoples' representatives was 56% of the total registered voters. Participation in the political process as measured by voter turnout at elections for peoples' representatives is declining. According to the Supervisor of Elections, Mr Simi Tekiteki, the reasons for this include:

- ? Overseas migration - 30 per cent of registered voters live overseas, and once an individual enrolls to vote their name cannot be removed from the electoral roll until they are deceased;
- ? Overseas Tongans are entitled to vote but cannot do so because there is no provision for postal or overseas voting due to financial and technical limitations;
- ? The electoral roll is not accurate – there are a number of registered voters on the electoral roll who are deceased; and
- ? Apathy - it is compulsory to enrol but not to vote.

Mr Simione Silapelu notes it is difficult for people to participate in the political process because of their limited knowledge of the system.

2.2.5. The Increasing Role of the Media

In 1986 the Legislative Assembly introduced broadcasting of its sittings on radio. Initially the government allowed sittings to be broadcast live, then the broadcast was delayed and now sittings for each week are broadcast in a summarised form for one hour on Fridays and Saturdays. Highlights and a summary of the daily program for each sitting day are broadcast at noon and in the evening. Before the broadcasting of Assembly sittings, interviewees noted, people had limited interest in the legislative process due to the lack of information. According to the Honourable Cecil Cocker, Minister of Works, Members of the Legislative Assembly ‘fight’ to make sure their voice is heard on the program. Televising of sittings of the Assembly is not feasible at this stage due to the cost involved. Copies of Hansard are also available to the public.

In the early 1990s the increase in media outlets saw an increase in the information about government available to the public. There are a range of local media outlets in Tonga including:

- ? Two magazines (one weekly and one monthly);
- ? Three private newspapers (weekly);
- ? Three religious newspapers (weekly);
- ? One State owned and three private radio stations; and
- ? Three privately owned television stations.

The Clerk, Ms Fatai Pale, points out that five years ago there was ‘very little’ public discussion of the Legislative Assembly. The growth of media outlets has served to raise popular awareness of the political process and the Assembly. The media often invites the Prime Minister to be interviewed on television and radio programs during Legislative Assembly sittings. The Prime Minister’s Office also runs programs on radio and television outlining the government’s policies and plans and often invites the Speaker and Members of the Legislative Assembly on these program to discuss issues. Some locally produced television programs address issues of political and social concern. There is, for instance, a political discussion show broadcast on one local television station.

There is, however, criticism of the Tongan media, especially for taking sides on issues. According to the President of TANGO, Mr Silapelu, this results in confusion among the audience. The tendency of the media to take sides on issues distorts the quality of the information the public has access to.

2.2.6. Local Level Governance

There are no constitutional provisions for local level governance and no real devolution of authority to the local level in Tonga. The *District and Town Officers Act 1930*

provides for the election of Town and District Officers and a limited range of responsibilities in relation to public health, compliance with the Land Act, quarantine matters, census maintenance and inspection of licences. The Town Officer is elected by the people every three years. The Town Officer acts as a communication bridge between the people and the government. People come to the Town Officer seeking representation on some issues, for example, land leases. In this sense, District Officers and Town Officers represent the government to the people. The role of the Town Officer is overseen in some districts by a Town Committee, of which the Town Officer can be selected Chairperson. The Town Officer position is a paid position although it is not a civil service position.

Under Section 54 of the Constitution the King appoints Governors of Vava'u and Ha'api island groups. Section 55 of the Constitution provides for the limited authority and responsibilities of the Governors - 'it is not lawful for a Governor to enact any law but he shall be responsible that the law is enforced in his district'. The Governors supervise the civil service in Vava'u and Ha'api. The Governors are also deputy ministers of land and oversee land issues in their respective areas. Honourable Fielakepa, Minister of Lands and Survey and former Governor of Ha'apai, however, suggests the role of governor has been superseded by the Central Government through improved communication links.

2.2.7. Recommendations

10. That a workshop to consider the recommendations of the legislative needs assessment of Tonga be held and involve all Members of the Legislative Assembly including the Prime Minister and Cabinet Ministers, church and other non-government organization leaders, other constitutional office holders and members of the public;
11. That a community consultation model and supporting guidelines and principles for the Legislative Assembly be prepared and disseminated among Members of the Legislative Assembly and the community;
12. That the Standing Committee on Bills or a select committee of the Legislative Assembly inquire into the possibility of co-opting members of the public onto Legislative Assembly standing and select committees and of revising the Rules for Proceedings to incorporate this change; and
13. The publication of a Handbook containing information on the structure and role of the Legislative Assembly and related information for both Members of the Legislative Assembly and members of the public.

2.3. Assessment of Law-Making Procedures of the Legislative Assembly

2.3.1. Constitutional Provisions

The main provisions of the Constitution relating to legislative procedures are:

- ? Section 56 – Power of the Legislative Assembly;
- ? Section 67 – Laws relating to the Monarch, Royal Family and nobility;
- ? Section 68 – King’s sanction;
- ? Section 79 – Amendments to the Constitution; and
- ? Section 82 – Powers of the Chief Justice.

Section 56 of the Constitution provides that having passed a Bill ‘which has been read and voted for by a majority three times it shall be presented to the King for his sanction and after receiving his sanction and signature it shall become law upon publication’.

Under Section 67 of the Constitution, only the representatives of the nobles can discuss or vote upon legislation relating to the King, the Royal Family, or the titles and inheritances of the nobles. Such legislation must be passed three times by a majority of the nobles’ representatives before being submitted to the King for his approval and signature.

Under Section 68 of the Constitution, the King’s veto of legislation precludes further discussion by the Legislative Assembly until the following session.

Under Section 79, the Legislative Assembly can discuss amendments to the Constitution insofar as these amendments do not affect the ‘law of liberty, the succession to the Throne or the titles and hereditary estates of the nobles’. Constitutional amendments must be passed by the House three times before being submitted to the King. If the Privy Council and the Cabinet are ‘unanimously in favour of the amendment’, the King will assent to the amendment and it will come into effect once he has signed it.

Under Section 82 of the Constitution, the Chief Justice may suspend any law approved by the Legislative Assembly or the Privy Council at variance with the Constitution until the next meeting of the Legislative Assembly.

2.3.2. Legislative Process

Only in the past four years have peoples’ representatives been allowed to prepare and introduce Bills to the House in accordance with Section 56 of the Constitution. Rules 124 to 148 of the Rules for Proceedings outline the process for consideration of Bills by

the House. Rule 125 provides for Bills prepared by Members to be referred to the Standing Committee on Bills before been introduced to the House. Members cannot get drafting assistance for private legislation as there is no Parliamentary Counsel and the Crown Law Office can only assist the government. The Crown Law Office is responsible for all litigation for the government, all legal advice to ministries, the drafting of legislation and recommending amendments relating to legal procedures.

Although Section 51 of the Constitution and Section 9 of the *Government Act 1903* requires the government to keep the Legislative Assembly informed, Members of the Legislative Assembly have limited access to government information, most of which is treated as confidential, or Members must request specific information. There is some leaking of government information and interviewees such as Mr Akilisi Pohiva believe this demonstrates civil servants' declining confidence in the government. It is difficult, especially for members of the public, to obtain access to a complete, up-to-date copy of the Laws of Tonga.

The main problem with the law-making procedures, according to Mr John Cauchi, Senior Crown Counsel, is that there is a lack of co-ordination between government ministries and departments in drafting legislation. Often departments act unilaterally in drafting their own legislation. Because of this lack of co-ordination the process of lawmaking is a convoluted one. No one takes responsibility for the co-ordination of legislation. There is a large degree of micro-management within government. Cabinet approves everything including the appointment of cleaners. There is an attempt to change this and devolve decisions to appropriate levels.

Private Members' Bills may be introduced to the House under Section 56 of the Constitution and Rule 124 of the Rules for Proceedings. However, Peoples' Representative for Ha'apai, Mr Teisina Fuko, is concerned that the legislative process is biased against Private Members' Bills given that all legislation approved by the Legislative Assembly must ultimately be sanctioned by the King. Mr Fuko is concerned that controversial legislation initiated by private members and approved by the House may not be sanctioned by the King if His Majesty and/or the government disapprove. For this reason Mr Fuko believes the legislative process should be reformed to closely model the Westminster system.

2.3.3. *Standing Committee on Bills*

Rule 169 of the Rules for Proceedings establishes the Standing Committee on Bills, otherwise known as the Law Committee. Under Rule 173 the Standing Committee on Bills is responsible for all the Bills submitted to the Committee by the House under Rule 125. The Standing Committee on Bills is also responsible for matters relating to the Rules for Proceedings and any resolution of the House to be passed on to the government.

2.3.4. Recommendations

14. That the Legislative Assembly provide Private Members with access to independent legal advice and assistance in the drafting of bills as a resource entitlement;
15. That a review be undertaken in relation to the co-ordination between individual agencies of the legislative program of the government to develop greater efficiency and simplify the law-making procedures; and
16. That a consolidation of the Laws of Tonga be undertaken, that such consolidations occur on a more frequent basis, and that access to the consolidated Laws of Tonga for members of the public be improved via the provision of additional copies in publicly accessible places.

2.4. Assessment of the Oversight Role of the Legislative Assembly

Under Section 78 of the Constitution, the Legislative Assembly must assess the revenue measures proposed by the Government and approve the estimates of expenditure for the Government. Section 19 provides that the Legislative Assembly must approve all expenditure and loans entered into by the Government with the following exceptions - where an Act has been passed by the Legislative Assembly authorising the spending or borrowing of money; and in case of emergency including war, rebellion or epidemic. Section 10 of the *Government Act 1903* provides that the Privy Council must approve and submit to the Legislative Assembly in or before June of each year 'an appropriation Bill and the Estimates of the Public Revenue and Expenditure for the ensuing financial year' for its consideration.

A number of interviewees noted that the Legislative Assembly is not as effective in its oversight role as it should be and is merely a 'rubber stamp' for the government. There is a perception among some people that the King, ministers and nobles lack accountability. The main problems with the Assembly's oversight role are:

- ? The dominance of the Executive;
- ? The absence of an effective parliamentary Opposition;
- ? The absence of other independent bodies to complement the oversight role of Legislative Assembly;
- ? The absence of an independent Auditor-General; and
- ? The ineffectual role of the Standing Committee on Finance.

2.4.1. Dominance of the Executive

There appears to be limited understanding of what separation of powers means, which in practice results in the Legislative Assembly being seen as part of the government. Interviewees expressed concern at the dominance of the Legislative Assembly by the Executive. The structure of membership of the House favours the Executive with 12 members and the nobles with nine members over the nine peoples' representatives. The independence of the Legislative Assembly is limited to administrative matters relating to staffing and funding.

2.4.2. Absence of an Effective Parliamentary Opposition

There is no formal party system in Tonga. Members of the Legislative Assembly are elected because of personal characteristics rather than policy platforms. This means there is no effective group to perform the oversight role of an Opposition. Although there are no parties or party structure and despite division within their ranks, peoples' representatives tend to act as a cohesive group for the purposes of consultation and strategy development, according to Mr Teisina Fuko, Peoples' Representative for Ha'apai. Mr Fuko notes that there is a tendency towards peoples' representatives versus the government, and the peoples' representatives, in effect, play the role of an Opposition. They are, however, limited in this role through the lack of resources such as information and advice, the nature of loose alliances, and the small number of peoples' representatives in the Assembly. Question time, held for one hour on Thursdays during sitting weeks, provides the main opportunity for the House to subject ministers to scrutiny.

2.4.3. Absence of other Oversight Bodies

There are no other oversight bodies such as an Office of the Ombudsman or independent Auditor-General in Tonga that could compliment the oversight role of Legislative Assembly.

2.4.4. The absence of an independent Auditor-General

Audit Process

Under the *Public Audit Act 1984* all government accounts are required to be audited by the Auditor-General who, in turn, submits an annual report to the Prime Minister. Section 7.4 of the Public Audit Act requires the Prime Minister to submit the Auditor-General's Annual Report for the financial year ended on the previous 30 June to Cabinet by 31 March each year. The Prime Minister then submits the Auditor-General's Annual Report to the Privy Council and following that to the Legislative Assembly.

Under Section 51 of the Constitution ministers must submit an annual report for their departments to the King. The King, in turn, forwards the annual reports to the Legislative Assembly. Under Section 51 the Legislative Assembly may also question ministers on any aspect of their respective portfolios, and the minister 'shall answer all questions put to him by the Legislative Assembly and report everything in connection with his department'. The submission of annual reports by government departments is often delayed and departments do not always maintain up-to-date records. The only mechanism for ensuring compliance by the Legislative Assembly in such cases is impeachment of the responsible minister, but this is a difficult course of action. Rules 39 to 48 of the Rules for Proceedings outline the procedures for impeachment. Impeachment requires the approval of the House and impeachment trials are presided over by the Chief Justice. Impeachment is rare, the most recent case being that of the Minister of Justice who was impeached several years ago. There is a need for legal sanctions other than impeachment to ensure timely and effective accountability.

According to the Auditor-General, Mr Pohiva Tu'i'onetoa, Members of the Legislative Assembly understand Annual Reports but still need to understand the mechanics of accountability and the framework of the separation of powers. Mr Tu'i'onetoa suggests that members of the public understand the principles of auditing government accounts but lack knowledge of the more complex issues affecting the Audit Department such as the appointment of the Auditor-General.

The Auditor-General

The Audit Department, headed by the Auditor General, is Tonga's public sector audit body. The Department's primary aim is accountability, to the Prime Minister, Cabinet, Privy Council, Legislative Assembly and ultimately to the public, for the proper and efficient spending of public funds and resources. It is important to note that the position of Auditor-General in the Tongan context is unique in that the Auditor-General is in effect Chief Internal Auditor for the government and not a servant of the legislature. The Auditor-General audits all government departments and ministries. Statutory authorities, however, can appoint their own auditors subject to approval of the Auditor-General. The Auditor-General sits in the House when annual reports are presented and speaks through the Prime Minister.

The Auditor-General does not audit the financial activities of the Legislative Assembly because of its legal status as an autonomous body unless specifically requested to do so by the Assembly.

Issues relating to the independence of the Auditor-General were raised in the Legislative Assembly during the last session. However, the Auditor-General, Mr Pohiva Tu'i'onetoa, believes the system works well and that an independent Auditor-General would not necessarily be any more effective. Mr Tu'i'onetoa believes that this lack of autonomy has not affected either the performance of the Auditor General's role or his objectivity. Mr Tu'i'onetoa suggests any reform of the Act to establish an independent Auditor-General must provide 'appropriate safeguards' to ensure the Auditor-General is

not 'used as a whim of political parties'. If the Auditor-General remains part of the Executive, then similar safeguards need to be incorporated in the Act.

The Auditor-General, in his 1998 Annual Report, recommended a review of the audit office in order to develop a more appropriate structure. Mr Tu'i'onetoa urged consideration be given to public perception of the following issues:

- ? The appointment of the Auditor-General and audit office staff;
- ? The tenure of appointment;
- ? The Auditor-General's ability to withstand client pressure; and
- ? The relationship between the Auditor-General and the client.

The process for determining the appointment, conditions of service and removal of the Auditor-General is provided for in Section 3 of the *Public Audit Act 1984*. However, the Act does not establish clear criteria for the removal of Auditor-General and the term is open-ended. Mr Tu'i'onetoa suggests the Legislative Assembly and Executive need to co-operate to correct the ambiguities in the Act on this matter.

The Tongan Association of Non-Government Organisations (TANGO) advocates strengthening the role of the Auditor-General, making the office independent of the government. Some Members of the Legislative Assembly are also lobbying for the Auditor-General to report directly to the Legislative Assembly.

2.4.5. *Standing Committee on Finance*

The Standing Committee on Finance operates in a similar way to a Public Accounts Committee, but its mandate is limited because its terms of references are determined by the House. The view of most interviewees was that in its performance of the role of a Public Accounts Committee, the Standing Committee on Finance is 'not working well'. The Standing Committee on Finance considers the budget of the Legislative Assembly and the national budget. In theory the national budget is vetted by the Standing Committee on Finance, but members have forced it to be examined by the whole House. The Standing Committee on Finance examines whatever legislation the House puts before it, including any Private Members' Bills relating to financial matters prior to debate but after the First Reading. The Rules for Proceedings provide for the Speaker to use the Standing Committee on Finance to resolve issues relating to financial matters.

2.4.6. *Recommendations*

17. That amendments be made to the relevant Acts and provision be made in the Rules for Proceedings for the Legislative Assembly to have recourse to legal sanctions in addition to impeachment to ensure compliance;

18. That consideration be given to the establishment of an independent Office of the Auditor-General reporting directly to the Legislative Assembly on all government accounts including those of statutory authorities;
19. That the existing provisions in the *Public Audit Act 1984* for the appointment, conditions of service, and removal from office, of the Auditor-General be reviewed in order to remove ambiguities in the legislation;
20. That members of the Standing Committee on Finance receive training in terms of the committee's role and in understanding the material on which they are required to report;
21. That the Rules for Proceedings be revised to provide clear terms of reference for the Standing Committee on Finance; and
22. That consideration is given to extending question time to each sitting day for a minimum of one hour.

2.5. Assessment of Existing Human Resource Constraints

Tonga experiences problems of limited human resource development which when combined with rapid career advancement truncate the development of already scarce human resources and skills for the Legislative Assembly. It is common for individuals to find themselves appointed to positions beyond their ability and there is some concern as to whether parliamentarians have the necessary skills to perform their duties. The level of consideration of issues is often seen to be superficial due to these problems.

The following two issues were raised by interviewees:

- ? The need for financial assistance for the Legislative Assembly to upgrade office equipment, establish an adequate library, and provide better office facilities for staff and members; and
- ? Training for parliamentary staff.

The Legislative Assembly has full authority to determine its own budget, but Members of the Legislative Assembly tend to cut the Assembly budget as part of their image making, no Member wants to be identified as raising the Legislative Assembly budget. Treasury officials provide the administrative support in relation to the Assembly's accounts and the Speaker and Clerk authorise expenditure by the Assembly. The Standing Committee on Bills considers appointments of staff and the Standing Committee on Finance considers salaries and employment conditions for staff.

2.5.1. The Speaker

Under Section 61 of the Constitution, the King appoints the Speaker of the Legislative Assembly. Section 15 of the *Legislative Assembly Act 1915* also provides for the appointment of the Speaker. Part 3, rules 3 to 5 of the Rules for Proceedings outline the appointment of the Speaker. Under Rule 3 the King appoints one of the Nobles' Representatives as Speaker. Under Rule 4 the Speaker holds office for a period determined by the King. The practice is for the Speaker to serve for the term of the Legislative Assembly, three years, although the King may re-appoint the incumbent. The Speaker governs the meetings of the House and is responsible for the administration of the Assembly as head of the Department of the Legislative Assembly. The Speaker does not vote but exercises a casting vote if the House is tied on a vote. Section 15 of the *Legislative Assembly Act 1915* and Rule 5 of the Rules for Proceedings provide for the appointment of an Acting Speaker by the King as necessary. There is no Deputy Speaker.

The current Speaker, Honourable Veikune, was appointed in 1998. Hon. Veikune is one of the longest serving members of the Assembly and was previously Chairman of the Committee of the Whole House.

Mr Semisi Kailahi suggests the Speaker needs to control the agenda and the proceedings of the House more effectively. This is because, in Mr Kailahi's view, the Assembly 'spends too much time and money for little output'.

2.5.2. Parliamentary Officers

There are 26 staff in the Department of the Legislative Assembly, nine of whom have full-time positions. The full-time positions are:

- ? Clerk of Parliament;
- ? Executive Officer;
- ? Pay Clerk;
- ? Two Assistant Pay Clerks (currently occupants of these positions are on secondment from the Department of Treasury);
- ? Two Clerk Typists;
- ? Driver; and
- ? Caretaker.

The remaining 15 positions are mainly part-time positions, working when parliament is in session. These include the Sergeant at Arms, Broadcasting Officer, Assistant

Broadcasting Officer, eight short hand writers, Security Officer, Technical Officer, Tape Recorder, Tea Lady and Reliever. There are no permanent positions in the Department of the Legislative Assembly.

Election of Staff

Section 61 of the Constitution and Section 15 of the *Legislative Assembly Act 1915* provide that all officers of the Legislative Assembly, except the Speaker, are appointed by the Assembly. Under Order 31 of the Standing Orders of the Legislative Assembly the Clerk of the House is elected by the House. Under Order 34 the Sergeant-at-Arms is elected by the House. All other staff are elected by the House.

Staff have to campaign for support among Members of the Legislative Assembly for election and re-election to their positions. The Standing Committees on Finance and Bills have discussed the issue of staff elections, but both committees favour the current system of electing staff. Pay and employment conditions are higher in the Department of the Legislative Assembly compared to the Public Service, but there is no tenure of service.

Most interviewees, including Peoples' and Nobles' representatives, believe the Legislative Assembly should not elect parliamentary staff. Instead they favour the establishment of ongoing parliamentary staff positions to which suitable candidates are appointed. However there is not sufficient consensus among Members of the Legislative Assembly on this matter for reform.

The Clerk

The position of Clerk of the Legislative Assembly is presently occupied by Ms Fatai Pale who is in her second parliamentary term as Clerk. There is no deputy or assistant Clerk.

The Clerk performs chamber work and is responsible, under the Speaker, for the administration of the Department of the Legislative Assembly. The Clerk is 'badly in need of an assistant'.

2.5.3. *Areas requiring Improvement*

Research Capacity

A small parliamentary research unit with the task of producing briefing papers on proposed legislation and other issues Members require information on is needed. This research service would increase the awareness of and knowledge on issues all Members must deal with. Access to the Internet is an important part of this initiative.

Physical Resources

Although Members are only employed as Members of the Legislative Assembly from May to October, that is, during the parliamentary session, they do work full-time as Members of the Legislative Assembly. For this reason, some peoples' and nobles' representatives are lobbying for the provision of individual offices. There is a concern among Members of the Legislative Assembly that they do not have offices and it is believed that they should have 'proper set-ups' so they can be contacted and better represent their constituents. Some interviewees noted that by not having proper offices members of the Assembly cannot adequately represent their constituents.

A limited number of computers and printers are available for use by staff and members. There is, however, a problem with the printing of documents in a timely manner, particularly minutes of sessions and committee meetings. A number of members believe there is a need to upgrade technical resources such as office equipment available to Members of the Legislative Assembly. Many interviewees, including Members of the Legislative Assembly, noted that purpose built facilities, including an adequate chamber, library and offices for members, are required to properly reflect the Legislative Assembly's role as a law making and oversight body in the twenty-first century. Access to the internet and training in its use for both staff and members is also a priority.

Training Needs

Priorities for public sector leadership need to be set and a workshop/orientation module be prepared and conducted for new Members of the Legislative Assembly. This would involve inviting a relevant person from one of the regional, New Zealand or smaller Australian legislatures and/or public sector/academia to prepare and conduct the workshop in conjunction with the Department of the Legislative Assembly of Tonga. The priorities for public sector leadership should assist Members of the Legislative Assembly to identify and adopt appropriate leadership behaviours.

The staff and Members of the Legislative Assembly should be provided with opportunities, in either Tonga or abroad, for training in technical courses such as computer skills, management and financial/accounting skills. Newly appointed staff, Speakers and Chairs of committees would benefit from short attachments to other legislatures of similar size and/or Australian legislatures. Members of the Legislative Assembly elect who will go on parliamentary visits or the Speaker and Clerk develop a list. The executive does not travel on parliamentary visits.

Professional development and mentoring networks for both staff and Members should be established and maintained with small regional or Australian legislatures such as the ACT or Northern Territory Legislative Assemblies. A systematic, strategic mentoring and professional development network would greatly enhance the role of staff and Members of the Legislative Assembly. Mentors should be chosen according to their ability to shape strategic thinking and communicate flexibly and skilfully as part of developing productive professional development and mentoring relationships.

2.5.4. Recommendations

23. That the Assembly consider the appointment, rather than election, of permanent staff and providing security of tenure to experienced and qualified Legislative Assembly officers;
24. That a parliamentary research unit is established and that its task involves producing briefing papers on proposed legislation and other issues Members need information on;
25. That priorities for public sector leadership be set and that a workshop/orientation module be prepared and conducted for new Members of the Legislative Assembly – inviting a relevant person from one of the regional, New Zealand or smaller Australian legislatures and/or public sector/academia to prepare and conduct the workshop in conjunction with the Department of the Legislative Assembly of Tonga;
26. That staff and Members of the Legislative Assembly are provided training in technical courses such as computer skills including internet use, management and financial/accounting skills;
27. That newly appointed staff, Speakers and committee Chairs be sent on short-term attachments to other legislatures of similar size and/or the smaller Australian legislatures; and
28. That professional development and mentoring networks for both staff and Members of the Legislative Assembly, particularly women, be established and maintained with small regional or Australian legislatures such as the ACT or Northern Territory Legislative Assemblies.

2.6. Review of Women's Participation and Representation

It is generally recognised that the incorporation of women into positions of authority in Tonga's political domains such as the Legislative Assembly and the civil service is incomplete. No women have become ministers in the government. The number of women in the senior ranks of the public service is limited. There are no female heads of departments. One woman is Deputy Chief Secretary and other women do hold senior positions but disproportionately to men. The Clerk of the Legislative Assembly is a woman, first elected to the position in 1996. The majority of women in the public service, however, are employed in lower level, primarily clerical, positions. Within the legal field, there are no women in the Law Association and no fully qualified women in private practice.

Only three women have been elected to the Legislative Assembly, one in the late 1970s, one in the early 1980s, and another in the mid-1990s. There are no women members in the current House. Legislative Assembly elections are male dominated, and success

depends on how vocal candidates are on issues. There are very few female candidates, according to the Supervisor of Elections, Mr Simi Tekiteki. At the by-election for a peoples' representative for Ha'apai district in February 2001, there were only two women out of nine candidates contesting the election. In the 1999 national election there were only three female candidates out of 30 candidates contesting the nine peoples' representatives seats.

Women generally tend to be marginalised from the formal political processes due to the strong influence of cultural norms, customs and religion. Mrs Fuiva Kavaliku, Secretary of Langafonua 'A Fafine Tonga (National Council of Women), points out that the current structure of the Legislative Assembly prevents women wanting to participate in the formal political process from doing so. Consequently they would rather work outside the Legislative Assembly to assist their communities. It is important to overcome these problems through voter education and involving men in this will be crucial to its success.

Despite the situation in the Legislative Assembly, women are active in the private sector and non-government organisations. Women are indirectly influential in the decision-making process, according to Mrs Kavaliku, through their role in the private sphere. Women are often at the forefront of trying to apply western ideas in Tonga, but with limited success. While very few women reach senior civil service levels, women are emerging as an influential economic force.

Several factors contribute to women's under-representation in formal decision-making, including their commitments in private, domestic realms and barriers to their pre-selection at the local level. There are traditional gender prejudices preventing women from participating fully in the formal political structure. Mr Niva Melekiola, Town Officer for Lapaha, points out that there is a popular perception that women are 'too weak to talk straight'. Historically, according to Mrs Fuiva Kavaliku, women have had a 'behind-the-scenes' role in decision-making. Although women are not intentionally marginalised, interviewees expressed the view that traditional cultural constraints operate to women's disadvantage.

Opportunities for women to actively participate in the formal political processes are also limited by socio-economic factors. Tongan society is patrilineal in that land is inherited through a male heir and the land tenure system does not entitle women to hold land. However, a number of women are advocating reform of land ownership through non-government organisations such as the Catholic Women's League. Mrs Kavaliku points out that consultation with women in rural areas indicates they prefer men retaining the ownership of land, with women having access to land through leasing arrangements. Women may also be prevented from active participation by 'heavy domestic workloads' and consequent lack of time. Unemployment of women who have completed secondary education is a major issue of concern. Other issues of concern to women include youth problems such as the consumption of addictive drugs and teenage pregnancies, human rights, and legal literacy.

According to the President of Tongan Association of Non-Government Organisations, Mr Simione Silapelu, Members of the Legislative Assembly tend to have limited awareness

of grass roots level issues affecting women. Mrs Betty Blake, President of the Catholic Women's League, points out that female Members of the Legislative Assembly are necessary because many issues specific to women are not understood and thus ignored by the Assembly. Development programs need to address the socio-economic position of women generally. There is also a need to empower women through education and encouraging their involvement in formal decision-making processes. Education also needs to incorporate men to change their attitudes to women's role in formal decision-making.

A number of interviewees suggested that a seat in the Legislative Assembly should be reserved for women candidates. However, Section 4 of the Constitution prohibits the enacting of laws for one class or group at the expense of another class. The Constitution, therefore, would have to be amended in order to reserve a seat for female candidates. Miss Polotu Fakafanua of the Women and Development Centre, Prime Minister's Office, is uncertain as to how effective reserving a seat in the Assembly for female candidates would be. Miss Fakafanua believes public awareness training, including encouraging voter registration, is far more important.

Women's Groups

The Langafonua 'a Fafine Tonga (National Council of Women) was established in the 1950s by the late Queen Salote Tupou III as the umbrella body for women's groups throughout the Kingdom. It promotes the 'vision' of women working together, passing on traditional practices to the next generation and assisting with the development of women in society. This approach aims to ensure that women are automatically part of the formal political structure. Mrs Fuiva Kavaliku, Secretary of Langafonua 'A Fafine Tonga, sees a number of critical areas for improving the role of women in Tongan society including:

- ? Capacity building
- ? Women in health and environment
- ? Family and women
- ? Economic empowerment

The Catholic Women's League was established in 1992. It aims to build and develop women through a holistic approach. In 1995 the first conference and election of office bearers was held. The Catholic Women's League has three priorities, according to Mrs Betty Blake, President of the Catholic Women's League - education for women, a crisis centre for women and social issues centred on the family. A project on legal issues for women and children was established in February 1997. This project involves workshops, consultation and discussion with women about their human rights. However, it is difficult to make progress because people feel that they should not talk about legal and human rights, especially those of women.

The Women and Development Centre in the Prime Minister's Office was established in 1993 and it is in the final stages of preparing the Draft National Policy on Gender and Development. The draft policy focuses on education and training and not on political participation for women. Prior to the last national election in 1999 the Women and Development Centre and the National Council of Women, with the technical assistance of UNIFEM Pacific, conducted workshops to support women wishing to participate as candidates in the election. Four women preparing to nominate as candidates for the 1999 Legislative Assembly elections were provided with training on strategies to assist them with their campaigning.

2.6.1. Recommendations

29. That the strategic objectives and action plans of the Women and Development Centre, in particular the Draft National Policy on Gender and Development, be supported;
30. That every bill introduced to the Legislative Assembly should include a gender impact analysis;
31. That concerted efforts are made to raise the standard of debates within the Legislative Assembly in terms of both tone and quality;
32. That training courses for women be conducted in leadership skills, communication, presentation and writing skills and in understanding the Constitution and laws of Tonga and the legislative process; and
33. That women's groups should be supported financially and technically in undertaking political education activities to encourage women to stand as candidates for election to Legislative Assembly and to encourage people to vote for female candidates, thereby changing the popular perception that 'politics is not a suitable pursuit for women'.

Appendix A: Terms of Reference for Tonga Legislative Needs Assessment

Areas for Institutional and Capacity Strengthening

The major challenge for the Kingdom of Tonga and its democracy is to sustain the democratic changes in society and to maintain continued support for reforms among its governance institutions. Capacity- and institution-building support to the Legislative Assembly will be of great value for strengthening parliamentary democracy on the one hand, and for enhancing legislative-parliamentary, parliamentary oversight and parliamentary-constituency relations, on the other.

Tonga's parliamentarians are limited in their knowledge and skills required for undertaking a sound professional analysis of draft laws prepared by Government agencies, particularly on such critical issues as budget preparation, market economics, aid co-ordination and aid management, the role of state in a modern democracy, decentralisation, etc. The *existing human resource constraints* in the Legislative Assembly limit the effectiveness of parliamentarians in performing their mandated tasks and make difficult the practical implementation of weak and vaguely formulated laws. There is a need for technical expertise to provide support to all MPs on various issues to help them scrutinise proposed legislation and contribute effectively to parliamentary debates. Technical expertise is also needed so that proposed laws can be harmonised with existing ones.

It is important that *parliament-constituency relationships* are enhanced by introducing appropriate mechanisms to improve parliamentarians' accountability vis-à-vis their constituents. This mechanism should enable the electorate to assess the effectiveness of MPs in representing their aspirations in the public decision-making processes, as well as their ability to explain the importance of decisions made and laws adopted by the Legislative Assembly.

Most important to be improved is the Legislative Assembly's *oversight* role. The Legislative Assembly needs to consider whether it is now appropriate to establish other oversight committees of the Legislative Assembly. The role of the Public Accounts Committee has to be strengthened in accordance with the changes in emphasis of the National Budgets, where resources are now allocated based on achievable targets. The Committee needs to have the appropriate powers to demand disclosure and prompt accountability from any government agency, public enterprise and any other entity, including NGOs, who received public funding.

Legislating procedures of the Legislative Assembly need to be reviewed to determine whether there are sufficient mechanisms for the inclusion of people in the legislative process. The Rules for Proceedings of the Legislative Assembly need to adequately provide for peoples' views on proposed legislation, even if a Government certified a proposed legislation as urgent. Regulatory provision should also be sufficient to allow for

all parliamentarians to have adequate understanding of proposed legislation before parliamentary debate.

Many parliamentarians recognise *a need for reviewing the Law on the Legal Status of Members of Parliament and their codes of conduct*. The training needs and a “codes of conduct” for all parliamentarians should strengthen the performance of MPs as well as the integrity of the Legislative Assembly.

Objectives of the Needs Assessment Study

1. Assess the existing national legislation related to the Legislative Assembly and its Members;
2. Review the existing mechanisms for legislative–parliamentary, parliamentary oversights and parliamentary-constituency relations;
3. Conduct a needs assessment to address the gender imbalance in parliamentary representation and legislative consideration;
4. Based on the above three objectives, develop a report with the recommendations on a concrete set of initiatives to be implemented by the Legislative Assembly.

Tasks and Responsibilities

The assessment mission, under the over-all direction of the Regional Programme Manager of GOLD and the Resident Representative of UNDP for the Kingdom of Tonga will:

Conduct a review of the existing key legal documents, including the Constitution of Tonga, Electoral Laws, and Rules and Procedures of the Legislative Assembly, to assess if the legal framework is adequately contributing to effective law making process in Tonga. In this effort, consultations with members of the Standing Committee, present and former Members of the Legislative Assembly, representatives of the Executive Branch, the Judiciary, civil society organisations (including women NGOs), and the media will be undertaken. As a result of this assessment, the concrete recommendations on how to improve the current legal and institutional system will lay the groundwork for a solid proposal on a technical assistance to the Legislative Assembly.

Assess the existing parliament-constituency relationship to suggest better mechanism aimed at strengthening parliamentarians’ accountability vis-à-vis their constituents. This mechanism should enable the electorate to assess the effectiveness of MPs in representing their aspirations in the public decision-making processes, as well as their ability to explain the importance of decisions made and laws adopted by the Legislative Assembly.

Assess the law-making procedures of the Legislative Assembly and recommend ways in which this process might be improved. The improved process should maximise the participation of all constituents in the legislative process. The new proposed mechanisms

(if any) of this improved process should provide people the opportunity to articulate their comments on proposed legislation in a timely manner.

Assess the oversight role of the Legislative Assembly and the effectiveness of the Public Accounts Committee in holding users of public funds to account. Recommend ways in which this function might be improved, including the role of the Auditor-General and the relevant powers required by oversight committees to impose consequences for non-compliance by government agencies with their accountability deadlines.

Assess the existing human resource constraints that limit the effective functioning of the Legislative Assembly and parliamentarians, in order to develop a comprehensive strategy/plan for addressing the current needs of parliamentarians to improve their professional capacity.

Review the current policies and, what is more important, practices of the Legislative Assembly, parliamentary fractions, and NGOs aimed at moving from 'de jure' to 'de facto' equality and strengthening women's participation in political leadership, in general and women's representation, in particular. This review will be undertaken through existing policy documents as well as active discussions with present and past MPs, heads of women NGOs and other civil society organisations.

Recommend ways in which potential and existing women leaders will be assisted in building skills, confidence and opportunities through training and other support activities; advocacy through media and gender sensitive surveys/researches to address problems relating to social relations and attitudes which perpetuate gender inequality. Emphasis should be placed on involving both women and men throughout of the design and implementation of a support programme for the Legislative Assembly.

Expected Outputs

Upon completion of the assessment mission and discussions with key stakeholders, the consultant is expected to deliver a report with the recommendations on concrete initiatives to be implemented by the Legislative Assembly.

Appendix B: Country Visit Program

The country visit took place between 3 and 11 February 2001. A program was prepared by the Clerk of the Legislative Assembly of Tonga, Ms Fatai Pale, in conjunction with the consultant. The program was as follows:

Sunday 4 February:

Briefing/orientation by Clerk of the Legislative Assembly of Tonga, Ms Fatai Pale

Monday 5 February:

Examination of key legal documents;

Discussion with Tongatapu No 1 Peoples' Representative, Mr Akilisi Pohiva;

Discussion with President of Tongan Association of Non-Government Organisations (TANGO), Mr Simione Silapelu

Tuesday 6 February

Discussion with Mr Semisi Kailahi, TV Talk Show Host (Channel 7) and commentator on political/social issues;

Discussion with Mr Teisina Fuko MP, Peoples' Representative for Ha'apai, Member of the Standing Committee on Bills;

Discussion with Hon Fusitu'a, Noble and former Speaker of Legislative Assembly;

Discussion with Mr Niva Melekiola, Town Officer for Lapaha;

Discussion with Mrs Fuiva Kavaliku, Secretary of Langafonua 'A Fafine Tonga;

Discussion with Mrs Betty Blake, President of Catholic Women's League, Legal Literacy Training Officer.

Wednesday 7 February

Discussion with Hon. Fielakepa, Minister of Lands, Survey and Natural Resources, member of the Law Reform Committee (Cabinet sub-committee), and member of the Standing Committee on Bills;

Discussion with Mr Simi Tekiteki, Supervisor of Elections.

Thursday 8 February

Discussion with Miss Polotu Fakafanua, Women and Development Centre, Prime Minister's Office;

Discussion with Mr John Cauchi, Senior Crown Counsel, Crown Law Chambers;

Discussion with Mr Pohiva Tu'i'onetoa, Auditor-General of Tonga;

Discussion with Hon. Cecil Cocker, Minister of Works, Chairman of the Standing Committee on Finance (former Minister of Finance).

Friday 9 February

Discussion with Hon. Nuku, Nobles Representative of Eua, member of the Standing Committee on Finance;

Discussion with Clerk of the Legislative Assembly, Ms Fatai Pale;

Review of the existing key legal documents in collaboration with the Clerk

Appendix C: Consultant

Mr Quinton Clements is a Senior Research Officer in the Committee Office, Department of the House of Representatives, Parliament of Australia. He has served as Inquiry Secretary to the Joint Standing Committee on Electoral Matters. Mr Clements is currently completing his PhD at the Australian National University. Mr Clements was previously engaged by the United Nations Development Programme to undertake Legislative Needs Assessments of the Parliaments of Nauru, Kiribati and Solomon Islands. He also attended the *Pacific Regional Conference on Governance for Parliamentarians* held in March 2000 in Nadi, Fiji. He undertook the legislative needs assessment of Tuvalu in December 2000, and the legislative needs assessments of Tonga and Solomon Islands in February 2001.