Overall Score:

65 - Weak

Legal Framework Score:

62 - Weak

Actual Implementation Score:

64 - Weak

Category I. Civil Society, Public Information and Media

I-1. Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:
There is no specific legislation, and the Constitution does not specifically provide for freedom of assembly, but it is implied in the general rights and freedoms.

References:

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.
1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

**YES | NO**

**Comments:**
There is no law specifically allowing this, but nor is there any prohibition or restriction, and CSOs do receive foreign funding.

**References:**
None

**YES:** A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

**NO:** A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

**YES | NO**

**Comments:**
CSOs operate in a free and open environment.

Under the Charitable Trusts Act c.30 all such registered organizations are required to submit annual audited accounts to the Registrar of Charitable Trusts. This would not necessarily reveal specific sources of funds. Further there appears to be no formal requirement that societies become incorporated or register as charitable trusts.


**References:**
No specific legislation.

**YES:** A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

**NO:** A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

83

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.
100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

Comments:
Hitherto, the level of effective input has been low, but the situation is changing, and CSO input is increasingly sought and accepted by government. Government called for public submissions on constitutional change and this is continuing, but is outside the time-frame (2007-2008) for this report.

References:
Drew Havea, Chairman, Civil Societies Forum of Tonga, 14 June 2009, Suva, Fiji.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku'alofa, Tonga.
0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

References:
Drew Havea, Chairman, Civil Societies Forum of Tonga, 14 June 2009, Suva, Fiji.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku alofa, Tonga.

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:
Drew Havea, Chairman, Civil Societies Forum of Tonga, 14 June 2009, Suva, Fiji.
Kalafi Moala, Journalist and media proprietor, 17 June, Nuku’alofa, Tonga.

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.
3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

References:
Drew Havea, Chairman, Civil Societies Forum of Tonga, 14 June 2009, Suva, Fiji.
Kalafi Moala, Journalist and media proprietor, 17 June, Nuku’alofa, Tonga.

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:
Drew Havea, Chairman, Civil Societies Forum of Tonga, 14 June 2009, Suva, Fiji.
Kalafi Moala, Journalist and media proprietor, 17 June, Nuku’alofa, Tonga.

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

4a. In law, citizens have a right to organize into trade unions.
Comments:
Such trade unions as have been formed are professional organizations, such as teachers’, nurses’, etc. The only impediments to other workers organizing are practical ones associated with the smallness of scale and unsophistication of the work force.

References:

<table>
<thead>
<tr>
<th>YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.</td>
</tr>
</tbody>
</table>

4b. In practice, citizens are able to organize into trade unions.

| 100 | 75 | 50 | 25 | 0 |

Comments:
Unions have little engagement with the political process, but there is no evidence of workplace intimidation, retribution for organisers, etc.

References:
Drew Havea, Chairman, Civil Societies Forum of Tonga, 14 June 2009, Suva, Fiji

<table>
<thead>
<tr>
<th>100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.</th>
</tr>
</thead>
<tbody>
<tr>
<td>75:</td>
</tr>
<tr>
<td>50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.</td>
</tr>
<tr>
<td>25:</td>
</tr>
<tr>
<td>0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.</td>
</tr>
</tbody>
</table>

I-2. Media
5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

100

6a. In practice, the government does not create barriers to form a print media entity.
100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:
No licence is necessary. The only licence required is under the Business Licences Act 2002; an applicant being refused a licence may appeal to the Minister for Labour, Commerce and Industry. Business Licences Act 2002, c. 12. [http://legislation.to/Tonga/DATA/PRIN/2002-023/BusinessLicencesAct2002.pdf] The Newspaper Act 2003 which required licences was declared unconstitutional by the Supreme Court almost as soon as it was passed.

References:
Business Licensing Office, Ministry of Labour, Commerce & Industries.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.
6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

Comments:
Business Licences Regulations 2007, Schedule 1 gives the fee for a new license as TOP$75; renewal (annual) TOP$65.

7. Are citizens able to form broadcast (radio and TV) media entities?
7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

|   | 100 | 75 | 50 | 25 | 0 |

References:
Kalafi Moala, journalist and broadcast media proprietor, 17 June, Nuku'alofa, Tonga
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku'alofa, Tonga.

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:
Broadcast licence applications are considered by the Communications Committee in the Prime Minister’s Office. An aggrieved applicant can appeal to the Minister responsible for the Department of Communication.

References:
Kalafi Moala, journalist and broadcast media proprietor, 17 June, Nuku'alofa, Tonga

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.
7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

| 100 | 75 | 50 | 25 | 0 |

Comments:
Long delays have been experienced in getting such licenses. Over a period of 20 years or so there would have been only 2 or 3 applications, and only 1 in the report period.

References:
Kalafi Moala, journalist and broadcast media proprietor, 17 June, Nuku'alofa, Tonga
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku'alofa, Tonga.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

| 100 | 75 | 50 | 25 | 0 |

Comments:
Moala is the only entrepreneur to have recently obtained a license. Costs were not a major hurdle.

References:
Kalafi Moala, journalist and broadcast media proprietor, 17 June, Nuku'alofa, Tonga

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.
8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

References:
Kalafi Moala, journalist and media proprietor, 17 June, Nuku'alofa, Tonga
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku'alofa, Tonga.

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

References:
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku'alofa Tonga
Filo 'Akau'ola, journalist and editor, 23 June 2009, Nuku'alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku'alofa, Tonga.

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:
50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

100

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:
The act distinguishes between criminal and civil defamation; in the former truth is a not a defense unless it can be shown that publication was in the public interest (c.7); truth is an absolute defense in the case of civil defamation (c. 14).

References:

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

References:
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku alofa Tonga
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku alofa, Tonga.

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.
50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

References:
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku'alofa, Tonga.
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku'alofa Tonga

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

50

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

Comments:
The only relevant act is the Business Licenses Act, and it makes no such requirement.
References:

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

Comments:
The Act does not require public disclosure of ownership.

References:

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:
Conflicting opinions were expressed by informants as to the success with which The Tongan Media Council Code of Ethics was complied with. Generally reasonable ethical standards apply but there is criticism within the profession of some egregious exceptions.

References:
Filo 'Akau'ola, journalist and editor, 23 June 2009, Nuku'alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku'alofa, Tonga.
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku'alofa Tonga

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:
Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

Editors and journalists are widely known to sell favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

In practice, during the most recent election, political parties or independent candidates received fair media coverage. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

In practice, political parties and candidates have equitable access to state-owned media outlets. State owned media offered equal time to all candidates for political broadcasting.

References:
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku'alofa Tonga
Filo ‘Akau‘ola, journalist and editor, 23 June 2009, Nuku'alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku'alofa, Tonga.
100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:
Such events would certainly have been reported had they occurred, and none were.

References:
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku'alofa Tonga
Filo 'Akau'ola, journalist and editor, 23 June 2009, Nuku'alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku'alofa, Tonga.

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.
YES | NO

Comments:
No reports, and there certainly would have been if such events had occurred.

References:
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku’alofa Tonga
Filo ‘Akau’ola, journalist and editor, 23 June 2009, Nuku’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:
No reports and there would have been if such had occurred.

References:
Filo ‘Akau’ola, journalist and editor, 23 June 2009, Nuku’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku’alofa Tonga

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual’s work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

89

I-3. Public Access to Information

12. Do citizens have a legal right of access to information?
12a. In law, citizens have a right of access to government information and basic government records.

**YES | NO**

**Comments:**
Laws on specific matters generally indicate what information may given to the public.
There is no Freedom of Information legislation.
The Official Secrets Act c.3.1.a in forbidding the divulging of information to unauthorised persons appears to imply an expectation that information may be given unless there is good reason not to.
Information can be obtained through a court order.

**References:**
There is no specific legislation or automatic right.

**YES:** A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

**NO:** A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

**YES | NO**

**Comments:**
An applicant may apply to the Supreme Court for an order to be allowed information.

**References:**
No specific legislation or institution.

**YES:** A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

**NO:** A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.
YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

90

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:
Witness testimony varies, and all agree that some people are able to obtain information more easily than others, probably depending on status and familiarity of dealing with government. However, mundane information is generally easily available; politically sensitive information may be subject to long and unjustified delays.

References:
Drew Havea, Chairman, Civil Societies Forum of Tonga, 14 June, 2009, Suva, Fiji.
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku’alofa Tonga
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.
Information when it is available is not subject to a fee, only the cost of copying. Most official documents, such as parliamentary minutes and reports can be bought cheaply at the Government Printer’s Office.

References:
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.
Drew Havea, Chairman, Civil Societies Forum of Tonga, 14 June, 2009, Suva, Fiji.
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku’alofa Tonga

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

References:
Drew Havea, Chairman, Civil Societies Forum of Tonga, 14 June, 2009, Suva, Fiji.
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku’alofa Tonga
Filo ‘Akau’ola, journalist and editor, 23 June 2009, Nuku’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:
The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

References:
Filo ‘Akau’ola, journalist and editor, 23 June 2009, Nuku’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.
Drew Havea, Chairman, Civil Societies Forum of Tonga, 14 June, 2009, Suva, Fiji.
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku’alofa Tonga

In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

Comments:
A reason is almost invariably given.

References:
Drew Havea, Chairman, Civil Societies Forum of Tonga, 14 June, 2009, Suva, Fiji.
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku’alofa Tonga
Filo ‘Akau’ola, journalist and editor, 23 June 2009, Nuku’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.
The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

**YES** | **NO**

References:
Constitution c. 64

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

**YES** | **NO**

References:
YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

100

15a. In practice, all adult citizens can vote.

Comments:
Ballot stations are provided within easy reach of all residents in electoral areas, and officials and police provide supervision to ensure that all may exercise their rights to vote.

References:

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

Comments:
From observation of several elections by the author, the process appears to be robust.

References:
Pita Vuki, Supervisor of Elections, Government of Tonga. 22 June 2009. Nuku’alofa, Tonga,
100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100  |  75  |  50  |  25  |  0

Comments:
Personal observation over two decades, confirms that the law in this respect is strictly adhered to.

References:
Pita Vuki, Supervisor of Elections, Government of Tonga. 22 June 2009. Nuku’alofa, Tonga,

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

100

16a. In law, all citizens have a right to form political parties.

YES  |  NO

Comments:
There is no legislation pertaining to political parties, but there is no impediment to their formation and parties have been formed without obstruction by government or other forces.
YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:
Anyone qualified to vote may stand as a candidate, except for persons against whom a court order for debt remains outstanding.

References:

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:
At the time of the 2008 election two parties had been formed but neither had a formal campaign machine or party manifesto, and party membership was merely token. Members in effect campaigned as individuals.

References:

100: While there is no guarantee of electoral success, political parties can form freely without opposition.
75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100  |  75  |  50  |  25  |  0

Comments:
Personal observation confirms that elections are well contested; candidates on registering are required to post a deposit, but this does not constitute a serious obstacle to nomination.

References:

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100  |  75  |  50  |  25  |  0

Comments:
Confirmed by long observation. The Tongan parliament is not structured on party lines and party discipline is weak or non-existent. However, non-government members can introduce legislation, force debates and votes, and reject government motions.
II-2. Election Integrity

18. Is the election monitoring agency effective?

20

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:
There is no separate election monitoring agency but the electoral process is not vulnerable to political manipulation. Nor is there any incentive to manipulate elections because elected representatives do not form government.

References:
Pita Vuki, Supervisor of Elections, Government of Tonga. 22 June 2009. Nuku’alofa, Tonga,

Eseta Fusitu’a, Minister for Information, and formerly Chief Secretary and Secretary to Cabinet, Government of Tonga, 21 June 2009, Nuku’alofa, Tonga.


YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.
18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

Comments:
There is no election monitoring agency other than the electoral administration itself.
Staff of the Supervisor of Elections are appointed after open advertisement, and in accordance with Public Service regulations under the Public Service Act.

References:

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

Comments:
Electoral officials are appointed according to Public Service Regulations under the Public Service Act. The staff though small in number is sufficient for routine administration of electoral affairs, and at the time of general elections is supplemented by staff from other branches of the Public Service, and are given appropriate training for their roles.

References:

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:
50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

| 100 | 75 | 50 | 25 | 0 |

Comments:
There is no formal, detailed report on the election process. The Supervisor of Elections reports the outcome and releases the voting figures. The only other report is a general one that is included in the annual report of the Prime Minister’s Department to parliament.

References:
Pita Vuki, Supervisor of Elections, Government of Tonga. 22 June 2009. Nuku’alofa, Tonga,
‘Eseta Fusitu’a, Minister for Information, and formerly Chief Secretary and Secretary to Cabinet, Government of Tonga, 21 June 2009, Nuku’alofa, Tonga.

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

| 100 | 75 | 50 | 25 | 0 |

Comments:
There is no separate independent election monitoring agency.

References:
Pita Vuki, Supervisor of Elections, Government of Tonga. 22 June 2009. Nuku’alofa, Tonga,
‘Eseta Fusitu’a, Minister for Information, and formerly Chief Secretary and Secretary to Cabinet, Government of Tonga, 21 June 2009, Nuku’alofa, Tonga.
19. Are elections systems transparent and effective?

100

19a. In practice, there is a clear and transparent system of voter registration.

Comments:
Registration is a continual process throughout the inter-election periods, with the Supervisor of Elections liaising with local government officers, and periodical visits by his staff to villages to inform and to update the roll.

References:
'Eseta Fusitu’a, Minister for Information, and formerly Chief Secretary and Secretary to Cabinet, Government of Tonga, 21 June 2009, Nuku’alofa, Tonga.

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.
Comments:
Any voter or candidate, or anyone entitled to vote, may lodge a petition if he/she has grounds for thinking that an election (in general or the election of a single representative) was invalid. Such a person lodges the petition with the Registrar of the Supreme Court and the matter proceeds to trial. The Supreme Court rules on the validity of the election. C.17 of the act allows any candidate to formally request within one week of the election the Supervisor of Elections to conduct a re-count.

References:

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:
It seldom happens, but on occasions that have been reported, the investigations have been promptly dealt with in the correct manner. During the reporting period (2007-2008) a general election was held, and gave rise to only one challenge, leading to a recount, which verified the outcome.

References:
Eseta Fusi'utu, Minister for Information, and formerly Chief Secretary and Secretary to Cabinet, Government of Tonga, 21 June 2009, Nuku'alofa, Tonga.

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.
19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:
In my observation of several elections there has never been any public suggestion of military or police interference.

References:
Pita Vuki, Supervisor of Elections, Government of Tonga, 22 June 2009. Nuku’alofa, Tonga,
‘Eseta Fusitu’a, Minister for Information, and formerly Chief Secretary and Secretary to Cabinet, Government of Tonga, 21 June 2009, Nuku’alofa, Tonga.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:
There is no legal impediment to international observation.

References:
No legislation specifically provides for observers. Relevant legislation including the Constitution, Legislative Assembly Act and Electoral Act are silent on the matter.

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.
19f. In practice, election observers are able to effectively monitor elections.

Comments:
The 2008 is the only one at which official observers have been present; they were invited by the government and were permitted to do their work freely.

References:
‘Eseta Fusitu’a, Minister for Information, and formerly Chief Secretary and Secretary to Cabinet, Government of Tonga, 21 June 2009, Nuku'alofa, Tonga.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers’ activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers’ movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. Is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:
The position of the Supervisor of Elections is established by the Electoral Act. His office is a unit within the Prime Minister’s Department. He is responsible for the proper conduct of elections. There is no separate agency that scrutinise the work of the Supervisor of Elections.

References:
The Supervisor of Elections.
II-3. Political Financing

20. Are there regulations governing the financing of political parties?

  0

20a. In law, there are regulations governing private contributions to political parties.

  YES | NO

Comments:
Political party development is so recent and rudimentary in Tonga that the issues leading to the regulation of financing elsewhere have not arisen. Parties play no significant part in Tongan political life.

References:
There is no legislation.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to political parties.

  YES | NO

Comments:
The issue is premature in the present stage of political development in Tonga.


References:
There is no legislation pertaining to this question.

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on corporate donations to political parties.

YES | NO

Comments:
The issue is premature in the present stage of political development in Tonga.

References:
No legislation.

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

Comments:
The issue is premature in the present stage of political development in Tonga.

References:
No legislation.

YES: A YES score is earned if there are any limits in size on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for the disclosure of donations to political parties.
YES | NO

Comments:
The issue is premature in the present stage of political development in Tonga.

References:
No legislation.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor’s name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances and expenditures of political parties.

YES | NO

Comments:
The issue is premature in the present stage of political development in Tonga.

References:
No legislation.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties’ finances and expenditures or if such requirements exist but allow for parties to self-audit.

20g. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

Comments:
The issue is premature in the present stage of political development in Tonga.
21. Are there regulations governing the financing of individual political candidates?

17

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | NO

References:
No legislation on the matter.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to individual political candidates.

21b. In law, there are limits on individual donations to political candidates.

YES | NO

References:
No legislation on the matter.

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.
YES | NO

References:
No legislation on the matter.

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

References:
No legislation on the matter.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor’s name or amount given, or the regulations allow for anonymous donations.

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | NO

Comments:
Candidates are required to submit statements of their campaign expenses to the Supervisor of Elections.

References:

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate’s campaign finances and expenditures. The auditing is performed by an impartial third-party.
NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

Comments:
Each candidate may spend no more than TOP$10,000 in campaign expenses. A return of expenses must be submitted to the Supervisor of Elections within one month after the date of the election.

References:

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates’ campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

22. Are the regulations governing the political financing of parties effective?

0

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

References:
No such law exists.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.
25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

References:
No applicable legislation.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

References:
No applicable legislation.

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:
Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:
No such agency exists.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, thought limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:
No such agency exists.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:
The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

In practice, contributions to political parties are audited.

References:
No applicable legislation.

Political party finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

Are the regulations governing the political financing of individual candidates effective?

In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

References:
There is no relevant legislation.
100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

References:
No applicable legislation.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates’ campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0
Comments:
If there is evidence or allegation that a candidate has exceeded the legal limit for campaign spending, the Supervisor of Elections refers the matter to the Auditor General for investigation. In practice, this has rarely happened.

References:
Pita Vuki, Supervisor of Elections. 22 June 2009, Nuku’alofoa, Tonga.
Pohiva Tu’ionetoa, Auditor-General, 23 June 2009, Nuku’alofoa, Tonga.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates’ campaigns. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, thought limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates’ campaigns imposes penalties on offenders.

100  |  75  |  50  |  25  |  0

Comments:
If the Auditor General finds that a candidate has violated the spending limit, he reports the matter to the Attorney General who prosecutes the offender in the Supreme Court. This has rarely happened in practice.

References:
Pita Vuki, Supervisor of Elections. 22 June 2009, Nuku’alofoa, Tonga.
Pohiva Tu’ionetoa, Auditor-General, 23 June 2009, Nuku’alofoa, Tonga.
‘Aminiasi Kefu, Solicitor General, 19 June 2009, Nuku’alofoa, Tonga.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

23e. In practice, the finances of individual candidates’ campaigns are audited.
References:
There is no legislation applying to contributions to campaign expenses.

<table>
<thead>
<tr>
<th>100</th>
<th>75</th>
<th>50</th>
<th>25</th>
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</thead>
</table>

100: The finances of individual candidates’ campaigns are regularly audited using generally accepted auditing practices.

75:

50: The finances of individual candidates’ campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates’ campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

<table>
<thead>
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<th>100</th>
<th>75</th>
<th>50</th>
<th>25</th>
<th>0</th>
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</table>

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

References:
The question is not applicable.

<table>
<thead>
<tr>
<th>100</th>
<th>75</th>
<th>50</th>
<th>25</th>
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</thead>
</table>

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.
25. Can citizens access records related to the financing of individual candidates’ campaigns?

33

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.
Candidates invariably comply with the reporting requirements of the Electoral Act — ie submit a statement of expenditure within one month of the date of the election. Reporting is required only at election time.

References:
Pita Vuki, Supervisor of Elections, 22 June 2009, Nuku'alofa, Tonga

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<th></th>
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<tbody>
<tr>
<td><strong>100:</strong> Individual candidates disclose their sources of funding and expenditures at least every quarter.</td>
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<td><strong>75:</strong></td>
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<tr>
<td><strong>50:</strong> Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.</td>
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<td><strong>25:</strong></td>
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<tr>
<td><strong>0:</strong> Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.</td>
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</table>

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

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<tr>
<th></th>
<th>100</th>
<th>75</th>
<th>50</th>
<th>25</th>
<th>0</th>
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<tbody>
<tr>
<td><strong>100:</strong> Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.</td>
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<tr>
<td><strong>75:</strong></td>
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<tr>
<td><strong>50:</strong> Records take two to four weeks to obtain. Some delays may be experienced.</td>
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<tr>
<td><strong>25:</strong></td>
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<tr>
<td><strong>0:</strong> Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.</td>
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</table>

Comments:
Citizens do not have access to the spending reports submitted to the Supervisor of Elections.

References:
Pita Vuki, Supervisor of Elections, 22 June 2009, Nuku'alofa, Tonga
Pohiva Tu'ionetoe, Auditor General, 23 June 2009.
25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

Comments:
Citizens do not have access to the spending reports submitted to the Supervisor of Elections.

References:
Pita Vuki, Supervisor of Elections, 22 June 2009, Nuku'alofa, Tonga
Pohiva Tu'ionetoa, Auditor General, 23 June 2009.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

88

27a. In practice, the chief executive gives reasons for his/her policy decisions.
Comments:
Ministers may be questioned in parliament, and on irregular basis give press conferences. There is no censorship as such, but
government seldom takes the initiative in providing explanations.

References:
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.
William Latu, Clerk of the Legislative Assembly, 19 June 2009, Nuku’alofa, Tonga.

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly
takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such
sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The
chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized
process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the
chief executive offer no exposure to critical questions. The government and government-run media routinely sensor such
sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:
The Supreme Court has no automatic right to scrutinise legislation, but declares on the constitutionality of legislation if an act is
challenged.
Authority: William Latu, Clerk of the Legislative Assembly, 19 June 2009, Nuku’alofa, Tonga.

References:
Constitution c. 90 defines the jurisdiction of the Supreme Court.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or
constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law
or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions
that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.
Comments:
This does not happen often, and not within the reporting period. The last time this happened was in 2004; the Supreme Court found against the government, and the ruling was accepted.

References:
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku'alofa, Tonga.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

Comments:
Respondents could not cite any cases for the reporting period. The device of ‘Executive Order’ is not used as far as I could ascertain to bypass or subvert the legislature. If there is an urgent need for government action when parliament is not in session, the Privy Council (i.e. the King meeting with the ministers and governors) can pass ordinances which have the force of law, but these have to ratified at the next sitting of Parliament.

References:
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku'alofa, Tonga.
William Latu, Clerk of the Legislative Assembly, 19 June 2009, Nuku'alofa, Tonga.

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.
25: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:
There is no special immunity apart from normal parliamentary privilege. Actions by members of the executive in their private capacities are subject to the Criminal Offences Act, including misuse of authority.

References:
The Criminal Offences Act proscribes certain acts.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:
There is no special immunity apart from normal parliamentary privilege. Actions by members of the executive in their private capacities are subject to the Criminal Offences Act, including misuse of authority.

References:

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on
29. Are there regulations governing conflicts of interest by the executive branch?

0

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:
No legislation.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:
There is no legislation.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO
**Comments:**
Witnesses evinced some uncertainty about this, but there is no clear policy.

**References:**
No legislation.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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</table>

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

**YES** | **NO** |

**References:**
No relevant legislation

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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</table>

**YES** | **NO** |

**References:**
No relevant legislation

**YES:** A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**NO:** A NO score is earned if no such restrictions exist.
29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:
Former ministers, parliamentarians and officials usually seek and obtain non-public sector employment. Whether they engage in lobbying is not known. There are not professional lobbyists in Tonga.

References:
‘Eseta Fusitua, Minister for Information and Acting Minister of Justice 21 June 2009, Nuku'alofa, Tonga.
William Latu, Clerk of the Legislative Assembly, 19 June 2009, Nuku alofa, Tonga.
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nukualofa Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nukualofa, Tonga.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

References:
There are no such regulations.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside
interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:
No such disclosures are required.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

References:
There is no relevant legislation

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).
**NO:** A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
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<tbody>
<tr>
<td>100</td>
<td>Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.</td>
</tr>
<tr>
<td>75</td>
<td>Records take around two weeks to obtain. Some additional delays may be experienced.</td>
</tr>
<tr>
<td>50</td>
<td>Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.</td>
</tr>
<tr>
<td>25</td>
<td></td>
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<tr>
<td>0</td>
<td>Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.</td>
</tr>
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</table>

**References:**
No such disclosures are required.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
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<tbody>
<tr>
<td>100</td>
<td>Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.</td>
</tr>
<tr>
<td>75</td>
<td>Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.</td>
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<tr>
<td>50</td>
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<tr>
<td>25</td>
<td></td>
</tr>
<tr>
<td>0</td>
<td>Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.</td>
</tr>
</tbody>
</table>

**References:**
No such disclosures are required.
26. Can citizens sue the government for infringement of their civil rights?

**100**

26. In law, can citizens sue the government for infringement of their civil rights?

**YES | NO**

**Comments:**
The precise meaning of C.103A (an amendment passed in 2003) has not been tested in court, but there is an abundance of case law and precedent.

**References:**

**YES:** A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

**NO:** A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. Official government functions are kept separate and distinct from the functions of the ruling political party.

**100**

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

**Comments:**
There are no effective political parties, and government is not in the hands of a party. Government resources are not used for campaigning at election time. The ‘government’ (ie the cabinet) is appointed, not elected.

**References:**
Not relevant; but extended personal observation affirms the score given.

**100:** Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.
The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

YES | NO

32a. In law, the judiciary can review laws passed by the legislature.

Comments:
The Constitution does not explicitly refer to a power to declare legislation unconstitutional but it is universally understood that that is what constitutional government means, and there is precedent in Tongan legal history.

References:
The jurisdiction of the Supreme Court is at Constitution c. 90.

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.
Comments:
No instances arose during the report year.

The most recent and most significant in Tongan history were attempts in 2003-04 to control the media. Legislation passed by parliament was challenged in the Supreme Court and disallowed. The Privy Council then attempted to circumvent that by passing ordinances, but these too were disallowed on petition to the High Court. The government after several attempts respected the judgment of the Court.

References:

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:
The Criminal Offences Act makes no exemptions for members of the legislature.

References:
Constitution c. 73

Criminal Offences Act Part III Exemptions

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?
33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:
No relevant legislation.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

References:
No relevant legislation.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:
No relevant legislation.
YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

References:
No relevant legislation

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

References:
There are no such regulations.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.
33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

| 100 | 75 | 50 | 25 | 0 |

References:
There are no such regulations.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

33g. In practice, national legislative branch asset disclosures are audited.

| 100 | 75 | 50 | 25 | 0 |

References:
No such disclosures are required.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

34. Can citizens access the asset disclosure records of members of the national legislature?
34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:
There is no relevant legislation and no asset disclosure.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:
No such disclosures are required.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0
100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

35. Can citizens access legislative processes and documents?

100

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:
A Hansard is published usually within a few days, and copies are readily available from the Government Printer, as are copies of all legislation and government reports.

Legislation is available on line at http://legislation.to/cms/legislation.html

References:
There is no explicit legal provision.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.
Comments:
Public documents are easily obtained from the government printer, and increasingly important documents are placed on
government websites.

References:
Pohiva Tu'ionetoa, Auditor General, 23 June 2009, Nuku'alofa, Tonga.
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku'alofa Tonga
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku'alofa, Tonga.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are
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35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

Comments:
Public documents are readily available from the government printer, and increasingly public documents are being placed on
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References:
Pohiva Tu'ionetoa, Auditor General, 23 June 2009, Nuku'alofa, Tonga.
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku'alofa Tonga
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100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as
by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific
office, such as a regional or national capital.

25:
0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

50

III-3. Judicial Accountability

36. Are judges appointed fairly?

67

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:
There is a formal process but it is not open to public scrutiny or debate. Judges are required to be legally qualified, with long professional experience, and are appointed by the King in Council.

In practice, the Judicial Services Commission advertises internationally, scrutinizes applications and makes a recommendation to the Minister for Justice by whom it is submitted to the King in Council. There are currently three Supreme Court justices. The Chief Justice is a New Zealand judge, the others are an Australian and a British judge.

References:


YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.
100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES  |  NO

Comments:
The procedure is that the Judicial Services Committee considers candidates after open advertisement of vacancies, and makes recommendation to the Minister of Justice by whom it is referred to the Privy Council which consists of the King with Cabinet. The appointment is made formally by the King.

References:

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

37. Can members of the judiciary be held accountable for their actions?

96

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES  |  NO

Comments:
The Court of Appeal Act in several places makes reference to written opinions and judgments, but one cannot find anything in the Supreme Court Act requiring the judge to give reasons for his judgment. However, it is invariably the practice that they do so.

References:

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:
Without or without a formal requirement, and there is some disagreement as to whether there is one, national-level judges always give their reasons in a written judgment.

References:
Aminiasi Kefu, Solicitor General, 19 June 2009, Nuku alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku alofa, Tonga.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

References:
YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES  |  NO

Comments:
Judges are appointed by the King in Council and are not subject to ministerial direction or authority. The former provision that a judge may be impeached before the Legislative Assembly, while still in the Constitution, is superseded by The Judicial Services Commission Act. The Act takes the disciplinary authority away from parliament and places it with the Commission which is independent. On receiving a complaint, the Commission conducts a preliminary investigation, and if the situation warrants, appoints a committee to investigate further. In the event of action against a judge being thought desirable, the report is tabled before the King in Council.

References:
Judicial Services Commission Act Part IV

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100  |  75  |  50  |  25  |  0

Comments:
The investigative mechanism acts on complaints received. So far there have been no cases to test this process.

References:

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies’ investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.
The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders. When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

0

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES  |  NO
YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

YES | NO

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:
There is no relevant legislation.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

Comments:
Note: all national level judges are expatriates and have been for approximately a century. As such they do not have Tongan assets and are thereby free of conflicts of interest. The Tongan government prefers foreign judges partly for this reason but mainly because it has more confidence in the independence and objectivity of foreign judges. Judges are recruited by open advertisement from other Commonwealth / Common Law jurisdictions. In practice, this means New Zealand, Australia and the United Kingdom. They are appointed on 2-year contracts renewable by mutual consent.

References:
There is no relevant legislation.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.
38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

References:
There is no relevant legislation.

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

References:
No such regulations exist.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.
References:
There are no such regulations.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

38g. In practice, national-level judiciary asset disclosures are audited.

References:
There are no such regulations.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0
39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

References:
There is no requirement for asset disclosure.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:
No such disclosures are required.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0
100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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III-4. Budget Processes

40. Can the legislature provide input to the national budget?

67

40a. In law, the legislature can amend the budget.

YES | NO

References:
Constitution, c.78

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0
Comments:
All significant items of expenditure are included in the budget. Any variation, or any deartments exceeding their budget allocation, must obtain approval of the Legislative Assembly. In practice it does not appear that significant amendments are made to the budget by parliament.

References:
‘Eseta Fusitua, Minister for Information and Acting Minister of Justice 21 June 2009, Nuku’alofa, Tonga.
Tiofilusi Tiueti, Deputy Secretary of Finance and Planning, Government of Tonga, 23 June 2009, Nuku’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.

<table>
<thead>
<tr>
<th>100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.</th>
</tr>
</thead>
<tbody>
<tr>
<td>75:</td>
</tr>
<tr>
<td>50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive’s personal budget, or other expenses.</td>
</tr>
<tr>
<td>25:</td>
</tr>
<tr>
<td>0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.</td>
</tr>
</tbody>
</table>

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

| 100 | 75 | 50 | 25 | 0 |

Comments:
Members of parliament do not have personal research staff or alternative sources of information about national economic management.

References:
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.
‘Eseta Fusitua, Minister for Information and Acting Minister of Justice 21 June 2009, Nuku’alofa, Tonga.

<table>
<thead>
<tr>
<th>100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.</th>
</tr>
</thead>
<tbody>
<tr>
<td>75:</td>
</tr>
<tr>
<td>50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.</td>
</tr>
<tr>
<td>25:</td>
</tr>
<tr>
<td>0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.</td>
</tr>
</tbody>
</table>

41. Can citizens access the national budgetary process?
41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

Comments:
There are extended negotiations among officials and cabinet ministers in the preparation of the budget, and while for some ministries relevant civil society organizations such as the Chamber of Commerce and Industry may be consulted, there is virtually no opportunity for wider public engagement.

References:
Eseta Fusitua, Minister for Information and Acting Minister of Justice 21 June 2009, Nuku’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

Comments:
There are limited opportunities for public input, and some ministries are more open to or more appropriate for public consultation than others. The government is more inclined to solicit public opinion than in previous years.

References:
Eseta Fusitua, Minister for Information and Acting Minister of Justice 21 June 2009, Nuku’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.
Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

Citizens or CSOs have no formal access to provide input to the budget debate.

In practice, citizens can access itemized budget allocations.

Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

There is no such committee.
100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

| 100 | 75 | 50 | 25 | 0 |

References:
There is no such committee.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members’ ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

| 100 | 75 | 50 | 25 | 0 |

References:
There is no such committee.
When irregularities are discovered, the committee is aggressive in investigating the government.

The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. Is there a separate legislative committee which provides oversight of public funds?

0

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:
Oversight is carried out by the Auditor-General's office. It is planned to introduce a parliamentary Public Accounts Committee in the near future.

References:
There is no formal institution

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?
44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

**YES | NO**

References:

**YES:** A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

**NO:** A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

**YES | NO**

Comments:
The words cited in the question are not used in the Code of Conduct but the Code requires impartiality, professionalism and integrity in the appointment and conduct of all employees.

References:

**YES:** A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

**NO:** A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

**YES | NO**
Comments:
There are formal procedures, but the mechanism operates within the public service, not through an independent tribunal. Aggrieved employees have a further right of appeal to Cabinet. Employees can also avail themselves of the services of the Commissioner for Public Relations [i.e. ombudsman].

References:
Public Service Grievance and Dispute Regulations.
http://legislation.to/Tonga/DATA/SUB/2002-034-03/PublicService(GrievanceandDisputeProcedures)Regulations2006.pdf

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism’s decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:
There is no automatic disqualification prescribed in law; applications for re-employment at a later date would be considered on their merits. Officials are required to perform professionally and with integrity and not bring the service into disrepute. The Disciplinary Procedures Regulations are silent as to the future employment of an former employee who had been dismissed.

References:
No specific legislative provision other than the Public Service Code of Conduct especially but not confined to cc. 2-3. [http://legislation.to/Tonga/DATA/SUB/2002-034-01/CodeofConductforthePublicService2004.pdf]

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

72

45a. In practice, civil servants are protected from political interference.
The civil service is nominally independent but in a small society it is probably impossible to ensure that non-objective considerations never apply. Neither public servants nor politicians publicly comment on each other; social pressure rather than material inducements seems to be the more common forms of interference. The fact that politicians do not actually exercise power probably reduces the scope for interference.

References:
Mishka Tuifua, Chair, Public Service Commission, 18 & 24 June 2009, Nuku’alofa, Tonga.

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

In a small society with a general shortage of highly qualified personnel it is difficult to avoid the perception of patronage in its various forms. Reforms are in progress, but for the report year, 2007-2008 it is believed that fair-hiring and promotion practices were not invariably observed.

References:
Mishka Tuifua, Chair, Public Service Commission, 18 & 24 June 2009, Nuku’alofa, Tonga.
‘Eseta Fusitua, Minister for Information and Acting Minister of Justice 21 June 2009, Nuku’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:
Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

In a small society with a general shortage of highly qualified personnel it is difficult to avoid the perception of patronage in its various forms. The well qualified tend to be well-connected. Reforms are in progress, but for the report year, 2007-2008 it is believed that fair-hiring and promotion practices were not invariably observed.

References:
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.
Mishka Tuifua, Chair, Public Service Commission, 18 & 24 June 2009, Nuku’alofa, Tonga.

Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person’s authority, responsibility and base pay.
Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position’s responsibilities, authority, or pay.

In practice, civil servant bonuses constitute only a small fraction of total pay.

Comments:
There is no system of bonuses.

References:
Mishka Tuifua, Chair, Public Service Commission, 18 & 24 June 2009, Nuku’alofa, Tonga.
‘Esita Fusitua, Minister for Information and Acting Minister of Justice 21 June 2009, Nuku’alofa, Tonga.

Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

Comments:
This information is provided in annual reports and in government budget estimates, and these are all published.

References:
Mishka Tuifua, Chair, Public Service Commission, 18 & 24 June 2009, Nuku’alofa, Tonga.
‘Esita Fusitua, Minister for Information and Acting Minister of Justice 21 June 2009, Nuku’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.
The government publishes such a list on a regular basis.

The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

The government rarely or never publishes such a list, or when it does it is wholly incomplete.

In practice, the independent redress mechanism for the civil service is effective.

In practice, the independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

In practice, in the past year, the government has paid civil servants on time.

The payroll system and budgeting system are robust and reliable, but occasionally in some ministries clerical errors or oversight have led to cases of payments being temporarily delayed.

Comments:
The only redress mechanism completely independent of the public service is through the Commissioner for Public Relations [i.e. ombudsman]. The grievance procedure for the public service appears robust, but is seldom or never appealed to by employees.

References:
Mishka Tuifua, Chair, Public Service Commission, 18 & 24 June 2009, Nuku’alofa, Tonga.
Pilimisoli Tamoua, Officer in Charge, Office of the Commissioner of Public Relations, 23 June 2009, Nuku’alofa, Tonga.
In the past year, no civil servants have been paid late.

In the past year, some civil servants have been paid late.

In the past year, civil servants have frequently been denied due pay.

In practice, civil servants convicted of corruption are prohibited from future government employment.

A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

Are there regulations addressing conflicts of interest for civil servants?

YES | NO

In law, senior members of the civil service are required to file an asset disclosure form.
YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

YES: A YES score is earned if there are regulations restricting civil servants’ ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.
Comments:
The section of the Code of Conduct prohibits the acceptance of gifts. Section d. in the same clause requires public servants to avoid conflicts of interest.

References:
Public Service Code of Conduct c.4.2.e


YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

References:
No legislative requirement for asset disclosure.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:
There are no such regulations.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.
50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100  75  50  25  0

Comments:
Informants had no definite impressions on this matter. Rumors circulate, but the level of abuse is not believed to be great.

References:
Mishka Tuifua, Chair, Public Service Commission, 18 & 24 June 2009, Nuku'alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nukualofa, Tonga.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100  75  50  25  0

Comments:
The chair of the Public Service Commission believes staff to be highly conscious of ethical conflicts. No such cases were reported in the media during the reporting year.
100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100  |  75  |  50  |  25  |  0

References:
No such disclosures are required.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES  |  NO


References:
There is no legislation requiring asset disclosure.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

| 100 | 75 | 50 | 25 | 0 |

References:
No such disclosures are required.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

| 100 | 75 | 50 | 25 | 0 |

References:
No such disclosures are required.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:
50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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### IV-2. Whistle-blowing Measures

**48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?**

13

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

**Comments:**
A whistleblower is not protected (in terms of protection against professional or other non-physical retribution) except by requirements for secrecy by investigators. The Anti-Corruption Commission Act c.42 provides for the protection of witnesses.

**References:**

**YES:** A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

**NO:** A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0
Comments:
Witness opinions vary; whistle-blowing is apparently rare, evidently because of fear of adverse consequences either socially or in employment.

References:
‘Eseta Fusitua, Minister for Information and Acting Minister of Justice 21 June 2009, Nuk’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.
Mishka Tuifua, Chair, Public Service Commission, 18 & 24 June 2009, Nuku’alofa, Tonga.

| 100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability. |
|---|---|
| 75: |
| 50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means. |
| 25: |
| 0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment. |

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:
The Commissioner for Public Relations Act requires investigations to be conducted in secret, but this provides no professional protection (protection from demotion or transfer for having blown the whistle, for instance) for someone known or suspected of having made an allegation.

References:
There are no legislative protections specifically provided for whistle-blowers.

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.
Commissioner for Public Relations Act c.17 provides for confidentiality in conducting investigations, but gives no protection to those suspected or known to have made allegations.

References:
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.
Pilimisoli Tamoua, Officer in Charge, Office of the Commissioner of Public Relations, 23 June 2009, Nuku’alofa, Tonga.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

0

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:
There is no such mechanism.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.
**References:**
There is no such mechanism.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

**References:**
There is no such mechanism.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.
49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

References:
No provision.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.
51. Is the public procurement process effective?

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

| YES | NO |

Comments:
Procurement legislation and accompanying regulations were reported in 2007 to be non-existent (http://www.adb.org/Documents/CPSs/TON/CPS-Tonga-2007-2012.pdf), but in 2008 were reported to have been recently passed (http://www.nzaid.govt.nz/library/docs/nzaid-jnt-tonga-nz-country-prog-strategy-2008-2018.pdf). According to the Auditor-General, however, procurement is governed by a Treasury Circular issued under a Cabinet decision, pending the preparation of legislation.

References:
Treasury CIrcular No. 6 2006-07

| YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials. |
| NO: A NO score is earned if no such rules exist. |

51b. In law, there is mandatory professional training for public procurement officials.

| YES | NO |

References:
No provision.

| YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials. |
| NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary. |

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.
Comments:
All witnesses agree that formal requirements and ethical expectations are rigorously enforced.

References:
Eseta Fusitua, Minister for Information and Acting Minister of Justice 21 June 2009, Nuku'alofa, Tonga.
Tiofilusi Tiueti, Deputy Secretary of Finance, Government of Tonga, 23 June 2009, Nuku'alofa, Tonga.
Pohiva Tu’ionetoa, Auditor General, 23 June 2009, Nuku'alofa, Tonga.

| 100 | 75 | 50 | 25 | 0 |

Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

References:
No provision.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

Comments:
These witnesses all agree that this is the case, but the Public Finance Management Act cited as the legal basis, does not provide
Procurement legislation and accompanying regulations were reported in 2007 to be non-existent (http://www.adb.org/Documents/CPSs/TON/CPS-Tonga-2007-2012.pdf), but in 2008 were reported to have been recently passed (http://www.nzaid.govt.nz/library/docs/nzaid-jnt-tonga-nz-country-prog-strategy-2008-2018.pdf). Procurement legislation and accompanying regulations were reported in 2007 to be non-existent (http://www.adb.org/Documents/CPSs/TON/CPS-Tonga-2007-2012.pdf), but in 2008 were reported to have been recently passed (http://www.nzaid.govt.nz/library/docs/nzaid-jnt-tonga-nz-country-prog-strategy-2008-2018.pdf).

According to the Auditor-General, however, procurement is governed by a Treasury Circular issued under a Cabinet decision, pending the preparation of legislation.

References:

**YES:** A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

**NO:** A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% of GDP).

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51f. In law, strict formal requirements limit the extent of sole sourcing.

**YES**  |  **NO**

Comments:
Procurement legislation and accompanying regulations were reported in 2007 to be non-existent (http://www.adb.org/Documents/CPSs/TON/CPS-Tonga-2007-2012.pdf), but in 2008 were reported to have been recently passed (http://www.nzaid.govt.nz/library/docs/nzaid-jnt-tonga-nz-country-prog-strategy-2008-2018.pdf). According to the Auditor-General, however, procurement is governed by a Treasury Circular issued under a Cabinet decision, pending the preparation of legislation.

References:
‘Eseta Fusitua, Minister for Information and Acting Minister of Justice 21 June 2009, Nuku’alofa, Tonga.
Tiofilusi Tiueti, Deputy Secretary of Finance, Government of Tonga, 23 June 2009, Nuku’alofa, Tonga.

**YES:** A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

**NO:** A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

---

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

**YES**  |  **NO**
References:
No formal provision of a process during 2007-08

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES  |  NO

Comments:
All agree that this right exists, but the legal basis has not been discovered. Procurement legislation and accompanying regulations were reported in 2007 to be non-existent (http://www.adb.org/Documents/CPSs/TON/CPS-Tonga-2007-2012.pdf), but in 2008 were reported to have been recently passed (http://www.nzaid.govt.nz/library/docs/nzaid-jnt-tonga-nz-country-prog-strategy-2008-2018.pdf). None of these documents is yet available on-line and have not been sighted in the preparation of this report.

References:
'Eseta Fusitua, Minister for Information and Acting Minister of Justice 21 June 2009, Nuku'alofa, Tonga.
Tiofilusi Tiueti, Deputy Secretary of Finance, Government of Tonga, 23 June 2009, Nuku'alofa, Tonga.
Pohiva Tu'ionetoa, Auditor General, 23 June 2009, Nuku'alofa, Tonga.

No formal challenge process is defined for 2007-08

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES  |  NO

Comments:
This is believed to be the case, but no cases are known to have occurred:
Eseta Fusitua, Minister for Information and Acting Minister of Justice 21 June 2009, Nuku'alofa, Tonga.
Tiofilusi Tiueti, Deputy Secretary of Finance, Government of Tonga, 23 June 2009, Nuku'alofa, Tonga.
Pohiva Tu'ionetoa, Auditor General, 23 June 2009, Nuku'alofa, Tonga.

References:
See below.

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.
51. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:
No cases are known. There is not apparently a formal register of 'black-listed' companies, but there wouldn't need to be for everyone to know that certain companies need not bid.

References:
‘Eseta Fusita, Minister for Information and Acting Minister of Justice 21 June 2009, Nuku’alofa, Tonga.
Tiofilusi Tiueti, Deputy Secretary of Finance, Government of Tonga, 23 June 2009, Nuku’alofa, Tonga.
Pohiva Tu’ionetoa, Auditor General, 23 June 2009, Nuku’alofa, Tonga.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

71

52a. In law, citizens can access public procurement regulations.

YES | NO

Comments:
The regulations are reported to be readily and cheaply available from the Government Printer. Procurement legislation and accompanying regulations were reported in 2007 to be non-existent (http://www.adb.org/Documents/CPSSs/TON/CPSS-Tonga-2007-2012.pdf), but in 2008 were reported to have been recently passed (http://www.nzaid.govt.nz/library/docs/nzaid-jnt-tonga-nz-country-prog-strategy-2008-2018.pdf). According to the Auditor-General, however, procurement is governed by a Treasury Circular issued under a Cabinet decision, pending the preparation of legislation.
YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:
Procurement legislation and accompanying regulations were reported in 2007 to be non-existent (http://www.adb.org/Documents/CPSs/TON/CPS-Tonga-2007-2012.pdf), but in 2008 were reported to have been recently passed (http://www.nzaid.govt.nz/library/docs/nzaid-jnt-tonga-nz-country-prog-strategy-2008-2018.pdf). According to the Auditor-General, however, procurement is governed by a Treasury Circular issued under a Cabinet decision, pending the preparation of legislation.

References:
There appears to be no formal requirement for this to be publicly announced.

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:
Regulations are available from the Government Printer on demand.

References:
‘Eseta Fusitua, Minister for Information and Acting Minister of Justice 21 June 2009, Nuku’alofa, Tonga.
Pohiva Tu’ionetoa, Auditor General, 23 June 2009, Nuku’alofa, Tonga.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:
50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:
'Eseta Fusitua, Minister for Information and Acting Minister of Justice 21 June 2009, Nuku’alofa, Tonga.
Pohiva Tu’ionetoa, Auditor General, 23 June 2009, Nuku’alofa, Tonga.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:
Advertised in the local print media. Major contracts requiring capital or expertise beyond what is available in Tonga may also be advertised abroad.

References:
'Eseta Fusitua, Minister for Information and Acting Minister of Justice 21 June 2009, Nuku’alofa, Tonga.
Pohiva Tu’ionetoa, Auditor General, 23 June 2009, Nuku’alofa, Tonga.

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:
50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:
The information is generally supplied to anyone who asks, but there is no formal announcement.

References:
Pohiva Tu’ionetoea, Auditor General, 23 June 2009, Nuku’alofa, Tonga.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

58

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO
There is no generic privatisation legislation, but specific legislation would be necessary for any instance of privatisation. Whether any business would be excluded from bidding would be decided on a case by case basis.

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

| YES | NO |

Comments:
According to witnesses, there are no regulations at present, but this is one of the matters that the reformist government is taking in hand:
Paul Taumoepae, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku'alofa, Tonga.
Tiofilusi Tiueti, Deputy Secretary of Finance, Government of Tonga, 23 June 2009, Nuku'alofa, Tonga.

References:
No law or regulations found

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

| 100 | 75 | 50 | 25 | 0 |

Comments:
Although there are no regulations, conflict-of-interest principles are strictly observed in privatization processes according to witnesses; the third observer believes conflicts of interest to be common.
100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

60

54a. In law, citizens can access privatization regulations.

YES | NO

Comments:
Although there are no generic regulations, the specific ad hoc requirements are publicly available.
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku'alofa, Tonga.
Tiofilusi Tuieti, Deputy Secretary of Finance, Government of Tonga, 23 June 2009, Nuku'alofa, Tonga.

References:
No legislation or regulations

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:
Privatization offers are advertised in the local and international print media and also on the internet. When privatizing, the government has been anxious to get the best possible price for its assets, and so has advertised widely.
100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75: 

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25: 

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments: Witnesses say both ‘yes’ and ‘no’. As with similar cases, it appears that the situation is in transition, with formal regulations being in view or in process. For the year 2007-2008 this may be taken to mean ‘no’.

Paul Taumoepaeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku'alofa, Tonga.
Tiofilusi Tu'ieti, Deputy Secretary of Finance, Government of Tonga, 23 June 2009, Nuku'alofa, Tonga.

References: No legislation found.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments: Although there are no umbrella regulations, the requirements for particular cases as they arise are readily available.
References:
Tiofilusi Tiueti, Deputy Secretary of Finance, Government of Tonga, 23 June 2009, Nuku’alofa, Tonga.
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku’alofa, Tonga.

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100  75  50  25  0

Comments:
Although there are no umbrella regulations, the specific requirements on each occasion are readily available.

References:
Tiofilusi Tiueti, Deputy Secretary of Finance, Government of Tonga, 23 June 2009, Nuku’alofa, Tonga.
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku’alofa, Tonga.

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. National Ombudsman
56. Is the national ombudsman effective?

75

56a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:
There is no explicit protection; legislation provides that the same conditions apply as to the Public Service. Since the Commission is administratively with the Prime Minister’s Department, there is a conflict of interest.

References:

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:
Testimony varies, reflecting probably knowledge of contrasting examples but it seems that the Commissioner is able to proceed with his work and usually meets with cooperation.

References:
Pilimisoli Tamoua, Officer in Charge, Office of the Commissioner of Public Relations, 23 June 2009, Nuku'aloa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with
some information needed to carry out its investigations.

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

Comments:
The commissioner is appointed for a fixed term with right of renewal; since the act came into force there has been no case of an unjustified removal from office.

References:
Pilimisoli Tamoua, Officer in Charge, Office of the Commissioner of Public Relations, 23 June 2009, Nuku'alofa, Tonga.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

Comments:
Staff appointments are made through the Public Service Commission with due observance of process, but the office is understaffed, and the office of Commissioner is vacant.

References:
Pilimisoli Tamoua, Officer in Charge, Office of the Commissioner of Public Relations, 23 June 2009, Nuku'alofa, Tonga.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.
The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

In practice, agency appointments support the independence of the ombudsman agency (or agencies).

The main limitation is that staff numbers are small, and in a small-scale, intimate society such as Tonga’s the appearance of a conflict of interest is hard to avoid. ‘Political party loyalties’ do not apply in Tonga.

References:
Pilimisoli Tamoua, Officer in Charge, Office of the Commissioner of Public Relations, 23 June 2009, Nuku’alofa, Tonga.

Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

In practice, the ombudsman agency (or agencies) receives regular funding.

Provided for in the annual budget.

References:
Pilimisoli Tamoua, Officer in Charge, Office of the Commissioner of Public Relations, 23 June 2009, Nuku’alofa, Tonga.

The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.
The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

In practice, the ombudsman agency (or agencies) makes publicly available reports.

Comments:
Individual cases are not reported on; an annual report is made to parliament.

References:
Pilimisoli Tamoua, Officer in Charge, Office of the Commissioner of Public Relations, 23 June 2009, Nuku'alofa, Tonga.

The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

Comments:
Investigations are always made following the lodging of a complaint. Most government agencies cooperate with the investigation.

References:
Pilimisoli Tamoua, Officer in Charge, Office of the Commissioner of Public Relations, 23 June 2009, Nuku'alofa, Tonga.
100: The agency aggressively starts investigations — or participates fully with cooperating agencies’ investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies’ investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:
The commissioner has no authority to punish. If an investigation discovers criminal behavior it makes a recommendation to the attorney-general for action.

References:

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:
The compliance rate is improving, especially with Public Service restructuring since 2007.
100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman’s reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:
The office can usually initiate investigations within a few days, and generally concludes quickly. In the recent devolution of responsibility, with matters formerly requiring cabinet approval now being dealt with by departmental CEOs or their staff, complaints can be dealt with much more quickly and with greater assurance of a satisfactory outcome.

References:
Pilimisoli Tamoua, Officer in Charge, Office of the Commissioner of Public Relations, 23 June 2009, Nuku’alofa, Tonga.

Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).
The only public report is the annual report to the Prime Minister, who is required to table it in parliament. Tabled documents are published.

Other reports (such as those that involve the conduct of agency staff who are the focus of an investigation) are not made public. The Commissioner reports to the Attorney General in the event of suspected breaches of the law. These are transmissions of operational information and should not be considered reports in the usual sense of the word.

References:
The Commission for Public Relations Act c.25


A YES score is earned if all ombudsman reports are publicly available.

A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

Comments:
Papers laid before parliament are made available from the Government Printer.

Hansard is also published, and minutes of parliamentary proceedings are posted on the government website, with a link through the website of the Tonga Broadcasting Commission as well.

References:
Pilimisoli Tamoua, Officer in Charge, Office of the Commissioner of Public Relations, 23 June 2009, Nuku'alofa, Tonga.
57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100  |  75  |  50  |  25  |  0

Comments:
Papers laid before parliament are made available from the Government Printer.

Hansard is also published, and minutes of parliamentary proceedings are posted on the government website, with a link through the website of the Tonga Broadcasting Commission as well.

References:
Pilimisoli Tamoua, Officer in Charge, Office of the Commissioner of Public Relations, 23 June 2009, Nuku’alofa, Tonga.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES  |  NO

Comments:
The ‘Commissioner for Public Relations’ is in function and prerogatives the equivalent of an ombudsman.

References:
YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

94

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:
Public Audit Act, 2007 c.4 [http://www.pacilii.org/to/legis/num_act/paa2007128/]

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:
The Auditor General has never been removed from office, and the incumbent has held the position for thirty years.

References:
Pohiva Tu'ionetoa, Auditor General, Government of Tonga. 23 June 2009, Nuku’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.
The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

0: The director of the agency can be removed at the will of political leadership.

In practice, the audit agency has a professional, full-time staff.

The agency is short staffed, and there is a shortage of fully qualified auditors in Tonga.

Personnel are appointed under Public Service Regulations and the provisions of the Public Service Act. Considerations of conflict of interest, and qualifications are observed.

References:
Pohiva Tu'ionetoa, Auditor General, Government of Tonga. 23 June 2009, Nuku'alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku'alofa, Tonga.
100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:
Funding is predictable and is provided for in the national budget.

References:
Pohiva Tu'ionetoa, Auditor General, Government of Tonga. 23 June 2009, Nuku'alofa, Tonga.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:
The Auditor General submits an annual report to parliament. Any report to parliament may be published by the auditor-general. The auditor general states that such reports are readily and inexpensively available from the Government printer.

References:
Pohiva Tu'ionetoa, Auditor General, Government of Tonga. 23 June 2009, Nuku'alofa, Tonga.
| 100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work. |
|---|---|---|---|---|
| 75: |
| 50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete. |
| 25: |
| 0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial. |

59g. In practice, the government acts on the findings of the audit agency.

| 100 | 75 | 50 | 25 | 0 |

Comments:
During the period 2007-08, two cases involving diversion of public funds (one involving the Director of Tourism and the other the Speaker of Parliament) were reported. Both offenders lost their positions as a result.

References:
Pohiva Tu’ionetoa, Auditor General, Government of Tonga. 23 June 2009, Nuku’alofa, Tonga.

| 100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action. |
|---|---|---|---|---|
| 75: |
| 50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies. |
| 25: |
| 0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes. |

59h. In practice, the audit agency is able to initiate its own investigations.

| 100 | 75 | 50 | 25 | 0 |

References:
Pohiva Tu’ionetoa, Auditor General, Government of Tonga. 23 June 2009, Nuku’alofa, Tonga.
100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

100

60a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:
The Act provides for the publication of reports which have been submitted to parliament. Such reports are readily available from the Government Printer’s Office.

References:
Pohiva Tu’ionetoa, Auditor General, Government of Tonga. 23 June 2009, Nuku’alofa, Tonga.
Public Audit Act 2007

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:
Once the report has been published it is readily available from the Government Printer’s Office.

References:
Pohiva Tu’ionetoa, Auditor General, Government of Tonga. 23 June 2009, Nuku’alofa, Tonga.
100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

References:
Pohiva Tu’ionetoa, Auditor General, Government of Tonga. 23 June 2009, Nuku’alofa, Tonga.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:
The Public Audit Act 2007 replaced the Public Audit Act 1984-1988 during the report period. It is considerably longer, more detailed and more explicit.
YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

98

V-3. Taxes and Customs

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:
Tiofilusi Tiueti, Deputy Secretary of Finance, Government of Tonga, 23 June 2009, Nuku'alofa, Tonga.
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku'alofa, Tonga.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.
**References:**
Tiofilusi Tuieti, Deputy Secretary of Finance, Government of Tonga, 23 June 2009, Nuku’alofa, Tonga.
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku’alofa, Tonga.

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

---

65. Is the customs and excise agency effective?

88

65a. In practice, the customs and excise agency has a professional, full-time staff.

---

**Comments:**
The capacity, efficiency and honesty of the Customs service has been called in question frequently over the years, and improvements are being made through legislative, administrative and personnel changes.

**References:**
Tiofilusi Tuieti, Deputy Secretary of Finance, Government of Tonga, 23 June 2009, Nuku’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku’alofa, Tonga.

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.
65b. In practice, the customs and excise agency receives regular funding.

100  75  50  25  0

References:
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku'alofa, Tonga.
Tiofilusi Tiueti, Deputy Secretary of Finance, Government of Tonga, 23 June 2009, Nuku'alofa, Tonga.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES  NO

Comments:
The Constitution requires Treasurer to report to parliament annual receipts and expenditure.

References:
Revenue Services Department in the Ministry of Finance and Planning.
Various Acts authorising the collection of specific taxes.

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.
63. Are tax laws enforced uniformly and without discrimination?

100

63. In practice, are tax laws enforced uniformly and without discrimination?

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References:
Tiofilusi Tieti, Deputy Secretary of Finance, Government of Tonga, 23 June 2009, Nuku’alofa, Tonga.
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 19 June 2009, Nuku’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nukualofa, Tonga.
Eseta Fusitua, Minister for Information and Acting Minister of Justice 21 June 2009, Nuku’alofa, Tonga.

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

50: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

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Comments:

References:
Customs Department, Ministry of Finance and National Planning.
Customs and Excise Management Act 2007 [http://www.pacilii.org/to/legis/num_act/caema2007282/]
Customs Act 2007 [http://www.pacilii.org/to/legis/num_act/ca2007124/]

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. Are customs and excise laws enforced uniformly and without discrimination?

| 100 | 75 | 50 | 25 | 0 |

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

Comments:
The capacity, efficiency and honesty of the Customs service has been called in question frequently over the years, and improvements are being made through legislative, administrative and personnel changes. There has been no suggestion that any group in society is systematically the beneficiary or victim of corrupt practice.

References:
Tiofilusi Tueti, Deputy Secretary of Finance, Government of Tonga, 23 June 2009, Nuku’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.
Paul Taumoepenu, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku’alofa, Tonga.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

| 50 |
68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

**YES | NO**

**Comments:**
Public Enterprises operate under the authority of the Minister of Public Enterprises. There is a perception however that they are permitted to operate without political direction.

**References:**

**YES:** A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

| 100 | 75 | 50 | 25 | 0 |

**References:**
Pohiva Tu’ionetoa, Auditor General, 23 June 2009, Nuku'alofa, Tonga.
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku'alofa, Tonga.

**100:** The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.
100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.
68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

| 100 | 75 | 50 | 25 | 0 |

Comments:
In practice the question has not arisen.

References:
Pohiva Tu ‘onetoa, Auditor General, 23 June 2009, Nuku’alofa, Tonga.
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku’alofa, Tonga.

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

100

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:
Availability of financial reports to the public is provided for in the legislation. Reports are made to parliament, and after being tabled are made available through the Government Printer.

References:
Public Enterprises Act c.22
YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

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References:
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku'alofa, Tonga.
Pohiva Tu'ionetoa, Auditor General, 23 June 2009, Nuku'alofa, Tonga.

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

50: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

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Comments:
Auditing is carried out by the Public Audit Office.

References:
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku'alofa, Tonga.
Pohiva Tu'ionetoa, Auditor General, 23 June 2009, Nuku'alofa, Tonga.

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.
25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100  75  50  25  0

Comments:
Reports having been tabled in parliament are then available to the public from the Government Printer.

References:
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku’alofa, Tonga.
Pohiva Tu’ionetoa, Auditor General, 23 June 2009, Nuku’alofa, Tonga.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100  75  50  25  0

Comments:
The reports having been tabled in parliament are made available to the public through the Government Printer at cost.

References:
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku’alofa, Tonga.
Pohiva Tu’ionetoa, Auditor General, 23 June 2009, Nuku’alofa, Tonga.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:
Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

References:
Ministry of Public Enterprises.

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

83

V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

100

In law, anyone may apply for a business license.
The only prohibitions on holding a business licence are being under the age of 18, and conducting an illegal activity.

References:
Business Licences Act c. 5.

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:
Appeals are made direct to the Minister for Labour, Commerce and Industries.

References:
Business Licences Act c. 12

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

Comments:
Licences are mostly issued over the counter on application.

References:
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku'alofa, Tonga.

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<tr>
<td>100: Licenses are not required, or licenses can be obtained within roughly one week.</td>
<td>75:</td>
<td>50: Licensing is required and takes around one month. Some groups may be delayed up to a three months</td>
<td>25:</td>
<td>0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.</td>
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70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:
The prescribed annual license fee is TOP$75 on first registration, and Top$65 for renewal.

References:
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku’alofa, Tonga.

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<tr>
<td>100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.</td>
<td>75:</td>
<td>50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.</td>
<td>25:</td>
<td>0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.</td>
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71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.
Health and other certificates are required for businesses as appropriate to their activities.

References:

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

Comments:
Witnesses say that these are transparent and publicly available.

Under the Public Health Act various regulations have been promulgated setting out health standards and procedures for various categories of business, including restaurants and food stores, bakeries and abattoirs. There are also regulations for the conduct of public markets.

The Public Health Act is detailed and specific about safety requirements, but does not prescribe safety limits (e.g. temperatures, distances, fire-retardant ratings etc.).

All legislation and regulations are available through the Government Printer. Whether the Department of Health or the Department of Labour, Commerce & Industries issue leaflets or take a pro-active position in notifying businesses and keeping them up to date is unknown, but given the laxness of inspections it seems unlikely.

References:

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

Comments:
Witnesses say that these are transparent and publicly available.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.
Comments:
Witnesses say that these are transparent and publicly available.

The Public Health Act lists various offenses against public safety including dangerous premises; pollutants; lighting, ventilation, crowding and sanitation of factories and workplaces; noise. The Act is detailed and specific on these and other matters relating to public safety.

There is also legislation concerning specific aspects such as legislation for cinemas, electrical wiring standards, fire services and the like.

Legislation and regulations are available from the Government Printer. There is no evidence of any brochures or the Ministry taking a pro-active position on educating the general and business community about these matters.

References:

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:
There appears to be a good deal of laxness and minor corruption in the matter of inspections.

References:
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku'alofa, Tonga.

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.
Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

Laxness and minor corruption is reported anecdotally.

References:
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku'alofa, Tonga.

Laxness and minor corruption are the subject of anecdotes.

References:
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku'alofa, Tonga.
Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. Anti-Corruption Law

73. Is there legislation criminalizing corruption?

89

73a. In law, attempted corruption is illegal.

Comments:
The clauses cited cover attempts to bribe officials, or corrupt actions by officials. Other legislation on particular matters contain their own provisions concerning corrupt behaviour. Other provisions are at sub-legislative level in regulations and codes of conduct.

References:
Criminal Offences Act cc. 50, 51, 52, 54.

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.
YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:
C.66 pertains to attempts to bribe jurors.
Other legislation also has anti-bribery provisions on specific matters, including the Bailiffs Act, Customs & Excise Act, Quarantine Act, Manufacture of Intoxicating Liquor Act, Agricultural Commodities Export Act, and very likely others as well.

References:
Criminal Offences Act, c.51, 66.

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:
Other legislation also has anti-bribery provisions on specific matters, including the Bailiffs Act, Customs & Excise Act, Quarantine Act, Manufacture of Intoxicating Liquor Act, Agricultural Commodities Export Act, and very likely others as well.

References:
Criminal Offences Act, c.50
YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES  NO

References:
No specific provision concerning this can be found.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES  NO

Comments:
This clause pertains to fraudulent conversion which is defined broadly. There are similar provisions in specific legislation and regulations.

References:
Criminal Offences Act c.53

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES  NO

Comments:
Some instances may be covered by The Official Secrets Act c.4 which prohibits the release of information contrary to the public
interest. Otherwise the law pertaining to fraudulent conversion in the Criminal Offences Act could be applied.

**References:**

**YES:** A YES score is earned if using confidential state information for private gain is illegal.

**NO:** A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

**YES | NO**

**References:**

**YES:** A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

**NO:** A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

**YES | NO**

**References:**

**YES:** A YES score is earned if organized crime is illegal.

**NO:** A NO score is earned if this is not illegal.
VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

33

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:
The act excludes the commissioner from the provisions of the Public Service Act and authority of the Public Service Commissioner. The Commissioner has the status of a judicial officer. C57 pertaining to obstruction of the Commissioner could also be interpreted to cover some kinds of political interference.

References:

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:
In fact the Commission is not operating because of delays in appointing a Commissioner. The commitment of the government to making an appointment has been called into question, but for the report year 2007-08 it is pertinent that the legislation was passed only in 2007.

References:
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku’alofa Tonga

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.
This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

The director(s) can in some cases be removed through a combination of official or unofficial pressure.

The director(s) can be removed at the will of political leadership.

In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

Comments:
Witnesses affirm the statement, but it is too soon to tell; the institution had not for the report period been put to the test.

References:
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku'alofa Tonga
Aminiasi Kefu, Solicitor General, 19 June 2009, Nuku'alofa, Tonga.

The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

The director(s) can in some cases be removed through a combination of official or unofficial pressure.

The director(s) can be removed at the will of political leadership.

In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

Comments:
No staff yet appointed, but the intention is that political, family and other non-professional considerations not intrude.

References:
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku'alofa Tonga
Aminiasi Kefu, Solicitor General, 19 June 2009, Nuku'alofa, Tonga.
100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:
No staff have been appointed.

References:
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku’alofa Tonga

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:
The legislation was passed only in 2007 so no funding was possible in the 2007-08 budget. The legislation provides for funding by the Legislative Assembly in the annual estimates.

References:
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku’alofa Tonga
100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:
The enabling legislation was passed only in 2007, and the commission had not come into operation in order to report for the 2007-08 year; the act provides for regular reports to parliament.

References:
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku'alofa Tonga
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku'alofa, Tonga.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:
So far this has not been tested because the commission had not been established for the period in question. The legislation however makes ample provision.
References:
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku’alofa Tonga
Paul Taumepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku’alofa, Tonga.

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The commission had not been put into operation for the reporting year.

References:
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku’alofa Tonga
Paul Taumepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku’alofa, Tonga.

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When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

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Can citizens access the anti-corruption agency?

0
76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100  75  50  25  0

Comments:
The commission did not come into operation during the reporting period.

References:
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku'alofa Tonga
'Aminiasi Kefu, Solicitor General, 19 June 2009, Nuku'alofa, Tonga.
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku'alofa, Tonga.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100  75  50  25  0

Comments:
Not yet tested because the commission was not yet operational but the legislation provides for the protection of witnesses.

References:
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku'alofa Tonga
'Aminiasi Kefu, Solicitor General, 19 June 2009, Nuku'alofa, Tonga.
Paul Taumoepeau, chairman, Chamber of Commerce and Industry, 18 June 2009, Nuku'alofa, Tonga.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.
Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:
The Anti-Corruption Commission.

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

44

VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

83

77a. In law, there is a general right of appeal.

YES | NO

References:
Constitution c.91.
**77b. In practice, appeals are resolved within a reasonable time period.**

| Score | 100 | 75 | 50 | 25 | 0 |

**Comments:**
The Court of Appeal convenes for a few weeks each year, and continues until all cases have been heard. There no backlog of cases pending.

**References:**
Aminiasi Kefu, Solicitor General, 19 June 2009, Nuku'alofa, Tonga.

**100:** Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

**75:**

**50:** Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

**25:**

**0:** Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

**77c. In practice, citizens can use the appeals mechanism at a reasonable cost.**

| Score | 100 | 75 | 50 | 25 | 0 |

**Comments:**
Testimony varies. Court and lodgment fees are low and universally affordable. There is a very limited legal aid service, but de facto legal aid is available in the form of the court administration undertaking much of the research for appeal trials. Legal representation however is prohibitively expensive, and litigants generally need assistance from relatives, especially those living abroad.
In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

78. Do judgments in the criminal system follow written law?

100

Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. Are judicial decisions enforced by the state?

100
79. In practice, are judicial decisions enforced by the state?

| Score | 100 | 75 | 50 | 25 | 0 |

**References:**
Filo ‘Akau’ola, journalist and editor, 23 June 2009, Nuku’alofa, Tonga.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75: 

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25: 

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

| Score | 44 |

80a. In law, the independence of the judiciary is guaranteed.

**Comments:**
Latimer House principles apply, but the freedom under this protection is a little constrained by the fact that judges are appointed from abroad on limited-term contracts, with renewal at the pleasure of the government.

**References:**
Not explicitly in statute, but in common law.

**YES:** A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

**NO:** A NO score is earned if there are no formal rules establishing an independent judiciary.
80b. In practice, national-level judges are protected from political interference.

Comments:
On the whole this probably applies; judges are not reported to have been influenced in their judgments, but there are suggestions of judges coming under pressure in relation to employment contracts as a result of judgments which have displeased government.

References:
Filo ‘Akau’ola, journalist and editor, 23 June 2009, Nuku’alofa, Tonga.

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:
Cases are allocated randomly by the Chief Justice but there is no prescribed procedure.

References:
The method appears not to be described in legislation.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.
80d. In law, national-level judges are protected from removal without relevant justification.

**YES | NO**

Comments:
The constitution provides for impeachment in the Legislative Assembly, but this is qualified by the Judicial Services Commission Act which refers to removal as a disciplinary measure.

References:
Constitution c.75
Judicial Services Commission Act c.11.3, 14.2.

**YES**: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

**NO**: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

**YES | NO**

Comments:
These and other witnesses are unanimous that there have been no such occurrences.

References:
Filo 'Akau'ola, journalist and editor, 23 June 2009, Nuku'alofa, Tonga.
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku'alofa Tonga
'Aminiasi Kefu, Solicitor General, 19 June 2009, Nuku'alofa, Tonga.

**YES**: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

**NO**: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.
81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

**YES | NO**

**Comments:**
These and other witnesses are unanimous that there have been no such occurrences.

**References:**
Filo 'Akau'ola, journalist and editor, 23 June 2009, Nuku'alofa, Tonga.
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku'alofa Tonga
'Aminiasi Kefu, Solicitor General, 19 June 2009, Nuku'alofa, Tonga.

**YES:** A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

**NO:** A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

**64**

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

**100 | 75 | 50 | 25 | 0**

**References:**
Filo 'Akau'ola, journalist and editor, 23 June 2009, Nuku'alofa
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku'alofa, Tonga.
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku'alofa Tonga
'Aminiasi Kefu, Solicitor General, 19 June 2009, Nuku'alofa, Tonga.

**100:** Judicial decisions are not affected by racial or ethnic bias.

**75:**

**50:** Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.
Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 75 50 25 0

References:
Filo 'Akau'ola, journalist and editor, 23 June 2009, Nuku'alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku'alofa, Tonga.
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku'alofa Tonga
'Aminiasi Kefu, Solicitor General, 19 June 2009, Nuku'alofa, Tonga.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES NO

Comments:
In March 2007 the government appointed two lawyers to the Community Law Centre to provide advice and representations to defendants. These positions were funded by New Zealand aid, and were not intended to become permanent. The step was announced by the Minister of Justice and reported on 22 March 2007 on the now-defunct website ‘Tonga Now’ [http://www.tonga-now.to].

References:
There is no legislation on this matter.
YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:
In March 2007 the government appointed two lawyers to the Community Law Centre to provide advice and representation to defendants. These positions were funded by New Zealand aid, and were not intended to become permanent. The step was announced by the Minister of Justice and reported on 22 March 2007 on the now-defunct web site “Tonga Now” [http://www.tonga-now.to].

Otherwise lawyers sometimes give their services gratis.

References:
Filo ‘Akau’ola, journalist and editor, 23 June 2009, Nuku’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.
Kalafi Moala, journalist and media proprietor, 17 June 2009, Nuku’alofa Tonga

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:
Opinions vary. Court fees are low but lawyers’ costs can be substantial. Litigation however is vigorous suggesting that it is affordable, but some witnesses affirm that many are excluded from justice by costs. Some lawyers assist by agreeing to reduced-price or payment only if the case is won and costs awarded.
100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:
Lawyers charges may be a deterrent in major cases, but most litigation involving small retailers is for the recovery of debts and these are pursued in the magistrates courts inexpensively.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.
Comments:
Magistrates Courts and the Supreme Court undertake circuits of the kingdom regularly. But in an archipelago of many small islands it is inevitable that some will have to journey over water to reach a court, and might find this requirement insuperable at times. The vast majority of the population has access to courts.

References:
Filo ‘Akau’ola, journalist and editor, 23 June 2009, Nuku'alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku'alofa, Tonga.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

83

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

Comments:
Opinions conflict probably reflecting the fact that during a period of reform contrasting perceptions are all likely to be rooted in truth.

References:
Filo ‘Akau’ola, journalist and editor, 23 June 2009, Nukualofa, Tonga.
100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:
Opinions vary, but it seems clear that by 2008 the police force had ample financial provision.

References:
Filo 'Akau'ola, journalist and editor, 23 June 2009, Nuku'alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku'alofa, Tonga.
Chris Kelley, Police Commander, 19 June 2009, Nuku'alofa, Tonga.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:
This is agreed, but the boundary between Minister and chief of police ('Police Commander' in Tonga) is blurred with division of authority not clearly defined.
100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

### 84. Can law enforcement officials be held accountable for their actions?

88

84a. In law, there is an independent mechanism for citizens to complain about police action.

| YES | NO |

Comments:
There is an internal mechanism, Professional Standards Unit established in 2008 and which vigorously investigates complaints. A citizen wishing to complain would have to address the officer in charge of this unit. Complaints against the police can also be pursued through the Office of the Commissioner for Public Relations, or through the courts as a matter of tort.

References:
There is no legislative provision for public complaints against a police officer.

| YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police. | NO: A NO score is earned if there is no such mechanism |

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen’s complaints within a reasonable time period.
Comments:
There is no formal body to receive complaints against the police specifically except the Office of the Commissioner of Public Relations. The officer in charge of this office reports a quick response time and usually a timely resolution. Some witnesses support this claim; other views contradict it, reflecting perhaps the changing conditions of a period of reform.

References:
Chris Kelley, Police Commander, 19 June 2009, Nuku’alofa, Tonga.
Pilimisoli Tamoua, Officer in Charge, Office of the Commissioner of Public Relations, 23 June 2009, Nuku’alofa, Tonga.
Filo ‘Akau’ola, journalist and editor, 23 June 2009, Nuku’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nukualofa, Tonga.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:
Internal police discipline process as well as the anti-corruption unit which was not yet operational for the reporting period. The Office of the Public Relations Commissioner can investigate, but cannot itself prosecute. Any findings of criminal activity are reported to the Attorney General for possible prosecution.

References:
This would be covered by the Police Act provisions for offences against discipline in addition to provisions under the Criminal Offences Act if applicable in particular cases.

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.
84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

| 100 | 75 | 50 | 25 | 0 |

**Comments:**
The internal police discipline unit, formalized in 2008 as a Professional Standards Unit, vigorously investigates complaints. These are initiated both by the police hierarchy and the public. The Office of the Commissioner for Public Relations can act only on complaints received.

**References:**
Filo ‘Akau’ola, journalist and editor, 23 June 2009, Nuku’alofa, Tonga.
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.
Chris Kelley, Police Commander, 19 June 2009, Nuku’alofa, Tonga.
Pilimisoli Tamoua, Officer in Charge, Office of the Commissioner of Public Relations, 23 June 2009, Nuku’alofa, Tonga.

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

**YES** | **NO**

**References:**

**YES:** A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

**NO:** A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.
Comments:
No crimes are exempt from investigation and prosecution. The rigor and consistency with which they were investigated has been questioned but even by 2007-2008 there was apparently confidence in the integrity of the process.

References:
Filo ‘Akau’ola, journalist and editor, 23 June 2009, Nuku’alofa, Tonga.  
Pesi Fonua, journalist, editor and media proprietor, 24 June 2009, Nuku’alofa, Tonga.  
Chris Kelley, Police Commander, 19 June 2009, Nuku’alofa, Tonga.  
Pilimisoli Tamoua, Officer in Charge, Office of the Commissioner of Public Relations, 23 June 2009, Nuku’alofa, Tonga.  

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.