

# Kingdom of Tonga National Parliamentary Election

16 November 2017



The Commonwealth

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## Table of Contents

Acknowledgements .....	iv
Executive Summary .....	vii
Recommendations .....	viii
Chapter 1 .....	1
INTRODUCTION.....	1
Terms of Reference.....	1
Activities.....	1
Chapter 2 .....	3
POLITICAL BACKGROUND .....	3
Early History.....	3
Pro-Democracy Movements and Reform .....	3
Chapter 3 .....	6
THE ELECTORAL FRAMEWORK, MEDIA, INCLUSIVE PARTICIPATION AND REPRESENTATION.....	6
Legal Framework and International and Regional Commitments.....	6
Head of State .....	7
Prime Minister and Cabinet.....	7
Legislative Assembly .....	7
Tonga Electoral Commission.....	8
Electoral Boundaries Commission and Boundary Review .....	9
Voter Registration.....	10
Candidate Eligibility and Nomination .....	11
Election-related offences.....	12
Election Disputes and Petitions .....	13
Voter Education and Civic Awareness .....	13
The role of the media .....	14
Inclusive Participation and Representation.....	15
Recommendations.....	19
Chapter 4 .....	21
THE ELECTION CAMPAIGN, VOTING, COUNTING AND RESULTS .....	21
Election Campaign .....	21

Voting.....	21
Key Procedures for Opening.....	22
Key Procedures for Voting.....	23
Observation of the Opening and Voting Process.....	24
Key Procedures for Closing and Counting.....	24
Observation of Closing and Counting.....	25
Overview of the Countrywide Observation.....	26
Tongatapu.....	26
Vava’u.....	26
Ha’apai.....	27
Election of the Nobles.....	27
Recommendations.....	28
Annex I.....	30
Biographies of Chairperson and Observers.....	30
Annex II.....	32
Arrival Statement.....	32
Annex III.....	34
Deployment Plan.....	34
Annex IV.....	35
Interim Statement.....	35

## **Acknowledgements**

We convey our appreciation to the Commonwealth Secretary-General, Rt Hon Patricia Scotland QC, for inviting us to serve the Commonwealth as observers of election processes in the Kingdom of Tonga.

We express our gratitude to His Majesty King Tupou VI, Nobles of the Realm, Prime Minister Hon 'Akilisi Pohiva, the Government and the people of Tonga for the generous hospitality that has been extended to us since our arrival.

The support and advice provided to the Group by the Tonga Electoral Commission was greatly appreciated. We extend our thanks to the various stakeholders that took the time to meet with us during our mission, including 'Aminiasi Kefu, A/g Attorney-General, who provided us with insights into the statutory framework.

We welcomed the opportunity to work in close collaboration with the Pacific Islands Forum observers, and benefited greatly from their insights. A special mention must be made to the Pacific Islands Forum Secretariat staff who arranged an excellent programme of joint meetings for our observers in the lead up to the election.

We greatly appreciated the support provided throughout the mission by the Commonwealth Secretariat Staff Team, Mr Luamanuvae Albert Mariner, Ms Sarah Linton and Ms Zippy Ojago.

## Letter of Transmittal

Rt Hon Patricia Scotland QC  
Secretary-General of the Commonwealth  
Marlborough House  
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LONDON SW1Y 5HX  
United Kingdom

Dear Secretary-General

We are pleased to submit our report to you on Tonga's 2017 National Parliamentary Election.

The election was conducted in accordance with Tonga's national laws. Many of the benchmarks for democratic elections were met. The election was conducted in a peaceful environment and we observed a high level of trust and confidence by the voters to the administration and conduct of their national electoral process.

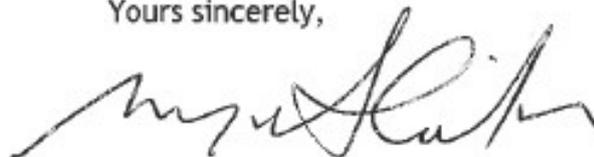
We have offered a number of recommendations for the Tongan Government and the Electoral Commission to consider to strengthen their election process. We sincerely hope that the recommendations will be accepted, as we recognise that Tonga's journey with its democratic reforms since 2010 will continue and may need support from its development partners.

Thank you for the opportunity to participate in this important assignment in support of the Kingdom of Tonga's democracy. The Group encourages the new incoming Government to pursue dialogue with all key stakeholders in the Kingdom to promote trust and mutual confidence while it continues with its reforms and development objectives.

We wish to express our gratitude for the excellent technical support provided by the Secretariat staff team. Without their help and advice our work would not have been possible.

We depart the Kingdom of Tonga with fond memories of the friendliness and friendship of the people we have met and congratulate them on holding a peaceful and successful election.

Yours sincerely,



Hon Margaret Wilson DNZM



Saneem Mohammed



Joseph Cain



Lomcebo Dlamini

## Executive Summary

A Commonwealth Observer Group was deployed to observe the 2017 National Parliamentary Election in the Kingdom of Tonga at the invitation of the Government of Tonga. The Group was present in the country from 9 to 20 November 2017.

As part of its Terms of Reference, the Group considered the various aspects of the electoral process against the national, regional, Commonwealth and other international frameworks for credible democratic elections to which Tonga had committed itself. The Group met with a number of stakeholders to understand and assess the conditions and preparations for the election. These consultations, as well as the Group's observations before and on election day, informed its overall assessment of the electoral process.

The 2017 election was the third conducted under the amended Constitution of 2010, as part of Tonga's democratic reforms, and followed the early dissolution of the Legislative Assembly by His Majesty King Tupou VI.

The Tonga Electoral Commission is to be commended for preparing and administering this successful election at short notice.

The campaign environment was lively and competitive, and the Group commended the media, candidates and people of Tonga for ensuring campaigning took place in a peaceful and broadly positive atmosphere.

The Group was pleased to see an increase in the overall proportion of women contesting the election, and encouraged continued efforts to ensure greater participation of women in elections in Tonga.

Noting the large population of young people in Tonga, the Group encouraged a greater emphasis on youth participation in politics as Tonga's democracy deepens.

The Group observed a smooth, efficient and well-organised process on 16 November. We were impressed with the high level of professionalism, integrity and efficiency displayed by polling officials, many of whom were women, during the election. Voters appeared to have a solid understanding of polling procedures and exercised their franchise in a calm and positive atmosphere.

The electoral landscape will continue to evolve as the Kingdom pursues and implements its democratic reforms. The Group concluded that the 2017 National Parliamentary Election was held in accordance with Tonga's national laws. It highlighted some aspects of international best practice for elections, to assist the Electoral Commission with its ongoing effort to strengthen the Kingdom's democratic process. We offer the following recommendations in pursuit of this goal.

## **Recommendations**

### ***Electoral Reform and Legal Framework***

- The Group encourages the incoming Government, the members of Parliament and all stakeholders to continue working together to strengthen the Kingdom's democratic processes and engage in dialogue to clarify constitutional issues that would deepen the Kingdom's democracy and promote the rule of law.
- The Group recommends that Tonga consider ratifying a number of key international conventions that would assist with the discussion relating to democratic process, including the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination Against Women, and Convention on the Rights of Persons with Disabilities.

### ***Election Administration***

- When considering their corporate plan, the Tonga Electoral Commission (TEC) could include the following matters: review of nomination rules relating to the discharge of outstanding debts; development of a communications strategy (including the use of social media); and providing a framework for domestic election observation by civil society.
- Further, the TEC could consider conducting a comprehensive review of candidate election spending and accounting practices, to strengthen transparency and provide for an even playing field at elections. Some of the issues that could be considered as part of this comprehensive review would relate to expenditure by candidates and indirect expenditure, including donations provided by supporters, business etc. Should political parties become formalised, their campaign expenditure should also be regulated.

### ***Voter and Civic Education***

- The Group considers there could be a greater emphasis on voter and civic education, particularly for young people and first-time voters. Greater collaboration with secondary schools, such as the inclusion of civic education into the national curriculum, would assist young people to develop a deeper understanding of their rights and responsibilities as voters.
- Further, the TEC could consider exploring other platforms for ongoing voter information and education, such as strengthened partnerships with civil society organisations, church groups and the use of social media.

## ***Media***

- The Government may wish to consider introducing a Freedom of Information Act in accordance with international good practice, to ensure access to information.
- The TEC may wish to consider developing a code of conduct for media reporting on elections, to ensure equal access by candidates during the election campaign. This could provide a platform for continued training of media practitioners ahead of elections.

## ***Inclusion and Access***

- The establishment of a Human Rights Commission could assist civil society organisations to promote and ensure the protection of human rights.
- The Group encourages the Government to continue its efforts to encourage greater participation of women in politics in Tonga, and notes Tonga could look to models in the region and throughout the Commonwealth to ensure more women are present in the Legislative Assembly.
- Further, the Group recommends consideration be given to reducing the voting age in Tonga to 18, given the increasing youth population and noting the importance of their participation for future democratic development.

## ***Campaign practices***

- Should the trend toward a political party system in Tonga continue, consideration should be given to the development of a legal regulatory framework and a programme of public dialogue and civic education, which may be useful in addressing emerging issues, including in relation to campaign financing.
- The Group recommends regulations be made to ensure that campaigns are not used as a platform to discriminate against people on the basis of their gender or sexual orientation.

## ***Voting practices***

- The Group recommends:
  - Consideration be given to declaring election day to be a public holiday. This would ensure all registered voters are able to cast their vote and would also help to promote the importance of elections and democracy.
  - Polling stations be clearly demarcated with signage to increase the visibility of the election and thereby encourage participation.

- Signs be erected at the polling station demarcating entry and exit.
- The display of how to vote instructions, which might be useful in clarifying arrangements for first time voters.
- TEC consider developing a record book for the Officers-in-Charge of polling station to capture all key processes, including the tally of results, replacing the current practice of using loose sheets of paper.
- Provision for advance voting for polling officials and security personnel, to eliminate the need for special mobile polling on election day.

### ***Counting practices***

- Consideration could be given to making the count more transparent by allowing accredited scrutineers to observe the process. This should not impact on the efficiency of the count.
- The Group recommends the TEC strengthen measures for reconciliation of ballots during the counting process.

# Chapter 1

## INTRODUCTION

The Commonwealth Secretary-General, Rt Hon Patricia Scotland QC, constituted an Observer Group for the 16 November 2017 National Parliamentary Elections following an invitation from the Government of the Kingdom of Tonga on 28 September 2017.

The Commonwealth Observer Group was led by Hon Margaret Wilson DNZM, former Speaker of Parliament of New Zealand, and comprised four Commonwealth citizens (Annex I). A three-person staff team from the Commonwealth Secretariat provided technical support to the Observer Group.

### Terms of Reference

*‘The Group is established by the Commonwealth Secretary-General at the invitation of the Government of the Kingdom of Tonga. The Group is to consider the various factors impinging on the credibility of the electoral process as a whole.*

*The Group will determine in its own judgement whether the elections have been conducted according to the standards for democratic elections to which the country has committed itself, with reference to national election-related legislation as well as relevant Commonwealth, regional and other international norms and commitments.*

*The Group is to act impartially and independently. It has no executive role: its function is not to supervise but to observe the process as a whole and to form a judgement accordingly. It would also be free to propose to the authorities concerned such action on institutional, procedural and other matters as would assist the holding of such elections.*

*The Group is to submit its report to the Commonwealth Secretary-General, who will forward it to the Government of Tonga, the Tonga Electoral Commission and Speaker of Parliament, and thereafter to all Commonwealth member governments.’*

### Activities

The Commonwealth Observer Group was present in Tonga from 9 to 20 November. In Nuku’alofa, the Group received briefings on the preparations and political environment ahead of the 2017 National Parliamentary Elections from the Prime Minister, Tonga Electoral Commission, Lord Privy Seal, Speaker of the Legislative Assembly, members of Government, people’s representatives and nobles’ representatives in the Legislative Assembly, candidates, the A/g Attorney-General, business representatives, civil society (including church leaders, women’s groups and youth representatives), the media and members of the diplomatic corps.

The Observer Group held a media conference on 13 November 2017, where an Arrival Statement was delivered (Annex II).

Members of the Group were deployed in teams to three electoral districts in the country, covering Tongatapu's 10 constituencies, three constituencies in Vava'u and two constituencies in Ha'apai (Annex III). The teams met with polling officials in those districts and observed polling and counting on election day.

Following their return to Nuku'alofa, the Commonwealth Observer Group held a media conference on 18 November 2017, where it released an Interim Statement (Annex IV), highlighting the Group's preliminary findings and observations.

This report was prepared in Nuku'alofa prior to the Group's departure on 20 November 2017, and was thereafter transmitted to the Commonwealth Secretary-General.

## Chapter 2

### POLITICAL BACKGROUND

#### Early History

Tonga was first inhabited 3,000 years ago. The country is a long-established Polynesian monarchy - its royal family goes back more than 1,000 years - with a well-developed social and political system. From the early 17<sup>th</sup> century, Europeans occasionally visited the Kingdom of Tonga: it was sighted by the Dutch navigator Abel Tasman in 1643 and later visited by British explorer Captain James Cook.

The first larger-scale arrival of Europeans was in 1826, when Wesleyan missionaries landed and began a highly successful religious conversion campaign. Civil wars raged between Christian and non-Christian factions until Taufa'ahau Tupou, ruler of the island of Ha'apai and a Christian convert, gained control of and united the islands, becoming, in 1845, King George Tupou I.

Tonga's first Constitution was adopted in 1875, and codified the King's authority as the ultimate power in Tonga. King Tupou I drafted the Constitution with the support of international advisers, including Wesleyan missionary Shirley Baker, who became Tonga's first Prime Minister from 1880-1890. The Constitution established three branches of government: The King and the Privy Council, the Legislative Assembly, and the Judiciary.

While Tonga was never a British colony, in 1900, the King agreed to a treaty of friendship with Great Britain, which gave Britain control of foreign affairs and treasury/national finances and kept Tonga free from other predatory powers. The treaty was frequently revised until May 1970, when Tonga became fully independent.

#### Pro-Democracy Movements and Reform

From 1990, a pro-democracy movement gathered strength, challenging Tonga's political system, under which the executive was appointed by the King and only a small number of members of the Legislative Assembly were elected.

A Constitutional Convention took place in Tonga in November 1992, convened by a group called the Pro-Democracy Movement. Discussions focused on democratisation in Tonga, although resolutions and specific recommendations were avoided. In the 1996 election, four of the nine people's seats were won by pro-democracy candidates and leading democracy campaigner 'Akilisi Pohiva had a convincing majority in his constituency.

In 1998, the Pro-Democracy Movement changed its name to the Human Rights and Democracy Movement (HRDM) and formally registered as an organisation. In January 1999, HRDM held another major public convention, and went into the election of March 1999 with the hope of raising its numbers in the Assembly

from the six seats they then controlled. In the event they won only five of the nine people's seats.

In the March 2002 election, HRDM increased its representation in Parliament to seven of the nine people's seats. The King re-appointed Prime Minister Prince 'Ulukalala Lavaka Ata following the election. Pohiva's HRDM issued new proposals for constitutional reforms to strengthen democracy and reduce the powers of the King. Though such motions had been unsuccessful in the past, the frailty of King Taufa'ahau Tupou IV and uncertainty over the succession gave them greater urgency. Nonetheless, in October 2003, changes to the Constitution gave greater power to the King and increased state control over the media.

In 2003, the Commonwealth Secretary-General appointed Sir Douglas Graham of New Zealand as Special Envoy to the Kingdom of Tonga. Sir Douglas's role was to encourage the Government to adopt democratic reforms in a manner and pace that would be acceptable to Tonga's deep traditional and cultural values.

In the March 2005 election, the HRDM again won seven of the nine people's parliamentary seats, the remaining two taken by independents. In the same month two people's and two nobles' representatives were appointed to cabinet.

In February 2006, Prime Minister Prince 'Ulukalala Lavaka Ata resigned and Dr Feleti Vaka'uta Sevele became acting Prime Minister. He was then confirmed as Prime Minister in March 2006. Sevele was the first Tongan citizen outside of the nobility to serve as Prime Minister.

In September 2006 King Taufa'ahau Tupou IV died after a long illness and was succeeded as head of state by his eldest son who was sworn in as King George Tupou V. In November 2006, when it seemed that Parliament would go into recess before enacting democratic reforms, pro-democracy demonstrations turned into riots and looting. Eight people died and much of Nuku'alofa's CBD was destroyed. At the Prime Minister's invitation, 150 Australian and New Zealand troops and police came to Tonga to restore order. The King promised that by 2008 the majority of leading government positions would be filled by elected representatives rather than nobles and King's appointees, and Parliament passed the reforms.

In the election of April 2008, with a turnout reportedly less than 50 percent, HRDM and its ally, the People's Democratic Party, together won six of the nine contested seats and independents took three.

In July 2008, the Constitutional and Electoral Commission was established, with the immediate task of making proposals for a more democratic system of government. In the same month, the King's spokesperson announced that by 2010 the King would surrender his role in government to the Prime Minister and that most Legislative Assembly members would be elected. In November 2009, the final report of the Constitutional and Electoral Commission was delivered

to the Legislative Assembly; the new Constitution was approved by the Legislative Assembly in April 2010 and enacted in September 2010.

Tonga's 2010 General Elections were the first to be held under the amended Constitution. Turnout was 91 percent, and the newly-established Democratic Party of the Friendly Islands (DPFI), led by Pohiva, won 12 of the 17 people's representative seats, but remained short of a majority in the 26-seat Legislative Assembly. The remaining seats were taken by five independent people's representatives and nine nobles. The Assembly members initiated negotiations with a view to forming a new government. On 21 December 2010 a noble, Lord Tu'ivakano, was elected Prime Minister by the Assembly, defeating Pohiva by 14 votes to 12.

On 18 March 2012, King George Tupou V died and was succeeded as head of state by his brother, former Prime Minister (2000-06) and High Commissioner to Australia (2008-12), Crown Prince Tupouto'a Lavaka, who was later sworn in as King Tupou VI.

In 2014, the Government, with support from a Commonwealth constitutional law expert, undertook a review of the provisions of the Constitution relating to the judiciary. The report recommended some amendments to the Constitution, in relation to the structure of the Privy Council, the posts of Lord Chancellor, Attorney-General, Law Lords and Director of Public Prosecutions and the function of the Judicial Appointments and Discipline Panel. These amendments were passed by the Legislative Assembly, but have yet to be enacted into law.

In the November 2014 election, voter turnout was approximately 79 percent. Twelve of the 17 people's representatives and one of the nine nobles were voted out of office. In a vote in the Legislative Assembly, People's Representative Pohiva was chosen to be Prime Minister with the support of 15 MPs, with 11 supporting Samiu Vaipulu. Former Prime Minister Lord Tu'ivakano was chosen as Speaker of Parliament.

## Chapter 3

### THE ELECTORAL FRAMEWORK, MEDIA, INCLUSIVE PARTICIPATION AND REPRESENTATION

#### Legal Framework and International and Regional Commitments

Tonga's national electoral legal framework is comprised of:

- Constitution of Tonga (1875, as amended);
- Legislative Assembly Act (1915, as amended);
- Electoral Act (1989, as amended);
- Electoral Commission Act (2010, as amended);
- Electoral Boundaries Commission Act (2010, as amended); and
- Electoral Regulations (2010, as amended).

Tonga's Constitution provides the basic framework for parliamentary democracy and elections, which are required to take place every four years (Clause 77). It establishes that every Tongan citizen aged 21 years or more who is not a noble, not insane or an imbecile and not convicted of a criminal offence and sentenced to imprisonment for more than two years is entitled to register and to vote in an election (Clause 64). It also permits Tongans resident outside of the country to vote, if they are registered and present in Tonga for the election and not otherwise disqualified (Clause 64).

Additionally, Tonga has signed or agreed to the following regional and international commitments relating to the conduct of elections and human rights:

- Commonwealth Charter (2012);
- Pacific Islands Forum Leaders' Declaration on Gender Equality (2012);
- Biketawa Declaration of the Pacific Islands Forum (2000); and
- Convention on the Elimination of All Forms of Racial Discrimination (1965, ratified 1972).

The Group noted that Tonga is considering several key international conventions that provide for democracy, protection of human rights and the rule of law, including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD). The Group recognised that the ratification of these conventions, as recommended following Tonga's 2013 Universal Periodic Review, was part of an ongoing national process.

The Group was informed that there was a need to educate Tongans on human rights and human rights instruments and obligations, and that part of the resistance to them was influenced by misunderstandings and concerns that they

presented a threat to Tongan culture and identity. The Group was advised that the discussions pertaining to the ratification of CEDAW had been particularly contentious because of a cultural and religious sensitivities. The Group encouraged the Government to consider positively these international conventions as it would demonstrate Tonga's commitment to international standards that all Commonwealth members were pursuing.

### **Head of State**

Tonga is a constitutional monarchy under King Tupou VI, with succession to the eldest male child and heirs of his body. In the event that he has no children succession is to the second male child and heirs and so on until all the male line is ended, in which case succession is to the eldest female child and heirs of her body (Constitution, Clause 32).

The Constitution provides for a Privy Council, comprising of any such people appointed by the King. The purpose of the Privy Council is to provide the King with advice, and the Constitution does not prescribe the nature of that advice (Clause 50).

The Government is divided into three bodies: the Executive (including the Prime Minister and Cabinet), the Legislative Assembly and the Judiciary (Clause 31).

### **Prime Minister and Cabinet**

The Prime Minister is an elected representative who is appointed by the King upon the recommendation of the Legislative Assembly (Constitution, Clause 50A). Cabinet consists of the Prime Minister and such other ministers nominated by the Prime Minister and appointed by the King (Clause 51). The Prime Minister has the power to appoint up to four non-elected individuals as cabinet ministers (Clause 51(2)(a)). The overall number of the Prime Minister and Cabinet must be fewer than half the elected members of the Legislative Assembly, excluding the Speaker (Clause 51(2)(b)).

### **Legislative Assembly**

The Legislative Assembly is a unicameral Parliament, composed of nobles' representatives, people's representatives and all members of Cabinet (Constitution, Clause 59). The Speaker is appointed by the King within five days after the appointment of the Prime Minister following a general election, and is drawn from one of the elected representatives of the nobles on the recommendation of the Legislative Assembly (Clause 61). The Speaker remains in office until an interim Speaker is appointed following the General Election, or he dies, resigns his appointment or ceases to be an elected representative (Clause 61(2)). Additionally, if the Prime Minister, with the approval of at least half of the members of the Legislative Assembly, recommends to the King that the Speaker be removed from office, the King shall revoke the Speaker's appointment (Clause 61(3)).

The Legislative Assembly has the power to pass bills, which become law upon the signature of the King (Clause 56). The Assembly meets at least once every twelve months (Clause 58).

Clause 38 of the Constitution provides that the King may dissolve the Legislative Assembly 'at his pleasure.' The Clause does not provide limitations or conditions on the dissolution of Parliament, save that the Kingdom cannot remain without a meeting of the Legislative Assembly for longer than one year. King Tupou VI invoked Clause 38 on 25 August 2017, triggering the national parliamentary election. The Group was informed that the 2017 election was the first to be conducted following the invocation of Clause 38.

The Group was advised that the King's decision to dissolve the Legislative Assembly followed the advice he received from the Speaker of Parliament, former Prime Minister and a nobles' representative, Lord Tu'ivakano. The Group was informed that the Speaker's advice to the King recommending the dissolution of Parliament had been based on alleged threats that the Executive had sought to remove the King's royal prerogatives, as well as alleged poor leadership and mismanagement by the Prime Minister and Cabinet.

Some commentators have described the King's decision to dissolve Parliament as an encroachment on the powers of the legislature, while others have described the King's action as an appropriate use of checks and balances built into Tonga's revised Constitution. The incoming Government, members of the Legislative Assembly and all stakeholders are encouraged to continue working together to strengthen the Kingdom's democratic processes and engage in dialogue to clarify constitutional issues that would deepen the Kingdom's democracy and promote the rule of law.

### **Tonga Electoral Commission**

The Electoral Act of 1989 establishes the position of Supervisor of Elections, appointed by the Prime Minister, who has the general control over and supervision of the election, including preparation of the electoral roll, handling of election-related complaints, and arranging adequate security measures (S.3).

The Electoral Commission Act, enacted in 2010, establishes an Electoral Commission (S.3). The Commission consists of a Chairman, appointed by the King for a term of five years, the Supervisor of Elections and another person appointed by the King for such term as he may deem fit (S.4(1)). The Commission is not subject to direction by any person under the Public Service Act (S.4(2)). The current members are: Lord Ramsay Dalgety (Chairman), Mr Pita Vuki (Commissioner and Supervisor of Elections), Ms Linda Folaumoetu'i (Commissioner, who also serves as Chief Executive Officer of the Ombudsman Commission).

The Commission is responsible for the long-term planning for elections, making and amending election regulations, recommending changes to election-related laws, determining appeals, challenges and disputes, recommending prosecution

for election offences, undertaking voter and candidate education, reporting, publication of data, regulating the use of media and advertising during the election period, and regulating candidate campaign expenditure (S.10).

The Tonga Electoral Commission employs five permanent staff, who work closely with Governors, district and local government officials to conduct core election activities such as the update of the electoral roll and the delivery of the election. In 2017, there were a total of 576 polling officials, mostly recruited from the civil service. Following the early dissolution of Parliament, the Commission received support from the Australian Electoral Commission for the conduct of the 2017 election, as well as some financial assistance from the New Zealand Government.

The Group commended the Tonga Electoral Commission for preparing and successfully administering this election at short notice. The TEC may wish to consider as part of its corporate plan, the following matters: review of nomination rules relating to the discharge of outstanding debts; development of a communications strategy (including the use of social media); providing a framework for domestic election observation by civil society.

### **Electoral Boundaries Commission and Boundary Review**

The Legislative Assembly Act establishes electoral constituencies. It provides that an Electoral Boundaries Commission shall divide Tonga into 17 single-member electoral constituencies for the purposes of the people's representatives, in accordance with the Electoral Boundaries Commission Act 2010 (S.3.1). It establishes five multi-member electoral districts in Tonga for the purposes of nobles' representatives: Tongatapu (3 representatives); Ha'apai (2 representatives); Vava'u (2 representatives); 'Eua (1 representative); and Niuafu'ou and Niuatoputapu (1 representative, see (S.3(2))).

The Electoral Boundaries Commission Act, enacted in 2010, establishes the Electoral Boundaries Commission (S.3). The Boundaries Commission consists of a person who holds or has held judicial office, a statistician and a qualified land surveyor and all positions are appointed by the King (S.4(1)). The Commission is independent in the exercise and functions of its duties (S.15). The Boundaries Commission is responsible for determining, defining and establishing electoral boundaries (S.16), and ensuring that the 17 electoral constituencies provided for under the Legislative Assembly Act contain an equal number of residents, with a variation of no more than 10 percent (S.17).

The Group was advised that the boundaries were last reviewed prior to the 2014 election. It was informed that the Electoral Boundaries Commission Act stipulates that updates to boundaries must be finalised no more than six months before the next general election. The early dissolution of Parliament therefore meant that boundaries could not be reviewed in time ahead of the election. The Group noted that under the current electoral framework, there would be another three and a half years prior to the next boundary review. The Group understood that TEC intended to recommend amendments to regulation to ensure a consistent regular review of constituency boundaries, and noted this

would strengthen the boundary review process in line with international good practice.

### **Voter Registration**

The Electoral Act provides for registration of voters through an electoral roll, maintained by the Supervisor of Elections (S.4). The electoral roll is divided into electoral districts, based on the final roll used for the previous election and amended continuously (S.4(2)). Every Tongan upon attaining 21 years of age, unless otherwise disqualified in accordance with Clause 64 of the constitution, is required to register to vote through application to the Supervisor for Elections for the district in which they reside (S.4(3)). A provisional roll is published not less than six months before the date of when an election must be held, to provide an opportunity for objections (S.5). An Electoral Appeal Committee is appointed by the King in each electoral district to hear appeals against decisions of the Supervisor of Elections (S.6).

The Group was advised that the electoral roll for the 2017 election was based on the final roll used in previous elections and had been updated. While the Electoral Act provides for continuous registration, the Electoral Commission usually also undertakes registration drives throughout Tonga to encourage voters to enrol and/or update their details. The early dissolution meant that the scheduled registration drives were unable to be completed. A provisional roll was produced on 4 September 2017 for public display and objections, and on 15 September 2017 a final electoral roll was produced. A supplementary roll was subsequently produced on 2 November 2017, to account for those who became qualified to vote following the publication of the final roll.

Tonga has adopted a National Identification (ID) card system, which is used as one of the forms of voter identification at election. The National ID Office is administered by the Lord Privy Seal and is responsible for registration and amendments of National ID cards. All permanent residents/citizens over the age of 14 in Tonga are eligible to register for an ID card. Registration and renewal of cards are free of charge, although replacement of lost or damaged cards incurs a TOP50 fee. Information collected by the National ID Office is shared with the TEC, which uses it to check information on the voters' register. The Group commended Tonga's implementation of a national ID card system, and encouraged the TEC and National ID Office to explore opportunities for greater enhancement and harmonisation of data collection for the purpose of enrolment.

The electoral roll is organised by constituency, village, and then family name, and contains the voter's name, gender, voter registration number and National ID number. Voters are to cast their ballot at their designated polling station within their constituency. If outside of their constituency, they can vote at one of the 'out of constituency' polling stations located in district centres. There is no procedure for advance or overseas voting.

The Electoral Act provides for voters to register in the constituency in which they have been resident for a period of three months or longer (s.4(3)). The

Group was informed that some candidates had encouraged supporters to transfer electorates into their constituencies.

A total of 59,003 voters were enrolled for the 2017 election. The average enrolment by constituency was 3,471 voters. Enrolment by constituency was highest in Tongatapu 3, with 4,765 enrolled voters, and the lowest was in Ongo Niua, with 1,138 enrolled voters. Approximately 51.9 percent of enrolled voters were women and 48.1 percent were men.

## **Candidate Eligibility and Nomination**

### *People's Representatives*

To be eligible to stand as a candidate for election as a people's representative, individuals must be nominated in the constituency in which they are registered as an elector (Constitution, Clause 65). If the prospective candidate is based overseas, they must have lived in that constituency for three months during the six months preceding the election (Clause 65). Candidates must not be convicted of a criminal offence and sentenced to a term of imprisonment of two years or more (Clause 23).

After the writs of election are issued, the Supervisor publishes the date for the close of nominations, no less than 21 or more than 28 days after the day on which the writ is received (Electoral Act, S.8). Candidates must nominate at the time and place fixed by the Commission, in writing, with the support of 50 qualified electors for that electoral district (S.9(2)). In 2017, nominations took place on 27-28 September.

Candidates must provide written clearance from the Supreme Court and Magistrate Court that there is no record of an outstanding order relating to Clause 65 of the Constitution (outstanding debts as ordered by a court). A number of interlocutors raised concerns that this provision placed an extra burden on the courts, and had the potential to prevent quality candidates from standing. It is important that this provision is not used as an obstacle to prevent otherwise suitable people from contesting the election. The Group noted the TEC was considering recommending amendments to replace this provision with a requirement that candidates not be insolvent or bankrupt. This would be in line with international good practice.

Candidates must pay a non-refundable deposit of TOP400 in order to nominate (S.9(3)). If by 3pm on the date of close of nominations only the same number of candidates have been nominated as there are vacant seats, the returning officer shall declare the candidate or candidates duly elected (S.9(5)).

Candidates are allocated positions on the ballot paper through random draw as outlined in the Electoral Act (S.9(5), see also Electoral Regulations). Only the name of the candidate and their village is displayed on the ballot paper.

### *Nobles' Representatives*

The nine nobles' representatives are elected from amongst the 33 hereditary nobles, as well as those persons appointed by the King as a life peer. Elections of the representatives of the nobles are to be conducted in accordance with Regulations.

Any person appointed by the King as a life peer, having the same rights and benefits of a noble, may vote as a noble for an electoral district, and is entitled to stand as a candidate (Elections of Representatives of the Nobles Regulations 2017). In 2017, all life peers indicated they would not stand as candidates.

The Group was advised that there is no formal process of nomination for nobles' representatives, and the names of all eligible nobles for each electoral district are printed on the ballot paper. The TEC advised that in 2017, nobles that had indicated that they did not wish to stand for election were positioned at the bottom of the ballot paper under a line, with the space to tick beside their name blacked out.

### **Election-related offences**

Part IV of the Electoral Act sets out penalties for election-related offences. These include:

- Failing to allow employees time off to vote;
- Impersonation of persons or voters;
- Attempting to vote more than once;
- Providing false or misleading information to TEC officers;
- Bribery and the giving of gifts, inducements, advances, payments or promises to electors or others to vote or not to vote or to do or take actions to secure a vote;
- Threats to voters, family or property of an elector or threatening, hindering, obstructing or abusing a polling official or officer of the TEC;
- Hindering, obstructing, annoying or pestering an elector going to, or at a polling station;
- Making speeches or statements in view or hearing of any public place or polling station, or by loudspeaker, PA system, television, video or radio that relates to the poll, on polling day;
- Having or maintaining a kava booth, entertainment tent or the like in a public place or near a polling station; and
- Showing or placing near a polling station any sign, card, photograph or paper that has the names of candidates, or directs or indicates how any person should vote.

Section 24 of the Electoral Act limits spending by any candidate to TOP20,000, and provides a framework for acquittal of expenditure to the TEC within one month after an election. In previous elections, expenditure had been limited to TOP10,000 per candidate, but the Tongan version of the law was amended in 2010 to TOP20,000. Under Tongan law, in the situation where there is an inconsistency between English and Tongan law, the Tongan language version is treated as giving the true meaning of the law.

The Group was advised that some candidates had spent in excess of the TOP20,000, and failed to acquit some of their expenses as provided for under law. It was further raised that traditional practices, such as gift exchange, hosting of events etc., occurred frequently during election campaigns despite these being listed as election-related offences. Concern was also expressed that incumbents were using resources of their offices, such as government vehicles, to support their election campaigns. The Group was informed that some of these candidates were also scheduling events for government business, in order to receive more media coverage (it was explained to the Group that these events were covered as news, rather than campaign activities).

The Group considers that the TEC should conduct a comprehensive review of election spending and accounting practices, to strengthen transparency and provide for an even playing field at elections. Some of the issues that could be considered as part of this comprehensive review would relate to expenditure by candidates and indirect expenditure, including donations provided by supporters, business etc. Should political parties become formalised, their campaign expenditure should also be regulated.

### **Election Disputes and Petitions**

Part V of the Electoral Act provides for the resolution of election-related disputes, including through the lodgement of election petitions to the Supreme Court. A candidate may request a recount within one week of the announcement of the result for a constituency. The candidate requesting the recount must pay a fee of TOP1,000, which is refundable if a different candidate is elected or where the Supervisor of Elections believes the request is reasonable (Electoral Act, S.17).

Candidates can challenge the conduct or result of an election. Petitions can be made by a person who voted or had a right to vote at the election, a person claiming to have had a right to be elected or returned at the election or a person alleging himself to be a candidate (S.26(1)). Petitions must be lodged within 28 days from the date of the election (S.27). Where more than one petition is presented relating to the same election or result, those petitions are to be dealt with as one petition (S.28).

### **Voter Education and Civic Awareness**

TEC delivered a number of voter awareness activities ahead of the 2017 election. Four TV programmes were broadcast to raise awareness on the following topics: the dissolution of Parliament and the calling of the election date; voter registration; candidate nominations; and polling venues and campaign rules. These programmes were re-broadcast three or four times a week on both TV and radio in the lead up to the election.

The TEC placed advertisements in all weekly newspapers to raise awareness on the election date, candidate nominations and polling venues. A TV and radio jingle was produced in collaboration with a local music group to provide

election information and encourage turnout and formal voting, particularly amongst young people. This jingle was played on a daily basis on radio and TV. The TEC produced 13,000 brochures on voter registration and voting, which were distributed across the country to venues such as banks and post offices. A nationwide SMS was released from 13 to 15 November 2017, encouraging voters to turnout to vote. These initiatives are to be commended, particularly considering the short timeframe the TEC had to prepare for the election.

Civil society organisations (CSOs), including church groups, women's groups, youth groups and the Tongan Leitis Association, expressed a desire for greater civic education and awareness ahead of elections. They noted that human rights and democracy were relatively new concepts to many Tongans, and that young people in particular had not been sufficiently engaged in political or electoral processes.

CSOs expressed interest in greater collaboration with the TEC in conducting civic and voter education so as to enhance participation. The Group was informed that some CSOs had planned election-related awareness programmes for 2018. Following the early dissolution of Parliament some CSOs had attempted to conduct some awareness ahead of the 2017 election, but informed the Group that the time constraint had been detrimental to their efforts. Nonetheless, the Group did note the particular effort by some youth groups to reach out to young people and generate interest in the election through social media. The Group encouraged greater use of these platforms, including by the TEC.

Some CSOs also expressed interest in participating in election observation, as it was felt that this would enhance their understanding of the process and of democracy. The TEC is encouraged to provide opportunities and develop relevant guidelines for domestic observation for interested CSOs.

### **The role of the media**

The media in Tonga continues to develop following the democratic reforms and the amendment of the Constitution in 2010. Tonga's Constitution guarantees freedom of speech and of the press. The Freedom House ranking for Tonga's Press Freedom status in 2017 was 'Free'.

Tonga's 2003 Newspaper Act and Media Operators Act regulate licensing for newspapers and broadcasters and imposes restrictions on the importation and sale of foreign media. Tonga does not have a Freedom of Information (FOI) Act but this issue has been discussed at several national consultations. The media has access to and regularly covers the debates at the Legislative Assembly, as well as other political developments. The Group encourages the Government to consider introducing an FOI Act, in accordance with international good practice.

The Taimi 'o Tonga was Tonga's first independent newspaper and is published in Tonga twice weekly. The independent monthly magazine and news website Matangi Tonga, is a prominent media organisation in the country. Other popular publications include the Talaki and Ika and Kele'a. The state-owned Tongan

Broadcasting Commission (TBC) operates the free-to-air Television Tonga and Radio Tonga. The Kingdom also has a pay television station, the Oceania Broadcasting Network and at least five other commercial radio stations.

A high speed internet cable system introduced by the Government in 2013 has made online news media the main source of information in Tonga and the access to the internet is not restricted. Internet penetration in the country in 2017 was estimated at around 45 percent.

The Tonga Media Council was established in 2003 to safeguard press freedom, raise the standard of journalism and create a forum with the Government on media related legislation and other matters. The Council has developed a voluntary General Code of Ethics for the News Media.

The media played an important role during the election with its extensive coverage of the campaign period. All the candidates had access to the various media organisations, subject to a payment of a fee, to convey their key messages in the lead up to the election. Nonetheless, some interlocutors expressed the view that several news outlets in Tonga appeared biased towards the incumbent Government. This view appeared based on the affiliations of several government MPs as well as government-backed candidates with some of the major newspapers and radio stations in Tonga. It was further noted that public statements and activities of incumbent members of Government were often being reported on as news, therefore providing additional publicity for their campaigns, while other candidates had to buy advertisement space to publicise their campaigns.

The Group was also briefed by the Tonga Media Council on recent challenges between the Government and the management of the TBC. The Group was advised that the challenge to the dismissal of the former General Manager of TBC had been reviewed and dismissed by the Supreme Court.

An independent, professional and responsible media is a critical component of democratic society. The media has a right to access to information and a responsibility to report in an accurate and balanced manner. The Group considers that the development of a code of conduct for media reporting on elections could assist in clarifying the role and responsibilities of media during the election period, and help to ensure equal access by candidates. It could also provide a basis for continued training of media practitioners ahead of elections. The TEC may wish to consider developing this code in consultation with the Tonga Media Council.

### **Inclusive Participation and Representation**

The ability of citizens to participate meaningfully in elections and, therefore, in a nation's governance is a key aspect of democracy. It is important that the legal and institutional framework governing the electoral process provides an enabling environment for this to occur, in particular for groups such as women, youth and persons with disability who, according to several interlocutors, are often marginalised in many aspects of Tonga's socio-economic and political life.

The Group therefore found it important to observe how persons from these groups participated in the 2017 election and examine whether any civic education, advocacy and other initiatives had been undertaken to promote their greater inclusiveness in the process.

### *Women*

Tonga's legal framework provides gender-neutral criteria for both candidacy and eligibility to vote for people's representatives in the Legislative Assembly - as long as electors and candidates fulfill the requirements stipulated in the Constitution and Electoral Act, there is no discrimination in law between women and men. However, according to Tonga law and custom, nobility is hereditary along male lines, thereby precluding women from being eligible for election to the nine nobles' seats, unless they are conferred a noble title by the King.

Women comprise over 50 percent of Tonga's population, and this majority was also reflected in the number of women - 30,051 out of 59,003 electors - that registered to vote in this election. The Group was encouraged that the overall proportion of women candidates had increased from 7.6 percent in 2010 and 15 percent in 2014, to 17.4 percent in 2017. Nonetheless, of the 86 candidates that contested the people's representative seats, only 15 were women, and in six of the constituencies no women contested the election.

Women's active participation in the different campaign activities leading up to the election was impressive, and included high numbers of women in the campaign float processions and visibility of women candidates in the media as well as through various posters and flyers. The involvement of women in the different aspects of management and delivery of the elections was also commendable, namely, as part of the leadership of the TEC, as well as being Officers-in-Charge and other polling officials. Women were also visible as part of the security arrangements at polling stations and were active in ensuring the maintenance of a peaceful and orderly process, as well as giving assistance to electors where necessary.

The Group sincerely congratulates the two female candidates who won their seats in Tongatapu and Vava'u, marking the first time two women will be represented in the Legislative Assembly concurrently. However, whilst an improvement from the previous election, the results demonstrate that there remains much to be done to promote women's participation and representation in Tonga. The Group noted that a low percentage of electors voted for women and consequently there was a low increase in women's overall representation. Women candidates received only 14 percent (5,575 of 39,463) eligible votes. With the exception of Tongatapu 5 and Vava'u 16, where women candidates received 35 and 43 percent of total votes respectively, the majority of women candidates received less than 20 percent of total votes in their constituencies, with Eua 11 being the least at 0.28 percent. The two women elected represent 11 percent of the people's representatives and about 8 percent of the total legislature.

The Group was advised that some women's groups in Tonga had been advocating for the adoption of temporary special measures, including the introduction of a quota for women's representation, and that this was one of the matters under consideration prior to the early dissolution of parliament. The Group was also informed of a legal provision for the Prime Minister to appoint up to four additional members to the legislature as cabinet ministers, and that there had been some engagement in the previous election where women's groups advocated that these members should be women. However, it was explained that appointed members was not a preferred option by the Government, who felt strongly that the Legislative Assembly should comprise elected members.

The Government and people of Tonga are encouraged to continue efforts to pursue greater representation for women in the national Parliament. Possible initiatives could include encouraging and building the capacity of greater numbers of women to stand as candidates, as well as creating an understanding amongst the populace of the value and importance of women's increased participation at national decision-making level. Consideration should also be given to the ratification and domestication of CEDAW, which promotes non-discrimination against women in all spheres of life. Article 7 of CEDAW specifically provides for women's equal participation in politics and public life hence would complement and strengthen current work in this regard. Tonga is further encouraged to look to existing models and international good practice as it promotes greater inclusion and representation of women in electoral processes and governance.

### *Youth*

The Kingdom of Tonga defines youth as being from 15 to 35 years of age. Similar to many countries, Tonga has a large young population, with over half the population under the age of 24. However, while the Group generally observed that while there were some young polling officials (especially young women), most candidates and electors seemed of older and elderly age and relatively few young people appeared to have voted. Further, the Group was advised that none of the candidates who contested the election were considered by the community to be 'youth' candidates, either in their age or in their policy focus. The importance of youth participation in democratic processes cannot be overstated and, as emphasised by the various stakeholders consulted, it is imperative that their voice is heard on matters of governance.

The Group commended current efforts by civil society groups to conduct civic and voter education by engaging young people on platforms on which they are most active such as social media, which the Group was informed is the most popular vehicle for information dissemination and debate for Tonga youth. This, together with initiatives that have previously been conducted such as youth parliaments, could go a long way in promoting youth interest and participation in elections.

The Group concurred with the concern expressed by some interlocutors that the qualification of 21 years of age for participating in the election leads to exclusion of a significant number of young people in the democratic process.

As part of efforts to increase youth participation, Tonga is encouraged to consider reducing this age requirement to 18 years of age in line with international good practice.

### *Persons with Disabilities and the Elderly*

The Group was not informed of any particular concerns regarding the franchise of persons with disabilities. Clause 64 of the Constitution states that persons who are 'insane or imbecile' are prohibited from participating in an election, but, but the TEC advised the Group that such status needed to be determined by a medical practitioner and lodged with the TEC, and that such an occasion was rare.

The Group observed a number of persons with physical disabilities voting at polling stations. Some factors such as the inaccessibility of civic and voter education, as well as possible constraints in the expedited registration process, may have inadvertently contributed to the seeming lack participation by persons with other types of disabilities. As far as the Group could tell, there were no braille materials or other assistive devices to enable persons with serious visual impairment or other sensory disabilities to vote.

Nonetheless, the Group noted that the stations were generally accessible to those disabled persons who did vote and it is commendable that some stations had ramps to facilitate wheelchair access. In some cases, where an elector was unable to physically enter the station, polling officials, accompanied by police officers brought the election materials to the affected voters who were outside, in the vicinity of the station. Further, a number of elderly persons with weakened visual abilities requested and were given assistance to cast their vote.

The Group was impressed by the concerted effort of elections officials to ensure that disabled and elderly electors were able to exercise their democratic right and encourages Tonga to explore further measures to facilitate greater inclusiveness in this regard.

### *Civil Society*

Civil society plays a key role in contributing to democracy and is at the forefront of exposing human rights violations and democratic deficits and advocating for inclusivity and accountability. The Group was informed by the different CSOs consulted that civil society has space to operate relatively freely in Tonga, although the close-knit nature of the society can result in self-censorship if, for instance, criticism is to be levelled against a family member in a position of authority. CSOs advised that while government may be uncomfortable at times with civil society advocacy, there are no significant reprisals against human rights defenders.

Nonetheless, the Group noted gaps in the legal and institutional framework for human rights protection. CSOs expressed concern about the uncertainty

regarding ratification of key international human rights instruments and that Tonga does not have a national human rights institution where violations, including those pertaining to elections and governance, can be reported and addressed. Tonga's 2013 Universal Periodic Review recommended that consideration be given to establishing such a structure and the Group was of the view that a Human Rights Commission would enhance civil society engagement and be beneficial to Tonga's democratic development.

## **Recommendations**

### ***Electoral Reform and Legal Framework***

- The Group encourages the incoming Government, the members of Parliament and all stakeholders to continue working together to strengthen the Kingdom's democratic processes and engage in dialogue to clarify constitutional issues that would deepen the Kingdom's democracy and promote the rule of law.
- The Group recommends that Tonga consider ratifying a number of key international conventions that would assist with the discussion relating to democratic process, including the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination Against Women, and Convention on the Rights of Persons with Disabilities.

### ***Election Administration***

- When considering their corporate plan, the Tonga Electoral Commission (TEC) could include the following matters: review of nomination rules relating to the discharge of outstanding debts; development of a communications strategy (including the use of social media); and providing a framework for domestic election observation by civil society.
- Further, the TEC could consider conducting a comprehensive review of candidate election spending and accounting practices, to strengthen transparency and provide for an even playing field at elections. Some of the issues that could be considered as part of this comprehensive review would relate to expenditure by candidates and indirect expenditure, including donations provided by supporters, business etc. Should political parties become formalised, their campaign expenditure should also be regulated.

### ***Voter and Civic Education***

- The Group considers there could be a greater emphasis on voter and civic education, particularly for young people and first-time voters. Greater collaboration with secondary schools, such as the inclusion of civic education into the national curriculum, would assist young people to

develop a deeper understanding of their rights and responsibilities as voters.

- Further, the TEC could consider exploring other platforms for ongoing voter information and education, such as strengthened partnerships with civil society organisations, church groups and the use of social media.

### ***Media***

- The Government may wish to consider introducing a Freedom of Information Act in accordance with international good practice, to ensure access to information.
- The TEC may wish to consider developing a code of conduct for media reporting on elections, to ensure equal access by candidates during the election campaign. This could provide a platform for continued training of media practitioners ahead of elections.

### ***Inclusion and Access***

- The establishment of a Human Rights Commission could assist civil society organisations to promote and ensure the protection of human rights.
- The Group encourages the Government to continue its efforts to encourage greater participation of women in politics in Tonga, and notes Tonga could look to models in the region and throughout the Commonwealth to ensure more women are present in the Legislative Assembly.
- Further, the Group recommends consideration be given to reducing the voting age in Tonga to 18, given the increasing youth population and noting the importance of their participation for future democratic development.

## Chapter 4

### THE ELECTION CAMPAIGN, VOTING, COUNTING AND RESULTS

#### Election Campaign

Eighty-six candidates contested the 16 November 2017 election, of which 15 were women. This represented an overall decline in the number of candidates compared to the previous 2014 election, where 106 candidates had contested. Some interlocutors speculated to us that the decline was attributed to the early dissolution of Parliament, as some intending candidates, including Tongans residing overseas, had not had the time to gather their support or finances. The decline is, however, in keeping with an overall trend - 145 candidates had contested the 2010 election.

Prime Minister Pohiva's constituency of Tongatapu 1 was the most highly contested, with 11 candidates, while Ongo Niua seat had only two candidates. The campaign period had commenced prior to the Group's arrival, and formally ended at 0900hrs on 15 November, 24 hours prior to the opening of polls.

Tonga's legal framework does not currently provide a formal system of political party registration and nomination, although there are no restrictions on political party formation. Prime Minister Pohiva and his supporters campaigned in all 17 people's constituencies under the banner of the Democratic Party of the Friendly Islands (DPFI), and the Group was informed of a few other minor groupings that had been established. Should this trend toward political party system continue, the development of a legal regulatory framework and a programme of public dialogue and civic education may be useful in addressing emerging issues, including in relation to campaign financing.

Many candidates chose to promote their campaigns through the production of candidate posters and advertisements and appearances on television and radio. The Group was advised that a key component of campaigning involved visiting communities and, for men, discussion during kava ceremonies. Some candidates adopted a colour and several employed the use of 'campaign floats,' where candidates' supporters drove in convoys around the towns to bring visibility of their campaigns. This contributed to a spirited and lively atmosphere ahead of the election, and the Group noted the visible and active participation of young people in these activities. Nonetheless, the Group was concerned by reports that discriminatory and pejorative language had been used by some candidates against members of the Leitis community in Tonga.

#### Voting

Polling took place in Tonga between 0900hrs and 1600hrs on Thursday 16 November 2017. As this was a working day, the Group generally observed that most Tongans were given time off from work to vote, in accordance with the Electoral Act. Nonetheless, as voters must vote in their designated polling

station, which is usually near their place of residence rather than employment, the Group noted that the Government may wish to declare polling day a public holiday. This could go some way towards emphasizing the importance of this critical democratic process, increasing the visibility of the election and encouraging high voter turnout, particularly amongst young people.

There were 170 polling stations around the country on election day. Polling stations were predominantly located in church and community halls in the villages and towns where the Group visited. Voters must vote in their designated polling place unless they are out of their constituencies, and most voters the Group interacted with appeared to have a good understanding of where to go to cast their ballot. Nonetheless, the use of signage to denote polling stations, including entries and exits therein, may go some way to improving visibility of the election and encouraging high turnout.

Polling materials, including ballot boxes and papers, were distributed to most polling staff on election day, except for the outer islands, where materials were distributed in the days prior to the election. Police officers were not always present during the distribution of materials, although no interlocutors expressed concern over the security of the materials or safety of the polling officials, and the Group was satisfied that the risk of interference was low.

On election day, all polling stations where observed had an Officer-in-Charge (OIC), supported by one or more polling official and at least one police officer or other security/emergency service personnel. Town officers also provided assistance to polling officials, including call to vote and assisting with the dissemination of information and identifying voters.

The TEC advised the Group that there were a total of 576 polling officials. Training for returning officers and assistant returning officers took place on 19 to 20 September 2017, and polling official training commenced on 19 October 2017 and was completed by 10 November 2017. Training was conducted in small groups using interactive methods, and officials were provided with a copy of the polling official handbook for future reference.

### **Key Procedures for Opening**

The key procedures for opening the polls is as follows:

- All staff are to arrive at polling station no later than 0830hrs.
- OIC unlocks the ballot box and removes the items from the box.
- The empty ballot box is displayed and then locked in front of the first two voters.
- Ballot box is to remain sealed throughout the hours of voting, and is not to be opened for any reason.

- Sealed ballot box is to be kept clearly visible to voters and staff at all times.

### **Key Procedures for Voting**

The key procedures for voting is as follows:

- Elector presents to the polling station.
- Polling official checks the identity of the elector using the National ID Card or, if they do not have a NID Card, their drivers' licence or passport or another form of identity 'acceptable to the OIC'.
- If the voter cannot produce an acceptable ID, and their name is on the roll of electors, then the voter is asked to swear and sign an oath (see Polling Station Manual).
- If the person is not on the roll of electors they cannot vote at the polling station, and are advised to contact the Supervisor of Elections to see if they are on the roll in another constituency.
- Once identity is verified, the polling official crosses out the elector's name on the electoral roll (NB: electoral roll is arranged by village in alphabetical order).
- OIC initials the back of the ballot paper and passes it to the elector and explains how to vote.
- Elector proceeds to the voting screen.
- Elector is to vote alone; no one, including families or friends, is to assist an able-bodied elector.
- Elector marks the ballot paper, folds it, places it in the ballot box and leaves the polling place.

### *Assisted voting*

- Elector's with impaired vision or other disabilities and requiring assistance are to be assisted to vote by the OIC.
- The OIC and the voter proceed to the voting screen and the OIC marks the ballot paper in accordance with the elector's direction.
- The OIC then assists the elector to fold and deposit the ballot paper into the ballot box.
- Police officer or, if unavailable, another person nominated by the voter (who is not a candidate) is to observe the assistance of the voter.

## **Observation of the Opening and Voting Process**

Polling stations opened on time and opening procedures were observed in most locations. Polling was conducted in a calm atmosphere. Voting was generally steady, although voters tended to cast their ballot in the morning. It appeared voters had a good understanding of the location of polling places, although the TEC may wish to consider using signage to clearly demarcate the polling venue and raise the overall visibility of the election, and to clarify the entry, exit, and flow of voters.

OICs and polling of officials, the majority of whom were women, were organised and professional, and appeared to have a good understanding of voting procedures. Police officers, and in some locations, fire and correctional services personnel, were present at all polling stations, providing security to the electoral process.

The vast majority of voters attended the polling station with their ID cards or passports ready for verification. In some instances, where a voter did not have identification, polling officials, with the support of the Town Officer, verified the identity of the voter, or facilitated the swearing of an oath.

Secrecy of ballot was respected at all polling stations, although in some locations the voting screens were unable to be erected as the wood had expanded. The TEC may wish to look at upgrading some of its equipment, including: voting screens to ensure all voters are able to cast their vote in secret; the development of new ballot papers so that serial numbers are displayed on a counterfoil, rather than the ballot paper; and transparent ballot boxes.

Voters appeared to have a good understanding of how to vote and were able to do so in an efficient manner. Voters that required assistance in voting were provided that assistance by the OIC in accordance with the assisted voting procedures.

There were some minor variations in procedures across polling stations, but these did not affect the credibility of the election.

## **Key Procedures for Closing and Counting**

The key procedures for voting is as follows:

- Polling station is to close at 1600hrs.
- Voters inside the station who have joined the queue prior to 1600hrs are allowed to vote.

- Where there is a queue of voters waiting to vote and they cannot be brought inside the booth a polling official is to join the queue to indicate who was at the station at 1600hrs.
- Once all voters have voted and left the premises, polling officials are to close the polls.
- Polling officials account for all unused ballot papers, and complete a form provided by the TEC.
- Officials empty the ballot box and unfold all the ballot papers.
- Officials sort the ballot papers by candidate voted for, using the sort card provided by the TEC.
- Votes for each candidate are counted and written on a sort code for the candidate.
- Formal votes are indicated by a tick or cross in the circle, next to the candidate's name, or another mark where the voters' intention is clear.
- A ballot paper is void if there are no marks for any candidate or two or more marks against candidates' names.
- Officials complete the returns and results slip. The number of ballots should equal the number of marked names on the roll.
- Assistant Returning Officer announces the result at the polling station.
- Results are taken to the district Returning Officer who will compile the result for the constituency.
- The result of the count for each constituency is announced by the Supervisor of Elections following the compilation of results from each polling station together with any votes taken at a designated polling station in a district for electors residing there temporarily and on the roll in another district.
- The successful candidate is the one with the highest number of votes.
- Ballot papers and the electoral roll are to be secured in the ballot box and, along with other materials, packed and returned to district centres as per instructions by the Supervisor of Elections.

### **Observation of Closing and Counting**

Voting ended on time at 1600hrs. The Group did not observe any voters in the queue prior to the close of polls.

Some voters and members of the public waited outside while polling officials counted the ballots. In all cases, these bystanders appeared calm and patient, and respected the process.

The counting process appeared to be well understood by polling officials, who counted the votes and filled out the forms in a professional and transparent manner.

In one polling place the officials misplaced one of the documents required for counting. The TEC may wish to collate these documents into one booklet, so as to provide for ease of use. The TEC may also wish to emphasise the importance of counting unused ballot papers as part of the reconciliation process, as this step was missed in at least one polling station.

## **Overview of the Countrywide Observation**

### **Tongatapu**

- Polling was calm, orderly and peaceful, with procedures broadly followed by polling officials.
- Ballot boxes were locked in all the polling stations we visited.
- No complaints about the voters list were received.
- Electors arrived with their identification ready to be checked and once checked proceeded to vote. The polling officer attended efficiently to a few electors who had a problem with identification. Polling officials examined each voter's ID document before the ballot paper was issued.
- Elderly voters were provided with assistance in casting their vote.
- Two police officers were present at all the polling stations visited. Both provided assistance to the polling officials in the sorting of ballot papers before the count commenced.
- The declaration of results was announced by the Officer-in-Charge outside the polling station immediately after the count and verification process.

### **Vava'u**

- Polling procedure in a calm, positive atmosphere, and polling officials appeared competent and well-trained.
- Voters had a good understanding of voting procedures and were able to cast their ballot in secret.

- Most voters chose to attend the polling stations in the morning, often on their way to work. Polling stations were generally quiet in the afternoon, with few voters coming through.
- The team observed a few voters being turned away from their polling stations as they were not on the roll, although we understand they were redirected to district headquarters where they were given advice as to their polling place location.
- Most voters were able to cast their ballot without assistance, and those who did require assistance were treated respectfully.
- The team observed several voters casting their vote at a dedicated polling station for people who were out of their constituency on polling day. This process appeared smooth, and voters had a good understanding of procedures.

### **Ha'apai**

- The team observed the two main islands of Lifuka and Foa in the Ha'apai island group on polling day.
- Overall, polling was conducted in an orderly and efficient manner. All polling stations opened on time and polling officials were very professional, well trained and seemed to know what they were supposed to do.
- Most voters cast their votes in the morning. There were hardly any voters lining up in the afternoon and only a few stragglers before the close of the poll.
- The team did not observe any incidents, and the electoral process appeared peaceful and organised.
- The polling officials were mostly women and security for the stations were provided either by the police, fire service or correctional service.
- Counting was orderly and broadly transparent, although the ballot box was not turned upside down and shown to everyone at the count that it was empty of contents.

### **Election of the Nobles**

- The Chair was invited to observe the voting and counting of the ballot for the nine nobles representatives.
- The ballots were filled out by the nobles and placed in a locked ballot box.

- The counting was conducted in a private office and undertaken by the Supervisor of Elections, the Chair of the Electoral Commission and the other current Member of the Electoral Commission.
- Eight of the nine nobles were elected by a majority while there was a tie for the ninth position.
- The ninth position was determined by the toss of a coin in accordance with the Electoral Act. The Supervisor of Elections conducted the toss of the coin in the presence of the two candidates.
- This process was conducted without incident.

## **Recommendations**

### ***Campaign practices***

- Should the trend toward a political party system in Tonga continue, consideration should be given to the development of a legal regulatory framework and a programme of public dialogue and civic education, which may be useful in addressing emerging issues, including in relation to campaign financing.
- The Group recommends regulations be made to ensure that campaigns are not used as a platform to discriminate against people on the basis of their gender or sexual orientation.

### ***Voting practices***

- The Group recommends:
  - Consideration be given to declaring election day to be a public holiday. This would ensure all registered voters are able to cast their vote and would also help to promote the importance of elections and democracy.
  - Polling stations be clearly demarcated with signage to increase the visibility of the election and thereby encourage participation.
  - Signs be erected at the polling station demarcating entry and exit.
  - The display of how to vote instructions, which might be useful in clarifying arrangements for first time voters.
  - TEC consider developing a record book for the Officers-in-Charge of polling station to capture all key processes, including the tally of results, replacing the current practice of using loose sheets of paper.

- Provision for advance voting for polling officials and security personnel, to eliminate the need for special mobile polling on election day.

### *Counting practices*

- Consideration could be given to making the count more transparent by allowing accredited scrutineers to observe the process. This should not impact on the efficiency of the count.
- The Group recommends the TEC strengthen measures for reconciliation of ballots during the counting process.

## **Annex I**

### **Biographies of Chairperson and Observers**

#### **Chair: Professor Margaret Wilson DNZM (New Zealand)**

Margaret Wilson is Professor of Law and Public Policy, University of Waikato, and a former Member of Parliament, having served from 1999 to 2008. She held several Ministerial appointments including Attorney-General, Minister of Labour, Associate Minister of Justice and Minister Responsible for Treaty of Waitangi Negotiations. Ms Wilson was Speaker of New Zealand's Parliament between 2005 and 2008. Positions held include that of Chair, National Advisory Council on the Employment of Women, Director of the Reserve Bank, Law Commissioner, Foundation Dean of Waikato Law School and President of the New Zealand Labour Party.

#### **Mr Mohammed Saneem (Fiji)**

Mohammed Saneem is the Supervisor of Elections at the Fijian Elections Office. He was appointed to this position by His Excellency the President of Fiji, Ratu Epeli Nailatikau, on 28 March, 2014. In this role, he is responsible for conducting national elections, the registration of voters, the registration of political parties and the registration of candidates. In 2015 Mr Saneem led the Pacific Islands Forum Observer Mission to the Autonomous Region of Bougainville Elections and he has also observed the 2016 Vanuatu Elections with the Melanesian Spearhead Group Observer Mission. Mr Saneem is a member of the Steering Committee of the Commonwealth Electoral Network.

#### **Mr Joseph Cain (Nauru)**

Joseph Cain was appointed as Nauru's first Electoral Commission in 2016. He conducted the Nauru General Election 2016 and Nauru By-election 2017. Mr Cain served as a member of the Pacific Islands Forum observer team for Papua New Guinea Election 2017. He also participated in the New Zealand Overseas Visitors Programme for New Zealand Election 2017, the ICPS 14th International Electoral Symposium 2017 held in Sri Lanka, and the Commonwealth Election Programme (CEP) training workshop on electoral democracy held in Apia, Samoa in October 2017.

#### **Ms Lomcebo Dlamini (Swaziland)**

Lomcebo Dlamini is a lawyer whose work focuses on human rights, gender equality, democracy and good governance. She is currently supporting the Human Rights Society of Swaziland (HURISWA) as a Human Rights and Gender Specialist and is also involved in capacity-building of Swaziland's women and youth movements for effective and meaningful participation in Swaziland's 2018 national election. Ms Dlamini is a founder member of Lawyers for Human Rights Swaziland (LHRS) and the Justice and Law Initiative (JULISA). She has previously served as National Coordinator of Women and Law in Southern Africa Research and Educational Trust (WLSA), Executive Director of Swaziland Coalition of Concerned Civic Organisations (SCCCO) Executive Secretary of Constituent Assembly of Civil Society in Swaziland (CA), National and Regional Chairperson of the Media Institute of Southern Africa (MISA) as well as member of Swaziland's Judicial Service Commission (JSC) and Task Force on People

Trafficking and People Smuggling. She has observed several elections, the most recent being the June 2017 National Assembly election in the Kingdom of Lesotho.

**Commonwealth Secretariat Staff Team**

Mr Albert Mariner, Head, Asia/Caribbean/Pacific Section, Team Leader

Ms Sarah Linton, Political Affairs Officer, Caribbean/Pacific Section

Ms Zippy Ojago, Executive Officer, Electoral Support Section

## Annex II Arrival Statement

***Statement issued by Hon Margaret Wilson DNZM  
Chair of the Commonwealth Observer Group  
Nuku'alofa, 13 November 2017***

It is an honour and a privilege to lead the Commonwealth Observer Group to Tonga's 2017 National Parliamentary Elections.

Our group was constituted by the Commonwealth Secretary-General Patricia Scotland, following an invitation from the Prime Minister of Tonga.

It is our task as observers to consider all factors relating to the credibility of the electoral process as a whole. Accordingly, we are charged with observing and evaluating the pre-election period, the poll, the count, and the declaration of results.

We will assess whether the elections have been conducted according to the national laws of Tonga and to Commonwealth standards to which Tonga has committed itself.

During our observation, we will not interfere with the process. We will act with impartiality, objectivity and independence. Each of us has been invited to participate in this assignment in our individual capacities and we do not represent the countries or organisations to which we belong.

This is the first national election in the Kingdom that the Commonwealth will observe. Our presence here in Tonga is part of the organisation's strong commitment to work with all the member states to support their national democratic processes. Credible and peaceful elections that enable citizens to choose their leaders is at the heart of the Commonwealth Charter, which was adopted by Commonwealth Heads of Government in 2012.

Since arrival, we have met with the Prime Minister, the Electoral Commission, some of the members of Parliament, civil society representatives, media council and the diplomatic community. Over

the next few days we will continue to meet with a range of relevant stakeholders to the election process.

On Wednesday, 15 November, I will deploy teams to Vava'u and Ha'apai islands. I will observe the process here in Tongatapu. Our teams will observe the campaign, the poll, the count and the declaration of results. We will continue to work and consult closely with observers from the Pacific Islands Forum.

Our Group will issue an Interim Statement of key findings shortly after the declaration of results. Thereafter, and before our departure from Tonga on 20 November, we will prepare our final report. This report of our assessment will be submitted to the Commonwealth Secretary-General, who will in turn forward it to the Government of Tonga, the Ministry of Justice, the Electoral Commission, and other stakeholders in Tonga. The report will be made publicly available throughout the Commonwealth.

We encourage all registered voters in the Kingdom to turn up on Thursday 16 November to vote and participate peacefully in Tonga's national parliamentary elections.

**Tanoa International Dateline Hotel**

**Nuku'alofa**

**13 November 2017**

***Note:*** *Copies of the Press Release issued by the Secretariat in London on 7 November outlined the composition of the Group and its Terms of Reference. Copies will be made available.*

### Annex III Deployment Plan

Team	Observers	Electoral District
1	Chair: Hon Margaret Wilson DNZM (New Zealand) Albert Mariner Zippy Ojago	Tongatapu
2	Mohammed Saneem (Fiji) Sarah Linton	Vava'u
3	Joseph Cain (Nauru) Lomcebo Dlamini (Swaziland)	Ha'apai

**Annex IV**  
**Interim Statement**

**Hon Margaret Wilson DNZM**  
**Chair of the Commonwealth Observer Group**  
**Saturday 18 November 2017**  
**NUKU'ALOFA**

***“We congratulate the Kingdom of Tonga for participating peacefully and in numbers in their national election to decide their leaders in the next Parliament.”***

The Commonwealth Observer Group was invited here by the Government of the Kingdom of Tonga. Since our arrival on 9 November, we have been warmly welcomed by everyone we have met. Before the election, we met with the Prime Minister and members of his Cabinet, the Speaker of Parliament, representatives of the Nobles of the Realm, the Electoral Commission, candidates, civil society groups, women and youth groups, Tonga Media Council, and members of the diplomatic corps.

Members of our Group were deployed to Vava'u, Ha'apai, and here in Tongatapu to observe the poll, count and declaration of results. We have collaborated and worked closely with the observers from the Pacific Islands Forum, who were present in Tongatapu and 'Eua.

I was privileged to observe the process where the Nobles of the Realm elected their nine representatives to Parliament. This is a unique constitutional arrangement in the Kingdom and a process outlined in Tonga's electoral laws.

This is the Group's Interim Statement, providing an outline of our key observations and findings.

### **Key Interim Findings**

#### *General summary*

The Commonwealth Charter “recognises the inalienable right of individuals to participate in democratic processes, in particular

through free and fair elections in shaping the society in which they live.” We congratulate the Kingdom of Tonga for turning out in numbers to exercise their democratic right. The election was conducted in a peaceful environment and the voters demonstrated a good understanding and trust in the process. We found the election was conducted in accordance with Tonga’s national laws and the results reflected the wishes of the people.

The Group noted that this was the third election held under the amended Constitution 2010, as part of Tonga’s democratic reforms. We further noted that this election was conducted a year earlier than anticipated, following His Majesty, King Tupou VI’s decision to invoke Clause 38 of the Constitution to dissolve Parliament on 25 August 2017.

We encourage the incoming Government, the members of Parliament and all stakeholders to continue working together to strengthen the Kingdom’s democratic processes and engage in dialogue to clarify constitutional issues that would deepen the Kingdom’s democracy and promote the rule of law.

#### *Preparations and election campaign*

The Group acknowledged and commended the work of the Electoral Commission in preparing the country’s election with short notice following His Majesty’s decision.

The Group observed campaigning in Tongatapu ahead of the 16 November election. Many candidates chose to promote their campaigns through the use of posters and with campaign ‘floats’ - large convoys of candidates’ supporters - which added a spirited and unique flair to the environment.

The Group commended the media for the positive role it played in creating awareness about election issues and the campaign. While some interlocutors raised access to the media as a potential issue, it appeared that campaigning was lively and competitive, and candidates were generally able to convey their campaign messages to the public.

We welcomed the large number of women candidates that contested the election. We convey our sincere congratulations to the two female candidates who won their seats in Tongatapu and

Vava'u, marking the first time two women will be represented in the Legislative Assembly concurrently. We encourage the women in Tonga to continue to participate in elections and pursue greater representation in the National Parliament.

### *Polling*

The Group was impressed with the high level of professionalism, integrity and efficiency displayed by polling officials, many of whom were women, during the election. These officials appeared well trained and ensured the polling process was well organised and that voters were able to cast their votes in an orderly manner.

Voters appeared to have a solid understanding of polling procedures and exercised their franchise in a calm and positive atmosphere. The Group was pleased to see a high turn-out of women voters at the election, as well as elderly and disabled voters who were assisted by the polling officials where necessary to ensure they were able to cast their votes.

We commended the support provided by the police, fire and correctional service personnel to the polling teams in all the constituencies we observed. Their presence contributed to the peaceful environment that enabled the people to exercise fully their democratic rights in the country's political process. The Group also welcomed the role that Town Officers and other local community leaders played in supporting polling teams in their task.

The Group recognised that none of the candidates had agents or scrutineers during the poll and count. This is testament to the trust and confidence the people of Tonga have in their electoral process.

### *Count and declaration of results*

The Group found the count to be efficient and methodical. Consideration could be given to make the count more transparent by allowing the voters to observe the process.

The result in each polling station was made public immediately after the completion of the count. Ballot boxes were then returned to the district offices and a final result was announced later in the evening by the Electoral Commission.

## *Conclusion*

We will finalise our report over the next two days and this will include the Group's conclusion and set of recommendations for consideration to strengthen the country's electoral process.

Our report will be submitted to the Commonwealth Secretary-General who will in turn submit it to the Government of Tonga, the Electoral Commission, Speaker of Parliament and other key stakeholders in the country.

The Commonwealth's long-standing commitment to Tonga's democracy and development will continue. The Kingdom's constitution has unique features which recognises its social, cultural and political structures. I encourage all citizens and the elected leaders from this election to continue working together in strengthening the Kingdom's democracy.

We note the process for forming the Government will commence shortly following the full declaration of results. We congratulate the Kingdom of Tonga on a successful election and convey our sincerest appreciation and best wishes to His Majesty King Tupou VI, the Nobles of Realm, the incoming Government and the people. It has been a privilege to lead this Group of Commonwealth observers to the Kingdom's national parliamentary election.

Nuku'alofa

18 November 2017

### **Declaration of Principles for International Election Observation**

The Commonwealth Secretariat is a signatory to both the Declaration of Principles for International Election Observation and the associated Code of Conduct for International Election Observation Missions, which were commemorated on 27 October 2005 at the United Nations in New York.

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