



## **National Integrity Systems**

# **Transparency International Country Study Report**

**Sāmoa 2004**

**Lead Consultants**

**Peter Larmour and Manuhuia Barcham**

Asia Pacific School of Economics and Government

Australian National University

Canberra

ACT 0200

AUSTRALIA

## Publication Details

**Authors:** Dr Le'apai L. Asofou So'o (country researcher), Ms Ruta-Fiti Sinclair (assistant researcher), Dr Unasa L.F. Va'a (assistant researcher), Dr Sonny Lāmeta (assistant researcher).

**Contributors:** A number of people have contributed to the development of this report by way of comment on its drafts.

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### **Biographic details:**

Dr Asofou So'o is the Director of the Institute of Sāmoan Studies of the National University of Sāmoa. Formerly he was the Head of the History Department of the same institution. Dr So'o has published widely, co-editing with Dr Elise Huffer the book *Governance in Sāmoa: Pūlega i Sāmoa* (2000), and was a member of the Sāmoan Government's 2001 Commission of Inquiry which looked at ways of improving Sāmoa's electoral system.

Ms Ruta Fiti-Sinclair lived in Papua New Guinea for thirty years where she raised a family and taught for ten years in the History Department and in the Anthropology/Sociology Department of UPNG. She returned to Samoa in 1998 and has since been a free-lance researcher and consultant. She has had short-term contract work with NZAID, AusAID and FAO as well as doing research into various social issues in Samoa. She is a founding member of Fa'atāua le Ola (Value Life) the suicide awareness and prevention NGO in Samoa.

Dr Unasa L.F. Va'a is Senior Lecturer in Samoan Language and Culture at the National University of Sāmoa. He has written extensively on Samoan overseas migration, Samoan mythology, cultural maintenance and social change. Since 2002, he has been a part of a research team on Oceanic tattooing headed by Professor Nicholas Thomas of Goldsmiths College, University of London.

Dr Sonny Lāmeta is the Research and Development Manager of the Institute of Sāmoan Studies of the National University of Sāmoa. Formerly, he was a public servant working for the Ministry of Agriculture, Forestry and Fisheries.

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## Abbreviations

AusAID	Australian Agency for International Development
CCA	Controller and Chief Auditor
CCCS	Congregational Christian Church of Sāmoa
CEO	Chief Executive Officer
EU	European Union
HRPP	Human Rights Protection Party
ID	Identity Card
ISP	Institutional Strengthening Project
MP	Member of Parliament
NGO	Non Governmental Organization
PSC	Public Service Commission
SBC	Sāmoa Broadcasting Corporation
SDUP	Sāmoa Development United Party
SNDP	Samoa National Development Party
SUIP	Sāmoa United Independent Party
SUNGO	Sāmoa Umbrella NGO
SWA	Sāmoa Water Authority
VAGST	Value Added Goods and Services Tax

## Executive Summary

Sāmoa has adapted to the Westminster model of parliamentary democracy by incorporating into it selected elements of Sāmoan custom and tradition. Of the 49 seats of parliament, 32 are occupied by supporters of the ruling Human Rights Protection Party (HRPP). The other 17 seats are occupied by the recently formed Sāmoa Democratic United Party (SDUP), which combined the Sāmoa National Development Party (SNDP) with 12 seats and the Sāmoa United Independents Party (SUIP) with five seats. HRPP has had this kind of majority support going back two or three parliaments. Because of its large support in parliament, the HRPP government has the numbers to do virtually anything including amending the constitution. The current Opposition is therefore almost powerless in influencing government policy. This feeling of political powerlessness is strong among government critics. It also exists among some government supporters though it is seen by some as a positive thing in that the government is able to get things done for the good of the country without much unnecessary interruption. However, this dominance also raises questions as to the effectiveness, or lack thereof, of 'checks and balances' in and on the political system.

It was the wish of the framers of Sāmoa's constitution that Sāmoa was to have a strong cabinet system (Davidson 1967:320; So'o 1996:127, 151). This wish was realised following the establishment of the first post-independence political party in mid-1979, the Human Rights Protection Party (HRPP). However, now the public's concern is that the government has acquired too much power, and some have argued that this position of almost unassailable dominance might have enabled instances of corruption to flourish. Supporters can be appointed to high level jobs, public resources could be manipulated to the government's political advantage, and contracts can be awarded in order to obtain and maintain political support among the business community. Some credit must be given to the government for instituting laws, policies, parliamentary standing orders and guidelines amongst other mechanisms, to curb and eliminate instances of corrupt practices. The government has also undertaken major reforms in the public sector in recent years in which it has incorporated elements of transparency and accountability. Yet it is also still too early to make any judgements as to the effectiveness of these government strategies. The most important challenge for the government is that they themselves abide by the rules they have helped put in place to curb and eliminate instances of corruption.

Instances of corrupt activities surface now and then everywhere in both the private and public sector. For example, currently there is a scandal involving the misuse of funds involving some employees of the Ministry of Health and the Ministry of Finance. More commonly mentioned instances of corrupt activities, however, have tended to be associated with the Ministry of Customs and the Ministry of Police and Prison because of the nature of their work. Customs employees have been bribed into reducing custom duties. Police officers have been bribed into dropping traffic charges and so forth. Fortunately, much of the corrupt activity that goes on in these Ministries and in other Ministries and corporations are detected, and those involved punished. This underlines the existence of sufficient mechanisms to detect and deal with such crimes.

Yet other transparency issues are not so easily dealt with. Gift giving and conflict of interests have always been challenges to the system. Although Sāmoan culture does not necessarily teach corrupt behaviour, the propensity to use public resources and misuse entrusted power have sometimes been associated with the pressure to contribute to cultural functions. With conflict of interest issues, unless people are honest, conflict of interests will always be a problematic area as it is not always easy to identify people who are related. For a culture that is strongly family-oriented the conflict of interest provisions in the law books will always be a challenge to enforce. On the positive side, however, there are rules in place to handle this issue should an official complaint be lodged on these grounds. Similarly, Sāmoa's electoral system has always been problematic. Gift-giving has always been a means of obtaining and maintaining political support in Sāmoa's traditional society. It has continued to exist alongside the democratic processes of parliamentary elections. Even though laws are already in place to prevent gift-giving as one of the means of obtaining and maintaining political support, the problem has continued to exist. Yet there are also improvements here as the population has started to make their choices of parliamentarians on the basis of more rational considerations.

Government has done a good job in putting in place existing laws, parliamentary standing orders, policies and guidelines to curb corruption. A recommendation in this area would be for the government to consolidate what it has in place now in terms of enforcing those rules and regulations. Furthermore, it should be the next logical phase in the government's reform programme that a specialist anti-corruption agency be established to follow up its accountability and transparency reforms that have been incorporated in the Institutional Strengthening Programmes (ISP) that are either currently running or have been completed in various government ministries. This would be a sensible strategy given the fact that no specific agency has been charged with the responsibility of coordination efforts towards prevention and elimination of corruption.

In order to understand better the whole area of gift giving and conflict of interest rules in a society like Sāmoa which is not only relatively small but with such a strong family-oriented and reciprocal culture, it would be worthwhile in the long term to conduct an in-depth study of Sāmoa's 'traditional' integrity system in order for both donors and Sāmoans to understand better the similarities and differences between the national integrity system and the 'traditional integrity system'. Such understanding would hopefully lead to a better appreciation of the national integrity system. The often off-the-cuff conclusion is that elements of the two systems could never be mixed as it would ultimately create opportunities for corrupt activities to take place. Perhaps there is some way in which elements of one system would enhance the effectiveness of the other.

## Country Overview

From the first instance of contact between Sāmoa and Europe in the late 1700's, Sāmoa's group of 10 islands became increasingly influenced by European ways in commerce, religion and government. Yet the existing socio-political system of indigenous Sāmoa continued to exist alongside the newly planted European systems and institutions. After more than 150 years of European contact, the indigenous institutions and associated practices adapted in ways to accommodate new changes. This process culminated in the promulgation of Sāmoa's constitution on independence day in 1962 in which Sāmoan institutions and practices were blended with introduced institutions and practices of liberal democracy. The current political set-up therefore follows closely the Westminster model of parliamentary democracy but also incorporates elements of the indigenous socio-political institutions and practices.

The constitution clearly distinguishes between parliament, the executive and the judiciary. Parliament comprises the Head of State and the Legislative Assembly. The latter passes bills which are then signed by the Head of State into law. General elections conducted under the first-past-the-post system are held every fifth year to elect members for the 49 seats of parliament. Parliament then elects from among its number a Speaker of the House and a Prime Minister. The Speaker controls and chairs all sessions of parliament while the Prime Minister appoints 12 members of parliament (MPs) to form his cabinet. Following the establishment of the HRPP in 1979, political offices are contested between and among political parties. Each cabinet minister heads one or several government corporations.

The Judiciary comprises two court systems, the Criminal and the Land and Titles Court. While the former is presided over by western-trained lawyers, the latter is presided over by vice presidents who are all Sāmoans with vast experience in Sāmoan custom and practices. The Chief Justice is also the President of the Land and Titles Court although he would only preside over the latter in very important cases and appeal cases.

Discussed later on in the present report are examples of aspects of the work of the Land and Titles Court where corruption might take place. Suffice at this stage to mention that there have been allegations of corruption in the Land and Titles Court associated with some of its decisions, including allegations from a former Judge of the Land and Titles Court (Personal Communication, 19 Jan 2004).

In terms of the relative influence of public and private sectors in Sāmoa, while the public sector dominates, the private sector - though relatively small - is rapidly expanding. Although NGOs have been around for quite some time, they have noticeably increased in number and size in recent years. Further, it is important to understand the impact of religion in Sāmoa. Sāmoa is predominantly a Christian country. The two main Protestant churches, Methodist and Congregational Christian Church in Sāmoa (CCCS), and the Catholic Churches were established in the early nineteenth century. Since then several other Christian and non-Christian denominations have been established.

Figures from the last national census in 2001 show that of the country's total population of 176,000, 34.7 per cent attend the CCCS, 19.7 per cent attend the Catholic church, 15.0 per cent attend the Methodist church, 12.7 attend the Latter Day Saints and the rest attend smaller denominations like the Seventh Day Adventist (3.5%), Assembly of God (6.6%), Jehovah's Witness (0.8%), CCCJS (1.0%), Nazarene (0.4%), Protestants (0.2%), Baptist (0.2%), Full Gospel (0.8%), Voice of Christ (0.4%), Worship Centre (1.3%), Peace Chapel (0.2%), Anglican Church (0.2%), Community Church (0.3%), Elim Church (0.1%), Sāmoa Evangelism (0.1%), Ā'oga Tusi Pa'ia (0.4%), Baha'i (0.5%), Muslim (0.0%), Others (0.6), and not stated (0.1%).

Generally, the church establishment supports the government of the day. Reference to certain verses in the Christian Bible which speaks of all earthly authorities originating from Jehovah the Almighty and God of the Christian Faith is the justification for this Christian stance. It is for this reason that church leaders and the Sāmoan churches in general do not often speak publicly against the government. However, there have been cases where the church and its leaders have taken active stands against certain government policies and some issues relating to corrupt practices. A public protest march in 1998 relating to

such issues as the introduction of the Value Added Goods Tax (VAGST), reduction of the Controller and Chief Auditor's (CCA) term of office from retirement at 62 years of age to a three-year contract term, the high cost of living and alleged corrupt activities alluded to in the same CCA's audit report that was tabled in parliament had among its some members some of the prominent church leaders. Among them was a Catholic priest, Mataeliga, who is now the Archbishop of Sāmoa and leader of the Catholic Church. Moreover, pastors of some parishes have in some instances used the public church service that is broadcast on the local television station on Sunday evening to air their concerns and criticism of some government policies and other controversial issues.

As the publisher of a prominent local newspaper has commented (see below), corruption appears to have decreased in the last five years. The publisher has put down this decrease in corruption to government's push for the adoption of the principles of transparency and accountability in the way the work of government and private corporations are conducted. The implementation of Institutional Strengthening Projects (ISP) in most government ministries has been a vehicle for the incorporation and promotion of these principles, although explicit anti-corruption provisions are not included in their terms of reference.



# Corruption Profile

## Definitions

Section 4(2)(1) of The Secret Commissions Act 1975 makes it a corrupt activity if any person:

gives or offers to give, to any agent, without the consent of his principal any gift or other consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the principal's affairs or business, or for showing or having shown favour or disfavour to any person in relation to the principal's affairs or business.

Section 5(1) of the same Act also makes it a corruption if an agent:

accepts or obtains, or agrees or offers to accept or attempts to obtain, or solicits from any person, for himself or for any other person, without the consent of his principal, any gift or other consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the principal's affairs or business (whether such act is within the scope of the agent's authority or the course of his employment as agent or not), or for showing or having shown favour or disfavour to any person in relation to the principal's affairs or business.

Section 5(2) of the same Act goes on further to say that:

Every agent who diverts, obstructs, or interferes with the proper course of the affairs or business of his principal, or fails to use due diligence in the prosecution of such affairs or business, with intent to obtain for himself or for any other person any gift or other consideration from any person interested in such affairs or business, shall be deemed to have corruptly solicited a consideration within the meaning of this section.

Section 29(1)(b) of the Public Service Act 1997 makes it an offence for an employee to 'Accept any money, fee, gratuity, or reward of any kind for services rendered otherwise than in the Public Service' without the express permission of the Public Service Commission. Section 30(1) of the same Act states that:

No fee, reward or remuneration of any kind whatsoever, beyond his salary, shall be received and kept for his own use by any employee for the performance of any service for the Government, unless specially authorised by the Commission.

Section 27(1) of the Public Service Act 1977 further makes it an offence for any person to:

either directly or indirectly solicit or endeavour to influence the Commission or any member of the Commission or any person having delegated authority therefrom in any matter relating to decision on individual employees or classes of employees.

Section 27(2) states that:

[a]ny employee or person desirous of becoming an employee who directly or indirectly solicits any person with a view to obtaining promotion in or appointment to the Public Service shall be deemed unfit for the promotion or appointment.

While the Secrets Services Commission Act 1975 and section 29(1)(b) of the Public Service Act 1977 are explicit about what constitute corrupt gifts, sections 27(1-2) and 30(1) of the Public Service Act 1977 imply, among other things, the use of corrupt gifts. For example, a person could try and influence the Public Service Commission or any member thereof by some kind of gifts. Gifts could also be implicated in section 27(2) of the same Act.

An agent who gives or receives gifts without the express permission of his principal is corrupt (Secret Services Act, 1975). Attempting to influence the Commission or any member thereof in 'any matter relating to a decision on individual employees or classes of employees' is an offence (Public Service Act 1977). Soliciting 'any person with a view to obtaining promotion in or appointment to the Public Service' is also an offence (ibid.). Gifts could be used to influence the Commission or solicit any person with a view to obtaining a promotion in or appointment to the Public Service. Therefore, the TI definition of corruption being the 'misuse of entrusted power for private benefit' does not seem to encompass all that is defined as corruption in the Secret Commissions Act 1975 and the Public Service Act 1977.

In the cases where employees in high positions of employment or politicians (such as Cabinet Ministers), among others, use their power to influence decisions of the Commission and to solicit promotion in or appointment to the Public Service for members of their families or some voters in the politician's electorate as reward for political support, the benefit is not directly for the employee or the politician but family members and voters/electors. In both contexts, the TI definition seems rather narrow in that it excludes what these Acts define as corruption.

These legal definitions as to what constitutes corruption and a corrupt gift run counter to the traditional perception of gift giving. Gift giving in the context of custom and tradition is part and parcel of its reciprocity practices. First traditional gift giving is not always meant to be seen as bribery. It is quite normal for a customer to give the employee who is serving him/her during normal duty hours a small amount of money (ST\$ tala or so) for the service provided to him/her. Sāmoan traditional history also speaks of several instances where the quality and quantity of the gift presented had moved the recipient to respond in favour of the donor's wishes. The dual existence of the traditional gift-giving philosophy and belief and the principles of legal-rational principles have continued to be a challenge in the modern system of administration. It is against this background that the Prime Minister made the comment to the authors of the present report, that what determines an acceptable gift is five per cent policy/law and 95 per cent common sense. The example he gave in the same interview was that a bottle of whisky or ten tala could be regarded as an acceptable gift while a gift of say 3,000 tala would certainly be regarded as unacceptable and would therefore be seen as a bribe (Prime Minister, Personal Communication, 3 Sep 2003). What is problematic here is that what is an acceptable commonsense gift to one person may not be an acceptable gift to another person. The question remains therefore: what constitutes a common sense and acceptable gift?

There have been instances of gift giving by disputing parties (whose issue of dispute is being heard in the Land and Titles Court) to members of the Land and Titles Court bench with the intention of influencing decisions in favour of those parties. The general though unwritten policy of the Land and Titles bench is that they would only accept gifts if they are presented by all parties involved in the hearing. In such situation acceptance of gift would not be seen as an attempt by one party of some parties to bribe the bench (Former Judge of the Land and Titles Court, Personal Communication, 19 Jan 2004). Some judges of the same court have also cited cases of some gifts being presented to them at their homes, which they have refused outright. On the other hand, gifts could be accepted after the decision has been handed down, not before the decision is given (ibid.).

Sāmoans sometimes generally use the term corruption to describe any action or activity that is unacceptable or where the motive of such action or activity is suspect. An example of this is the decision of the Land and Titles Court already mentioned, which was alleged to have been changed by the presiding judge against the express consent of the other judges in his panel, with the reason given being that the presiding judge had discovered factual mistakes. The original panel decision was made on Friday and the changed decision was read out the following Monday. In protest against their presiding judge, the other judges refused to sign their names in that decision (Personal Communication, 19 Jan 2003; L.C. 9369/9369P1 – Land Commission 9369P12). The analysis of NIS pillars that constitutes much of this report gives more details of existing mechanisms that deal with instances of corruption.

## Scope

There is no concrete evidence of widespread and persisting corruption in any particular area in Sāmoa. Corruption claims against the government and the way it has handled the affairs of the country fall more in the category of public perception rather than being based on concrete evidence. Most claims of corruption against the government relate more to government's secure grip on power rather than actual instances of corruption that have been proven in the court of law. This does not necessarily suggest the complete absence of corrupt activities in some sectors of government that may go undetected. Sometimes it is because no-one has lodged an official complaint against such activities in the court of law. Examples of such activities are not only too sensitive to get into, let alone divulging it for public consumption, but impossible to follow closely and identified with absolute certainty within the time frame of the present report.

Because the Executive (implying in particular the Prime Minister and his Cabinet) is thought to be too powerful, critics of government argue that the government could do anything it wishes. This, by inference, involves appointments to public and political offices, the award of successful bidders in the tender process, the manner in which public resources have been used for political support, and so forth. The general public suspicion of the HRPP government arises out of the latter's record in past parliaments. For example, it passed, in 1993, two constitutional amendments which seemed intended to safeguard its own political interests. One was the amendment where the parliamentary term was increased from three to five years – a move that obviously favoured the incumbent government as the parliament which passed that amendment continued on for a term of five years.

The other amendment increased from eight to 12 the number of Ministers in Cabinet. This amendment was generally perceived as a strategy to accommodate more MPs in cabinet thereby minimizing the possibility of MPs who might not be appointed to those high offices leaving the party and switching support to opposition parties. Another constitutional amendment was passed in 1997 which reduced the Controller and Chief Auditor's tenure of office from retirement at 62 years of age to a three-year contract that could be renewed. This particular amendment follows a political controversy arising out of allegations made in the CCA's report to parliament at which it alluded to corruption in high places. Furthermore, the assassination of a cabinet minister in 1997 spurred public speculation about possible corruption.

A general reflection of this public suspicion has been voiced by an opposition Member of Parliament (MP) who commented at a public forum attended by one of the authors that there is huge corruption in government and the basis of it is because the government has too much power, given its two-third majority in parliament. The government could even amend the constitution in its favour as it has done in the past. Arguably, this general public suspicion of government has a direct link to the current reform programme. It is too early to judge if the current reform programme will live up to their expectations of accountability and transparency. Furthermore, only then would we know whether current reforms would indeed reduce and eliminate corruption or whether they will only be creating new opportunities for corrupt activities.

The general impact of this amendment is that the CCA would be checked by the government of the day and not the other way around. In other words, as long as the incumbent CCA does not say anything with which the government of the day might disagree he/she is likely to be reappointed for another three-year term should he/she wants the job. The HRPP government, which was responsible for this constitutional amendment, on the other hand, has argued that the amendment is necessary to bring in line the CCA's tenure of office with the three-year contract system under which CEOs of other Ministries and Corporations are appointed. The CCA (whose controversial report that prompted the HRPP government to amend that provision of the constitution) did not opt to reapply for another term following the enactment of the new contract provision.

Other areas of concern relate to the issue gift-giving in the public domain whose administrative systems are supposedly governed by legal-rational principles. As stated in the summary above, gift giving is at the heart of Sāmoan cultural beliefs. This cultural

attitude permeates all organisations and circles (public and private) of which Sāmoans are members.

The issue of conflict of interest is also acute in Sāmoa where traditional society with a relatively small population revolves around family connections and other forms of affiliations such as being members of the same village, subdistrict, parish, denomination, club, old college association and so forth. The reality in most cases is that in almost all organisations there is bound to be people in decision-making capacities who are related to or would know someone the decision they are making would affect. As one Sāmoan theologian and council member of the National University of Sāmoa has commented in the university's council meeting in September 2003, the challenge in Sāmoa is not so much whether or not there is conflict of interest because they will always be a conflict of interest relating to some issue when making decisions (for reasons already discussed). Instead, the challenge is for Sāmoans is to learn to rise above cross-cutting conflict of interests in order to make independent and wise decisions.

Churches and NGOs have also had their share of problems in terms of trying to curb instances of corruption, which now and then surface in their respective spheres. Church problems have been generally the result of the nature of their organisations and their associated administrative structures. In some cases, the problem has been associated with the church leaders having too much discretion on what they can do in the day to day running of their respective churches. Churches with such shortcomings have realised the problem and have since put in place organisational mechanisms to remedy the problems. In some cases, problems in the churches result from the large amount of money they sometimes handle. For example, for a small parish like the Le'auva'a Congregational Church on Upolu island, it was able to build a new church building worth ST\$800,000 (The Sāmoa Observer [SO], 28 Dec 2003).

The other small parish of Si'ufaga Falelātai on the north-western side of Upolu was able to complete three relatively small projects in one year. One of which, a new fence, was worth ST\$30,000 (SO, 23 Dec 2003). In some large parishes, the cost of church buildings could run into six figures. Occasionally, there are allegations of some church funds being unaccounted for. Committees of some parishes don't always provide annual financial statements for their congregations. One of the major problems in some parishes relates to the huge costs of church related activities that they have become a financial burden to church members especially when repaying loans incurred to complete these projects.

The initial problems of NGOs have been mainly to do with the disorganised manner in which they were established. They have since evolved organisational structures and rules to govern their activities. There is also room for improvement in terms of the communication strategies between the government and NGOs generally. Communication among NGOs has improved greatly following the establishment of their umbrella organisation, Sāmoa Umbrella NGO (SUNGO).

Therefore, although instances of corrupt practices tend to be associated with the Ministry of Police and the Ministry of Customs because of the nature of their work, instances of minor corruption also surface within other public and private organisations as well. Examples of corruption in the Ministry of Police include the following. A recent case involving police corruption was that of a police sergeant who was found guilty of charges of official corruption and forgery in March, 2003. He accepted a bribe of \$2,000 from an expatriate who was in police custody for narcotic offences. As a result, he allowed the expatriate to go free. He was sentenced to three years in jail, and in sentencing him, Judge Vui Clarence Nelson said:

You are an honourable man with a good background. But you did a dishonourable thing. As a result, you have brought shame on yourself, on your family and disrepute to the Police Force. Your action has undermined the trust of the community in the police (SO, 4 Mar 2003).

Cases of alleged police brutality are, however, much more common. For instance, seven police officers were accused on manhandling two suspects in front of the Development Bank building, Apia, in September, 2003. It is alleged that they swore at the men, punched and forced them into a police van, despite the presence of one of the suspect's

children and despite the fact that one of them was nearly naked after losing his wraparound (SO, 1 Oct 2003). In another case, a policeman in a Police Drug Squad car fired shots at a taxi because it was travelling too slowly (SO, 20 Oct 2003). Earlier this year, 2004, a paraplegic prisoner, who was also a diabetic, is thought to have died as a result of being locked up in an isolation cell (as punishment for suspected marijuana use) and being deprived of his medication. These complaints were all referred to the Police Commissioner for investigation.

Examples of corrupt activities in the Customs Department involve the jailing of some of its officers who were part of a ring that accepted bribes for preferential treatment by certain members of the travelling public. Moreover, one of the major instances of corruption in the Immigration Section of the Prime Minister's Department was the so called passport scandal of the mid-1990's. It started with a Chinese man who was reported to have been detained by the police when he tried to enter the country with a Sāmoan passport (SO, 15 Apr 1997). The alleged racket was then probed. Three Immigration officers were later suspended and a government investigation was under way (SO, 1 May 1997). On the front page of The Sāmoa Observer of 4 May 1997, it was alleged that the government was selling Sāmoan passports in Hong Kong. It also showed an advertisement in a Hong Kong newspaper where it is said that 70 per cent of the proceeds from the sale of passports would go to the government and 30 per cent would go to the agent in Hong Kong, who was alleged to be selling Sāmoan passports. The government denied all the allegations but the publisher of The Sāmoa Observer newspaper kept writing for more information and the government kept on refusing to publish its report of their inquiry (SO, 7 May 1997). The government finally confirmed the illegal sale of passports but did not say who did it. Five senior Immigration officials including the chief immigration officer were implicated and later suspended (SO, 17 & 21 May 1997).

An example of corruption involving other government ministries include the ongoing investigation by the government into embezzlement of funds amounting to over ST\$1 million at the Ministry of Health. A number of public servants, including senior public servants, are implicated.

Following a greater awareness of instances of corrupt activities, and also in compliance with the internationally respected principles of transparency and accountability, the government has in the last three years put in place laws, parliamentary standing orders, policies and guidelines to espouse and consolidate anticorruption ideals. Most of these have come into force in the last two or three years, and therefore more time is required before it could be known for certain whether these strategies of government are working. Critics of the government have often asked who is checking that the government (Prime Minister and Cabinet) is abiding by these admirable principles they are advocating. In other words, there is the general public suspicion out there that the government may not be "walking its own talk". Long-term impact studies would help ascertain first, whether the government's cry for transparency and accountability is being adhered to by others and second, whether the government is itself taking the lead in these initiatives.

### **Causes**

Corruption in places like the Ministry of Customs and the Ministry of Police and Prison has resulted mainly from employees accepting bribery. Employees of the Ministry of customs would accept bribes from customers who ask for reduction or exemption in custom duties. Police officers would accept bribes in order to drop traffic and marijuana charges among others. As examples already cited show, in many cases, the culprits are caught and punished.

The public perception is that corruption of a much larger scale takes place at high places because the Executive has acquired too much power. The government has the support of two-third majority in parliament so that it could easily amend the constitution to its advantage. The negative public perception of government has not quite gone away following the constitutional amendments made by government as outlined above, among other seemingly corrupt activities already cited.

# National Integrity System

## The Executive

Article 4 of the Constitution and Section 3 of the Government Proceedings Act 1974 are existing pieces of legislation which provide for the protection of the rights of Sāmoan citizens against the government. Article 4 of the Constitution enforces Individual Rights stipulated in Part II of the same document while Section 3 of the Government Proceedings Act 1974 provides for any person to enforce as of right any civil claim against the Government in respect of rights identified under that Act. Moreover, the Public Finance Management Act 2001 and the Public Bodies (Performance and Accountability) Act further provide protection of the citizens' rights against the Government. Under the latter, all Board Directors (alternatively called Board Members if it is a Public Body that is not a company) of State-Owned Enterprises - which could include Ministers of Cabinet and other high officials - have to disclose their pecuniary interests on 30 June every year (Section 20[1]). Failure to do so would result in the director forfeiting his or her directorship position (Section 20[2]). The whole aim of this Act is to promote improved performance and accountability in respect of Public Bodies and, to this end, to:

- (a) specify principles governing the provision of the operation of Public Bodies; and
- (b) specify the principles and procedure for the appointment of Directors of Public Bodies; and
- (c) establish requirements concerning accountability for Public Bodies; and
- (d) provide support for Director of Public Bodies (Introduction, Public Bodies [Performance and Accountability] Act 2001).

The Drake/SāmoaTel controversy is a good illustration of the government enforcing the conflict of interest law in relation to Board Directors of Public Bodies. The gist of the controversy is that Mr Murray Drake is the lawyer for the SāmoaTel Corporation. He is also the chairman of SāmoaTel's Board of Directors. Four of SāmoaTel's expatriate staff live in Mr Drake's town houses which cost SāmoaTel ST\$14,400 a month in rent (SO, 9 Dec 2003). SāmoaTel's CEO says that there is no conflict of interest in terms of Mr Drake's position in the Board and the fact that four expatriate staff who work for SāmoaTel pay him rent. Later, the Responsible Minister for SāmoaTel advised his SāmoaTel CEO to drop Drake and Company Ltd. as the company's lawyer. The Minister himself eventually told Mr Drake to resign his directorship or have his firm give up handling the corporations' legal work. Mr Drake was given till Friday of that week to hand in his resignation but none came (SO, 7 Dec 2003). Eventually Cabinet met and handed down its decision which reads:

Cabinet has resolved to direct SāmoaTel to terminate with immediate effect the engagement of the Law firm of Drake and Company Ltd. as legal representative for SāmoaTel as long as Murray Drake is chairman of SāmoaTel's [Board of Directors] (SO, 7 Dec 2003).

Cabinet's decisions follows closely section 21 of the Public Bodies Act 2001 which states that:

A person who whilst acting in the capacity of a director of a Public Body, knowingly makes or takes part in the making, or attempts to take part in the making of a decision where the person has a pecuniary or other interest which conflicts with the interests of the Public Body is guilty of an offence and shall be liable to a fine of up to 100 penalty units [ST\$10,000].

There is no general law in relation to conflicts of interest on the part of Ministers and high officials. However, Section 29(f) of the Public Act 1977 stipulates that every Chief Executive Officer (CEO) must disclose and take all steps to avoid any real or apparent conflicts of interest in relation to their employment. Clause 2.45 (Declaration of Interest) of the Guidelines for Government Procurement also provides rules for all government officials (including Ministers) involved in assessing or evaluating and/or deciding on the award of contracts to declare any interest in any company or close family relationship to the principals of any company bidding for any government procurement. For high officials,

the Public Service Amendment Act 2002 provides for all employees and CEOs to disclose and take all reasonable steps to avoid any real or apparent conflicts of interest in relation to their employment.

The authors of the present report are not aware of any register of disclosure of conflict of interests being kept. However, one of the authors knows from their own experience that a Minister did declare his interest in a complaint to the water authority. The Minister told the author that he had declared his conflict of interest and left the room. The minister was the author's cousin's son, and the author and he were close as the author had taught him at college.

There are no registers in existence concerning gifts and hospitality for Ministers and High Officials. For high officials, however, the Public Service Amendment Regulations 2003 specifies that 'an employee must not directly or indirectly ask for or accept money or goods or any other valuable from any person or entity concerned with any matter connected with the employee's official duties ([48][2]). There is also no law or policy that restricts ministers from taking up post-ministerial employment, nor is there one for high officials.

In terms of checks on Executive decision making, members of the Executive are not obliged by law to give reasons for their decisions. However, they are required by common law rules of natural justice to provide reasons for the decisions that they make that affect the rights of the subjects of Sāmoa, including individuals, community groups, corporations and so forth. This is irrespective of whether the decision making power is derived from a statute or some other common law power.

Ministers and high officials have right to and do exercise the power to make final decisions in certain aspects of the tender system. This power is provided under the Tenders Board Guidelines. For example, CEOs can make decisions on entering or awarding of contracts on behalf of their Ministry in relation to expenditure of that Ministry less than SAT\$50,000. For contracts over SAT\$50,000 approval is by the Tenders Board. For contracts over SAT\$500,000 approval is by the Tenders Board and Cabinet (Lusia Sefo, Deputy Chief Executive Officer (Corporate Services) of the Ministry of Finance Personal Communication, 28 Aug 2003). There are administrative checks on the decisions of individual Ministers. For example certain decisions of the Tenders Board have been overturned by Cabinet collectively.

Public suspicions of 'politician businessman' who not only becomes more important with prosperity but whose wealth would be a valuable asset come the time for parliamentary elections campaigns abound. Of the seven members of the Tenders Board four are politicians. They are the Minister of Finance, Minister of Public Works and SWA and the Parliamentary Under-Secretaries of the Ministry of Finance and the Ministry of Public Works and SWA. Even though the inclusion in the Tenders Board of these four politicians may be absolutely necessary given the nature of bids upon which the Board make decisions, there is nevertheless that public suspicion of the 'politician businessman' given the involvement of politicians in important Boards such as the Tenders Board.

The involvement of cabinet ministers and other senior government politicians in business enterprises has been a major criticism levelled at the ruling HRPP. The normal rule is that a cabinet minister or a senior government official was barred from being actively involved in any private business venture but this did not extend to ownership of shares in a business. To get around this rule, some cabinet ministers and senior government officials resign any directorships in their companies (see Drake/SāmoaTel controversy already discussed) but these continue to operate under the management and directorship of others. Thus one of the most powerful politicians in the country is connected with the country's largest bus transport company but he denies any involvement in it. He says the company is a family-owned one and is run by his children.

## **Legislature**

Article 94 of the Constitution provides for the legislature to approve the budget. The budget has to be passed by parliament every year. Article 96 of the Constitution provides

for Unauthorised Expenditure to the value of not more than 1 per cent of the budget to be authorised by the Minister of Finance.

Conflict of interest rules for parliamentarians are stipulated under Section 4A of the Standing Orders of Parliament. Standing Order 85 deals with Bills affecting private persons. A Member of Parliament (MP) is not allowed to sit on a Select Committee to review such a Bill unless he has made and signed a declaration to the effect that he has no pecuniary interest in the Bill.

There are no rules and registers concerning gifts and hospitality for parliamentarians. Thus it would never be certain how much and to what extent parliamentarians influence electors and voters in their constituencies through gift giving and many other ways in which parliamentarians help individuals and groups within their constituencies. The norm is that candidates for parliamentary elections are expected by their constituencies to provide gifts in the form of food, money and other material goods. It is also the practice that parliamentary candidates and elected parliamentarians provide help for individuals or groups within the constituencies in the form of helping out financially with some community projects like building a new church, school and so forth. Some electors ask their MPs to help them out through paying the schools fees of their children. Most of these would fall under the category of gifts and hospitality. However, as long as there are no records of these activities it would never be certain how much MPs give out either as a way of genuinely helping members of their respective constituencies or as a way of trying to influence the voters in their favour.

Like other public servants, there are sanctions in place against parliamentarians. For example, Section 163(f-g) of the Standing Orders specifies bribery as a contempt of Parliament. MPs found guilty of contempt of Parliament may be sanctioned by the Speaker. Parliamentarians are also subject to the provision of the Crimes Ordinance 1961 and the Secret Commissions Act 1975. The Privilege Committee of Parliament also has right to sanction. Parliament as a whole could also sanction a MP by passing a moving for that purpose.

There are no restrictions on post-legislature employment. Thus it is normal to have former parliamentarians taking up almost any job that is available after losing a parliamentary seat. There have been several examples of this. The incumbent Chairman of the Public Service Commission (PSC) was a Minister of Cabinet in the last parliament. The incumbent Chairman of the Public Accounts Committee of Parliament was appointed as one of the three-member Commission of the PSC in the last parliament when he lost his parliamentary seat. In fact it looks normal here in Sāmoa for parliamentarians to hold various jobs after they had lost their seats, even if those jobs were arranged by the government of the day to which they lend political support while they were MPs.

## Elections

Problems associated with Sāmoa's electoral system since independence have resulted mainly from the difficulty in reconciling the differences in the democratic system of elections and those associated with custom and tradition. Up until the introduction of universal suffrage in the 1991 general elections, only *matai* (chiefs, the titled heads of families) had the right to vote and contest parliamentary seats. It resulted in the proliferation of titles for the ballot (*matai pālota*).

The level of political participation was relatively restricted with only matai involved in campaigns for parliamentary elections. In some constituencies it was common to agree unanimously on a single candidate to represent the constituency in parliament thereby preventing the need for elections. In other constituencies, village councils comprising all village matai of constituent villages will agree to rotate among them the right to nominate a candidate for their parliamentary seat. In order to get the support of the constituency, the prospective candidate would provide presents for the constituency in the form of food, money and other material goods. These gifts presentations would often be given in the context of custom and tradition. That is, presents would be given to the village council. He/she would also contribute to village projects such as church buildings, schools buildings and others. A post-independence practice developed whereby it became a norm to give presents as one way, if not the most important one, of winning political support. Bribery,



treating and undue village council influence on choice of candidate for elections became common problems.

The introduction of universal suffrage stemmed the proliferation of titles for the ballot but created other problems. All voters and electors had to have Identification Cards (IDs) they would carry to the voting booth on election day. Voters would use their IDs as bargaining chips to obtain material (food, money, etc.) from parliamentary candidates. The latter on the other hand would hold on to IDs after they had paid for the electors and voters IDs. The IDs would only be given out on the day of the election. In this way parliamentary candidates would be assured that the voters and electors whose IDs they paid for would vote for them, or so they think. It was only after the elections that some voters and electors were discovered to have had two, three or even more IDs (Muli'aumaseali'i 2001:44). They had become 'commodities' in the electoral process.

Against the backdrop of problems associated with electioneering, voter registration and administrative work in preparation for the General Elections of 2001, the Prime Minister committed his Party (HRPP), if returned to power, to a review of the Electoral Act 1963 as amended. Hence, immediately after the general elections in 2001, the HRPP government set up the Commission of Inquiry with 15 terms of reference whose overall aim was to overhaul the country's electoral system. As expected, the Commission discovered several problems in the electoral system. Some of which are associated with the persisting difficulty in reconciling the ideals, values and practices of custom and tradition on one hand and democracy on the other. Other problems arose out of the short time during which electoral rolls were compiled, registration of voters and electors were administered, and the lack of a general elections public awareness and public education programmes, among others.

The Commission made 22 recommendations to Cabinet on ways to improve the electoral system. They include setting up an Electoral Commission to handle all issues associated with elections, heavier penalties for offenders under the Electoral Act, discontinuation of the use in parliamentary elections of Identification Cards, dividing into two separate electorates the five existing two-seat electorates, abolishing the two seats for Individual Voters (whose roll mainly comprise descendants of Sāmoa's foreign population at the time of Independence in 1962) and replacing them with two Urban Area seats, among others. Hopefully the establishment of the Electoral Commission will help solve most, if not all, of the persisting problems in the electoral system. The electoral commissioner has recently been appointed. He is appointed by the Head of State on the recommendation of Cabinet.

### **Political Parties**

Although the first post-independence political party was established in May 1979 after the general elections in that year, political parties as such were only legally recognised following the enactment of the *1995 Electoral Amendment Act*. The Standing Orders of Parliament further specifies that only until there are at least seven MPs in a grouping would that grouping qualify to be registered as a political party. Under that rule, the only two political parties in parliament are the party in government, the Human Rights Protection Party (HRPP), and the Opposition Sāmoa National Development Party (SNDP). However, it was only on 23 December 2003 that the SNDP and the five Independents (who since the 2001 general elections had called themselves the Sāmoa United Independent Party (SUP) even though they have not been legally registered as a political party) combined to form the newly established Sāmoa United Democratic Party (SUDP).

The Standing Orders of Parliament further stipulate that only legally established political parties are entitled to a portion of the ST100,000 that is allocated in the budget for the support of political party offices. Under that provision of the Standing Orders Independents are not entitled to a portion of the ST100,000. Now that SUP has merged with the SNDP, its members are now entitled to that budget allocation. Thus, the ST100,000 will be divided equally among the 32 members of HRPP and 17 members of SUDP. According to a senior Minister in the current HRPP cabinet, this money is only for the support of political party offices. The government never intended it to help with party campaigning. For example, the HRPP has its party headquarters a short distance from the parliament house. People are employed to look after the party houses and maintain the grounds. The party's share of that ST\$100,000 is spent on those costs. However, given

the manner in which political support is sought in the period leading up to elections and immediately after it but before the first session of parliament is convened in order to obtain a majority of seats in parliament to form a government, it would not be surprising if occasionally some of this money is diverted to that purpose.

Political campaigning is a huge undertaking and the cost seems to climb exponentially from one general elections to the next. It generally takes place in two phases. The first phase is the party as a whole and the second one is the individual effort of individual members. The first phase includes activities such as formulation and publication of party manifesto, and in some cases minimal financial help to election candidates. There is also the factor of on-going informal negotiations and tapping into circles of friends and family connections everywhere throughout the country in order to win over support the party candidates whose names and photographs are published in the party manifesto document.

The second phase involves the individual efforts of election candidates. Expenditure in this phase varies between candidates though generally it could be a huge undertaking. It could involve gifts to individual voters/electors, contribution to community projects and presents in the form of food and money that is presented to the village council and its other associated traditional sub-organisations. All these party expenses could not be accounted for as there is no such system in place. Donations to political parties by various donors are not publicised either in accordance with the wish of the latter. Under existing rules, parties are not required to report back to parliament on how their portion of the budgeted ST100,000 has been used, nor are their expenses published. For these reasons and others, political competition facilitated by the electoral system could never be a level playing field. Although other competing factors are there, it has become increasingly apparent that money has had a big influence (if not the main influence) in determining the winners in parliamentary elections.

### **Controller and Chief Auditor**

The CCA is independent. He/she is appointed for a three-year term under Article 97 of the Constitution by the Head of State on the recommendation of the Prime Minister. Should the Prime Minister decide to suspend the CCA, he is required to lay before Parliament a full statement of the grounds of suspension within 7 sitting days of Parliament. However, Article 97 does not specify the grounds upon which the CCA may be suspended. Although the Constitution does not set out any eligibility criteria for the position of CCA, the appointment is based essentially on relevant qualifications and vast experience in accounting and auditing.

All public expenditures are declared in the official budget, audited annually and reported to Parliament as stipulated under Article 99. Reports of the CCA are submitted to the Public Accounts Committee and debated in parliament.

The 1994 audit report by the CCA, Su'a Rimoni Ah Chong, must be considered one of the most damaging reports ever made by a Sāmoan CCA against a government. Su'a cited numerous examples of corruption within government departments and among both public servants and politicians (SO, 13 Jan 1995). Abuses cited include fraud, collusion, conflicts of interest and use of government land, equipment and staff for private enterprise. At least seven cabinet ministers, or half of the total cabinet, were involved in corrupt practices, according to the CCA. Because of his outspokenness, Sua's report was shelved, he was sacked and article 97 of the constitution which provides for the appointment of the CCA was amended to reduce the CCA's tenure of office from 65 years to three years. The government achieved its goal but at the expense of its credibility, (SO, 2 May2000).

For his courage in his fight against corruption in the Sāmoan government, Su'a was awarded the Transparency International Integrity Award for 2003. According to Transparency International, Su'a showed great determination to expose financial crime and has been an inspiration in the battle to promote government and private sector accountability. 'Su'a faced serious threats when he exposed financial irregularities and refused to approve illegal payments to Cabinet ministers in the 1990s' (SO, 16 May 2003).

The issue relating to the reduction of the CCA's term of office is whether the CCA can unconditionally conduct his duties independent of government influence. What could be

concluded is that the CCA is independent only within the three years of his contract. If in the course of these three years the CCA disagrees with the government on some issue relating to the performance of his/her duties, the government of the day would have the final say in whether or not to reappoint the incumbent CCA for another term or terms. Furthermore, the reduction of the CCA's term has effectively meant that the CCA is now dependent on the Executive for the security of his position rather than the Legislature, as the founding fathers of the Sāmoan Constitution had envisaged. Such a change could inhibit criticism of government operations by the CCA.

In support of this constitutional amendment the government argued that it brings the term of office of the CCA in line with the current government policy where all heads of government corporations are appointed on contractual basis for a term of three years. Critics of the constitutional change, on the other hand, have consistently argued that the CCA could no longer be an independent service provider of parliament and the country. Their argument seems further strengthened by the fact that the relevant amended constitutional provision does not specify the grounds upon which the CCA may be suspended. An extension of this logic therefore is that instead of the CCA checking on the government, it is now the government checking on the CCA.

### **Judiciary**

Article 73 of the Constitution of Sāmoa, as well as common law, gives the Supreme Court the power to review the actions of the Executive. In practice, however, according to the Secretary for Justice, the Court is reluctant to exercise this power as it does not want to be seen to be interfering with the independence of the Executive, being one of the three divisions of State.

Article 40 of the Constitution states that a decision of Cabinet may be reviewed by the Executive Council comprising the Head of State and the Prime Minister and his Cabinet. If the Head of State supports the decision of Cabinet already being made, that decision takes effect as a decision of Cabinet. On the other hand, if the Head of State does not agree with a decision of Cabinet already being made, he could request Cabinet to reconsider its decision. If Cabinet after that reconsideration reaffirms its original decision or accepts the amendment requested by the Head of State, the original decision or the decision as so amended, as the case may be, shall forthwith take effect as a decision of Cabinet. Twice during the public protest marches in 1994 and 1995 under the leadership of the traditional political centres of *Tumua* and *Pule* did the Head of State convene meetings of the Executive Council (SO, 3 Mar 1994, 12 Mar 1995; So'o 2000:143). Meetings of the Executive Council, which comprises Cabinet and the Head of State, is where the latter exercises his constitutional right to request reconsideration of a cabinet decision.

Appointed by the Judicial Service Commission comprising the Chief Justice (as president), Attorney General and a person nominated from time to time by the Minister of Justice, Judges of the court are independent. Their appointments are based on merit.

The criteria required of a Supreme Court Judge are set out in Article 65(3) of the Constitution. They include possession of qualifications as the Head of State acting on the advice of the Judicial Service Commission, may prescribe; and being in practice as a barrister in Sāmoa or in an approved country, or partly in the one and partly in the other, for a period of, or periods amounting in the aggregate to, not less than eight years. Other judges are appointed by the Head of State on the recommendation of the Judiciary Service Commission.

Even though there are criteria upon which these appointments are made, critics of government would argue that another important consideration in these appointments is political affiliation. For example, in the case where two equally qualified candidates compete for a job where one is a government supporter and the other is not, the one chosen could be the former. This is perhaps acceptable to some extent. However, in the case where a non-government supporter with far more superior qualifications but is not appointed, there seems to be an issue of corruption in the system. When pointing out political affiliation as one of the important considerations in making these appointments, the critics of government seem to have in mind the second scenario. This is a contested public perception which does not seem to have much evidence to support it. Such

comments against appointment of judges are often discussed in private. The absence of similar discussions in the media is probably an indication that the people who disagree with these appointments are not prepared to have their views tested there or in the court.

### **Public Service Commission (PSC)**

Originally, the PSC is responsible for the appointment, promotion, transfer, termination of appointment, dismissal and disciplinary control of the Public Service and has such other functions as may be provided by Act. Following government reforms in the late 1980's and early 1990's, functions of the PSC have been substantially reduced to that of a policy making body and to exercise overall control of the public service. Most of its former responsibilities have now been delegated to government ministries and corporations.

Several mechanisms are in place to prevent instances of corruption in the public service. They include the following. Career development and recruitment are based on merit as stipulated in section 7(4) of the Public Service Act 1977. Sections 27, 28 and 29 of the Public Service Amended Act 2002 stipulate rules to prevent nepotism and positive discrimination. Civil servants are required to be independent as provided for in section 27 and section 29 of the Public Service Amended Act 2002. Section 27 stipulates that every public servant should provide 'impartial advice, acting without fear or favour, and making decisions on their merits' while section 29 stipulates that every public servant should be 'honest and impartial'. Powers of sanction against contract public officials include termination of contracts. Official government contract figures from the Public Service Commission (PSC) shows a grand increase total of contracts from 36 in the 1997-8 financial year to 132 in the 2002-3 financial year. The biggest increase was from 36 in 1997-8 to 124 in the following year. The number only slightly increases between 1998-9 to that of 2002-3. The biggest increase from 36 to 124 follows the extension of the three-year contract system under which Chief Executive Officers are appointed to include Assistant Chief Executive Officers (ACEO) as well. For other public servants, sanctions are provided for under the Public Service Act 1977. Procedures and criteria for administrative decisions are published by each Ministry as a matter of Ministry policy.

A number of pieces of legislation relating to Public Service duties establish criminal and administrative sanctions for bribery. For example, Section 27(1) of the Public Service Act 1977 makes it an offence to attempt to influence the PSC or any person having delegated authority therein, in any matter relating to decisions on individual employees or classes or employees. Bribery in the civil service falls under the scope of the Secret Commissions Act 1975. Official corruption is a criminal offence under section 35 of the Crimes Ordinance 1961. Among other things, it prevents acceptance of bribe (money or valuable consideration whatever), on account of anything done or to be afterwards done by an officer in the service of Sāmoa in his official capacity.

Complaint mechanisms for public services include making direct submission to the PSC or to other bodies like the Ombudsman. In relation to dealings with public funds, section 116 of the Public Finance Management Act 2001 requires an employee of the Public Service with knowledge of any circumstances of an offence under section 115 of the Public Finance Management Act 2001 to report those circumstances to the Minister of Finance or the Chief Executive Officer of Finance or both. Among other things, service charters of Ministries provide for officers to deal with complaints by members of the public against the public servants. With regards to administrative checks and balances on decisions of individual public officials, this is the function of supervising officers. Service Charters of Ministries also provide for this purpose.

There are rules but no registers concerning the acceptance of gifts and hospitality. These rules are provided for under the regulations and directives of cabinet which do not go to parliament. There is an issue associated with gift giving in the public service. For example, Ministers of Cabinet and high officials are often invited to functions such as the dedication of school buildings, church buildings and so forth. The selected representative of the Ministry, who is usually its Minister, would normally take from the Ministry funds a small amount of money as their gift for the invitation. To reciprocate the Ministry gift, the village whose school is being dedicated would provide presents for the Ministry though often presented to the Minister who is usually the representative of the Ministry. The issue is whether the Minister and or members of his/her Ministry should consume the

reciprocated gift (which is often in the form of food, fine mats and money) or should it be converted into cash to reimburse the Ministry funds.

Two alternative ways of addressing this issue have evolved. One is what some Ministries, like the Ministry of Public Works and SWA, have adopted where gifts received from villages and other organisations to which the Ministries had given gifts are apportioned and distributed among staff members of the Ministry. As most of these village presents are in the form of perishable foodstuff, and given the fact that most ministries/institutions don't always have refrigerators on hand in which food is stored, this seems a sensible alternative. At least the reciprocal gift is distributed among employees of the Ministry. The other alternative, which has been adopted by the Avele College Old Pupils Association, is where members of its Executive Committee contribute to gifts (usually financial contribution) that are presented to funerals, school dedications and so forth. Funds belonging to the Association are not used. Gifts received for the Association's presents are distributed among members of the Executive Committee who contributed to the Association present.

There are no restrictions on post public service employment, and this is controversial. For example, former employees of the Public Works Department (which is now substantially disestablished) have moved on from their previous employment in the Department to privately owned companies they themselves formed immediately after retirement from the Public Works. In fact, it seems like everything was planned for this setup after early retirement from the Public Works. The whole arrangement has not provoked public reaction. In fact it seems to have been a well accepted arrangement. However, it begs the question of whether this sort of arrangement for the establishment of new companies after public service employment is a corrupt practice. Judging by the non-reaction of the public against the arrangement, it seems to be an acceptable arrangement.

### **Police and Prosecutors**

Section 5 of the Police Service Act 1977 provides for the appointment of the Commissioner of Police. The three-year contract appointment is made by the Head of State on the recommendation of Cabinet. Section 4 of the Police Service Act protects the Police Commissioner from being removed from office without relevant justification. Whether or not the Commissioner of Police is truly independent is part of the on-going debate relating to the issue of three-year contract appointment of Chief Executive Officers of Government Ministries and Corporations. The general public consensus leans more towards the argument that CEOs could never be independent as long as they have aspirations of continuing on with their jobs. The basis of this argument is that CEOs are not likely to make any politically unpopular decisions on fear that Cabinet who make their appointments or their individual Minister might not renew their contract for another term or terms.

Similarly, an aspirant for a CEO job would have to toe the political party line if they are to have any chance of being appointed to CEO positions. Understandably, incumbent CEOs and Ministers of Cabinet would argue to the contrary.

The public prosecutor is the Attorney General as provided for under Article 41 of the Constitution. There are presently no public prosecutors for the court system *per se*. In the alternative, legal aid is available upon application. Legal aid is not available for the offence of possession of narcotics.

Complaints of corruption against the police can be made to the Police Tribunal or the Ombudsman. The civil society does not have a role in this complaint mechanism. Examples already cited show that police officers suspected of corruption do get prosecuted. Figures on the number of prosecutions in the last five years were not available at the time this report was put together.

Legislative instruments that can be used by the police and public prosecutors to investigate and prosecute cases of corruption/bribery include section 35 of the Crimes Ordinance 1961 (in relation to official corruption), sections 4 to 11 of the Secret Commissions Act 1975 (in relation to private corruption), section 96 of the Electoral Act 1963 (in relation to

corruption in the course of an election), section 27 to 29 of the Public Service Act 1977, and sections 111, 115, 116 and 117 of the Public Finance Management Act 2001.

### **Public Procurement**

Rules for public procurement require competitive bidding for all major procurement with limited exceptions. For example, open competitive bidding is required for all procurement over SAT\$50,000. Section 1.02 of the Tenders Board Guidelines sets out the principles which underline public procurement including the principle of transparency as being essential to achieving economy and efficiency and to combat fraud and corruption. These rules laid down in documents are publicly accessible. For example, the Procurement Guidelines are available from the Ministry of Finance in both English and Sāmoan free of charge.

There are strict formal requirements which limit the extent of sole sourcing. For example, sole sourcing or direct purchase may only be done after prior clearance by the National Tenders Board and is permitted only under specified circumstances listed in the Guidelines for Government Procurement (see pp34-5).

Public procurement by open competitive bidding above SAT\$50,000 must be advertised in a widely circulated paper for a period of not less than 14 days. All procurement decisions are made public after the notification of award.

Section 11 of the Tenders Board Guidelines stipulates that if an unsuccessful bidder wishes to ascertain any of the grounds upon which its bid was not selected, it may first request an explanation of the relevant Ministry or Corporation. If unsuccessful, the Ministry may arrange for the bidder to meet with the Tenders Board to discuss its bid. The Board may then appoint a subcommittee, which must include the Attorney General, to look into the complaint. Decisions in relation to procurement may be challenged in court.

There are no specific provisions for blacklisting of companies proved to have bribed in a procurement process. However, government procurement also complies with the procurement requirements of its multilateral partners such as the World Bank which has a blacklist of such companies. The Tenders Board also maintains good records of previous contracts and may decide to exclude a company from any government procurement. The assets, incomes and life styles of public procurement officers are not specifically monitored.

### **Ombudsman**

The Ombudsman Act 1988 established the independent office of the Ombudsman. The appointment is made by the Head of State on recommendation by the Legislative Assembly. The Act, however, does not set out the criteria for appointment to this office. The Ombudsman is protected from removal under the same Act.

The Act does not specify that petitioners could complain anonymously if they fear reprisals. The Act only specifies that every complaint is required to be made in writing. The Act, however, does provide for all complaints and matters discussed therein to be kept confidential. There is also no direct requirement under the Act for reports of the Ombudsman to be published. However, under section 12 of the Act, the Legislative Assembly may make general rules for the guidance of the Ombudsman in the exercise of his functions. Such rules may authorise the Ombudsman to publish its reports in general or a specific report relating to a particular case. Under section 19 of the Act, the Ombudsman reports his recommendations to the appropriate Department or organisation involved.

For now the office is adequately resourced. However, this is only because the office is not very well known publicly. The office has some work to do in this area, as it needs to make known to the general public its role in society. Once this publicity work is undertaken, the office would expect an increasing flow of customers thereby increasing several times fold its workload. It would then mean more staff and resources in order for the office to cater for the needs of its expanding register of customers. The current Ombudsman has been a public servant all his life.

## Investigative/Watchdog Agencies

There are no specialised watchdog agencies in Sāmoa. This role is carried out under the auspices of the Police Services.

## Media

Article 13(1)(a) of the Constitution guarantees freedom of speech and of the press. Judging by decisions of the court to date relating to the issue of freedom of the press, this important element of democracy has been consistently upheld. People in the media, however, have strong reservations about the Publishers and Printers Act 1982. They argue that although all countries have this law, it is only the Sāmoan legislation that requires the publishers, printers and editors to name confidential sources if public officers claim they are being defamed by articles and reports in the media. In other countries, only the judge has the power to order revelation of sources. In Sāmoa, all that is needed is a request by a government official (Cabinet minister, Member of Parliament or a public servant) to reveal a source. Failure to do so would lead to imprisonment. Critics of the Publishers and Printers Act have consistently argued that this Act has significantly curtailed the constitutional freedom of the press.

There is censorship in the media in relation to the exposure of indecent material to the public. The Indecent Publications Ordinance 1960 provides for the censorship of material such as periodical, newspapers and visual material with regard to the publication or sale of indecent material. Section 18 of the Film Control Act 1978 as amended in 1998 sets out a censorship regime specifically in relation to films. With newspaper, radio and television, there is no censorship as such although employees in the government media organisations are constantly reminded to be sensitive to cultural standards especially to what is socially acceptable. There are certain assumptions about what is proper or improper in the context of *fa'asāmoa* (Sāmoan way or culture). One such assumption is that it is not proper to publicly criticise once *matai* (chief), once village council of chiefs and people in authority generally. This assumption is reinforced by the Christian belief that all authorities is from God. A certain amount of self-censorship, therefore, is required. According to people in the private radio stations, the only censorship from their stand point is when they blip out bad words in English and Sāmoan songs that they play over their stations. Otherwise, there is no censorship of the media by government.

There is a spread of media ownership. Among the electronic media, there is the Sāmoa Broadcasting Corporation (SBC) television station, Graceland GBN television station, and Cable stations. For radio stations there are the FM, SBC 1, GBN and Laufou.

Although the public-owned television and radio stations have in recent years become increasingly liberal in terms of including the views of both the government and critics of government in their programmes, they are at the end of the day controlled to some extent by their employers, the government. This relatively restricted dissemination of public information by public media organisations is somewhat balanced out by the existence of privately-owned radio and television stations who have the liberty of broadcasting both the government's and its critics point of views. They are sometimes criticised by some government officials for being too biased towards the critics of government.

The absence of media censorship by government is also apparent in the way media licenses are issued. Media licensing authorities use transparent, independent and competitive criteria and procedures. Section 11(c)(2) of the Broadcasting Ordinance 1959 sets out the considerations that the Minister responsible for Broadcasting must have regard to in determining whether to issue a license to broadcast. One of these considerations is to the extent to which the proposed service is necessary or desirable in the public interest.

The media carry articles on corruption provided there is sufficient evidence for such corruption. There are no libel laws in Sāmoa which might restrict reporting on corruption. However, a provision in the Crimes Ordinance has once been used against a newspaper publisher for alleged corrupt practices of a former Prime Minister. According to the local newspaper publisher against whom the former Prime Minister filed the lawsuit, the lawsuit was later dropped when the plaintiff passed away (Personal Communication, 1 Sep 2003).

Journalists investigating cases of corruption have not been physically abused but they have been verbally abused.

The influence of overseas Sāmoans on local politics is not a strong one at this point. This is reflected by the fact that the wishes of the majority of overseas Sāmoans with respect to the parliamentary term (three years instead of five), the reduction of the time needed to reside in Sāmoa before standing for parliament (one year instead of three, as at present) and the ability to vote while a permanent resident overseas, have not been adopted by the present government. The government policy is to strengthen the rights of local Sāmoans as against those of overseas Sāmoans. The argument in support of the government position is: Why should Sāmoans who have lived overseas most of their lives, for instance, try to change the lives of locals who have always lived here and helped to develop this country?

Still, if the political influence of overseas Sāmoans is minimal in more recent years, their economic influence is still a major factor, and this cannot be ignored. This is manifested in huge amounts of remittances and goods sent by overseas Sāmoan migrants to their relatives in Sāmoa every year. Overseas Sāmoans are also a main source of funds for local development projects such as village schools and churches, as well as for parliamentary elections.

### **Civil Society**

The public has access to information and documentation produced by government Ministries and Corporations. However, some media organisations complain that they have had some difficulty obtaining information from some Ministries and Corporations.

Although tender procedures are made widely available to all interested people some civil society organisations feel that some government Ministries have not been cooperative in this manner.

There are no citizen's groups campaigning against corruption except the Sāmoan Society of Civil Liberties. It is a group of less than 10 people who come together when there is an issue of common interest that they feel strongly about. It is loosely organised under the voluntary leadership of a local lawyer who has over the years earned a reputation as a staunch campaigner for civil liberties.

Citizen's groups and/or business groups don't monitor the government performance in areas of service delivery. Normally, complaints against service delivery are put before parliament through the speeches of its Members. Such complaints in parliament are still effective in terms of improving service delivery. Only recently have a number of Ministries open for the public during lunch hour.

Given the general lack of civil society groups, the Chamber of Commerce is the only citizen's group that regularly makes submissions to the legislature on proposed legislation. Even the Law Society does not seem to be as active as it should have been, especially in matters concerning proposed bills and so forth.

A number of subjects currently taught in the public and private school systems include topics either directly or indirectly related to integrity issues and corruption/bribery. For example while most church schools, if not all, include religious instructions in their curricula, public schools teach these kinds of issues in subjects such as Social Studies and Sāmoan Culture. The substantial majority of Sāmoans are Christians. Issues related to integrity, corruption and bribery are therefore constantly discussed in the family environment as well.

### **Traditional Organisations**

The most conspicuous type of traditional organisations are the village councils comprising titled heads of families (*matai*) and their associated sub-organisations. Such organisations have their own integrity systems in place. Any corruption (as defined in village terms) detected at these levels is immediately punished using various means of punishment



available to the village councils. In this sense, village council integrity systems operate independently of any national integrity system. However, village integrity systems could also be part of the national integrity system through their link to the Ministry of Internal Affairs. Village councils are accountable to the Ministry of Internal Affairs for the use of funds that have been given to them for the implementation of some Ministry-controlled projects. The formal link between the Ministry of Internal Affairs and village governments are the village mayors (*pulenu'u*) who, though elected by village councils, are confirmed and given an salary by the government through the Ministry of Internal Affairs. It is often said that the strength and integrity of village governments hold Sāmoan society and government together, not the other way around.

Deliberations and decisions of village councils are not open to the media as such. However, certain decisions and aspects of deliberations would sometimes find their way to the media.

### **Private Sector and NGOs**

The government has made it its policy since the mid-1990s to work closely with the private sector. Privatisation, outsourcing and increased use of NGOs have resulted in an increase in the number of contracts administered by Government Ministries. As such the private sector has gradually but visibly expanded in recent years thus helping to ease the pressure on government to provide jobs for its increasing school leaving population.

In terms of transparency issues, individual companies have evolved their own particular mechanisms to reduce corruption in their activities and to discourage their members from corrupting public officials. For example, in the Apia Concrete Product (ACP) Company Ltd there are people checking trucks when they get loaded with house building bricks. This is to make sure that drivers during loading time do not add extra bricks to their load which they could then sell for their own gain. Trucks are also equipped with wireless facilities in order for the company office to check their whereabouts during the day. It also enables the office to check that the drivers are not having unscheduled 'tours' around the island instead of using the most direct route to their drop off points. Besides these individual company mechanisms to prevent corruption in their own activities there is no general policy or rule specifically associated with the private sector to reduce if not eliminate corruption. NGOs, such as SUNGO and others, have since their establishment evolved organisational structures and associated rules to help them reduce opportunities for corruption in their own activities. Similarly Churches have learned from past mistakes and have constantly improved their organisational structures and associated rules to reduce opportunities for corruption in their own activities.

### **Local Government**

Local governments in the Sāmoan context are village governments already referred to under the section on Traditional Organisations. There are no rules for disclosure provisions at the local level in the same sense as to those at the national level. However, as already alluded to earlier, local governments have their own administrative systems intact after nearly 200 years of contact with the West. Disclosure of assets in the Western sense is not always necessary at the village government level. Being small communities of between 1,000 and 3,000 permanent settlers, it is not hard to see who has what assets and how much those assets might be valued at. Everyone knows each other including genealogical connections and other connections. This knowledge of various connections between village settlers help the others check the fairness or otherwise of decisions made by the village councils and other sub-village organisations. Though corrupt practices from the villages' point of view could and have taken place, by and large culprit of corrupt activities are sought out and punished.

There is no legal requirement that meetings of village governments should be open to the press and public. If anything, the contrary is the norm. Village government meetings are the concerns of the village settlers only. The involvement of the media in the Western sense would be obtrusively unacceptable and rude. Village concerns and village affairs are jealously guarded from outsiders. After all, it is the village that would solve their own problems, provide the livelihood for its own settlers and take care of its own security concerns.

Village councils, in both theory and practice, are very efficient administrative machines for their traditional tasks. If they err, it is usually on the side of harshness in their decisions for often, their punishments tend to be excessive, when compared with the offence. When corruption is meant, it usually refers to mishandling or misappropriation of funds, often by a senior member of the council. But because more often than not more than one person is involved, it is sometimes difficult to apportion blame.

If certain people are found "guilty" councils have several ways of dealing with such situations. These include banishment from the village, money or property fines, or a requirement for paying back the missing money. Sometimes, the offence is forgiven because the councils have decided that this would be the best course of action. But whatever, councils are more concerned with maintaining village peace and solidarity. Ultimately it comes down to the merits of each case.

Sāmoans who return to their villages after spending many years as migrants overseas sometimes get into trouble with their village councils because of their acquired liberal ideals. Thus a Falelātai businessman was banished from his village because of his insistence on his right to work on Sunday's to repair his buses. The village told him that no work could be done on Sunday's and that everyone had to go to church. The businessman replied that he did not have to go to church because the Constitution gave him the right to practise or not to practise any religion. After his persistent refusals to comply with the village council directive, he was eventually banished from the village. In the subsequent court cases, the businessman won, but he was still unable to return to his village because his personal security could not be guaranteed. In another more tragic case, a former Sāmoan migrant who lived at the village of Lona, Fagaloa, was killed in 1993, allegedly as a result of an ongoing feud between himself and the village council. The people involved in the killing, including members of the council, were later brought to justice (Va'a 2000: 151).

### **Progress with Government Anti-Corruption Strategy**

The government does not have an anti-corruption strategy *per se*. However, the government endorsed the ADB-OECD Anti-Corruption Initiative for Asia-Pacific in November 2001 along with its Action Plan and Implementation Plan. The Implementation Plan has 3 Pillars: (1) Developing effective and transparent systems for public service; (2) Strengthening anti-bribery actions and promoting integrity in business operations; and (3) Supporting active public involvement. Most of the measures for implementing these pillars are incorporated within the existing and ongoing public sector reform programmes of the government. Moreover, the enforcement of the Public Service Codes of Ethics and the Parliament Codes of Ethics as stipulated in the Standing Orders of Parliament have also been moves towards that direction. Both documents deal issues such as conflict of interests. The strategy is operating at the national level. The government has no timetable as to when these targeted outcomes are expected to be achieved.

In an interview carried out on 1 Sep 2003 with the publisher of the local newspaper, The Sāmoa Observer, the publisher commented on the recent history of corruption in Sāmoa and the HRPP government's efforts to clean corruption, stating that:

Corruption in Samoa has decreased noticeably over the last five years, partly because government leaders realise that corruption does not serve society well. It also undermines its efforts to improve the life of the people. For example, the assassination of a cabinet minister in July, 1999, has led the government to realise that corruption is not right if it leads to murder. It has enabled the Samoan prime minister, Tuila'epa Sa'ilele, to assert at the meeting of Pacific Ministers of Finance held at the Tusitala in 1999, that his government will be guided by the principles of transparency and accountability to achieve good governance.

Although the Prime Minister has made known his government's intention to be guided by the principles of transparency and accountability to achieve good governance, no government agency has been set up or identified specifically to follow up these reforms. Perhaps this is the next logical development in government's current reforms.

Other than the link the Prime Minister has made between his government's current reforms and corruption in the country, the present authors have been unable to draw any other links to these reform, such as the possibility of pressure from international organisations and other countries, the desire to reassure investors and the desire to show it was cleaning up its act for domestic voters.

### **Donor Anti-Corruption Initiatives**

The major bilateral donor agencies represented in Sāmoa include Australia, Japan, New Zealand, European Union (EU), China and a whole bunch of smaller donor countries such as Canada and Korea. The only multilateral donors based in Sāmoa are the EU and some UN agencies. The UK and US are active mainly in the provision of volunteers.

Donors such as AusAid have supported anti-corruption initiatives mainly through its Institutional Strengthening Projects (ISP), although ISP terms of reference do not include explicit anti-corruption provisions. Eighty-five per cent of Australian programmes have involved ISP. ISP Programmes with the Ministries of Trade, Commerce and Industry, Treasury and Customs are already completed. Those involving the Public Service Commission (PSC), Sāmoa Water Authority, Ministry of Education, Sports and Culture, Ministry of Health, Ministry of Agriculture, Ministry of Immigration and Police are either now starting or continuing. The aim of all these programmes is not just to strengthen institutions, but also to reduce the incidence of corruption.

Donors have been cooperating and coordinating their aid programmes to Sāmoa. Aid coordination in Sāmoa is the role of government. This role is performed by the Aid Coordinating Committee and the Aid Coordinating Unit. Other informal mechanisms also exist which facilitate this coordination and cooperation between and among donors in Sāmoa.

### **Future Research and Donor Support**

Some of the key issues identified in this report requiring immediate attention include the following.

The first is the whole area of the relationship between CEOs and their respective Ministers and with Cabinet in general. How independent CEOs are from their superiors? Are CEOs truly independent of their respective Ministers and Cabinet in general? Should CEOs be independent in the first place? What should be the proper nature of this relationship? Does the relationship lend itself necessarily to corrupt practices?

The second is the issue of the extent of executive power. How much power is acceptable executive power? When can a strong healthy government become intrusive, unpleasant and corrupt?

The third is the issue of gifts and conflict of interest in the context of Sāmoan culture and its associated value system, convention and accepted practices. Can gift giving in the cultural context be divorced from the public arena operating on legal-rational principles and practices? Would mixing the two systems necessarily lead to corrupt practices? Can the mixed system be regulated in such a way as to avoid creating opportunities for corrupt practices?

The fourth is the whole issue of the relationship between the Church and civil society. Where should the boundary be drawn between theological teaching, on one hand, and manipulation of cultural and religious sentiments for the gains of the Church as an organisation and the clergy as its visible representation in the various parishes, on the other? Would the incorporation of culture into Christian practices necessarily lead to a better society or would it lead to the Church acquiring increased power vis-à-vis civil society? What might be the implications of the church establishment acquiring increased power?

The fifth is the extent to which discretionary power given to church leaders could lead to either good governance or corrupt practices. Does too much discretionary power necessarily lead to corrupt practices?

The sixth is issue of a possible link between giving to the church and cultural functions (*fa'alavelave*) and corruption. Is there such a link?

And finally, can corruption in the Western-legal sense be equated with corruption in the Sāmoan cultural sense?

## Anti-Corruption Activities

Although discussion of corrupt activities in Sāmoa has always been around in both the private and public sectors, it was not until the Report of the Controller and Chief Auditor in the early 1990's that was submitted to parliament and the murder of one of the Cabinet Ministers in the late 1990's with which two of his cabinet colleagues were involved that the issue of corruption was confronted head on in Sāmoa. The report of the Controller and Chief Auditor pointed to examples of corruption in high places. The murder of the Minister of Public Works also implicated the possibility of corruption (SO, 17 Aug 1999; 18 Jan, 23 & 24 Feb 2000). This report would argue that it was probably because of these two cases which prompted the government to put in place laws, parliamentary standing orders, policies and guidelines to curb instances of corrupt activities. These government strategies coincide with the international push for transparency and accountability which the government fully supports.

If these mechanisms work as they are intended to do, most, if not all, instances of corruption would be eliminated. Time will tell whether that indeed will be the case. It is important, therefore, that some impact studies be carried out to ascertain if these government strategies have been effective in achieving the goals that the government has set out to achieve.

## Key Issues

### The National Integrity System (NIS)

Sāmoa does not have an explicit and overarching anti-corruption policy as such. However, as already explained, reforms the government has carried out in recent years has enabled it to incorporate into existing systems aspects of the integrity system the present project has identified.

In general, Sāmoa is sufficiently endowed with laws, parliamentary standing orders, policies and guidelines whose ultimate aims are to curb and eliminate opportunities for corrupt activities. However, it is too early to assess the effects of these mechanisms. Furthermore, given the fact that these mechanisms have been put in place in the last few years, it is difficult at this stage to ascertain beyond doubt the existence of a gap, if there is any, between some of these mechanisms and what goes on in reality.

There is also difficulty in discussing a national integrity system as such when for 80 per cent of the time, if not more, Sāmoans live under village governments which are in reality outside central government rule. Village governments are in reality independent of central government. They have their own integrity systems whose measures and means of penalty do not always correspond to the Integrity System pillars identified in the present project. Perhaps, it would be better that a separate study of the "traditional integrity system" be conducted separately, then have aspects of the two integrity systems compared and contrasted in order to get a clearer picture of the situation in Sāmoa.

### Effectiveness of Government and Donor-Supported Activities

As already stated, it is too early to make any conclusions as to the effectiveness of the present government reforms in terms of curbing and eliminating corrupt activities in Sāmoa. Strategies like Institutional Strengthening Projects (ISP) have been used by some donors as means by which to improve governance practices in ministers. Improved governance would mean less corruption, and better still, no corruption.

### Priorities and Recommendations

Government has done a good job in putting in place existing laws, parliamentary standing orders, policies and guidelines to curb corruption. A recommendation in this area would be for the government to consolidate what it has in place now in terms of enforcing those rules and regulations.

In order to understand better the whole area of gift giving and conflict of interest rules in a society like Sāmoa which is not only relatively small but with such a strong family-oriented and reciprocal culture, it would be worthwhile in the long term to conduct an in-depth study of Sāmoa's 'traditional' integrity system in order for both donors and Sāmoans to understand better the similarities and differences between the national integrity system and the 'traditional integrity system'. Such understanding would hopefully lead to a better appreciation of the national integrity system. The often off-the-cuff conclusion is that elements of the two systems could never be mixed as it would ultimately create opportunities for corrupt activities to take place. Perhaps there is some way in which elements of one system would enhance the effectiveness of the other.

# Appendix 1 - Questionnaire

## Executive

### Can citizens sue government for infringement of their civil rights?

#### *Formal or legal position*

Yes. Article 4 of the Constitution of Sāmoa, the supreme law of the country, gives any person the right to apply to the Supreme Court of Sāmoa to enforce the fundamental rights conferred under Part II of the Constitution. These fundamental rights are:

- (i) the right to life;
- (ii) the right to personal liberty;
- (iii) the right to freedom from inhuman treatment;
- (iv) the right to freedom from forced labour;
- (v) the right to a fair trial;
- (vi) rights in relation to criminal law;
- (vii) the right to freedom of religion;
- (viii) the right to freedom from religious instructions;
- (ix) the right to freedom of speech, assembly, association, movement and residence;
- (x) rights regarding property;
- (xi) the right to freedom from discriminatory legislation.

Citizens and persons within the jurisdiction who have accrued civil rights may sue Government for infringement of their civil rights. Section 3 of *The Government Proceedings Act 1974* provides for any person (whether a citizen of Sāmoa or not) to enforce as of right any civil claim or demand against the Government in respect of the following causes of action:

- (i) breach of contract or trust;
- (ii) any wrong or injury for which the Government is liable in tort under the *Government Proceedings Act 1974* or under any other Act which is binding on the Government;
- (iii) any cause of action, which is independent of contract, trust, or tort, or any Act, for which an action for damages or to recover property of any kind would lie against the Government if it were a private person of full age and capacity;
- (iv) any other cause of action in respect of which relief would be granted against the Government at common law or in equity.

Apart from laws there are also policies which require that all government corporations must disclose all accounts in case there is a conflict of interest.

#### *What actually happens*

There have indeed been a number of examples of citizens taking different types of legal actions of varying degree of seriousness against the Government at different times. However, there is also a section of the community who would be apathetic should the government infringe their rights. There are also those who might want to take the government to court but could not because they do not have the necessary resources to do this.

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

- For cabinet ministers ?

#### *Formal or legal position*

The *Public Finance Management Act 2001* ("the Act") sets out procedures for the monitoring and proper management of public money and public property/assets. Disclosure of the use of public money and property under the Act must be made at all levels, from the Minister of Finance, to each Government Minister and Ministry Chief Executive Officers (CEOs).

The purpose of the Act (as set out in Part I of the Act) in general terms is to:

- (a) foster and enhance effective and responsible economic and financial management by Government, including adherence to policy;
- (b) provide accompanying accountability arrangements together with compliance with those arrangements;
- (c) require the Government to produce statements of proposed policy, confirmation of adherence to fiscal discipline, economic and fiscal statements (including economic and fiscal forecasts and updates) and management of information including comprehensive financial statements.

In accordance with the above purposes of the Act, the Minister of Finance under section (4)(1)(b) of the Act is responsible to Cabinet and to the Legislative Assembly for ensuring that adequate guidelines exist for the use of public money and public property.

Pursuant to section 5(g) of the Act, the Minister of Finance is furthermore responsible for the supervision of finances, assets and liabilities of the State so as to ensure that full accounting is made to the Legislative Assembly of all transactions involving public moneys or the disposition of public property.

Pursuant to section 7(1) of the Act, each Government Ministers is responsible to Cabinet and the Legislative Assembly for ensuring that the Ministry CEO coming within the area of the Minister's assigned responsibilities complies with their responsibilities under the Act for the efficient and cost-effective financial management of all public money under their areas of responsibility. Included in this is the responsibility to comply with all reporting requirements under the Act.

The Act requires Government Ministers, in relation to the areas they have been assigned responsibility over, to make reports to the Legislative Assembly regarding the public money and assets under their area of responsibility. Pursuant to section 22 of the Act, reports relating to public money or assets are required to provide certain details and reasons in order to transparently set out the use and allocation of public money and assets.

Pursuant to section 13 of the Act, Ministry CEOs also have responsibilities to properly disclose and report to their responsible Government Minister the use of public moneys and assets in their respective Ministries.

A similar accountability regime has been established for public bodies (e.g. government corporations) under the *Public Bodies (Performance and Accountability) Act 2001*. Under section 20 of this Act, Cabinet Ministers who are Board Directors of State-Owned Enterprises have to disclose their pecuniary interests.

#### *What actually happens*

It appears as if there has been no publicly known case of a Minister being sued for breaking these provisions of the relevant Acts. Perhaps more time is required to have a more thorough search to ascertain whether or not these laws are strictly observed in all instances. With the Public Bodies Act, however, some prominent board directors are discomfited by the fact that they have to disclose their assets. Whether or not they will end up disclosing all their assets is yet to be seen.

#### • **For high level officials?**

##### *Formal or legal position*

Yes. See above.



*What actually happens*

Again, it appears unlikely that any high official has tried to dodge these legal requirements. It could be concluded from this that the mechanisms in place have so far been very effective in keeping high officials in line, thereby minimizing, if not total eliminating, opportunities for corrupt practices.

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

*Formal or legal position*

In relation to the monitoring of public assets, there is no difference in the procedure and disclosure provisions between Ministers and high level officials (Ministry CEOs) as discussed above.

*What actually happens*

Both Ministers and high officials abide by the same rules and procedures.

**Are there conflict of interest rules:**

- **For ministers?**

*Formal or legal position*

There is no general law in relation to conflicts of interest on the part of Ministers or high level official. However, a number of Acts have provisions relating to conflicts of interest. For example, pursuant to section 29(f) of the *Public Service Act 1977* every Ministry CEO must disclose and take all reasonable steps to avoid, any real or apparent conflicts of interest in relation to their employment.

Moreover, the Guidelines for Government Procurement (Clause 2.45 - Declaration of Interest) provide rules for all government officials (including Ministers) involved in assessing or evaluating and/or deciding on the award of contracts to declare any interest in any company or close family relationship to the principals of any company bidding for any government procurement.

*What actually happens*

To date, there has not been any known case of any Minister or high official dodging conflict of interest legal requirements. There is, however, murmur among some contract bidders concerning certain realities relating to the bidding process. For example, the Tenders Board does not always abide by the publicly declared date on which the successful bidders are announced until it is discovered much later as to exactly who was the successful bidder. Such murmurs tend to imply a behind-the-scene manipulation of the tender process to the advantage of certain bidders. Furthermore, Sāmoa being a relatively small community, everyone seems to know everyone. It is these friendship circles and many other levels of affiliation that give critics of the tender process the impression that the whole process could never be neutral and fair in the true sense of the word. Despite all this, it appears as if no bidder has officially lodged a complaint against the Tender Board and the tender process in general. Or perhaps the disgruntled bidders (often the unsuccessful ones) fear recrimination thereby disadvantaging their chances come the next bidding round.

- **For high level officials?**

*Formal or legal position*

Yes. This is provided for in the *Public Service Amendment Act 2002* which says that 'Every employee and every Head of Department shall (f) Disclose, and take all reasonable steps to avoid, any real or apparent conflicts of interest in relation to their employment'.

*What actually happens*

There has been no case of complaint against this legal requirement to date. Perhaps it is too early to tell. There has been some noise prior to the enactment of this legislation regarding some high officials in loan approving institutions approving loans for businesses either they themselves run or are registered under some relative or dependent, and it is feasible that this was one of the reasons for the creation of this piece of legislation.

**Are there rules and registers concerning gifts and hospitality:**

- **For ministers?**

*Formal or legal position*

There are no rules and registers concerning gifts and hospitality for Ministers.

*What actually happens*

According to one prominent political leader the practice in Samoa is guided by convention and 95 per cent common sense. The convention is that it is alright to accept small gifts. Problematic as it is, this leader's comment says a lot about the reality regarding this issue. For example, how much is a small gift? The reality, therefore, is that gifts and hospitality being some of the core values and practices in the Sāmoan culture are not only a reality in the home environment but in the work place as well.

- **For high level officials?**

*Formal or legal position*

There are no registers as such. However, the *Public Service Amendment Regulations 2003* specifies that 'an employee must not directly or indirectly ask for or accept money or goods or any other valuable from any person or entity concerned with any matter connected with the employee's official duties'.

*What actually happens*

Though employees don't always ask for money or goods, they have not always rejected money and goods given to them by some of the customers they serve. This is a difficult issue in Sāmoa as it is an accepted cultural practice that a service or gift is reciprocated. This cultural practice has infiltrated the work place supposedly operating under legal-rational principles to the extent that it seems the proper thing to do in most instances. However, there have been instances where the intended gift recipients have rejected outright (though in a diplomatic way) gifts presented to them. It should also be understood that in some contexts, rejection of these 'gifts' could be seen as either being rude and uncultured or that the gift presented was not enough for the service provided.

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

Not relevant.

**Have they legal powers to enforce disclosure?**

Not relevant.

**Have they staff to investigate allegations?**

Not relevant.

**What powers of sanction are in place against Ministers who are also parliamentarians? Have they ever been invoked?**

Not relevant.

**What powers of sanction are in place against high level officials? Have they ever been invoked?**

*Formal or legal position*

The powers exist under the *Public Service Amendment Regulations 2003*. A range of penalties depending on the severity of the misconduct are specified in the same document.

*What actually happens*

There has not been a case yet of these powers being invoked. Perhaps it is too early to have a realistic assessment of the impact of this law.

**Are there restrictions on post ministerial office employment?**

- **By ministers?**

*Formal or legal position*

There is no law or policy which restricts taking up post-ministerial employment.

*What actually happens*

According to one of Sāmoa's leading political figures, such restrictions exist. However, because of Samoa's lacking capacity in terms of qualified people, there have been times when former Ministers of Cabinet who had lost their seats in parliament have been re-appointed by Government for public service positions. For example, two different former cabinet ministers have been appointed at different times as Members of the Public Service Commission (PSC) after they had lost their parliamentary seats in the general elections. One of whom is the incumbent chairman of the PSC.

- **By high level officials?**

*Formal or legal position*

There is no law or policy to restrict high level officials from taking up jobs after employment either.

*What actually happens*

According to one of Sāmoa's leading political figures, such restrictions exist and there are good reasons for it. He then mentioned as an example the case of one former Head of the Treasury Department (now called the Ministry of Finance) who took up employment immediately after being dismissed by Government from his job. As long as the Head of the Treasury Department is allowed to get another job after employment, as in this case, it gives him/her the opportunity to organise another job after his government post by giving favours to his prospective employer.

However, as already discussed, because of Samoa's lacking capacity in qualified people, some high officials get appointed to other government jobs after their first employment. An example of this is some of the judges of the Land and Titles Court. A former police commissioner and former secretary of the PSC are now judges of the Land and Titles

Court bench. They have helped enriched the quality of decision-making of the Land and Titles Court.

The suspicion concerning post-ministerial office employment by both ministers and high officials implies possible manipulation of the system and/or exploiting current employment for the purpose of securing new employment. On the other hand, they may have been proper procedures followed, guided by existing policies, which have enabled legitimate movement from present jobs to new ones. More research is needed in this area to ascertain the truth or otherwise of these possible scenarios.

### **Are members of the Executive obliged by law to give reasons for their decisions?**

#### *Formal or legal position*

There is no general obligation under the statute law of Samoa that requires members of the Executive to give reasons for their decisions. Where a member of the Executive derives a decision making power from a statute, that statute may or may not set out a legal requirement for the Executive decision maker to provide reasons for their decisions.

An exception would be the Minister of Immigration under the Immigration Act 2003 which requires the Minister to give reasons for his decision.

However, members of the Executive are required by the common law rules of natural justice to provide reasons for the decisions that they make that affect the rights of the subjects of Samoa, including individuals, community groups, corporations, and so forth. This is irrespective of whether the decision making power is derived from a statute or some other common law power. An individual, community group, etc. may initiate legal action in the Supreme Court of Sāmoa to require the Executive decision maker to provide the reasons for his/her decision.

#### *What actually happens*

There has not been any time when a citizen or an organisation has demanded the Executive to give reasons for their decisions. Thus it is hard to gauge the practical reality of having the Executive provide reasons for their decisions should they be demanded by any member of the public to do that.

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

#### *Formal or legal position:*

##### *Awarding Contracts*

Section 88 of the *Public Finance Management Act 2001* ("the Act") established a Government Tenders Board ("Tenders Board") to oversee the procurement, acquisition, disposal or management of goods, services and construction works by the Government of Sāmoa. The Tenders Board has established guidelines for awarding contracts involving the expenditure of public money.

Pursuant to the Tenders Board Guidelines, Ministry CEOs have the power to make final decisions in relation to entering or awarding contracts on behalf of their Ministry in relation to the expenditure of that Ministry less than SAT\$50,000 on the basis of a quotation system. All procurement of the acquisition, disposal or management of goods, services and construction works over SAT\$50,000 must be carried out through public tender. In relation to contract amounts in excess of SAT\$50,000, the approval of either the Tenders Board or the Tenders Board and Cabinet (for contract amounts over SAT\$500,000) is required prior to a contract being entered into on behalf of the Government of Sāmoa. A copy of the Tenders Board guidelines is attached.

##### *Awarding licenses*

The power of a Minister to grant a license is usually provided for by statute. Whether or not a Minister has the authority to make a final decision to grant a license would therefore depend on the nature of the circumstances and the empowering statute.

*What actually happens*

It appears that no bidder has yet lodged an official complaint against the Tenders Board or the tender system in general. It could only be assumed therefore that either the system is working well or that the bidders do not take much notice of any weaknesses that are there in the system. There have not been any official complaints regarding licenses either. One could only therefore assume that the system is working satisfactorily.

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

*Formal or legal position*

Yes there are administrative checks as the following examples show.

*What actually happens*

In an interview with the Prime Minister, he gave an example of a decision by The Tenders Board whose chairperson is the Minister of Finance, which was later overturned by Cabinet even though all the Ministers of Cabinet except one supported the decision of the Tenders Board. The Prime Minister also gave another example of a former Cabinet Minister using Public Works equipment to tar-seal the road to his plantation. The Leader of the Opposition in that parliamentary term raised the matter in parliament. When Cabinet checked, the Leader of the Opposition was correct. The Minister of Public Works was indeed tar-sealing his private road using government equipment and labour. That Minister was not re-appointed to cabinet in the next parliament even though he regained his seat. The incumbent Prime Minister also cited the case of a tender, which all Ministers except himself had supported. In the end, the late Prime Minister, Tofilau Eti Alesana, supported the current Prime Minister's argument. This is another example of the role that Cabinet can play as a check and balance of decisions made by the Tenders Board and or individual cabinet ministers.

## Legislature

**Is the legislature required to approve the budget?**

*Formal or legal position*

Yes. Pursuant to Article 94 of the Constitution of Samoa, the Minister of Finance must lay the budget before the Legislative Assembly for its approval by way of a vote on an appropriation bill. This is done every year.

*What actually happens*

As stated above.

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

*Formal or legal position*

If there is likely to be any substantial expenditure incurred that has not been approved by way of an appropriation bill, it must go before the Legislative Assembly by way of a

supplementary appropriation bill. Article 94 of the Constitution of the Independent State of Samoa stipulates these details.

Under Article 96 of the Constitution which provides for Unauthorised Expenditure, the Minister of Finance could authorise expenditure outside the budgeted amount provided it does not exceed one per cent of the total amount of all sums appropriated by the Appropriation Act for that year.

*What actually happens*

As stated above.

### **Are there conflict of interest rules for parliamentarians?**

*Formal or legal position*

Yes. Section 4A of the Standing Orders of Parliament comprises the Code of Parliamentary Ethics for members of parliament. Section 4A(4) specifically stipulates that:

Every member shall exercise any influence or authority obtained from Public Office only to advance the public interest and where any potential and actual conflict of interest arises whether in the member's private, financial, pecuniary or any interest the member shall be required to declare that interest and take any steps to remove the conflict or withdraw from the particular process of transaction.

Standing Order 85 deals with Bills before Parliament which affect private persons. A Bill affecting private persons is one which is intended to affect or benefit some particular person, association, or corporate body. Under Rule 85(4) no Member of Parliament is allowed to sit on a Select Committee reviewing such a Bill until he has made and signed a declaration:

- (i) that he has no personal pecuniary interest in the Bill; and
- (ii) that he will not vote on any question that may arise in respect of which evidence may be given without having duly heard and attended to the evidence relating thereto.

Under Rule 163(s) it is contempt of Parliament if a Member of Parliament participates in the consideration of a business and fails to declare any pecuniary interest which he/she has in that business.

*What actually happens*

It could not be ascertained whether these rules are enforced, and by whom. On the positive side, however, I do not know and have not heard of any Member of Parliament having problems with these conflict of interest rules.

### **Are there rules and registers concerning gifts and hospitality for parliamentarians?**

*Formal or legal position*

There are no rules and registers concerning gifts and hospitality for parliamentarians.

*What actually happens*

Parliamentarians provide a lot of help to their respective constituencies through such services as paying fees for children, helping out with village projects such as building schools, churches and so forth. As a reward for these services, candidates for parliamentary elections and incumbent members of parliament expect constituencies to reciprocate their services by voting for them come election day. As long as these gifts and act of hospitality go unrecorded, it will never be known for certain how much of this affect

voting behaviour. Even though there is strong evidence pointing towards party policy influencing voting behaviour, it will be a long time away before Samoa's voting behaviour is determined purely by policy and issues. Though gift-giving and hospitality are in the electoral laws regarded as bribery and treating, the substantial majority of Sāmoa's voting population regard them as normal cultural means of reciprocating political support.

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

Not relevant.

**Have they legal powers to enforce disclosure?**

Not relevant.

**Have they staff to investigate allegations?**

Not relevant.

**What powers of sanction are in place against parliamentarians?**

*Formal or legal position*

Sections 163(f) and (g) of the Standing Orders of Parliament define bribery (or an attempt to bribe) of a member of Parliament to influence that member's conduct in respect of proceedings in the Legislative Assembly or committee of the Legislative Assembly, as a contempt of Parliament. Pursuant to the Standing Orders, members of Parliament found to be guilty of contempt of Parliament may be sanctioned by the Speaker of the House.

Parliamentarians are also subject to the provisions of *the Crime Ordinance 1961* and the *Secret Commissions Act 1975*. These provisions are discussed below under the heading 'Civil Service'.

Moreover, the Privilege Committee of Parliament has the power to sanction otherwise they would be dealt with by parliament.

*What actually happens*

No Member of Parliament has been punished under these rules. Perhaps it is difficult to sanction affected Members of Parliament when there are no register of gifts and hospitality.

**Have they ever been invoked?**

No.

**Are there restrictions on post legislature employment?**

*Formal or legal position*

There are no restrictions on post legislature employment.

*What actually happens*

There are several examples of former parliamentarians obtaining employment elsewhere both within and outside the government service.

## Elections

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

*Formal or legal position*

There is an independent electoral commission, which has recently been established initially through the appointment of Sāmoa's first Electoral Commissioner. The establishment of the Electoral Commission follows the approval by Cabinet and Parliament of the Le'aupepe Sanerivi Commission of Inquiry Report on Samoa's Electoral System (2001). The report recommended the establishment of an Electoral Commission. The post of Electoral Commissioner has recently been announced.

Under the Electoral Act 1963, the administration and conduct of elections are the responsibilities of the Chief Electoral Officer and the Registrar of Electors and Voters. Both positions are established under section 3 of the Electoral Act 1963 but fall under the ambit of the Public Service Commission. As members of the Public Service, these positions are independent in that persons appointed to these positions cannot be removed at whim. Removal from office must comply with the provisions of the *Public Service Act 1977*, any regulations under the Act as well as common law in relation to employment.

Furthermore, in relation to investigations into corrupt practices in the course of an election, Part X of the Electoral Act 1963 ("the Act") provides for an election result to be questioned by way of an electoral petition filed with the Supreme Court of Sāmoa complaining of an unlawful election or unlawful declaration or report. An electoral petition may be lodged by either a person claiming to have a right to be elected, or a person alleging himself to have been a candidate at the election. Following the hearing of an electoral petition, the Supreme Court may determine an election result to be void on the grounds that the winner of the electorate seat has committed corrupt and illegal practices in the course of the election.

Now that the Electoral Commission has been established, the office of the Electoral Officer and Registrar will come under the jurisdiction of the Electoral Commissioner.

*What actually happens*

In the general elections between 1991 and 1996 electoral matters had been handled by the Clerk of the Legislative Assembly. The Clerk of the Legislative Assembly was both the Chief Electoral Officer and Registrar of Electors and Voters as well. This officer had often been accused in parliament of partiality. Before 1991 the posts of Chief Electoral Officer and Registrar of Electors and Voters had been held by different people. According to the incumbent Clerk of the Legislative Assembly who is also the Chief Electoral Officer, the decision to have the two electoral related posts in the early 1990's held by the Clerk of the Legislative Assembly was for easier facilitation of the electoral process in the period leading up to the 1990 plebiscite to decide whether or not to introduce universal suffrage, and when universal suffrage was introduced in the general elections the following year.

At present the office of the Registrar of Electors and Voters has been separated from the office of the Chief Electoral Officer. The separation began in the period leading up to the last general elections in 2001. The office of the Registrar of Electors and Voters is now a section within the Department of Justice, which has recently been called the Ministry of Justice and Court Administration. The present separation of the two offices (or rather a return to the practice that existed up to the late 1980's) was a response to public criticisms against the incumbent Clerk of the Legislative Assembly being the Registrar of Electors and Voters, and Chief Electoral Officer at the same time. These criticisms alleged that the Clerk of the Legislative Assembly, as long as she was Chief Electoral Officer and Registrar of Electors and Voters as well, had been less than impartial in the handling of these highly sensitive political matters. A more blunt criticism was that the Chief Electoral Officer was too powerful as long as she was the Clerk of the Legislative Assembly as well as being the Electoral Officer and Registrar of Electors and Voters as well. The intention behind the establishment of the Electoral Commission, therefore, is to have all electoral



matters handled by that institution independently of any possible political influence and interference as perceived by critics of the system that existed prior to its establishment.

### **Who appoints the Head of the Commission?**

#### *Formal or legal position*

Cabinet recommends to the Head of State.

#### *What actually happens*

Like all other government contract positions, the involvement of political considerations in such appointment cannot be totally dismissed from the minds of the skeptics. However, I believe that the recent appointment of Sāmoa's first electoral commissioner has been made predominantly, if not totally, on relevant qualifications and relevant experience.

## **Political Party Funding**

### **Are there rules on political party funding?**

#### *Formal or legal position*

There are no rules on political party funding. The only rule there is at present is that the government in its annual budget allocates a lump sum of ST\$100,000 for the activities of all existing political parties, such as maintaining their respective offices. At the present, a political party has to have at least seven members in order to qualify as a political party. The sum of ST\$100,000 is divided equally among all political parties depending on the number of members in each party. Independent members of parliament are not entitled to this financial support.

#### *What actually happens*

As above.

### **Are substantial donations and their sources made public?**

#### *Formal or legal position*

No. Any kind of donation (big or small) is not made public. Some people who donate funds to the Samoa National Development Party (SNDP) request that their names remain confidential. There is no rule to publicise any donations received. The leader of the opposition does not believe that this practice will change in the near future. Given that Samoa is a small place where everyone will know what is happening with everyone else, it is unlikely that donors will be prepared to reveal their identities. Political parties will have to respect the wish of those who have helped them out financially and various other ways.

#### *What actually happens*

As above. From the point of views of both the donors and the recipients of donations, the most important people to know about these donations are the recipient political party(ies). They know the amount donated, the nature of the donation and the identity of the donor(s), and donors hope that the recipient political party will not forget them in the future if they come to power.

### **Are there rules on political party expenditures?**

No.

### **Are political party accounts published?**

#### *Formal or legal position*

At the moment that is not done partly because of the donor's request when donating to parties that their identities should not be publicised. However, the Leader of the Opposition thinks it is a good idea to have these accounts published (Personal Communication, 8 Aug 2003)

#### *What actually happens*

As above. This situation is not likely to change in the near future. It will be a long time before political parties are prepared to publicise the identity of donors. Nor would it seem likely that political parties will want to publish how much funds they have or do not have.

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

#### *Formal or legal position*

Accounts are not checked by an independent institution. They are not published and they are not submitted to parliament.

#### *What actually happens*

As above.

### **Does that institution start investigations on its own initiative?**

Not relevant.

### **Who appoints the head of the institution?**

Not relevant.

## **Controller and Chief Auditor (CCA)**

### **Is the CCA independent?**

#### *Formal or legal position*

Yes, the CCA is independent in that he/she is a contract appointment for a specified length of time. The position is created under Article 97 of the Constitution of Samoa. The appointment is made by the Head of State acting on the advice of the Prime Minister. Article 97, however, does not set out any eligibility criteria for the position.

The CCA holds office for a term of 3 years but is eligible for reappointment. The CCA may be suspended from office by the Head of State on the advice of the Prime Minister. The Prime Minister is required under the same constitutional provision to lay before the Legislative Assembly a full statement of the grounds of suspension of the CCA within 7 sitting days of the Legislative Assembly. However, Article 97 does not specify the grounds upon which the CCA may be suspended.

The CCA may only be removed from office by a resolution of the Legislative Assembly. A CCA who has been suspended shall be restored to office by the Head of State unless the Legislative Assembly, within 42 days after the day that the Prime Minister's statement of reasons for suspension has been laid before it, declares by resolution that the CCA ought to be removed from office.

*What actually happens*

The independence of the CCA is a 3-year reality. If the government for any reason does not like the CCA, he/she would not be appointed for another term. There have been heated debates in parliament and skepticism among sections of the public concerning the issue of reduction of the term of office of the CCA from 60 years to three years. The constitutional amendment followed a report of the then incumbent CCA in which he pointed to some financial discrepancies (among other discrepancies) in high places. Critics of the HRPP government have consistently argued that the only real reason behind the constitutional reduction of the CCA's term of office from when he/she turns 60 years of age to a three-year contract was so that the HRPP government could control future CCA's who may decide to exercise too much liberty to check on the activities of government. The issue now is whether the CCA could ever be truly independent of government interference and be undertaking his/her duties to the best of his/her ability and in the interest of the country as a whole.

**Is the appointment of the CCA required to be based on professional criteria/merit?***Formal or legal position*

Even though the Constitution does not set out any eligibility criteria for the position of CCA, the appointment is based essentially on relevant qualifications and vast experience in accounting and auditing. The renewal of contract depends on performance and the satisfactory achievement of target outputs.

*What actually happens*

Renewal of contract does not only depend on performance and the satisfactory of achievement of target outputs. It is also important in the final analysis that the appointee toes the government's political line. An example is the case of a former CCA whose report to parliament created much heated parliamentary debate, public political marches to parliament and the constitutional reduction of the CCA's term of office to a contract of three years, which can be renewed.

**Is the appointee protected from removal without relevant justification?***Formal or legal position*

As already stated the Controller and Chief Auditor is well protected from removal under Article 97 of the Constitution.

*Reality*

That protection is short-lived given the appointment is for a contract period of 3 years only.

**Is the office of the CCA adequately resourced?**

Government funding is based on the number of personnel in a Ministry. With the passing of many laws putting in place the requirements of transparency and accountability, such as the Public Bodies Act, 2001, the office of the CCA has come under increasing pressure to add more staff because of the increased workload. So far the staff has been able to hold the fort. They have been able to accomplish 100 per cent of pre-audits of all government expenditures before payment. But more help is needed for the performance of other auditing functions. For example, the government's financial year ends on 30 June and Treasury is required to come out with draft accounts for all government departments and state-owned enterprises. These must be audited and submitted to parliament within a specific time frame. For instance, it generally takes six months for the draft accounts of

government departments to be audited, and four months for those of the state-owned enterprises.

But this is not all. There has been a tremendous increase in the growth of public bodies, which has also led to a corresponding increase in the workload of the Audit Office. Moreover, the current emphasis in the Audit's line of work is on performance auditing, similar to performance budgeting. It is no longer a matter of figures, but whether the Office meets the goals they set out a year earlier. Hence the need for more staff, especially those with adequate qualifications, to enable the Office to meet their deadlines and to accomplish their increased workload. To attract these people, the Audit Office has to offer good salaries and other satisfactory conditions of employment.

### **Are all public expenditures audited annually?**

*Formal or legal position*

Pursuant to Article 99(1) of the Constitution, the CCA shall audit the Treasury Fund, such other public funds or accounts as may be established, the accounts of all ministries and offices of executive government, and the accounts of such other public, statutory, or local authorities and bodies as may be provided by Act. Pursuant to Article 99(2) of the Constitution, the CCA shall report at least once annually to the Legislative Assembly on the performance of his functions under Article 99 and his report shall draw attention to any irregularities in the accounts audited by him.

*What actually happens*

As stated.

### **Is reporting up to date?**

*Formal or legal position*

Yes. When the incumbent CCA and his team were appointed in 1998, public accounts were five years in arrears but that is no longer the case. Public accounts are now up to date to 30 June 2002. This is true with respect to all government ministries. Most state-owned enterprises are also up-to-date. It is expected that the draft accounts for 2003 would be completed by October 2003.

The urgency in being up-to-date with the accounts is partly due to the effect of the Public Bodies Act, 2001, which makes heads of Ministry CEOs responsible for any lateness in presenting their annual accounts.

*What actually happens*

As stated above.

### **Are reports submitted to a Public Accounts Committee and/or debated by the legislature? Are they acted on by the government?**

*Formal or legal position*

Yes, reports are presented to the Speaker of Parliament and to the Public Accounts Committee. The committee holds hearings to which the CCA and other interested parties are invited. After this, the committee submits its own reports on the accounts to the Legislative Assembly where further debate takes place. If the reports are well researched and written, they are usually accepted by government.

*What actually happens*

As stated above.

**Are all public expenditures declared in the official budget?***Formal or legal position*

Yes, all public expenditures are declared in the official budget. Government cannot spend any money that has not been passed by parliament.

Further the CCA is required to certify as correct the warrant for the expenditure of any public monies before it is submitted to the Head of State for his signature.

There is also a provision where cabinet can authorize expenditure of public funds before such expenditure is ratified in parliament. This is called unauthorized expenditure but it cannot exceed one per cent of the budget. If such expenditure exceeds the allowable limit, then our office will question the government about it.

*What actually happens*

As stated above.

## Judiciary

**Have the courts the jurisdiction to review the actions of the Executive (i.e. Prime Minister or other Ministers of Cabinet and their officials)?***Formal or legal position*

The Supreme Court of Samoa has the jurisdiction under Article 73 of the Constitution of Samoa as well as common law to review actions of the Executive. The Supreme court under Article 4 of the Constitution has the power to make such orders as may be necessary and appropriate to secure the enjoyment of any of the fundamental rights under Part II of the Constitution.

*What actually happens*

According to a high official of the court system, however, the Court is very reluctant to exercise this constitutional right. It thinks that the exercise of such right could be perceived as the court interfering with the principle of the three divisions of power - executive, judiciary and legislators.

**Are judges/investigative magistrates independent?. That is, are appointments required to be based on merit?***Formal or legal position*

Members of the Samoan judiciary enjoy full independence. Appointments of judges to the Supreme Court of Samoa are based on merits. The criteria required of a Supreme Court judge is set out in Article 65(3) of the Constitution of Samoa. Pursuant to Article 68(1) of the Constitution, a Supreme Court judge holds office until he or she reaches the age of 62 years. This age limit can be extended under Article 68(1) by the Head of State of Samoa acting on advice of the Prime Minister in the case of the Chief Justice, or on the advice of the Judicial Service Commission in the case of any other Judge of the Supreme Court. A judge of the Supreme Court of Samoa can only be removed from office if he or she:

- (i) resigns (see Article 68[4] of the Constitution); or
- (ii) is removed by the Head of State following a vote by the Legislative Assembly carried by not less than 2/3 of the number of members of Parliament and only on the grounds of misbehaviour or infirmity of body or mind (Article 68[5]) of the Constitution)

There are criteria specifying required skills when appointing judges.

Judges are appointed by the Judiciary Service Commission comprising the Chief Justice, Attorney General and one person appointed by the Minister of Justice from outside the Justice Department. The Judiciary Service Commission makes its recommendation to the Head of State. Complaints from the public go to the Judiciary Service Commission.

*What actually happens*

As stated above.

**Are the appointees protected from removal without relevant justification?**

*Formal or legal position*

Yes, as already explained.

*What actually happens*

As stated above.

**Are recruitment and career development based on merit?**

*Formal or legal position*

Yes, as already explained.

*What actually happens*

As stated above.

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

*Legal/formal*

There have been many instances where officers were found to be corrupt and were successfully prosecuted thereafter. Some of these cases have not been as high profile as the case of the senior policeman who has been jailed. Some police officials have been asked to resign and have lost their entitlement. What the Ministry of Police and Prison wanted was to get these corrupt officials out from where they can do more harm. It is often hard to get evidence to prosecute as people are clever to cover their tracks, so it is best to get them out as soon as possible was the comment by one senior official (Personal Communication, 8 Aug 2003). However, if there is evidence, they are prosecuted.

*What actually happens*

As stated above.

## **Public Service Commission (PSC)**

**Are there laws establishing criminal and administrative sanctions for bribery?**

*Formal or legal position*

Yes, Pursuant to section 27(1) of the *Public Service Act 1977* ("the Act"), it is an offence to attempt to influence the Public Service Commission or any person having delegated authority therein, in any matter relating to decisions on individual employees or classes or employees. Pursuant to section 27(2) of the Act, it is an offence for any person who is

desirous of becoming an employee of the Public Service to either directly or indirectly solicit any person with a view to obtaining promotion in or appointment to the Public Service. Furthermore, under section 27(2) of the Act, a person found guilty of this offence shall be deemed unfit for the promotion or appointment that they were found guilty in relation to.

Bribery in the civil service also falls under the scope of *the Secret Commissions Act 1975*. Sections 4 to 11 of this Act set out offences relating to the giving and accepting of corrupt gifts and other such secret acts which are carried out for the personal gain on the part of an agent of a principal. Under section 3(1)(c) of this Act, an agent includes an employee of the Public Service who is involved in corrupt practices in relation to the Public Service Commission.

Furthermore, official corruption is a criminal offence under section 35 of the *Crimes Ordinance 1961*. Section 35 states:

Everyone commits the offence of official corruption and is liable to imprisonment for a term not exceeding 5 years who:

- (i) Being the holder of any office, whether judicial or otherwise, in the service of the Independent State of Sāmoa, corruptly accepts or obtains, or agrees to accept or attempts to obtain, for himself or any other person any bribe, that is to say, any money or valuable consideration whatever, on account of anything done or to be afterwards done by him in his official capacity; or
- (ii) Corruptly give or offers to any person holding any such office or to any other person any such bribe as aforesaid on account of any such act.

Correct behaviour by members of government from cabinet ministers down to ordinary public servants is also prescribed in a Code of Ethics that was issued by Government in May 2001.

#### *What actually happens*

Some employees and employers alike have accepted gifts from customers. This is seen as being in accordance with culture. To reject a gift that is given by a customer in the time of the normal service being provided for that customer would be perceived by the latter as being 'rude'. It could also be perceived that the non-acceptance of the gift could mean that the gift being presented was not enough, thereby requiring the person who presented the gift to give more. It has become a kind of custom for those the service is being provided for to give gifts as a way of personally thanking the employee for the service being provided.

There has been considerable discussion in government circles on the issue of whether gifts constitute bribery or whether they are aspects of the *fa'asāmoa* (Sāmoan way). There are strong feelings both for and against these views. The politicians' view generally speaking is that certain types of gifts, such as *sua*, are appropriate according to custom, while professional public servants lean to the view that no gift, however small, should be accepted privately. This is still a gray area.

### **Are there rules requiring political independence of the civil service?**

#### *Formal or legal position*

These rules are provided under Section 27 and Section 29 of *the Public Service Amendment Act 2002*. Section 27, for instance, says: every public servant should provide "impartial advice, acting without fear or favour, and making decisions on their merits" while Section 29 says every public servant should be "honest and impartial".

#### *What actually happens*

Though normally the public service is impartial, overseas experts and local skeptics often raise the question whether our public service is really impartial, especially at the higher levels. This is because appointments to senior posts within the public service are made by cabinet. And while the Prime Minister insists on our honest and independent advice, other ministers may not necessarily hold this view.

### **Are recruitment/career development rules based on merit?**

#### *Formal or legal position*

Yes. Section 7(4) of the *Public Service Act 1977* provides for appointment of officers to the Public Service of Sāmoa to be based on merit in the event of two or more officers being available for appointment to the same position. Pursuant to section 7(5), merit of an officer shall be determined by:

- (i) work experience and competence shown in performance of duties previously carried out by him; and
- (ii) personal qualities, characteristics, and attributes relevant to the position to be filled; and
- (iii) relevant educational or other qualifications.

Other relevant provisions include sections 27, 28 and 29 of the *Public Service Act 1977* (which is now called the *Public Service Amendment Act 2002*). Section 28(2)(a) requires the Public Service Commission to make appointments and promotions based on merits.

In previous eras, long service was also included but this provision was subsequently removed because long service does not necessarily mean people are producing according to expectations. The Public Service Commission issues a Manual of Appointments which contains explanations about the merit system and the different selection criteria used for a position. Competencies and skills for a post are adequately explained therein.

#### *What actually happens*

As stated above.

### **Are there specific rules to prevent nepotism? Cronyism? (note: rules discriminating positively in favour of marginalised or minority groups are not included in this description)**

#### *Formal or legal position*

These rules are covered in Sections 27, 28 and 29 of the *Public Service Amendment Act 2002*. For example, section 29(i) of the Public Service Act 1977 requires every employee and Ministry CEO to act with integrity and not to misuse their status or authority to seek or obtain a benefit for themselves or any other person or body. Furthermore, the Public Service Regulations clearly provides in the situation of married couples, that spouses are not to work within the same Ministry to avoid situations of nepotism. Affirmative action is also covered in these sections.

#### *What actually happens*

Because Samoa is a people with strong sentiments for family affiliations, it is not unusual to find family members (though this identity is not often visibly noticeable) in a Ministry that are relatives or friends of the some middle manager in the Ministry.

### **Are there rules and registers concerning acceptance of gifts and hospitality?**

#### *Formal or legal position*

There are rules (but no registers) concerning acceptance of gifts and hospitality. These rules are provided for under the regulations and directives of cabinet which do not go to



parliament. This is an issue that has long been discussed within government circles and is still being discussed. The difficulty in finding a solution is that gifts are also made according to custom and tradition. Can a distinction be made between such gifts and those addressed within the Westminster system?

*What actually happens*

As already explained.

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

*Formal or legal position*

In the regulations there are rules concerning gifts but no requirement about keeping registers. This is in part due to the inconclusive nature of the debate within government circles about what constitutes a gift. Cabinet is of the view that *sua*, or presentations of gifts made by villages, belong to the realm of tradition and therefore should not be included in the category of gift as used in European countries. But other senior government officials disagree saying a gift is a gift however it is dressed; gifts made in an official capacity should belong to the state, not to individuals, such as ministers or heads of departments. One way of resolving this problem has been adopted by at least of the government ministries which distribute among employees gifts from villages and so forth.

*What actually happens*

As stated above.

**Have they legal powers to enforce disclosure?**

*Formal or legal position*

Disclosure of gifts is based on current policy as in Sections 27 and 29 of the *Public Service Amendment Act 2002*. The key trope here is honesty, especially if the gift is of a substantial nature.

*What actually happens*

As stated above.

**Have they staff to investigate allegations?**

*Formal or legal position*

There is a pool of investigating officers, people with backgrounds in law and accountancy, who have a good understanding of the relevant laws of the Public Service Commission. There are 18 people in a pool. If a public servant comes under suspicion for inappropriate behaviour or worse, a pool will be formed from officers from other departments to investigate the matter. If a grievance is involved, this will go first to the chief executive officer. If satisfaction is not forthcoming, the matter will go to a Tribunal set up by the PSC and Attorney General. If still no satisfaction then the matter goes to the Public Service Appeal Board. All these steps have to be followed unless for exceptional reasons.

*What actually happens*

As stated above.

**What powers of sanction are in place against public officials? Have they ever been invoked?**

*Formal or legal position*

There are powers of sanction against public servants under contract. Their services can be terminated for non-performance, for violation of the Code of Ethics or for redundancy. Sanctions for other public servants are provided for under the Public Service Act.

*What actually happens*

As stated above.

**Are there restrictions on post public service employment?**

*Formal or legal position*

There are no legal restrictions on post public service employment.

For short-term consultancies of up to three months, a public servant needs to inform the chief executive officer. If permission is granted, the Inland Revenue Department is informed because tax matters are involved then the public servant goes on leave without pay.

With regard to retirees, the present age for retirement in the public service is 55, usually extended to 60 and sometimes, as in the case of nurses and doctors, well over 60. This is because of the scarcity of medical personnel. If, however, replacements are still needed in ministries, retirees may still be hired, but at a lower rate of ST\$5 an hour. At present, unlike overseas countries, we cannot extend the retiring age because we have so many young people who need employment.

*What actually happens*

As stated above.

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

*Formal or legal position*

This is a matter for each ministry.

*What actually happens*

As stated above.

**Are there complaint mechanisms for public servants and whistleblower protection measures?**

*Formal or legal position*

There is no whistleblower protection as in Australia but this does not take away the right of any public servant to write direct to the Public Service Commission or other relevant government bodies, such as the Office of the Ombudsman, to complain of any irregularities. People do not have to identify themselves. But once a complaint is received, then PSC usually carries out an investigation.

Furthermore, in relation to dealings with public funds, section 116 of the *Public Finance Management Act 2001* requires a person (including an employee of the Public Service) with knowledge of any circumstances of an offence under section 115 of the *Public Finance Management Act 2001* shall report those circumstances to the Minister of Finance or the CEO of Finance or both. Offences under section 115 of the *Public Finance Management Act 2001* relate to accountability of public funds.

*What actually happens*

A number of disgruntled and dissatisfied public servants and private sector employees have made use of the local newspapers to write anonymous letters to the editor complaining about a particular situation in the service or about the way they were treated. Other similar complaints are often raised by Members of Parliament during parliamentary sessions.

**Are there means for complaints by members of the public?***Formal or legal position*

As of November 2000, all government ministries were required to have service charters, which set out their functions and working hours, an officer to deal with members of the public who have complaints or claims to make. To facilitate contact with the public, lunch hours have been eliminated, so that there will always be somebody in the office. Not all ministries have completed these charters so the deadline for completing them has been extended to 31 December 2003.

*What actually happens*

As stated above. It would be interesting, however, to know how many members of the public would use such complaint mechanisms to their advantage. Samoans tend not to have the patience to take any complaints they might have through these channels. They would rather see somebody on the spot or seek an audience with a cabinet minister or their member of parliament.

**Are there administrative checks and balances on decisions of individual public officials?***Formal or legal position*

Yes. Supervising officers are required to check the decisions of Public Service employees under their supervision. Public Service employees are required by section 29 to disclose and take all reasonable steps to avoid any real or apparent conflict of interest in relation to their employment.

Checks and balances are also provided in the Service Charter of the Public Service Commission. The process starts within individual ministries but others are also involved, especially Audit. The biggest check, however, is public opinion as expressed in the media and other public fora.

*What actually happens*

As stated above.

## **Police and Prosecutors**

**Is the Commissioner of Police independent?***Formal or legal position*

Legally, yes. The Commissioner of Police is appointed pursuant to section 5 of the *Police Service Act 1977* ("the Act") by the Head of State of Samoa. The Head of State pursuant to section 5 must only appoint a person he determines to be a 'fit and proper person to be Commissioner of the Police Service' and only if that person has:

- (i) served in the Police Service for not less than 10 years; and
- (ii) held a rank not below that of a Commissioned Officer at the time immediately prior to the recommendation for appointment.

The Commissioner upon appointment holds office for a period of three years unless reappointed. The Commissioner is eligible for reappointment, and if so reappointed, the term is also three years, as stated in section 3 of the *Police Services Act 1988*. The Commissioner may only be removed from office if the Head of State of Sāmoa determines that he has committed a breach of his police duties, or has been charged with a criminal offence himself.

*What actually happens*

Even though the appointment is made by the Head of State for a period of three years, the recommendation to that effect is made by Cabinet. As long as the Police Commissioner is appointed by Cabinet, as is the case of all Ministry CEOs, a significant section of the public will always be skeptical that CEOs are not independent in the true sense of the word, as they could never be totally free of political influence during the performance of their duties.

**Are appointments required to be based on merit?**

*Legal/formal*

Yes, as already explained.

*What actually happens*

As already explained, as long as these positions are appointed by Cabinet there will always be that public scepticism about the political neutrality of these appointments.

**Is the appointee protected from removal without relevant justification?**

*Legal/formal*

Yes. The Police Service Act stipulates that the Commissioner may only be removed from office if the Head of State of Sāmoa determines that he has committed a breach of his police duties, or has been charged with a criminal offence himself as stipulated under section 24 of the Act.

*What actually happens*

As above. To date, only one Police Commissioner was removed from office, in the 1970's, but that was due to a recommendation of a Commission of Inquiry conducted at the time. No Police Commissioner has been removed from office following the enactment of the new CEO contract system where they are appointed for a contract period of three years.

**Are public prosecutors independent?**

*Formal or legal position*

Pursuant to Article 41 of the Constitution, the Attorney General of Sāmoa is the public prosecutor for the country. Article 4(2) provides that the Attorney General has power, exercisable in his/her discretion to institute, conduct or discontinue any proceedings for an offence alleged to have been committed.

There are presently no public prosecutors for the court system in Samoa *per se*. In the alternative, legal aid is available upon application in relation to the defence of certain criminal offences, such as murder, manslaughter and theft as a servant. Legal aid is not available for the offence of possession of narcotics.

*What actually happens*

As stated above.

**Are there special units for investigating and prosecuting corruption crimes?**

*Formal or legal position*

No. However, an allegation of corrupt practices against a member of the Police Services may be made to the Police Services itself. The Police Services then has an obligation to investigate the matter and if necessary, to lay charges against the person involved. A police officer was recently charged and convicted of corrupt charges and sentenced to three years imprisonment. This is discussed below.

The criminal investigation unit investigates all crimes including corruption.

*What actually happens*

As stated above.

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

*Formal or legal position*

Yes. Complaints against the Police Services or a member of the Police Services can be made to the Ombudsman. There is also a Police Tribunal which deals with any complaints against police. There is a special unit within the police force which investigates police misconduct. If a police is found to have broken the law, he/she is taken to court, like anybody else.

*What actually happens*

The authors have been unable to obtain information relating to the number of such complaints that have been lodged with the Ombudsman and the Police Tribunal.

**Does civil society have a role in such a mechanism?**

No.

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

*Formal or legal position*

Yes, in 2003 a former Sergeant of the Police Services was convicted in the District Court of Sāmoa of official corruption and forgery and was sentenced to three years imprisonment. This conviction arose from the former Sergeant's actions in taking money from a person arrested for being in the possession of marijuana, and then releasing that person without charging him for that offence (SO, 4 Mar 2003).

*What actually happens*

As stated above.

**Are there any cases of corruption within the prosecuting agencies?**

*Formal or legal position*

Yes. As already mentioned a police officer is now in prison. The prosecuting agency in this case would be the Office of the Attorney General acting on behalf of the Police Services. There have been no cases of corruption within the Office of the Attorney General.

*What actually happens*

As stated above.

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

*Formal or legal position*

The relevant legislative instruments include the following:

- (i) Section 35 of the *Crimes Ordinance 1961* (in relation to official corruption)
- (ii) Sections 4 to 11 of the *Secret Commissions Act 1975* (in relation to private corruption)
- (iii) Section 96 of the *Electoral Act 1963* (in relation to corruption in the course of an election)
- (iv) Sections 27 to 29 of the *Public Service Act 1977*.
- (v) Sections 111, 115, 116 and 117 of the *Public Finance Management Act 2001*.

**Is the law applied?**

Yes.

**Is private-to private corruption punishable by law?**

*Formal or legal position*

Yes. Section 3 of the *Secret Commissions Act 1975* sets out that the Act applies to actions of members of a corporation, estate, Board, Council, Commission, firm, arbitrator and liquidator.

*What actually happens*

As stated above.

**Is the law applied?**

Yes, the law is applied.

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

The Police Commissioner did not have the file for this information.

## **Public Procurement**

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

*Formal or legal position*

Yes. Open, competitive bidding is required for all procurement over SAT\$50,000. Limited exceptions include local and international shopping, sole sourcing, and repeat orders but these must have prior clearance of the National Tenders Board.

Section 1.02 of the Tenders Board Guidelines sets out the principles which underline public procurement including the principle of transparency as being essential to achieving economy and efficiency and to combat fraud and corruption.

The Government Tenders Board Guidelines under *the Public Finance and Management Act 2001* clearly sets out that all public procurement over SAT\$2,000 must be carried out by competitive bidding. Public procurement in the amount of SAT\$2,000 to SAT\$5,000 requires at least 3 verbal quotes. Public procurement in the amount of SAT\$5,000 to SAT\$50,000 requires a public tender.

*What actually happens*

As stated above.

### **Are the rules laid down in documents publicly accessible?**

*Formal or legal position*

Yes. The Procurement Guidelines are made available from the Ministry of Finance in both English and Samoan and are available free of charge.

*What actually happens*

Some NGO members complain that they find it hard to access some, if not all, of this information.

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

*Formal or legal position*

Yes. Sole sourcing or direct purchase may only be done after prior clearance by the National Tenders Board and is permitted only under specified circumstances listed in the Guidelines for Government Procurement. For example, direct purchase is only allowed in any one of the following situation, as stipulated in section 3.05 of the Tenders Board Guidelines:

- (i) when buying small or off the shelf items generally valued at less than SAT\$10,000;
- (ii) when standardization is important and equipment and spare parts required for expansion or repair of existing equipment must be procured from the original supplier or from a supplier of identical goods;
- (iii) when the equipment is proprietary in character and is obtainable from one supplier;
- (iv) when critical items are to be procured from specialist suppliers;
- (v) when the civil works to be undertaken are a natural extension of an earlier or ongoing job and it can be shown that the engagement of the same contractor will be more economical and will ensure compatibility of results in terms of quality work.

*What actually happens*

As stated above.

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

*Formal or legal position*

Yes. All public procurement by open competitive bidding above SAT\$50,000 must be advertised in a widely circulated paper for a period of not less than 14 days.

*What actually happens*

As stated above.

**Are procurement decisions made public?**

*Formal or legal position*

Yes. All procurement decisions are made public after the notification of award.

*What actually happens*

There have some noises made by some bidders that some decisions are not always given on the publicised date. It is only until much later and in an unofficial manner that the unsuccessful bidders find out about the decision.

**Is there a procedure to request review of procurement decisions?**

*Formal or legal position*

Yes. Section 11 of the Tenders Board Guidelines provides that if an unsuccessful bidder wishes to ascertain any of the grounds upon which its bid was not selected, it may first request an explanation of the relevant Ministry or Corporation. If the unsuccessful bidder is unsatisfied with the explanation given by the Ministry or Corporation, it may arrange a meeting with the Tenders Board to discuss its bid. The Board may then appoint a subcommittee, which must include the Attorney General, to look into the complaint.

*What actually happens*

Some unsuccessful bidders have indeed tried to find out why their bids had been unsuccessful. The main reason for doing so is so they know what to do come the next bidding round.

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

*Legal/informal position*

Yes, decisions in relation to procurement awards may be challenged in court.

*Reality*

I don't know nor heard of any unsatisfied bidder who has gone that far.

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

*Formal or legal position*

Not specifically. However, government procurement also complies with the procurement requirements of its multilateral partners such as the World Bank which has a blacklist of such companies. The Tenders Board also maintains good records of previous contracts and may decide to exclude a company from any government procurement.

*What actually happens*

There are no written provisions for this except for companies involved in fraud or other corrupt practices. For instance, building contractors need to register with the Registrar of Building Contractors. If any are found subsequently to be involved in corrupt practices, they are struck off the list.



In order to bid, these companies must register in one of three categories: Category A, for contracts up to \$100,000; Category B for contracts up to \$500,000; and Category C for contracts above \$500,000.

To promote fairer competition, Category A companies may bid for Category B or C contracts, but not the other way around: Category C companies may not tender for contracts at the lower levels.

However, loopholes in the law allow certain anomalies. For instance, the same group of people may form three different companies to bid in the various categories mentioned. So far there is no way of stopping people from doing this. "If you are legally registered as a company, then it is legal to bid." (Sefo, Personal Communication, 28 Aug 2003).

There is one way of countering this. If in the opinion of the Board the same company cannot carry out efficiently the requirements of several contracts awarded to it, then this may be ground for limiting the number of contracts.

The board always has in mind the need to spread benefits around so that all profit, not just the big companies, but also the small ones. The tendency is to break up the big projects so that everyone has a piece of the action.

### **Are there rules and procedures to prevent nepotism/conflict of interest in public procurement?**

#### *Formal or legal position*

Yes. Rules and procedures are provided in the Guidelines for Government Procurement Clause 2.45, in the *Public Finance Management Act 2001*, the *Public Bodies Transparency and Accountability Act 2001*, the *Public Service Amendment Act 2002*, and Treasury Regulations and Instructions.

#### *What actually happens*

If people involved in the tender process are not honest, it is not always easy to know who is related to whom, among Board members, among the bidders and between the Tender Board members and the bidders. Conflict of interest and nepotism as such are not always easy to detect. All the rules guiding the tender process found in the legislation, guidelines and policies are therefore rendered ineffective unless all these friendship and family affiliations are also known.

### **Are assets, incomes and life styles of public procurement officers monitored?**

#### *Legal/formal*

Not specifically.

#### *What actually happens*

Such monitoring should be the role of civil society. Citizens, when they detect signs of corruption in the service, should write to the newspaper or to the Public Service Commission to express their concerns. Citizens have to be careful, however, because they may be held accountable for invasion of privacy.

The potential for corruption is high among procurement officers. But it depends on who actually does the procuring because in the Ministry of Finance, a procurement officer is one who processes payments and, therefore, the least likely to be corrupt. The real procurement is done by others, for example, engineers, who do the evaluation.

## Ombudsman

### **Is there an ombudsman or its equivalent (i.e. an independent body to which citizens can make complaints about maladministration)?**

Yes. The office of the Ombudsman is established and governed by the *Ombudsman Act 1988*.

### **Is the ombudsman independent? That is, are appointments required to be based on merit?**

#### *Formal or legal position*

Pursuant to section 2 of the *Ombudsman Act 1988*, appointment to the office of Ombudsman is by the Head of State acting on the recommendation of the Legislative Assembly. The Act does not set out criteria for appointment to this office. However, the Government alone does not have the authority to appoint the Ombudsman but a vote of the Legislative Assembly as a whole is required. Pursuant to section 4 of the Act, the person appointed to the office of Ombudsman holds a term of three years. Pursuant to section 5 of the Act, the Ombudsman may only be removed from office on the grounds of disability, bankruptcy, neglect of duty or misconduct.

#### *What actually happens*

Given that the appointment is made by parliament and government, it does not necessarily have to be based on merit alone. There may be someone who can do the job better but if not in favour with the government, then he/she won't have a chance of getting the job.

### **Is the appointee protected from removal without relevant justification?**

#### *Formal or legal position*

Yes. As already stated, the Ombudsman is appointed by the Head of State on the recommendation of the Legislative Assembly. In other words, the Ombudsman is appointed by parliament.

#### *What actually happens*

To date, no Ombudsman has been dismissed by parliament.

### **Is the office of Ombudsman adequately resourced?**

#### *Formal or legal position*

At the moment yes. However, once the Ombudsman's office started going out to publicise their functions and role they will have to take on more staff. At the moment the Ombudsman's office has a staff of four, the Ombudsman himself, his secretary and two investigation officers.

#### *What actually happens*

Generally, the office of the Ombudsman is not known among a significant section of the public. The office is therefore rather distant and somewhat detached from society. As long as this remains the case, there will be no need for more staff.

### **Has an Ombudsman been removed without relevant justification in the last five years?**

No.

**Can petitioners complain anonymously if they fear possible reprisals?***Formal or legal position*

The Act does not specify whether a complaint by a petitioner may be made to the Ombudsman anonymously. Section 13 of the Act only provides that every complaint is required to be made in writing. The Act, however, does provide for all complaints and matters discussed therein to be kept confidential. For example, pursuant to section 13 of the Act, a complaint made by a prison inmate is to be forwarded unopened to the Ombudsman. Pursuant to section 15 of the Act, every investigation by the Ombudsman shall be conducted in private. Pursuant to section 18 of the Act, the Ombudsman and his staff must maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions. Furthermore, all staff of the Ombudsman office must take an oath of secrecy prior to beginning employment.

*What actually happens*

Cases are treated with full confidentiality.

**Are reports of the ombudsman published?***Formal or legal position*

There is no direct requirement under the Act for reports of the Ombudsman to be published. However, pursuant to section 12 of the *Ombudsman Act 1988*, the Legislative Assembly may make general rules for the guidance of the Ombudsman in the exercise of his functions. Such rules may authorise the office of the Ombudsman to publish its reports in general or a specific report relating to a particular case.

*What actually happens*

Yes, reports of the Ombudsman are tabled in parliament in which it mentions the number and nature of cases being investigated, among other related matters.

**Does the government act on the Ombudsman's recommendations?***Formal or legal position*

Pursuant to section 19 of the Act, the Ombudsman shall report his recommendations to the appropriate Ministry or organisation concerned. In any such case he may request the Ministry or organisation to notify him within a specified time of the steps that it proposes to take to give effect of his recommendations. If within a reasonable time after the report has been made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman in his discretion, after considering the comments (if any) made by the Ministry or organisation, may send a copy of the report and recommendations to the Prime Minister and may thereafter make such report to Parliament as he things fit.

*What actually happens*

Yes, the Government does act but not always quickly enough. For example, the exit permit took years after the present Ombudsman recommended for it to be removed before it actually happened. The office put another proposal to parliament in the early 1990's for a leadership code to be approved. However, the two cyclones in the early 1990's and the passing away of the late Prime Minister, Tofilau Eti Alesana, has delayed matters so that the Code has still not been passed by parliament. Since the conviction of two former cabinet ministers relating to the murder of another cabinet minister in the later 1990's the Ombudsman has re-drafted the same bill and re-submitted it to parliament. The bill is still with parliament (Ombudsman, Personal Communication, 18 Aug 2003).

## Investigative/Watchdog Agencies

### Are there special investigative or watchdog agencies?

#### *Formal or legal position*

Given resource constraints, there are no specialised watchdog agencies in Sāmoa. This role is carried out under the general functions of the Police Services. A specialised investigative unit of the Police Services, the Transnational Crimes Unit, has been established to investigate transnational crimes. This unit is responsible for investigating complex transnational crimes.

#### *What actually happens*

Because there are no special investigative or watchdog agencies as such, non-governmental organisations like the *Si'osi'omaga Society* at times exerts pressure on government on issues relating to the environment. The media also plays this whistleblower role.

### What are their main responsibilities?

Not relevant.

### Are they independent?

Not relevant.

### Do they report publicly to the legislature on the general scope of their work?

Not relevant.

### Can people complain to the agency without fear of recrimination?

Not relevant.

## Media

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

#### *Formal or legal position*

Yes, Article 13(1)(a) of the Constitution grants all citizens of Sāmoa the right to freedom of speech. Inherent in this constitutional right is the right to freedom of the press.

#### *What actually happens*

Government media organisations are at the end of the day controlled by their Employer.

### Is there censorship in the media?

#### *Formal or legal position*

Yes there is censorship of the media in relation to the exposure of indecent material to the public. *The Indecent Publications Ordinance 1960* provides for the censorship of material such as periodicals, newspapers and visual material (including films, and television

material) with regard to the publication or sale of indecent material. Section 18 of the *Film Control Act 1978* (the "Act") as amended in 1998 sets out a censorship regime specifically in relation to films. A 'film' under the Act is broadly defined to include any visual images, such as television material. Pursuant to section 18 of the Act, the principal censor shall not give his approval for a film to be exhibited in Sāmoa if in his opinion the film depicts certain acts of torture, violence, sexual conduct, exploits children, promotes criminal acts, is racial, or under section 18(2)(f) 'which depicts any matter which is contrary to public order or undesirable in the public interest'.

*What actually happens*

In the privately owned media organisations, there is no censorship of the media. In the government owned media organisations, however, the media would in the end have to toe the government line though lately, there have been attempts to bring out all sides of a story.

Employees in the government media organisations are also reminded to be sensitive to cultural standards especially to what is socially acceptable. There are certain assumptions about what is proper or improper in the context of *fa'asāmoa* (Samoan way). A certain amount of self-censorship, therefore, is required.

According to a private radio station, there is no censorship of the media by the government. The only censorship is self-censorship where they blip out bad words in English and Sāmoan songs that are played over their stations.

**Is there a spread of media ownership?**

Yes, there is. Among the electronic media, there is the Sāmoa Broadcasting Corporation (SBC) Television Station, Graceland Broadcasting Network (GBN) television station, and the Cable Stations. For radio stations, there are the FM, SBC 1, GBN, Laufou and the recently opened Catholic radio station.

In the late 1940s, government owned both Radio 2AP and the local *Sāvali* newspaper. Now it also owns SBC. Government needed the media to disseminate various kinds of information, which is often seen by the critics of government as government propaganda.

However, in the last 20 years, there has been a spread in the ownership of the media. There are more private newspapers, three owned locally and the rest owned by Sāmoans living in New Zealand. The spread in ownership is pretty evident.

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

*Formal or legal position*

SBC Radio 1 and SBC Television have attempted to cover the views of the Opposition Party and government critics.

*What actually happens*

How much of government criticisms are covered would in the end be censored by the ultimate employer of SBC radio and television, the government, whether through its Minister or the CEO.

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

*Formal or legal position*

There have been no cases of physical abuse. However, there have been instances of verbal abuse against some of the reporting staff because some viewers did not like what was said some TV programmes. Employees of the radio stations share the same experience.

*What actually happens*

Same

### **Does the media carry articles on corruption?**

*Formal or legal position*

Yes, provided there is sufficient evidence for such corrupt activities. Factual reports such as judicial proceedings and results of court cases are also carried by the media.

Privately owned newspapers in particular carry several articles on corruption.

*What actually happens*

Same

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

*Formal or legal position*

Pursuant to the *Broadcasting Ordinance 1959*, Sāmoa has a licensing regime in relation to broadcasting. Section 11(c)(2) sets out the considerations that the Minister responsible for Broadcasting must have regard to in determining whether to issue a license to broadcast. They include:

- (i) the general policy of the Government in relation to broadcasting and the required standards of broadcasting;
- (ii) the extent to which the proposed service is necessary or desirable in the public interest;
- (iii) the economic effect which the establishment of a private broadcasting station to which the application relates may have in respect of broadcasting stations already in operation;
- (iv) the needs of Sāmoa or the locality or localities to be served, in respect of broadcasting services;
- (v) the financial ability of the applicant to carry on the proposed service;
- (vi) the likelihood of the applicant carrying on the proposed service satisfactorily;
- (vii) the results of any study conducted by the Department responsible for Broadcasting;
- (viii) the hours during which the applicant proposes to broadcast programmes;
- (ix) the extent of advertising matter which the applicant proposes to broadcast;
- (x) the proposed rates and charges to be made in respect of advertising programmes; and
- (xi) such other matters as may be prescribed under the Act.

There is no licensing regime for newspapers in Sāmoa. However, pursuant to section 4 of the *Newspapers and Printers Act 1992/1993* (the "Act"), every person who desires to publish a newspaper in Sāmoa must lodge with the Registrar of the Supreme Court an affidavit signed by each person intending to be the publisher, printer and editor of the newspaper. Under section 15 of the Act, it is an offence for any person to print, publish, sell or distribute any newspaper which is not registered under the Act.

*What actually happens*

No one has been rejected a license to operate a radio station. Furthermore the proliferation of newspapers implies the ease with which anyone could obtain the right to found a newspaper.

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

No, as there are presently no libel laws in Sāmoa that are designed to restrict reporting of corruption. Libel or defamation laws in Sāmoa are for the purpose of regulating free press and the interests of private persons suing for defamation.

*What actually happens*

As already stated the press and the media are free to report corruption. The Government media organisations often insist on having sufficient evidence before they could report on corruption.

The editor and publisher of one privately-owned newspaper has stated that a provision in the Crime Ordinance, called criminal libel - a remnant of colonial laws, was used to punish people found guilty of plotting to undermine the peace of society, treason, or plotting to overthrow a government. It has long since been abolished by the New Zealand parliament. It is still in the Australian and Canadian law books but is never used. However, it was the same provision which was used against him by a leading politician in 1998. Proof of guilt would have meant a term of imprisonment. Overseas watchdogs of media freedom protested against that politician's course of action. When that politician passed away, the present government discontinued the case because of the absence of a plaintiff (Observer Publisher, Personal Communication, 1 Sep 2003).

According to the same newspaper editor, another law which strikes at media freedom and independence is *the Publishers and Printers Act, 1992*. All countries have this law except that in the Sāmoan legislation, publishers, printers and editors are required to name confidential sources if public officers claim they are being defamed by articles and reports in the media. In other countries, only the judge has the power to order revelation of sources. In Samoa, on the other hand, all that is needed is a request by a government official (Minister, Member of Parliament or public servant) to reveal a source. Failure to do would lead to imprisonment.

## Civil Society

**Does the public have access to information and documents from public authorities?***Legal/formal*

Yes. There are also a variety of governmental websites with useful information which the media could use to access information (e.g. Ministry of Finance website; the Government Press Secretariat; the PSC, the Ministry of Commerce, Industry & Labour, and others). Other than that, the provision of information depends very much on each agency.

*What actually happens*

According to some media organisations and people in the media, they have had problems at times obtaining copies of public documents or some information they want from some ministries.

**Do public authorities generally co-operate with civil society groups?**

*Formal or legal position*

Yes. Most, if not all, public authorities say they do.

*What actually happens*

Although tender procedures are made widely available and that some Ministries even have all manuals and public documents available on their websites (such as the Ministry of Finance), some civil society organisations feel that some government ministries have not been cooperative in this manner. It is important therefore that public authorities find other ways of making this information more accessible for the benefit of civil society organisations who may not have access to the electronic media. Perhaps placing copies of these documents in a public library could be one way of solving the problem as these civil society organisations see it.

**Are there citizen's groups or business groups campaigning against corruption?**

*Formal or legal position*

There are no such groups. Mr. Tony Pereira (a lawyer) and the Sāmoan Society of Civil Liberties, using Mr. Pereira's law firm, fight for the protection of liberties as defined in the Constitution of Samoa through Samoa's legal system. Mr. Pereira has lost his legal fight three times in the Samoa's Court of Appeal. Specifically, however, there are no citizen's groups campaigning against corruption.

*What actually happens*

Same

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

*Formal or legal position*

No.

*What actually happens*

NGOs like the *Si'osi'omaga Society* go some way into carrying out this function. It raises public awareness and sometime lobby for support against some government policy on issues relating to the environment, conservation and so forth. It is important to note that the recent directive of Cabinet and Employment Instruction issued by the PSC requires that all Ministries must have Service Charters by 31 December 2003. It will ensure that any customer and stakeholder of the Government is able to monitor the delivery of services by Government against published standards.

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

*Formal or legal position*

The Chamber of Commerce is the group that seems to be making regular submissions for this purpose. The Public Service Association (PSA) used to be the other one. It has gone somewhat quiet now. The Law Society is hopeless on this front.

*What actually happens*

Same



**Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?***Formal or legal position*

No, the school system is not expected to. However, the generally accepted values of society which include the non-acceptance of corruption and bribery are generally discussed in such subjects as Social Studies and Sāmoan Language and Culture. All church schools give instructions on religious faith which provide another vehicle for alerting and ingrain in students the negativity associated with corruption and bribery. As a generally Christian country, the generally espoused society values are further taught and encouraged in the family environment. Corruption and bribery are not one of those values.

*What actually happens*

Same

## **Traditional Organisations**

**To what extent are traditional organisations, such as councils of chiefs, subject to the National Integrity System? And to what extent are they part of the National Integrity System?***Formal or legal position*

To the extent that the head of a division within the Ministry of Internal Affairs would follow up the use of funds allocated to village councils for various government projects, village councils in some degree is part of the 'Government' Integrity System and is subject to that Integrity System. In the case of the National Council of Women, they go directly to the Prime Minister if there is anything they want.

*What actually happens*

Village governments (as the most visible example of local traditional organisations) have existed long before European contact in the eighteenth century. They have thus evolved their own integrity systems independent of modern government. Those systems have continued to coexist with the institutions of modern government, though in most cases independently of each other. As such, village governments have continued to operate independently of government and have consistently resisted central government interference in their affairs. In this sense, they operate under their own home-grown integrity system independent of a 'national integrity system'. The effectiveness or otherwise of their integrity systems can only be judged against values and criteria within those systems.

**Is their funding and staffing subject to external review and audit?***Formal or legal position*

As already explained, funding allocated by the Ministry of Internal Affairs could be subject to external review and audit.

In the case of the Council of Women, they go directly to the donors if they want some project funded. At the end of the project they prepare a report on how the funds had been used.

With village governments, they are part of the external review idea in that they have come under the state orbit following the passing of the 1989 *Village Fono Act*. Various aspects of village governments are also subject to the Acts of Parliament and the Constitution of Sāmoa.

*What actually happens*

With village governments, they do their own thing regardless of what the central government thinks. Although certain Acts exist, like the Village Council, village governments do not see the central government as having any right to interfere with their internal affairs. History proves village governments consistently resisting central government interference in their affairs. In most village governments, there is a genuine feeling that they have more effective ways of combating corruption and bribery in their own jurisdictions than anything the central government could offer.

**To what extent are they part of the NIS controlling corruption in other bodies?***Formal or legal position*

As already explained. In the case of the National Council of Women, they belong to the National Integrity System to the extent that they do have an external auditor and officials representing aid donors who can check up on the way funds is used. Otherwise organisations like the National Council of Women do not deal directly with government on matters pertaining to corruption unless there is a matter to be brought directly to the attention of government. In which circumstances, the National Council of Women goes directly to the Prime Minister.

With village governments, they are not subject to external review or audit as long as they are operating outside central government influence.

*What actually happens*

Same

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

Village council make their own laws, execute them and adjudicate over them. Any unexplained discrepancies in the use of collective village funds and other resources are dealt with immediately and effectively by the village council.

In the case of the National Council of Women, there used to be extensive corruption in the old days but at the present time the problem of corruption has been largely resolved because it has introduced new measures to prevent it. For example, there is stricter control of funds by the treasurer and the general secretary under the supervision of the Executive Council. This council comprises the President (who is presently the Minister of Education), two vice presidents (one each from Savai'i and Upolu islands), the treasurer and the secretary. There is also a Central Committee which comprises members of the Council plus two members elected from each constituency. There is also an external auditor who audits the Council's accounts and prepares a report for consideration by our Annual Conference. There is also the Annual Conference to evaluate our performance (Ainu'ū, Personal Communication, 26 Sep 2003).

*Formal or legal position*

Village council decisions and deliberations are not open to the public and the media as such. However, these decisions and deliberations have to be made known to all villages through their representatives in the village councils, the family heads or *matai*. It is not unusual, however, that some of these decisions and deliberations find their way into the media. Only then would people in other parts of the country know about these deliberations and decisions if they had not made their way to the public arena by word of mouth through village people themselves.

In the case of the National Council of Women, conference is not normally open to the media representatives because of their negative experience with the media in the past. The media used to publish wrong information about the organisation. However this does

not prevent representatives of the media from contacting and interviewing members of the organisation provided the matter to be discussed is an appropriate one.

*What actually happens*

Same

## Private Sector and NGOs

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

*Formal or legal position*

Each company has put in place its own mechanisms to reduce corruption within their own activities. For example, the Apia Concrete Product (ACP) has evolved methods of checking that the delivery drivers do their job honestly. For instance, three people check every load of goods going out to the customers. They include the dispatch clerk, someone from the office and the driver. They all check that what is written on the receipt is what leaves the factory and gets delivered. Each truck has a log to keep record of what it delivers. A highly responsible person of the company goes around once in a while to the big customers to check that they are getting what they ordered.

Delivery truck drivers have cell phones to ring when they get to a job and when they are on their way back. In the office itself, the 3 office women handle all the orders and payments but banking is done by Manager and sister-in-law.

*What actually happens*

With the ACP, some times the drivers are caught doing things they are not expected to do. In which case, the drivers are either disciplined or dismissed. The company is always very conscious that by receiving food from customers to whom goods are delivered that the drivers are not been bribed into corrupt practices. On the other hand, from the Company's point of view, it is also hard to request customers not to give drivers food, and so forth, because it accepted custom to give drivers food or something after they had done the work, like delivering products to customers.

It is also hard to control officials in some companies not to do special favours to people (who could be government officials, etc.) in order to get things done for them. It has always been part of the system to give people things (which could be looked upon as bribe) to get things done. It is very difficult either to monitor these sorts of things happening, let alone controlling it. There has always been noise about these sorts of things happening but it is very difficult to find absolute proof for it.

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

*Formal or legal position*

Again this varies between companies. For example, the ACP feeds its drivers everyday in order to reduce the risk of drivers putting the bite on customers for food. The company also tells its customers not to give drivers anything.

*What actually happens*

The chamber of commerce has 147 members. As a group they lobby government for businesses. It has good working relations with ministers, better than with heads of departments and with workers in service departments.

The *fa'asāmoa* (Sāmoan way) of giving food or money or a bottle of beer for the workers is hard to eliminate altogether as it's a form of work culture that has grown up and some workers expect it and will slow down doing the job unless they are given something.

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

*Formal or legal position*

Outsourcing of government services (there has been over the last few years an upsurge of these following the ongoing reforms) has resulted in an increase in the number of contracts administered by Government ministries. Outsourcing is covered under the normal procurement rules of open, competitive bidding if above SAT\$50,000. In practice, Ministries have also brought in most contracts below SAT\$50,000 under open, competitive bidding to ensure transparency (and avoid perceived complaints of corruption).

*What actually happens*

According to some NGO workers, the reality for them and most NGOs is as follows. The outsourcing of work to NGOs has not worked well for them. There is no process or set of procedures in place where reasons for decisions regarding funds being given to NGOs are made available to NGO representatives. The tender process relating to the award of project funds is non-existent to the extent that NGOs have no say on how government goes about awarding funds to the various NGOs. In the absence of such processes and procedures, who gets funds depends heavily on personality. It is a heavily personality driven process at the moment.

There has been very little outsourcing from the government to NGOs in Sāmoa. The government say they give their support to NGOs but services that can be done by some NGOs are done by government departments. For example, a project called "Healthy Home, Healthy Village" involves the inspection of kitchens, toilets and home surroundings and encouraging healthy living and eating. This programme is conducted by the Ministry of Women Affairs even though every village has a Women's Committee. These Women's Committees belong to an NGO called *Komiti Tumamā*. In each village, the *Komiti Tumamā* inspects kitchens, toilets and home surroundings as part of their weekly routine. Therefore, the project "Healthy Home, Healthy Village" can be given to the *Komiti Tumamā* NGO. Instead it is done by the Ministry of Women Affairs.

The government does not trust the ability of NGOs to manage funds. There have been some good reasons for this in the past, but a number of NGOs have grown and now have good systems of checks and balances yet the government still refrains from awarding these NGOs projects to implement.

There is a need for a tendering process whereby NGOs can put proposals to bid for the implementation of some services which the government is providing.

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

*Formal or legal position*

For SUNGO (the umbrella organisation for all local NGOs), the formation of the organisation has gone a long way towards reducing and curtailing chances of corruption. Instances of corruption had been there in the early stages of SUNGO's own establishment – for example, one person took upon himself the responsibility of looking after the organisation's stationary to the extent that he would take the whole stock to his home and control the use of stationary from there. However there have been some major improvements in SUNGO's operationalisation of its own affairs and in coordinating the efforts of NGOs in Samoa.

The extent of SUNGO's development now is such that the executive is still voluntary and comprises people with the appropriate skills to handle the pressure of work required at that level, though support staff are paid workers. The work of SUNGO is much more transparent now than it was in the past, as it now has in place an accounting system to record and provide information on the organisation's expenditures and incomes. There is also a clear distinction between the work of the management team and the policy-making role of the executive. In terms of its funding and structure, SUNGO is funded by donors like government and so forth and its constitution was revised in September 2003. The organisation is important as it provides opportunities for people involved to talk to each other.

As legally constituted organisations, NGOs are registered under the *Incorporated Associations Act*. Under this act, an NGO must have a constitution, and must lodge its yearly audited accounts with the Ministry of Justice. The constitution sets out laws under which the NGO functions. Some NGOs have policies and procedures which guide the relationship between governance and management. They also provide guidelines for the day-to-day running of the organisation. These are sets of checks and balances involving the board and staff.

All NGOs under the all-embracing organisation of SUNGO have training in good governance, values, financial management, proposal writing and others. There is also sharing of experiences, mentoring and learning from each other's mistakes. SUNGO has also arranged for the setting up of accounting systems with NGOs as part of NZAID programme with NGOs. These systems and training are intended to enhance accountability and transparency. They have been driven by both government and donor agencies as NGOs are required by donors to acquit good accounting for funds allocated to them for their projects. NGOs are also increasingly getting good quality personnel with the right skills and are becoming more professional in their service delivery, and SUNGO is working towards raising the capacity building among its members.

SUNGO does not like the current practice of some government ministries where the latter, like the Ministry of Women Affairs, is also involved in community work which should be more the domain of SUNGO and NGOs in general. SUNGO thinks that the reason for this state of affairs is because government ministries also want to secure those funds from the donors. (For more detailed information on SUNGO, see its Constitution, Governing Process Policies, SUNGO members document, and SUNGO Conflict of Interest Guidelines).

*What actually happens*

As above

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

*Formal or legal position*

All Churches have their own administrative organisations though some are more developed than others. Built-in administrative mechanisms to curb anti-corruption tendencies are present in all Church systems. Past discrepancies in the administration of Church funds have resulted from such instances as the Head of the Church being too sympathetic with the needs of certain parishes or particular individuals that his discretion on the use of Church funds had been exercised to allocate funds for such identified needs which would not have been given in normal circumstances. The traditional organisational structure of some Churches have given too much liberty to the Head of those Churches to the extent that the Heads of those Churches have in some cases single-handedly dealt with some Church matters, including financial matters. It appears as if most Churches, however, have learned from their past mistakes and have now put in place organisational remedies for past wrongs.

*What actually happens*

As above

## Regional and Local Government

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

*Formal or legal position*

There are no regional governments in Sāmoa's political structure as defined in its Constitution.

At the local level, however, are village governments. As already explained, they have as part of their whole socio-political systems unwritten rules for disclosure provisions and conflict of interests somewhat similar to those operating at the national level. In most cases, however, it is not necessary to have such disclosure provision. Being close knit and small communities, everyone knows each other. People in the community will know when there are likely to be cases of conflict of interest.

*What actually happens*

In some cases, some village leaders can be so blatant in the way they ignore conflict of interests for their own person gain and the individual game of their immediate families. Very often, however, village pressure that is put on such blatant behaviour would result in the unaccepted behaviour being self-reformed, if it had not punished before that by the village council.

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

*Legal/formal*

Officers of government at the local level (or village councils) are village mayors (*pulenu'u*). They are elected by their respective village councils and endorsed by the national government which pays them an annual salary every month.

*What actually happens*

As above

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

*Formal or legal position*

No. There is no such legal requirement. However, meetings of the village council are opened to *matai* and non-*matai* males whose traditional role is to serve the *matai* during those meetings. Decisions affecting the whole village are later relayed to the village sub-organisations of females. They include the wives of *matai*, wives of untitled men and village girls.

Village meetings are not open to the press and the public as such. The village meetings are for the interests of village people only.

*What actually happens*

As above

**Are there clear criteria restricting the circumstances in that city/town councils can exclude the press and public?**

Not relevant.

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

*Formal or legal position*

No such agencies work at the village level in the context of village governments.

*What actually happens*

As above

## **Progress with Government Anti-Corruption Strategy**

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

*Formal or legal position*

Not specifically. However, the Government endorsed the ADB-OECD Anti-Corruption Initiative for Asia-Pacific in November 2001 and its Action Plan and Implementation Plan. The Implementation Plan has three Pillars. They are (1) Developing effective and transparent systems for public service; (2) Strengthening anti-bribery actions and promoting integrity in business operations; and (3) Supporting active public involvement. Most of the measures for implementing these pillars are incorporated within the existing and ongoing public sector reform programmes of the government. Moreover, the enforcement of the Public Service Codes of Ethics and the Parliament Codes of Ethics as stipulated in the Standing Orders of Parliament have also been moves towards that direction. Both documents deal with such issues as conflict of interests and so forth.

*What actually happens*

Same

**How much of the strategy has been implemented?**

*Formal or legal position*

Strategies as stipulated in both documents are now enacted in law. Moreover, government reforms which incorporate a lot of these anti-corruption principle and practices have already been implemented.

*What actually happens*

Same

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

*Formal or legal position*

Both documents are intended to be at the national level as parliament and the Public Service are national institutions.

*What actually happens*

Same

**Is the government meeting its own timetable?**

There is no timetable as such.

## **Donor Anti-Corruption Initiatives**

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

*Formal or legal position*

*What actually happens*

Major bilateral donor agencies in Samoa represent the governments of Australia, Japan, New Zealand, European Union, China and a number of smaller donor countries such as Canada and Korea. The United Kingdom and the United States are active mainly in the provision of volunteers, and the only multilateral donors based in Samoa are the EU, and some UN agencies.

**What types of anti-corruption initiatives have they supported?**

*Formal or legal position*

Aid donors such as the AusAid do not have specific anti-corruption programmes as such, but it does not mean corruption is not an issue. AusAid addresses this issue on a broader front through mechanisms such as the Institutional Strengthening Programme (ISP). In fact, 85 per cent of AusAid's programmes have to do with ISP to support government's public sector reform programmes. Through ISP, AusAid hopes to minimise incidents of corruption by improving public services.

ISP programmes with Trade, Commerce and Industry, Treasury and Customs are already completed. Those involving Public Service Commission, Samoa Water Authority, Department of Education, Department of Health, Department of Agriculture, Immigration and Police are either now starting or continuing. The aim in all these programmes is not just to strengthen institutions, but also to reduce the incidence of corruption.

*What actually happens*

Same

**Are there any examples of donors cooperating or coordinating their programmes?**

*Formal or legal position*

In Sāmoa, aid coordination is the role of government. This is performed by two main committees, the Aid Coordinating Committee and the Aid Coordinating Unit.

The government in its Statement of Development Strategy (SDS) has identified its needs and priorities. Thus aid for secondary education has been earmarked for New Zealand, while aid for curriculum framework for primary schools has been given to Australia mainly because Australia has been helping with the training of primary school teachers over the last five years. Thus government identifies which donor is best suited for certain types of aid.

But this does not stop donors from working with each other so as to maximize input into education. For instance, AusAid, NZAID and the Sāmoan government have their own guidelines for the award of scholarships and in some areas these need to be harmonized, hence discussions to ensure such harmony, particularly between AusAid and NZAID. In



the next 4 to 5 years, the concept of donor harmonization will become evident as donor agencies and government identify similarities and areas where resources could be pooled.

Donor agencies also work together through meetings to discuss what they are doing and for how long for a specific project, for instance, water project, education and health. The government will then announce its own needs so that better coordination in aid projects could be implemented.

In addition, every year AusAid has high-level consultations with government officials in the Public Service Commission, Treasury and Foreign Affairs, and those public bodies most involved in the aid process. This way, there is less chance of tampering with projects.

But other schemes are more open to tampering, for instance, small grants for NGOs. This is because each donor has different guidelines for use of their money and thus there are more chances for corruption because more people are involved in the consultation process. One of the main forms of such corruption is the use of aid funds for a purpose other than the original one agreed upon.

Ten years ago, the donor would say, this is what you get. It is no longer true now the recipients of aid are consulted and their wishes honoured.

AusAid is currently coordinating a Governance Facility as part of its aid programme for Samoa.

*What actually happens*

Same

## Future Research and Donor Support

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

In terms of key areas for consideration, perhaps most important is the public perception that the government itself is often corrupt in its activities. Examples given include the way people have been appointed to high-level jobs, the way tenders are being awarded, the way political support has been rewarded and so forth. Public perception put down the main cause of this overall problem to the Executive having too much power *vis-à-vis* parliament and other sectors of society. Executive in this context imply the Prime Minister and his Cabinet.

Of the 49 seats of parliament, 32 are occupied by supporters of the ruling Human Rights Protection Party (HRPP). The other 17 seats are occupied by the recently formed Sāmoa Democratic United Party (SDUP), which combines the Sāmoa National Development Party (SNDP) with 12 seats and the Samoa United Independent Party (SUIP) with five seats. Because of its large support in parliament, the HRPP government could virtually do anything including amending the constitution, as it has the number to do that. HRPP has had this kind of majority support going back two or three parliaments. The current Opposition is powerless to influence government policy. This feeling of political powerlessness is strong among government critics. It is also there among some government supporters though it is seen as a good thing in that the government, from their point of view, is able to get things done for the good of the country without much unnecessary interruption by the parliamentary Opposition and/or critics of government outside parliament.

The situation as explained could pose a number of research questions. Is the Executive really too powerful? If it is, is it to the benefit or detriment of the general public? If the Executive is unpleasantly powerful, how could the situation be overcome? Is there corruption in government which is identified as a by-product of too much Executive power? How much corruption is there? Who are responsible for that corruption? Who are involved in those corrupt activities?

Other areas to look at to ascertain first, the truth or otherwise of corrupt activities taking place and second, the extent of such corrupt activities could include the Ministry of Police and gift giving in the context of administrative systems founded on legal-rational principles. Another area of on-going concern is the electoral system mainly because of the fact that it incorporates both the normal democratic process and cultural ways of obtaining and maintaining political supports through gift-giving and so forth.

There is also a need to understand fully the role of the Church in Sāmoa against the background of the country's hospitality and other related cultural practices. With the increasing trend towards user-pay policies against the background of such cultural practices of gift-giving to the Church and to other cultural functions, could these be reasons for some of the corrupt practices in terms of misuse and abuse of public properties? The Church would in turn argue that much of the corruption that surface now and then has resulted from the people ignoring or turning away from the Church which teaches moral values.

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

This question has already been answered in the first question.

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

As already alluded to earlier, perhaps the two general areas of concern in Sāmoa are the public perception of too much Executive power and cultural attitudes associated with gift-giving and hospitality against the backdrop of legal-rational administrative principles, and in relation to the Church and other cultural functions generally called *fa'alavelave*. More research on these areas should shed more light on possible areas in the system where corrupt activities are likely to take place.

**Can key areas or issues relating to possible anti-corruption initiatives be identified as requiring donor support?**

Perhaps more donor support is needed in the area of Institutional Strengthening Projects (ISP) to ensure that all Ministries have ISP programmes going. There may be a need too for follow up work in those Ministries which have already completed ISP programmes.

One Cabinet Minister has argued that the root of corruption in Sāmoa (and generally) is when people don't feel that their work is being reciprocated fairly. The example was given that the reason for the recent increase in parliamentary salary/allowance was to help curb corruption because Members of Parliament have so many engagements for which they are expected to give and donate. Given that the economy of Sāmoa would never be able to financially reward people fairly, it would be extremely difficult to see how corruption in Sāmoa could be eliminated if this Cabinet Minister's argument has any substance in it.

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

It is hard to identify any particular anti-corruption initiative relating to gift-giving because the gift giving attitude of Sāmoans is so closely tied to reciprocity, which is at the heart of their cultural beliefs. Perhaps donor support could be given in terms of supporting more research into the relationship between Cabinet and parliament, and Cabinet and the rest of society. Perhaps there should be more donor support required in the area of impact studies. A lot of the enacted pieces of legislation to espouse the principles of transparency and accountability - thereby minimising instances of conflict of interests and so forth, have

been passed in the last two or three years. An impact study of those laws would help indicate whether those laws are effective in terms of doing what they have been intended to do, such as minimising and eliminating instances of corruption. An impact study should also be undertaken to ascertain how effective the disclosure and conflict of interest provisions of Parliament's Standing Orders have been. Generally, there needs to be a long-term impact study of what the law books say (in terms of disclosure and conflict of interest provisions, and so forth) and what actually happens on the ground.

## Appendix 2 – References

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## **Appendix 3 – Legal References**

### **Acts of Parliament**

Constitution of the Independent of Western Samoa

Defamation Act 1992/1993

Electoral Act 1963

Film Control Act 1978

Fundamental Rights, *Part II, The Constitution of the Independent State of Sāmoa*

Government Proceedings Act 1974

Land and Titles Act, 1981

Newspapers and Printers Act 1992/93

Ombudsman Act 1988

Police Service Act 1977

Public Bodies (Performance and Accountability) Act 2001

Public Finance Management Act 2001

Public Service Act 1977

Secret Commissions Act 1975

### **Constitutional Amendment Act**

Article 97: Controller and Chief Auditor, 1997

### **Ordinances**

Broadcasting Ordinance 1959

Indecent Publications Ordinance 1960

### **Standing Orders of Parliament**

(Relevant) Standing Orders