

A NEW DAY IN TONGA: THE JUDICIARY, THE REFORMERS AND THE FUTURE

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While the government of Tonga grapples to maintain the status quo, public opposition calls for nothing short of political revolution. Between these two forces lie a handful of foreign jurists whose position as justices on the Tongan courts requires them to strike a balance between liberty and stability that will set the course for this tiny island nation and its 132 year old *Constitution*.¹

In Tonga, the monarch constitutionally exercises enormous power.² With few limitations, the King has the power to dictate policy and purpose throughout the Kingdom. Through appointments to the Cabinet, who are ex-officio members of the Legislative Assembly, he is not only able to implement his agenda, but also create and cancel positive law.³ Even the powerful Tongan nobility is subservient to the King because he has the power to dissolve their representation in the Legislative Assembly and fill their ranks with members who are loyal to him.⁴

Yet the power wielded by the King has not scared off the handful of pro-democracy reformers who have repeatedly and publicly challenged the system.⁵ While the reformers' true target has always been the monarchy, their efforts have proven to be most influential on strengthening the role of the Tongan judiciary to act as a counter-balance to the King's power. As a result of their actions, the Tongan judiciary has set a strong precedent of protecting the individual rights granted in the *Constitution* of Tonga. The Tongan reformers have successfully exploited this protection in order to bring democracy to a people who have lived under chieftainship or kingship for over 1,000 years.⁶

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¹ Tonga has been a constitutional monarchy since its constitution was promulgated in 1875. Kerry E. James, 'Tonga's Pro-Democracy Movement' (1994) 67 *Pacific Affairs* 242 (1994). It is the last remaining Polynesian kingdom in the Pacific.

² *Constitution of Tonga (Constitution)* Clauses 30 – 44 and 51. The Tongan monarch has more power than the British monarch. James, above n 1, 242.

³ *Constitution* Clause 51.

⁴ *Constitution* Clauses 38 and 44.

⁵ David Robie, 'The Contempt Case of the "Tongan Three"' (1996) 3 *Pacific Journalism Review* <http://www.asiapac.org.fj/PJR/issues/next/962tongan.html> (Accessed 21 November 2007). See generally James, above n 1, which provides examples of the pro-democracy movement's challenges to the government.

⁶ Philip L. Soljak, 'Island Kingdom of Tonga' (1946) 15 *Far Eastern Survey* 232, noting that former Queen Salote Tubou could trace her decent back to the first Tongan chiefs who came from Ta'u, in Eastern

This paper explores the role the Tongan judiciary has played in the ongoing reform process in Tonga, the precedents that have been created as a result of that process, and the political and social changes that have occurred since the landmark *Lali Media* and *Taione* cases.

ANATOMY OF THE KINGDOM OF TONGA

In 1875 the loosely federated island states that make up modern day Tonga were unified under a constitution adopted by King George Tupou I.⁷ The Tongan *Constitution* provides for a strong executive branch vested in the King and his primogeniture.⁸ The executive branch includes the Prime Minister and the Cabinet, which becomes the Privy Council when presided over by the King.⁹ Under the *Constitution* the King has the power to make treaties,¹⁰ veto legislation,¹¹ and dissolve the Legislative Assembly.¹² The King also has the authority to appoint the Speaker of the Legislative Assembly,¹³ Supreme Court Justices,¹⁴ Court of Appeal Judges,¹⁵ Cabinet ministers,¹⁶ and the Governors of Ha'apai and Vava'u.¹⁷

The unicameral Legislative Assembly is controlled by the royal family and nobles.¹⁸ It consists of nine noble's representatives who are elected by the members of the Tongan nobility¹⁹ and nine people's representatives²⁰ elected by universal adult suffrage for 3 year terms.²¹

Unfortunately, the people's votes have not translated into any real power in the Legislative Assembly because they elect such a small number of representatives in it.²²

Samoa, over 1,000 years ago. See also U.S. Department of State, 'Background note: Tonga' (October 2007) <http://www.state.gov/r/pa/ei/bgn/16092.htm> (Accessed 21 November 2007).

⁷ U.S. Department of State, above n 6; Soljack, above n 6, 233; James, above n 1, 242.

⁸ *Constitution* Clause 32.

⁹ U.S. Department of State, above n 6.

¹⁰ *Constitution* Clause 39.

¹¹ *Constitution* Clause 68.

¹² *Constitution* Clause 38.

¹³ *Constitution* Clause 61.

¹⁴ *Constitution* Clause 86. The King appoints Supreme Court Justices with the consent of the Privy Council.

¹⁵ *Constitution* Clause 85. The King appoints Court of Appeal Judges with the consent of the Privy Council.

¹⁶ *Constitution* Clause 51. The Cabinet Ministers are also members of the Privy Council and the Legislative Assembly.

¹⁷ *Constitution* Clause 54. The King appoints the Governors of Ha'apai and Vava'u with the consent of the Cabinet. The Governors of Ha'apai and Vava'u are also members of the Legislative Assembly and the Privy Council.

¹⁸ U.S. Department of State, above n 6.

¹⁹ *Constitution* Clause 60. In an effort to minimise the power of recently conquered chiefs, the *Constitution* allotted a special role for tribal rulers in the form of nobility (James, above n 1, 249). See also I. C. Campbell, 'The Quest for Constitutional Reform in Tonga' (2005) 40 *Journal of Pacific History* 91, 93 (noting that 'the nobility... had been created by the constitution in 1875').

²⁰ *Constitution* Clause 60.

²¹ Tongan subjects who are 21 years old and able to read and write may vote (*Constitution* Clause 64).

²² James, above n 1, 244.

Because the Cabinet members are also members of the Legislative Assembly,²³ the King appoints more than a third of the representatives in the Legislative Assembly.²⁴ Furthermore, the noble's representatives have regularly voted in line with the Cabinet.²⁵ As a result, the people's representatives are unable to advance the interests of the people because of their marginal position in the Assembly.²⁶

In the late 1970's, the Human Rights and Democracy Movement (HRDM) was launched by 'Akilisi Pohiva, Kalafi Moala, Lopeti Senituli, and other prominent Tongans in the capital city of Nuku'alofa on the island of Tongatapu.²⁷ The organisation has called for greater access to the political process since the people's representatives' marginal number of seats in the Legislative Assembly prevents them from both enacting laws that the King does not support and blocking measures proposed by the monarchy.²⁸ Frustrated with attempts to reform the structure of their government through the legislative process, the HRDM turned to the judiciary. In 1987 the *Fotofili* cases were brought against the Legislative Assembly; *Siale v. Fotofili*²⁹ challenged the procedures the Legislative Assembly used to determine compensation for its members and *Sanft v. Fotofili*³⁰ challenged the procedures used to pass a Bill.

THE HRDM'S EARLY ATTEMPTS TO CHANGE THE POLITICAL PROCESS THROUGH THE TONGAN JUDICIARY

In the *Fotofili* cases the HRDM's members challenged the Legislative Assembly's procedures. In *Sanft v. Fotofili* the Supreme Court of Tonga concluded that it had no power to rule on the validity of the Assembly's internal proceedings. Accordingly, it struck out the HRDM's action for want of jurisdiction. However, in *Siale v. Fotofili*, which concerned a challenge to certain allowances paid out of public funds to members of the Legislative Assembly, the Supreme Court concluded that it could investigate whether the allowances paid to each member were calculated correctly. The court reasoned that 'the actions of individual members [of the Assembly] in claiming and receiving their allowances... are not "internal proceedings."' ³¹ For that reason, the Supreme Court held that those matters are open to investigation by the court, who may inquire into whether there has been compliance with the law.

²³ *Constitution* Clause 51.

²⁴ Kerry James & Taniela Tufui, *Transparency International National Integrity Systems Country Study Report Tonga 2004* (2004) <http://www.transparency.org.au/nispac.php> (TI Country Study Report Tonga 2004) (Accessed 21 November 2007) 15.

²⁵ James, above n 1, 252; TI Country Study Report Tonga 2004, above n 24, 15.

²⁶ James, above n 1, 244.

²⁷ Human Rights & Democracy Movement of Tonga, 'Homepage' <http://www.planet-tonga.com/HRDMT/> (Accessed 27 September 2007).

²⁸ TI Country Study Report Tonga 2004, above n 24, 5. See also Human Rights & Democracy Movement of Tonga, 'Aims and Objectives' http://www.planet-tonga.com/HRDMT/About/Aims_Objectives.shtml (Accessed 1 October 2007).

²⁹ *Siale v. Fotofili* [1987] LRC 240; [1987] TOSC 1 <http://www.pacii.org>.

³⁰ *Sanft v. Fotofili* [1987] LRC 247; [1987] TOSC 2 <http://www.pacii.org>.

³¹ *Siale v. Fotofili* [1987] LRC 240; [1987] TOSC 1 <http://www.pacii.org>.

In order to avoid this inquiry, members of the Legislative Assembly appealed to the Privy Council, which at that time sat as the highest court of appeal in Tonga.³² The Privy Council is not independent from the Legislative Assembly. This is because the Privy Council includes the King and his Cabinet Ministers – appointees of the King – who were also part the Legislative Assembly.³³ The Privy Council in this case was joined by Sir Clinton Roper, who assisted in the interpretation of law.³⁴ Despite the conflict of interest issues that arise when members of one branch of government are allowed to decide a case that involves the procedures they themselves adopted to determine their compensation, the Privy Council agreed to hear the case.

The Privy Council determined that the action could be maintained only if there was an express violation of the *Constitution*. The Privy Council examined Clause 62 of the *Constitution*, which states ‘The Assembly shall make its own rules of procedure for the conduct of its meetings.’ The Privy Council broadly construed Clause 62. It reversed the Supreme Court’s decision and held that the compensation procedures adopted by the Legislative Assembly were internal and therefore free from judicial interference. Sir Clinton Roper, writing for the Privy Council, alluded to the notion that this was a political rather than justiciable issue when he stated, ‘In such a delicate constitutional situation the court would look for a clear mandate to act.’³⁵ To provide justification for his statement, Sir Clinton Roper cited British cases that held similarly.³⁶

The Privy Council’s application of common law principles in order to interpret the *Constitution* was remarkable. The *Civil Law Act* [Cap 25], which incorporates the common law of England into the Tongan legal system, limits the application of common law principles to situations where ‘no other provision has been... made by or under any Act or Ordinance in force in the Kingdom’³⁷ that speaks to the issue under consideration. Because a country’s constitution serves as its identity by defining the government’s structure, purpose, and principles, one would expect a brief discussion on past practices of earlier Legislative Assemblies, or how the early chief’s and elders were compensated. Yet, neither domestic precedent nor traditions were addressed.

The decision to interpret the Tongan *Constitution* in light of legal interpretations reached in other nations would become a reoccurring theme in Tongan constitutional law and, consequently, have a profound impact on the development of precedent. After *Fotofili v. Siale* the HRDM realised that any success they may have in the lower courts would be reviewed by the very power structure they sought to challenge. Unsatisfied with their failure to change policy through the court system, and mindful that the Privy Council might again thwart their efforts, the HRDM returned to criticising the Ministers in news sheets and protesting the lack of transparency and accountability of government

³² TI Country Study Report Tonga 2004, above n 24, 20.

³³ *Constitution* Clauses 50 and 51. See also TI Country Study Report Tonga 2004, above n 24, at 15 and 20.

³⁴ *Fotofili v. Siale* [1988] LRC (Const) 102; [1987] TOPC 2 <http://www.paclii.org>.

³⁵ *Ibid.*

³⁶ Cases cited were *Bradlaugh v Gossett* (1884) 12 QBD 27, *British Railways Board and Anor v Pickin* [1974] AC 765, *Roberts v Hopwood* [1925] AC 578, and *Stockdale v Hansard* (1839) 9 Ad & El 1.

³⁷ Section 4 of the *Civil Law Act* [Cap 25].

officials.³⁸ In 1988 the door to the courthouse opened up again as a viable option after the Court of Appeal, which is staffed with foreign justices, replaced the Privy Council as the highest court in Tonga.³⁹

Between 1987 and 1990 the reform movement began to draw followers. This resulted in its advocates' success in parliamentary elections.⁴⁰ Eventually seven of nine of the people's representatives were members of the HRDM.⁴¹ At a time of growing public support for change, the Legislative Assembly ordered Clive Edwards, the Minister of Police, to arrest 'Kalafi Moala, Filokalafi 'Akau'ola, and 'Akilisi Pohiva – the three leaders of the reform movement. The defendants were charged with contempt of the Legislative Assembly for publishing an article in the *Taimi 'o Tonga*, a government opposition newspaper.⁴²

The article informed readers that an impeachment of the Minister of Justice had been submitted by the people's representatives to the Legislative Assembly. The article then set out the full text of the impeachment notice, including the allegations of misconduct made against the Minister. The call for impeachment was mainly based on an allegation that the Minister of Justice had attended the Olympic Games in Atlanta after the Chairman of the House had declined an application for leave.⁴³

The Legislative Assembly issued a summons to Moala, Pohiva, and 'Akau'ola after receiving a complaint about the article. The summons asserted that the article was 'not correct' and 'disrespectful to the Legislative Assembly.'⁴⁴ While there was impeachment proceedings planned, they had not yet begun and that factual error was the source of the Legislative Assembly's discontent.⁴⁵

Moala, Pohiva, and 'Akau'ola appeared before the Legislative Assembly for a contempt hearing. They were found guilty. Subsequently, the Speaker of the Legislative Assembly sent the Minister of Police a warrant for their imprisonment. The warrant stated no offenses.⁴⁶ Instead it ordered them to be imprisoned for 30 days 'by virtue of the power vested in the Legislative Assembly by clause 70 of the *Constitution* and the judgment of

³⁸ TI Country Study Report Tonga 2004, above n 24, 20.

³⁹ 'The Court of Appeal shall have exclusive power and jurisdiction to hear and determine all appeals which by virtue of this Constitution or of any Act of the Legislative Assembly lie from the Supreme Court or Land Court (excepting matters relating to the determination of hereditary estates and titles)' (*Constitution* Clause 92).

⁴⁰ See Campbell, above n 19, 95.

⁴¹ See 'Results of the Tongan General Election' *Matangi Tonga Online* (Nuku'alofa, Tonga) 18 March <http://www.matangitonga.to/scripts/artman/exec/view.cgi?archive=4&num=804> (Accessed 12 December 2007).

⁴² *Minister of Police v. Moala* [1997] TOCA 1 <http://www.paclii.org>.

⁴³ *Ibid.* See also *Edwards v. Pohiva (Cross Appeal)* [2003] TOCA 8 <http://www.paclii.org>. Although this case is related to *Minister of Police v. Moala*, it is cited here and other places throughout this paper only for its factual background.

⁴⁴ *'Akau'ola v. Kingdom of Tonga* [1999] TOSC 76 <http://www.paclii.org>.

⁴⁵ *Minister of Police v. Moala* [1997] TOCA 1 <http://www.paclii.org>.

⁴⁶ *Edwards v. Pohiva (Cross Appeal)* [2003] TOCA 8 <http://www.paclii.org>.

the House...'⁴⁷ On September 19 1996, Moala, Pohiva, and 'Akau'ola began serving their sentences.⁴⁸

While in prison, Moala and 'Akau'ola each made an application to the Supreme Court for the issuance of a writ of habeas corpus.⁴⁹ They based their applications on the grounds that their detention was unlawful and unjustifiable because they did not speak or act disrespectfully in the presence of the Legislative Assembly as contemplated by Clause 70.

The Supreme Court reasoned that Clause 70 'create[d] a number of transgressions the performance of anyone of which [would] render [a] person liable for imprisonment.'⁵⁰ The court took notice of the fact that the Tongan language copy of the *Constitution* used the word *lohiaki'i* in Clause 70. According to the court, *lohiaki'i* means to lie or deceive and is similar to the English word "libel." The court concluded that the use of *lohiaki'i* incorporated the theory of libel within the meaning of contempt. Remarkably, the court did not address the fact that impeachment proceedings were contemplated by the Legislative Assembly. Additionally, the court failed to adequately address the due process arguments before it. As a result, the court held that the Legislative Assembly had the authority 'to determine what words or actions will amount to contempt and the sanction which it should impose upon a person whom it finds to have committed a contempt of the House.'⁵¹ Accordingly, Moala and 'Akau'ola's applications were denied.⁵²

Shortly after the Supreme Court's decision, Moala, Pohiva, and 'Akau'ola made another application.⁵³ They argued that Legislative Assembly did not have the power to detain offenders in prison beyond the period of its parliamentary session. The court again rejected their applications.

Determined to be vindicated, Moala, Pohiva, and 'Akau'ola made a third application for habeas corpus to the Supreme Court based on constitutional grounds.⁵⁴ The Chief Justice granted their application and ordered their immediate release. He held that the allegations contained in the summons fell outside the terms of Clause 70 and that the minimum requirements of a fair trial were not met. "The Tongan Three," as the overseas papers called them, were released after serving 28 days of a 30 day sentence.⁵⁵

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ 'Akau'ola v. Kingdom of Tonga [1999] TOSC 76 <http://www.pacii.org>.

⁵⁰ Ibid.

⁵¹ See also *Minister of Police v. Moala* [1997] TOCA 1 <http://www.pacii.org>.

⁵² 'Akau'ola v. Kingdom of Tonga [1999] TOSC 76 <http://www.pacii.org>.

⁵³ *Edwards v. Pohiva (Cross Appeal)* [2003] TOCA 8 <http://www.pacii.org>.

⁵⁴ *Minister of Police v. Moala* [1997] TOCA 1 <http://www.pacii.org>. It would later be determined (in *Edwards v. Pohiva (Cross Appeal)*) that Moala, Pohiva, and 'Akau'ola were in fact 'convicted of an offense that did not exist.'

⁵⁵ Amnesty International, 'Tonga: Amnesty International Welcomes the Release of Three Prisoners of Conscience' (16 October 1996) <http://web.amnesty.org/library/Index/ENGASA400021996?open&of=ENG-TON> (Accessed 12 December 2007).

Even though the Tongan Three were eventually released, Tongan government appeared to be successfully oppressing freedom of speech. On 'Check it Out,' an Oceania Broadcasting Network television show that deals with civic issues, people's representative 'Esau Namoa stated that Chief Justice Hampton had no authority pass judgment on cases dealing with land matters in Tonga.⁵⁶ Additionally, Namoa asserted that 'the Chief Justice had no authority at all to give judgment in [the case of *PPEL v. Masima*].'⁵⁷ Namoa was later arrested and charged with contempt of court for those statements.

The contempt alleged against Namoa was that his 'comments scandalised the Court.'⁵⁸ The court relied on the definition of scandalising the court found in the turn of the last century case of *Rex v. Gray*.⁵⁹ In that case Lord Russell said, 'Any act done or writing published calculated to bring the court or a judge of the court into contempt or to lower his authority, is a contempt of court.'⁶⁰ The court reasoned that

The types of contempt that will amount to scandalising the court are extreme and would go beyond any form of mere criticism. Scurrilous abuse of the court or judge may amount to scandalising the court if it is likely to undermine public confidence in the court's function. Similarly untrue allegations of bias or impropriety will amount to a serious contempt because of the tendency to undermine the very basis of the judge's function.⁶¹

The court further reasoned that in a small community, with few judges and a relatively undeveloped press and media, the level of criticism likely to undermine public confidence in the administration of justice is lower than in a larger community more familiar with and better able to evaluate the remarks of commentators in the media.

The court concluded that the test to be applied to Namoa's comments was whether they posed 'a real risk of undermining public confidence in the administration of justice.'⁶² In other words, the court examined whether Namoa's comments had a tendency to undermine the authority of the court itself. It was not necessary to prove that Namoa intended to bring the court into disrepute or lower its authority. His intention was relevant only when deciding the appropriate penalty.

The defense, relying on United States cases concerning freedom of speech, argued that Namoa's comments were reasonable and therefore protected by Clause 7's pronouncement of freedom of speech in Tonga. The court rejected the use of United States cases as being irrelevant to the interpretation of the Tongan *Constitution*. The court

⁵⁶ *Attorney-General v. Namoa* [2000] TOSC 13 <http://www.paclii.org>.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ (1900) 2 QB 36.

⁶⁰ *Attorney-General v. Namoa* [2000] TOSC 13 <http://www.paclii.org> (quoting *Rex v. Gray* (1900) 2 QB 36).

⁶¹ *Ibid.*

⁶² *Ibid.*

found that Namoa's statements lowered the authority of the court because they were deliberate attacks on the authority of Chief Justice Hampton. Namoa was convicted of contempt and fined \$1,500.

The standard of contempt in *Attorney-General v. Namoa* seems antithetical to the notion of a vigorous public debate. This is particularly clear when one considers that Namoa was elected by the people and that his statements were not made in court – where the judge's role must be respected in order to preserve civility and authority – but in a public forum provided in order to assert opinions.

After *'Akau'ola v. Kingdom of Tonga* and *Attorney-General v. Namoa* it appeared that freedom of speech was not guaranteed in Tonga. Pro-democracy newspapers were the target of a government eager to silence dissent. Even the judiciary was willing to punish citizens for their honest opinions. Despite this risk, the reform leaders would continue their campaign for change. Using the *Kele'a* and the *Taimi 'o Tonga* to deliver their message, the pro-democracy movement continued to attract followers throughout the Kingdom.

In an attempt to quash the reform movement's ability to persuade, the Chief Commissioner of Revenue banned the importation of the *Taimi 'o Tonga* under the powers delegated to him in the *Custom and Excise Act 2003*.⁶³ The government asserted that the *Taimi 'o Tonga* was 'seditious,'⁶⁴ "foreign," had a "political agenda," and had "unacceptable journalistic standards."⁶⁵ The King considered it to be, among other things, 'involved in anti-attitude and propaganda against the Monarchy and the Tongan Government... [and] committed to the removal of the present Institution of Government.'⁶⁶ Lali Media, who published the *Taimi 'o Tonga* in New Zealand, sought relief from the Supreme Court.⁶⁷ The court issued an interim order lifting the ban.

While anticipating an unsatisfactory result from the judiciary, the Privy Council, in the absence of the Legislative Assembly, enacted the *Protection from Abuse of Press Freedom Ordinance 2003* (PAPFO) on April 4 in order to negate any effect the Supreme Court's decision might have.⁶⁸ The PAPFO allowed the Privy Council or the Cabinet Ministers to identify, list, and ban those publications they deemed to be seditious.⁶⁹ The Ministers again named the *Taimi 'o Tonga*.

The PAPFO was a direct challenge to the legitimacy and independence of the courts. The judiciary would respond by setting a clear standard for the protection of speech and individual liberties in what would come to be known as the Lali Media decisions.⁷⁰

⁶³ *Lali Media Group Ltd v. Lavaka Ata* [2003] TOSC 27 <http://www.paclii.org>.

⁶⁴ *Ibid.*

⁶⁵ Reporters Sans Frontieres, 'Tonga - 2004 Annual Report' http://www.rsf.org/article.php3?id_article=10226 (Accessed 12 December 2007).

⁶⁶ *Utoikamanu v. Lali Media Group Ltd* [2003] TOCA 6 <http://www.paclii.org> [9].

⁶⁷ *Lali Media Group Ltd v. Lavaka Ata* [2003] TOSC 27 <http://www.paclii.org>.

⁶⁸ Reporters Sans Frontieres, above n 65.

⁶⁹ *Lali Media Group Ltd v. Lavaka Ata* [2003] TOSC 27 <http://www.paclii.org>.

⁷⁰ *Taione v. Kingdom of Tonga* [2004] TOSC 47 <http://www.paclii.org>. In *Taione* the Supreme Court noted

THE TONGAN JUDICIARY SETS A CLEAR PRECEDENT

In *Lali Media v. Lavaka Ata*, Kalafi Moala and Filokalafi 'Akau'ola claimed that the PAPFO was unconstitutional because it was contrary to Clause 7 guarantees of freedom of opinion and press, it amounted to punishment without due process in contravention of Clause 10, and it was *ultra vires* the power under section 7(a) of the *Government Act* [Cap 3].⁷¹ The government argued that the PAPFO was enacted as an exercise of Royal prerogative pursuant to section 7(d) of the *Government Act* [Cap 3] and, as such, could not be reviewed by the courts. Furthermore, the government reiterated that the material published in the *Taimi 'o Tonga* was seditious because it called for changes in the *Constitution* and structure of government.

The court stated that 'prerogative power is power which is possessed by the Crown but not its subjects.'⁷² It is 'based on the supreme sovereignty of the Monarch and the concept that the King can do no wrong.'⁷³ However, the court noted, 'the modern position of the prerogative is that it is limited by the common law and the Monarch can claim no prerogative that the law does not allow.'⁷⁴ The court concluded that when the prerogative is defined by statute – as occurs in the *Tongan Constitution* – it is thereafter subject to that law.

Chief Justice Ward then utilised the "intent of the framers approach" to determine the proper role of the King under the *Constitution* by referring to King George Tupou I's speech announcing the adoption of the *Constitution*. In his speech the King said,

The form of our Government in the days past was that my rule was absolute, and that my wish was law and that I chose who should belong to the Parliament and that I could please myself to create chiefs and alter titles. But that, it appears to me, was a sign of darkness and now a new era has come to Tonga - an era of light - *it is my wish to grant a Constitution and to carry on my duties in accordance with it and those that come after me shall do the same and the Constitution shall be as a firm rock in Tonga for ever.*⁷⁵

The court determined that King George Tupou I ceded many powers and that he intended that his duties be carried out in accordance with the *Constitution*. Because King George Tupou I intended to rule in accordance with the provisions and procedures embodied in the *Constitution*, the court concluded that the present King, Tupou IV, was similarly

that in *Lali Media Group Ltd v. 'Utoikamanu – Ruling* [2003] TOSC 14 and *Lali Media Group Ltd v. Lavaka Ata* [2003] TOSC 27 it was found that the PAPFO was invalid and unconstitutional. Those decisions of the previous Chief Justice were subsequently upheld by the Court of Appeal on 25 July 2003 in *'Utoikamanu v. Lali Media Group Ltd* [2003] TOCA 6 <http://www.paclii.org>.

⁷¹ *Lali Media Group Ltd v. Lavaka Ata* [2003] TOSC 27 <http://www.paclii.org>.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Emphasis added. Sione Latukefu, 'The History of the Tongan Constitution' http://www.planet-tonga.com/HRDMT/Articles/Convention_92/Sione_Latukefu.shtml (Accessed 5 October 2007).

restrained. Chief Justice Ward reasoned that because the King was limited to acting within the bounds of the *Constitution*, it was the job of the courts to apply meaningful review to the King's actions. Therefore, the PAPFO could be reviewed.

The Supreme Court found that the power to pass the PAPFO is a statutory one given to the Privy Council by section 7 of the *Government Act* [Cap 3]. The court also determined that it is a limited power to be used only between meetings of the Legislative Assembly. Therefore, the court reasoned that if the Privy Council had considered passing the PAPFO under the power given by subsection (a), it would have had to determine whether the banning of the *Taimi 'o Tonga* was required as a consequence of circumstances arising between meetings of the Legislative Assembly.

The plaintiffs pointed out that section 7(a) was necessary in a time when it could take weeks to convene the Legislative Assembly but with advances in communication and travel there was no reason why the Legislative Assembly could not have been convened to discuss the PAPFO.

The court accepted that view but stated section 7 was still relevant today. The Privy Council may still pass an ordinance to enforce the King's prerogative, for example, where the King wishes to declare martial law or to consent to a royal marriage.

The court concluded that the evidence showed the reasons for the attempts to ban the *Taimi 'o Tonga* had been building up over a period of more than a year. Therefore, there was no evidence that the Privy Council purported to act under subsection (a) but, had it done so, it would not have been a sufficient reason for the use of that power because there was no circumstance which had arisen requiring the passing of the PAPFO. Accordingly, the court held that the PAPFO was unlawful and invalid.

Additionally, the court said that its conclusion from the earlier *Lali Media* case applied to the present case. Thus, it held that the government's 'attempt to muzzle a paper simply because it expresses views contrary to, or critical of the policies of the government in power is a blatant and serious abuse of clause 7.'⁷⁶

Determined not to let their position be undermined by a decision which limited the scope of the King's royal prerogative, the King and Prince 'Ulakalala Lavaka Ata immediately challenged the ruling.⁷⁷ The Court of Appeal quickly summarised and affirmed the Supreme Court's decision, thereby agreeing that the PAPFO was an invalid exercise of royal power. The court could have stopped there and ruled in favour of the plaintiffs. Instead, it sought to address the issue of freedom of speech in Tonga and characterise the actions of the government in response to the *Taimi 'o Tonga*.

The Court of Appeal stated that 'Clause 7 is a constitutional guarantee of freedom of speech and of the press.'⁷⁸ It acknowledged that '[s]ome limitations are conceded by its

⁷⁶ *Lali Media Group Ltd v. Lavaka Ata* [2003] TOSC 27 <http://www.paclii.org>.

⁷⁷ *'Utoikamanu v. Lali Media Group Ltd* [2003] TOCA 6 <http://www.paclii.org>.

⁷⁸ *Ibid* [27].

language... But such a guarantee is not to be ignored or brushed aside.’⁷⁹ The court determined that the government could not lawfully ban the *Taimi ‘o Tonga* simply because it expressed ‘views inimical to those of the Government.’⁸⁰ The *Taimi ‘o Tonga’s* advocacy of changes to the *Constitution* were protected forms of speech because Clause 79 of the *Constitution* allows amendments and therefore must protect those individuals who would seek to alter or modify the *Constitution*. Otherwise, the court reasoned, Clause 79 would be meaningless because change is a process that requires debate protected under the laws of “natural liberty.” Finally, the Court of Appeal found that the absence of a hearing was a violation of Lali Media’s right to due process under Clause 10, which requires a fair trial to be held in a judicial setting before the government may punish one of its citizens or legal entities.

After the Court of Appeal’s decision, the Legislative Assembly passed, and the King assented to, three new Acts. The first two were the *Newspaper Act 2003 (Newspaper Act)* and the *Media Operators Act 2003 (Media Act)*, both of which, like the PAPFO, allowed Cabinet ministers to identify and list certain publications as seditious.⁸¹ In order to ensure that the new legislation would not be invalidated by the judiciary, the Kingdom made an unprecedented move by amending Clause 7 of the *Constitution* through the passage of the *Constitution of Tonga (Amendment) Act 2003 (Constitution Amendment Act)*. The King gave his royal assent to the amendment over the protests of nearly 10,000 people gathered outside his home.⁸²

Prior to the *Constitution Amendment Act*, Clause 7, which guarantees the freedom of expression, stated:

It shall be lawful for all people to speak write and print their opinions and no law shall ever be enacted to restrict this liberty. There shall be freedom of speech and of the press for ever but nothing in this clause shall be held to outweigh the law of defamation, official secrets, or the laws for the protection of the King and the Royal Family.⁸³

The *Constitution Amendment Act* added the following provisions:

(2) It shall be lawful, in addition to the exceptions set out in sub-clause (1), to enact such laws as are considered necessary or expedient in the public interest, national security, public order, morality, cultural traditions of the Kingdom, privileges of the Legislative Assembly and to provide for contempt of Court and the commission of any offence.

(3) It shall be lawful to enact laws to regulate the operation of any media.

Ten months after the *Newspaper Act*, the *Media Act*, and the *Constitution Amendment Act*

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ *Taione v. Kingdom of Tonga* [2004] TOSC 47 <http://www.paclii.org>.

⁸² Reporters Sans Frontieres, above n 65.

⁸³ *Constitution* Clause 7 (as amended in 2003).

were passed, Allen Taione, Lali Media, Kalafi Moala, and ‘Akilisi Pohiva, as well as 145 other plaintiffs, challenged the new laws.⁸⁴ The Supreme Court was faced with the unusual dilemma of deciding whether a constitutional amendment was in fact constitutional.⁸⁵

The court identified that *Taione* presented two main questions: Were the procedures implemented in enacting the *Constitution Amendment Act* consistent with those called for by Clause 79 of the *Constitution*? And if so, did the entrenching provision of Clause 79 prohibit this particular amendment because it affects the laws of liberty?

The King, with the support of the Privy Council, the Governors, and six of the nine noble’s representatives, had little trouble passing the first test, which requires a bill to be ‘passed [by] the Legislative Assembly... [and] submitted to the King and if the Privy Council and the Cabinet are unanimously in favour of the amendment it shall be lawful for the King to assent’.⁸⁶

The court then addressed the secondary issue of whether the entrenchment clause in Clause 79 of the *Constitution* prohibited the *Constitution Amendment Act*. The court began by summing up the precedents set in a variety of cases that dealt with constitutional construction. Until this time the proper, or preferred, method of interpreting the *Constitution* was largely unclear, and many times Justices had adopted vastly different factors to be considered when applying rules of interpretation.

The Supreme Court adopted the following guidelines:

this Court must -

- (1) first pay proper attention to the words actually used in context;
- (2) avoid doing so literally or rigidly;
- (3) look also at the whole Constitution;
- (4) consider further the background circumstances when the Constitution was granted in 1875;
- (5) bear in mind established principles of international laws [*not relevant here*];
- (6) finally, be flexible to allow for changing circumstances.⁸⁷

While the court seemed to establish a domestic approach, Chief Justice Webster utilised a wide range a sources in *Taione*, including cases from the United States, India, Zimbabwe, Britain, South Africa, and Jamaica. The net effect was a Tongan form of textual interpretation that could be supported by reasoning adopted from a wide array of common law sources. This adaptation was consistent with earlier implementations of

⁸⁴ *Taione v. Kingdom of Tonga* [2004] TOSC 47 <http://www.paclii.org>.

⁸⁵ *Ibid.* The validity of the two remaining Acts rested on the success of the *Constitution Amendment Act 2003* and thus were not issues in the case.

⁸⁶ *Constitution* Clause 79.

⁸⁷ Quoting from *Tu‘itavaka v Porter* [1989] Tongan LR 14; [1989] TOSC 3 <http://www.paclii.org>.

foreign sources, yet it expanded the bank of sources from which Tongan jurists could draw their support. Additionally, it was a departure from Sir Clinton Roper's opinion in *Fotofili* that rejected the use of American law.⁸⁸

The court supported its use of foreign law by referring to the drafting of the *Constitution* in which King George Tupou I utilised the constitutions of New South Wales and Hawaii to create a document that provided Tongans with the freedoms enjoyed by other nations. This was in line with the belief that the intent of King George Tupou I was to adopt the greatest freedoms enjoyed by all "Christian civilised peoples."⁸⁹ In sum, the court rationalised its use of foreign law to interpret the Tongan *Constitution* by arguing that that is what the framer King George Tupou I intended.

After establishing the context in which the *Constitution* was to be interpreted, the court looked to the language of the entrenchment clause. It reads,

It shall be lawful for the Legislative Assembly to discuss amendments to the Constitution provided that such amendments shall not affect the law of liberty the succession to the Throne and the titles and hereditary estates of the nobles.⁹⁰

The defendants argued that the court had no right to review the *Constitution Amendment Act* because the Legislative Assembly had the power to decide if an amendment affected the laws of liberty. The court rejected this argument by holding that it is ultimately their sole responsibility to interpret and apply the *Constitution* and determine if the legislature acted within the boundaries set by the Constitution. The court, after considering many foreign sources, opined that the Tongan *Constitution* can be altered only in the manner that it provides and that entrenchment clauses implemented to protect the liberties granted to citizens are to be applied broadly and purposefully.

The defendants then argued that the entrenchment clause was not absolute and that the *Constitution Amendment Act* was compliant with Clause 7 of the former *Constitution* because it only controlled areas of speech that were excepted in the principal act. The court disagreed. Rather than support the fact that the new provisions restricted the laws of liberty, which would call on the court to speculate, the court pointed out that Clause 67 of the *Constitution* provides for an exception to the entrenchment provision regarding succession to the throne and the title of hereditary estates. Clause 67 provides that only nobles may alter the current system of hereditary rights if they reach a consensus on the proposed change. There is no such provision concerning amendments that would affect the laws of liberty. The court said that the purposeful omission of an exception to the entrenchment provision regarding amendments to the enumerated liberties made those protections absolute and that the *Constitution Amendment Act* was therefore invalid.

Since *Taione* and the *Lali Media* decisions, Tongan citizens have enjoyed protection from

⁸⁸ See *Fotofili v. Siale* [1988] LRC (Const) 102; [1987] TOPC 2 <http://www.paclii.org>.

⁸⁹ The history of the making of the Tongan *Constitution* is discussed in some detail in *Taione v. Kingdom of Tonga* [2004] TOSC 47 <http://www.paclii.org>.

⁹⁰ *Constitution* Clause 79.

a judiciary that has sent a strong signal that censorship of political speech will not be upheld in Tonga. This has greatly reduced the potential risks presented to reformers.

The Public Servants Association (PSA) is a labour organisation comprised of 3,000 government employees who went on strike for over six weeks after receiving news that the Cabinet ministers received another pay raise while their annual salaries remained low.⁹¹ Without the personnel to carry out the necessary functions of a modern society, the Kingdom found itself crippled and desperate for a solution. As the Kingdom's weakness became increasingly evident, the talking points of the protests moved from equitable distribution of wealth to equitable distribution in the political process.⁹²

Resolved to end the strike, the King offered to bring in New Zealand arbitrators to negotiate a deal between itself and its administrative arm. The PSA agreed to settlement talks but only under the condition that they would receive 60% to 80% pay increases across the board, back pay, and immunity from their actions. New Zealand negotiators were sent back days later, unable to make the PSA budge, even after offering teachers large pay increases to leave the strike.⁹³ The government had no choice but to give in to their demands. It agreed that the PSA would receive salary increases ranging from 60% to 80% and it said it would consider setting up a Royal Commission on the *Constitution*.⁹⁴

After the strike, the reformers called for the dismissal of the Cabinet ministers, and even Prince Lavaka Ata, the Prime Minister.⁹⁵ Clearly the call for the dismissal of the King's son is a sign that the people are no longer afraid of reprisal from the government.

CONSTITUTIONAL REFORM BEGINS TO TAKE SHAPE

In 2005 Tongans begun seriously contemplating the details of the new government they want to see emerge rather than entertaining the possibility of change. Many influential leaders, including former Police Minister Clive Edwards,⁹⁶ drafted proposals for amending the *Constitution*.

Edwards' proposed amendments would establish a parliamentary system similar to the Westminster Model. The Privy Council would be comprised of the King, Prime Minister,

⁹¹ I. C. Campbell, 'Progress and Populism in Tongan Politics' (2006) 41 *Journal of Pacific History* 49, 59.

⁹² See 'Big March Calls for Dismissal of Tongan Prime Minister' *Matangi Tonga Online* (Nuku'alofa, Tonga) 6 September 2005 <http://www.matangitonga.to/article/tonganews/government/bigmarch060905.shtml> (Accessed 12 December 2007).

⁹³ 'Govt says Yes to 60-70-80%, But PSA Needs Time to Think About It' *Matangi Tonga Online* (Nuku'alofa, Tonga) 3 September 2005 <http://www.matangitonga.to/article/tonganews/government/govtYes030905.shtml> (Accessed 12 December 2007).

⁹⁴ I.C. Campbell, above n 92, 59.

⁹⁵ Above n 93.

⁹⁶ Clive Edwards, 'Proposal for Constitutional Changes to Provide for a Democratically Elected Government for the People of Tonga' (July 27, 2005) http://www.planet-tonga.com/articles/political_reform/constitutional_changes.pdf (Accessed 12 December 2007).

and the Cabinet.⁹⁷ The Legislative Assembly would consist of 39 members: 33 representatives of the people all elected by the people of Tonga – with both nobles and Tongans being able to stand for election – and 6 representatives of the nobles, elected by the nobles.⁹⁸ The proposed system would allocate 20 members to the capital island of Tongatapu, 7 to the island group of Vava'u, 4 to Ha'apai, and 1 member each to the smaller island groups of Eua and Niufu'ou.⁹⁹ This system of allocation has the benefit of ensuring that the smaller island groups of Eua and Niufu'ou would still be able to play a part in the process, while reserving the majority of influence in the most populous island group of Tongatapu.

In addition to Clive Edwards' proposal is one drafted by Laki Niu, a Tongan lawyer.¹⁰⁰ Niu's proposal calls for a similar Westminster Model government, but he submits that the Legislative Assembly should consist of 30 members with the people electing 24 members and the nobles electing 6.¹⁰¹

On October 24 2005, the Tongan Parliament approved the formation of the National Committee for Political Reform (NCPR).¹⁰² On January 30 2006, the NCPR began holding "talanoas" – facilitated public meetings with no preconceived agenda where Tongans are encouraged to speak on any issue – during which Tongans, including those living abroad, were solicited for their opinions on political reform and constitutional revision.¹⁰³

In September 2006 the NCPR chairman, Dr. Sitiveni Halapua, presented the NCPR's 100 page report to Princess Pilolevu at Mercy Hospital in Auckland where the King had been a patient.¹⁰⁴ The report was later given to the King.¹⁰⁵ Unfortunately, on September 10 2006, King Tupou IV's 41 year reign came to an end when he passed away at age 88 after suffering a long illness.¹⁰⁶ The next day, Tonga entered into a traditional mourning period for their fallen King. On September 11 2006, the Crown Prince ascended to the

⁹⁷ Ibid, 7.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ 'Tongan Lawyer Plans Sit-in to Back his Calls for Constitutional Change' *Radio New Zealand International* 16 October 2005 <http://www.rnzi.com/pages/news.php?op=read&id=19941> (Accessed 12 December 2007).

¹⁰¹ 'Laki Niu Starts New Protest at Pangai Si'i on Monday' *Matangi Tonga Online* (Nuku'alofa, Tonga) 16 October 2005 <http://www.matangitonga.to/article/tonganews/politics/lakiniu161005.shtml> (Accessed 12 December 2007).

¹⁰² 'Tonga's King Receives NCPR Report' *Matangi Tonga Online* (Nuku'alofa, Tonga) 1 September 2006 http://www.matangitonga.to/article/tonganews/politics/ncpr_report310806.shtml (Accessed 12 December 2007).

¹⁰³ Pesi Fonua, 'Talking From the Heart' *Matangi Tonga Online* (Nuku'alofa, Tonga) 22 December 2005 <http://www.matangitonga.to/scripts/artman/exec/view.cgi?archive=4&num=1535> (Accessed 12 December 2007).

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ 'HM King Taufa'ahau Tupou IV Passes Away' *Matangi Tonga Online* (Nuku'alofa, Tonga) 11 September 2006 http://www.matangitonga.to/article/tonganews/royalty/tonga_king_dies110906.shtml (Accessed 12 December 2007).

throne as King George Tupou V.¹⁰⁷

Although Tongans initially disagreed over the specific number of seats that the Parliament would have and how they would be distributed among the people, the report recommended that a new 26 member Parliament be made up of 17 people's representatives to be elected by the people, and nine noble's representatives to be elected by the 33 nobles of the realm.¹⁰⁸

In support of this recommendation, hundreds of Tongans flocked to Pangai Si'i to witness what they thought would be a peaceful reformation of their monarchy. Near the end of the Legislative Assembly's session, expectations ran high that the democracy movement's 30 years of work would produce tangible results. However, the Legislative Assembly failed to act on the proposal and it appeared that it would be at least another year before the reformers would have their wish.¹⁰⁹

On November 16th 2006, a peaceful protest consisting of Tongans who came out to show support for political reform erupted into a riot. The Tongan people suffered through the most violent and destructive day since their *Constitution* was adopted. The aftermath left the capital city of Nukualofa badly damaged and burned. Among the first buildings set on fire were the Prime Minister's business and Tonfon, a subsidiary of the Shorelines group of companies that were owned by the King. It appeared that businesses linked to the monarchy and nobility were specifically targeted for arson by the members of the mob.¹¹⁰ New Zealand and Tongan police arrested approximately 900 people for crimes connected with the riots of "16/11," as it is commonly referred to, in the weeks that followed.¹¹¹ The charges include murder, arson, sedition, and theft.¹¹² Among those accused of sedition were five People's Representatives: Akilisi Pohiva, 'Isileli Pulu, Clive Edwards, 'Uliti Uata, and Lepolo Taunisila.¹¹³

¹⁰⁷ 'Tonga Begins Month of State Mourning' *Matangi Tonga Online* (Nuku'alofa, Tonga) 11 September 2006 <http://www.matangitonga.to/article/tonganews/royalty/halfmast110906.shtml> (Accessed 12 December 2007).

¹⁰⁸ Pesi Fonua, 'Tonga Steps Forward with New Road Map for Political Reform' *Matangi Tonga Online* (Nuku'alofa, Tonga) 16 October 2006 http://www.matangitonga.to/article/features/interviews/halapua_161006.shtml (Accessed 12 December 2006).

¹⁰⁹ 'One Month On: How Tensions Erupted Into Tonga's Day of Mob Violence' *Matangi Tonga Online* (Nuku'alofa, Tonga) 18 December 2006 http://www.matangitonga.to/article/16nov_171206.shtml (Accessed 12 December 2007).

¹¹⁰ For a full discussion of events, see above n 109.

¹¹¹ 'NZ and Tonga Police Need Time to Catch Ringleaders' *Matangi Tonga Online* (Nuku'alofa, Tonga) 25 January 2007 http://www.matangitonga.to/article/tonganews/crime/nzpolice_050107.shtml (Accessed 12 December 2007).

¹¹² Above n 109; 'Police Continuing Investigations to Bring Riot Ringleaders to Justice' *Matangi Tonga Online* (Nuku'alofa, Tonga) 21 December 2006 <http://www.matangitonga.to/article/tonganews/crime/ringleaders211206.shtml> (Accessed 12 December 2007); 'Five PRs to Appear in Magistrate's Court at Start of 16/11 Inquiry' *Matangi Tonga Online* (Nuku'alofa, Tonga) 23 March 2007 http://www.matangitonga.to/article/tonganews/courts/five_prs_inquiry230307_744mf.shtml (Accessed 12 December 2007).

¹¹³ Pesi Fonua, 'Tonga's Political Reform Process Overshadowed by a Sense of Injustice' *Matangi Tonga*

CURRENT EVENTS

The riots have defined King George Tupou V's reign since he came to power. Legitimately occupied with the rebuilding of the capital, King Tupou V has not yet taken an active role in the reform process. However, there are signs that change is underway.

On September 13 2007, the Legislative Assembly voted to have reform take place in 2010, after the majority of the people's representatives failed to get reform to take place in 2009.¹¹⁴ Yet there are good reasons to delay the reform. First, it is not simple to change a political system that has been with the Tongans for the past 131 years.¹¹⁵ Second, because the new political system is going to produce democracy and constitutional changes that are expected to last for quite some time, it is important that Tongans take the time to create a political system that is worthy of the time and sacrifice they have spent to produce it. During the next two years it is of paramount importance that the reformers focus their efforts and solidify their support behind one proposal so they can approach the Legislative Assembly with a unified front.

While two years may seem like a long time to wait for democratic representation, it is important to remember that only a short time ago the government actively sought to ban critical media voices. Now those same voices are openly debating the details of changes that are scheduled to be made in the near future.

CONCLUSION

The political reform process, and the widespread protests that caused it, would not have been possible without the protections afforded by the Tongan judiciary in the *Lali Media* decisions. The Tongan story teaches us that a judiciary which sets a clear precedent of protecting political speech can truly provide a level playing field where reason and power can meet face to face. Fortunately in Tonga that field is relatively civil and political dissidents are not threatened by violent reprisal.

While the November riots were a tragedy, the main target of the rioters was property, not people. Riots are symptomatic of the growing pains that many transforming nations endure, and the events of November 16 are not indicative of the peaceful and law abiding character of the Tongan people. It is the authors' opinion that the continued transition toward democracy in Tonga will not be marred by many more of these events.

Online (Nuku'alofa, Tonga) 19 July 2007

http://www.matangitonga.to/article/tripartite_committee_190707_103.shtml (Accessed 12 December 2007).

¹¹⁴ Pesi Fonua, 'Political Reform, Tonga's "Tower of Babel," says Luani' *Matangi Tonga Online* (Nuku'alofa, Tonga) 21 September 2007

http://www.matangitonga.to/article/tonganews/parliament/minutes_27-29.shtml (Accessed 12 December 2007).

¹¹⁵ *Ibid.*

At the time of this writing the trial of Pohiva and the other pro democracy leaders has not yet come to a decision, but much will ride on its outcome. The sedition charge against Pohiva is linked to statements he allegedly made in the midst of widespread vandalism and looting.¹¹⁶ Although the Tongan judiciary's *Lali Media* decisions checked the government's ability to prevent the public from being exposed to criticism of the status quo, it is hard to determine whether Pohiva's statements will be protected as free speech because of the context in which they were made. What effect the trial will have on the reform movement is unclear at this point. Therefore, observers should pay special attention to the upcoming decision as it will certainly be a historical moment for this island in transition.

¹¹⁶ 'The PRs on Sedition Charges Await Judge's Decision' *Matangi Tonga Online* (Nuku'alofa, Tonga) 1 June 2007 http://www.matangitonga.to/article/tonganews/courts/sedition_010607_952_pf.shtml (Accessed 12 December 2007).