

# SAMOA

## Introduction

At independence, Samoa adopted a unique political system that combines its traditional political institutions and systems with those adopted from the Westminster style of democracy. The traditional political system, known as the *fa'amatai*, revolves around the leadership of *matai* (family leaders). The importance of this aspect of the traditional system is reflected in its incorporation into the political framework adopted at independence. Samoa accepted the idea of a nation-state, and adopted a national political framework that centred on the legislative assembly as the main governing body. The Constitution<sup>1</sup> originally provided for the *fa'amatai* by limiting the voting franchise to *matai*. In addition, the assembly, which initially comprised 47 members, only allowed two of these seats to be held by non-*matai*. The other 45 were reserved for candidates who sought office using their *matai* status. Universal franchise was adopted in 1991, but candidature rules for the assembly, which now contains 49 seats, remain the same; only two of these seats are set aside for non-*matai*.

Parliament, consisting of the Head of State and the Legislative Assembly, is the governing body at the national level. It has the power to make laws for the country, having effect both outside as well as within Samoa. Executive power is vested in the Head of State, but the decisions of this position are largely determined by a Cabinet of Ministers, which includes the Prime Minister. The Head of State appoints as Prime Minister, a Member of Parliament (MP) who commands the confidence of a majority of the Members of Parliament. The Head of State, acting on the advice of the Prime Minister, appoints the Cabinet. Cabinet has the general direction and control of the Executive government and is collectively responsible to Parliament.<sup>2</sup>

Party politics did not develop in Samoa until the early 1980s. The first political party, the Human Rights Protection Party (HRPP), assumed power in 1982. Since then there have been a number of political parties which have emerged, including the Samoa National Development Party (SNDP), Samoa Democratic United Party (SDUP), Samoa Party, *Tautua Party*, and the People's Party. The legislature, named the *Fono Aoao Faitulafono* (National Legislative Assembly), has 49 members each serving five-year terms. Although legislative power is vested in the assembly, the Government generally controls legislation through its weight of numbers in the *Fono Aoao Faitulafono*. While this is a common feature of all Westminster governments, this is particularly the case in Samoa where, apart from a short period in 1985, the HRPP has been in power since 1982. The dominance of the HRPP, combined with the 'First Past the Post' election system means that

<sup>1</sup>Constitution of the Independent State of Western Samoa.

<sup>2</sup>Constitution of the Independent State of Western Samoa.





the Parliamentary Opposition is unable to effectively hold the Government accountable on the floor of Parliament. This raises a number of concerns about the dominance of political power and the exercise of political power in Samoa by a single political party. The first is the ability of the HRPP to hold and exercise political power for over 27 consecutive years. The second is the ability of other political parties to compete for political power. Under these scenarios, holding government decisions and actions accountable and ensuring transparency is especially a challenge. During the period of HRPP's rule, there have been several allegations of corruption in Government. Some of these were highlighted in a 1994 Controller and Chief Auditor (CCA) report,<sup>3</sup> which implicated Government ministers as high as Cabinet members.

Nonetheless, Samoa has built a reputation in the region for political stability often attributed to the HRPP's retention of political power for a long period of time and the function of the *fa'amatai*. The control of *matai* over the *nu'u* remains a fundamental pillar of order and stability. Aiding this is the strong emphasis in Samoa of religion, with every village subscribing to at least one, although more often many, Christian faiths.

## Section 1:

### Principle 1 – Respect for the Law and the System of Government

- i) Respect for upholding of democratic processes and institutions, the rule of law and the independence of the judiciary and the legislature:
  - a) Allow for peaceful transfer of power;

The Constitution of Samoa allows for the democratic transfer of power, primarily through its provisions for periodical elections, which are held every five years.<sup>4</sup> From 1962 until 1991, elections were held every three years. However, the *Constitution Amendment Act (No.3) 1991* amended this by substituting five years for the original three years. The Constitution also provides for occasions when elections cannot be held during these intervals. Article 63, Sub-Articles 2 and 3, outlines the conditions under which the Head of State can dissolve the Legislative Assembly earlier than the expiry of five years from the date of the preceding general elections.

An area of concern exists about a democratic transfer of power. Any provision of the Constitution, except Article 102, may be amended or repealed by an Act of Parliament supported by two-thirds of the total number of MPs (including vacancies).<sup>5</sup> This has happened once. The 1991 elections were carried out before this Amendment was passed. Despite this, the Government brought the Amendment into effect before the next elections, which were supposed to have been held in 1994. Therefore, the incumbents extended their own term of Parliament, giving themselves an additional two years.

<sup>3</sup>Audit Office, Samoa, *Controller and Chief Auditor's Report to the Legislative Assembly Period* (1994).

<sup>4</sup>*Constitution of the Independent State of Western Samoa* pt V, art 63(4); art 64.

<sup>5</sup>*Constitution of the Independent State of Western Samoa* Constitution pt XI, art 109.



- b) **Respect and promote the separation of powers by ensuring the financial autonomy of the judiciary and Parliament and ensure that the judiciary and Parliament are free from unlawful interference by the executive;**

Article 69 of the Constitution states: ‘The Salaries of Judges of the Supreme Court ... shall be determined by Act.’ Salaries of judges come under what is known as Statutory Expenditure and are not voted or deliberated on by the Legislature. Funding for judges’ salaries is drawn from the Treasury Fund. The Constitution provides this protection under Part VIII on finance.

The Constitution provides a number of protections against the arbitrary removal of Supreme Court Judges. Article 68 of the Constitution provides that ‘a Judge of the Supreme Court shall hold office until he reaches the age of sixty-two’, unless that person is not a Samoan citizen and is appointed for a ‘term of years’. In the case of the Chief Justice, the Prime Minister can advise the Head of State to extend his period of office beyond the age of sixty-two. Any other Supreme Court judge may have their period of office extended on the advice of the Judicial Service Commission. A Supreme Court Judge may resign from his office, but shall not be removed unless the Legislative Assembly makes such a request with the support of not less than two-thirds of the total number of Members of Parliament (including vacancies). These protections promote the separation of powers, but there remain important links between the Judiciary and the Executive. Article 65 of the Constitution provides that the Chief Justice is appointed by the Head of State acting on the advice of the Prime Minister. Article 68(6), provides that the Chief Justice may be suspended by the Head of State acting on the advice of the Prime Minister. There were no cases of the Executive unlawfully interfering with the Judiciary in 2008.

The Executive’s control of the Legislature and Government under the HRPP’s rule is evidenced through the *Remuneration Tribunal Act 2003*,<sup>6</sup> but especially the *Parliamentary Under-Secretaries Act 1988*.<sup>7</sup> Under the former Act, Cabinet determines the salary, allowances and other benefits for public offices or a class of public offices (s.9). These public offices include, the Prime Minister, the Ministers, the Opposition Leader, the Parliamentary Under-Secretaries, the Speaker, the Deputy Speaker, members and former members of the Legislative Assembly, or for the spouses or children of such persons (s.17). The *Parliamentary Under-Secretaries Act 1988* provides for the appointment of a Parliamentary Under-Secretary. The *Parliamentary Under-Secretaries Amendment Act 2006*,<sup>8</sup> changes this title to Associate Minister. It might be argued that Associate Ministers are part of the Executive, because under the *Parliamentary Under-Secretaries Act 1988* they are given and can exercise powers, duties, and functions of the Minister under his or her direction or the direction of the Prime Minister (s.8-9).

After the 2006 elections, 20 Associate Minister’s were appointed. Together with the twelve Cabinet Ministers, the Executive consisted of thirty-two Members of Parliament at that time (one Associate Minister has since left the party). The Associate Ministers are all from the same political party, the HRPP. The Speaker and Deputy Speaker of the Legislative Assembly are also from the HRPP. This has created a situation where ‘these ministers and associate ministers will make



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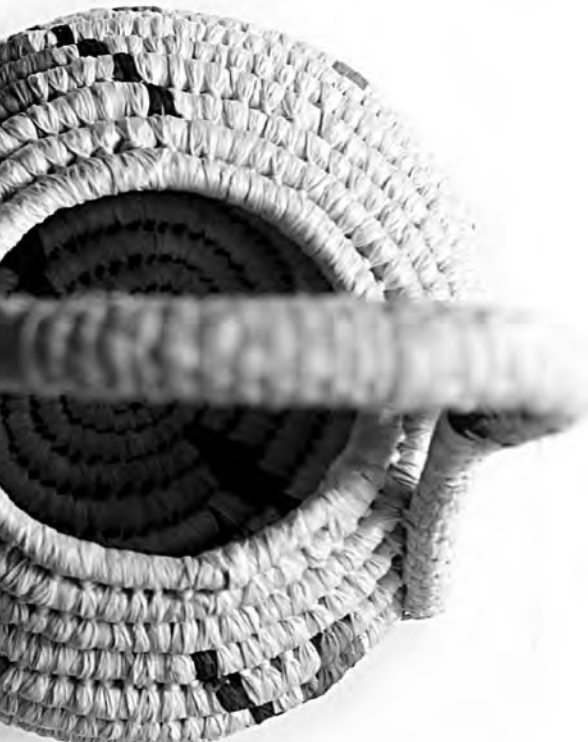
<sup>6</sup>*Remuneration Tribunal Act 2003* (Samoa).

<sup>7</sup>*Parliamentary Under-Secretaries Act 1988* (Samoa).

<sup>8</sup>*Parliamentary Under-Secretaries Amendment Act 2006* (Samoa).

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executive decisions and defend these at the same time in Parliament' or 'rule by the executive'.<sup>9</sup> The *Parliamentary Under-Secretaries Act 1988* increases the political power of the Executive as well as the continued dominance of one political party.

There was no incident in 2008 that related to the issues discussed in this section. However, one past case does suggest that a concentration of political power in one political party can inhibit the separation of powers between the Executive and Parliament. In 1994, the Controller and Chief Auditor (CCA) tabled a report in Parliament which alleged government corruption, implicating MPs including Cabinet Ministers. Instead of submitting the report to the Chairman of the Public Accounts Committee, the Government appointed a Commission of Enquiry to investigate how the report was carried out and its findings. The Commission confirmed in the main the irregularities outlined by the CCA, but did not agree with all of the dimensions of the events covered in the report. It was particularly critical of the CCA for overstepping the boundaries of his authority in reaching some of his conclusions.<sup>10</sup> Subsequently, the CCA was dismissed and Article 97 of the Constitution, which set out the employment terms and conditions of the CCA's was repealed by the *Constitution Amendment Act (No. 3) 1997*.

Under the original provisions of Article 97 of the Constitution, the CCA was appointed by the Head of State, acting on the advice of the Prime Minister. The CCA was to retire from office when he or she reached the age of sixty two. Significantly, the CCA could resign at any time but could not be removed from office except by a two-thirds majority vote in the Legislative Assembly.<sup>11</sup> *The Constitution Amendment Act (No.3) 1997*, maintained a number of provisions such as how the CCA was appointed, and the provision for voluntary resignation. The key changes relate to the CCA's term in office and the provision for his removal by the Legislative Assembly. Article 97(2) now provides that the CCA shall hold office for a term of three years, but shall be eligible for reappointment. Article 97(5) stipulates that the CCA may be suspended from office by the Head of State on the advice of the Prime Minister, but Article 97(6) requires the Prime Minister to lay before the Legislative Assembly a full statement of the grounds of any suspension within seven sitting days of the Legislative Assembly. Article 97(7) provides that the CCA can be removed from office by the Legislative Assembly within forty-two days after the day that the Prime Minister lays the statement. Otherwise, the CCA is restored to office by the Head of State.

Legislation like the *Parliamentary Under-Secretaries Act 1998*,<sup>12</sup> and amendments to the constitutional position of the Controller and Chief Auditor makes the Executive especially dominant over Parliament.

## ii) Upholding a just, fair and honest government through:

### a) Respect for and enforcement of the decisions of courts and independent tribunals;

The rule of law applies to everyone in Samoa, including MPs. The convictions of Cabinet Ministers Toi Aukuso and Leafa Vitale in 2000, after the Courts found them guilty of arranging the assassination of another Cabinet Minister, Luagalau Kamu, is an example.<sup>13</sup>

A Commission of Inquiry has wide ranging powers of investigation. According to

<sup>9</sup>Unasa L F Va'a, 'Polynesia in Review: Issues and Events, 1 July 2007 to 30 June 2008: Samoa' (1990) 21(1) *The Contemporary Pacific*, 175, 175-181; Unasa L F Va'a, Interview (Samoa, April 2009).

<sup>10</sup>Commission of Enquiry's Finding into Chief Auditor's Report', *Samoa Observer* (Apia), 25 November 1994, 6; *Ah Chong v Legislative Assembly of Western Samoa* (1996) WSSC 12 April 2000.

<sup>11</sup>Economist Intelligence Unit, 'Country Report. Pacific Islands – Fiji, New Caledonia, Samoa, Solomon Islands, Tonga, Vanuatu' (1997) *Quarters: 1, 2, 3, 4 Economist Intelligence Unit* (Great Britain); Lauofo Meti, *Samoa: The Making of the Constitution* (2002) 210-12.

<sup>12</sup>*Parliamentary Under-Secretaries Act 1998* (Samoa).

<sup>13</sup>*Police v Vitale and Aukuso* (2000) WSSC.



the *Commission of Inquiry Act 1960*, a Commission of Inquiry has ‘the power and status of a Judge of the Court in respect of citing parties interested in the inquiry, summoning witnesses, administering oaths, hearing evidence, and conducting and maintaining order at the inquiry.’<sup>14</sup> It may ‘refer any disputed point of law arising in the course of an inquiry to the Court for decision’, and the ‘decision of the Court shall be final and binding on all parties to the inquiry and on the Commission.’<sup>15</sup> A Commission of Inquiry also has the power to award costs of the inquiry. However, a Commission of Inquiry’s findings are not binding. According to the Court of Appeal ruling in *Ah Chong v The Legislative Assembly of Western Samoa and the Attorney General of Western Samoa*,<sup>16</sup> the Commission’s findings ‘are only an expression of views formed by the Commission’ and ‘have no binding effect’. Moreover, it notes that these decisions ‘cannot be enforced like a judgment of a Court’. The force of these decisions lies in their effect on people’s reputations.

The powers of a Commission of Inquiry and the limitations on its final decision were on display in 2008, in a gun-smuggling case that implicated the Samoa Police Commissioner. On 19 April, firearms were allegedly smuggled into Samoa aboard a police patrol boat returning from American Samoa. The Commissioner, Papali’i Lorenese Neru was implicated in the incident because the box containing the guns was addressed to him and delivered to him. The box was sent by a former American Samoan police captain who carries the same *matai* title as Neru, Papali’i Marion Fitiseanu.<sup>17</sup> The Government appointed a Commission of Inquiry to investigate the matter. The members were appointed by the Head of State on the advice of Cabinet, and the Ombudsman, Maiava Iulai Toma, was appointed as the Chair. During the investigation, the crew of the ship denied any knowledge of the package, which the Captain of the boat had stored in his cabin. Moreover, the customs officer who cleared the patrol boat in Samoa stated that the package was not declared in the ship’s manifest.<sup>18</sup> The Commission’s findings were released in 2009; they recommended that the Attorney General oversee a criminal investigation into the Commissioner together with the captain of the ship on which the guns were smuggled. Cabinet decided not to follow the Commission’s recommendation. Despite protests from the public, and in particular members of the Opposition, Cabinet decided that a ‘severe censure’ was sufficient punishment for the Commissioner, publicly declaring that it was taking a ‘holistic approach’ to the matter.<sup>19</sup> It is worth noting that the Police Commissioner is appointed by the government.

**b) Enforcement of lawful instructions and lawfully created policies;**

The national government has various organs that enforce its instructions and policies, for example the Supreme Court enforces people’s constitutionally guaranteed rights and the Police maintain law and order. Their authority to enforce these is laid out in the Constitution and other Acts of Parliament. Part 2 of the Constitution, for example, deals with fundamental rights and the Supreme Courts power to secure these, and the *Police Powers Act 2007*,<sup>20</sup> defines the law enforcement powers of the police. However, there is uncertainty over how far this authority stretches. The police, for example, enforce the law, but its jurisdiction is unclear because village councils also enforce laws, both their own and those created by the national Government.<sup>21</sup>



<sup>14</sup>*Commission of Inquiry Act 1960* s 6(2).

<sup>15</sup>*Commission of Inquiry Act 1960* s 13(1)(3).

<sup>16</sup>*Ah Chong v The Legislative Assembly of Western Samoa and the Attorney General of Western Samoa* (1996) WSCA 17 September 1996.

<sup>17</sup>Radio New Zealand International, ‘Samoa Police Commissioner Caught with Guns’, 19 November 2008.

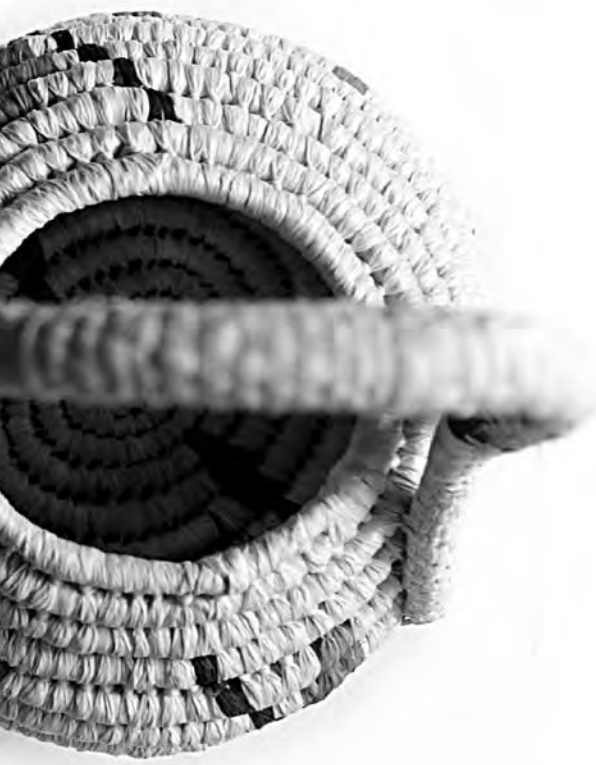
<sup>18</sup>Radio New Zealand International, ‘Commission of Inquiry in Samoa into Gun Smuggling Extended’, 19 October 2008; Alan Ah Mu, 2009. ‘Top Cop Chooses to Remain Silent’, *Samoa Observer* (Apia), 4 February 2009; U.S. Department of State, 2008 *Human Rights Report: Samoa. Bureau of Democracy, Human rights, and Labor* (2009), U.S. Department of State <<http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119055.htm>> at 1 April 2009.

<sup>19</sup>Alan Ah Mu, 2009. ‘Top Cop Chooses to Remain Silent’, *Samoa Observer* (Apia), 4 February 2009.

<sup>20</sup>*Police Powers Act 2007* (Samoa).

<sup>21</sup>U.S. Department of State, *Samoa*, (2008), U.S. Department of State <<http://www.state.gov/g/drl/rls/hrrpt/2007/100536.htm>> at 15 July 2008.





The *Village Fono Act 1990*,<sup>22</sup> validates and empowers the exercise of power and authority by the Village *Fono* in accordance with the custom and usage of their villages. In addition to these, the Act clarifies other powers of the Village *Fono*, namely, in relation to the maintenance of hygiene, development and use of village land for economic wellbeing and powers to direct individuals to undertake work required to be done. Section 6 of the *Village Fono Act 1990* also clarifies punishments that Village *Fono* have at their disposal, above and beyond their powers as preserved by the Act. These include fines in money, animals, foods, finely woven mats, as well as to order the offender to undertake any work on village land. Section 9 of the Act limits the authority of the Village *Fono*. It does not extend to ‘any person who does not ordinarily reside in its village and any person who not being a *matai* of its village ordinarily resides in its village on Government, freehold, or leasehold land and is not liable in accordance with custom and usage of that village to render *tautua* to a *matai* of that village.’<sup>23</sup>

Whether the Village *Fono* need the Act to legitimise their authority is questionable because the basis of their authority does not lie with the Constitution or laws created by the national Government. The basis of their authority originates from its members, in particular the *aiga* who constitute each village. The nature of this authority is set out in the *fa’alupega* of each *nu’u*. The *fa’alupega*, a statement of the constitution of the *nu’u*, establishes the hierarchy of authority.

The *Police Powers Act 2007*,<sup>24</sup> also extends the powers to enforce law in Samoa to foreign agents. Sections 15 and 16 of the Act give ‘a team of police or specially trained persons from another country that are in Samoa at the request of the Government pursuant to an intergovernmental agreement to carry out specific activities’, the same powers that may be exercised by local police officers. Section 19 grants them immunity from both criminal and civil proceedings ‘in relation to actions ... that are taken in the course of, or are incidental to, official duties’.

The law, at the national level, prohibits forced exile. The Constitution guarantees the right to move freely throughout Samoa and to reside in any part thereof.<sup>25</sup> Moreover, in *Leituala v Mauga, Kilifi et al* (2004) the Supreme Court held that village councils do not have the power to order customary banishments as a punishment, even under the *Village Fono Act 1990*.<sup>26</sup> Despite this, village councils continue to use this punishment. In 2008, there were at least two cases of banishment. In January, a high ranking *matai* and former MP, Leva’a Sauaso, was banished from the village of Apolima uta because his son-in-law was arrested and charged by police for allegedly murdering another villager.<sup>27</sup> The Land and Titles Court later ruled that Sauaso and his family should be allowed to return.

There were a number of banishment cases throughout the year. In July, a mother and her children were banished from the village of Elise Fou. It followed after her husband killed a man who he thought she was having an affair with.<sup>28</sup> Also in July, a woman and all her descendants were banished from the village of Vaiusu after police confirmed that their family was selling marijuana. The family was allegedly warned earlier about the possibility of being banished after members allegedly discharged firearms in the village. The village mayor (*Pulenu’u*), a government paid position, reportedly told a resident petrol station owner that the Vaiusu village council had the power to close down his business operations and banish him if he

<sup>22</sup> *Village Fono Act 1990* (Samoa).

<sup>23</sup> *Ibid* s 9 (a)(b).

<sup>24</sup> *Police Powers Act 2007* (Samoa).

<sup>25</sup> *Constitution*, above n 1, pt II, art 13.

<sup>26</sup> Miranda Forsyth, ‘Banishment and Freedom of Movement in Samoa: *Leituala v Mauga, Kilifi et al*’ (2004) 8(2) *Journal of South Pacific Law*.

<sup>27</sup> Radio New Zealand International, ‘High Ranking Matai Banished from Village’, 15 January 2008;

<sup>28</sup> Radio New Zealand International, ‘Family Banned From Samoa Village After Estranged Husband Allegedly Kills Wife’s New Partner’, 13 June 2008; Radio New Zealand International, ‘Samoa NGO says Village Judgement may Hinder People Needing Help’, 17 June 2008.



was confirmed to be involved in the selling of marijuana.<sup>29</sup> In August, the families of four men who police charged with first degree murder were banished from the village of Leauva'a. The Leauva'a village council subsequently overturned the banishment order in that same month.<sup>30</sup> There may have been more cases which might have escaped being reported in 2008. According to the United States Department of State, 'cases of village banishment are rarely made public'.<sup>31</sup>

Although the courts often overturn village council banishments, it is unclear how many exiles actually return. In a number of past cases, exiles chose not to return out of fear of victimisation.<sup>32</sup> The extent to which instructions and policies, created and enforced at the national level, are respected is still subject to the laws and judgements of village councils, and vice versa.

- c) **Compliance with the letter and spirit of the laws, which are made for the benefit of the public;**

Refer to instances reported in section b) above.

- d) **Disclosure of fraud, corruption and mal-administration, of which the leader has become aware;**

The office of the CCA is pivotal in exposing instances of fraud, corruption, and mal-administration. All government departments are audited, and therefore can be scrutinised by Parliament. Once audit reports are tabled in the Legislative Assembly, they are given to the relevant sub-committees for investigation. These sub-committees are supposed to comprise members of both the Government and the Opposition. After this phase, the report is returned to the Legislative Assembly for debate and discussion.

If cases involving government fraud, corruption, and mal-administration go to court, the Government cannot interfere with the legal process. A number of cases in 2008 indicate that these kinds of cases are exposed and handled through the legal system. In April 2008, an account officer in the Ministry of Police and two account officers in the Ministry of Finance were charged with embezzling \$350,000 tala belonging to Police. In May 2008, a staff member of the former South Pacific Games Authority was convicted for embezzling \$43,000 tala. During the same month, the former financial controller of the Samoa Kidney Foundation pled guilty to a 2007 charge of theft as a public servant. In August, a senior official of the Ministry of Justice was terminated after two court files went missing. He was later offered reinstatement when an employment dispute tribunal found him innocent of wrongdoing.<sup>33</sup>

- e) **Refraining from exertion of pressure, and abuse of persons carrying out their lawful duties;**

There are no known cases of leaders doing this in 2008.

- f) **Refraining from using any legal immunity or privilege as a cloak or shield for behaviour of a lower ethical standard than that reasonably expected of the leader by citizens;**

Article 62 of the Constitution provides that 'privileges, immunities and powers of the Legislative Assembly, of the committees thereof and of Members of Parliament may be determined by Act', but cannot extend 'to the imposition of a fine or to



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<sup>29</sup>'Women and Family Ordered out of Village', *Samoa Observer* (Apia), 7 July 2008.

<sup>30</sup>Radio New Zealand International, 'Samoa Chiefs Overturn Banishment in Leauva'a', 25 August 2008.

<sup>31</sup>U.S. Department of State, above n 19.

<sup>32</sup>Terry Tavita, 'Samoa Religious Exiles Enjoy Relative Peace', *Samoa Observer* (Apia), 10 July 2002.

<sup>33</sup>U.S. Department of State, above n 19.

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committal to prison for contempt or otherwise, unless provision is made by Act for the trial and punishment of the person concerned by the Supreme Court'. There were no specific cases in 2008 relating to this point.

However, there were two pieces of legislation in which the Government included clauses that gave them legal immunity in a way that could be seen as a cloak or shield for behaviour of a lower ethical standard than that reasonably expected of leaders. Both the *Land Titles Registration Act 2008*, and the *Road Transport Reform Act 2008* contain immunity clauses that protect the Government in case problems arise. *The Road Transport Reform Act 2008*, Section 11, exempts the Government from any liability by reason of any provision of the Act 'for any injury, damage, or loss (including any claim for the diminution of value of any vehicle) which may occur to any person or property'. The Samoa Law Society argues that this section is unconstitutional.<sup>34</sup>

**g) Establishing and empowering bodies, such as an Ombudsman Commission, to independently investigate public complaints against government actions;**

The *Komesina O Sulufaiga (Ombudsman) Act* was passed in 1988 and an Ombudsman was appointed in 1991. The Head of State appoints the Ombudsman on the recommendation of the Legislative Assembly, which recommends an Ombudsman following a vote in the *Fono* (Parliament) for the most suitable candidate. The Ombudsman however is not a Constitutional office-holder and therefore does not enjoy the protections afforded by the Constitution.

The *Komesina O Sulufaiga (Ombudsman) Act 1988* gives the Ombudsman authority 'to investigate any decision or recommendations made (including any recommendations made to a Minister of Cabinet), or any act done or omitted, relating to a matter of administration and affecting any person or body, in person or departments or organisation' following a complaint by an individual or at the Ombudsman's own initiative'. The functions of the Ombudsman are set out in Section 11 of the Act. *The Komesina O Sulufaiga (Ombudsman) Act 1998* lists the Ministries and organisation to which the Act applies. They include all Government ministries, Government corporations, and the police.

A formal complaint must be made in writing to the Ombudsman to initiate an investigation. The Act does not specify if this may be anonymous or not, but it must be kept confidential. The investigative powers of the Ombudsman are set out in Section 23 of the Act. Section 12 gives the Legislative Assembly certain powers in relation to the Ombudsman's functions; it may 'make general rules for the guidance of the Ombudsman in the exercise of his or her functions'. Section 26 goes on to specifically prohibit attempts to influence, mislead, or withhold information from the Ombudsman.

Upon completion of an investigation, Section 19 of the Act requires the Ombudsman to produce a report with recommendations, which will be submitted to the department concerned and copied to the relevant Minister. Reports generally have a specified time frame for action, and the ministries concerned are supposed to respond accordingly. According to Section 19(4) of the Act, if the Ombudsman's recommendations are not acted upon within a reasonable period of time, the Ombudsman may send a copy of the report and its recommendations to the Prime

<sup>34</sup>'We've Got RHD Report: Most Submissions Oppose Road Switch', *Samoa Observer* (Apia), 17 April 2008.



Minister and to Parliament. There is no legal requirement for the reports to be published.

**h) Ensuring that the Auditor General reports directly and in a timely manner to Parliament/Congress;**

The supreme audit institution of Samoa is the Controller and Chief Auditor (CCA). The office of the CCA of Samoa is established under Article 97 of the Constitution.

The *Audit Regulations 1976* describe the role and powers of the CCA in more detail. The CCA is empowered by Article 99 of the Constitution to audit the Treasury Fund, other public funds and accounts, the accounts of all ministries and offices of the government, and the accounts of other public, statutory, or local authorities and bodies. The CCA is to report at least once annually to the Legislative Assembly to draw attention to any irregularities in the audited accounts. The CCA undertakes not only financial audits, but also completes performance audits for government agencies. Article 99(2) of the Audit Regulations requires that the CCA report at least annually to the Legislative Assembly.

In recent years, the CCA has come under pressure to keep up with the demands of performance auditing in the Samoan public service, aside from budget auditing. To alleviate this pressure, the capacity of the Office of the CCA has been strengthened. With increases in funding from Government, the number of staff has grown from 25 in 2006 to 41 in 2008 with further plans on increasing the staff number to 50 officers. Increased staff numbers has helped in alleviating the backlog of cases in mid-2007, with the Office of the CCA now up-to-date with its auditing work.

The powers, functions and duties of the CCA are set out in the Constitution but do not enjoy the independence normally accorded to such office in other countries. When a CCA report is tabled in Parliament, it is analysed by the relevant Parliamentary Committee, before Parliament debates and discusses its findings. Except in 1994, this process was been complied with. The 1994 CCA report created controversy because of alleged widespread Government corruption, even among Cabinet ministers. The CCA report was referred to a Commission of Inquiry.

The Commission of Inquiry criticised the report on a number of points: lacking ‘balance and consistency’, addressing matters ‘outside the Controller and Chief Auditor’s jurisdiction and legitimate sphere of concern’, ‘citing of political figures, particularly Ministers on flimsily composed allegations or suggestions of wrongdoing’, disregarding ‘mechanisms laid down by law to determine the correctness or legality of certain actions by government officials’, and the CCA ‘improperly taking unto himself the function of declaring such actions as wrong or unlawful’.<sup>35</sup>

The Commission also confirmed ‘in the main, the irregularities outlined by the Controller and Chief Auditor’ although it did not agree with all of the dimensions of the events covered in the Report.<sup>36</sup> It also confirmed ‘the disturbing trends of dishonesty and unprofessional conduct uncovered by the Controller and Chief Auditor in some Departments and Agencies of Government’, considered it ‘appropriate to institute measures aimed at discouraging misconduct while developing public confidence in the institutions of Central Government, and concluded that Cabinet had ‘fundamental obligations, the observance of which is vital to the maintenance of democracy’.<sup>37</sup> It recommended ‘the introduction



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<sup>35</sup>As cited in *Ah Chong v The Legislative Assembly of Western Samoa* [1996] (Unreported, Court of Appeal Western Samoa, 27 August 1996).

<sup>36</sup>Ibid.

<sup>37</sup>Ibid.

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of legislation to establish a Code of Conduct for leaders in Government’, ‘that Government addresses directly the issue of inconsistent applications of the law and tax assessment procedures by the Department of Inland Revenue’, ‘the Public Service Commission carry out a thorough review of the entire upper structure of PWD’, and ‘that Government considers amending the *Public Trust Act 1975* with a view to clarifying the functions and regularising the activities of the Public Trust Office’.<sup>38</sup>

The Commission’s report led the Government to remove constitutional provisions that protected the independence of the CCA. The CCA, Su’a Rimoni Ah Chong brought a legal challenge against the Government for the way it handled the CCA’s report, and for the way it treated him. The case, *Su’a Rimoni D Ah Chong v The Attorney General* was heard in the Supreme Court of Samoa on 6 June 1997. The presiding Judge reserved judgment, and by the end of 2008, still has not issued one.

### iii) Protection of fundamental human rights:

Part II of the Constitution of Samoa provides for the protection of fundamental human rights: the right to life, right to personal liberty, freedom from inhuman treatment, freedom from forced labour, right to a fair trial, rights concerning criminal law, freedom of religion, rights concerning religious instruction, rights regarding freedom of speech, assembly, association, movement and residence, rights regarding property, and freedom from discriminatory legislation. The courts, in particular the Supreme Court, and the police are the primary institutions charged with enforcing these protections.

The protection of fundamental human rights sometimes conflicts with traditional practices, in particular the right of village councils to use banishment as a punishment for deviant behaviour. The cases of banishment discussed earlier impinge on freedom of movement and residence. However, it also breaches other rights because it is not applied solely to the offender. Often, the offender’s family members are also collectively punished, regardless of their culpability in the offence. Because of this, the punishment of banishment also impinges laws of natural justice, and rights such as right to personal liberty and fair trial.

Freedom of religion is also a point of tension between the national government and village councils. There are numerous examples where village councils have banished people for worshipping a religion that the village did not sanction.<sup>39</sup> The Constitution provides for freedom of religion, but the actual practice is inconsistent with the Constitution. In 2008, there were no reported cases of banishments based on religious belief. Religious faiths like the Baha’i Faith and Islam exist in Samoa. In 2007, some members of the public protested the visit to Samoa by a representative of the Church of Scientology.

<sup>38</sup>Ibid.

<sup>39</sup>‘Bible Study Group Jailed in Samoa’, *Samoa Observer* (Apia), 20 June 2000; Fili Sagapolutele, ‘Samoa Prison Releases 54 Bible School Students’, *Samoa News* (Apia), 2 August 2000; Mata’afa Keni Lesa, ‘Samoa Court Orders Bible Study Group to Leave Village’, *Samoa Observer* (Apia), 14 September 2000; ‘Worshippers Forced Out of Falealupo’, *Samoa News*, 12 June 2002; Radio Australia, ‘Samoa Villagers Forced Out for Going to the “Wrong” Church’, 2 May 2002 <<http://166.122.164.43/archive/2002/May/05-03-19.htm>> at 25 September 2008.

## Section 2:

### Principle 2 – Respect for Cultural Values, Customs and Traditions

#### i) Respect for cultural values, customs, traditions and indigenous rights and observation of traditional protocols in the exercise of power:

There are constitutional, legal and policy-based protections and institutions in place to safeguard local cultural values, customs and traditions. Article 100 of



the Constitution provides for 'a *matai* title to be held in accordance with Samoan custom and in the preamble it states:

Whereas the Leaders of Samoa have declared that Samoa should be an Independent State based on Christian principles and Samoan custom and tradition.

The particular way that *nu'u* or villages carry out their customs and traditions is also protected in the *Village Fono Act 1990*, which validates and empowers 'the exercise of power and authority by Village *Fono* in accordance with the custom and usage of their villages and to confirm or grant certain powers; and to provide for incidental matters'.<sup>40</sup> However, as discussed earlier, the laws have placed limitations on the kinds of traditional punishments that councils can use.

Customary land underpins customs, traditions, and indigenous rights expressed in the concepts the *fa'a Samoa* and *fa'amatai*.<sup>41</sup> Customary lands are held and controlled by *nu'u* (villages) and *aiga* (extended families); and a significant portion is attached to chiefly titles, or *suafa matai*, which are held and controlled by *aiga* and village councils. This control is a key foundation for the authority of *aiga* and village councils, and it is through this authority that they hold the right to determine issues of custom and tradition. Because of the importance of customary land, it is protected by the Constitution. Article 102 prohibits the alienation of customary land except under special circumstances. Article 109 entrenches Article 102, allowing for its amendment only by a two-thirds majority vote in a national referendum. All other Articles in the Constitution can be amended by a two-thirds majority vote in the Legislative Assembly. Other laws dealing with customary land include the *Alienation of Customary Lands Act 1965*, *Land and Titles Act 1981*, *Land Titles Investigation Act 1966*, and the *Taking of Lands Act 1964*.

Civil society organisations, some politicians and academics claim that the *Land Titles Registration Act 2008* will undermine customary land ownership, in particular, the Torrens systems where authority over family land will be transferred from the trusteeship of a *matai* title as is custom, to an individual - namely the individual who currently holds that title.<sup>42</sup> They argue that the registration process under this system is incompatible with traditional principles of land ownership, particularly the method for recording ownership. Under traditional principles, the chiefly title is registered as the owner. Under the Torrens system, ownership is recorded under the name of the person holding the chiefly title. The Government has strongly denied that customary lands would be brought under the Torrens Land System. However, its claims have been allegedly contradicted by members of the Ministry of Natural Resources and Environment (MNRE) involved in developing this Act. According to participants of a 2007 SUNGO-sponsored public forum on this issue, the Assistant CEO of MNRE at the time, was alleged to have said that the purpose was to introduce the Torrens Land System to customary lands.<sup>43</sup> The *Land and Titles Act 1981* allows for the registration of customary land and other land such as public land and freehold land. This was also confirmed by the Attorney General.<sup>44</sup>

Section 4 of the *Law Reform Commission Act 2008* also assists the review, reform and development of the laws of Samoa in order to promote Samoan custom and traditions, apart from social, economic and commercial development of Samoa, enhances the cultural aspects of Samoan society.



<sup>40</sup> *Village Fono Act 1990*, preamble.

<sup>41</sup> Iati Iati, 'Controversial Land Legislation in Samoa: It's not just about the land' Paper presented at the 2008 Devnet Conference, Wellington, 3-5 December 2008. <<http://www.dev-zone.org/downloads/IatiIatiLandLawSamoa.pdf>> at 10 February 2009; Tu'u'u Ieti Taule'alo, Sooi'alo David Fong and Patea Malo Setefano, 'Samoa Customary Lands at the Crossroads - Some Options for Sustainable Management', in *Samoa Environment Forum: Proceedings of the 2002 National Environment Forum* (2003) no. 4, 1, 5.

<sup>42</sup> 'Land Bill UnSamoa: SUNGO', *Samoa Observer* (Apia), 10 March 2008; 'Reject Land Bill SUNGO Urges', *Samoa Observer* (Apia), 7 April 2008; 'Pass Calls For Support on Monday', *Samoa Observer* (Apia), 10 April 2008. 'Samoa Party Didn't "Misunderstand Bill"', *Samoa Observer* (Apia), 17 May 2008; Alan Ah Mu, 'Bill Will Alienate Land, Anti-Land Bill Group Insists', *Samoa Observer* (Apia), 14 May 2008; Unasa L F Va'a, 'Polynesia in Review: Issues and Events, 1 July 2007 to 30 June 2008: Samoa' 21(1) *The Contemporary Pacific*, 175, 178-9; Radio New Zealand International, 'Recently Passed Land Registration Law in Samoa to be Challenged in Court', 3 July 2008.

<sup>43</sup> Iati Iati, *Civil Society, Political Accountability and Foreign Aid: A Samoan case study* (2009) 34.

<sup>44</sup> Interviews, Samoa 2009.





In June 2008, the Land and Titles Court demonstrated its authority over customary matters when it presided over a dispute concerning one of the highest *matai* titles in Samoa: Malietoa. On 11 May 2007, Malietoa Tanumafili II passed away, leaving the Malietoa title vacant. On 14 June, a clan from within the Malietoa family bestowed the title on Fa'amausili Moli Malietoa, the son of the late Malietoa. This was strongly disputed, with 52 petitioners going before the Land and Titles Court to plead either in favour of Fa'amausili's appointment or against it. On 20 June 2008, the Court ruled against the bestowal of the title, on the grounds that those who bestowed the title failed to observe an earlier verdict by the Court. On 14 December 1939, the Land and Titles Court ruled that the next holder of the title had to be decided by heirs from the three branches of the family descended from Malietoa Talavou, Malietoa Gatutasina and Malietoa Moli. The case also demonstrates the growing extent to which the Court adjudicates over customary matters. Although it ruled against the bestowal, it left it up to the heirs to determine the next holder, in keeping with its 1939 decision.<sup>45</sup>

### Section 3:

#### Principle 3 – Respect for Freedom of Religion

##### i) Respect for religious belief and practice:

The Constitution provides for the freedom of religion in Article 11. It states that 'Every person has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom either alone or in a community with others, and in public or private, to manifest and propagate his religion or belief in worship, teaching, practice and observance'. Whilst the Preamble states that Samoa should be based on Christian principles, Samoa also has people practising the Baha'i and Muslim faiths.

A number of Supreme Court rulings in 2002 and 2003 found that some village *fono* infringed on people's freedom of religion when they were banished for practising a religion not sanctioned by the village.<sup>46</sup> Although the court ordered that these people be allowed to return, many did not return home out of fear of being victimised.<sup>47</sup> There have been no reports in 2008 of individual's Constitutional rights being denied by the decisions of village *fonos*.

### Section 4:

#### Principle 4 – Respect for People on whose behalf Leaders Exercise Power

##### i) Proper use of official powers:

There were no reports or cases of officials being prosecuted for improper use of official powers in 2008. The controversial *Road Transport Reform Act 2008*, which proposes to change the driving side of the road however, raises issues about the proper use of official powers. Two public protest marches, attracting some 18,000 people, and several public meetings were staged in protest, as well as submissions against the Bill.<sup>48</sup> According to the Parliamentary Select Committee, which considered the Road Transport Reform Bill, there were 114 submissions, and 91

<sup>45</sup>Samoa Live, 'Court Says Malietoa Recipient Inappropriately Chosen', 20 June 2008; 'Court: 27 Parties Vie for the Malietoa Title', *Talamua*, 8 April 2008.

<sup>46</sup>Afamasaga Toleafoa, 'Religion in Samoa is Free, Court Rules in Overturning Banishment', *Samoa Observer* (Apia), 23 August 2002; Radio New Zealand International, 'Samoa Bible Group Ban Ruled Unconstitutional', 1 May 2003.

<sup>47</sup>Iati Iati, *Civil Society and Political Accountability in Samoa: A Critical Response to the Good Governance Agenda for Civil Society from a Pacific Island Perspective* (D Phil Thesis, University of Hawai'i at Manoa, 2007) 309-15.

<sup>48</sup>Anthony Upton, "'Save Us, Say No'", *Samoa Observer* (Apia), 15 April 2008; Cherrille Jackson, 'Samoa Government Unmoved by Right Hand Drive Protest', *Samoa Observer* (Apia), 18 December 2007; 'Land Bill Opponents Call for Referendum', *Samoa Observer* (Apia), 2 May 2008.



of these opposed the Bill.<sup>49</sup> Three members of the HRPP allegedly opposed the Bill publicly and in Parliament, and two allegedly resigned from the Party over this issue. Despite opposition from the public, the Road Transport Reform Bill was enacted by Parliament.

In June 2008, the Minister of Communication and Information Technology was alleged to have threatened members of the Audit Committee of the Samoa Broadcasting Corporation (SBC) for leaking an Audit report that revealed an unexplained loss of \$1,011,542 tala at SBC between 2006 and 2007. The report was published in the *Samoa Observer* on 22 June 2008. The Minister is alleged to have warned the members to refrain from leaking key decisions of the Board.<sup>50</sup> According to Section 18 of the *Samoa Broadcasting Corporation Act 2003*, 'The Directors, the Chief Executive Officer and all Corporation employees shall not communicate or reveal to any person any matter which becomes known to them as a Director, Chief Executive Officer or employee, except when required to do so by this Act'. They can only do so with the approval of the Board of Directors for the SBC or 'as required for the discharge of their duties as a Director of Chief Executive Officer or employee of the Corporation'. It is unknown whether the members who leaked the report had the authority to do so. The Minister's alleged outrage at the incident suggests that they did not. Section 17(3), however, states that the Corporations annual financial statements, the audit report on such statements and an annual report should be provided to the Minister in accordance with the provisions of the *Public Finance Management Act 2001* and the *Public Bodies (Performance and Accountability) Act 2001*. Section 17(4) states that the Minister shall then present these documents to Parliament in accordance with the same two Acts. Therefore, it is likely that the subject of the leaked report would have been made public eventually.

**ii) Honesty in dealing with the people and Parliament, with any misleading information corrected at the earliest practical opportunity:**

In the case of the *Road Transport Reform Act 2008*, it was to allow right-hand drivers to 'use their 'wise hand' to steer',<sup>51</sup> and to discourage the importation and use of 'gas guzzling' vehicles.<sup>52</sup> However, the Parliamentary Select Committee on the Road Transport Reform Bill stated that the Bill intended to give opportunity to the majority of people in the country to receive vehicles from relatives in New Zealand and Australia, and for the general public and business operators to import their vehicles directly from Japan, which it considered to be a cheaper source.<sup>53</sup>

**iii) Publicising information on legal wrongdoing, ethical lapses and false or misleading statements:**

In 2005, an Inter-Parliamentary Union (IPU) investigation into Samoan parliamentary proceedings was launched after the then SDUP Deputy Leader, Asiata Saleimoa Va'ai was suspended from Parliament because he complained about the Speaker's unfair treatment of members of the Opposition. The IPU report supported Asiata's claims of unfair treatment, appealed for his immediate reinstatement and noted the need for Government and Opposition to be given equal opportunity to voice their views.<sup>54</sup> In 2008, the issue remains unresolved. In March 2008, Va'ai, now the leader of SDUP, filed actions in court to challenge the constitutionality of key Government measures, including the way the Speaker of the House implements the Point of Order rule.<sup>55</sup>



<sup>49</sup>'We've Got RHD Report: Most Submissions Oppose Road Switch', *Samoa Observer* (Apia), 17 April 2008.

<sup>50</sup>'Revealed Loss of \$1 million by Samoa Broadcasting Corp.', *Samoa Observer* (Apia), 30 July 2008.

<sup>51</sup> Alan Ah Mu, 'Top Lawyer Laughs at PM's RHD Reasons', *Samoa Observer* (Apia), 29 November 2007.

<sup>52</sup> Mika Kelekolio, 'PM Tells Why RHD', *Samoa Observer* (Apia), 15 December 2007.

<sup>53</sup> *Samoa Observer* above n 49.

<sup>54</sup> Asiata Saleimoa Va'ai, 'One Party Dictatorship Under HRPP Control of Parliament', *Pacnews Digest*, 17 February 2009.

<sup>55</sup> Alan Ah Mu, above n 51.





The *Samoa Observer* newspaper has been a key watchdog on Government operations for over thirty years. It is often the source of controversial stories that reveal questionable Government conduct that the public would not otherwise know about. In June 2008, the *Samoa Observer* was notified by the Attorney General on the contents of two articles which were alleged to be defamatory and seditious. The Attorney General is alleged to have cited two pieces of legislation: the *Legislative Assembly Powers and Privileges Ordinance 1960* on defamation and the *Crimes Ordinance 1961* on sedition to which these articles purported to invoke.<sup>56</sup>

**iv) Giving priority to official duties over private interests:**

There were no reported cases in 2008 of leaders not giving priority to official duties over private interests.

**v) Performance of public duties uninfluenced by fear of personal cost or any hope of personal benefit:**

There were no reported cases in 2008.

**vi) Public and private conduct that does not lead to a conflict of interest, or in which the fair and impartial exercise of duties might be compromised:**

Please refer to the discussion of the 2008 gun-smuggling case involving the Samoa Police Commissioner.<sup>57</sup>

**vii) Ensuring that public facilities are used only for public purposes and not for personal purposes unless authorised by legislation or by a public decision of Cabinet:**

There were no reported cases relevant to this in 2008.

**Section 5:**

**Principle 5 – Respect for Members of the Public**

**i) Treatment of members of the public honestly and fairly with proper regard for their rights and obligations:**

The controversy and opposition from the public over the *Road Transport Reform Act 2008* raises issues about whether members of the public are treated with proper regard for their rights and obligations. During a protest march, a protestor was allegedly manhandled by police for ‘simply standing up’. In the same protest march, police confiscated a placard mentioning China and another that read ‘Change the Prime Minister’.<sup>58</sup> The rationales provided by the Assistant Police Commissioner, Papali’i Li’i Masipa’u for these acts raise significant questions about what constitutes official powers, and whether they were breached on these occasions. In a newspaper interview, Masipa’u explained that the Commissioner of Police granted a permit for the protest march, but set specific conditions on it. In relation to the alleged manhandling incident, he stated that one of the conditions was that participants had to obey the lawful directions of police officers. He noted that a peaceful march means sitting down and remaining peaceful and implied that the protestor at the centre of the incident might not have done this. He also noted that the conditions prohibited offensive placards and those which incited violence and disorder. He considered the messages concerning China and

<sup>56</sup>AG Warns Samoa Observer’, *Samoa Observer* (Apia), 29 June 2008; Unasa L F Va’a, ‘Local Government in Samoa and the Search for Balance’, in Elise Huffer, Asofou So’o (eds), *Governance in Samoa: Pulega I Samoa* (2000), 197; Radio New Zealand International, ‘Parliamentary Delegation Advises Samoa to Reinstate Deputy Opposition leader to Parliamentary’, 8 August 2005.

<sup>57</sup>See above Section 1, ii, a, para 3.

<sup>58</sup>Alan Ah Mu, ‘Police Conduct Defended’, *Samoa Observer* (Apia), 17 April 2008; Anthony Upton, ‘Allegedly “Manhandled” Protestor Speaks Out’, *Samoa Observer* (Apia), 19 April 2008; ‘Police Under Scrutiny’, *Samoa Observer* (Apia), 16 April 2008.



the Samoan Prime Minister as being in breach of these conditions.<sup>59</sup> There was no official government response to Masipa'u's handling of this matter, which could mean they were ignorant of it, did not care, or endorsed it. If drawing attention to China and calling for a change of leadership are considered offensive and as incitement to violence and disorder, then the police were using their official powers lawfully, though it would raise serious questions about what the parameters of freedom of speech are. However, if publicly raising these issues is lawful, then the police did not use their powers properly in this case.

## Section 6:

### Principle 6 – Economy and Efficiency

The foundation for economic growth in Samoa is limited. Its economy is driven by tourism, remittances, fisheries, construction, and to a lesser extent, agriculture and small scale manufacturing. Only 12 per cent of the total population are engaged in formal paid employment, with approximately two-thirds of the potential labour force engaged in subsistence village agriculture. The agricultural base is narrow; the main food crops are coconuts, breadfruit, bananas, cocoa and taro.<sup>60</sup> Given this situation, prudent and creative economic policies are imperative.

In 1996, the Samoa Government launched a reform programme focussed on developing the private sector.<sup>61</sup> The Government's reforms have been adjudged successful in some circles.<sup>62</sup> According to the Asian Development Bank (2008),<sup>63</sup> over the past ten years, the reforms have 'rationalised the trade regime, achieved fiscal stability, reduced inflation, and begun to reduce the role of government' and the result has been 'sharply improved economic growth'. A joint project between the Governments of Samoa, Australia, and New Zealand notes 'privatisation of government services and State-owned enterprises, tax, tariff and trade reforms, adoption of Value Added Goods and Services Tax (VAGST), liberalisation of the financial sector and foreign investment, environment, realignment and institutional strengthening of government agencies and introduction of a strategic planning and budgeting framework' have been credited for Samoa's success.<sup>64</sup> The signs, however, are not all positive. There is an estimated 20 per cent of Samoans living below the basic needs poverty line and eight per cent below the food poverty line.<sup>65</sup> The growth in GDP has dropped significantly since 2005, in particular between 2005 and 2006 where GDP declined from 5.2 per cent to 2.6 per cent. Samoa's macroeconomic performance is highly vulnerable to global economic shocks and natural disasters. Cyclones in 1990, 1991, and 2004 caused severe economic setbacks.<sup>66</sup>

Recent reforms include the corporatisation of state-owned enterprises, Government ministries such as the Ministry of Works, Transport and Infrastructure contracting out services, and selling the international routes of the national airline, Polynesian Airlines.<sup>67</sup> According to the ADB, '[m]ost of the necessary macroeconomic reforms have now been completed'.<sup>68</sup>

The ADB noted that a number of constraints still need to be addressed. First, the state plays too large a role in the economy and raises the cost of doing business. In particular, the state accounts for over 40 per cent of Samoa's GDP and owns



<sup>59</sup>Ibid.

<sup>60</sup>New Zealand Ministry of Foreign Affairs and Trade, *Samoa* (2008) New Zealand Ministry of Foreign Affairs and Trade <<http://www.mfat.govt.nz/Countries/Pacific/Samoa.php>> at 5 January 2009.

<sup>61</sup>Treasury Department, Government of Samoa, *A New Partnership, a Statement of Economic Strategy 1996-1997* (1996); Treasury Department, Government of Samoa, *Strengthening the Partnership: State of Economic Strategy 1998-1999* (1998); Treasury Department, Government of Samoa, *Partnership for a Prosperous Society: Statement of Economic Strategy 2000-2001* (2000).

<sup>62</sup>AusAid, 'Samoa' (2008) AusAid <<http://www.ausaid.gov.au/country/country.cfm?CountryId=18>> at 15 May 2009.

<sup>63</sup>Asian Development Bank, Samoa: *Consolidating Reform for Faster Economic Growth 2006-2010*, (2008) <<http://www.adb.org/Documents/Reports/PSA/SAM/PSA-SAM.pdf>> at 15 October 2008.

<sup>64</sup>Governments' of Samoa, Australia and New Zealand, *Joint Samoa Program Strategy 2006-2010*, (2008) <<http://www.nzaid.govt.nz/library/docs/samoa-jpsps-prog-strategy-2006-2010.pdf>> at 15 November 2008.

<sup>65</sup>AusAid, n 64.

<sup>66</sup>New Zealand Ministry of Foreign Affairs and Trade, above n 61.

<sup>67</sup>Ibid.

<sup>68</sup>Asian Development Bank, see n 65.





a significant number of enterprises, the quality of infrastructure is poor and raises the costs of doing business. Many state-owned enterprises are inefficient. Electricity supply is unreliable and expensive. The community services obligations of state-owned enterprises are not fully known. Second, property rights are not well defined because of weaknesses in the land leasing framework. Third, financial market deepening is hampered by problems such as weak property rights, the lack of a collateral framework, and difficulty in collecting debts. Fourth, commercial law reform is incomplete. Fifth, existing policies are poor in promoting Samoa's comparative advantage in niche product agriculture. Sixth, there are insufficient processes in place to attract foreign direct investment. Seventh, there is insufficient formal engagement between the Government and the private sector, in particular the Chamber of Commerce.<sup>69</sup>

The *Land Titles Registration Act 2008* addresses issues with ill-defined and weak property rights. It provides for the establishment and maintenance of a register of title to land, ownership of interests in land by registration, the recording in the register of information in respect of transactions with land, and access to information recorded in the register.

**i) Ensuring that public resources are not wasted, abused, or used improperly or extravagantly:**

The *Water Resources Management Act of 2008* seeks to provide for the management, protection and conservation of the water resources of Samoa. Section 6 gives the state control over all water resources, but stipulates that nothing in the Act 'affects any rights of customary ownership of land in Samoa' and that no action may be taken under the Act which deprives 'existing rights to land and resources held in accordance with the customs and traditions of Samoa'. The Act provides for the Ministry of Resource and Environment to implement the Act and manage the water resource (s.9). It gives the Minister of Natural Resources and Environment considerable powers to govern water usage and consumption, exemplified by Section 10(g), which gives the Minister the power to 'regulate and control the utilisation of the water resource, and any activity that may affect the quality of water or the quantity of water supply'. The Minister may also prescribe environmental standards and public health standards related to the taking of water and any activity that may affect water quality (s.14). The Minister's powers provided under Section 10 may be delegated to the Chief Executive Officer or any other officer of the Ministry. The Act restricts people from taking water unless they hold a licence or permit issued by the Ministry. It provides protections to anyone performing a function under its authority, stating that such a person 'shall not be liable for any loss or damage, or be subject to any criminal prosecution, in relation to the reasonable exercise of that power or the performance of that function' (s.44).

Samoa experienced electricity supply problems near the end of 2008. In response, a power rationing scheme was put into effect. The General Manager of the Electric Power Corporation attributed the problem to a prolonged dry spell that reduced the water supply for the hydro generators, and which caused the diesel generators to be overworked. After one diesel generator failed, power rationing schedules were implemented, but these were revised when another generator also failed. The General Manager also criticised the cultivation of catchment areas which

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<sup>69</sup>Ibid.



reduced the water supply for hydro generation. Critics reportedly blamed the problems on a lack of proper maintenance of equipment, and lack of foresight in anticipating weather conditions and equipment failure.<sup>70</sup> The Chamber of Commerce referred to the scheme as ‘an irrational approach’, and an indication of a lack of appropriate planning by the Government.<sup>71</sup> The Prime Minister reportedly said that \$100 million loan from the ADB and Japan had been approved in 2007 for the improvement of the power supply, and there were plans to build a new power station at Fiaga, an inland location on the island of Upolu.<sup>72</sup>

A public sector reform program which began in the mid-1990s aimed at encouraging the development of the private sector is continuing in 2008.<sup>73</sup>

## Section 7:

### Principle 7 – Diligence

#### i) Exercise of proper diligence, care, and attention:

In May 2008, the Minister of Finance, Niko Lee Hang announced a large budget deficit of \$104,173,346 tala.<sup>74</sup> The overall budget deficit for the 2006/2007 and 2007/2008 financial years were \$32,907,177 tala and \$30,302,010 tala respectively.<sup>75</sup> The Budget coincided with the first year of the *Strategy for the Development of Samoa 2008-2012*, which presents Samoa’s development vision, medium-term national development goals, and the strategies to be implemented during the four financial years 2008/09 to 2011/12. They include sustained macroeconomic stability, private sector led economic growth and employment creation, improved education and health standards and community development and social harmony, and improved governance, environmental sustainability and disaster risk reduction.<sup>76</sup> There is an evident relationship between the Government’s development plans and the deficit. According to Lee Hang, the deficit was due to ‘a large injection in capital spending towards development projects in public and social infrastructure, including large education and health investments’.<sup>77</sup> The Government tried to allay potential fears over the size of the deficit, noting that it was being financed from soft loans of \$105.4 million tala, in particular borrowings from Samoa’s international development partners ‘on highly concessional terms’.<sup>78</sup> In order to ensure that the Government’s overall expenditures did not exceed its overall receipts (inclusive of borrowings), Lee Hang proposed a ten per cent increase on the rates of excise on soft drinks, alcoholic beverages and cigarettes, which he expected to generate about \$5 million tala in revenue.

In October, an electricity pole fell on a car of a Samoan couple visiting from Australia. The husband was killed and his wife left paralysed from the neck down.<sup>79</sup> Efforts to establish which Government department was responsible for the pole were unsuccessful. However, it was alleged to be either of two Government owned corporations: Electric Power Company, and SamoaTel.<sup>80</sup> EPC donated \$20,000 tala towards the funeral of the deceased. The pole was reportedly rotten at the base. The Minister of Electric Power Corporation was quoted saying: ‘To me there is no point in seeking who owns the pole because it won’t return EPC’s money’.<sup>81</sup>

In December 2008, Deputy Prime Minister, Misa Telefoni, reportedly launched an investigation into the pricing of several food imports with the intention of



<sup>70</sup> Alan Ah Mu, ‘Patience, PM urges’, *Samoa Observer*, (Apia), 9 November 2008.

<sup>71</sup> ‘Power Cuts Ominous: Chamber’, *Samoa Observer* (Apia), 12 November 2008.

<sup>72</sup> Alan Ah Mu, see n 71.

<sup>73</sup> Treasury Department, Government of Samoa, see n 62.

<sup>74</sup> Treasury Department, Government of Samoa, 2008/2009 *Budget Address* (2008) 5 <<http://www.mof.gov.ws/publish/budgetspeech.shtml>> at 16 November 2008.

<sup>75</sup> Treasury Department, Government of Samoa, 2006/2007 *Budget Address* (2006) <<http://www.mof.gov.ws/publish/budgetspeech.shtml>> at 15 November 2008; Treasury Department, Government of Samoa, 2007/2008 *Budget Address*, (2007) <<http://www.mof.gov.ws/publish/budgetspeech.shtml>> at 15 November 2008.

<sup>76</sup> Treasury Department, Government of Samoa, see n 75.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> ‘Husband Killed, Wife Paralysed’, *Samoa Observer* (Apia), 30 September 2008.

<sup>80</sup> ‘Grieving Family Questions EPC’, *Samoa Observer* (Apia), 4 October 2008; ‘EPC Boss Speaks Out’, *Samoa Observer* (Apia), 6 October 2008.

<sup>81</sup> ‘Owner of Fatal Pole Irrelevant’, *Samoa Observer* (Apia), 28 October 2008.



determining fair prices. This was in response to rising food prices. There was a suggestion, however, that the Government itself was culpable in the prices rises. The Chamber of Commerce is reported to have supported the determination of fair pricing so long as it included services provided by Government corporations and State-owned enterprises. Moreover, they noted that costs of services at the Ports Authority, Electricity Power Corporation (EPC), and Samoa Shipping Services had risen, and was driving up the prices of goods, particularly on the island of Savai'i.<sup>82</sup>

**ii) Always seeking to achieve high standards of public administration:**

There were no reported cases in 2008.

**Section 8:**

**Principle 8 – National Peace and Security**

**i) Promotion of peace, security and harmony:**

Samoa has entered into various regional and international arrangements to promote national peace and security. Samoa is a member of the Pacific Islands Forum. As part of this body, Samoa has contributed to the Regional Assistance Mission to the Solomon Islands (RAMSI). At the national level, the *Police Powers Act 2007* allows the Government to call in visiting specialists for purposes they consider to be necessary, in particular, national peace and security.

In April 2008, a brawl erupted amongst students from several schools, which resulted in injuries to a police officer and several students. One student was admitted to the intensive care unit at the national hospital. She was later transferred to New Zealand for further treatment because her injuries were too serious to be treated in Samoa. Her expenses were paid for the by the Government of Samoa. Several businesses premises were also damaged. The brawl was ignited by tensions over a rugby tournament. A number of students were charged. The Prime Minister called a special meeting of school leaders to find a solution, and later banned inter-school sporting competitions.<sup>83</sup>

**ii) Refusal to give or obey an illegal order to use force against another citizen:**

There were no reported cases in 2008.

**Section 9:**

**Principle 9 – Respect for Office**

**i) Exercise authority and interact with people in a manner that is open, transparent, accountable, participatory and decisive but fair and equitable:**

The Opposition in the Legislative Assembly alleges that the Opposition is often prevented from extensively questioning the Government on its policies. In 2008, the Leader of the SDUP commenced legal proceedings against the Government on this matter. The SDUP Leader alleges that the Speaker allowed the Prime Minister unrestrained opportunities to deliberately interrupt MPs who are speaking, and that the Government used Unforeseen Expenditures without informing Parliament afterwards of what the funds had been spent on.<sup>84</sup> At the end of 2008, the case was still ongoing.

<sup>82</sup>Chamber Blames Govt Service Costs for High Cost of Living', *Samoa Observer* (Apia), 20 December 2008.

<sup>83</sup>TVNZ, 'Samoa Teen Burned in School Brawl', TVNZ, 11 May 2008 <<http://tvnz.co.nz/view/page/536641/1774938>> at 1 June 2008; Radio Australia, 'Samoa College Pulls Out of Inter-School Sports Because of Violence', 2 April 2008

<<http://www.radioaustralia.net.au/pacbeat/stories/200904/s2533474.htm>> at 24 September 2008; Radio New Zealand International, 'Sixty Four Samoa College Students Deny Brawl Charges', 7 April 2008.

<sup>84</sup>Alan Ah Mu, 'Legal Challenge of PM's appointment adjourned', *Samoa Observer* (Apia), 8 April 2008.



On the Inquiry into the Police Commissioner’s involvement in gun smuggling, the Government imposed media restrictions on reporting on and about the Inquiry.<sup>85</sup> The media was not allowed to report on anything except to disseminate the media releases prepared by the Office of the Attorney General on behalf of the Commission. The media was prohibited from reporting or commenting on or providing details of evidence, witnesses, submissions or any other detail of or information from the hearings or the proceedings of the Commission outside of or beyond that provided in the press release.<sup>86</sup>

**ii) Seek to strengthen the integrity of a leader’s Office and its effectiveness:**

There was no report in 2008 on this matter.



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<sup>85</sup>Mata’afa Keni Lesa, ‘Samoa Court Orders Bible Study Group to Leave Village’, *Samoa Observer* (Apia), 14 September 2000.

<sup>86</sup>Ibid.

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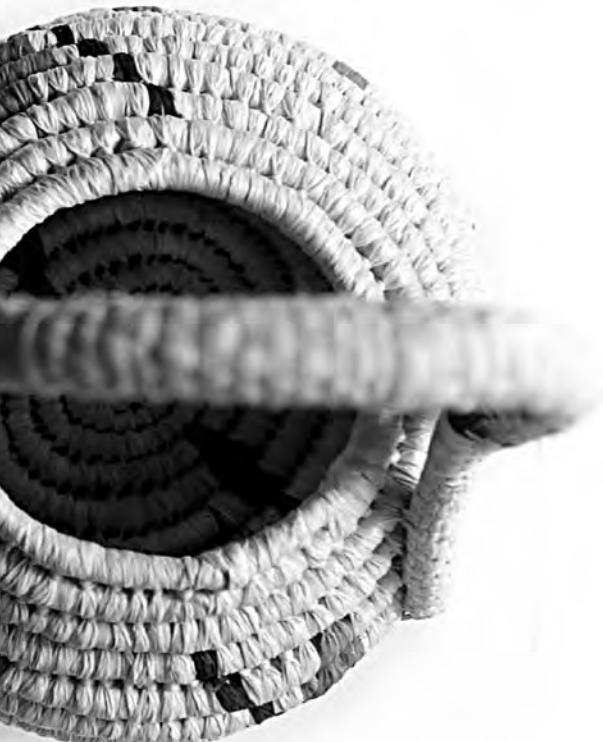
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