

AMNESTY INTERNATIONAL PUBLIC STATEMENT

Date ASA 45/2474/2020

SAMOA: STATE OF EMERGENCY EXPLOITED TO RUSH THROUGH LAWS THAT WEAKEN JUDICIARY

Samoa's government has proposed a suite of new draft laws that will undermine the rule of law and the independence of the judiciary, thereby weakening human rights protection in the country. The Constitutional Amendment Bill 2020, Judicature Bill 2020 and the Land and Titles Court Bill 2020 would create a separate and distinct land courts system; remove the right to appeal cases to the Supreme Court; and establish supremacy of customary law (rather than human rights protections under Samoa's Constitution) for all land matters.

Amongst other things, the proposed new laws erode the rule of law and enable the executive to arbitrarily dismiss judicial officers without cause or due process. They also seek to establish the paramountcy of customary law, an issue which is likely to increase tensions and disputes in local communities by eroding the checks and balances on customary law. Moreover, the draft laws exclude human rights law from applying in the Land Titles Court, a move that fails to recognize the link between land and the right to adequate housing and livelihoods. Pacific Islander communities are particularly dependent on land to support and supplement their livelihoods and access to food.

Samoa's Constitution already has strong recognition and protection of customary law and human rights, and these two issues should not be seen as mutually exclusive. Effectively, the laws would enable a Village Fono (Village Council) to banish and forcibly evict villagers (which are serious human rights violations) including on a discriminatory basis, without consideration of constitutionally protected human rights or the right to appeal to the Supreme Court. An example of the importance of human rights protections on village land decisions can be found in the Samoan case of *Lafaialii v Attorney-General* [2003] WSSC 8. In this case a number of villagers started a bible group, initially with the approval of the Village Fono. As the group expanded its religious practices and membership, the Village Fono tried to banish villagers and stop them practicing their new faith. The Supreme Court stepped in to uphold the right to freedom of religion by overturning that decision and upholding constitutional rights. The newly proposed laws would remove the ability for the Land Courts to consider human rights in their application of customary land laws, and the right of appeal to the Supreme Court, leaving no avenue for redress for those denied access to land or shelter as a result of peacefully exercising their rights.

Born out of a misperception that customary rights (enshrined in Samoa's Constitution) are not adequately protected, past reviews of Samoa's land courts system have asked: Why are individual rights more powerful than Village Fono decisions? These views overlook the indivisible and universal nature of human rights and have led to these problematic draft laws.

Not all in Samoa support this approach, and the new Bills have received widespread criticism from the Law Society,¹ the judiciary² and other eminent legal experts both within Samoa and internationally. Justice Kirby, on behalf of the International Bar Association Human Rights Institute, has said the proposed laws alter the court system and undermine the rule of law and judicial independence – essential pillars to uphold and protect human rights.³

The draft laws come after a number of court proceedings that appear to have frustrated the executive branch of government – including a personal case of criminal defamation brought by the Prime Minister and other land cases that have upheld human rights.

The state of Samoa has an obligation to protect the right to a fair trial by upholding the rule of law and independence of the judiciary, in accordance with the UN Basic Principles on Judicial Independence and the International Bar Association and the IBA Minimum Standards of Judicial Independence.

¹ Sina Retzlaff, *Samoa Law Society says bills fundamentally and technically defective*, Samoa Global News, 24 April 2020, available at: <https://samoaglobalnews.com/sls-bills-fundamentally-technically-defective/>

² Radio New Zealand, *Judges warn Samoan government about judicial reform*, 13 April 2020, available at <https://www.rnz.co.nz/international/pacific-news/414135/judges-warn-samoan-govt-about-judicial-reform>

³ International Bar Association, *IBAHRI condemns Samoan Government's proposed legislation as a disruption of the rule of law*, Press Release, 18 May 2020, available at <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=bb5ffd28-869e-4235-90d6-b2a1ded8052a>

BACKGROUND

These laws were introduced into parliament on 17 March 2020, the day before Samoa declared a State of Emergency due to the Covid-19 global pandemic. The laws have also been proposed whilst the posts of Attorney General and the Chief Justice of the Supreme Court are vacant.

Samoa has no confirmed cases of Covid-19; however the continued operation of Emergency powers means that restrictions on freedom of peaceful assembly and freedom of movement within the country impact the ability to have an open public consultation on the newly proposed laws. The global health pandemic must not be exploited to rush through laws that undermine human rights protections in Samoa.

Samoa has been governed by the Human Rights Protection Party for more than 40 years, since independence from New Zealand in 1962. Samoa has a Westminster system of government, and a common law legal system. Samoa has a Head of State who is appointed by Parliament for a fixed 5 year term and an elected Prime Minister. All members of Parliament must hold a Matai title (a village title that often represents the head of a family or village).

More than 80 percent of land in Samoa is held under a customary title system where the title is held by the Matai, who have authority over customary usage of the land. Samoa's population is around 96% Samoan, with the remaining people living in the country being New Zealand or other nationals.