



Analysis #12

April 2022

# The Rule of Law and an Independent Judiciary in Samoa

Taulapapa Brenda Heather-Latu<sup>1</sup>

## Introduction

The Independent State of Samoa is a small island state located beneath the flightpath roughly half way between New Zealand and the Hawaiian Islands in the Pacific Ocean, comprising 190,000 people of Polynesian ethnicity spread over two large and two smaller islands. Samoa's people have long since boasted about the strength of its unique culture and near absolute Christian observance, and were first in the Pacific region to declare independence from colonial control in 1962.

The strength of the 'fa'a samoa' (Samoan custom and traditions including rituals, considerations and observances) was well reflected in the acceptance by the United Nations Organization when facilitating Western Samoa's transition to self-governance in the mid-1950s to the early 1960s. Back then, the UNO allowed the new nation state to limit its elected representatives to those with traditional chiefly 'Matai' titles or Samoans of European descent, as well as suffrage by those two groups, which was less than the ideal of universal suffrage encouraged at the time. The limitation on representation has remained to this day, meaning that only chiefs/matai may stand and be elected as parliamentary representatives, although voting has been extended to all citizens over the age of 21 years.

The concept of being 'mua i malae' in the Samoan language, which when translated means: 'being first to achieve something or reach a goal', has been a national mantra for Samoan leaders in the Pacific region since independence, as the country has placed a strong focus on being the first Pacific state to innovate, to achieve, to adopt and to try new policies and strategies in order to advance its own interests, often before its neighbouring states and territories. To meet those goals, Samoa has actively sought and requested regional and international aid, grants and loans, as well as the support of bi- and multilateral development partners.

---

<sup>1</sup> Taulapapa Brenda Heather-Latu - Partner and Legal Consultant, Latu Lawyers; Honorary Consul for Great Britain and Northern Ireland to Samoa

## Political and Legal System

The Constitution of the country, enacted at independence on 1 January 1962, was the subject of national consultations conducted in 1956 and 1960, drawing together the traditional nobility, cultural leaders and orators, together with the local captains of commerce who were often the descendants of foreign traders and adventurers.

Of considerable prominence (during the recorded discussions of these Constitutional conventions) was the overriding concern that the country's unique customs and traditions (through its system of chiefly order and cultural observances) be a defining touchstone in the Constitution, together with the need to recognise Christianity in Samoan society.

To direct its future, Samoa adopted the Westminster system of representative democracy, with three year electoral terms, choosing as its representatives chiefs and orators from the traditional geographic districts of the island state. There are also seats reserved for prominent, mixed heritage leaders who contributed to the commercial life of the country.

## One Party Dominance

Since 1981, one party has dominated the political landscape in Samoa. Formed after a period of intense instability from 1980 to 1981, the Human Rights Protection Party (HRPP) has been in Government for 40 years under two Prime Ministers: Tofilau Eti Alesana and Tuilaepa Sailele Malielegaoi. The latter was first Deputy Prime Minister, and then held the position of Prime Minister from 1998 to 2021, making him one of the longest serving prime ministers in the Commonwealth and the world.

HRPP's political dominance came to an abrupt end at the general elections held in April 2021, after the 52 seat Parliament comprising 46 HRPP members and 6 others, completed their 5-year term in December 2020.

Much to the surprise of the incumbent HRPP administration, a new party formed less than a year before the general elections called Fa'atuatua I Le Atua Samoa ua Tasi [translated as Samoa United as One in Faith to God]. More commonly known as the FAST Party, the Party received 25 votes which - together with the vote of an independent member of parliament - was able to garner a one seat majority to claim the Election.

What followed from April 2021 until the final Court of Appeal decision confirming the legitimate government was a period of extraordinary legal and political events. They were fuelled by the refusal of the former Prime Minister to relinquish his grip on political power and included a number of unique events:

- a 'dead of night' administrative appointment of an additional female HRPP MP by the Electoral Commissioner, when it was clear that the independent member was due to announce his support of the new FAST Party, thus effectively creating a constitutional 'deadlock' of equal votes in Parliament 26-26, an appointment which was later declared unlawful by the Supreme Court;
- another late night declaration by the country's Head of State (acting on the advice of the Caretaker administration) 'voiding' the results of the general election and calling for a new election in two weeks, also later declared unlawful by the Supreme Court;
- the prolonged refusal by the Head of State (acting on advice) to convene Parliament in order to allow the elected members to determine the party with the majority of members' votes;

- a proclamation issued by the Head of State (acting on advice) to convene Parliament on 24 May 2021, which was then 'voided' by a further proclamation made a few days later;
- the first Parliamentary session (including the swearing in of members of the FAST Party as members of parliament and the appointment of the Speaker of the Legislative Assembly as well as the first female Prime Minister and 12 members of Cabinet) took place under a tent erected outside Parliament House, because the latter was locked by the Clerk of the Legislative Assembly, at the direction of the former Speaker;

The political deadlock was finally broken by the Court of Appeal presided over by the Chief Justice, which declared the 'tent' swearing in lawful. So four months after the general election and intense times, the FAST Party finally took up its role as the government of the day, led by Samoa's first female Prime Minister, the Honorable Fiame Naomi Mata'afa, the daughter of Samoa's first ever Prime Minister, the late Honorable Fiame Mata'afa Faumuina Mulinu'u II, and his wife, the Honorable Lauulu Fetauimalemau Mata'afa, also a former member of parliament.

### **Threads from the Present**

Multilateral donors would often remark that Samoa's extended period of political stability under HRPP was the foundation for its many achievements and milestones. Internationally, Samoa also played a leading role representing the Pacific in international, regional and Commonwealth events for the last two decades. And whilst it is true that the development of public infrastructure, including universal access to electricity, water and public transport, and the embrace of advances in public and financial sector reform, technology and innovation may be attributed to HRPP, their response to a free and fair election detracted from that history of achievement.

Some would observe that longevity in political leadership, and the concentration of public power and resources in the hands of one Leader (the former Prime Minister), would almost inevitably end 'in tears', and such was the case in Samoa.

Over the past two decades, the near total control within Parliament, Cabinet and the public sector by the former Prime Minister was mirrored by the weakening of the independence of the public sector and public servants. Appointments to public offices, the boards of public companies and constitutional roles were no longer left to independent bodies, but were pulled back to the hands of a Cabinet distinguished by the sober, unquestioning and silent obedience by all its members to the Leader. Samoa was under the control of one of the Pacific's 'strongmen'.

Nepotism, favouritism, and an increasing 'opaqueness' in decision making in the use of public funds and resources was matched by a public service offered personal benefits for loyalty. These benefits were perceived as coming from the Leader's own benevolence. The resulting sense of 'personal entitlement' in the public service, and close emotional links to the former Leader, have created obstacles to the ability of the new government to govern, as most senior public 'servants' stood at the heart of opposition to the new administration.

Perhaps democracy's greatest manifestation in Samoa in 2021 was the ability for voters to change the path the country had been treading for 40 years, by the conduct of free and fair elections and the access to, and the use of, an independent judiciary.

In short, the people of Samoa chose FAST over HRPP in the 2021 general elections by the slimmest of margins – just one vote. However, reflecting the change in national mood and the outcome of subsequent electoral petitions, FAST now have 31 seats and HRPP 20 seats in Parliament.

The long standing incumbent administration (the caretaker government in the interregnum) employed a range of strategies to prevent the FAST Party from taking office. Public officers and office holders were placed under enormous pressure by the incumbent government to obey their directions and by the new party and the public to act independently and simply do their jobs 'without fear or favour' in the struggle to govern. The former Prime Minister enticed and directed public officials to exercise their powers to prevent and disrupt the accession to power of the duly elected administration.

### **The Independent Judiciary**

The solitary institution which prevented Samoa's slide to autocracy was the country's Judicial branch of Government which remained independent and immune from improper influence. The Chief Justice, the Honorable Satiu Simativa Perese, the Supreme Court and its esteemed Judges, were prevailed upon (in the period after the general elections) to determine a range of constitutional matters never previously decided, and to define the parameters of government authority and legitimacy, in a country riven by an increasingly sharp political rhetoric from the previous administration. The Judiciary discharged their important duties with diligence, grace and honour.

To say the country was 'saved by the law' would neither be too dramatic nor too evocative, the public were transfixed by the multiple court hearings, awaited their outcomes with anxiety and expectation, they knew the rulings from the Court would direct the country's future prospects. Never has 'the Constitution' figured so prominently in daily life, nor have legal arguments been discussed so heatedly around the dinner tables and kava bowls of this small land.

If there is a prevailing thread in what Samoa has experienced last year, then it is the unquestionable need, indeed absolute imperative, for society to support and strengthen the institutions and high principles which define the lives of free men and women where:

- the value of a vote is powerful and transformative;
- the Rule of Law protects the governed and limits the governors;
- an independent and well-resourced Judiciary serves and protects the people;
- a free press supports liberty and freedom;
- democratic values are the foundation stone for life, liberty and freedom;
- courage and integrity lie at the heart of ethical and successful leadership;
- Faith in God and seeking His Grace and Mercy upon all His people, offers hope and purpose in all we do.

Samoa has emerged from its recent malady of instability and restlessness, with its core values battered, yet intact, due to the emerging and powerful leadership of those who have dreams and plans to prosper and not harm the country and its people.

If democracy as an ideal, a process and a destination prevails, then our freedom, our choices and the opportunity to enhance our lives and the lives of others will be assured.

## About the Author

---

### Taulapapa Brenda Heather-Latu

Brenda Heather-Latu is a New Zealand educated and trained barrister and solicitor who has practiced law for 35 years. Initially based in Wellington/New Zealand (where she was a Crown Counsel with the Crown Law Office and a government legal adviser), Brenda later on migrated to Samoa where she worked for the Samoan Government for 10 years, including 9½ years as Samoa's longest serving Attorney General.

Since 2007, Brenda has worked in private practice with her husband Matafeo George Latu (Latu Lawyers) in Apia/Samoa, specialising in commercial, constitutional and public law. She has also a range of other interests including local and regional legal consultancies, and has worked as a Trainer with the Samoa Institute of Directors since 2005. She is also a Regional Adviser for the newly established Australia Pacific Security College 'PSC' based at the Australian National University in Canberra/Australia.

Brenda has had a particular interest in ethical and effective leadership for many years and further expanded that interest after being nominated by the Rt Hon Helen Clark, the then Prime Minister of New Zealand, and being selected by the Council of World Women Leaders, as Samoa's representative in the first group of Pacific women to attend the Kennedy School of Government's Executive Program called 'Leaders in Development', held at Harvard University in 2002.

She chairs the Pacific Leadership Foundation which runs the Emerging Pacific Leaders Dialogue (EPLD) every four years (since 2006) and has been a Board member of the Commonwealth Study Conference (CSC) (Australia); the Association of Emerging Leaders Dialogues (International) and Leadership Samoa, a charitable trust based in Samoa.

In 2014, Brenda was bestowed with the chiefly title of 'Taulapapa' from the village of Fogapoa, in the District of Safotulafai, on the Island of Savai'i.

In the same year, she was appointed the Honorary British Consul to Samoa and reports to the British High Commissioner to Samoa.

Brenda is a Director of Habitat for Humanity (New Zealand) based in Auckland/New Zealand and a Director of the International Centre for Democratic Partnerships 'ICDP' based in Sydney/Australia.

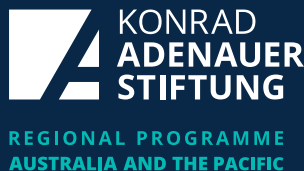
She is a serving as Judicial Officer for World Rugby and currently chairs Oceania Rugby's Judicial Committee.





## About the Periscope Series

'Periscope' is the Occasional Analysis Paper/Brief series of the Konrad Adenauer Foundation's Regional Programme Australia and the Pacific. Just like the real-world sighting instrument, Periscope is meant as a lens to broaden our insights - taking in views from different angles. This way, it seeks to bring together perspectives from Germany, Europe, Australia, New Zealand and the Pacific region to augment our understanding of contemporary issues and help address the pressing problems of our time. The Periscope Series covers topics from the area of foreign and security policy, cybersecurity, terrorism/counter-terrorism, energy policy, rule of law, socio-economic matters and development policy. It comprises both **longer Analysis Papers** – in the form of single-author (and co-authored) contributions or edited volumes with multiple authors - and **shorter Analysis Briefs**.



**Konrad Adenauer Stiftung (Australia) Ltd**  
Regional Programme Australia and the Pacific  
[www.kas.de/australia](http://www.kas.de/australia)  
[periscopekasaaustralia.com.au](http://periscopekasaaustralia.com.au)



This analysis is published under a Creative Commons licence:  
"Creative Commons Attribution-Non-Commercial-Share Alike 4.0 international" (CC BY-NC-SA 4.0),  
<https://creativecommons.org/licenses/by-nc-sa/4.0/legalcode>

This publication of the Konrad Adenauer Stiftung is solely intended for information purposes. It may not be used by political parties or by election campaigners or supporters for the purpose of election advertising.

Periscope – Occasional Analysis Brief Series #12 (April 2022).  
ISSN: 2652-7332 (Online)