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LAWASIA STATEMENT OF CONCERN ON THE THREATS TO JUDICIAL INDEPENDENCE AND THE RULE OF LAW IN SAMOA

LAWASIA notes with concern that the proposed legislative amendments in Samoa contained in the *Constitution Amendment Bill 2020*, the *Judicature Bill 2020*, and the *Lands and Titles Bill 2020* ("the Bills") pose a grave threat to judicial independence and the rule of law.

The Bills were tabled in Parliament immediately prior to the government's announcement of the COVID-19 state of emergency. In their sweep, the proposed amendments would significantly weaken the independence of the Samoan Supreme Court, fundamentally alter the current structure of the courts in Samoa and manifestly impair the constitutional rights of Samoans to seek remedy from the Supreme Court for protection of fundamental rights.

LAWASIA is a regional association of legal organizations, lawyers, judges and jurists which advocates to promote social justice and global rule of law principles in Asia and the Pacific region. The objectives of LAWASIA include the promotion of the administration of justice and the maintenance of the rule of law in the region.

Threats to judicial independence

The Bills would undermine judicial independence by providing for the dismissal of the judges of the Supreme Court by a Judicial Services Commission, which is an unelected body consisting of a majority of members appointed by the Executive. This would replace the current system where removal of the judges is by a two-thirds majority vote in Parliament, and on the grounds of mental impairment or misbehavior.

LAWASIA is concerned that the substitution of the non-partisan parliamentary process, with a system that is wholly controlled by the Executive, will give untrammeled powers to the Executive to dismiss Supreme Court judges without due process or grounds. This will diminish the security of tenure that judges currently enjoy.

Further, the protection of the salaries of the Supreme Court Judges in Article 69 of the Constitution of Samoa appears to have been removed. The salaries of Supreme Court Judges may be administratively reduced to their prejudice.

LAWASIA is concerned that the exposure of the salaries of the Supreme Court Judges to arbitrary reduction will affect their ability to act impartially, particularly in determining disputes concerning the Executive, for pain of retribution. Judges should not be penalized or be held to ransom for discharging their duties without fear or favor, and any attempt to deprive Judges of their hitherto constitutionally protected salaries should be rejected.

The independence of the judiciary is a key principle of the Rule of Law. It guarantees neutrality in decision making, which is integral to the administration of justice based on the rule of law. The independence of the judiciary will be curtailed if the Executive can exercise undue influence over the judiciary. LAWASIA submits that the judiciary should not be subject to political pressure or interference. The exercise of

unbridled Executive power over the judiciary would upset the separation of powers in Samoa's government and will violate the minimum requirements of the rule of law, and democracy.

Threats to the rule of law

LAWASIA is similarly concerned about the threats to the rule of law by the proposed amendments to the structure of the Samoan Land and Titles Court ("LTC").

The Bills would have the effect of establishing the LTC as a separate judicial arm. The LTC would no longer be subject to the supervisory curial review that is presently exercised by the Supreme Court of Samoa. This would create two parallel and seemingly co-equal court systems, with vaguely defined jurisdictional boundaries. This could give rise to competing claims, conflicting decisions and uncertainty in the law.

The Bills would diminish the primacy of the Supreme Court as a superior court in the administration of justice of Samoa. It is of most concern that the Constitutional right of Samoans to seek judicial review of a decision of the LTC in Samoa's Supreme Court would be abolished. Thus, there would be a denial of the right to have fundamental liberties arising out of claims in the LTC determined by the Supreme Court of Samoa. Additionally, common law and equity would be expressly excluded from the LTC's decisions. The LTC would therefore have unfettered decision making powers and could potentially be a law unto itself.

While recognizing the specialist nature of the LTC and its important function in determining matters of Samoan custom and genealogy, LAWASIA is concerned that the removal of the Supreme Court's judicial review jurisdiction to decide on all matters relating to the Constitution, including remedies sought against fundamental rights and human rights breaches, may prevent access to justice and eliminate judicial scrutiny of government decision-making. This will cause a serious erosion of the rule of law in Samoa.

LAWASIA calls on the Samoan Government to ensure that the effect of Government decisions on fundamental rights and human rights be appropriately determined under the general court structure, and not be granted the immunity or the shelter that the proposed new LTC structure may provide.

Conclusion

Given the drastic changes the Bills would effect if passed, LAWASIA echoes the concerns of other international law organizations, in addition to local Samoan lawyers and the Samoa Law Society, as to the lack of meaningful public and stake-holder consultations.

LAWASIA strongly urges the Government of Samoa to reconsider the passage of the Bills until wider and more comprehensive consultation has occurred, and a thorough analysis of the impact on fundamental principles including the rule of law, access to justice, fundamental rights and human rights protections is undertaken. The Bills must not cause unfairness and impose rule by law on the people of Samoa.



Chunghwan Choi
President, LAWASIA