



PACIFIC ISLANDS FORUM SECRETARIAT
Moulini Road, Apia, Samoa



PACIFIC ISLANDS FORUM
40th Anniversary 1971-2011

**Pacific Islands Forum Secretariat Election
Monitoring Study – 4 March 2011 General
Elections, Samoa**

30 August 2011

Executive Summary

On 4 March 2011, 92,429 electors of the 100,810 registered electors of Samoa went to the polls to elect from a total of 159 candidates (including 7 women), 49 Members of Parliament (MPs). For the first time in Samoa's history of elections, it was contested exclusively by titled men and women after the *Electoral Act 1963* (the *Act*) was amended to require candidates standing for the Individual Voters' Roll (IVR) to be *matais*. The IVR had been established to enable Samoan citizens with part-Samoan origins to vote for candidates for two specifically allocated seats.

The incumbent Prime Minister Tuilaepa Sailele Malielegaoi, Leader of the Human Rights Protection Party (HRPP) and MP for the constituency of Lepa, was returned unopposed for the second time. He was one of two candidates who were elected unopposed after three candidates from the Tautua Samoa Party (TSP) were disqualified by the Court because they failed to meet several requirements introduced by the *Electoral Amendment Act 2009*. One of the requirements is the "*monotaga*", that is, the performance of traditional village obligations, duties and responsibilities by candidates.

Except for 6 constituencies which are 2-member constituencies, all others are single-member constituencies. Samoa uses the first-past-the-post count method. For the 2-member constituencies, candidates with the first and second highest number of votes win. Although 43 candidates stood as Independents, the real political test was between two political parties, the new TSP and the ruling HRPP. The HRPP has had an uninterrupted hold on political power for 30 years. The HRPP fielded a total of 80 candidates in all the 42 constituencies whereas the TSP endorsed 39 candidates. The HRPP had a head start with 2 constituencies being declared unopposed before polling as there were no TSP or Independent candidates standing for these constituencies. The HRPP also secured 4 more seats as it was the only party that fielded candidates in these constituencies.

The final election figures confirmed the preliminary results counted on 4 March. The HRPP retained political power with an overwhelming majority of 34 seats to form government. The TSP assumed the role of Opposition. Several women candidates stood but only two women were elected. The TSP won 13 seats and Independents obtained two seats, with the latter being claimed by the HRPP since they were HRPP members contesting as Independents.

Although national policy issues feature in public pre-election debates, in general, these may not necessarily decide how Samoans vote as other factors such as family and blood ties, including church membership may also play an important part on how people are likely to vote. Polling was peaceful, orderly and quiet. In Samoa voting is not compulsory but a high number of voters - 92% of the registered voters exercised their political rights to elect MPs, in accordance with the principles of democratic good governance. Informal votes from preliminary figures accounted for less than 1% (86%) of the total votes cast. In summary, the elections were conducted in accordance with the relevant laws of Samoa, and were free and fair.

Abbreviations

AEC	-	Assistant Electoral Officer
CPL	-	Corrupt Practices List
DROs	-	Deputy Returning Officers
DRO	-	Deputy Returning Officer
EC	-	Electoral Commissioner
HRPP	-	Human Rights Protection Party
IVR	-	Individual Voters' Roll
MP	-	Member of Parliament
MPs	-	Members of Parliament
OEC	-	Office of the Electoral Commissioner
ROs	-	Returning Officers
SDUP	-	Samoa Democratic United Party
SoP	-	Speaker of Parliament
TC	-	Territorial Constituencies
TSP	-	Tautua Samoa Party
UN	-	United Nations

Pacific Islands Forum Secretariat Election Monitoring Study –
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INTRODUCTION

Background

1. As a Trust Territory of the United Nations (UN), Western Samoa, as it was known until 1997, was administered by New Zealand between 1945 and 1962 having been placed by the League of Nations under its administration after the Second World War. In 1900, the country was divided between the United States of America and Germany but after that New Zealand, at the request of Great Britain, took control of Western Samoa which had been controlled by Germany.

2. The country became independent in 1962 and adopted a parliamentary system of government. Prior to 1991, parliamentary elections were held every three years but after that elections have been held every 5 years. During the term of Parliament following the 1991 general election, MPs voted to extend the term of Parliament by two years bringing into effect the 5-year term of Parliament. MPs also extended their term by 2 years without going to general elections. The general election of 4 March 2011 is the 15th one for Samoa.

3. Samoa's electoral system is an outcome of the Constitutional Convention of 1954 which was voted on in the plebiscite held on 9 May 1961 under the supervision of the UN. Many Samoans did not accept universal suffrage, but opted for the *matai* traditional governance system and in this regard chose restricted suffrage.¹ Hence in Samoan constituencies, the *matais* were the only persons with voting rights and eligible to be nominated as candidates for elections. The UN Visiting Mission of 1959, however, noted some support for universal suffrage but with the qualification of only *matais* being eligible as candidates.² Universal suffrage was available only to the European community. Elections were by secret ballot under 45 constituencies, later reduced to 41 and then increased to 42.

4. In another plebiscite held in 1990, Samoans voted for universal suffrage. The Government subsequently amended the *Electoral Act 1963* to allow for all Samoan citizens aged 21 years and above to register as electors. The right to vote is therefore not conferred by the Constitution and neither is it mandatory. So while untitled Samoans were empowered to vote, only titled Samoans can become MPs. For the first time in the 2011 general election, as a result of the 2010 amendments to the *Act*, candidates contesting the two seats in the IVR were all *matais*.

Invitation to Observe the Elections

5. On 23 February 2011, the Chief Executive Officer of the Samoa Ministry of Foreign Affairs and Trade, Mr. Aiono Mose Pouvi Sua, in consultation with the Electoral Commissioner (EC) Mr. Tanuvasa Isitolo Lemisio, permitted the Secretariat to observe the 2011 general election as part of its regional election monitoring programme. A team of two officers ("the Team") from the Pacific Islands Forum Secretariat visited Samoa from 1-7 March 2011.

¹ *Attorney-General and Others v Saipa'ia (Olomalu)* [1982] WSCA 3; [1980-1993] WSLR 41 (16 June 1982).

² *Attorney-General and Others v Saipa'ia (Olomalu)* [1982] WSCA 3; [1980-1993] WSLR 41 (16 June 1982).

Composition of the Team

6. The Team comprised of:

Dr. Henry Ivarature Political Governance and Security Programme	Ms. Katrina Ma'u Political Governance and Security Programme
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Terms of Reference

7. The Team's Terms of Reference were:

The Pacific Islands Forum Secretariat election team ("the Team") will be present in Samoa before, during and after the General Elections of 4 March 2011 in order to see the preparations for the election, the polling, the counting and the results process, and the overall electoral environment.

The Team will act impartially and independently and provide validation that the elections are held in accordance with the principles of democratic good governance, relevant laws of Samoa and are free and fair.

Following the elections, the Team will provide a report to the Secretary General of the Pacific Islands Forum Secretariat, and the Government of Samoa which propose recommendations to refine, enhance or improve the way elections may be carried out in Samoa in the future.

Methodology

8. The work of the Team was limited to the island of Upolu. Prior to polling, the Team met with relevant government officials, including the EC and key members of his team, a senior church official of the Samoa Methodist Church, an academic, the Commissioner of Police and journalists. Others included voters, election workers, candidates and poll watchers (See Schedule 1).

9. For the polling and counting, the Team, accompanied by a liaison officer from the Office of the Electoral Commissioner (OEC) visited the opening of a polling station at Vailima in Apia and then spent the day looking at the conduct of polling at the special booths set up for electors of Savai'i and parts of Upolu at the Ministry of Education compound in Apia. Upon the closure of polling and counting of ballots, the Team proceeded to the OEC at Mulinu'u where the "central tally room" was set up to see the preliminary results being counted, and remained there until the tallying of results was completed at 12.00am.

10. To obtain further insight into the way the electoral system operates, the Team reviewed the decisions and judgements of the Supreme Court of Samoa, in particular, the election petitions arising out of the 2006 general election, and other deliberations of the Court on matters directly relevant to the laws governing elections in Samoa. A review of the 2006 election petitions was important to understanding the context of the 2011 general election. Some of the findings are reiterated in the recommendations of this report.

THE CONTEXT

Legal Framework Governing Elections in Samoa

11. Samoa's legal framework governing elections is found in the following Articles of the Constitution and laws:

- The Constitution of the Independent State of Samoa, specifically:
 - Article 44 – Members of the Legislative Assembly;
 - Article 45 – Qualifications for membership;
 - Article 46 – Tenure of office of members;
 - Article 47 – Decisions on questions as to membership;
 - Article 48 – Filling vacancies;
 - Article 49 – Election of Speaker;
 - Article 63 – Prorogation and dissolution of Legislative Assembly, and,
 - Article 64 – General elections.

- *Electoral Act 1963* (as amended from time to time);
- *Electoral Amendment Regulations 2006*;
- *Territorial Constituencies Act 1963*;
- Second Schedule of the Constitution of the Independent State of Samoa – Members of Parliament to be elected by persons whose names appear on the Individual Voters' List.

The Electoral Timetable

12. In accordance with the Constitution and the *Act*, Parliament was dissolved on 27 January 2011. The Head of State, upon the advice of the Prime Minister, appointed 4 March 2011 as the day of election.

Key Electoral Events	Dates
Close of electoral roll	4 November 2010
Opening of nomination of candidates	18 February 2011
Closure and withdrawal of nomination of candidates	25 February 2011
Public holiday End of campaigns and removal of campaign paraphernalia from public areas	3 March 2011
Polling, preliminary count and tabling of provisional results	4 March 2011
Sorting of special votes	7 March 2011
Scrutiny of rolls and official count	8 – 14 March 2011
Announcement of official results	21 March 2011
Return of writs	21 March 2011

The Electoral System

13. The key elements of Samoa's electoral system are prescribed in the *Act*³. The *Act* prescribes that the EC and officers of the OEC are responsible for the administration, enforcement and implementation of the electoral laws and systems. A key responsibility is to report suspected breaches of the *Act* to the appropriate authorities.

14. The *Act* also prescribes the qualification of members, in particular, individuals who may be candidates for election as MPs, that is, "any person who is registered as an elector of any constituency and is a *matai*" qualifies to be a candidate and can be elected as an MP for that constituency. Also any person who registers as an elector on the IVR and is a *matai* qualifies to be a candidate. The IVR is represented by two MPs and is an electoral roll for electors and candidates who are part-Samoan in origin. Candidates contesting the IVR seats before the *Act* was amended did not have to be *matais*. The '*matai* only' criteria for the IVR became effective in the 2011 general elections.

15. Presently, while universal suffrage is granted to Samoans aged 21 years, only Samoan (men and women with *matai* titles may become MPs.⁴ The statutory basis of this authority comes from the *Act*. It has no reference to or authority from the Constitution. As observed by the Supreme Court of Samoa: "It is therefore open to Parliament to reform the law as to voting without requiring constitutional amendment".⁵

16. The *Act* also prescribes how vacancies in MPs' term of office arise and how they are to be addressed. In general, these provisions ensure that MPs meet minimum standards, remain

³ See *Samoa Party v Attorney General* [2010] WSCA4 (7May 2010), pp.12-13.

⁴ For the background on how the decision was arrived at for *matais* only to be eligible to stand for elections and to enter Parliament see Asofou So'o (1993) *Universal Suffrage in Western Samoa: the 1991 General Elections*, Canberra: Australian National University Canberra.

⁵ See *Samoa Party v Attorney General* [2010] WSCA4 (7May 2010).

representative and comply with the electoral laws throughout their term of being an MP⁶. A recently introduced minimum standard is the requirement for a statutory declaration to be signed by the *pulenu'u* certifying that the candidate has provided services to the village and has resided in the community for 3 years.

17. Governance arrangements for political parties are also prescribed by the *Act*, and in particular, the establishment and registration of political parties. The provisions are designed to ensure that political parties are viable and that their long-term growth in Samoa will afford and offer electors a choice of candidates. The provisions also deal with party-hopping by MPs. As a minimum requirement, political parties must maintain a membership of 100 current financial members. A membership of less than 100 current financial members may lead to disqualification and deregistration of the political party.

18. The OEC is tasked to register electors, oversee the qualification requirements of electors, maintain and revise the electoral rolls and enforce offences associated with these matters. Electors vote in the constituency with which they have a connection. The electorates or constituencies of Samoa are covered separately by the *Territorial Constituencies Act 1963*, (see detailed discussion below). Electors can cast one vote only. The secret ballot – which occurs in the privacy of a polling booth - enables electors to vote without interference. Although registration of electors in Samoa is compulsory, voting is not mandatory.

19. The procedures for the conduct of elections and by-elections, including before, during and after polling day, as well as the procedure for counting of votes are prescribed in the *Act*. These procedures are designed to protect the integrity of the secret ballot. Counting of ballots is based on the 'first-past-the-post' method. The candidate with the largest number of votes, after all informal ballots are determined and rejected, wins the election.

20. Election practices defined as illegal and corrupt are also prescribed in the *Act*. Prosecution of breaches of the *Act* may be pursued by both state and private parties. State prosecutions proceed upon being reported by the EC to the appropriate body for investigation, prosecution or action. Private prosecutions may be exercised through section 11 of the *Criminal Procedure Act 1972* against an MP for alleged electoral corruption, leading to disqualification if successful. Also provided for in the *Act* is the procedure for electoral petitions. Petitions must be lodged within 7 days after the day on which the final results of the poll are made public.

Constituencies

21. The electoral constituencies of Samoa are based on the traditional districts, which are essentially political divisions developed in association with the major paramount titles, or titles associated with them⁷. As such their boundaries are fixed. Hence, the political divisions on Upolu have their historical origins traced to one traditional source upon which Upolu's paramount titles and traditional political divisions are derived. The three principal political divisions are Ā'ana,

⁶ See *Samoa Party v Attorney General* [2010] WSCA4 (7May 2010).

⁷ For a more detailed elaboration on traditional political divisions and paramount titles in Samoa, refer to the book authored by Asofou So'o (2008) *Democracy and custom in Samoa: and uneasy alliance*. Fiji: University of the South Pacific.

Tuamāsaga and Ātua. Others on Upolu are Āiga-i-le-Tai and Va'a-o-Fonoti and have different historical origins to the others.

22. On Savai'i, however, the traditional districts with which the paramount titles are associated are traced from various legends and traditions. The main political districts on Savai'i are Fa'asālele'aga, Gāgā'emauga, Gāgāifomauga, Vaisigano, Sātupai'itea, and Palauli. The exception to these electoral constituencies is the IVR which as mentioned earlier was created for European electors.

23. Upolu has 22 constituencies, two more than Savai'i. The precise geographic descriptions of all these constituencies are prescribed in the *Territorial Constituencies Act 1963*. All constituencies are single-member constituencies, except for six, which are two-member constituencies, including the IVR. Altogether, Samoa's Parliament has 49 seats.

Electors

24. The qualification of electors is prescribed in Part III of the *Act*. Basically, section 16(b) of the *Act* states that an elector can register to vote in the constituency he or she resides in, or in the constituency where he or she has a *matai* connection by reason of their spouse, parent, child and siblings holding a *matai* title there. It does not extend to include *matai* titles acquired through the spouse of the siblings. The definition of place of residence is prescribed in section 16A of the *Act*.

25. An elector with a *matai* title is required to register to vote in the constituency in which the title exists. But an elector with multiple titles in different constituencies can register to vote in one of the constituencies in which the title exists. But this is limited to one constituency during general elections.

26. Electors can transfer registration to another constituency but only after 5 years from first registering as an elector, or from the last transfer to another constituency. Prisoners, persons detained in hospitals or places of security under the *Mental Health Act 2007*, or whose name appears on the Corrupt Practices List (CPL) for any constituency are disqualified from being registered as an elector.

Candidates

27. The legal provisions that prescribe the qualifications of members are set out in Article 45 of the Constitution and Part II of the *Act*. Section 5 defines the principal qualifications as follows:

Any person (i.e., a Samoan citizen) who is registered as an elector of any constituency and is the holder of a Matai title is qualified to be a candidate and to be elected as a Member of Parliament for that constituency, and any person who is registered as a voter on the individual voters' roll and is the holder of a Matai title is qualified to be a candidate and to be elected as a Member of Parliament ...”

28. The determinants for disqualification prescribed in Part II of the *Act* include the following:

- Loss of any enabling qualification required for registration as an elector;

- Absence from Samoa equalling or exceeding 3 years;
- Bankruptcy;
- Conviction of an offence punishable by death;
- Imprisonment for a period of 2 years or more;
- Conviction in Samoa for a corrupt practice; and,
- Of unsound mind.

29. The exception to being absent from Samoa applies to persons or their spouses appointed to a post under the *Foreign Affairs Act 1976*, to positions in international organisations overseas under Government sponsorship or nomination, and persons in need of medical treatment outside of Samoa for more than 125 days in any one year or more for a consecutive 3 year period. Being resident in Samoa, in terms of this *Act*, means a person has been in Samoa for at least 240 days in each year for a consecutive three year period ending on nomination day.

30. Public servants may become candidates or be elected but they must apply and be granted special leave of absence from the public service. Special leave is effective during the elections for the purpose of his or her status as a candidate. Upon being elected as an MP, the public servant is deemed to have vacated his or her office (see section 8 of the *Act*).

31. The specific disqualification that has received a great degree of public attention, including that of the Courts, prior to the 2011 general election, is section 5(3)(c) of the *Act*. Introduced through the *Electoral Amendment Act 2009*, amongst others, section 5(3)(c) requires a candidate to have a statutory declaration (form 1A) from the *pulenu'u* (a government appointee) of the candidate's village or, where the *pulenu'u* is deemed by the EC to be "unable or cannot properly" provide the statutory declaration form, any other person as determined by the EC. This, however, is not as straightforward as it seems.⁸ The declaration form must state that the candidate has satisfied the 3-year residential requirement, has not been banished from the village, and has met village service requirements. Village service requirements or *monotoga* is defined in section 5(3A) of the *Act* as "the services a *matai* renders to his or her village in accordance with the customs of that village".

32. In late February 2011, just prior to the closing of nomination of candidates, the Court heard three cases on the refusal of the village *pulenu'us* to sign the statutory declarations attesting to the candidates' provision of services or "*monotoga*" to the village. In the case involving the candidate by the name of Tu'ula Kiliri Lafi Tuitui, the Court found no evidence of the candidate having performed the *monotoga*⁹. Not only was it shown that he did not reside in the constituency but his claims of contributions to village affairs were vehemently disputed by the *pulenu'u*. It was on these grounds that the *pulenu'u* informed the EC in writing why he refused to sign Form 1A.

33. In the second case, the candidate did not approach the *pulenu'u* to sign the statutory declaration form¹⁰. The circumstances of this case were such that even if the candidate had tried, it was apparent that the *pulenu'u* would not have signed the form anyway. Moreover, several internal village differences appeared to have affected the candidate's relationship with the village council. Also, the candidate was alleged to have led a group of villagers into establishing a breakaway

⁸ See *Asalemo v Electoral Commissioner* [2011] WSSC 18 (28 February 2011).

⁹ See *Tuitui v Attorney-General* [2011] WSSC 16 (25 February 2011).

¹⁰ See *Ale v Electoral Commissioner* [2011] WSSC 14 (23 February 2011).

village. In the third case, the EC exercised caution and sought legal directives on who should sign the statutory declaration form as the *pulenu'u* had refused to endorse the form because the candidate did not satisfy the requirements.¹¹ Although, the candidate subsequently obtained the endorsement of the church pastor for services to the village, he did not meet the residential qualifications.

34. An interesting outcome of these cases is how the concept of *monotaga* accommodates social changes. Contributions include the giving of money, food and fine mats, attendance at meetings and participation in the decision-making processes of the village.¹² Essentially, it involves almost everything the village does and is not necessarily confined to raising funds for village projects, providing fine mats and helping with the contribution of food¹³. In the course of our consultations, concerns were expressed by people that the current practice of the *pulenu'u* determining a potential candidate's demonstration of *monotaga* could possibly disadvantage potential candidates. For example, the current practice seems likely to disregard an individual's performance of assistance or service where this is provided indirectly through various means without necessarily being physically present. The concept of *monotaga* and its interrelationship with the political process seems likely to continue to attract public debate and may potentially define social change in the community.

35. A total of 159 candidates met the qualification criteria needed to contest the 49 seats in Parliament in this general election. The HRPP fielded 49% of the total candidates, TSP accounted for 24% and the rest were independents.

Recommendation:

- (i) *Noting the complex nature of recently introduced requirements for validation of a candidate's performance of monotaga, that this requirement continues to be monitored and reviewed so as to ensure that the practice of monotaga is not seen to be manipulated for political purposes, and is not seen to limit a person's ability to participate fully in the political life of Samoa.*

Political Parties

36. Part IIA of the *Act* which provides for political parties came into effect through the *Electoral Amendment Act 2005*. This part of the *Act* provides for the EC to register political parties which are eligible for registration, establish and maintain a register of political parties and de-register political parties on the grounds specified in the *Act*.

37. With a view to preventing MPs from party-hopping and changing political party membership between general elections, Parliament enacted section 15(4)(a) and (b) of the *Act*. Essentially, a candidate, who being a member of a registered political party at the time of being elected in a general election and upon being sworn in as an MP, must remain with that political party during the term of Parliament. If that MP resigns from the registered political party, his or her membership of Parliament is disqualified and a by-election is declared to elect a new MP for that constituency. Candidates elected as independents who, prior to taking the oath of allegiance, join a registered

¹¹ See *Asalemo v Electoral Commissioner* [2011] WSSC 18 (28 February 2011).

¹² See *Ale v Electoral Commissioner* [2011] WSSC 14 (23 February 2011).

¹³ See *Asalemo v Electoral Commissioner* [2011] WSSC 18 (28 February 2011).

political party and subsequently resign from that political party to join another political party are also disqualified from Parliament.

38. Disqualification does not affect an MP who resigns as a member of a registered political party to become an independent MP. The primary consideration of this provision was to deter MPs switching political party membership during the term of Parliament. It was introduced to bring about and maintain political stability in Samoa.

39. Unlike the 2006 general election, the 2011 election saw only two political parties, the TSP and the HRPP fielding candidates. In this section of the report, the Team discusses the events surrounding the formation of the TSP with respect to the application of Part IIA of the *Act* and the judgments of the Supreme Court of Samoa.

40. In the 2006 general election, the Samoa Democratic United Party (SDUP), the HRPP, Samoa Party and the Christian Party each endorsed candidates to stand for election. The SDUP won 10 seats while 4 of the seats were won by Independent candidates. But for various reasons, including a leadership difference, its membership decreased to 6 MPs in September 2006. Consequently, in November 2006, the Speaker of Parliament (SoP), in accordance with the relevant Parliamentary Standing Orders, announced that its status as a political party could not be recognised.¹⁴

41. Standing Order 20 (1) and (5) of Parliament provides that any group of MPs of no less than 8 shall be recognised as a political party in Parliament on its Party Leader notifying the Speaker. If the membership of the party falls below 8 MPs, it will lose its recognition as a political party in Parliament.¹⁵ If the number of party members was less than 8 MPs prior to the MPs taking the Oath of Allegiance, the MPs may join another political party or become independent MPs. The Standing Orders which were introduced on 16 April 1997 were also intended to help prevent party-hopping by MPs during a term of Parliament, and keep political stability.¹⁶ Originally, a membership of 13 MPs was required to maintain status in Parliament as a political party but the number was revised and progressively reduced over the years to 11, and then to 9 and later to 8¹⁷. The reductions became necessary due to the declining number of opposition political party members, and to ensure that the political party in opposition continued to be recognised as a political party.¹⁸

42. The SDUP members sought an interim injunction from the Court to restrain the Speaker from not recognising the SDUP as a political party on 8 December 2006 but were unsuccessful. Further interventions sought from the Court resulted in the Supreme Court quashing the ruling of the SoP

¹⁴ The SDUP which had won 10 seats in the 2006 election lost its members in Parliament through an electoral petition, resignation of party leader Le Mamea Ropati and Sililoto Tolo to become an Independent MPs. In 2007, two more members Fuimaono Tei and Aeau Peniamina Leavai left the SDUP. See *Samoa Democratic United Party (SDUP) v Leiataua* [2007] WSSC 15 (12 March 2007).

¹⁵ Cited from *Samoa Democratic United Party (SDUP) v Leiataua* [2007] WSSC 15 (12 March 2007).

¹⁶ See *Samoa Democratic United Party (SDUP) v Leiataua* [2009] WSSC 49 (6 May 2009), paragraph 29.

¹⁷ Standing Orders were amended on 20 August 1997 to reduce the numbers required for a group of MPs to be recognized as a party in Parliament from 9 to 8, see *Samoa Democratic United Party (SDUP) v Leiataua* [2007] WSSC 15 (12 March 2007).

¹⁸ See *Samoa Democratic United Party (SDUP) v Leiataua* [2009] WSSC 49 (6 May 2009), paragraph 29.

that declared the MPs' seat vacant and cancelling the by-elections.¹⁹ The background is discussed below to describe the eventual establishment of the TSP.

43. The TSP was formed in December 2008 primarily to put up candidates for the 2011 general election. Its members comprised five independent MPs, four SDUP MPs and an MP from the HRPP. On 21 January 2008, one of its members, Lealailepule Rimoni Aiafi, informed the SoP about its establishment. The Speaker replied on the following day that on the basis of the Standing Order, the MPs were to notify him in 21 days of their membership of the TSP. He also stated that the formation of TSP was in breach of section 15F(4) of the *Act* due to insufficient numbers. Between January and February 2009, the 10 MPs however submitted that they were independent MPs, in effect acknowledging that section 15 of the *Act* and Standing Order 20 did not permit such a political party to be recognised.

44. On 29 May 2009, the SoP announced the disqualification of the 10 MPs in accordance with section 10(j) of the *Act*, thus effectively declaring their seats in Parliament vacant. This was also in accordance with Article 46(2) of the Constitution. The 10 MPs were also disqualified because the formation of a new political party breached section 15F(4)(a) and (b) of the *Act*. Notice of their disqualification was also published in the special issue of the *Savali* of 8 June 2009 and in the *Samoa Observer* by the Deputy SoP. When Parliament met on 15 June 2009, the 10 MPs were ordered to leave.

45. The Court heard their motion for an interim injunction and declaratory orders on 29 June 2009 with respect to their disqualification as MPs, the declaration that their seats in Parliaments were vacant and the conduct of by-elections to elect new MPs. The Court concluded that the basis of their disqualification was not supported by section 15F (4)(a) and (b) of the *Act*.²⁰ The term "political party" as set out in the *Act*, really means or refers to a "registered political party". The TSP, at that point in time, was not a "registered political party" because it had only 30 financial members instead of the required 100 current financial members, and would not have met the requirements for it to have been registered as a political party. The main reason for disqualification from Parliament was the formation of a new political party whereas the facts proved that the 10 MPs were really independent MPs. Four were elected as independents in the 2006 general election. The other four were elected as members of registered political parties, i.e., 3 as SDUP and 1 HRPP but had subsequently resigned and became independent MPs. As such they did not resign from one registered political party and move on to join another registered political party. Likewise, the independent MPs did not resign from one political party to join another one.

46. The Court also noted that the freedom to form associations like political parties provided under Article 13(1)(c) of the Constitution was a fundamental right but that section 15F(4)(a) and (b) of the *Act* does impose a restriction on the right to form associations, including the right to form political parties. In a term of Parliament, the *Act* and the Standing Order imposes a restriction on the right of MPs to form associations such as the right to form political parties. Moreover, the failure of a political party to maintain a minimum membership of 8 MPs in Parliament would mean that that

¹⁹ See the following judgments the background to the TSP's establishment as a political party; *Samoa Democratic United Party (SDUP) v Leiatua* [2007] WSSC 15 (12 March 2007); *Aiafi v Speaker of the Legislative Assembly* [2009] WSSC 63(24 June 2009); *Aiafi v Speaker of the Legislative Assembly* [2009] WSSC 65 (8 July 2009).

²⁰ See *Aiafi v Speaker of the Legislative Assembly* [2009] WSSC 65 (8 July 2009).

political party may not be recognised in the Legislature. It was against this background that the TSP emerged to contest the 2011 general election.

2011 GENERAL ELECTION: ISSUES AND OBSERVATIONS

Election Management and Personnel

47. The OEC is headed by an EC who is responsible for the implementation of the *Act*. Its responsibilities, functions, duties and powers are prescribed in section 3A of the *Act*. Its status as an independent body, separate from the Legislative Department and the Ministry of Justice was granted through the *Electoral Amendment Act 2005*. The EC at the time of the 2011 general election was Tanuvasa Meleisea Lemisio. Other key officers of the OEC appointed on the recommendation of the EC include the Assistant Electoral Commissioner (AEC), Returning Officers (ROs), Deputy Returning Officers (DROs), Registrars and Deputy Registrars. According to the *Annual Report of the Office of the Electoral Commissioner for the year ending 2008*, OEC had a total of 27 salaried positions of which 2 positions were vacant. In addition, the report noted that there were 12 “wage workers”.

48. For the 2011 general election, the EC enlisted officers from other government departments to assist with polling on 4 March. A training programme was conducted several weeks prior to polling day to teach officials about the procedures for conducting polling. About 290 polling places were set up throughout Samoa with about 51 ROs put in charge of them. About 309 DROs, 591 Polling Clerks, and 132 Information Technology and Specialists assisted to ensure electors cast their votes. In all, some 1,373 electoral officials were involved on polling day. This figure does not include the number of police personnel assigned by the Police Commissioner to provide security and maintain order at all the polling places.

49. To ensure that polling commenced on the appointed times, electoral officials assigned to constituencies furthest from Apia, such as the rural constituencies and Savai'i, travelled one day ahead of the polling day to set up the polling places and prepare polling materials. They were accompanied by police officers who took charge of transporting the ballot boxes to the OEC in Apia when polling was completed.

50. The EC is required by section 3A(g) of the *Act* to provide to the SoP within 6 months from the date of each general election and a by-election, a report on the conduct and result of the election. This report is tabled by the SoP before Parliament for its consideration.

Electoral roll

51. Electors who wish to be registered as an elector in any constituency are required to make an application in person to the EC or officer appointed by the EC. Upon completing the application and obtaining the approval of the EC, one of the requirements is to take a shoulder length photograph of the elector. This is pasted alongside the elector's name on the roll. Electors are re-photographed at intervals of 10 years. The elector is also fingerprinted. These are recent developments using local expertise to strengthen the electoral roll; they replaced the Identification Card (ID) system.

52. In 2011, electoral officials used the rolls with electors' photograph affixed to the name of the elector to confirm the identity of the elector. Where polling officers had trouble with the identity of electors, a scan of their fingerprints enabled the elector's photograph and fingerprints to appear on a computer screen.

53. There are two types of rolls – territorial constituencies (TC) and IVR. The latter comprises of Samoan citizens of foreign parentage. They are represented by two MPs. The majority of these electors are integrally connected to Samoan families and have acquired *matai* titles through these family connections. Part II of the *Electoral Amendment Act 2010* prescribes these rolls. These rolls are subject to the scrutiny of other electors who are entitled under section 26 of the *Act* to object to the name of any elector on the roll. Objections are submitted in writing to the EC clearly specifying the basis for the objection. Similarly, the EC is also empowered by section 27 of the *Act* to object to the presence of any elector on a roll and is obliged to inform the elector in writing, specifying the reasons for the objection.

54. The elector whose name on the roll is being objected to has 5 days upon being notified to show cause. An objection to being removed from the roll is referred to the District Court for a time and place for the matter to be heard. The process is set out in section 29 of the *Act*. Objections and hearings on objections take place when the TC and IVR rolls are temporarily closed, with exceptions. Objections must be made 21 days before polling day and no application or hearing will be heard by the District Court within 14 days of polling day.

55. It is a requirement for a person who is no longer qualified to be enrolled as an elector in a constituency or as an individual voter to notify the EC within 1 month of not being qualified. Failure to do so is an offence. Other steps taken to revise the roll include notifications from the Commissioner of Births and Deaths of the death of any adult person and from the Commissioner of Marriages. The EC is also empowered (section 32 of the *Act*) to remove names from the roll where:

- electors have requested that their names be removed from the roll;
- the Commissioner of Births and Deaths or an adult advises of the death of an elector;
- the EC's inquiry finds electors have ceased to be qualified; and,
- names of persons are entered on the CPL for the TCs and for the IVR.

56. The EC is also empowered by section 32(5) of the *Act* to alter the roll to correct mistakes, omissions, and entries of names of electors appearing more than once. Names accidentally removed by mistake, clerical error or through false information may be restored. The CPL, as prescribed in section 32A of the *Act*, contains names of electors who have been convicted of a corrupt practice, or reported by the Supreme Court in its report on election petitions to be guilty of a corrupt practice, within the preceding four years. The CPL includes residential details and information on convictions and is attached to the rolls when they are printed. The names are removed upon the expiration of four years from the date of conviction or upon receipt of order by the Supreme Court.²¹

57. Section 34 of the *Act* prescribes that when a general election is due, all rolls are temporarily closed not less than 4 months before the general election. The exception is for electors turning 21

²¹ For the Courts finding on enforcement of this provision see *Pa'u v Electoral Commissioner [2011] WSSC 6 (9 February 2011)*.

years of age within 4 months, or who are eligible to transfer their registration inside 4 months up to polling day. However, they must apply before the 4 month period. The roll is also temporarily closed when a by-election is due to be held.

58. It is a requirement under sections 35-36 of the *Act* for the main roll and supplementary roll for both TCs and IVR to be printed. The supplementary roll contains names that have been added to the main roll after it has been printed, and becomes part of the main roll. These rolls are kept for the public's inspection at the OEC, the post office in Apia and at other places as determined by the EC. A composite roll may also be printed. It contains the names of all registered voters on the main roll (TCs and IVR) and the supplementary roll and the names of persons whose names do not appear on either the main roll or supplementary roll. The closing date for the composite roll for the TCs and IVR is on writ day in relation to an election. It is the primary roll and supersedes both the main roll and the supplementary roll as the authoritative roll.

59. The total number of registered electors on the TC and IVR rolls for the 2011 general election was 100,810. Registered electors on the IVR was 3,739, constituting 3.7% of the total population of registered electors in 2011.

Voter education

60. Voter education is defined in section 3A(e) of the *Act* as one of the responsibilities, functions and duties of the EC. The EC is required by law "to undertake public awareness and education programmes concerning Samoa's electoral system and laws". The EC is also required by:

- Section 3A(b) of the *Act* to advise the Head of State, MPs, Parliamentary Committees and Ministers about Samoa's laws, policies and electoral system; and,
- Section 3A(d) of the *Act* to initiate, sponsor, carry out and publish studies and research on the electoral system and laws in Samoa.

61. Voter education is not discussed in the OEC's annual report for the year 2008. However, voter education and awareness is identified in two of the four strategic goals in the *Strategic Plan 2007-2012 for the Office of the Electoral Commissioner*. Under Goal 1, the focus is on registration of electors and under Goal 2, the emphasis is on educating Samoans on the country's electoral process, system of government and referenda. In the Schedule of Implementation for the Strategic Plan, voter education and awareness exercises on registration and the electoral system were planned for July 2008 and February 2012.

62. The percentage of informal votes is low. Estimates from the provisional results were 0.86%. Voter turn-out according to the final results indicated 92% of the total registered voter population, implying that some 8% of the registered electors did not exercise their right to vote in the 2011 general election. Voter turn-out in the 2006 general election was 89.3% with 10.7% of the registered voters not voting. According to the *Strategic Plan 2007-2012 for the Office of the Electoral Commissioner*, young people were identified as the group who may not be exercising their rights to vote. In noting this information and commitment in the Strategic Plan, consideration may be given to conducting voter education programmes targeting young electors so as to encourage their participation in voting.

63. Another important area is the right of electors to vote without the potential threat of being banished by village councils. There were anecdotal reports of electors being banished from their communities after this general election²². Perhaps, and noting the sensitive nature of this issue, culturally appropriate voter education and awareness programmes may be considered to help village councils in their roles as leaders to address the underlying causes that led to these situations.

Recommendations:

- (ii) *That the Government consider allocating appropriate funding to support the voter education and awareness activities of the OEC;*
- (iii) *That the OEC may wish to consider the merits of developing culturally appropriate voter education and awareness programmes that might assist village councils to address the underlying causes for electors being banished from their communities following a general election.*

The Campaign

64. Candidates and MPs contesting general elections are generally required to perform traditional Samoan practices, which in the past were viewed as contrary to the spirit of a free and fair election. Usually, MPs at the end of the term of Parliament formally return his or her Parliamentary seat to the constituency through the presentation of cash and food. Presentations are accompanied by the giving of a speech by the MP or someone else on his or her behalf, thanking the constituents for their support and seeking their ongoing support if he or she desires to run again for the seat. This practice is called “o’o” or “momoli”.²³ Through the *Electoral Amendment Act 2005*, “o’o” and “momoli” are now lawful activities provided that such presentations are performed within 180 days and 90 days from expiry of Parliament, 5 years from the date of the last general election.

65. Another Samoan cultural practice which may not be considered as treating, bribery, illegal or corrupt is “*tautua faaauau*” so long as the assistance or service is “given before 90 days prior to the expiry of Parliament, 5 years from the date of the last general elections or after the close of poll on polling day”²⁴. The service or assistance may take any form or manner and may be provided to any person or organisation, as long as it is considered culturally appropriate or is to be expected, is not excessive in the circumstances and is not “o’o” or “momoli”. It does not include assistance or service to the MPs’ church minister or assistance at a funeral service.

66. In light of concerns that legalising “o’o” and “momoli” would place MPs in a position of advantage compared to other candidates in a forthcoming general election, and to allow everyone a level playing field, the *Electoral Amendment Act 2005* provides for MPs and candidates to make their traditional presentations within a defined period of time so it may not be viewed as bribery,

²² See ‘Man banished over vote’, *Samoa Observer*, 18 March 2011; ‘It’s a crying shame, Samoa!’, *Samoa Observer*, 18 March 2011; ‘Samoa opposition leader faces bribery and treating allegations in court’, *Radio New Zealand International*, 15 April 2011.

²³ See *Posala v Su’a* [2006] WSSC 29 (16 August 2006), paragraph 118.

²⁴ See section 97B of the *Act*.

treating, or a corrupt or illegal practice.²⁵ Basically, the practice of “o’o”, “momoli”, “tautua faaauau” and *monotaga* are the main ways of campaigning in Samoa. Such presentations usually intensify during elections, and often start a year before a general election.

67. Aside from these Samoan customs, political parties, candidates and independents utilised the media to advocate their platforms. Political plans, achievements and candidates’ photographs were published in the local newspapers.²⁶ Panel discussions on current issues were also aired live on television and included talk-back shows where candidates answered questions fielded by electors. Campaign activities picked up momentum towards polling day led by village campaign committees and their networks throughout the villages. In addition to collective party campaigns, and unlike independents, candidates standing under a political party are also supported with funds given by the political party. Information on party campaign funds, including their sources are not disclosed. Isolated incidents of campaign committees being intimidated were reported in the press but the overall atmosphere of the campaign was peaceful and quiet.²⁷

Recommendations:

- (iv) *The OEC may wish to consider issuing a public notice to inform all MPs and potential candidates seeking to contest the next general election the dates within which the traditional presentations of “o’o” and “momoli” are permitted to take place. Formal notice about the dates for permissible traditional presentations may help to ensure that candidates and electors alike are aware of the legality, or not, of the traditional presentations in the context of the election campaigns. This suggestion may also be considered for the conduct of “tautua faaauau”;*
- (v) *At present, the Act does not provide for political parties and candidates to disclose information on sources of campaign finances and campaign expenses. In this regard, consideration may be given to examining the merits of taking appropriate legislative and administrative measures to enhance transparency in the funding of candidates for elected public office and, where applicable, the funding of political parties.*

Polling

68. On polling day, registered electors gathered at polling places set up across the country to cast their votes. Indelible ink was used for the first time to deter impersonation and multiple voting. Part VII sections 59-75 of the *Act* prescribe polling at election and the ballot. They include details on polling places, essential items required for polling such as polling booths, ballot boxes and ballot papers, allocation of officers and the hours of polling. Similarly, the ballot processes are prescribed for the electoral officers to follow during polling.

69. In order for the OEC to conduct an efficient polling operation and to process the 100,800 electors, a total of 290 polling places were set up on Upolu and Savai’i. Furthermore, in order for the OEC to cater for electors who could not travel to their constituencies, special voting places were set

²⁵ See *Posala v Su’a* [2006] WSSC 29 (16 August 2006), paragraph 120.

²⁶ See “HRPP vs Tautua” *Samoa Observer*, 3 March 2011; “Human Rights Protection Party (HRPP) Manifesto for the 2011 General Election”, *Savali*, 25 February 2011, pp.11-12.

²⁷ “Weapons drawn in election heat”, *Samoa Observer*, 2 March 2011, pp.1, 8.

up in Apia to enable voters from Savai'i and other parts of Upolu to cast their votes. Classrooms, church halls and sporting facilities were used as polling places. The Government declared the 3rd and 4th days of March as public holidays to allow people to return to their constituencies and cast their votes.

70. In summary, electoral officials complied with the requirements prescribed by the *Act* in conducting the polling and the ballot. Several polling places remained open after 3.00 pm to allow electors who arrived before 3.00 pm to cast their vote. Others proceeded to the preliminary count of votes, having processed all the electors by 3.00 pm.

The Count

71. The preliminary count of votes commenced immediately after the polling places closed at 3.00 pm. The DROs opened the ballot box, reconciled the ballot papers and sorted these according to the votes cast for each candidate. Present throughout this process were scrutineers, Presiding Officers and a police constable. In one of the polling places which the Team observed, the police constable drew out the ballot papers and handed these over to the DRO who read out the name of the candidate ticked on the ballot. The DRO then showed each ballot paper to the scrutineers and electoral officers and then proceeded to pile the ballots according to the name of each candidate.

72. The total number of votes cast for each candidate was read out aloud for the scrutineers and onlookers who were present at the polling place. At one polling place which the Team attended, an elderly *matai* thanked the electoral officials when polling ended. His word of appreciation was duly acknowledged by one of the electoral officers. Preliminary results were conveyed by the DROs using mobile phones to the OEC at Mulinu'u in Apia. The ballot boxes were transported by police officers to the OEC where they were stored for the final count.

73. A central tally room was set up outside the OEC where all the preliminary results for each constituency were tabulated. The media and other authorised persons were permitted to observe and report to listeners and television viewers on the progress of results. In the course of our consultations, concerns were expressed about how Special Votes were kept in storage for sorting, scrutiny and counting. Special Votes are not counted during the preliminary count but the number of Special Votes cast at each constituency is recorded for that constituency and held until the final count where they are opened, sorted according to the constituency where the elector is registered, scrutinised and counted. Some people suggested that Special Votes should be counted during the preliminary count and not held until the final count as they believed that these votes could be tampered with before they are counted.

74. Two candidates, the caretaker and incumbent Prime Minister Tuilaepa Sa'ilele Malielegaoi and Fonotoe Nuafesili Pierre Lauofo were elected unopposed after the Court disqualified two members of the TSP on the grounds of not providing services to the village. For the Prime Minister, this is the second time for him to be re-elected unopposed.

Recommendation:

- (vi) *That consideration may be given to the merits of educating some members of the public on why Special Votes are not counted immediately at the polling places. At present, the number*

of Special Votes cast at each constituency is recorded during the preliminary count and are later sorted, scrutinised and counted during the final count. The importance of educating the public on how Special Votes are handled arises from an apparent lack of knowledge amongst some electors of the transparent process with which Special Votes are handled, and hence the belief that these votes could be tampered with while kept in storage for sorting, scrutiny and counting.

Disputed Elections

75. Disputed elections are covered under Part X of the *Act*. Election petitions are required by law to be submitted 7 days after the disclosure of final results. The EC also files election petitions. If there is more than one petition on the same election or result of the election, all these petitions are to be dealt with as one petition (see section 108 of the *Act*)²⁸. The Electoral Court presides over petitions and submits its report to the SoP upon the conclusion of the hearings.

76. In section 105(1) of the *Act*, petitions can be made by “a person claiming to have had a right to be elected or returned at an election” or “a person alleging himself or herself to have been a candidate at the election”. However, an additional requirement introduced in 1995 was for these persons to obtain 50% of the total number of votes obtained by the winning candidate.

77. The rationale for enacting section 105(1) of the *Act* was to eliminate the potential for too many voters and candidates filing election petitions. Nonetheless, this provision has also attracted public and legal attention with several candidates challenging it on various grounds, including its alleged violation of certain provisions of the Constitution. A key legal challenge was the case of *Pita v Attorney-General* [2007] WSSC99 (20 November 2007)²⁹. In this case, the applicant argued that this provision prevented those who failed to meet the requirement from exposing through the Courts, in the form of petitions, winning candidates who had resorted to dishonest practices and corruption.³⁰ It was also argued that the provision “restricted their unimpeded rights of access to the Courts and undermined the constitutional role of the judiciary”.³¹

78. The matter was heard in October 2009 and May 2010. It was argued that section 105(1) of the *Act* was inconsistent with Articles 9³², 15³³ and 22(2) of the Constitution. In respect of Articles 9 and 15, the Court found that there was “no personal constitutional right either to vote or to challenge an election”, and dismissed the case.³⁴ The judgment also shows that the Constitution of Samoa does not confer the right of universal suffrage, rather this is a right provided by the *Act*.

79. Further, in terms of Article 15 of the Constitution, the Court found that it dealt with human rights problems of discrimination, and not with the failure to obtain a specific percentage of votes in

²⁸ Also see *Kini v Aiafi* [2006] WSSC 44 (10 August 2006).

²⁹ Also see *Samoa Party v Attorney-General* [2009] WSSC23 (20 March 2009) wherein the Court found that section 105 (1) did not violate several provisions of the Constitution. These were Articles 9(1), 15(1) of the Constitution, the doctrine of separation of powers, and the principle of representative and responsible government.

³⁰ See *Pita v Attorney-General* [2007] WSSC99 (20 November 2007).

³¹ See *Pita v Attorney-General* [2007] WSSC99 (20 November 2007).

³² The Article is “Right to a fair trial”.

³³ This Article is “Freedom from discriminatory legislation”.

³⁴ See *Samoa Party v Attorney-General* [2009] WSCA4 (7 May 2010).

a particular election.³⁵ The Court also considered that section 105(1) of the *Act* is not inconsistent with the Constitution because the rights of candidates were not denied. Firstly, candidates who obtained the 50% threshold retained the right to file election petitions. Secondly, candidates also have the right to lodge criminal prosecutions, with a successful prosecution unseating the winning candidate. Thirdly, the right to petition an election can also be pursued by the EC.

80. Election petitions ensure that electoral abuses such as corruption, bribery and treating are identified and perpetrators are prevented from holding office. Election petitions which find that a candidate, either the successful or the unsuccessful candidate, was involved in corrupt practices³⁶ results in their disqualification from contesting the by-election³⁷. The *Act* makes a distinction between illegal practices³⁸ and corrupt practices³⁹. The punishment for these offences is also different. Persons found guilty of an illegal practice are liable to serve a prison term of up to 3 years whereas a person found guilty of a corrupt practice is liable to serve a prison term of up to 2 years. The coverage of corrupt or illegal practices is not necessarily confined to candidates. Pursuant to section 119(2) of the *Act*, the Court is empowered to report *anyone* found guilty of corrupt or illegal practice to the SoP, and the person is afforded the opportunity of being heard on why he or she should not be reported.

81. In the 2011 general election, 10 election petitions were filed. Three petitions were subsequently withdrawn. Three were against newly appointed ministers⁴⁰, the party leader of STP, and the SoP. The rest of the petitions were filed against HRPP candidates.

Recommendation:

- (vii) *That the OEC may wish to consider including the issue of election petitions in its voter education and awareness programmes, particularly to assist enhancing the knowledge of candidates on their rights and obligations regarding election petitions.*

The Role of Police

82. Over a period of six months prior to the election, the Samoa Police assessed the potential threats to the general election. Although there was an absence of real threat, the Samoa Police conducted updated sectional briefings continuously until the week before polling. An operational order was issued which set into motion everything the police was required to do to ensure a peaceful and trouble-free election. Some 300 policemen were assigned to cover polling places in Upolu and Savai'i while others were placed on general duties to oversee law and order. A contingent of 30 policemen was sent out to the police outposts so that they could quickly mobilise a response in the

³⁵ See *Samoa Party v Attorney-General* [2009] WSCA4 (7 May 2010).

³⁶ Corrupt practices include personation, bribery, treating and undue influence.

³⁷ See examples discussed in *Samoa Party v Attorney-General* [2009] WSSC23 (20 March 2009), paragraphs 33, 34, 35 and 40.

³⁸ Illegal practices include procurement of votes by unqualified electors and illegal activities during the period of election.

³⁹ See *Posala v Su'a* [2006] WSSC 29 (16 August 2006).

⁴⁰ They were the Minister of Education Magele Mauiliu, the Minister of Finance Faumuina Tiatia Liuga and the Minister of Works, Transport and Infrastructure Manu'alesagalala Enokati Posala. Also challenged were the Leader of Samoa Tautua Party Va'ai Vailupe Va'aia and newly elected Speaker of Parliament Agafili Patisela Etuati.

event of trouble. Policemen assigned to polling places were specifically instructed not to interfere in the polling process.

83. On 1 March 2011, the Police Commissioner issued a warning against potential trouble-makers and urged the public to cooperate with authorities to ensure a trouble free election. He was also reported in the *Samoa Observer* of 2 March 2011, reminding potential trouble makers of the presence of police throughout the country on polling day.

84. Upon the completion of counting at polling places, police delivered all the ballot boxes to the storage room at the OEC at Mulinu'u. The key to the storage room was held by police. Given the absence of a perimeter fence to secure the safety of ballot boxes stored at the OEC, police maintained security for this area until the completion of all disputed election petitions.

Women and the Election

85. Out of the 159 candidates that contested the 2011 general election, 7 were women candidates. However, only two women were elected. Both are members of the HRPP and both held ministerial positions in the last government. One was appointed Minister for Justice. Compared to the 2006 general election the number of women candidates has declined. In 2006, 19 women stood as candidates and 4 were elected. Three of them were members of the HRPP and 1 was a member of the SDUP.

86. The number of women candidates remains low. Moreover, the number of women elected as MPs is also low. A programme involving political parties may be considered by Government to examine some of the underlying reasons for women candidates' low success in general elections and identify appropriate measures that may help to improve the performance of women candidates. Such a programme may also consider a study of electors' attitudes, including women, village councils and political parties to identify appropriately tailored steps to support women who wish to become legislators. Changing people's attitudes involve long-term investment in appropriate programmes that targets the barriers that prevent women's greater participation in parliamentary democracy.

Recommendation:

(viii) *In light of the low number of women MPs, that consideration be given to developing appropriate programmes aimed at increasing the number of women in Parliament, including programmes aimed at sensitising MPs, village councils, women and political parties on the importance and value of women's contribution as legislators.*

The Role of the Media and Public Access to Information

87. The media in Samoa played an important role in raising awareness about the election, its preparations, and the aspirations of candidates and political parties. At the time of the general election, Samoa had 5 newspapers,⁴¹ 3 television stations⁴² and 4 radio stations.⁴³ Most of these

⁴¹ *Savali* newspaper- a bilingual fortnightly newspaper that is state owned; *Samoa Observer*-Privately owned newspaper that is published daily; *Le Samoa* – Bilingual weekly newspaper, *Talamua Magazine* – a monthly bilingual paper)

media outlets have online websites. Media coverage reaches both Savai'i and Upolu. The readership of the *Samoa Observer*, a private newspaper and the government-run *Savali* newspaper, is generally confined to Apia and an outreach program is now targeting readership in Savaii and Upolu.

88. In terms of coverage of election matters, the *Samoa Observer* and *Savali* ran news items on the general election, including publication of campaign items such as photographs of candidates, political parties and their political manifestos. Public debates on key elections issues were also published in the 'Letters to Editor.' Important public notices released by the OEC and printed by the *Samoa Gazette* were also reprinted in the newspapers for electors' information. These included polling place locations and names of electoral officers assigned to these polling places. The OEC also managed its own online website, posting information on the election including updates on the preliminary and the final results⁴⁴. Other information included news on the candidates, the constituencies and corresponding registered voter data, electoral laws and related reports. Media organisations with approved accreditation were granted access to observe and provide live coverage on the progress of preliminary results on the afternoon of 4 March.

CONCLUSIONS AND RECOMMENDATIONS

89. Overall, the Team witnessed the election in Samoa at a unique period of time. In 2011, the election was contested by *matai's* only. Also new candidate screening processes such as the requirement to provide services to the community came into effect and a new political party entered Samoa's political landscape. The use of indelible ink was also introduced. Furthermore, electors' fingerprints and photographs replaced the use of voter identification cards.

90. The election process was peaceful and orderly, and conducted according to the processes defined in the *Act*. Ninety-two percent (92%) of the electors participated in a fundamental governance process without hindrance. The general election was held in accordance with the principles of democratic good governance, relevant laws of Samoa and was free and fair.

91. However, with reports of some electors being banished from their villages by their village councils, consideration may be given to examining how the secrecy of electors' votes may be protected.⁴⁵ While the practice of banishment is not a frequent occurrence such practice would inherently impact on electors' freedom of choice of candidates and would inherently affect free and fair elections.

92. The Team respectfully offers some recommendations which may be of help to the election management body. The recommendations are attached in Annexure "A".

⁴² Samoa Broadcasting Corporation (SBC) TV1 – state-run; TV3-privately owned and Vaiala Beach Television (VBTv) – privately owned

⁴³ Magik FM - popular music ; K-Lite FM - easy listening music ; Talofa FM - Samoan language and music; Samoa Broadcasting Corporation (SBC) - state-run, commercial, operates medium wave (AM) and FM stations

⁴⁴ <http://www.samoaelection.ws/index.cfm>

⁴⁵ See 'Man banished over vote', *Samoa Observer*, 18 March 2011; 'It's a crying shame, Samoa!', *Samoa Observer*, 18 March 2011; 'Samoa opposition leader faces bribery and treating allegations in court', *Radio New Zealand International*, 15 April 2011.

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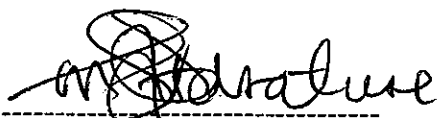
93. The Team thanks the OEC for the assistance and support in Samoa. Despite an extremely busy period for the OEC, an officer was released from electoral duties to assist the Team. We are very grateful and we thank the EC Tanuvasa Isitolo Lemisio for this support.

94. We also thank Aiono Mose Pouvi Sua, Chief Executive Officer, Ministry of Foreign Affairs and Trade. With the Ministry's support we were able to meet with key officers and to obtain information on the preparations for the election, general information on the election environment, and their insight into the conduct of elections and some of the key political issues prevailing in Samoa at that time. We are especially grateful that we were able to meet these people despite the short notice of the confirmation of the mission. We value their willingness to meet us, the information we obtained and appreciate the knowledge and experiences which they shared with us.

95. The insight of these people enabled us to have a better understanding and appreciation of the electoral environment, the socio-political context in which Samoa's election is undertaken and the political nuances that are unique to Samoa.

96. We are honoured to have witnessed the 2011 general election and we are pleased to share our report, and hope that the recommendations are useful to the OEC.

Faamalo,



Dr. Henry Ivarature
Pacific Islands Forum Secretariat



Ms. Katrina Ma'u
Pacific Islands Forum Secretariat

Suva
Fiji

30 August 2011

Annexure "A": SUMMARY OF RECOMMENDATIONS

Listed below is a summary of the recommendations of the Pacific Islands Forum Secretariat Election Team.

- (i) *Noting the complex nature of recently introduced requirements for validation of a candidate's performance of monotaga, that this requirement continues to be monitored and reviewed so as to ensure that the practice of monotaga is not seen to be manipulated for political purposes, and is not seen to limit a person's ability to participate fully in the political life of Samoa;*
- (ii) *That the Government consider allocating appropriate funding to support the voter education and awareness activities of the OEC;*
- (iii) *That the OEC may wish to consider the merits of developing culturally appropriate voter education and awareness programmes that might assist village councils to address the underlying causes for electors being banished from their communities following a general election;*
- (iv) *The OEC may wish to consider issuing a public notice to inform all MPs and potential candidates seeking to contest the next general election the dates within which the traditional presentations of "o'o" and "momoli" are permitted to take place. Formal notice about the dates for permissible traditional presentations may help to ensure that candidates and electors alike are aware of the legality, or not, of the traditional presentations in the context of the election campaigns. This suggestion may also be considered for the conduct of "tautua faaauau";*
- (v) *At present, the Act does not provide for political parties and candidates to disclose information on sources of campaign finances and campaign expenses. In this regard, consideration may be given to examining the merits of taking appropriate legislative and administrative measures to enhance transparency in the funding of candidates for elected public office and, where applicable, the funding of political parties;*
- (vi) *That consideration may be given to the merits of educating some members of the public on why Special Votes are not counted immediately at the polling places. At present, the number of Special Votes cast at each constituency is recorded during the preliminary count and are later sorted, scrutinised and counted during the final count. The importance of educating the public on how Special Votes are handled arises from an apparent lack of knowledge amongst some electors of the transparent process with which Special Votes are handled, and hence the belief that these votes could be tampered with while kept in storage for sorting, scrutiny and counting;*
- (vii) *That the OEC may wish to consider including the issue of election petitions in its voter education and awareness programmes, particularly to assist enhancing the knowledge of candidates on their rights and obligations regarding election petitions;*
- (viii) *In light of the low number of women MPs, that consideration be given to developing appropriate programmes aimed at increasing the number of women in Parliament, including programmes aimed at sensitising MPs, village councils, women and political parties on the importance and value of women's contribution as legislators.*

SCHEDULES AND TABLES

Schedule 1: Consultation List, 1 – 8 March 2011

Names	Position
Aiono Mose Pouvi Sua	Chief Electoral Officer, Samoa Ministry of Foreign Affairs and Trade
Tanuvasa Isitolo Lemisio	Samoa Electoral Commissioner
Reverend Vaiao Etuate	Superintendent, Apia Synod, Methodist Church in Samoa
Dr. Morgan Tuimalieafano	Academic and scholar, University of the South Pacific
Mata'afa Keni Lesa	Editor, Samoa Observer
Terry Tavita	Editor, <i>Savali</i>
Roina Vavatau	CEO, Samoa Umbrella Non-Government Organisation (SUNGO)
Mrs. Vaasiliifiti Moelagi Jackson	SUNGO
Ms Laeimau Oketevi Tanuvasa	CEO, Computer Services Limited
Vete Fenerita Luisa Lokeni	Temporary Registration Officer
Lilomaiava Su'emalo Fou Taioala	Commissioner of Police
Tigaina Laupepa	Legislative Assembly, Ministry of Justice

Final Results of 2011 Samoa General Election

No.	Electorates	Population of registered voters	Number of candidates per electorate	Total final votes counted	Preliminary votes of elected candidates	Final votes of elected candidates	Votes (%) obtained by elected candidates from total votes counted	Voter turn-out (%)	MPs elect	Party Affiliation
1	Vaimataga Sasae	3065	4	2377	933	1010	42.49	76	Tuisigaletaua S Aveau	HRPP
2	Vaimataga Sisifo	5632	9	7234	1842	1973	27.27	128	Lefau Harry Schuster	TSP
					1287	1377	19.04		Lenatai V.F. Tamapua	HRPP
3	Faleata Sasae	2159	4	1740	746	774	44.48	81	Aveau N. Palamo	TSP
4	Faleata Sisifo	5057	2	3732	2215	2341	62.73	74	Lealaillepule R Aiafi	TSP
5	Sagaga le Falefa	3754	4	2935	1157	1178	40.14	78	Tuisa Tasi Patea	IND
6	Sagaga le Usoga	2781	3	2059	813	844	40.99	74	Muagututagata A. P Ah Him	HRPP
7	Ā'ana Ālofi I	3622	5	4659	1197	1253	26.89	129	Leaupape T Faafisi	HRPP
					-----	1275	27.37		Tuitama T Tuitama	IND
8	Ā'ana Ālofi II	1522	3	1133	580	617	54.46	74	Tolofuaialelei F Leiatua	HRPP
9	Ā'ana Ālofi III	2590	5	2001	1004	1038	51.87	77	Toolesulusulu C.P.S Schuster	TSP
10	Āiga I le Tai	2988	5	2394	849	879	36.72	80	Ilopo Matia Filisi	HRPP
11	Falelatai and Samatau	1979	3	1627	621	647	39.77	82	Taefu Lemi	HRPP
12	Lefaga and Falease'ele	2874	2	2186	1060	1095	49.91	76	Lemamea Ropati	HRPP
13	Sāfata	4256	6	5841	1271	1323	22.65	137	Paluesalue Faapo II	TSP
					1249	1293	22.14		Manualesagalala E Posala	HRPP
14	Si'umu	1988	2	1569	839	867	55.26	79	Tuuu Anasii Leota	HRPP
15	Faleāilii	4131	6	5351	1218	1286	24.03	130	Tuiloma Lameko	HRPP
					1132	1162	21.72		Tusa Misi Tupuola	HRPP
16	Lotofaga	814	2	641	454	469	73.17	79	Fiaame N Mataafa	HRPP
17	Lepa	740	1	---	---	---	---	---	Tuilaeapa S Matilegaofi (*)	HRPP
18	Āleipata Itupā i Luga	2265	2	1780	936	1009	56.69	79	Seuala Taua Tavaga Kitiona Seuata	HRPP
19	Āleipata Itupā i Lalo	2291	4	1818	753	882	48.51	79	Tatua Matuelue Tafua	HRPP
20	Va'ao Fonofu	2342	5	1894	755	774	40.87	81	Tialavea F. T Seigafolava	HRPP
21	Anoāma Sasae	2294	4	1871	1073	1094	58.47	82	Alaiasa F.S Hunt	IND
22	Anoāmo Sisifo	2449	1	---	---	---	---	---	Fonotoe N.P Laufofo (*)	HRPP

23	Fa'asale'aga I	3197	11	4779	767	817	17.10	150	Gatoaifaana A.A Gidlow Magele Mauiliu Magele	HRPP
24	Fa'asale'aga II	2173	3	1763	660	686	14.35	81	Papalii L. F. T Masipau	HRPP
25	Fa'asale'aga III	1694	3	1337	901	678	53.89	79	Tuilieutu Alavaa Voi	TSP
26	Fa'asale'aga IV	1623	4	1400	583	597	50.71	86	Peseta Vaofou Tevaga	HRPP
27	Gāgā'emauga I	2811	2	2327	1636	1664	42.64	83	Sala Fata Lisati Pinati	HRPP
28	Gāgā'emauga II	1117	4	864	298	304	71.51	77	Levaopolo Talatou	TSP
29	Gāgā'emauga III	1724	3	1406	604	721	35.19	82	Faamoetaulao Ulaitino Faale Tumaalii	IND
30	Gāgā'fomauga I	1013	2	825	489	504	61.09	81	Tuiloma Anetelea	HRPP
31	Gāgā'fomauga II	2309	5	1985	1003	1051	52.95	86	Sooalo Mene	HRPP
32	Gāgā'fomauga III	1131	2	887	604	627	70.69	78	Laaui L.P Fosi	HRPP
33	Vaisigano I	2105	3	1657	701	731	44.12	79	Vaai Papu Vailupe	TSP
34	Vaisigano II	1540	2	1261	634	659	52.26	82	Motuopuaa U.A Vaai	TSP
35	Falealupo	1289	3	1049	547	572	54.53	81	Aeau P Leavaiseeta	TSP
36	Alātaua Sisifo	1036	3	824	504	514	62.38	80	Lafatele P Leiatualesā	HRPP
37	Sālega	2518	5	3449	981	1020	29.57	137	Afualo Wood Ufi Salele Tapuai S Moananu	TSP
38	Palauji Sisifo	2221	5	1847	513	572	25.51	83	Agatili P.E Tolovaa	HRPP
39	Satupa'itea	1183	3	931	443	457	28.53	79	Tavui Tiatafu Tafu Salevao	HRPP
40	Palauji Sasae	2616	5	2180	773	798	49.09	83	Afoafouvale John Moors	HRPP
41	Palauji le Falefā	2178	3	1808	892	918	36.61	83	Faumua Titiatia Liuga	HRPP
42	Individual Voters	3739	6	5188	1547	1635	50.77	139	Papalitele Niko Lee Hang Manuaivaao Pat Ah Him	HRPP
Totals	-----	100,810	159	92429	43035	45194	31.53	92%	49 MPs	---
					43035	45194	48.90%			

Source: Compiled from preliminary results and final figures from the Electoral Office.

Notes:

1. The asterisk in closed bracket (*) informs that the candidate was elected unopposed and declared officially by Head of State before polling on 4 March.
2. Voting figures exclude the two candidates elected unopposed.