

# Samoan government amends constitution to elevate traditional “custom”

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Three bills which fundamentally change Samoa’s constitution are nearing their final reading in the country’s parliament. Critics, including the Samoa Law Society and members of the judiciary, assert that the COVID-19 pandemic is being used to push through the amendments without the mandatory public consultation.

Introduced by Prime Minister Tuila’epa Sailele Malielegaoi, the Constitution Amendment Bill 2020, the Land and Titles Bill 2020 and the Judicature Bill 2020 divide the judicial system into two parallel courts of equal standing, one to deal with criminal and civil matters, the other with customary land and titles.

The changes will assert more direct government control over the legal system, reflecting growing authoritarianism and appeals to tribalism by governments across the Pacific in response to rising poverty and discontent caused by the escalating economic crisis. Over 100 people protested outside Samoa’s parliament last month when the amendments were presented at a select committee hearing.

Currently the Land and Titles Court, composed of lay judges appointed on the basis of traditional hierarchical Samoan custom, has jurisdiction over customary land disputes and *matai* (chiefly) titles. Under the new amendments, the Land and Titles Court would be entrenched in the constitution, gain a new appellate court, and have “supreme authority over the subject of Samoan customs and usages.”

The current ability to appeal decisions of the Land and Titles court to the Supreme Court is removed. Furthermore, a government-appointed commission will be empowered to dismiss judges. These measures have been condemned by international legal organisations, including the South Pacific Lawyers’ Association and New Zealand Law Society, claiming they erode the

independence of the judiciary and threaten the rule of law, while subjecting judges’ tenure to political pressure.

The changes elevate tribal custom as a source of law and integral part of the constitutional system. Tuila’epa bluntly declared that the constitution in its present form expressed “unfounded *palagi* [white foreigner] thinking,” when it was framed under pressure from the New Zealand colonial ruler and the UN as Samoa assumed formal independence in 1962.

The move also follows a controversial 2017 constitutional amendment which formally declared Samoa a Christian state. Christianity was expanded with European colonisation, and the churches remain a powerful force for social control today.

The powers of sections of the traditional Samoan elite, centred on the hierarchical *matai* system, will be further entrenched. *Matai* are the holders of chiefly titles and play the key role in the regulation of social life. There are nearly 17,000 *matai* out of a total population of 202,000. Importantly, the *matai* administer family property including customary land. About 81 percent of Samoa’s land is under customary ownership, with only 4 percent freehold and the rest public lands.

From independence only *matai* could vote and stand as candidates in elections to parliament. Limited universal suffrage giving the right to vote to adults aged 21 and over was only introduced in 1990. The right to stand for elections, however, remains with *matai*. In the 49-seat Legislative Assembly all 47 members are *matai*, with the exception of two seats reserved for non-Samoans. The new laws will entrench the control of this tribal elite over land ownership.

A former head of state, Tui Atua Tupua Tamasese Efi, has asserted that the real purpose of the bills is to

enable the government to sell land to fund overseas debts and infrastructure developments. In December 2017, hundreds of people protested in the capital Apia against the Lands Title Registration Act 2008, which they claimed violates customary land rights by breaking communal land into individual titles. The government denied the claims, saying it only applied to freehold land.

Throughout the Pacific, disputes over the control of land have increasingly been at the centre of competing sections of the ruling elites. The traditional tribal hierarchy and customary landowners are pitted, not only against each other, but against business leaders, state bureaucrats and middle-class layers who resent the monopolising of the country's wealth and political power.

With foreign investors barred from buying land, demands have also been raised by international financial agencies and the local imperialist powers, Australia and New Zealand, for programs of economic liberalisation to privatise the public sector, combined with hollow calls for more “democracy.”

In a 2008 report, the Asia Development Bank (ADB) praised Tuila'epa as an economic “reformer.” State-owned enterprises were corporatised, government ministries contracted out work, international air routes sold off and a new private mobile network operator licensed. However, ongoing criticisms over the size of the public sector, the cost of doing business and poor quality infrastructure remained.

The ADB report identified “weaknesses” in the land leasing framework as adversely affecting large parts of the economy, particularly finance, agriculture and tourism. It called for policies to make leasing more flexible to make “the substantial land holdings of the state available to private investors.” In a 2016 report, the ADB again warned about Samoa's “high transaction costs ... inefficiencies in state-owned enterprises, an underdeveloped finance sector, and poor access to secure land titles.”

Samoa's pro-business economic drive attacking the social position of the working class has been accompanied by increasingly autocratic measures. University of Auckland law lecturer Fuimaono Dylan Asafo told Radio NZ that Tuila'epa, who has been prime minister for 21 years, has instituted a “rise in tyranny” in Samoa, including the suppression of free

speech, curtailment or abolition of civil liberties and laws passed by decree without public debate or popular approval. Asafo, however, also defended the government's record of economic “development.”

Escalating tensions have seen divisions erupt inside the ruling Human Rights and Protection Party (HRPP). Former parliamentary speaker and cabinet minister, La'auli Leuatea Polataivao Schmidt announced that under pressure from his constituents he had quit the party and would oppose the bills. Another dissenting MP, Faumuina Wayne Fong, has been sacked. La'auli claimed Samoa had become a “one party state” under Tuila'epa and he intends to establish a new party to contest next year's election.

La'auli represents sections of the ruling elite that have no fundamental differences with Tuila'epa, in particular its economic agenda, but are seeking to establish new safety valves for opposition among the working class and rural poor. Popular hostility to the government is simmering over its disastrous mishandling of last year's measles epidemic, in which 83 children died and 1,868 were admitted to hospital. The deaths were a profound shock to the tiny country's 200,000 people and Tuila'epa has dismissed widespread calls for an official inquiry into the disaster.

The dire economic effects of the coronavirus pandemic are exacerbating already severe social inequality. The COVID-19 State of Emergency has been extended for another month, taking the country to an unprecedented four-month lockdown. The collapse of tourism and remittance income, which together account for 40 percent of Samoa's GDP, will thrust thousands even deeper into poverty.

The ruling elites across the Pacific, whether archaic relics of authoritarian tribal elites, privileged layers of business and the law and the upper middle class or, as in Fiji, military dictatorships, have all proved incapable of meeting the democratic aspirations and basic social needs of the mass of their oppressed populations.



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