



Monday 27th April 2020
MEMBERS PRE-SITTING BRIEFING

A total of 39 Members of Parliament convened today, Monday 27th April 2020 at the Conference Room of Maota Tofilau Eti Alesana (MTEA), Mulinuu for a re-brief of the three controversial Bills which were tabled in the March sitting. The Hon Speaker took lead of the Briefing which had four items on the Agenda, namely:

1. Constitution Amendment Bill 2020
2. Land and Titles Bill 2020
3. Judicature Bill 2020; and
4. Electoral Amendment Bill 2020.

The Executive Director of the Samoa Law Reform Commission, the Chief Executive Officer of the Ministry of Justice and Courts Administration and the Assistant Attorney General presented on the first three bills on the Agenda; while the Commissioner for the Electoral Office presented on the Electoral Amendment Bill 2020.

The following will note the main issues and concerns raised by Members in regards to the 4 Bills discussed.

(1) CONSTITUTION AMENDMENT BILL 2020

Presenter: *Teleiai Dr. Lalotoa Mulitalo - Executive Director (SLRC)*

Afioga Teleiai presented an overview of the Bills and spoke on the background and rationale for the development of the Bills. She clarified that it was in 2016 during a Parliamentary Symposium that the Chief Justice at the time, Afioga Patu Tiavaasue in a presentation made at the Symposium stated that the individual rights take precedence over communal rights as it is provided for in the Constitution, given this, the decisions made by the Village Fono is disregarded during court proceedings as the Constitution does not reflect communal rights.

Teleiai continued that it was also in 2016 that a Special Inquiry Commission was established to assess the procedures of the Land and Titles Court, much deliberation took place during the Commission's investigations and a report was tabled with recommendations formed from the outcome of numerous consultations with the Ministry of Justice and Courts Administration, the Land and Titles Court, the Attorney General, and the general public. It was in 2018 that a Land and Titles Bill was formulated with recommendations from the Special Inquiry Commission incorporated into the new Bill. In

2019 after further consideration, Cabinet decided that there were other factors which needed to be refined and further clarified; hence the instructions made by Cabinet to the Ministry of Justice and Courts Administration, the Office of the Attorney General and the Samoa Law Reform Commission to research and investigate the practices and procedures recommended by the Commission of Inquiry on the Land and Titles Court. The Committee then conducted its investigations and research as instructed for 5 months (October 2019 - February 2020) which has brought about the amendment to the Constitution and the new Land and Titles Bill 2020. The Executive Director explained that from the 124 Articles of the Constitution of the Independent State of Samoa, only 8 Articles make reference to the Samoan culture; we need to better reflect our Samoan customs and practices in our Supreme Law, and this is how we can achieve this, by changing the Constitution without infringing or removing any rights provided for in the Constitution.

Issues and concerns raised by Members:

- Tofa Nafaitoa Talaimanu Ketu noted that in the past there were 28 cases referred to Judicial Review and only 9 were successful; he then queried the grounds used by the Judicial Review panel which led to the success of these 9 cases.
- Afioga Lealailepule Rimoni Aiafi advised the presenters to focus their presentations on the issues and concerns raised by the Samoa Law Society; he stated that the worries expressed by the Samoa Law Society should be clarified by the administering body to ensure Members can accurately explain and inform their constituents and members of the public who are now becoming unreceptive to the proposed changes.
- Afioga Faumuina Wayne Fong queried whether there were enough consultations between the Committee and affected parties in regards to the proposed changes. The Member stated that proper consultation and awareness is crucial to ensure members of the public are not easily swayed from the truth and stand against the proposed changes.
- Afioga Tafua Maluelue Tafua also raised the issue of not spending enough time to properly inform and clarify the changes to the people especially the Samoa Law Society. He queried what the Committee's stand is on the issues raised by concerned citizens that the amendment will provide the Justice System with two heads - that is the Chief Justice for the Civil and Criminal Courts and the President for the Land and Titles Court. He further asked whether the two will have the same authority.
- Afioga Hon Lopao Natanielu Mua spoke on the rationale of the amendment and stated that as the Chairperson of the Special Inquiry Commission established in 2016, he is aware of the concerns which were raised during the Inquiry on the Land

and Titles Court (LTC) specifically the need for the independence of the LTC. The Hon Member explained that when the constitution was formed Samoa adopted the laws of foreign rulers (those who came and colonised our nation). It is because of this, the laws are not reflecting local customary practices, hence why this amendment is critical in ensuring that our own unique culture is reflected in the Constitution.

- Tofa Olo Fiti Afoa Vaai expressed his appreciation for the members of the Law Society who are concerned with the Amendment Bills and stated that it is important to have different viewpoints on such changes especially given it is a constitutional amendment. The Member queried that it is uncertain whether there are lawyers involved in the Land and Titles Court (how can the law be accurately interpreted without lawyers?) The Member also noted his uncertainty in the qualifications and eligibility of members seated on the Court of Appeal and Final Review as well as the High Court for the Land and Titles Court; as well as whether members of the Judicial Service Commission have legal qualifications or otherwise.
- Afioga Hon Faumuina Tiatia Liuga and Afioga Hon Tuitama Talalelei Tuitama both expressed support and appreciation for the amendment as it will better reflect Samoa's customs and traditions in its Supreme Law (Constitution).
- Afioga Alaiasa Sepulona Moananu raised the need for effective public consultations and public awareness to better inform the community. The Member also suggested to have stronger policies and procedures in place to ensure those seated in the Supreme Court and Court of Appeal and Final Review are well qualified to carry out the duties and responsibilities.
- Afioga Sulamanaia Fetaiai Tauilili Tuivasa expressed appreciation to the Hon Speaker for another opportunity to further clarify the Bills which have already been referred to Committees and stated that as Members of Parliament it is important to fully understand the reasons for changes to laws to ensure the explanation and clarification given to members of the constituency is easily understood and accepted.
- Afioga Faaulusau Rosa Stowers raised the importance of having effective public awareness on the Bills for better understanding and acceptance by members of the public.
- Afioga Salausa John Ah Ching informed the Hon Speaker that he would like to be granted the opportunity to speak in Chamber during its proceedings to voice his appreciation and support for the Bill as it values the Faa-Samoa. Salausa stated

that during the covid-19 lockdown there has been no public gatherings including village fono's.

Executive Director of the SLRC - RESPONSES

- The Executive Director attempted to respond to the issues raised and clarified that currently the Committee (SLRC, MJCA and AG) are prepared to respond to the concerns raised by the Samoa Law Society, and are also awaiting their appearance before the Committee to express and clarify the current changes. Furthermore Teleiai stated that the amendment does not provide the Land and Titles Court to be equal or superior to the Criminal and Civil Procedures Court because both courts have different jurisdictions. The two courts will operate separately and work within their own jurisprudence because they have separate values. The European Court focuses more on individual rights whereas the Land and Titles Court values the communal rights. Teleiai asked "how can there be an autonomous Land and Titles Court; the answer is simple, it must be incorporated within the constitution." The SLRC Commissioner explained that if the Land and Titles Court is provided in the Land and Titles Act then it will always be subordinate to the Criminal and Civil Procedures Court.
- Teleiai responded to the query whether there were two heads of the Ministry of Justice and Courts Administration; there are separate heads of the Civil and Criminal Procedures Court, and the Land and Titles Court (the Chief Justice and the President) - who is responsible will depend on the matter being discussed, whether it is an individual right issue, the Criminal Court has jurisdiction, if it is a communal rights issue, then the Land and Titles Court will take lead.
- The Executive Director explained that this framework and layout is not permanent (it can be changed) depending on the majority will of the nation.

(1) LAND AND TITLES BILL 2020

Presenters: *Moliei Vaai - CEO - Ministry of Justice and Courts Administration*
Galumalemana Noumea Loretta Teueli - Acting Attorney General

The CEO for the MJCA began her presentation by recalling the debates of the 1960 Constitutional Convention, whereby one Member questioned the presence of the cultures and customs of Samoa in the Constitution. This made way to a response by the overseas consultant who stated that there will come a time when Samoa's constitution is matured and developed to incorporate such changes.

Furthermore, the CEO explained that the Bill proposes a new structure/set up for the Land and Titles Court. The LTC will have its own Supreme Court for LTC matters in the form of a High Court; it will also have its own LTC Court of Appeal and Final Review.

Issues raised by Members:

- Afioga Faumuina Wayne Fong queried whether lawyers will be used to argue Land and Titles matters - if so, he suggested that this be removed, as he supports the absence of lawyers when arguing land and title matters.
- Afioga Lealailepule Rimoni Aiafi noted his support for the Bill and appreciation for the importance placed on the Land and Titles Court as evidenced with the establishment of its separate High Court and Court of Appeal and Final Review. The only issue raised by the Member was his disagreement on the amendment which states that there shall be no more than 5 chiefs or matai sa'o in families. Lealailepule believes that the courts should not restrict or limit the number of titles bestowed by families (we should not intervene with this).
- Afioga Taefu Lemi stated that his concern is on the capacity of the Land and Titles Court to perform and carry out the new functions once the act is enacted; the LTC should be properly resourced and developed together with its human resource - employees should be upskilled and improved to ensure the duties and responsibilities are carried out and implemented accurately. The Member also noted that recently Faamasino Fesoasoani were let-go and the President was also under investigation. Taefu realised the importance of building the capacity of the employees.
- Afioga Tafua Maluelue Tafua queried whether there was a benchmark set by the Ministry to allow local judges and lawyers who have served 15 years or more in the legal sector to be eligible to sit on the Land and Titles Supreme Court or the Court of Review and Final Appeal; this is to avoid any further hiccups given that the current criteria is for a retired Supreme Court Judge, a Supreme Court Judge, Vice president, and another appointed member to make 4 members seated at the Supreme Court for LTC and the Appellate Court for LTC.

The CEO further clarified that the President of the Land and Titles Court can sit in at the High Court LTC or the LTC Court of Appeal and Final Review; his powers and jurisdiction are not limited. In addition, the Acting Attorney General commented that lawyers are not allowed to argue cases of the Land and Titles Court - they can only assist with filing submissions but cannot stand in court and argue on LTC matters. On the same issue, the Acting Commissioner also clarified that Judges from the LTC may be removed by Parliament, whereas Judges from the Civil and Criminal Courts can be removed by the Ao o le Malo upon the advice of the Judicial Service Commission.

The Chief Justice and the President of the LTC are the only positions that require a two-third majority of Members of Parliament present to determine their removal from office.

(4) Committee Amendment to the ELECTORAL BILL 2020 as per FK20(19)

Presenter: *Faimalomatumua Mathew Lemisio - Commissioner OEC*

The Commissioner of the Electoral Commission Office presented on the amendment of the Electoral Bill 2020 which simply provides the Commissioner the authority to determine a date to disqualify or reject further applications or registrations of political parties.

Although queries raised by Members were not specific to the amendment Bill; the following provides general queries made by Members to the Electoral Commissioner.

- Members requested an updated list of electoral roll after the official transfer was completed in January 2020.
- Another Member queried the removal of religious contributions - as an eligibility requirement for candidacy in the upcoming General Elections;
- Several Members sought clarification from the Commissioner as to where the line is drawn when it comes to bribery - another member queried whether assisting families and constituents during the financial challenges of covid-19 is permissible.
- One Member recalled his personal experiences from past General Elections whereby he has been to court for bribery and he has succeeded on all counts - the Member clarified that there is a difference between helping those who seek assistance, and offering assistance when it has not been asked of the Member.

The Commissioner advised Members that these are sensitive times as we draw closer to elections and it is always best to avoid any practice or actions that may be questioned as bribery.

The Commissioner acknowledged the Members for their time and concluded his presentation.

The Hon. Speaker concluded with a Prayer and the Briefing was adjourned.