

RELIGIOUS FREEDOM & SOCIAL STABILITY IN SAMOA

Presentation by Ming C. Leung Wai, Attorney General of Samoa at the 22nd Annual International Law and Religion Symposium (Religion, Law and Social Stability), BYU International Center for Law & Religion Studies, Provo, Utah, USA, 4th – 6th October 2015.

Introduction

Firstly, I would like to thank the BYU International Center for Law & Religion Studies for inviting me to this insightful and well organized symposium. In particular, I want to thank Mr Arthur Edgson, General Counsel of LDS Church for the Pacific region for persuading me to attend this symposium. You have heard these past 2 days excellent presentations about religious freedom and social stability – mostly from the view point of academics, lawyers and judges at the plenary sessions. What I want to share with you today are the practical challenges faced by the Samoan Government in its attempt to promote religious freedom and social stability within Samoa.

In Samoa, religious freedom is an emerging issue that has at times caused division within some villages. Samoa's Constitution guarantees fundamental rights such as religious freedom. The division is often caused when a new Christian denomination is introduced into a village but is not welcomed by the chiefs of the village. My presentation will explore the tension brought about by religious freedom and the process that the Samoan Government has undertaken to minimize such tensions.

Before I share Samoa's experience with religious freedom and social stability, let me give you a snapshot of Samoa to help provide you with some context about what I will be talking about in the next 14 minutes.

Samoa Society

Samoa is a deeply religious Christian nation. I say this because 99% of our people are Christians according to our 2011 census. Whilst we may be a church going people, we do not necessarily adhere to all the Christian principles so Samoa is certainly not a crime-free society.

Samoa is located just South of the Equator in the middle of the Pacific ocean, about halfway between Hawaii and New Zealand. It consists of several islands with a total land mass of 2,944 km². It has a population of about 186,000 people. Probably the same number of Samoans, if not more reside overseas in New Zealand, Australia and USA. Samoans have one culture and

one language (Samoan), but most can also speak English. Please note that Samoa is different from American Samoa as the latter is a territory of USA.

Samoa's government is a parliamentary representative democracy and its legal system is based on English common law. Samoa was the first country in the South Pacific to gain independence in 1962. Samoa was also the first country to move the international dateline sometime in the 1890s, before it moved it back in 2011 so as to be on the same side of the dateline as New Zealand and Australia to make trade with these countries easier. With the moving of the dateline, Samoa is the first country in the World to see the Sun rise every morning. You may also find it interesting that Samoa was the first and only country in the Pacific to change the side of the road people drive on from the right side to the left side in 2009. As you can see from these examples, Samoa is a country of "firsts" since it is not afraid of making changes.

Parallel to Samoa's system of government is Samoa's traditional political system that is evident in its culture that is still strongly practiced up to this day. Samoan culture has been around for 3,000 years and is one of the main contributing factors to Samoa's peace and stability.

Underpinning Samoa's culture is the *matai* or chiefly system which has its own hierarchy, processes and laws. Each aiga or extended family has several matai (ie, chiefly title holders) who are heads of the aiga. The status and ranking of a matai varies depending on the background of the matai title. Collectively, the matai in a village are referred to as the Ali'i and Faipule (*Village Fono* or council of chiefs). The *Village Fono* has regular meetings where it acts, from a "Western" perspective, as the Executive, Legislature and Judiciary of the village. There are over 300 traditional villages in Samoa but very few of them around the town area do not have village fono. Above the village fono level is the district level comprising of lineage allegiances of villages. What I have just described briefly is Samoa's traditional political system which is headed by the council of chiefs of each village.

Samoa's Hon. Chief Justice had this to say about social stability in Samoa in the case of *Lafaialii v Attorney General* (Unreported Judgment, 24 April 2003, Supreme Court, Sapolu CJ):

"The authority of the Alii and Faipule has played a major and vital role in maintaining and preserving peace, harmony and stability within village societies for very many years so that the country has been able to enjoy peace and stability nationwide."

It is therefore no surprise that Samoa has one of the lowest number of police officers per capita in the World due to the stability provided by the village fono. Political stability is also enjoyed

by Samoa and the ruling party has been in power for over 30 years now. Such stability is vital for Samoa's economic development since Samoa does not have natural resources such as oil, gold, coal, natural gas, etc. Samoa relies on tourism and the export of fish and its people. Samoans residing overseas remit a lot of money to their relatives in Samoa. We also have Samoans who play rugby in Japan, USA, New Zealand, Australia and Europe. Also every major football team in USA's NFL would have a least 2 Samoans playing per team. Marcus Mariota for example is one famous Samoan currently playing for the Tennessee Titans. In fact, BYU Cougars have a few Samoans playing for them and this may help explain why they are performing so well. It appears that the Cougars have discovered the winning formula behind the All Blacks success which has Polynesians (mostly Samoans) playing for them. For those who do not know, the All Blacks is New Zealand national rugby team which are the world champions in rugby.

Individual Rights vs Communal Rights

Stability and harmony within Samoan society rely heavily on communal interests, often at the expense of individual rights. In other words, the interests of the majority are more important and take precedence over the rights of the minority or an individual. It is therefore inevitable that conflicts will arise if the communal interests are inconsistent with individual rights. For example, if the council of chiefs of a village has decreed for there to be only one Christian denomination within a village, this can pose a problem if a villager (or a family within the village) wants to establish a different church in the village. Religious freedom is guaranteed by Article 11 of the Constitution and can be exercised by any individual within the confines of the law. But there are times when the exercise of such right is not permitted by the council of chiefs within a village as just explained.

There is a Samoan saying that, "E sui faiga ae tumau faavae." In English, it literally means "methods can change but foundations remain". In other words, Samoan culture can be flexible but its fundamental principles never change. So whilst Samoan culture can evolve and adapt, its essence must remain intact. This has allowed Samoa's culture to survive and remain strong over the years.

Therefore, the introduction of religious freedom and how such freedom is to be exercised within Samoan society, must be handled with care to ensure that it does not compromise the very essence of Samoan culture and risk disruption to social stability.

Article 11

Religious freedom is guaranteed under Article 11 of Samoa's Constitution:

11. Freedom of religion

(1) Every person has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in a community with others, and, in public or private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Nothing in clause (1) shall affect the operation of any existing law or prevent the State from making any law in so far as that existing law or the law so made imposes reasonable restrictions on the exercise of the right conferred under the provisions of that clause in the interests of national security or of public order, health or morals, or for protecting the rights and freedom of others, including their rights and freedom to observe and practice their religion without the unsolicited interference of members of other religions.

Council of Chiefs

Even though religious freedom is enshrined in Samoa's Constitution, some villages have chosen to ignore this right, particularly when there are attempts to introduce a new Christian denomination into a village. There are various reasons why villages prohibit the introduction of new churches. One reason is that the forbears of a village had decreed for there to be only one church in the village and should therefore be respected. Another reason could be that there are too many churches already or that the neighboring village already has that particular denomination. Another common reason is that a new church is established without the permission or blessings of the council of chiefs.

Whenever a new church is set up in the village with the approval of the village's council of chiefs, it is afforded the protection of the village council of chiefs. No one is to harm the pastor, his wife or family as that would attract heavy penalties, including banishment imposed by the chiefs. Recognition is also given to the church by the village, eg food, fine mats or money are given to the pastor or pastors in a village every time a ceremonial event takes place in the village, such as chiefly title bestowals, funerals, etc.

Therefore any attempt to introduce a new church against the will of the council of chiefs could result in the disruption of harmony and social stability within a village. These type of disputes have often come before the Supreme Court of Samoa, and the result has always been in favour of religious freedom. Whether this will threaten and ultimately erode the authority of village chiefs remain to be seen. But villages which have accepted more than 1 Christian denomination continue to experience the social stability they had always enjoyed, eg my villages of Sapunaoa and Poutasi.

Court Decisions

In the cases that have come before the Courts, the chiefs have yet to score any clear victory since Courts have always ruled in favour religious freedom. This is particularly so in instances where the Alii and Faipule have tried to impose restrictions on the manifestation of one's religious beliefs. I will now discuss a few of these cases.

In the case of *Tariu Tuivaiti v Sila Faamalaga & Others* (Unreported Judgment 17 December 1980, Supreme Court, St John CJ), the Plaintiff and his family were banished from the village of Matautu, Falelatai for failing to attend church. The Plaintiff successfully sued the Ali'i and Faipule when the Court overturned the banishment order and awarded monetary compensation to the Plaintiff. The then Chief Justice upheld the Plaintiff's right of religious freedom, as such right included the right not to have any religion at all and therefore, the Ali'i and Faipule cannot compel the Plaintiff and his family to attend church.

In the case of *Faioso M. Sovita & Others v Police* (Unreported Judgment, 28 January 2000, Supreme Court, Sapolu CJ) the Appellants (who were chiefs and taulele'a (untitled men) from Salamumu) were convicted of arson and some of assault in the District Court. They appealed their sentence. The victim (Levao) was told by the Ali'i and Faipule to desist from conducting his own church services in Salamumu because only one church was allowed in the village, namely the Methodist Church. Levao was a member of Gospel of Jesus Church. When the victim continued with his church services by arguing that they were only "bible studies", the Ali'i and Faipule ordered the burning of Levao's house. On appeal, the Supreme Court reduced some of the monetary fines and also removed the compensatory awards.

In the case of *Mau Sefo & Others v Attorney General* (Unreported Judgment, 12 July 2000, Supreme Court, Wilson J.), the Plaintiffs successfully applied to the court to overturn a decision of the Ali'i and Faipule of Saipipi that had stopped them from conducting bible studies and worship services. The Ali'i and Faipule had earlier petitioned the Land and Titles Court to support its decision to limit the number of churches at Saipipi to only three. The Plaintiffs were seen to be introducing a new church so the Ali'i and Faipule banished the Plaintiffs. The Supreme Court invalidated the banishment order by citing the Constitution which guaranteed religious freedom.

Commission of Inquiry

The importance of the issue of religious freedom resulted in Cabinet directing for a Commission of Inquiry to be set up in 2010 to look into whether Samoa should restrict religious freedom to only Christian religion by amending Article 11 of the Constitution. The Commission of Inquiry was headed by the Ombudsman and comprised of respected members of the community as

well as prominent pastors from various Christian denominations. The Commission conducted public consultations around the country before they submitted their report to Cabinet. The Commission recommended against any restriction of religious freedom as that was not reasonable and practical in this day and age and would be contrary to Samoa's international obligations.

Village Fono Act

The issue of religious freedom again came up in 2011 during public consultations conducted by the Law & Justice Sector regarding the Village Fono Act 1990.

The purpose of the Village Fōnō Act may be found in its preamble:

“AN ACT to validate and empower the exercise of power and authority by village fono in accordance with the custom and usage of their villages and to confirm or grant certain powers and to provide for incidental matters”.

In effect, the Act gave legal recognition to the powers and authority that the Ali'i and Faipule have always had.

When the Village Fōnō Bill was discussed in Parliament before it was passed in 1990, some Members of Parliament argued that it gave too much powers to the Ali'i and Faipule. Others countered that there are reasonable restrictions to such power because aggrieved persons can still appeal the decisions of Ali'i and Faipule to the Land and Titles Court. The Government's position at the time was that the Bill will help develop village land for the economic betterment of the villages, promote community safety and maintenance of hygiene.

Twenty years after the passing of the Village Fono Act 1990, the Law & Justice Sector went out to the public to seek their views about the Act. The common theme that came out from the consultations was that the authority of Ali'i and Faipule need to be strengthened if Sāmoa is to continue to enjoy the stability it is experiencing. The public identified threats to this authority caused by the changes brought in by globalization. One such threat included this concept of “human rights” relating to freedom of movement and religious freedom, the latter caused by the introduction of new churches, particularly within villages which opposed new churches.

After these consultations, the Law and Justice Sector reported to Cabinet and some of its recommendations (which were accepted by Cabinet) included the need to amend the Village Fōnō Act to:

- (a) strengthen the role and authority of Ali'i and Faipule;
- (b) provide guidelines for the exercise of such authority;
- (c) provide a legal mechanism to enable the registration of village by-laws of each village.

Consequently, the Attorney General's Office drafted a Bill to amend the Village Fōnō Act which has gone through its second reading in Parliament. The salient parts of Bill relate to the following areas:

- (a) the Ali'i and Faipule to keep a written record of their inquiries, particularly where fines and penalties are imposed;
- (b) the Ali'i and Faipule to respect natural justice before a person can be penalised or fined;
- (c) a legal mechanism to allow registration of village by-laws and that such by-laws will be given judicial notice by the Courts;
- (d) a specific statutory power for Ali'i and Faipule to issue a banishment order rather than seeking such order from the Land and Titles Court (but such order to be still subject to judicial review);
- (e) for the Ali'i and Faipule to be consulted before any building or structure is built or activity is carried out that would impact on custom, safety, health, social cohesion and village harmony (e.g. establishment of a new church);
- (f) encouraging those living on freehold or Government land located within village lands to take into account village by-laws.

Those who are not happy with the decision of the village council of chiefs can appeal such decision to the Land & Titles Court.

The Government's aim with the Bill is to encourage religious freedom by providing a legal mechanism whereby anyone wishing to set up a new church in a village must consult with the village's council of chiefs. If the chiefs disallow the new church, then the matter can be taken to Court where the chiefs must justify their reasons to the Court as to why they have rejected the new church. Whilst there may be practical difficulties in enforcing a Court's decision should it rule against the chiefs, at least there is a legal mechanism in place which would require the chiefs of a village to carefully consider their decisions should the chiefs reject the establishment of a new church in their village.

Even though the amendment is yet to be passed, the Ministry of Women, Community and Social Development has commenced public awareness consultations on the Bill to inform stakeholders, particularly the village mayors about the Bill's salient features.

Conclusion

The balancing of individual rights and communal interests is a challenge that Samoa is facing. Samoa's Constitution guarantees fundamental rights such as religious freedom whilst at the same time recognizing Samoan customs which are communal in nature. It is therefore inevitable that these fundamental rights (which are individualistic in nature) will conflict with the communal interests intrinsic in Samoa's culture.

Samoa's Government has tried to "marry" individual rights with its custom's communal interests through public awareness workshops and consultations and legislative intervention. The process is a very delicate one and must be handled with great care. This is particularly so as the process could result in detrimental harm to the fundamental principles of Samoa's culture and to the concept of religious freedom. If such were to happen, the result would be catastrophic as this could spell the end of social stability in Samoa.

God bless and Soifua.