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His Excellency Tuilaepa Aiono Sailele Malielegaoi  
Prime of Minister of Samoa  
P.O.Box 1866  
APIA  
Samoa

19 May 2020

**Private letter to His Excellency Tuilaepa Aiono Sailele Malielegaoi from the International Bar Association's Human Rights Institute**

Your Excellency,

We are writing to you on behalf of the International Bar Association's Human Rights Institute (IBAHRI) to express our concern over the major constitutional amendments proposed in three bills currently before your Parliament, which would greatly undermine the rule of law and the independence of the judiciary in Samoa.

The International Bar Association, established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. It has a membership of over 80,000 individual lawyers, and 190 bar associations and law societies, spanning over 160 countries. The IBAHRI, an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

According to reports received by the IBAHRI, the proposed legislation would alter the court system to establish the Land and Titles Court as a separate court outside the constitutional and legal supervision of the Supreme Court. This would undermine the primacy of the Supreme Court by removing the Land and Titles Court from its scrutiny. The IBAHRI maintains that every court, government department, officeholder and person exercising governmental power must be subject to the scrutiny of the general court system - ultimately the Supreme Court - so that governmental power can be constantly checked and scrutinised against the Constitution and other laws of the land. The IBAHRI is concerned that such a move away from the rule of law could pave the way for further serious derogations from international human rights law in the future; it is a dangerous and undesirable precedent.

Further to this, the IBAHRI has been made aware that these proposed changes would greatly undermine the independence of the judiciary by granting the Judicial Services Commission – an unelected executive body – the power to dismiss judges, without cause or consideration of due process. Currently, judges may only be removed by a two-thirds majority vote in Parliament on grounds of misconduct or mental impairment. The IBAHRI is deeply concerned by the move to introduce such legislation, which would radically alter the constitution of Samoa, only a day before the country's Covid-19 state of emergency was called. The Covid-19 crisis should not be

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exploited as a guise under which controversial legislation can be pushed through, while international attention is diverted to fighting the crisis.

The IBAHRI contests the belief that international legal principles, as enshrined in the current Constitution, are unfit for Samoans, as expressed in your Ministerial address noting this proposed legislation. This legislation cannot better serve the needs of Samoans if it derogates from their human rights. The rule of law and the independence of the judiciary are fundamental pillars of international human rights law, and the IBAHRI is concerned that this proposed legislation, threatens these pillars and interferes with the guarantees of fundamental rights. The adoption of the Universal Declaration of Human Rights enforces the intrinsic relationship between human rights and the rule of law, as two sides of the same principle. The Declaration of the High-Level meeting of the General Assembly on the Rule of Law, adopted by the General Assembly in 2012, reaffirms international commitment to the rule of law, as the ‘foundation of friendly and equitable relations between States and the basis on which just and fair societies are built.’

As a member of the Commonwealth, Samoa is committed to upholding the shared values in the Commonwealth Charter. Paragraph VI secures nations’ commitment to guaranteeing the separation of powers and paragraph VII secures their commitment to upholding the rule of law as ‘an essential protection for the people of the Commonwealth’. A failure to uphold the values of this Charter could imperil Samoa’s reputation and its 50-year membership of the Commonwealth. Further to this, the IBAHRI would like to remind you of Your Excellency’s duty to defend judicial independence in Samoa. The UN Basic Principles on the Independence of the Judiciary uphold States’ duty to respect and observe the independence of the judiciary, which includes the right of Judges to a fair hearing before removal, and to be subject to removal only for reasons of incapacity or misconduct. The IBA Minimum Standards of Judicial Independence upholds that in disciplinary proceedings related to judges, the executive must only participate ‘in the initiation of disciplinary proceedings, but not the adjudication.’

The IBAHRI urges the Government of Samoa to reconsider the proposed legislation in light of its serious consequences laid out in this letter. We would be grateful to receive your assurances that you have received our letter and that our concerns will be addressed as a matter of urgency.

Yours sincerely,

The Hon Michael Kirby AC CMG  
IBAHRI Co-Chair

Anne Ramberg, Advocate, Dr jur hc  
IBAHRI Co-Chair

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