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**THIRD INTERNATIONAL DECADE FOR THE ERADICATION OF COLONIALISM**

**Caribbean regional seminar on the implementation of the Third International  
Decade for the Eradication of Colonialism: the future for decolonization in  
the Non Self-Governing Territories: what are the prospects?**

**Kingstown, Saint Vincent and the Grenadines  
16 to 18 May 2017**

**STATEMENT BY MR. DANIEL AGA**

**(AMERICAN SAMOA)**

**\*Revised version for the website submitted by the Author**

**Written Statement of the American Samoa Government  
On behalf of the Honorable Lolo Matalasi Moliga  
Governor of American Samoa**

Perspective submitted by Tapaau Dr. Daniel F. Aga

The Caribbean regional seminar on the “Implementation of the Third International Decade for the Eradication of Colonialism: the Future for Decolonization in the Non-Self-Governing Territories. What are the Prospects?”

National Insurance Services Headquarters, Kingstown, St. Vincent and the Grenadines 16 – 18 May, 2017

*E muamua lava ona ou faatulou atu i lenei Seminā Faaitulagi, ae maise i lau susuga o le Taitai Fono ia Rafael Dario Ramirez Carreno, ma le mamalu o le Komiti Faapitoa e To'a 24. Tulou, tulou lava.*

*E faatulou atu fo'i i le Malo o St. Vincent ma Grenadines -- o le Malo o le To'afilemu ma le Amiotonu.*

[First, allow me to respectfully acknowledge this important regional seminar, the Honorable Chairman Rafael Dario Ramirez Carreno and the Special Committee of 24. May I also acknowledge the Government of St. Vincent and the Grenadines – the Government of *Peace and Justice*. Salutations and Greetings.]

*Tau ina avea lo'u leo faatauva'a, e fai ma sui o le Afioga o le Kovana ia Lolo Matalasi Moliga ma le faigamalo o Amerika Samoa, e momoli atu ai se faafetai mo lenei valaaulia ma avatu ai se faamatalaga e tusa ai ma ni isi o taumafaiga e tatau i le faagaoioiga o le atina'eina o le pulea ma le tauaveina e o matou tagata – lea e ona le Mālo -- lo matou lava Mālo.*

[On behalf of Governor Lolo M. Moliga (mō lee ngah) and the American Samoa Government, I offer our expression of gratitude for this invitation, and for the opportunity to comment on the efforts of our people to develop self-government.

*O a'u nei o Tapaau Daniel Aga, le Faatonu o le Ofisa o Tulaga Faamalo, le Toe Iloiloina o le Faavae, ma Sootaga tauFeterale o Amerika Samoa.*

[I am the Director of the American Samoa Office of Political Status, Constitutional Review, and Federal Relations.]

## Part I: Are We a Colony?

**Chairman Rafael Carreno,**

A) It is important to first acknowledge the UN General Resolution stating “all peoples have the right to self-determination.”<sup>1</sup>

Given our present government and way of life, do we, in American Samoa<sup>2</sup>, live under a regime for which colonization must be *eradicated*? Do we consider ourselves *a colonized people*?

The answer to both questions is “**No. We do not.**”

Is there is a *widespread yearning* for political independence? “**No. There is not.**”

The Committee of 24 might ask if our people do not at least *thirst for freedom*? We answer differently. The Constitution of American Samoa<sup>3</sup> gives our people the right to free and open elections.<sup>4</sup> We know and enjoy great constitutional freedoms such as the freedom of speech and freedom of religion.

B) One constitutional right *key to our survival as an indigenous people* is stated in Article I, section 3 of the Constitution of American Samoa making it the policy of our government “... to protect persons of Samoan ancestry against alienation of their lands and the destruction of the Samoan way of life and language....”

By constitutional design, our traditional leaders are ensured a voice in each branch of government. We are the only US territory that maintains local control of immigration.<sup>5</sup> The indigenous land tenure system remains intact, with 90% of lands owned as communal family lands protected by local laws.<sup>6</sup> Close to 90% of the population is Samoan.<sup>7</sup>

The protection of the Samoan way of life is rooted in the two “Deeds of Cession” which established the legal beginnings of American Samoa as a territory of the United States.<sup>8</sup> In these two documents, the Samoan people ceded sovereignty of our islands to the US but required the protection of the Samoan way of life.

<sup>1</sup> UN General Resolution 1514 (XV); 14 Dec 1960 and 2625 (XXV). Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the UN.

<sup>2</sup> American Samoa is an unincorporated and unorganized territory. This group of islands is 76 square miles in size with a population of nearly 60,000.

<sup>3</sup> Revised Constitution of American Samoa, 1967.

<sup>4</sup> Qualifications of electors are established in Article II, section 7 of the American Samoa Constitution.

<sup>5</sup> 8 USC 1101 [a] [38]. American Samoa is *not* included in the definition of the US for US Immigration law purposes.

<sup>6</sup> A.S.C.A. tit. 37, particularly in 37.01, Titles to Land, and 37.02, Alienation of Land.

<sup>7</sup> American Samoa Statistical Yearbook 2012. Table 1.16 Ethnic Origin and Race: 1980 to 2010.

<sup>8</sup> The Tutuila and Aunu'u Deed of Cession, dated April 17, 1900, and Manu'a Deed of Cession, July 14,

A 2017 court ruling re-confirmed the vitality of the Deeds<sup>9</sup>. The District Court of Hawaii concluded that the American Samoans' right to use their "property" to protect and continue their cultural and customary fishing practices is reserved by implication in the Deeds of Cession. The ruling is being appealed.<sup>10</sup>

C) Since the Political Status Study in 1970 and the second in 2006-2007<sup>11</sup>, the people of American Samoa have selected to maintain the *status quo*. One of the most important reasons for staying with the *status quo* lies in the substantial economic benefits made possible by our affiliation with the US. No one wants to risk the economic advantages available to families and the community.<sup>12</sup>

We see and admire the political independence of island nations close to us such as Samoa, Fiji, and Tonga. But while the importance of political independence is paramount, it is the overall **development** of political, economic, and social sectors that our people observe and consider.<sup>13</sup>

Why else this propensity to keep the status quo? Comparison data suggests that compared to independent island countries, non-self-governing territories have, for example, lower infant mortality rates and higher life expectancy rates.<sup>14</sup> This sense of *well-being* correlates favorably with our US relationship.

The desire **not to upset the equilibrium** may simply be a matter of personal and government priorities. Instead of investing our energies in trying to change political status, there is more concern with maintaining a solid enough employment rate to keep the economy from shrinking, being sensitive to raising taxes while raising government revenues, raising federal Medicaid caps to provide affordable healthcare, making jobs available for returning college graduates to prevent brain drain, hiring more qualified teachers to help decrease remedial college placement scores, the global impact of climate

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1904 (collectively "the Deeds of Cession").

<sup>9</sup> TERRITORY OF AMERICAN SAMOA VS. NATIONAL MARINE FISHERIES SERVICE, ET AL; CIVIL 16-00095 LEK-KJM; ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANTS' COUNTER-MOTION FOR SUMMARY JUDGMENT

<sup>10</sup> The territory of American Samoa has asked the federal court in Honolulu to dismiss defendants' motion for reconsideration and to amend the court's judgment.

<sup>11</sup> Final Report of the Future Political Status Study Commission 2007, American Samoa. The 1932 Bingham Commission stalled due to the Great Depression in the US.

<sup>12</sup> For example, Social Security, Medicare & Medicaid, Student Financial Aid for higher education, FEMA, local Retirement fund, Social Service programs like Food Stamps, School Lunch Program and many others.

<sup>13</sup> In 2010, the median household income was \$23,892. In 2010, about 57.8 percent of all persons or 54.4 percent of families were below the national poverty level. In spite of the contrast with federal levels, American Samoans who have visited neighboring island countries comment on a much wider gap between the elites and the rest of society whereas in American Samoa the basic needs of a higher percentage of families are better served.

<sup>14</sup> Jerome L. McElroy and Katherine Sanborn (2005). THE PROPENSITY FOR DEPENDENCE IN SMALL CARIBBEAN AND PACIFIC ISLANDS.

change policies at the national level that can damage our fragile ecosystem, geographic isolation and the need to change the cabotage law, federal minimum wage policies and their impact on the fish canneries, road repair costs, public safety and the alarming increase in illegal drug traffic, the critical need to repair a 50 year water system and provide safe drinking water, decreasing land for agriculture and building food security, the increasing rate of non-communicable diseases and many other personal needs and public services aimed at giving our people “Good Government.”

D) Yet no lesser figure than Mahatma Ghandi was known to have said “Good government is no substitute for self-government.”

The rights and freedoms of American Samoa’s constitution are about political processes more *internal* to the territory, whereas its non-self governing status is more concerned with the territory’s *external* relationship with the Administering Power. In this external relationship, American Samoa has serious democratic deficiencies.<sup>15</sup>

## Part II. Relationship with the Administering Power

A) All US territories are subject to the unilateral authority of the “Territorial Clause”.<sup>16</sup> At one time it was believed that commonwealth status represented a more *highly developed* relationship with the federal government.<sup>17</sup> After CNMI lost local control of immigration to the federal government<sup>18</sup> and Puerto Rico was subjected to the PROMESA law to deal with billions in public debt, it is questionable whether commonwealth status is significantly more self-governing.

B) As a result of the Insular Cases<sup>19</sup>, the outlying areas including American Samoa became unincorporated US territory, not recognized as an integral part of the US.

<sup>15</sup> Corbin, Carlyle (2017). “A Centennial of United States dependency - Decolonization or Colonial Reform for the U.S. Virgin Islands?” Paper presented at the 58th Annual Convention of the International Studies Association to the panel on Human Rights and Foreign Policy.

<sup>16</sup> Article IV, Section 3, Clause 2 of the United States Constitution. “The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”

<sup>17</sup> CRS Report for Congress: US Insular Areas and Their Political Development. GAO-07-119 US Insular Areas. “A commonwealth is an unorganized territory US insular area that has established a more highly developed relationship – usually embodied in a written mutual agreement – with the federal government. The agreement between CNMI and the US was enacted by Pub. L. No. 94-241.”

<sup>18</sup> The CNMI Covenant was unilaterally amended by the CNRA, thus altering the CNMI's immigration system. Specifically, CNRA § 702(a) amended the Covenant to state that “the provisions of the ‘immigration laws’ (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))) shall apply to the Commonwealth of the Northern Mariana Islands.” Further, under CNRA § 702(a), the “immigration laws,” as well as the amendments to the Covenant, “shall...supersede and replace all laws, provisions, or programs of the Commonwealth relating to the admission of aliens and the removal of aliens from the Commonwealth.”

<sup>19</sup> A series of US Supreme Court cases from the early 20<sup>th</sup> century that determined how the US Constitution applies to US territories.

*Fundamental* rights are extended to all territories. If a constitutional right is not fundamental, its extension to a territory would require an Act of Congress.<sup>20</sup>

US constitutional rights not extended to American Samoa are:

- 1) US citizenship<sup>21</sup>. People born in American Samoa are classified as US Nationals.<sup>22</sup>
- 2) the right to vote for the US President<sup>23</sup>; and
- 3) the right for our delegate in Congress to vote for legislation in the full House<sup>24</sup>.

In spite of the democratic deficiencies, our loyalty and patriotism as a people is un-challenged. Our veterans deserve the highest honor and respect for their service and courage.

These deficiencies are made more acute when considering the sons and daughters of American Samoa who serve in the US Armed Forces.

When joining the US military, this young person swears an oath to **“support and defend the Constitution of the United States ....”**

Therein lies the irony of young men and women serving under a flag with a white star for each of the 50 states and nothing for any of the territories, no star to represent their island home.

How can the sons and daughters of American Samoa give their lives defending a constitution that does not *in turn* give them all its rights? This is the political inequality and unjust application of the US constitution that exists in the unincorporated jurisdictions of America.<sup>25</sup>

C) It's easy to assume that the way to rectify this inequality is for the people of American Samoa to become US citizens. After all, all other US territories enjoy the privilege. Hundreds of thousands of people around the world wish they could become

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<sup>20</sup> With regards to US territories, See: General Accounting Office, U.S. Insular Areas: Application of the U.S. Constitution, OGC-98-5 (1997).

<sup>21</sup> 14<sup>th</sup> amendment, Section 1: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

<sup>22</sup> 8 U.S.C. §1101 (a) (21), (22).

<sup>23</sup> The 15th Amendment of the United States Constitution prohibits the federal and state governments from denying a citizen the right to vote based on that citizen's "race, color, or previous condition of servitude"

<sup>24</sup> US Constitution Art I.

<sup>25</sup> Note: The Director of the American Samoa Veterans Affairs Office says all veterans are eligible for the same benefits.

US citizens. Why not make a request to the US Congress to grant US citizenship to the people of American Samoa in the same way it was done for all other US territories?<sup>26</sup>

Such a question was raised in the recent case of *Tuaua v. United States of America, et. al.*<sup>27</sup> The question presented was “whether the 14<sup>th</sup> Amendment Citizenship Clause entitles persons born in American Samoa to birthright citizenship.” However, the petitioners sought a judicial solution instead of a legislative (or congressional) one.

The democratically elected leaders of American Samoa **opposed** birthright citizenship.<sup>28</sup>

In a process of appeals, the case reached the doorsteps of the highest court in the land – the US Supreme Court. Citing *Reid v Covert* (1957) the courts ruled “it is ‘impractical and anomalous’ to impose citizenship by judicial fiat—where doing so requires [the courts] to override the democratic prerogatives of the American Samoan people themselves.”<sup>29</sup>

This is the paradox of American Samoa – instead of securing further integration with birthright citizenship, **our act of self-determination was to oppose it.**

Why was it so critically important for our leaders to commit such an act?

Governor Lolo Moliga warned that birthright citizenship “would have created political complications with a devastating impact on our land tenure system and usurpation of our rights to determine the political format we wish to adopt.”

For similar reasons, American Samoa has been careful not to federalize its courts or immigration. American Samoa is the only part of the US not formally included into

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<sup>26</sup> Guamanians, via the Guam Organic Act of 1950; Puerto Ricans, via the Jones-Shafroth Act of 1917; U.S. Virgin Islanders, via Public Law 414 of 1952 (66 Stat. 237, incorporated as 8 U.S. Code § 1406); and CNMI via Pub. L. No. 94-241. (Native Americans, via the Indian Citizenship Act of 1924.)

<sup>27</sup> Petitioners objected to being treated like aliens in naturalization process, to the high costs of re-locating to US, not being eligible for certain federal and state jobs, not being eligible to vote and run for office, and denied the right to own guns. Many legal scholars have argued the Insular Cases are racist and discriminatory.

<sup>28</sup> See: 2012 BRIEF OF THE HONORABLE ENI F.H. FALEOMAVAEGA AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS; See also: IN THE Supreme Court of the United States LENEUOTI FIAFIA TUAAUA, ET AL., *Petitioners*, v. UNITED STATES OF AMERICA, ET AL., *Respondents*. On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit; BRIEF IN OPPOSITION BY RESPONDENTS ASG AND THE OFFICE OF CONGRESSWOMAN AUMUA AMATA OF AMERICAN SAMOA.

<sup>29</sup> United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUIT; Argued February 9, 2015 Decided June 5, 2015 No. 13-5272. LENEUOTI FIAFIA TUAAUA, ET AL., APPELLANTS v. UNITED STATES OF AMERICA, ET AL., APPELLEES; AMERICAN SAMOA GOVERNMENT AND AUMUA AMATA, INTERVENORS; Appeal from the United States District Court for the District of Columbia (No. 1:12-cv-01143) Before: BROWN, Circuit Judge, and SILBERMAN and SENTELLE, Senior Circuit Judges.

the US federal court system.<sup>30</sup> Nor is it included in the definition of the US for US Immigration law purposes.<sup>31</sup>

Self-determination for the Samoan people must be based on the inextricable link between the land and the ocean and the Samoan way of life. A definition of self-determination that severs this link could have the kind of tragic and dehumanizing consequences experienced by colonized peoples.

### Part III: The Samoan Way of Life<sup>32</sup>

A) **We are an indigenous people<sup>33</sup>.** There is strong archaeological evidence that our ancestors inhabited these islands thousands of years before Western contact.<sup>34</sup> Today we live a distinct way of life with democratic and egalitarian features unique in Polynesian societies.<sup>35</sup> Our greatest hope is to pass on this way of life to future generations.

<sup>30</sup> (US Senate 1978, 2) 1978 High Court of American Samoa Appeals Act. Committee on the Judiciary, Report no. 95-1107. 95<sup>th</sup> Congress.

<sup>31</sup> 8 USC 1101 [a] [38].

<sup>32</sup> See: Kneubuhl, John. *The Samoan Identity*.

Also: Flag Day Address by the Head of State of Samoa, His Highness Tui Atua Tupua Tamasese Ta'isi Efi, April 17, 2017; published in Samoa News.

Also: Aga, Daniel (2001). "An Examination of American Samoa's Political Status." quote from published dissertation. Golden Gate University.

"Fa'aSamoa is a way of life meant to protect and ensure the peaceful survival and well-being of its people by maintaining the bonds of the *aiga* (extended family) through the practice of its *agam'u'u* (culture). Strong and benevolent leadership must be exercised by the *matai* (family head) for the benefit of the family, the village of which the family is an integral part, and beyond. The continued practice of traditions and customs reaffirms those communal values upon which rest communal land ownership. Samoans hold that if the fundamental values and practices of the *fa'aSamoa* are not adhered to or effectively adapted to meet today's needs, the family will be put at great risk. This vulnerability exposes the family to the threat of fragmentation which if happens in Samoa, would make the fragmentation of the land inevitable and thus, end a way of life that has given Samoans continued ownership and influence over the affairs of their islands. Communal land ownership instead of private-ownership, is held to be the strongest protection against today's outside threats to the survival and integrity of the *fa'aSamoa*. " (1993)

<sup>33</sup> See Working Group on Indigenous Populations Report, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4, ¶ 379.

"Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples in accordance with their own cultural patterns, social institutions and legal systems."

<sup>34</sup> "Lapita Culture." Encyclopædia Britannica School and Library Subscribers, last modified February 26, 2016. <https://www.britannica.com/topic/Lapita-culture> accessed November 1, 2016.

<sup>35</sup> Lowell D. Holmes (1980). *Factors Contributing to the Cultural Stability of Samoa*. *Anthropological Quarterly*. Vol. 53, No. 3 (Jul., 1980), pp. 188-197. Published by: The George Washington University Institute for Ethnographic Research

"Cultural change will be greatest in those cultures wherein the indigenous systems rewards the fewest number of people, and therefore there would be less tendency on the part of the majority to cling to the old when a new more *egalitarian* system presented itself."

**The United Nations Declaration on the Rights of Indigenous Peoples Articles 3, 7, 8 state in part that –**

“Indigenous peoples have the right to self-determination . . . . the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide . . . and the right not to be subjected to forced assimilation or destruction of their culture.”

At the same time, Principle VIII of UN GA Resolution 1541 says an integrated status must conform to calls for the integration to be *“on the basis of complete equality”* with *“equal status and rights of citizenship....”*

**Chairman Carenno --**

Does the notion of complete equality in Resolution 1541 support and reconcile with the UN’s Declaration on the Rights of Indigenous Peoples? Or are there contradictory elements?

B) From the US perspective, the principles of equality and integration were codified in the US Constitution as the 14<sup>th</sup> amendment. It forbids states from denying “any person within its jurisdiction the **equal protection of the laws.**”

If enforced vis-à-vis American Samoa’s political relationship with the US, the equal protection clause would pose an existential threat to the Samoans.

We do understand how important it is to apply the US constitution in a manner that is **just** for all people. US history and government is taught in all schools in American Samoa. In public awareness sessions, students were reminded of the **self-evident truth** “all men are created equal” written into 1776 Declaration of Independence. They were told about the 1860’s Civil War that freed the slaves. American Samoa celebrates the national holiday for Rev. Martin Luther King but did students really understand the 1960’s civil rights movement against segregating public accommodations, education, and voting? Students were told of the societal ideal *“Equal Justice Under Law”* engraved on the front of the US Supreme Court building. The youth are taught to respect diversity, practice tolerance and have empathetic reciprocity for all people and residents in American Samoa.

Yet, we have self-evident truths of our own. They were not written down in books but were passed down in oral traditions from generation to generation. They tell us that these islands are our home and must be protected for the ones we love -- even for those yet unborn. No one takes the land with him or her. We are merely stewards. Ours is a **compelling interest** to *preserve who we are* as a distinct cultural community and to *make fundamentally important decisions* for ourselves.<sup>36</sup> Legally, American Samoa has a

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<sup>36</sup> Van Dyke, Jon (1996). A legal analysis regarding the Chamorro and Hawaiian right to self-determination was written for the University of Hawai’i Law Review.

compelling interest in preserving lands of Samoa for Samoans.<sup>37</sup> Put another way, the Samoans will defend their family lands with their very lives.

In a series of Supreme Court cases called the *Insular Cases*<sup>38</sup>, it was ruled that the US constitution should not be applied or enforced in the territories if the application is “**impractical or anomalous.**” “Impractical” means that the constitutional provision in question would not work because the culture of the island involved would make it unworkable. ‘Anomalous’ means that applying the provision in the same way it would be applied in a state could damage or destroy the indigenous culture or some aspect of it. Thus, requiring the free alienation of land by ‘interposing’ the constitutional requirements of the Equal Protection Clause would be both impractical and anomalous in this setting.”<sup>39</sup>

A constitutional interpretation that would allow outsiders an equal right to own land might could undermine and eventually destroy Samoan culture. In *Wabol v Villacrusis*, it was explained that the ““Bill of Rights was not intended to operate as a genocide pact for diverse native cultures’ – whether genocide is defined as physically destroying a people or killing their cultures.”<sup>40</sup>

One attorney insists we are “a 116 year old colony of the United States filled with non-citizens and controlled by a Congress where our delegate has no vote.”<sup>41</sup> But even if birthright citizenship became law by judicial fiat, the one exception the courts cannot make is to give citizens in a territory the voting rights that the Constitution grants only to citizens of the 50 states in the union.<sup>42</sup>

Some have argued, there is little to worry about -- that the laws already exist to protect our lands, even saying that losing our lands will never happen. But from the perspective of the people who have the most at risk and the most to lose, there is a great deal of *historical evidence* that says otherwise.<sup>43</sup> What happened to the Native

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<sup>37</sup> Case note from Article I, section 3 states “Territory has a compelling interest in preserving lands of Samoa for Samoans; laws in conflict with the US not displace.”

<sup>38</sup> This sequence of US Supreme Court cases that determined how the US Constitution will be applied to the territories as long as it was not impractical or anomalous are: *Downes v. Bidwell*, 182 U.S. 244, 289 (1901), *created the distinction between incorporated and unincorporated territories*. *Balzac v Porto Rico*, 258 U.S. 298 (1922), *adopted the incorporation doctrine meaning only fundamental rights apply to territories but did not say which rights are fundamental*. *Reid v Covert* 354 U.S. 1, 75 (1957) Harlan, J., concurring, *constructed a theory that constitutional provisions apply unless impractical and anomalous*. *King v Morton* F.2d 1140 (D.C. Cir. 1975), *developed a rule for the impractical and anomalous test*. *Wabol v Villacrusis* 908 F.2d 411, 422 (9<sup>th</sup> Circuit, 1990), *argued equal protection clause on land restrictions in CNMI impractical and anomalous*. *Boumediene v. Bush* 553 U.S. 723 (2008), *on constitutional rights of Guantanamo detainee*. *Tuaua v. USA* (2015).

<sup>39</sup> Laughlin, Stanley K. Jr. (2005). “Cultural Preservation in Pacific Islands: Still a Good Idea – And Constitutional”. 27 University of Hawai’i Law Review 33. Public Law and Legal Theory Working Paper Series No. 73. June 2006.

<sup>40</sup> *Wabol*, 908 F2d at 424 and *Wabol v. Villacrusis*, 958 F.2d 1450, 1461 (1992).

<sup>41</sup> Samoa News quote by attorney for the petitioners in *Tuaua vs USA*.

<sup>42</sup> Quoting Howard Hills, former counsel for territorial status affairs in the Executive Office of the President and the U.S. Department of State during the Reagan Administration.

<sup>43</sup> See: Robert H. Stauffer, Robert H. (2004). *Kahana: How the Land Was Lost*. Honolulu: University of

Americans? What happened to the Native Hawaiians? What has happened to the Chamorro? The real danger is not equal protection itself. It's the **toxic mix** of free-market profiteering, artificially altered demographics, and legally sanctioned access that could set us down the slippery slope or deliver that fatal blow.<sup>44</sup> We must exercise all the due diligence we can to prevent this from happening.

We understand our US constitutional rights are limited. But for now, we prefer the **compromise**<sup>45</sup> that limits enforcement of the US constitution's equal protection clause to limit the risk to Samoan lands.

C) This is not to say that Samoans haven't integrated into the US in other ways. American Samoans carry US passports and do not require visas or permits to travel, reside, and work in the US. They can become naturalized as US citizens with equal rights in the states.<sup>46</sup> In 2015, 296 US Nationals became naturalized US citizens.<sup>47</sup>

Since 1951 with the first large-scale migration to the US, generations of Samoans have been born and raised as Samoan-Americans. More than 180,000 people of Samoan descent live stateside. This is 3 times the population of American Samoa. After the Native Hawaiians, **Samoan-Americans** are the second largest Pacific Islander group in the U.S.<sup>48</sup>

Samoan communities or "urban villages" have been established along the West coast and across the nation. Strong family, church, and cultural connections are maintained between the islands and the states.

#### **IV. What are the future prospects for decolonization in American Samoa?**

The Regional Seminar asks "What are the Prospects for the Future for Decolonization in the Non- Self-Governing Territories?"

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Hawaii Press. Also: *Kinalamten Pulitikåt: Siñenten I Chamorro: Issues in Guam's Political Development: The Chamorro Perspective*, by the Political Status Education Coordinating Commission, 1996, pp. 2-16. Also: "Pa'a Ke Aupuni" The Reel History of Hawaii at <http://www.kamakakoi.com>. And: Banner, Stuart (2005). How the Indians Lost Their Land Law and Power on the Frontier. Harvard University Press.

<sup>44</sup> Jacobs, Wilbur. The Fatal Confrontation. "If there is a probable test for survival of a native people, it is found in the answer to the question "how much of their land did they retain after the alien invasion?"

<sup>45</sup> Or what Michael Williams called a "deliberate distance." Michael Williams was the *Counsel of Record* for respondents/appellees and American Samoa Government.

<sup>46</sup> See "A Guide to Naturalization, U.S. Citizenship and Immigration Services, U.S. Dep't of Homeland Security, M-476." See also <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartA-Chapter2.html> and <https://www.uscis.gov/citizenship/learners/apply-citizenship>. Or go to: <https://www.dhs.gov/how-do-i/become-citizen>.

<sup>47</sup> 2015 Yearbook of Immigration Statistics published by Department of Homeland Security.

<sup>48</sup> 2010 US Census as cited in "Honolulu Mayor honors National Samoan Language Week". *Samoa News*. 2012-06-05. Retrieved 2012-06-0.

A) To help answer questions like these, Governor Lolo Moliga established in 2016 and for the first time, an “Office of Political Status, Constitutional Review, and Federal Relations”.<sup>49</sup>

Its duties include raising awareness in a non-partisan matter and working with government *and the public* on constitutional amendments or other political status issues that may be presented as referendums to the voters of American Samoa. **No referendum or plebiscite is planned at this time.**

Governor Moliga’s executive order was preceded by a “**Panel on Self-Determination.**” Representatives from Guam, US Virgin Islands, and American Samoa were selected because these are the three US territories remaining on the UN list of non-self-governing territories. The panel was hosted by then Assistant Secretary of the Department of Interior, Esther Kiaaina, and the Director of the Office of Insular Affairs, Nikolao Pula. Later that year, grant awards were provided to each territory for public education and development.

The Governor established an Advisory Council for the Office. The Secretary of Samoan Affairs is Chair and the Attorney General is Co-Chair.

Early efforts by the Office focused on a long-term public education program by developing curriculum in the public schools, training teachers, and developing learning resources.<sup>50</sup> Student forums were hosted at the island’s only community college<sup>51</sup> and for the high schools.<sup>52</sup> The Office will continue its outreach to the workplace, to the villages, and will use various forms of media.

**Before initiating any change** in our political status, it would be prudent to consult with the “*Tamā o le Atunuū*” or the “Fathers of the Country” whether they are with the Office of Samoan Affairs, the Senate, or in traditional village or district councils. The wisdom of women is a valuable resource as well.

B) As for options -- The UN provides three options for a territory to demonstrate a full measure of self-government:

- (a) Emergence as a sovereign independent State;
- (b) Free Association with an independent State; or
- (c) Integration with an independent State.”<sup>53</sup>

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<sup>49</sup> Executive Order 002-2106 by Governor Lolo Matalasi Moliga, American Samoa Government.

<sup>50</sup> Go to [www.faavaeoamerikasamoa.com](http://www.faavaeoamerikasamoa.com). This is the Office website.

<sup>51</sup> Jan. 26, 2016 ASCC Lecture Hall Student Forum

<sup>52</sup> Political Status and Constitutional Review Student Forum, “*O Lou Faavae ma Lou Malo*”, April 10-11, 2017 at the Lee Auditorium.

<sup>53</sup> Principle VI; UN General Resolution 1541 (XV); 15 Dec 1960.

At the same time, the UN recognizes that the “specific characteristics and the aspirations of the peoples of the Territories require flexible, practical and innovative approaches to the options for self-determination....”

**Chairman Carreno,**

**What does a flexible and innovative approach to self-determination entail?**

**What qualitative considerations are there when considering definitions for a “full measure of self-government?”**

Without a flexible and innovative approach, prospects for decolonization in the non-self-governing territory of American Samoa are limited.<sup>54</sup> Otherwise, we would have to *radically* change the entire territorial framework. One would have to imagine overturning the Insular Cases, amending the US Constitution’s territorial clause, and overcoming the politics between US political parties.<sup>55</sup> This could cease the differentiation between states and territories, remove the unilateral authority of Congress over the territories, and provide American Samoa with the same level of representation in Congress. A change like this would be no small miracle for the territories.

Or, if American Samoa were to pursue free association, it would no longer be under the territorial clause and could exist as a sovereign nation. American Samoa would then have to negotiate the terms of its free association with the US.<sup>56</sup>

**C) What are the chances of American Samoa engaging in an authentic political process?**

i. An authentic process would be **vested in the authority of the people** to freely choose its political status.<sup>57</sup> American Samoa’s electorate has never had a political status

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<sup>54</sup> Wesley-Smith, Terence (2007). THE LIMITS OF SELF-DETERMINATION IN OCEANIA. *Social and Economic Studies*, Vol. 56, No. 1/2, The Caribbean and Pacific in a New World Order (March/June 2007), pp. 182-208. On the limits of nation-state model.

<sup>55</sup> Note: If the territories had voting representatives, would they be Republican or Democrat? Partisanship quarrels between the two parties prevent voting rights for territorial delegates because their votes could impact a measure’s outcome. Territorial delegates are typically Democrats.

<sup>56</sup> Models are the Republics of Palau, FSM, and the Marshalls; New Zealand’s freely associated states like Cook Islands and Niue; Greenland and Denmark.

<sup>57</sup> The People of American Samoa Are Entitled to Choose Their Own Political Arrangements. (from “BRIEF IN OPPOSITION BY RESPONDENTS AMERICAN SAMOA GOVERNMENT AND THE OFFICE OF CONGRESSWOMAN AUMUA AMATA OF AMERICAN SAMOA; May 11, 2016.

MICHAEL F. WILLIAMS *Counsel of Record*) -- “Consent of the governed is the foundational premise of a democratic republic. *Id.* at 20a (*citing Kennett v. Chambers*, 55 U.S. (14 How.) 38, 41 (1852)). As Justice Story explained: [C]ivil society has its foundation in a voluntary consent or submission; and, therefore, it is often said to depend upon a social compact of the people composing the nation. And this, indeed, does not, in substance, differ from the definition of it by Cicero, *Multitudo, juris consensu et utilitatis communione sociata*; that is . . . a multitude of people united together by a common interest, and by common laws, to which they submit with one accord.

Joseph Story, *Commentaries on the Constitution of the United States* 225–26 (Thomas M. Cooley ed., 4<sup>th</sup> ed. 1873) (footnotes omitted). Accordingly, the state “arises from, and its legitimacy depends upon, the

plebiscite to freely choose the kind of political relationship it wants with the United States. This means our form of government is vested in the authority of the US Congress and the US Executive but not in the authority of the people of American Samoa.

Puerto Rico has had 4 plebiscites with the 5<sup>th</sup> taking place in June 2017.<sup>58</sup> The Puerto Rico experience can provide American Samoa with a list of “Lessons Learned” for developing a plebiscite of its own.

ii. When will American Samoa have a plebiscite? The 1929 law<sup>59</sup> accepting the Deeds of Cession requires Congress to provide for a government for the islands but Congress has never passed an organic act to organize a government for American Samoa. Instead of an organic act approved by Congress, American Samoa developed a constitution that was approved by the Secretary of Interior and by the voters in 1967.<sup>60</sup>

It has been 88 years since the 1929 Act.

iii. Congressional action on the 1929 law could mean changes in our internal governance or in our external relationship with the US. To the extent the 1929 law is enacted to shape our internal local government, American Samoa could seek **transfers of authority** to strengthen local self-government. In spite of having our own constitution, electing our Governor, and electing our own Legislature, there is *still work to be done*. For example, the Secretary of Interior still has a role in the veto-override process.<sup>61</sup> The Secretary still appoints the Chief Justice<sup>62</sup>. The Secretary can still intervene in local court decisions.<sup>63</sup>

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express or tacit consent of individuals. The state, in turn, may rightfully exercise its authority only in accordance with the terms of that ‘social contract.’”

<sup>58</sup>Go to: <http://plebiscito2017.ceepur.org/en/Documents.html>. Or for a more user-friendly site, go to: [https://ballotpedia.org/Puerto\\_Rico\\_Referendum\\_\(2017\)](https://ballotpedia.org/Puerto_Rico_Referendum_(2017)).

<sup>59</sup> Title 48 U.S.C. § 1661, 1662.

<sup>60</sup> Keesing, F. (1951). Memoranda Relating to the Political Situation in American Samoa. This contains formerly classified information. In 1950’s, the Samoans objected to an organic act after learning Congress had removed clauses proposed in an organic act for Guam which would have protected Chamorro land and culture. Congress labeled these clauses “Un-American.” If an organic act would not protect Samoan lands and culture, Samoans wanted nothing to do with it.

Also: Gray, A. (1960). Amerika Samoa. “An organic act would bring into local effect all of the provisions of the Constitution of the US. In 1950, the Fono appointed a committee ... to safeguard the matai system against the pending organic act (HE 4500). [The first DOI-appointed Governor] Phelps Phelps brought the personal assurance of Secretary Chapman “that no unacceptable organic act would be rammed down the throats of the Samoans... and he opposed the pending act firmly and consistently.” (p. 261)

<sup>61</sup> The veto-over ride referendum has been defeated 4 times in 2008, 2010, 2012 and 2014. 2010 was the “all or nothing” ballot.

<sup>62</sup> Article III, section 3: Appointments, AS CON.

<sup>63</sup> From Arnold Leibowitz 2006 “Report to the Political Status Study Commission” on a critique of the role of the Secretary of Interior. “The power of the Secretary of International Affairs arose once more in the case of Corp. of the Presiding Bishop of the Latter Day Saints (LDS) v. Hodel. There, the LDS appealed to the Secretary of the Interior to review and overturn a decision of the High Court of American Samoa regarding ownership of a parcel of land on Tutuila Island. Once again, the Assistant Secretary for OIA

American Samoa understands the value of its partnership with the Department of Interior and respects the history of this relationship. The people of American Samoa still felt a constitutional amendment was needed to, in effect, transfer the authority of the Secretary of Interior to the American Samoa Government. This proposal did not make it past the local vote.<sup>64</sup> Even if it did, any amendment to American Samoa's constitution requires congressional approval.<sup>65</sup>

iv. The US constitution allows for three **political status options**: independence, statehood, and the territorial option.<sup>66</sup> All options should be considered.

Any future *territorial* political status option for American Samoa would be based on two equally important considerations:

- 1) keeping and maintaining a strong relationship with the United States and
- 2) protecting the Samoan way of life.<sup>67</sup>

Many lessons have been learned from Puerto Rico's quest for a permanent political status.<sup>68</sup> In the upcoming June 2017 Puerto Rico plebiscite, voters are given a choice of three options: independence/free association, statehood, or the current territorial status.<sup>69</sup>

v. However, simply offering general categories seems insufficient. Voters will want to know if these general categories address issues of importance to them. They will need to know the specific risks or consequences *within* each option.<sup>70</sup>

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confirmed his power to overturn the High Court decision: . . . Pursuant to 48 U.S.C. sec. 1661(c) and Presidential Executive Order No. 10264, the Secretary of the Interior ("Secretary") exercises "all civil, judicial, and military powers of government in American Samoa." *Therefore, it is within the authority of the Secretary to review the decision and determine whether to intervene.* . . . Nor does this case appear to present such a clear abuse of judicial discretion that intervention is dictated. For these reasons I choose not to intervene. . . *By copy of this decision to the Chief Justice of the High court, I am asking that he undertake to notify the named parties in Reid v. Puailoa of my decision and that he include a copy if it in the court records of the case.*<sup>63</sup> (Emphasis Supplied)

<sup>64</sup> In the 2010 Constitutional Convention, it was proposed the "Secretary shall not review, overturn or intervene in the appeal of a decision of the High Court of American Samoa." The 2010 referendum had packaged all the proposed amendments in an all-or-nothing format. This proposal was not approved because the entire package was not.

<sup>65</sup> 48 U.S. Code § 1662a. Pub. L. No. 98-213, Dec 8, 1983, 97 Stat. 1462.

<sup>66</sup> Raben, Robert (2001). Assistant Attorney General, Office of Legislative Affairs, US Department of Justice. Letter to Frank Murkowski, US Senator, to President Clinton on status options for Puerto Rico.

<sup>67</sup> Sustainable and appropriate economic development would be the third central consideration. Defense and foreign affairs would be treated in its own separate category.

<sup>68</sup> Garrett, Sam. (2011). "Political Status of Puerto Rico: Options for Congress." Congressional Research Service, RL 32933.

<sup>69</sup> These 3 options will be on the June 2017 Puerto Rico plebiscite pursuant to Senate Bills 51 and 427 of the Puerto Rico Legislature. The result of the referendum does not bind Congress to take action.

<sup>70</sup> Wolfers, Edward Paul (2015). "Acceleration, Innovation, and Self-Determination: Taking Stock and Looking Ahead, with particular reference to the remaining non-self governing territories in the Pacific." Discussion Paper presented at Regional Seminar, Managua, Nicaragua, 2015.

Individuals in American Samoa have asked questions like:

- 1) Why do this now? Are we in crisis?
- 2) Who said to do such a thing? Is it really our right?
- 3) What advantages would a change give us that we don't already have?
- 4) How can we be assured we will not be *worse off* than we are now?
- 5) Will the US reduce its funding to us if we change?
- 6) What will it mean if American Samoa chooses the status quo?

Is a **comprehensive or incremental approach** to developing self-government the right one? Before deciding on which approach, the public will need to understand the pros and cons of each approach.

D) **Do the people of American Samoa know what they want?<sup>71</sup> What are their hopes and aspirations?**

The Political Status, Constitutional Review & Federal Relations Office has developed an *aspirational* set of principles pursuant to the rights of the American Samoan people to self-determination.<sup>72</sup> Subject to an island-wide discussion and review<sup>73</sup>, these principles would help “update” and strengthen the legality and stability of our relationship with the US for the long term. If the people of American Samoa can successfully negotiate an agreement based on these principles, it would serve to:

- clarify the purposes, function, intentions and promises of the Deeds of Cession (and determine whether or not a *new* covenant is needed);
- establish whether American Samoa’s Constitution requires further explicit action to serve as the territory’s organic act;
- solidify the rights and make clear the responsibilities of the American Samoan people to its lands, marine and natural resources,
- solidify rights to cultural heritage, and the specific role played by *matai*<sup>74</sup> in American Samoa;
- limit the types of legislation that Congress can impose upon the people of the American Samoa;
- protect and strengthen the internal self-governance of the island consistent

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<sup>71</sup> as asked by OIA Director Pula at the DOI Panel on Self-Determination.

<sup>72</sup> Adapted from the late Jon Van Dyke’s 2006 power-point presentation to the American Samoa Future Political Status Commission.

<sup>73</sup> Faleomavaega, Eni F. H. (1995). Navigating the Pacific: a Samoan Perspective. The late Congressman Faleomavaega said there should be a “national dialogue” to determine what the people want.

<sup>74</sup> See: A.S.C. I, secs. 701-804 (1973) on registration of matai titles and 1 A.S.C. sec. 751 for statutory eligibility requirements for the matai title.

with US laws; and

- protect the right to control immigration & customs.

A more formal political relationship between the United States and American Samoa would support economic ties with a greater willingness by the federal government to:

- enact laws that promote investments, tax incentives and territory-specific economic federal policies
- enact waivers and exceptions to laws that recognize the unique geographic<sup>75</sup> and physical needs of the islands as well as the impact of international treaties; and
- build a closer economic relationship between the United States and American Samoa and determine appropriate and sustainable economic development of American Samoa's islands.<sup>76</sup>

*At all stages*, we would need to consult with local leaders, the public, Samoan communities off-island, the Department of Interior, the US Executive branch, Congress, and even regional and international persons<sup>77</sup>. There may be legal challenges in the federal courts. Whatever those challenges, we must ensure that our form of government is firmly vested in the authority of the people of American Samoa. This is **our right and our duty**. We have only to proclaim it.

*We recognize there are many truths in our relationship and destiny with the United States. As we navigate the waters of an uncertain future, we cannot allow the political process to be solely dictated by others or taken completely out of our hands. It is a struggle we cannot afford to lose because future generations depend on it.*

*Still we believe ourselves to be fortunate. We are a people of great faith and we believe “o Samoa e muamua le Atua.” (Samoa God is first).*

Thank you Chairman Carreno and the Committee of 24.  
*Soifua* (Farewell).

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<sup>75</sup> such as the Cabotage law, (Pub. L. 109-304, § 4, Oct. 6, 2006, 120 Stat. 1487.) 46 U.S. Code – SHIPPING.

<sup>76</sup> Defense and foreign affairs would be treated in its own separate category.

<sup>77</sup> “In a letter dated 2 November 2006 addressed to the delegate of American Samoa to the United States House of Representatives, the United States Assistant Secretary of State for Legislative Affairs, Jeffrey T. Bergner... indicated that the status of the insular areas regarding their political relations with the federal Government was an internal United States issue and not one that came under the purview of the Special Committee...that the Special Committee had no authority to alter in any way the relationship between the United States and those territories and had no mandate to engage the United States in negotiations on their status.” See A\_AC.109\_2016\_1.pdf.