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THIRD INTERNATIONAL DECADE FOR THE ERADICATION OF COLONIALISM

Pacific regional seminar on the implementation of the Third International Decade for the Eradication of Colonialism: towards the achievement of the Sustainable Development Goals in the Non-Self-Governing Territories: social, economic and environmental challenges

**Saint George's, Grenada
9 to 11 May 2018**

STATEMENT BY

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(AMERICAN SAMOA)

Written Statement of the American Samoa Government
For the Honorable Lolo Matalasi Moliga
Governor of American Samoa
By Talauega Eleasalo V. Ale
The Attorney General of American Samoa

Before The

United Nations Pacific Regional Seminar on the “Implementation of the Third Decade for the Eradication of Colonialism: towards the achievement of Sustainable Development Goals in the Non-Self-Governing Territories: social, economic, and environmental challenges.”

Saint George’s, Grenada, May 9 to 11, 2018

Mr. Chairman, Members of the Committee, Ladies and Gentlemen. Thank you for the opportunity to offer this statement on behalf of our Governor, the Honorable Lolo Matalasi Moliga, regarding American Samoa’s experience as a Territory of the United States of America and the efforts of our people to develop self-government. I am Talauega Eleasalo Ale and I serve as the Attorney General of American Samoa. I am joined today by High Talking Chief Fiu Saelua, Chief of Staff to Governor Moliga.

It is indeed a great honor for me to speak before this distinguished body on behalf of American Samoa. I bring to you good tidings and greetings of Alofa and Talofa from Governor Moliga and the people of American Samoa.

Overview

On April 17, 2018, the people of American Samoa, despite still recovering from the devastating impacts of Tropical Cyclone Gita, celebrated 118 years of our union with the United States of America. Flag Day, as it is commonly known, is an annual week-long celebration filled with jubilation and festivities marking the anniversary of the first raising of the U.S. flag on the island of Tutuila on April 17, 1900.¹ It is the most important holiday for our local government because it marks the beginning of our ever-evolving modern governance structure under the American Flag. For the people of American Samoa, Flag Day is, at its core, a day of thanksgiving. We thank God for His guidance and protection on us as a people, specifically for guiding our forefathers to seek out and commensurate a relationship between our people and the United States. We also take the opportunity to express our sincere gratitude to the United States for its many acts of kindness towards and protection of American Samoa through the years.

While there was concern about holding a Flag Day celebration this year given the recent tropical cyclone that hit the Territory just two months earlier, Governor Moliga and many American Samoans felt strongly that we must celebrate Flag Day especially this year – we have much to be thankful for. Despite the devastation caused by Cyclone Gita, no lives were lost. The United States Government, led by the Federal Emergency Management Agency (“FEMA”) provided immediate and necessary assistance which greatly assisted in our recovery efforts.

The recovery efforts in American Samoa continue to this day. Power and water are restored throughout the Territory, clean-up efforts are all but complete, and financial and other assistance have been disbursed to victims to begin the process of rebuilding. American Samoa could not have reached this level of recovery without significant help from the United States.²

I bring this story to your attention, in part, because it highlights the nature and critical importance of our relationship with the United States. The union of American Samoa and the U.S. is strong and healthy as ever. By any measure, this union has yielded countless benefits for the people of American Samoa and its government. As a territory of the United States, we enjoy the protection of the most powerful country in the world. The U.S. response following Cyclone Gita is but one recent example of the protection we enjoy under the American flag.

¹ A similar event (but smaller in scale) is held on July 16 to mark the first raising of the US Flag on Manu’a soil on July 16, 1904.

² We were also aided in our recovery efforts by various non-government organizations, especially the Red Cross, which provided critical aid in the housing and feeding of the many displaced victims of the cyclone.

Perhaps the most important benefit to many American Samoans has been the protection of our culture and our communal land tenure system that is the foundation of our culture. These ideals were set forth in the Deeds of Cession of 1900 for Tutuila and Aunu'u, and 1904 for the Manu'a Islands. The Deeds of Cession were premised in part upon protecting the Samoan way of life, and for 118 and 114 years, respectively, the United States has been assiduous in honoring this commitment.

But despite the many benefits we have enjoyed under the American Flag throughout the years, we understand that our current form of government is not ideal, and certainly cannot be the final word. Our current government structure exists largely at the pleasure of the U.S. Congress through the Executive Branch. This state of affairs limits our ability to self-govern and exposes us to the vagaries of decisions made in Washington D.C. without our input.

The American Samoa Government ("ASG"), with assistance from the United States, has taken definitive steps to address these issues. In 2016, Governor Moliga established the Office of Political Status, Constitutional Review, and Federal Relations. This Office will function as a resource to research and educate our people about political status options and other issues regarding our relationship with the United States. The U.S. Department of Interior through the Office of Insular Affairs ("OIA") awarded \$300,000 to American Samoa to fund the work of this Office for two years. We will pursue additional funding from OIA to maintain and expand work of this Office. This is an important first step towards engaging and exploring remedies within the political process, which may lead to negotiating a more formal agreement with the United States.

In addition to the political process, ASG is also exploring remedies in the U.S. judicial system. In a recent lawsuit against certain federal agencies, including the National Marine Fisheries Services ("NMFS"), ASG challenged a regulation issued by NMFS as violative of the United States' obligations under the Deeds of Cession.³ U.S. District Court Judge Leslie Kobayashi agreed with ASG and invalidated the proposed regulation.⁴ This decision marks the first time a federal court has nullified a U.S. policy because it violated the Deeds of Cession. But the lawsuit is not over as the federal defendants have appealed the decision to the U.S. Ninth Circuit Court of Appeals.

There is much work ahead for American Samoa to realize its proper political status and to resolve recurring challenges in its relationship with the United States. The people of American Samoa are engaged in this work and taking definitive steps towards resolution of these issues.

1. American Samoans Are Not Colonized People

I wholeheartedly join in the statements of my predecessors before this Committee, that we, the people of American Samoa, do not consider ourselves a *colonized people*. We do not live under a regime for which colonization must be eradicated. Our relationship with the United States is one built on consent, trust and respect for our indigenous people and our Samoan culture.

Protection of indigenous rights to land ownership was a fundamental principle upon which our relationship with the United States was forged in 1900. The Deeds of Cession, by which the chiefs of Manu'a, Tutuila and Aunu'u undertook allegiance to the United States, specifically obligated the United States to respect and protect the rights of the people to their lands and property according to their customs. ("The Government of the United States shall respect and protect the individual rights of all people dwelling in Tutuila to their lands and other property in said District.")⁵; ("[T]he rights of the Chiefs in each village and of all people concerning their property according to their customs shall be recognized")⁶.

The U.S. Congress, pursuant to its authority under Article IV, Section 3 of the U.S. Constitution to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States," formally accepted the Deeds of Cession in 1929. However, in recognition of the United States' obligation to protect the rights

³ The regulation threatened to harm cultural fishing practices of indigenous American Samoans.

⁴ *Territory of American Samoa v. National Marine Fisheries Service*, 2017 WL 1073348 (D. Hawaii 2017).

⁵ Deed of Cession of Tutuila and Aunu'u, April 17, 1900.

⁶ Deed of Cession of Manu'a, July 16, 1904.

of American Samoa natives to their lands, Congress specifically prohibited the application to the Territory of “...existing laws of the United States relative to public lands...”⁷

Since 1900, the United States government has done its part to preserve and protect the rights of indigenous American Samoans to their land. Shortly after the cession of Tutuila and Aunu’u, Commander B.F. Tilley prohibited the alienation of land to non-Samoans.⁸

In 1963, under the administration of the Secretary of the Interior, American Samoa adopted its Revised Constitution which explicitly states “[i]t shall be the policy of the Government of American Samoa to protect persons of Samoan ancestry against alienation of their lands and the destruction of the Samoan way of life and language, contrary to their best interests.”⁹ This constitution was approved by the Secretary of Interior. But in 1983, Congress provided that any amendments could be made “only by Act of Congress.”¹⁰ This Congressional action in 1983 confirms Congress’ understanding of its obligation to the indigenous people of American Samoa.¹¹

Consistent with the protective policy in the Deeds of Cession and Revised Constitution, the American Samoa Government, under the watchful eye of the Secretary of Interior and Congress, enacted the land alienation laws to preserve our land tenure system¹², and other laws to ensure protection of the indigenous rights.¹³

In addition to the significant protections of our indigenous rights and Samoan culture, our relationship with the U.S. allows us the freedom to operate our local government. Today, the government of American Samoa is run by American Samoans. We elect our own Governor and Legislature. We make our own laws. We control our own customs and immigration borders.

2. Challenges of our Relationship with the United States

But our union with the United States is not without its challenges.

While it has been over 89 years since the U.S. Congress accepted the Deeds of Cession in 1929 – along with the obligation to provide for a government for these islands, Congress has yet to pass an organic act to organize a permanent government for American Samoa. Instead, Congress delegated its authority over administration of American Samoa to the President, who first used the Navy, then the Department of Interior to directly administer the Territory.

⁷ 48 U.S.C. §1661 (a).

⁸ See Jeffrey B. Teichert, J.D., *Resisting Temptation in the Garden of Paradise: Preserving the Role of Samoan Custom in the Law of American Samoa*, 3 Gonz. J. Int’l L. 17 (2000).

⁹ *Rev’d. Const. of American Samoa Art. I, §3.*

¹⁰ 48 U.S.C. §1662(a).

¹¹ *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Hodel*, 830 F.2d 386 (D.C. Cir. 1987) (“To some extent, therefore, Congress may be viewed as having ratified the Samoan Constitution, at least in principle.”).

¹² American Samoa’s land alienation statute prohibits the transfer of “any lands except freehold lands to any person who has less than one-half native blood.” A.S.C.A. § 37.0204(b). It states in relevant part as follows:

It is prohibited to alienate any lands except freehold lands to any person who has less than one-half *native* blood, and if a person has any *nonnative* blood whatever, it is prohibited to alienate any native lands to such person unless he was born in American Samoa, is a descendant of a Samoan family, lives with Samoans as a Samoan, lived in American Samoa for more than 5 years and has officially declared his intention of making American Samoa his home for life.

A.S.C.A. § 37.0204 (b) (emphasis added).

¹³ See e.g., A.S.C.A. § 41.0201(a) (immigration laws enacted in recognition of the need to “protect the lands, customs, culture, and traditional American Samoan family organizations of person of American Samoa ancestry, and to encourage business enterprises by American Samoans.”), A.S.C.A. § 7.0205(b) (providing a preference for American Samoans for career services jobs).

As a result, despite the autonomy we have received from the U.S. to administer our own government and practice our Samoan culture, our government continues to exist by virtue of delegation of authority from Washington D.C.

Indeed, our Legislature cannot now override a veto of a bill by the Governor without the approval of the Secretary of Interior. Our Constitution cannot be amended without the approval of Congress, despite Congress never having expressly approved our Constitution to begin with. The Secretary of Interior continues to appoint the senior members of our Judiciary. The absence of a formal agreement to establish a permanent government for American Samoa leaves our Territory vulnerable to unilateral U.S. actions. Too often, these federal actions expose us to harmful impacts in ways we cannot anticipate nor for which we can adequately plan.

Representatives of American Samoa have presented to this Committee examples of U.S. policies and laws that have had devastating impact on the people and economy of American Samoa. Perhaps the most significant is the minimum wage laws, which continue to have a debilitating impact on the tuna industry in American Samoa. These challenges are amplified by our small size and our location far from Washington, D.C. We are also hampered by the fact that our one delegate to Congress is a non-voting member of the House of Representatives.

Entering into an organic act with the U.S. is an option available to American Samoa to solidify its political status and ensure protection of its people and unique Samoan culture. This is perhaps the most viable option available to American Samoa given our long history with the United States. This could be a platform to address issues such as increasing the representation of the Territory within the federal government by giving our Congressional delegate the right to vote on the floor of Congress, and clarifying the status of people born in American Samoa – whether U.S. citizens or U.S. nationals.

Some, however, fear that engaging in discussions of this sort will threaten the protections we currently enjoy, especially protections of our Samoan culture. The fear is that the U.S. would require, as a condition of any agreement that American Samoa abide by all provisions of the U.S. Constitution including the Equal Protection Clause, which prohibits discrimination. If challenged, the land tenure system and other aspects of the Samoan culture would most likely be declared unconstitutional.

In my opinion, however, this fear may be overstated. Any discussion between American Samoa and the U.S. regarding an organic act would be governed by the terms of the Deeds of Cession. The Deeds expressly obligate the United States to protect the rights of the indigenous people of American Samoa. The Deeds, which are federal law, have been adjudicated and upheld in federal courts.¹⁴ Thus, any agreement between the United States and American Samoa cannot ignore the terms of the Deeds.

Furthermore, our 118-year experience under the American Flag teaches us that the U.S. has kept its promise to protect the indigenous rights of American Samoans. At no point in time during our long history has the United States acted contrary to the expressed wishes of the people of American Samoa. When a constitutional form of government was the will of the people, it happened. When the people wanted to elect their own governor, it happened. When the people felt that Congress should protect them from the possibility of unilateral changes to the Constitution by the Department of Interior, it happened. The Deeds of Cession and the extensive record of our relationship with the U.S. are two important tools to help American Samoa in any future discussions with the United States about its political status.

3. The Way Forward

As stated earlier, the American Samoa Government is taking the lead and moving with a more methodical approach towards a resolution of this important issue. The Office of Political Status, Constitutional Review, and Federal Relations is in full operation and headed by Tapa'au Dr. Daniel Aga, who presented at your meeting last year in Kingston, Saint Vincent and Grenadines. The work of this Office is creating a robust conversation within the community about the future political status of American Samoa.

¹⁴ *Hodel*, 830 F.2d 374, 385 (D.C. Cir. 1987); *Territory of American Samoa v. NMFS*, 2017 WL 1073348 (D. Hawaii 2017).

For example, with the leadership of this Office, ASG is hosting a Youth Summit this summer to explore with young members of our community issues of political status, constitutional amendments, and our relationship with the United States. The government is also beginning a campaign to educate voters about a proposed constitutional amendment that will be on the ballot for the general election in November this year. The proposed constitutional amendment is intended to remove the authority of the Secretary of Interior from the veto-override process, thus allowing the local Legislature to override a veto by the Governor. It is expected that this measure will also invigorate public dialogue over the future political status of American Samoa.

The next steps in the political process will require continued serious dialogue among all the people of American Samoa. Our choices are varied, and profound: (i) maintain the status quo, which causes us continuing concern due to the future uncertainties outlined above; (ii) consider an Organic Act, like Guam and the Virgin Islands, which would draw us closer to the United States, but on the other hand would likely lock us into economically untenable circumstances; (iii) look to the idea of Commonwealth status akin to Puerto Rico and the Commonwealth of the Northern Marianas Islands; (iv) or consider some form of free association. All are possible. Not all are viable.

While the wheels of the political process are expected to proceed at a slower and calculated pace, ASG is also pursuing legal action within the U.S. court system to seek more immediate reprieve from federal policies that negatively impact American Samoa, using the Deeds of Cession. In the NMFS lawsuit, for example, a U.S. District Court Judge invalidated a federal policy that threatened cultural practices of American Samoans because it violated the Deeds of Cession. These types of legal actions provide a legitimate avenue to counteract the impact of unfavorable federal actions on American Samoa. More importantly, successful legal actions of this sort create a useful body of federal law to help bolster the validity of the Deeds. This would be a useful tool when American Samoa finally negotiates its future political status with the United States.

Conclusion

American Samoans are proud and loyal Americans. We have been members of the American Family for over 100 years - and our patriotism is manifested in one of the highest rates of enlistment from any State or territory in the Armed Forces of the United States. Our connections with the United States are deep and entrenched. And we are proud to celebrate and honor these connections especially during Flag Day, as was done last month in American Samoa. Not even a cyclone could stop our Flag Day celebrations.

While there are certainly aspects of our form of government and our relationship with the United States that are challenging and in need of improvement, we as proud Americans, trust and believe that many, if not all of the solutions to these issues can be found within the confines of the American political and judicial systems - with perhaps a soft push from the international community from time to time.

Thank you for the opportunity to be heard before the Special Committee.

Soifua.