



SAMOA NATIONAL ELECTIONS 2016

REPORT OF THE PACIFIC ISLANDS FORUM ELECTION OBSERVER TEAM

INTRODUCTION

On 26 February 2016 the Pacific Islands Forum was officially invited by the Government of Samoa to observe the 2016 Samoa National Election. The Pacific Islands Forum Secretariat subsequently deployed a Forum Election Observer Team to Apia, Samoa, from 29 February to 11 March 2016, to observe the Samoa elections. The election was held on 4 March 2016, with official results declared on 11 March 2016. The Forum Election Observer Team (the “Forum Team”) comprised Mr Bernard Grundler, Chief Secretary and Returning Officer of the Republic of Nauru, and Mr Calvin Ziru, Registrar of Political Parties Commission of Solomon Islands. The Forum Team was supported by Forum Secretariat staff (the list of the Forum Team is attached at **Annex 1**).

2. The Forum Team was based in Apia, the capital of Samoa, and met with a wide range of stakeholders including senior Government officials; the Samoa Office of the Electoral Commissioner; civil society (including youth, women and disability groups); election candidates; development partners; media representatives; and members of the diplomatic corps based in Apia. On Election Day, 4 March 2016, the Forum Team deployed across the island of Upolu. During the course of its mission, the Forum Team observed all aspects of the elections in rural and urban areas – the pre-polling environment, the opening of polls, casting of votes, closing of polls, and the counting of votes

3. The Forum Team conveys its sincere appreciation to the Government of Samoa for the invitation to observe elections in Samoa, noting that the 2016 National Election was the first time official election observers were invited by the government.

SUMMARY OF RECOMMENDATIONS

4. The Forum Team recommends the following for the consideration of the Government of Samoa and the Samoa Office of the Electoral Commissioner, as appropriate:

Recommendation 1

5. Noting the value and utility of sections 30 to 32 of the Samoa *Electoral Act 1963* as a model mechanism to facilitate information sharing amongst civil registries, that the Pacific Islands Forum Secretariat facilitate peer-to-peer exchanges amongst electoral offices in the region on information sharing amongst civil registries, as well as other good practices.

Recommendation 2

6. That at least thirty days prior to the temporary closing of rolls for general elections, that sustained and wide spread public awareness campaigns be carried out, including in the vernacular, to advise people of the deadline for registration.

Recommendation 3

7. That the opening of the polls commences with the Presiding Officer in each polling booth displaying the interior of the ballot box to all assembled voters and scrutineers to verify/ensure that each box was empty, before the ballot boxes are locked.

Recommendation 4

8. That:

- a) a sufficiently large room (or area) is made available for the transfer of ballot boxes to the Office of the Electoral Commissioner, and that access to that area be strictly monitored to prevent crowding and ensure that all ballot boxes in the possession of Presiding Officers and police officers are in full view of all present;
- b) the importance of protecting the integrity of the ballot boxes at all times is underscored/emphasised to all Presiding Officers, polling officials and police officers, to ensure that once the ballot boxes have been sealed following the preliminary count, they must not be opened until they are transferred to the custody of the Office of the Electoral Commissioner; and
- c) following the reconciliation of records by Presiding Officers, the separate parcels/envelopes containing the ballots (whether used, unused, spoilt or informal) are sealed and stamped, and the Presiding Officers are to sign across the seal. Each parcel/envelope should only be opened during the official count.

Recommendation 5

9. That standardised processes be followed for the conduct of the count (including the preliminary count) and that all elections officials are given at least one full-day refresher training before the election to ensure consistency of practice in the facilitation of the polling processes (including the conduct of polling).

Recommendation 6

10. That:

- a) there be greater legislative and regulatory clarity around what constitutes *monotaga* under the law, in particular to address the issue of the inherent ineligibility of paramount chiefs and non-*monotaga* title holders; and
- b) there be greater legislative and regulatory clarity around enforcement of the eligibility requirements for candidates under the *Electoral Amendment Act 2015* to ensure consistent and uniform application of the law.

Recommendation 7

11. That amendments be made to the *Electoral Act* to remove section 70(4)(a) to section 70(4)(c), which at present enables the Office of the Electoral Commissioner to identify how each voter voted.

CONTEXT

12. Samoa is an independent nation comprising the westernmost group of the Samoan Islands, with a combined land mass of 2,842 square kilometres. The two main islands are Upolu and Savai'i. The capital, Apia, is located on the island of Upolu. Samoa has an estimated population of 197,000, of which about 92% are ethnic Samoan. The remaining population is mostly comprised of - non Samoans and part Samoans and a very small Caucasian minority. Approximately 19% of the population is urban, living in and around the capital, Apia.

13. Samoa gained independence from New Zealand on 1 January 1962, in the process becoming the first Pacific island trust territory to gain independence. The Executive comprises the Head of State and the Executive Government – led by the Prime Minister and supported by Cabinet Ministers. The Prime Minister is the Member of Parliament who commands the confidence of the majority of Parliament. The number of cabinet ministers is prescribed under the Constitution to be between 8 and 13 (including the Prime Minister).

14. Samoa has a unicameral Parliament. At the date of the 2016 general elections, the Parliament comprised 49 members elected by popular vote to serve five year terms. In 2013 Samoa amended the Constitution to reserve a minimum quota of 10% or five seats of the 49 parliamentary seats for women. Under the *Constitution Amendment Act 2013*, up to five additional seats can be added to Parliament for women if no women won seats in the national elections. In such a case the additional five seats would be filled by the five unsuccessful female candidates who polled the highest percentage of votes at the national election. If one woman was voted into parliament then four seats would be added, and so on. Therefore, the number of Parliamentary seats can range from 49 to 54 depending on the number of women who won seats in the general elections. Samoa is the first independent country in the Pacific to introduce reserved seats for women at national level.¹

2016 ELECTIONS

15. The Forum Team congratulates the Government of Samoa and the Office of the Electoral Commissioner on the successful conduct of elections and furthermore commends polling officials for their efficiency and professionalism in facilitating the vote across the 360 polling booths set up throughout the country. On the basis of its observations and wide ranging consultations, the Forum Team is of the view that the conduct of the 2016 national elections was free, transparent, and credible, and consistent with the legislative framework governing elections in Samoa. The Forum Team is also of the view that the outcome of the election is an accurate reflection of the will of the people of Samoa.

16. In addition, the Forum Team is of the opinion that the Samoa *Electoral Act 1963* (and subsequent amendments), provides a comprehensive and efficient framework for the conduct of elections. It includes several model provisions that could be considered by other countries in the Pacific. Likewise, the Forum Team commends both the Government of Samoa and the Parliament of Samoa for the enactment of the *Constitutional Amendment Act 2013* which recognises the importance of the participation of women at the highest level of decision making, without reducing the number of available seats to be contested by candidates.

¹ New Caledonia and the Autonomous Region of Bougainville have reserved seats for women at Parliamentary level. Vanuatu has reserved seats for women at municipal level.

Pre-polling

General environment

17. The pre-polling environment in and around Apia was orderly and peaceful. In the week prior to election there were several high profile court decisions that found six candidates ineligible, one of whom was a paramount chief. The candidates' eligibility had been challenged in court by contesting candidates under the 'village service requirement' criterion of the *Electoral Amendment Act 2015*. The Forum Team was pleased to note that even though the court cases generated a lot of public debate, the decisions of the court were respected and accepted, including by disqualified candidates.

Campaigning

18. With respect to candidates' preparations for the polls, the Forum Team did not witness or hear of any actual campaigning taking place. The Team was advised that the practice of campaigning as in other jurisdictions, such as candidates holding rallies, convening public fora for discussions, or arranging convoys of vehicles to drive around with loudspeakers advertising candidates' merits and platforms, does not happen in Samoa. The Forum Team did observe many billboards, including electronic billboards, and posters around the island of Upolu, promoting different candidates. The Forum Team was also pleased to note regular and sustained voter awareness campaigns on television and radio as well as on electronic billboards in and around Apia, which were sponsored by the Office of the Electoral Commissioner.

Registration

19. Registration in the electoral roll is compulsory although voting is voluntary. At the 2011 elections, there were 115,901 voters registered on the roll. The Forum Team noted that sections 30 to 32 of the *Electoral Act* required the sharing of information between the Commissioner of Births and Deaths, the Commissioner of Marriages and the Office of the Electoral Commissioner (OEC) for the purpose of ensuring the accuracy of the electoral roll.

20. The Forum Team recalled that in some other jurisdictions where elections had been observed, the accuracy of the electoral rolls could not be verified due to significant information gaps between civil registries. The Forum Team therefore commends the clause in the *Electoral Act* mandating the sharing of information amongst the civil registries. The Forum Team congratulates the OEC and the Registry of Births, Deaths and Marriages (BDM) on working together to ensure the accuracy of the electoral roll with up-to-date information from the Registry of Births, Deaths and Marriages.

21. The Forum Team was pleased to note that following the formalisation of information sharing mechanisms between the OEC and the BDM, the OEC was able to identify in 2015 that approximately 17,000 eligible voters were not registered. As such the OEC was able to undertake targeted advocacy and increase the number of registered voters. The Forum Team however also noted reports that a large number of eligible voters were deterred by the long queues for registration, with processing running into the early hours of the morning to enable OEC staff to meet the deadline for registration.

22. The Forum Team was of the opinion that if the registration process had commenced earlier and/or been more widely advertised there would have been more time for eligible voters to register. The Forum Team notes that under section 34(3) of the *Electoral Act* the

Commissioner is obligated to give public notice of the date of closing of the roll/s at least fifteen days before the date of closing.

Recommendation 1

23. The Forum Team in noting the value and utility of sections 30 to 32 of the Samoa *Electoral Act 1963* as a model mechanism to facilitate information sharing amongst civil registries, recommends that the Pacific Islands Forum Secretariat facilitate peer-to-peer exchanges amongst electoral offices in the region on information sharing amongst civil registries, as well as other good practices.

Recommendation 2

24. The Forum Team recommends for the consideration of the Office of the Electoral Commissioner that at least thirty days prior to the temporary closing of rolls for general elections, that sustained and wide spread public awareness campaigns be carried out, including in the vernacular, to advise people of the deadline for registration, and encourage registration.

The poll

Opening

25. The Forum Team observed the opening of the polls in two polling stations (booths) in Upolu. At both booths observed, polling opened on time at 8.00am consistent with the *Electoral Act*. The Forum Team noted that under section 66 of the Act, the Presiding Officer at each polling booth shall, before the opening of the poll, and in sight of any scrutineers present, see that the ballot box was empty, and close and lock it, following which the ballot box should not be opened again until after the close of the poll.

26. The Forum Team did not witness the locking of the ballot box as described above in either of the polling booths observed – that is, the box was already locked when the Team arrived at the booth. The Forum Team was however informed by other observers that the locking of the ballot box had been witnessed in at least one other polling booth. The Forum Team noted that the Act does not prescribe a specific time before the opening of polls for the locking of the ballot box, or prescribe the procedure as part of the opening process.

27. At no time did the Forum Team have reason to question the integrity of the Presiding Officers or the integrity of the ballot boxes. However, in such a critical national exercise as the election of representatives to Parliament, the Forum Team notes the importance of institutionalising detailed procedures to ensure consistency in practice and minimise opportunities to question the results. For instance the Forum Team noted that at one of the polling booths observed, there were no scrutineers present (acknowledging that under the Act it was the responsibility of candidates to appoint scrutineers to polling booths). In such a case, if the Presiding Officer had opened the ballot box in front of all assembled voters before locking the box, as is the practice in other countries, other people could verify that the box was empty before it was locked, adding to the transparency and integrity of the electoral process in Samoa.

Recommendation 3

28. The Forum Team recommends for the consideration of the Office of the Electoral Commissioner that the opening of the polls commences with the Presiding Officer in each polling booth displaying the interior of the ballot box to all assembled voters and scrutineers to verify/ensure that each box was empty, before the ballot boxes are locked.

Voting process

29. The Forum Team congratulates the Office of the Electoral Commissioner on establishing 360 polling booths across Samoa to ensure maximum access to polling booths by voters. The Forum Team observed voting in 23 polling booths on the island of Upolu, in both urban and rural settings. The Forum Team is in agreement that although there were several procedural issues witnessed during voting, these were neither systematic nor intended to defraud the electoral process, and did not have a significant impact on the outcome of the elections.

30. The Forum Team was pleased to observe that at all polling booths visited elderly voters and voters with disabilities were given preferential treatment by being moved to the front of queues. The Forum Team commends polling officials and voters alike for their courtesy and kindness. The Forum Team also had opportunity to observe several cases of assisted voting, which the Forum Team was pleased to note were carried out in accordance with section 73 of the Act.

31. The most common issue observed by the Forum Team was with regard to misunderstanding on the polling booths designated for the casting of certain special votes. Under section 59(1A) of the *Electoral Act* the Electoral Commissioner can designate polling places for any constituency which can be located outside the territorial boundaries of such constituency. Section 70C further states that a person qualified and registered to vote at any election in any constituency, may vote as a special voter at a polling place outside that constituency.

32. The Forum Team met with one woman who had been incorrectly referred from two polling booths and was on her way to a third, to find the booth where she could cast her special vote for her constituency in Savai'i. At another polling booth within the urban Apia area, a disabled voter who wanted to vote in the Urban East constituency was told that the booth did not have ballots for that constituency and was asked to wait for ballots to be brought in. In both cases the voters stated they had followed information published in the newspaper by the Office of the Electoral Commissioner on designated special voting booths. The Forum Team had met with several such voters across the polling booths observed.

33. The Forum Team noted that the 2016 Election was the first where there were multiple designated special voting booths (where previously there were only two in Apia). As such teething problems could be expected in the initial roll out of the practice, as would seem to have been the case. While the misunderstanding had inconvenienced voters, the Forum Team does not believe this was intentional or organised. However, the Forum Team noted for future reference the importance of ensuring widespread dissemination of information on designated polling booths for special votes, including in Samoan. It would also be useful to ensure all polling officials have access to the full list of special voting booths, so if voters went to the wrong booth they could be accurately referred to the nearest booth.

Closing

34. The Forum Team observed the close of polling in three polling booths. Consistent with the law the polls were closed at 3.00pm although in two of the booths observed several voters who arrived just on 3.00pm were allowed to vote, including voters who carried in a man with a broken leg. It was noted that two of the late voters also showed up at the wrong polling booth. Fortunately there were six booths within walking distance of each other and in both cases the

police officers escorted the voters to the correct polling booth and asked the polling officials there to allow the voters to cast their votes. The Forum Team commends the police officers and polling officials at those polling booths for allowing those voters to exercise their right to vote.

35. As part of the closing process, under section 75 of the *Electoral Act* the Presiding Officer should, in the presence of any scrutineers present, make up into separate parcels: i) certified copies of the main roll and supplementary rolls showing the number of ballots issued; ii) all counterfoils of ballot papers issued; iii) all spoilt ballot papers; and iv) all unused ballot papers. Following this, the Presiding Officers should then open the ballot boxes and proceed to undertake the preliminary count. The Forum Team was pleased to observe these processes take place in the polling booths where the close of polling was observed.

The count

The preliminary count

36. The preliminary count was observed in six polling booths in Upolu. There were very minor differences in the conduct of the preliminary count across the booths observed, which in the view of the Forum Team, was a reflection of the distinct managerial styles of the different Presiding Officers. In all the cases observed, a polling official would remove the votes from the ballot box one at a time, call out the name of the selected candidate, show the ballot to the police officer and scrutineers present, then place the ballots in different piles/heaps, one for each candidate, or for informal ballots. The difference observed was in the distance between the scrutineers' table and the ballot box and how much time was taken by the polling official to show the ballots to the scrutineers (with some holding the ballots up high for all to see at one time and others taking the ballots to each individual scrutineer to see up close). As far as the Forum Team could ascertain there were no complaints by the scrutineers of the placement of their seats or the speed with which the preliminary count was undertaken.

37. Under sections 75(1)(c) to 75(1)(e) of the *Electoral Act*, the Presiding Officer should then make up into three separate parcels of the used ballots, informal ballots and ballots issued to the same name twice. The Presiding Officer should then sign the certificate provided indicating: i) the number of votes received by each candidate; ii) the number of ballots set aside as informal; iii) the number of ballots issued to the same name twice; iv) the number of spoilt ballot papers; v) the number of unused ballot papers; and vi) the numbers of ballots papers originally delivered to the polling booth. The signed and certified reconciled records should then be placed back into the ballot box, and transported by the Presiding Officer and the police officers assigned to that polling booth to the Office of the Electoral Commissioner, where the official count would take place. The Forum Team observed this practice happen at the polling booths visited.

Transfer of ballot boxes from Presiding Officers to the Office of the Electoral Commissioner

38. The Forum Team also went to the Office of the Electoral Commissioner after the preliminary count to observe the process where ballot boxes were transferred from polling booths to the custody of the Office of the Electoral Commissioner. The Forum Team noted several aspects of that process which it believes would benefit from a more systematic and orderly approach. The Forum Team also noted that unlike in the polling booths, access to the venue was not controlled and that members of the general public could freely access and move about the premises.

39. Although the room in which the transfers were effected was fairly large, in the opinion of the Forum Team it was too small for the purpose of facilitating the transparent and efficient

transfer of ballot boxes from 360 polling booths to the Office of the Electoral Commissioner. As a result, there were cramped and disorderly queues of Presiding Officers (accompanied by the two police officers assigned to their booths) carrying their respective ballot boxes (or two boxes in the case of designated special voting booths).

40. While the Forum Team did not have any reason to suspect electoral fraud or inappropriate behavior/intentions by polling officials, in the view of the Forum Team, the crowded room and overall disorder provided opportunity to tamper with the ballot boxes (and thereby could call into question the integrity of the ballot boxes). For example, in many instances the ballot boxes were not clearly displayed, but were simply placed on the floor and pushed forward by foot when the queue moved. In addition several ballot boxes appeared to be unlocked. The Forum Team also observed two Presiding Officers opening their respective ballot boxes in the crowded room and go over their reconciled records of the ballots.

41. After the transfer of the ballot boxes to the Office of the Electoral Commissioner, the records of the preliminary count from each polling booth, as certified by the Presiding Officer of that booth, were written on large black boards around the venue. All the preliminary results were thus displayed. The Forum Team was informed that the process for the transfer of ballot boxes to the Office of the Electoral Commissioner, and the transfer of preliminary results to the blackboards concluded at 5am on the following morning.

42. The Forum Team commends the great care taken by Presiding Officers and police officers to protect the integrity of the ballot boxes in the polling booths. However, the Forum Team notes that all that hard work could be undermined by the significantly relaxed attitude of Presiding Officers and police officers once within the vicinity of the Office of the Electoral Commissioner. The Forum Team acknowledges that this attitude is likely a reflection of the high level of trust in the process and the system, probably on the basis of experience. The Forum Team also notes that the Act does not stipulate that the parcels containing the different ballots (as described in paragraph 35 above) be sealed and/or locked in the ballot boxes before being transported to the Office of the Electoral Commissioner.

43. However, the Forum Team notes that in the conduct of national elections, regardless of trust in electoral institutions and systems, the integrity of the process is contingent on protecting the integrity of the ballot boxes or parcels of ballots as is the case in Samoa. While the Forum Team is confident that there was no electoral fraud committed in the process of transferring the custody of the ballot boxes to the OEC, there were many practices observed that needed to be improved.

Recommendation 4

44. The Forum Team recommends for the consideration of the Office of the Electoral Commissioner that:

- a) a sufficiently large room (or area) is made available for the transfer of ballot boxes to the Office of the Electoral Commissioner, and that access to that area be strictly monitored to prevent crowding and ensure that all ballot boxes in the possession of Presiding Officers and police officers are in full view of all present;
- b) the importance of protecting the integrity of the ballot boxes at all times is emphasised to all Presiding Officers, polling officials and police officers, to ensure that once the ballot boxes have been sealed following the preliminary count, they must not be opened until they are transferred to the custody of the Office of the Electoral Commissioner; and
- c) following the reconciliation of records by Presiding Officers, the separate parcels/envelopes containing the ballots (whether used, unused, spoilt or informal) are

sealed and stamped, and the Presiding Officers are to sign across the seal. Each parcel/envelope should only be opened during the official count.

The official count

45. The Forum Team observed the official count from Monday 7 March to Thursday 10 March. Candidate scrutineers and Observers were required to fill forms and sign a declaration that captured details such as their name and organisation or party they represented. Prior to the official count the special votes were sorted and allocated to the relevant constituency card-boxes on Saturday 5 March, which process the Forum Team also observed.

46. At the sorting, two elections officials rotated the duty of opening each special vote which was then shown to the observers and scrutineers, and handed over to one of five election officials (runners) to deliver to the election officials responsible for each constituency box. The number of special votes received for each constituency was recorded. Ineligible special votes were electronically recorded. The Forum Team observed that some special vote boxes were empty (with the special votes later found in the ordinary ballot boxes). In addition, some special vote boxes contained papers other than special votes, leading to more work for officials with sorting and verifying the contents of the boxes. One special vote box could not be opened as the incorrect key was attached to the box.

47. On the morning of Monday 7 March, prior to the official count, the scrutiny of the rolls was undertaken, in line with section 77(1)-(2) of the *Electoral Act*. In this process the master rolls were scrutinised against the certified copies of the rolls from each polling booth. A line was drawn through the number and name of any elector or voter on the master roll who was shown on the certified copies of the rolls to have received a ballot. The Forum Team observed the identification of six separate incidences where a single elector was issued two ballots. (The official supervising the count advised the Forum Team that double voters would be prosecuted). The elections officials then commenced the counting of the special votes from each polling booth, where each ballot was marked and recorded electronically. The names and numbers of the special voters were then scrutinised against the master roll.

48. The official count proper began in the evening of Monday 7 March with the counting of special votes. There were eleven counting stations where the count was undertaken simultaneously. At least one police officer was present at each counting station in addition to candidate scrutineers and official observers. Generally, an election official would hold up each ballot for scrutineers' and observers' inspection while calling out the candidate's name. The ballots were then placed in different piles/heaps, one for each candidate, or for informal ballots. The total number of votes received by each candidate was then announced, recorded and placed in separate envelopes. After all special votes had been counted, the same process was repeated for the ordinary votes.

49. As with the preliminary count, there were minor inconsistencies in the procedures undertaken across the eleven counting stations, such as the distance of scrutineers and observers from the counting official and the fact that some election officials explained the processes about to be undertaken to scrutineers and observers, while others did not. The Forum Team did not observe or hear of any complaints regarding the arrangements and is pleased to note that the official count was undertaken in a highly transparent manner. There were a number of administrative and procedural issues observed which, although minor and should not affect the validity of the results, caused significant inconvenience and delay. These include the allocation of special votes to wrong constituencies (during the sorting) and finding special votes in ordinary ballots boxes. The Forum Team noted that on Saturday 5 March, the day after elections, when sorting of the special votes was undertaken, that officials had been working

from the previous day up till 5am that morning. The Forum Team acknowledged that the elections officials were therefore understandably tired during the sorting period.

Recommendation 5

50. The Forum Team recommends for the consideration of the Office of the Electoral Commissioner that standardised processes be followed for the conduct of the count (including the preliminary count) and that all elections officials are given at least one full-day refresher training before the election to ensure consistency of practice in the facilitation of the polling processes (including the conduct of polling).

THE INSTITUTIONAL FRAMEWORK AND ENABLING ENVIRONMENT FOR CONDUCTING ELECTIONS IN SAMOA

The Samoa Electoral Commission

51. The Samoa Office of the Electoral Commissioner (OEC) was established under section 3 of the *Electoral Act* under which the Commissioner is subject to public service law, although the Act also details the conditions under which the position could be filled and vacated. The responsibilities of the Commissioner include the conduct of elections in Samoa as well as a range of other electoral related functions. These include providing advice to the Head of State and Legislative Assembly on Samoa's electoral system, policies and laws; undertaking public awareness and education programmes concerning Samoa's electoral system and laws; and providing a report on the conduct and result of each election within six months of the election, to the Speaker of the Legislative Assembly.

52. The Forum Team was pleased to note that under section 3(3A)(h) of the Act the Commissioner may also provide, with Cabinet approval, assistance in matters relating to elections to authorities of foreign countries and international and regional organisations. The Forum Team noted that at the time of the election there was a team from the Solomon Islands Electoral Commission seconded to the Samoa Office of the Electoral Commissioner to observe the conduct of the first elections following the constitutional amendments reserving seats for women. This was the second such team from the Solomon Islands Electoral Commission to visit Samoa on the same issue.

53. As noted in paragraph 16 above the Samoa *Electoral Act* (and subsequent amendments) as well as the *Constitutional Amendment Act 2013* contain examples of model practices for the conduct and management of elections, which could benefit other jurisdictions. It was welcome news therefore that the sharing of best practice with other jurisdictions, subject to Cabinet approval, is not only encouraged but legislated. This would enable the Forum Secretariat to better facilitate Recommendation 1 above.

Samoa culture and the legislative framework guiding elections

54. Elections in Samoa are guided by the *Electoral Act* and relevant amendments, the most recent of which came into force in September 2015. The *Constitutional Amendment Act 2013* regarding the reservation of seats for women is also a key component of the electoral process.

55. The Forum Team noted the importance and complementary nature of Samoan culture embedded in Samoa's laws, including the Constitution. The overwhelming majority of Samoan stakeholders the Forum Team met with emphasised that Samoan culture was an integral part of life in Samoa and expressed the hope that Samoan culture would continue to be recognised

accordingly under the law. Samoa's laws therefore reinforce and adapt to this widespread support for the recognition of traditional governance systems by the formal institutions of state.

56. As such the *Electoral Act* combines representative democracy principles of political selection, with Samoan governance models based on active kinship and reciprocity within local constituencies. An important and unique component of the electoral framework is the legal recognition of kinship ties as a determinant of eligibility to register in a constituency as well as and to stand as a candidate in a particular territorial constituency.

57. The Forum Team noted that by codifying aspects of traditional governance into national legislative structures, as well as legally proscribing certain cultural practices during specific electoral periods, Samoa has in effect adapted the western principles of democracy to the local context. The result is a functioning form of democracy that is relevant and contemporary, and provides lessons to other jurisdictions in the Pacific. The Forum Team noted that other jurisdictions in the Pacific as well as elsewhere in the world continue to contend with combining distinct features of traditional modes of governance with principles of representative democracy. In most cases, attempts to combine traditional modes of governance with representative democracy has often resulted in vilifying one form or the other

58. The Forum Team noted the legislated accountability of candidates to their constituencies and communities through a three year residency requirement prior to the elections, and the obligatory provision of *monotaga* or 'village services' – both of which are qualifying criteria to contest territorial constituencies in elections. The Forum Team acknowledges that Samoa is arguably a homogenous society with a relatively small population, factors which most likely contribute to the successful codification and application of the integrated leadership framework.

59. The Forum Team notes that democracy takes many forms and need not be interpreted by one approach only. As such, certain principles of democracy as understood in other jurisdictions, are not applied in Samoa. In particular the Forum Team notes that the right to contest elections is restricted to individuals holding traditional leadership or *matai* titles. The preference and endorsement of this form of suffrage is based on the fact that the *matai* are representative of *aiga* (families), and by extension constituencies, because they are chosen by a decision of the *aiga potopoto* or extended family. In the Samoan context therefore *matai* are "representative".

60. The Forum Team notes that a plebiscite held on 9 May 1961, revealed a majority preference for restricted suffrage under which only *matai* could run for elections and vote. Universal suffrage was only adopted following another plebiscite in 1990, thirty one years after the first plebiscite. There is a precedent therefore of reforming the legislative electoral framework to reflect the will of the majority of the population, which at present prefers the *matai* system of political governance.

The Electoral Amendment Act 2015

61. In March 2015 the Legislative Assembly of Samoa passed the *Electoral Amendment Act 2015* which had a number of implications on the 2016 Elections, most notably the Supreme Court ruling five candidates for the election were ineligible under the amendments to the Act.

Cultural amendments – provision of Monotaga and conduct of O'o and Momoli

62. The most discussed amendments clarified and defined the eligibility requirements that candidates must satisfy: the three year residency requirement and the 'village service

requirement' for the preceding three years, universally understood to mean the *monotaga*. Under the 2015 amendment, *monotaga* is defined as “the compulsory service, assistance or contribution (such as contribution in form of cash, kind or goods) rendered for customary, traditional or religious activities, events, functions or similar purposes pursuant to the customs of a particular village.”²

63. The Forum Team noted from its consultations with various stakeholders that there was strong support for the *monotaga* clause, including the amendments, however, many stakeholders were of the view that *monotaga* amendments should have been implemented at the next elections in 2021 – and not applied retrospectively. The retrospective application of the law automatically disqualified people who had not made *monotaga* contributions from three years previously, as well as individuals who were bestowed *matai* titles within the last three years. In addition, the point was raised that the definition of *monotaga* under the law did not adequately take into account all the cultural complexities of the practice.

64. The example was raised of the legal challenge of a candidate who is a paramount chief and a holder of a non-*monotaga* title. According to the custom of his village, his position as holder of a paramount chiefly title would not provide *monotaga* but receive *monotaga*. He was the subject of an election petition based on the same clause in 2011 when the Court accepted the customs of his village pertaining to his title and *monotaga* and dismissed the petition against him. However, in 2016, the Court ruled in favour of the petition against him in light of the 2015 amendment clarifying *monotaga* to be the compulsory service to a village. As his title does not provide compulsory service to the village he is thus automatically disqualified, notwithstanding the fact that he provides voluntary services to the village.³

65. The Forum Team commended the legislative reform around the traditional practice of the presentation of ‘*O’o*’ and ‘*Momoli*’. This is traditionally undertaken by Members of Parliament or candidates for elections to thank their supporters. The Forum Team observes that the line between cultural reciprocity and corruption are issues that other developing jurisdictions grapple with. Under the amendment to the law the presentation of ‘*o’o*’ and *momoli* is restricted to the 12 month period following the declaration of results. This includes the provision of gifts of food and money. A key component of ‘*o’o*’ being the provision of transport for voters to polling booths on polling day is also explicitly outlawed.

66. The Forum Team also noted the electoral amendment under section 5(9) (Qualification of Members), allowing a candidate to challenge the qualification of another candidate, within three days of the nomination, in the Supreme Court to disqualify that other candidate. The Forum Team was informed of several candidates who did not meet the *monotaga* requirements, who still ran for Parliament simply because no one challenged their eligibility. In addition, there were widespread reports (including a newspaper editorial) that candidates and their supporters were still providing ‘*o’o*’ to voters, including offers of free transportation to polling booths. As far as the Forum Team could ascertain none of those allegations were addressed.

Recommendation 6

67. The Forum Team recommends for the consideration of the Office of the Electoral Commissioner and the Legislative Assembly of Samoa that:

² Prior to that, the term *monotaga* was not defined separately and was universally understood to be the ‘**village service requirements**’ clause defined as the services a *matai* renders to his or her village in accordance with the customs of that particular village.

³ See *Liuga v Alailima* [2016], WSSC 11 (29 February 2016), and *Samu v Adams* [2016] WSSC 10 (25 February 2016)

- c) there be greater legislative and regulatory clarity around what constitutes *monotaga* under the law, in particular to address the issue of the inherent ineligibility of paramount chiefs and non-*monotaga* title holders; and
- d) there be greater legislative and regulatory clarity around enforcement of the eligibility requirements for candidates under the *Electoral Amendment Act 2015* to ensure consistent and uniform application of the law.

Amendments to the constituencies/electoral rolls

68. Another amendment to the *Electoral Act* was the change in names and definition of the types of electoral rolls in Samoa. Previously there were basically two types of rolls – the first type for ethnic Samoans and the second for non-Samoans and part Samoans. Voters registered on the roll for non and part Samoans were called “individual voters/electors” while voters registered on any of the rolls for ethnic Samoans were called “constituency voters/electors.” There are six multi member (two seats) constituencies and thirty five single member constituencies for ethnic Samoans, and one multi member (two seats) constituency for part and non-Samoans.

69. Under the 2015 amendment the allocation of seats remains the same, however, the two ‘individual voters’ seats have now been renamed “Urban constituencies” while the electoral constituencies have been renamed “Territorial constituencies.” Under the law, there is a residency requirement or a kinship requirement to be registered on an electoral roll in Samoa. A bill tabled by the Government last year to physically define boundaries for the two urban constituencies, Urban East and Urban West, was defeated in May 2015. As such, the primary criterion determining voters’ eligibility to register on the urban roll is that they must reside on non-customary land (freehold land or leased state owned land). In effect therefore, all voters residing on customary land would be registered on the territorial rolls for their areas of residence (or to which they have kinship ties). Voters living on alienated land with kinship ties to territorial constituencies may choose to be registered on either the urban roll or territorial roll to which they have kinship ties. Voters may only be registered on one roll.

70. Candidates contesting the urban seats need only prove 6 month residency requirement in that constituency (but having lived in Samoa for the preceding 3 years) and need only show proof of providing some form of community service in the preceding three years (as opposed to the three year *monotaga* requirement for candidates contesting territorial seats). Prior to the 2011 elections, candidates for the ‘individual voters’ roll did not have to be *matai* title holders, however, an amendment to the law in 2010 changed the eligibility criteria so that commencing with the 2011 elections all electoral candidates must be *matai* title holders.

The Constitution Amendment Act 2013

71. The Forum Team highly commends the Government of Samoa for its adoption of the *Constitution Amendment Act 2013* to provide for a minimum number of women Members of Parliament, which minimum number should account for no less than 10% of Members of Parliament. At present 10% of Parliament is equivalent to 5 seats. As noted in paragraph 14 above, under the Constitutional amendment, the special measures are only activated if no women, or fewer than 5 women are elected to Parliament in the general elections.

72. In the opinion of the Forum Team this is a good example of Samoa taking ownership of an external principle (regarding increasing the representation of women in highest level of decision making) and adapting it to its local context. The Forum Team noted that in 2016 an unprecedented twenty four women candidates ran for elections, of which four won their seats in the general election. As such, and in keeping with the constitutional amendment, only one

extra seat would be added to the Parliament, for the unsuccessful woman candidate who polled the highest percentage of votes.

73. The Forum Team also commends efforts by development partners to help Samoa fully implement the constitutional amendment, including through funding support for civic awareness on the importance of individual votes; advocacy on the merits of reserved seats for women including through radio talk back shows and community programmes on the issue; expert mentoring and workshops for women candidates in preparation for elections; and provision of funding support to the Office of the Electoral Commission with civic awareness campaigns. The Forum Team heard from women candidates that the mentoring and training provided by development partners, particularly in the form of political consultants, were invaluable in helping them prepare for the elections.

74. The Forum Team congratulates all five successful women candidates and wishes them the best for the next parliamentary term.

Disability access

75. The Forum Team was pleased to note that the Office of the Electoral Commissioner, working in partnership with the Samoa Disability Organisation (*Nuanua o le Alofa*), had undertaken training and awareness raising for Commission staff on facilitating ease of access to polling booths by persons living with disabilities. The Office of the Electoral Commissioner had also designated two specific venues in the urban area with wheel chair access as special voting booths. The Forum Team observed that one of the venues also had spare wheel chairs.

76. The Forum Team commends the Office of the Electoral Commissioner for its inclusiveness and for undertaking projects to ensure that all eligible voters were able to access polling booths. The Forum Team notes that the designation of 360 venues as polling booths would have stretched resources significantly, however, would have greatly enhanced the accessibility to polling booths by voters.

Civic awareness

77. The Forum Team commends the Office of the Electoral Commissioner for the civic awareness programmes it ran in the weeks leading up to elections, which included information on the electoral amendments – particularly the restrictions on the ‘O’o’, and the importance of each individual vote. The Forum Team notes however that there had been issues with regard dissemination of accurate and up-to-date information on the location of special voting booths, which could have been avoided.

Potential issue with regard the secrecy of the vote

78. The Forum Team noted that under sections 70(4)(a) and 70(4)(c) of the *Electoral Act* the Office of the Electoral Commissioner would have the ability to identify how each voter votes. The Forum Team notes that this is possible as a consequence of section 77 whereby the Commissioner is able to identify, upon scrutiny of the rolls, if any voter was issued more than one ballot paper. The Commissioner is permitted to open the parcels of ballot papers from the polling booths at which the voter appeared to have voted, and remove the additional ballots issued.

79. The Forum Team is of the view that secrecy of the vote is an essential integrity safeguard because it enables voters to cast their ballot with full independence and without fear of retribution. The Forum Team acknowledges that voter fraud is an issue, as evidenced by the

six incidences of double voting identified, and is of the view that the existing safeguards against double voting (particularly the biometric voter registration system) should be strengthened. The Forum Team is also of the view that sections 70(4)(a) and 70(4)(c) of the *Electoral Act* are an unnecessary infringement on the right of the voter to cast a secret ballot.

Recommendation 7

80. The Forum Team recommends for the consideration of the Office of the Electoral Commissioner and the Legislative Assembly of Samoa that amendments be made to the *Electoral Act* to remove sections 70(4)(a) to section 70(4)(c), which at present enable the Office of the Electoral Commissioner to identify how each voter voted.

CONCLUSION

81. Overall, the Forum Team is of the view that:

- the Samoa Office of the Electoral Commissioner, in particular the Acting Commissioner and all his staff (both permanent and temporary) should be highly commended and congratulated on a job well done;
- polling officials conducted themselves in a highly professional and impartial manner;
- voters were able to exercise their civic rights freely and without intimidation; and
- although there were shortcomings, particularly relating to misinformation on the location of special voting booths, the Team does not believe that there was any malice or intent to commit electoral fraud.

ACKNOWLEDGEMENTS

82. The Pacific Islands Forum Election Observer Team acknowledges with gratitude:
- the Government of the Independent State of Samoa for the invitation to observe the elections;
 - the Acting Elector Commissioner and staff of the Office of the Electoral Commissioner for their support of the mission including facilitating access by the Team to polling booths;
 - the polling and security officials at all booths visited by Team members for taking time to speak with Team members;
 - the Chief Executive Officer for Foreign Affairs & Trade;
 - all the interlocutors the Team met with including Government representatives, civil society and faith based organisations, political parties and independent candidates, development partners, and members of the diplomatic corps; and
 - the people of Samoa for their warm welcome and hospitality.

Pacific Islands Forum Election Observer Team

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