

# **Indigenisation of the Land & Titles Court of Samoa**

**John Dawson**

**Faculty of Law, University of Otago, NZ**

**A short account of the PhD thesis  
of Dr Fanaafi Aiono-Le Tagaloa,**

***The Land and Titles Court of Samoa,***

**University of Otago, 2008**

**(in Emalus and NZ university law libraries)**

## **Fanaafi's main question:**

**Despite its colonial origins, should the Land and Titles Court now be considered a customary body, following its indigenization by Samoans?**

# **Dr Fanaafi Aiono Le Tagaloa (2008):**

## **The Land & Titles Court :**

**“... is an integral part of the Samoan legal order.**

**“It has been entrenched in the Constitution.**

**“It operates with Samoans’ consent today, possibly because the judges of the Court are matai, hearings are conducted in Samoan, and elements of Samoan custom and protocol are followed.**

**“What started as a colonial institution ... has become a heavily indigenised hybrid body ... [that applies] the customary rules relating to land and titles ... albeit through a non-customary process.”**

# **Land & Titles Court of Samoa**

- **Resolves disputes about customary lands  
(80% of Samoa; 20% state or freehold land)**
- **Resolves disputes about Matai titles, to which these lands are ‘attached’**
- **Supervises succession to Matai titles**
- **Jurisdiction always based on customary law**
- **Not originally a customary dispute resolution process**

*Alaelua Vaai v The Land and Titles Court*  
[1980-1993] WSLR 507;

in the Supreme Court, Lussick ACJ said:

**“Samoa has two systems of law working side by side.**

**“On the one hand, we have statute law, English common law and equity; on the other, custom and usage and the principles of customary law which govern the holding of matai titles and customary land.**

**“Each legal system has its own court.”**

# **Aspects of indigenisation of the Court**

- **Changes in language and identity of judges**
- **Constitutional entrenchment**
- **Indigenisation of its process**
- **Role as a ‘bastion’ against commercialisation and alienation of customary lands**

# **The constitutional position of the Court**

- **Samoan Constitution is ‘supreme law’:  
inconsistent laws are ‘void’**
- **The Constitution:**
  - **requires the continuation of Land & Titles Court**
  - **states that legislation will govern the Court’s powers**
  - **declares Samoan custom a recognised source of law**
  - **declares customary land ‘inalienable’**
  - **says matai titles & land are held  
‘in accordance with custom’**

# **Indigenisation of the Court's process**

## **One example: Opening of proceedings**

- 1. Last minute attempts at customary mediation**
- 2. “All rise”.**
- 3. Recitation of honourifics:**
  - the standard greeting between Matai**
- 4. Reading petitions; procedural rulings; oaths.**
- 5. Inquisitorial questioning from the Bench.**



# **Parallel customary processes**

- **Seumalo:**
  - **customary mediation**
  - **last minute attempts at reconciliation**
  - **to avoid a public hearing**
  - **outside the courtroom**
  - **led by delegations of other Matai from the nuu**
  
- **Tapuaiga**
  - **attendance and hosting of relatives in support**
  - **“the one who enters the fray is not half as important as the one who sits and waits”**

## **Some of Fanaafi's conclusions**

- ‘Decolonisation can occur in various forms and at various speeds’.**
- ‘The colonisation of Samoan land tenure principles was only partial’.**
- ‘Decolonisation in the Samoan context includes the grafting of customary practices on to colonial dispute resolution systems’.**
- ‘The Court has been woven into the fabric of Samoan society, much like Christianity’.**
- ‘It is now an important mechanism for maintaining and strengthening social cohesion’.**

# **Some of Fanaafi's conclusions II**

**'The future of custom ... depends on the Court'.**

**'Pressures for commercialisation of land bear on the future of the Court'.**

**The Court could take on new roles:**

- supervising leasing of customary land**
- supervising compensation paid for state purchases**

**But:**

**'Lifting the prohibition on sale of customary lands might have a greater impact than colonisation'.**

**'It might see the end of the Court'.**

# **History of Land & Titles Court**

- **Established under German colonial administration: 1903**
- **Continued under NZ colonial administration: 1915-1961**
- **Entrenched in the Constitution of Samoa: 1960**
- **Continued after independence of Samoa**
- **Details now in Land & Titles 1981 Act (Samoa)**  
**>>> more than 100 years continuous operation**

## **Dr Fanaafi Aiono Le Tagaloa (2008):**

**The L&T Court “has become an integral part of the Samoan legal order.**

**“It has been entrenched in the Constitution.**

**“It operates with Samoans’ consent today, possibly because the judges of the Court are matai, hearings are conducted in Samoan, and elements of Samoan custom and protocol are followed.**

**“What started as a colonial institution ... has become a heavily indigenised hybrid body ... [that applies] the customary rules relating to land and titles ... albeit through a non-customary process.”**