

Asia Pacific Labour Law Review

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Workers' Rights for the New Century

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AMRC is an independent non-governmental organisation
that focuses on Asian and Pacific labour concerns.

The Center provides information, research, publishing, training, labour networking
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AMRC's main goal is to support democratic and independent labour movements in Asia and the Pacific.
In order to achieve this goal, AMRC upholds the principles
of workers' empowerment and gender consciousness, and follows a participatory framework.

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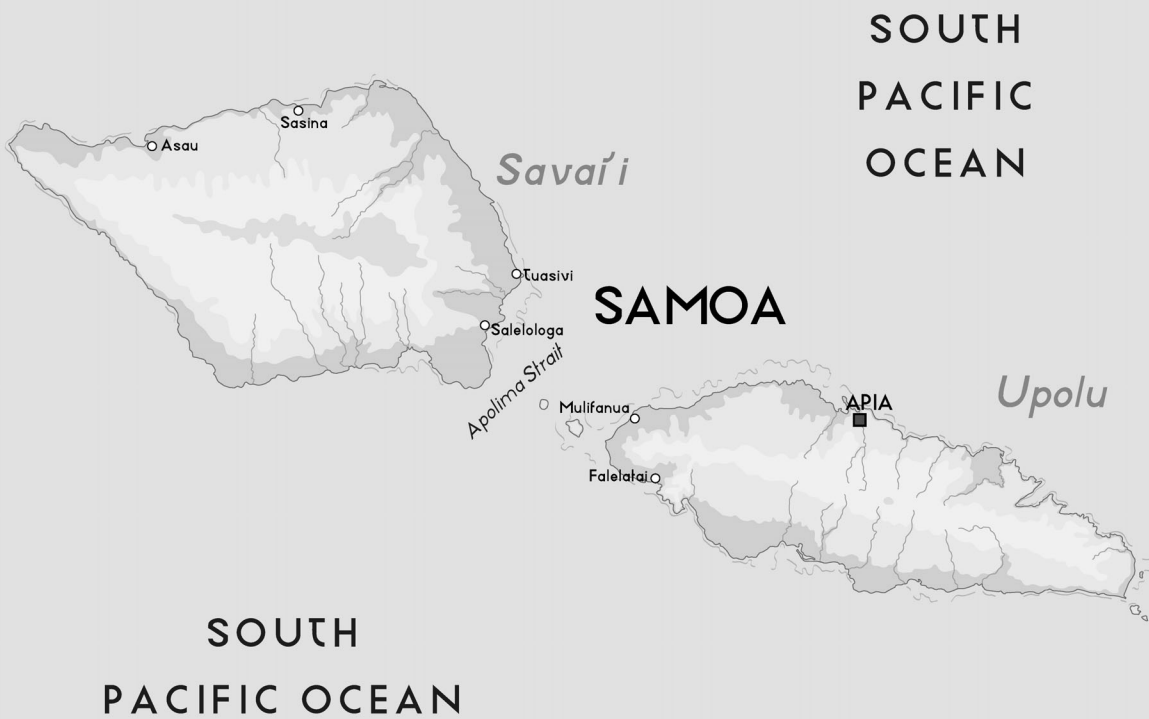
A Survey: Labour and Law in Samoa

Mohammed L Ahmadu

Introduction

As in any developing nation, Samoa must address labour issues from a multitude of perspectives. While on record the nation enjoys general labour and industrial peace, it is important to reach out far for ways that will further improve the condition of workers and their productivity. To this end, as the country opens up its economy to foreign capital it must at the same time weigh the effects of globalisation of trade and services on its domestic labour force. In particular, the nation seeks factors that would enhance the competitiveness of labour to cushion the impacts of globalisation. This reasoning encourages workers to embrace the 'race to the bottom'. This is more so considering that the country is a tax haven and offshore finance centre. Local training and general enlightenment of workers and improvement in their working conditions and general welfare are necessary indicators of manpower development that Samoa needs to focus on. The same may be said of other nations in the region.

It is against this background that this brief paper examines the present state of labour laws in Samoa. It also analyses the efficacy of the laws and concludes by offering a number of suggestions. The objective of this present-



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tation is to provide a synopsis of the current legal situation of labour and workers.

Geo-political profile

Formerly known as Western Samoa, the country is officially now called the Independent State of Samoa. Samoa literally means 'sacred centre of the universe'. It is an archipelago of nine islands located in the south-west Pacific. Samoa has a total land area of 2,831 square kilometres. The islands are made mainly of volcanic rocks and have a generous supply of fresh water. The climate is tropical maritime and the vegetation is generally made up of dense forest. The approximate population is 165,000 (1995 estimate). The capital city is Apia. The official language is Samoan but English is widely used in administration and commerce. According to the 1991 census about 89,000 are between the working-age of 15-64. The time is Greenwich Mean Time minus 11 hours. The level of literacy is conservatively put at about 90 percent. The country became independent in 1962. Samoa is a constitutional democracy with a single-chamber parliament and in 1970 became a full member of the Commonwealth. (Commonwealth Yearbook, 1998, pp. 323-326)

The executive arm of government is headed by a prime minister, the parliament by the speaker, and the judiciary by a chief justice. The Magistrates' Court and the Land Titles Court are of co-ordinate jurisdiction, meaning that both courts are of the same judicial powers and can deal with the same matters brought before. In both cases appeals go from there to the Supreme Court and then on to the Court of Appeal. Appeals from the Village Fono go to the Land and Titles Court. In other words, all judicial pronouncements made by the village court are subject to appeal in the Lands and Titles Court for further determination.

Important laws on labour matters

The following are worthy of mention.

- Labour and Employment Act 1972
- Labour and Employment (Employment of Expatriates) Amendment Act No. 17 1999
- Accident Compensation Act 1989

- National Provident Fund Act 1984

These laws have been amended on a number of occasions, taking into account the exigencies of the time. This paper incorporates these amendments in the discussions that follow without necessarily specifically listing all the legal texts of the amendments.

Labour and Employment Act 1972

The law is divided into eight parts. Part 1 deals with preliminary matters including interpretation of the law and its application; Part 2 covers administration of the law; Part 3 deals with wages protection; Part 4 examines contract of service; Part 5 has provisions on holidays, leave, hours of work, and overtime; Part 6 covers working conditions, safety, and health; Part 7 deals with conciliation and arbitration and Part 8 dwells on miscellaneous issues such as offences, civil proceedings and regulations.

This law establishes the office of the Minister of Labour, the Department of Labour, and defines their functions and duties. It also prescribes the post of the Commissioner of Labour and other officers. The Minister of Labour may delegate powers to the Commissioner of Labour. The powers of the Commissioner for Labour are also defined by the same law. In appropriate cases powers may also be delegated by the Commissioner to other officers.

Employers by law must fix wage periods which shall not exceed one month in duration. Wages must be paid upon completion of work by workers and the mode of payment must be made in Samoan currency, the Tala. Only authorised deductions may be made to the wages of workers. It is therefore illegal for employers to remunerate workers in any form other than wages. Employers have no right to dictate how workers are to spend their wages. The Minister may by order, stipulate the minimum wages payable by employers in any given occupation. Where any term in a contract of employment contravenes the Act, it is to be regarded as unlawful and void, except where such term existed before the coming of the Act.

The law also prescribes various rules regulating termination of contract of employment. Various time scales are provided by the law relating to notice for termination depending on the circumstances and the nature of the contract. However, it is important to mention that where

an employee has been in continuous service for five years or more, the length of notice shall be two months. Every written contract of employment must comply with the pro forma in the First Schedule to the Act. The language of the contract may be Samoan or English subject to the choice of the employee.

Workers must be afforded appropriate days of leave and cannot be compelled to work on public holidays. Where workers decide to work overtime, appropriate wages must be paid by employers for the duration of the overtime. In respect of annual leave, a worker shall be entitled a minimum of 10 working days paid leave for every 12 months of service. In case of sick leave, the period is 10 days in every 12 months of service provided that the leave is covered by a genuine medical certificate. Standard hours of works are a maximum of 40 hours per week or eight hours per day excluding approved meal or break times. The same rules with minor variations apply for shift work.

Children below the age of 15 years are not to be employed except in light work and with the permission of the Commissioner for Labour. Night employment for women is also prohibited except in nursing, medical, police, postal, telephone, telegraphic, and other essential services of government. Whether this amounts to gender discrimination in employment or not is an issue that needs to be explored further, although attention must be paid to local culture.

Employers must guarantee the safety of the workplace and must report every case of accident not later than 48 hours after its occurrence. Satisfactory sanitary conditions must be maintained at all times in and around the workplace. By way of example, Section 36 provides that every workplace shall be kept in a clean and tidy state free from any nuisance, smell, or leakage from drain or sanitary facility. There must be separate washing facilities for male and female workers and an adequate supply of drinking water.

Where there is proof of an industrial dispute, the Minister may, and if the parties request shall, appoint a Conciliation Committee. Nominated members include representatives of workers, employers, and the Chair is appointed by the Minister of Labour. The initial attempt of the Committee is to secure a voluntary settlement of

the dispute. In the event of a failure the Commissioner of Labour may conciliate between the disputing parties. Where conciliation by the Commissioner also fails the dispute is referred to the Supreme Court of Samoa. The powers of the court may be exercised in such a way as to achieve the best possible outcome. In particular Section 39 (5) allows other interested parties not originally in the suit to be permitted to make representations before the courts. By way of example the subsection provides that if it appears to the court that there are employers or workers in the same class of industry or in any industry related to the industry in respect of which the dispute has been referred to the Court, it may permit such persons to appear and make representations to the Court in connection with such dispute. Barristers and solicitors also have a right to represent clients in disputes before the Court.

Employers who contravene the provisions of the law are liable to criminal penalty which may be a term of imprisonment, or a fine, or both. Any person who obstructs officers from performing duties under the Act is also subject to criminal sanctions.

Section 42 of the Labour and Employment Act empowers the Head of State, taking the advice of the Cabinet, to make such other regulations that may be deemed expedient under the circumstances.

Labour and Employment (Employment of Expatriates) Amendment Act No. 17 1999

This amended the principal Act discussed above. The primary objective of the amended law is to make provision for the employment of non-citizens in Samoa. This covers the application, processing, and the granting of work permits to non-citizens of Samoa who wish to take up lawful employment in Samoa. It also provides for the keeping of work permit register by the Commissioner of Labour. The register is open to inspection upon the payment of prescribed fees. The law is generally directed at all incoming expatriates whether white or blue collar workers.

Accident Compensation Act 1989

This was amended by the Accident Compensation Amendment Act No. 8 1997. The Law covers all aspects

of compensation to workers arising from injury, occupation-based illness, and death. The Act is divided into nine parts.

The Law establishes an Accident Compensation Board which is empowered to deal with all issues touching on compensation to workers. The board is vested with corporate personality i.e. it can sue or be sued in its own name without necessarily joining the Government. In general the Board is headed by the Minister who is the chairperson, the deputy chair who is the Commissioner of Labour, the Financial Secretary, the President of Chamber of Commerce and the President of the Manufacturers Association plus five other members appointed by the Head of State acting on the advice of the Cabinet.

Workers who suffered injury, work related illnesses or death are eligible to compensation according to a pre-determined scale set by the Act. This includes the payment of rehabilitation assistance. In case of death compensation shall be paid to the dependants. Where overseas treatment is necessary, the Board may pay the worker up to a maximum of \$4,000 to assist with evacuation and medical treatment. This payment is exclusive of any life assurance or personal injury insurance cover that may have been privately taken by the worker.

National Provident Fund Act 1984

This provides for the general superannuation of workers. It is a compulsory scheme for all workers. The Act was amended in 1990, 1992, 1993, and 1994. With increasing mobilisation of labour, it is now becoming clear that employment issues arising from economic globalisation need a more comprehensive welfare approach. A superannuation scheme is good but cannot effectively tackle all problems associated with, for instance, the marginalisation of labour.

Labour events

The most prominent event in this context was the nurses' strike in the mid 1990s. The primary grudge was a demand for improved wages, working conditions, and facilities. The strike succeeded completely because of the essential nature of the services being provided by the nurses. In the late 1990s, schoolteachers also threatened strike action predicating their demand also on increased wages. A significant case arising from dismissal by an

employer was the celebrated case of the Chief Auditor in early 2000. The State was successful at the Supreme Court in defending its decision to dismiss the then Chief Auditor. (M. Soonalole, 2002)

Conclusion

The Labour and Employment Act 1972 is the most significant legislation affecting employment issues in Samoa. It attempts to cover all matters relating to employment by incorporating conciliation and arbitration, issues of occupational health and safety all in one law. That is not without its merits but there are certainly some drawbacks in this approach.

The issue of trade disputes need to be covered in a separate and more detailed law. Its inclusion in the Labour and Employment Act is therefore inadequate as an effective way of elaborating on the rights of workers in a comprehensive manner. Furthermore, the law does not seem to make a distinction between purely personal disputes between employers and employees and trade disputes. This distinction is significant.

Trade union matters need a specific law to deal with them. Without this, the right to freedom of association provided in the Constitution may not be fully realised in the case of workers in the informal sectors of the economy. The freedom to associate empowers all citizens including workers to organise themselves in legal, political, social, or economic groupings to further the legitimate objectives. To workers generally, this right is necessary to assist them in union activities. To this end, no law apart from the Constitution may effectively curtail such rights.

It is interesting to note that Section 13 empowers the Accident Compensation Board to execute some functions relating to safety and rehabilitation of workers. The question is how effective can this be handled by such a Board comprising high-ranking and very busy civil servants? Maybe a professional board with the requisite technical, legal, and medical competence should be formed and entrusted with these responsibilities. A monitoring and regulatory agency may be the best option. It should be equipped with enforcement and prosecutorial powers to augment the discharge of its functions.

Monetary contribution from the Accident Compensation Board towards overseas treatment needs to be re-

viewed. The limitation in terms of the availability of specialist treatment in a number of medical areas should be taken into account. The current maximum ceiling of \$4,000 needs to be upwardly revised. It is difficult to measure the effectiveness or otherwise of the level of monetary compensation without any form of statistical studies.

There is at present no national welfare scheme. This is something that should be viewed as a matter of urgency if the rights of workers in general are to be improved. The alternative is to institute compulsory insurance schemes for workers, especially in the private sector.

Samoa is not an International Labour Organisation (ILO) member. Without being a signatory to ILO conventions, the country, the workers, and the employers lose out on beneficial services, training, and advice from the ILO. This is a matter which all concerned parties have to look into more closely and seriously.

Culture, customs, and tradition play an important part in the lives of the people. Village councils have significant legislative powers to deal with a number of local issues in various communities, as afforded by the Village Fono Act 1990. Culture is a bonding and unifying force in Samoan way of life. What probably has not been fully determined is the effect that this may have on gender balance in employment both in formal and informal sectors of the economy. Up to date figures and statistics in this area are hard to come by. This lacuna may prompt further academic inquiry.

To better enhance the quality of the labour force in the country special labour awareness workshops may be considered as a long-term strategy towards the empowerment of workers and the enlightenment of employers.¹

The issue of minimum wage is covered in the Labour and Employment Act 1972 as amended. The prerogative to determine what minimum wage should prevail in a given occupation is vested in the Head of State. The Minister may appoint an advisory committee on minimum wages where this becomes necessary. (See for instance, Section 19). There would be representatives of the state, workers, and employers on the committee. But what is clear is that powers to eventually determine what minimum wage should prevail, lies with the government. The best approach is to have a permanent statutory board constituted with relevant personnel and members drawn from both the private and public sectors of the

economy. Because a number of interlocking factors may affect the determination of wages in an economy, it is important for the proposed wages body to be seen as a specialist organ with the necessary competence to handle its assignment. In this case, separate wages legislation may be the answer.

Lastly, to complement the operations of the Accident Board Compensation Act, it is necessary to promulgate a fully-fledged law on occupational health and safety in Samoa. There are some attempts in this direction but speeding that process up is vital to securing the total welfare of workers in the country.

Strikes, lockouts and other forms of labour agitations have been rare except for the nurses' strike. Most labour issues affecting workers in industrialised societies have no parallel in Samoan societies. To that extent there are no known discrimination cases to have come before the courts for adjudication. Cases on unfair dismissal are rare and none can specifically be identified in the area of gender discrimination. This state of affairs does not in any way negate the need for a detailed sociological research in these areas.

It might be worthwhile to illustrate a few known judicial approaches to the issues of unfair or wrongful dismissal and breach of contract of employment. In the case of *Fataulofa (Faataga) v Board of Western Samoa National Provident Fund* (Supreme Court Samoa 1992), in an action by the plaintiff for a claim against the defendant for unfair dismissal, the court held that there was no breach of contract. The plaintiff was asked to write a report on one of the fund's clients. He refused to write the report. The employer considered the refusal an act of insubordination. He was then suspended under section 21 of the Labour and Employment Act 1972. The plaintiff challenged the dismissal and lost.

In the case of *Leaula T. Amosa v The Board of Trustees of the Congregational Church in Samoa and Another* (Supreme Court of Samoa 1993), the plaintiff brought an action for wrongful dismissal against the defendant. The court did not consider the merits of the plaintiff's claim on the technical ground that the plaintiff had sued the wrong defendant. The action was subsequently dismissed by the court.

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Note

1. For instance, the Law School in Vanuatu has designed a general civics awareness programme made of 10 modules comprising elements of the Constitution of the different countries in the region. The modules also cover political institutions, legal rights, economic and social globalisation issues. This was sponsored mainly by DFID and partly by UNESCO. We (Professor Hughes and M.L. Ahmadu) have administered these programmes as workshops in Fiji, Vanuatu, and the Solomon Islands. Working with an agency like AMRC, significant labour issues and personal rights could also be incorporated in a modified version of the programme to serve as a training model for the South Pacific region. It may be administered centrally by inviting all participating unions in the region to, say, Vanuatu for the training programme, or be administered in each country in the region or elsewhere as AMRC may decide. This endnote comes by way of suggestion only.