

IN THE SUPREME COURT OF SAMOA
HELD AT MULINUU

**BETWEEN: HUMAN RIGHTS
PROTECTION PARTY**

Applicant

**AND: ATTORNEY GENERAL,
named on behalf of the Prime
Minister**

First Respondent

**AND: ATTORNEY GENERAL,
named on behalf of the Ministry
of Women, Community and
Social Development**

Second Respondent

**AND: ATTORNEY GENERAL, on
behalf of the Government of the
Independent State of Samoa**

Third Respondent

Counsel: F. S. Ainuu for the Applicant
B. Keith (via video link), M. Lui & J. Faleafaga for the Respondents

Hearing: 09 March 2026

**Further
Submissions:** 19, 23 and 24 March 2026

Judgment: 30 March 2026

JUDGMENT OF THE COURT

[1] This application for interim orders centres on a document known as the District Development Program: Program Operating Manual – Guidelines for the Use of the One Million Grant to Each Districts Development Program, Themes: Resilience, Inclusive and Sustainability – dated August 2024 (“**Manual**”).

[2] The Applicant, the Human Rights Protection Party (“HRPP”), challenges the legality of the appointments of Chairpersons of the District Development Council (“DDC”),¹ which the Government made in January 2026.

[3] The Applicant claims the Manual and the practice of the past few years supports the position that a Member of Parliament (“MP”) belonging to the HRPP, who is successfully returned at the 2025 General Election, should be appointed Chairperson of his or her Constituency’s District Development Program.

[4] The Applicant applies for an order to prohibit the Respondents in the ways described below at [5], until its substantive case against the appointment of the Chairpersons has been finally determined.

The application for interim relief

[5] The Applicant seeks two “interim declaratory orders”, framed as stays:

- a) The Respondents refrain from giving effect to the appointments of Chairman/Chairperson for the DDC until the court has determined the Applicant’s substantive claim;
- b) The Respondents refrain from carrying out the Recruitment and Selection (“R&S”) and appointments to positions of the DDC until the court has determined the Applicant’s substantive claim.

[6] The Applicant relies on its First Amended Statement of Claim (“ASOC”), which pleads the following:

- a) the Respondents are bound by the Manual;
- b) by way of declaration, that the Chairperson decision, and the R&S Process and other appointments are inconsistent with the Manual and the Cooperative Societies Ordinance 1952 (“the Ordinance”), or, in the alternative:
- c) the Chairperson decision and R&S Process are illegal, because;
 - (i) The Chairperson positions *were not established as employment positions either in the Constitution, Ministry or a Public Body*;
 - (ii) The “Respondents were bias [sic] in their decision to advertise the Chairperson position rather than comply with the Ordinance and the [Manual] by not selecting any of the HRPP Member of Parliament to the Chairperson position”;

¹ District Development Council – incorporated under the Cooperative Societies Ordinance 1952, and enter into funding arrangements with the Government to deliver the Governments objectives as set out in the Manual.

- d) the Chairperson decision violates the Applicant's Members of Parliament Article 9 rights under the Constitution, which right supports a legitimate expectation that the Applicant Member would be the Chairperson;
- e) the Chairperson decision and the R&S Process is illegal as procedurally improper;
- f) the Chairperson decision to appoint other than the elected Member of Parliament of an electoral Constituency is unreasonable.

[7] The parties agree that the relevant legal principles by which the application for interim relief may be approached is to ask three questions:

- a) Whether there is a serious question or arguable issue to be tried?
- b) If there is a serious question, then where does the balance of convenience lie?

In the leading case of *Klissers v Harvest Bakeries* [1985] 2 NZLR 129 at 142, His Honour Cooke J (as he was) considered the serious question and the balance of convenience considerations as an accepted framework for approaching these applications. His Honour added a third dimension to the framework:

- c) Where does the overall justice lie?

[8] This court in *Ropati v Attorney General* [2022] WSSC 76 and [2023] WSCA 2 has accepted, in reliance on *Carlton & United Breweries Ltd v Minister of Customs* [1986] 1 NZLR 423 (CA), the following approach:

The court has a wide discretion to consider all the circumstances of the case, including the apparent strength or weakness of the claim of the applicant for review, and all the repercussions, public or private, of granting interim relief.

In this case, the Court's discretion will focus on the public or private repercussions of granting relief in terms of where the overall justice lies.

Is there a serious question to be tried?

[9] The Court determines from the Applicant's pleaded claims, that the issue of serious question is to be considered in relation to the issues referred to above at [5]. The first seeks the making of a declaration based on an interpretation of the Manual. Second, and alternatively, the Applicant wants to judicially review the Chairperson decision asserting (1) a claim of bias in the selection of Chairpersons; and (2) an alleged breach of the Applicant members' legitimate expectation to be appointed Chairpersons.

Declaratory Relief

[10] The Applicant's first argument relies on the Declaratory Judgments Act 1988. By s. 4, the Applicant may ask the Court to determine a question as to the construction or validity of the Manual, as it relates to the appointment of Chairpersons.

[11] For reasons set out in this judgment, the Court does not consider that the Applicant raises an arguable issue in relation to this head of claim. In essence, the plain meaning of the Manual provides that it is a guideline and able to be amended on account of changes of policy or conditions, within the terms of development project.

[12] The Court does not rewrite Government policy, and respectfully, that is what the Applicant seeks. The Court cannot locate in the Manual a provision which expresses the intention that the Applicant contends – that the Chairperson of a DDC shall be the sitting MP, and that this appointment practice or policy shall not be changed. Had the Manual been worded in such a way, then a declaration in the terms sought by the Applicant might be able to be considered.

Judicial Review

[13] The Applicant's second argument is judicial review - the new arrangements stem from an exercise of a public power and are accordingly reviewable by the Court.

[14] As the New Zealand Supreme Court said in *Ririnui v Landcorp Farming Limited and Ors*:²

Judicial review is a supervisory jurisdiction which enables the courts to ensure that public powers are exercised lawfully. In principle, all exercises of public power are reviewable, whether the relevant power is derived from statute, the prerogative or any other source. The courts acknowledge limits, however. These limits are reflected primarily in the notions that the case must involve the exercise of a public power, that even if the court has jurisdiction, the exercise of power must be one that is appropriate for review and that relief is, in any event, discretionary.

(emphasis added)

[15] His Honour Sapolu C.J. made similar observations in *Pouniu v Land Titles Investigation Commission*:³

Conventionally, a motion or application for judicial review seeks to review the decisions, determinations and orders of individuals and bodies which perform public functions.

² *Ririnui v Landcorp Farming Limited and Ors* [2016] NZSC 62, per Elias C.J. and Arnold J., at [1]

³ *Pouniu v Land Titles Investigation Commission* [2003] WSSC 5 (3 March 2003)

[16] But the power to review the exercise of public powers has its limits, which the Court in *Ririnui* addressed as follows:⁴

[89] While the modern view is that courts have the power to review all exercises of public power whatever their source, the courts accept that some exercises of public power are not suitable for judicial review because of their subject matter. Decisions about the allocation of national resources or involving issues of national defence or national security or involving national political or policy considerations have been held to be not reviewable by the courts, although courts in recent times have been more willing to review decisions in areas previously regarded as inappropriate for review, the most obvious example being decisions in relation to national security. Courts have treated decisions about Treaty of Waitangi settlements as inappropriate for judicial review, not simply because they often involve legislation but also because the issues involved in settlements – such as the nature, form and amount of redress – are quintessentially the result of policy, political and fiscal considerations that are the proper domain of the executive rather than the courts.

[17] The size and scope of the Government's Development Project might lend it to be categorised as quintessentially the result of policy, political and fiscal considerations, on the grounds of it being concerned with the allocation of national resources or issues involving a high degree of policy. If that were so, then the issue of who Chairs the DDC is really a matter that falls to be determined by the executive rather than the courts. No final views can be drawn on this issue until full argument at the substantive trial.

[18] The basis for the Court declining to act is respect for the doctrine of the separation of powers, and a recognition that in general the Court is not well placed to review executive decisions, save where the exercise of power is biased, made in breach of a legitimate expectation or that call in to play the Court's supervisory jurisdiction.

[19] Overarching the Applicant's claim is its argument that the Government is bound to apply the Manual; it submits this would mean that because the Government is bound to apply the Manual that the Manual is therefore binding on the Government, and the Government must appoint HRPP MPs as Chairpersons of their respective Constituencies or Districts.

[20] The Applicant's argument, however, fails to address the fluidity of the Manual. The Applicant asks the Court to endorse a meaning that is contrary to the words used in the Manual, which is clearly expressed to be a guideline, and therefore able to be altered:⁵

PROGRAM OPERATING MANUAL

(GUIDELINES FOR THE USE OF THE ONE MILLION GRANT TO EACH DISTRICT UNDER THE DISTRICTS DEVELOPMENT PROGRAM)

(my emphasis)

⁴ Above n5 at [89] - without footnotes

⁵ Respondents Authorities Tab 12

[21] Furthermore, another express statement tends to suggest the Manual is unique in that it applies to a developing situation. It is expressed as a document that can accommodate changes in conditions and policies related to the implementation of the Manual:⁶

Hence, the Program Operating Manual is understood to be a living document that can accommodate changes in conditions and policies related to the implementation of the Districts Development Program.

(my emphasis)

[22] The Manual is a “living document” and provides a framework within which the DDP is to operate. The Court acknowledges the Applicant’s submission that the Manual is binding on the Government. Respectfully, the Court does not understand the Government to oppose that view.

[23] The Manual sets out the legal basis for the Government’s development project and how it is intended operate. The issue in this dispute really concerns the nature of the changes the Government may make to the Manual.

Bias

[24] Turning to the first of the Applicant’s judicial review claims.

[25] Bias in public decision making concerning the distribution of public money, of itself, is a matter of grave concern and on its face judicially reviewable. The arguments from the parties in relation to the allegation of bias: (1) Mr AINU’U submits the Government has since late 2025 held and expressed the view that there would not be any HRPP Chairpersons for the DDCs (Mr AINU’U referred to statements of alleged bias made by the Prime Minister in November 2025); (2) Mr Keith submits that if that was the Government’s position in 2025, a position he did not concede, he submits that by the time it came to appointing Chairpersons in January 2026, the Government introduced the concept of Co-Chairpersons, and these appointments meet the Applicant’s concern of pre-determination and bias.

[26] The Court considers as relevant to the serious question issue the Government’s appointment criteria for Co-Chairpersons - that the Co-Chairpersons role is intended to support inclusive leadership, balanced oversight, continuity, and sound financial controls. The criteria, on its face, reasonably suggest sound governance and accountability, rather than actual or implicit bias against HRPP Members of Parliament.⁷

⁶ Respondents Authorities Tab 12, p 8

⁷ Affidavit Unasa Viane Toala, dated 6 March 2026, at 3.1.(b).

[27] The Court also reflects on the delay between the making of the allegedly biased statement and the application seeking injunctive relief, initially on a Pickwick basis, on 13 February 2026. An interim injunction is an equitable remedy. The Applicant has not explained the reason for the delay in its application for urgent relief, and this failure leaves the Court with a large question mark about the need for urgency reflected in the granting of interim orders.

Legitimate expectation

[28] The Applicant's judicial review claim in this regard requires further information. The Court's principal concern is that this claim suffers from a fundamental flaw, which the Applicant has not adequately addressed to the Court's satisfaction - how does a legitimate expectation arise, to be automatically appointed Chairperson by dint of being the MP. for a Constituency, out of a working or development document expressed to be a living document?

[29] Even if it can be shown that in previous years, the sitting MP has invariably been appointed the Chairperson, the Manual can be changed and was changed. Moreover, if the intention to support inclusive leadership, balanced oversight, continuity and sound financial controls do not materialise, there is nothing standing in the way of the Government, with its Parliamentary majority, from changing the governance structure again to protect public funding for the development project.

[30] The Court considers that the Applicant does not advance serious or arguable issues on the grounds of judicial review, and its application must accordingly fail.

[31] However, if the Court has erred in its assessment, the Court now addresses the question of the balance of convenience.

Where is the Balance of Convenience?

[32] In considering this part, the Court needs to determine whether what may happen between now and the conclusion of the litigation is may, if the Applicant was successful in its claim, be irreparable or may not be adequately remedied. The final disposition of this proceeding may be months if not a year or more away.

[33] The case involves the appointment of the Chairperson for an incorporated society that has a key role in the delivery of an economic development initiative. The government campaigned on delivering the initiative and have secured the relevant appropriation. There must be anticipation from the community awaiting implementation. Some of the project money is for the payment of "back to school" assistance of \$150 per student, which Mr Aiafi, a Member of Parliament for the HRPP,

candidly says is presently on foot and being rolled out. This will necessarily affect many in the community.

[34] Mr AINU'u suggests the balance of convenience favours the granting of the injunction because Government could use other Government Departments to make available the back-to-school assistance. The Court does not have sufficient information to determine the viability of alternative delivery mechanisms, which if they existed, might provide a strong argument in favour for pausing the operation of the DDCs.

[35] But the economic development project is significantly more involved than distributing \$150 because it also involves the financing agreements the Government has signed with 48 DDCs, worth \$1.8m for each Constituency. Interim orders would halt the DDC's work in this regard. None of the community-based applications for these resources can be considered or allocated for the foreseeable future. The Applicant has not attempted to independently quantify or qualitatively assess such an impact on the community or itself.

[36] However, the Court reminds itself that at its core, the issue in this case is not about the merits of the economic development project, but about who should be the Chairperson of an incorporated society – the DDC. When viewed in this way, the Court is not satisfied that the Applicant would suffer irreparable injury if the application succeeded at the substantive trial. Were the Applicant to succeed, the Court can make orders to give effect to that outcome.

[37] For the reasons given, the Court finds the balance of convenience weighs in favour of the Respondents.

Overall justice

[38] The Court, standing back, considers the overall justice falls in favour of the Respondents, even if it could be said the Applicants had an arguable issue.

[39] The Court gives due regard to the public interest as the beneficiary of the development project. The Court considers the public interest would be materially prejudiced by an order staying the development project because of the effect that this may have on Samoa's wider economic and national interests:

- a. The halting of grants for such things as school fees may have far reaching and unintended consequences for students, families, and their community schools. The COVID experience has shown what happens when schools do not operate for weeks on end, as would be the case for a student in a family unable to afford fees.

- b. There is no suggestion that only certain sectors would benefit from the development aid. Moreover, there is no evidence before the Court that in earlier years certain sectors of the district were prevented from or discriminated against accessing development aid on account of their political affiliation.
- c. Establishing and implementing the framework for the distribution of the further \$1.8m is work for the whole Council not just the Chairperson. An injunction would have the consequence of preventing the DDC from carrying out its mandate to distribute further funds to the community, which, in the absence of any contrary evidence has so far been carried out in good faith;
- d. The Chairperson's role is essentially to manage meetings. The voting rules for Cooperative Society is one member one vote with the Chairperson exercising a casting vote in the event of a tie.⁸ In other words, the DDC is not a board of 1. Any member who defers his or her decision-making duties to the Chairperson may be able to be challenged and if appropriate, removed and be required to refund his or her publicly funded board members fees.
- e. The enactment of the DDA appears to demonstrate the Government's commitment to the longevity of the Development Program. There is no apparent reason as to why the continuity of a long-term economic project for "*development initiatives that will benefit the district*",⁹ and its integration into the Government's overall economic strategy should be halted, whilst governance issues concerning the rightful Chairperson is being debated. The response of imposing an interim injunction to stay the project whilst the Court examines the validity of the DDC Chairperson appointment, is not proportionate.

District Development Act 2026 ("DDA 2026")

[40] Since the hearing of this application, the Government has passed the DDA 2026, described in its long title as:

AN ACT to provide for the administration of the district development program through strengthened governance arrangements and safeguards for the use of public money; to establish the District Development Authority; to provide for consequential institutional and transitional matters; to repeal the Internal Affairs Act 1995; and to amend the Ministry of Women Affairs Act 1990.

[41] Counsel were given the chance to file further submissions addressing how the new legislation might impact the Applicant's application for interim orders. In summary, their responses are:

⁸ Section 24 Co-operative Societies Ordinance 1952

⁹ Manual, August 2024 Section 1: Introduction

- a. The Applicant submits the DDA 2026 bolsters its application for interim injunction orders in satisfying the serious issue inquiry and in relation to the balance of convenience limb of the test that the Court refers to below.
- b. On the other hand, the Respondents say the DDA 2026 does not come into force until 1 July 2026 and therefore the Act is not presently determinative. The Respondent points to the relief the Applicant seeks is to unwind the Chairperson appointments made in January 2026, and so the DDA 2026 has limited, if any, relevance to the issues concerning the January 2026 appointments.

[42] Respectfully, Mr Keith correctly observes the Applicant's pleadings, as they are presently settled, only challenge the January 2026 appointments. However, the new Act expressly saves the appointment of a chairperson at the commencement date of the DDA 2026, as continuing to hold office after commencement.¹⁰ The issue that may need to be resolved is what should happen to appointments at commencement dates, which are successfully challenged in this Court and found to be unlawful?

[43] The Court will require further submissions at the substantive trial concerning the impact of the DDA 2026 once the legislation commences.

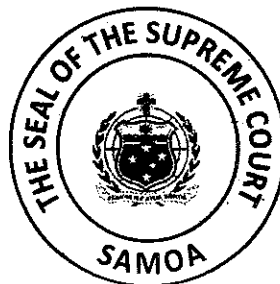
Result

[44] The application for interim relief is dismissed.

[45] As this is an application for interim orders in a substantive application for Declaratory orders or judicial review, costs are reserved, as part of the cause.

[46] The matter is to be listed before me for a case management conference at 10.30am on Thursday 9 April 2026. The parties must be prepared discuss a suitable timetable for discovery, amendments to the pleadings, and the preparation of evidence.

[47] The Registrar is asked to set this matter down for trial in the week commencing 13 July 2026.



Perese C.J.
CHIEF JUSTICE

¹⁰ Transitional and Savings, District Development Act 2026, Sechedule 1, section 11