IN THE SUPREME COURT OF SAMOA
HELD AT MULINUU

BETWEEN: **HUMAN RIGHTS PROTECTION PARTY**

Applicant

AND: **ATTORNEY GENERAL**

Respondent

AND: **FA'ATUATUA I LE ATUA SAMOA UA TASI (FAST) PARTY**

Intervener 1

AND: **LEATINU'U WAYNE SO'OIALO**

Intervener 2

Coram: Chief Justice Perese
Justice Clarke

Hearing: 13 & 14 July 2026

Counsel: R. Harrison KC, S. Ainuu & M. Lemisio for the Applicant
B. Keith & Ms. Lui for the Respondent
F. Lagaaia for the FAST Party (Intervener 1)
L. Su'a-Mailo for Leatinu'u Wayne So'oialo (Intervener 2)

Decision: 23 November 2026

RESERVED JUDGMENT OF THE COURT

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INTRODUCTION

[1] This proceeding concerns the process for appointing chairpersons of District Development Councils ("**District Councils**" or "**DDC**") under the District Development Program ("**Program**"). The Program began in 2022 with each District Council being chaired by the elected member of Parliament for that District ("**MP**" or "**Member**"). But, in 2025, the Government replaced that arrangement with a new application and selection policy ("**new chairperson appointment policy**"), which was approved on 31 October 2025.

[2] Since the introduction of the new appointment policy, the Government has appointed sole chairpersons for some districts and co-chairpersons, designated A or B, for others. The appointed chairpersons and co-chairpersons A are Fa'atuatua i le Atua Samoa ua Tasi ("**FAST**") MPs or FAST Party supporters. Although the co-chairpersons were expected to work consultatively, co-chairperson A held decision-making authority over the District Council's bank accounts and the power to select a majority of its members.

[3] The Human Rights Protection Party ("**HRPP**" or "**Applicant**") challenges the appointments and the corresponding non-appointments of its Members on three grounds: (1) they were the result of discrimination on the ground of political opinion contrary to art 15(2) of the Constitution of the Independent State of Samoa ("the **Constitution**"); (2) a predetermination or bias; or (3) a breach of the principles of legitimate expectation concerning the published selection criteria and appointment process.

[4] The Attorney General disputes each of the Applicants' claims.

[5] The Court first outlines the Program and the changes to the appointment process. It then addresses the constitutional challenge, followed by the claims concerning bias and predetermination, and legitimate expectation. Finally, it considers whether relief sought is appropriate.

FACTUAL BACKGROUND

The District Development Program

An overview

[6] The Government established national and sectoral priorities in Pathway for the Development of Samoa ("**PDS**") 2021/22 – 2025/26 in areas that included social-wellbeing, health, education, cultural-development, agriculture and fisheries, tourism, sport, environment and climate change, and infrastructure and finance. The PDS is supported at a local level by a Program that is run by District Councils working within territorial boundaries defined by the district's electoral constituencies.[1]

[7] The Program is delivered through an approved governance, and operational guideline called the Program Operating Manual ("**Manual**"), August 2024. It addresses the areas of the legal status of District Councils, planning, approval, procurement, implementation, financial management,

[1] Main Estimates for the Financial Year 2021/2022 (Appropriation Act 2021/2022) - refer section 1 Manual (RB 200). The Ministry of Women, Community & Social Development budgeted for $11,000.000.00 for District and Community Development Program.

monitoring, audit, and government oversight and control through various Government Ministries including Finance, Health, Education, Sports and Culture, Tourism, Environment.[2] The lead agency was the Ministry of Women, Community and Social Development ("the **Ministry**").[3]

[8] The Manual describes itself as a "living document", which can be amended by Cabinet to improve the Program's implementation.

[9] Parliament first approved, in the main estimates for the Financial Year 2021/2022, grants of SAT$200,000 for each District. The amount grew to SAT$1,000.000.00 per district. And, following the 2025 General Election, the Government has made available SAT$2,000.000.00 per district. The Government initiative now has an annual budget of SAT $102,000.000.00.

[10] Up until 31 October 2025, meetings of the District Council were chaired by the elected Member of the particular district/electoral constituency.[4] The Manual provides that the chairperson was one of up to 15 members of the District Council; had authority to select a Deputy Chair; and the mandatory signatory of the District Council's cheque account.

The new chairperson appointment policy – FK (25) Special 15 (RB 29 and 31)

[11] The Cabinet discussed PK (25) 1389 on 31 October 2025 and approved a Policy Guide for the selection/appointment of chairperson for District Councils in Districts/Constituencies.[5] This replaced the policy in the Manual that elected Members were appointed Chairpersons of the District by virtue of their offices.[6]

The criteria

[12] The new Policy had three eligibility criteria: the chairperson had to be a Samoan citizen and a matai; have been registered as a candidate at the 2025 General Elections; and a person of good character, honest with no previous convictions or record of misuse of District Council Funds.

[13] The Ministry published on 17 November 2025 an updated criteria for selecting chairpersons. These concerned integrity and good standing; recognised leadership within the district; responsible management of public development funds; fair access to services, particularly for vulnerable families; alignment with Samoa's vision for community-driven development; and registration as a candidate at the 2025 General Election.[7]

[14] The 17 November 2025 advice also said that appointments would follow 'the established process'; that the eligibility criteria would be clearly defined, publicly communicated, and applied consistently; and it identified that the selection and appointment of the chairperson would be carried out by the District Development Program Steering Committee.

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2 Manual (3.1), Respondent's Bundle ("RB") 206.

3 Ministry of Women, Community and Social Development as of 1 July 2026 split into three separate Government entities: Ministry of Family and Social Affairs; Samoa District Development Authority & Government Printing Services.

4 RB 207.

5 The Policy Guide is a 5-page document that formed part of PK (25) 1389 (RB 56-51 inc).

6 Clause 3.1.3(a) at RB 207.

7 RB 291.

[15] Further the Ministry suggested that increased funding made the role of the District Council chairperson now even more critical, emphasising the responsibility for transparent management of funds; effective coordination between village and district structure; meaningful community engagement; fair decision-making that benefits every family; and strong, accountable leadership.[8]

[16] Further change to the Policy came about with the use of a co-chairperson model. The co-chairperson model was adopted on or about 21 December 2025. It was the subject of a public statement dated 16 January 2026. Mr Unasa Viane Toala ("Mr **Toala**"), the then Assistant Chief Executive Officer of the Ministry said the single chairperson arrangement remained the standard governance model for most districts but that co-chairperson arrangements were applied only where directed by Cabinet as an operational governance measure to support inclusive leadership, balanced oversight, continuity and sound financial controls, in line with the manual.[9]

Process and Implementation

[17] Cabinet's FK (25) Special 15 approved a process and timetable to implement its new policy.[10] These steps included:

(a) establishing and setting the criteria, and roles and responsibilities of Chairpersons; the advertising of the position chairperson;
(b) recording and accepting applications submitted with the relevant timeframe; the Ministry's consideration of the Applications and then presenting the applications to the Steering Committee for its consideration of who is suitable for the position of chairperson;
(c) interviews by panel members responsible for conducting interviews;
(d) Panel members to submit their interview report to the Steering Committee for their approval; submitting cabinet submissions to approve the appointment of chairperson for the 51 electoral constituencies;
(e) letters of appointment of chairperson;
(f) chairperson to select members of the District Council as well as the Deputy chairperson.

[18] The Panel Members were appointed on 26 November 2025 as recorded in FK (25) 46.[11] The Panel were required to submit a final report after the interviews to the Steering Committee for their approval.[12]

[19] The Steering Committee membership comprised:[13]

(a) Five Cabinet Ministers;
(b) two Associate Ministers;
(c) six community representatives;
(d) seven CEOs from Government Ministries, as ex officio members;
(e) four other government officials.

8 RB 293 at para 5.
9 RB 288 para 3.1(b).
10 RB 31.
11 RB 41 at point 2.
12 RB 41 at point 3.
13 RB 206 and 228.

Process followed

[20] The Ministry announced the new appointment policy and called for applications for chairperson roles on 6 November 2025 (RB 290);[14] the application period closed on 14 November 2025.

[21] Applications were made to the Ministry within the application period for all 51 Districts, which closed 3 days before the publication of the updated eligibility criteria published on 17 November 2025. There is no evidence that the candidates were given the opportunity to review their applications to take into account the updated criteria.

[22] Interviews were held in both Upolu and Savaii with the exception of 3 districts where only one application had been received. These districts were Vaisigano 1, Gagaifomauga 3 and Anoamaa 1, where sole chairperson appointments were then made. The only other exception concerned four HRPP Members whom the Panel determined had not made applications and were not invited to be interviewed. More will be said about the Panel's decision later in this judgment.

[23] Following the interviews, the Panel made 51 recommendations for the appointment of sole chairpersons for each district. These recommendations, in accordance with the terms of the Policy, were passed to the Steering Committee for its approval. Following this approval part of the process the Ministry submitted only 39 of the recommendations the Panel had made. These were approved by Cabinet on 17 December 2025: FK (25) Special 18.[15] The Steering Committee directed that the remaining 12 of the 51 recommendations be referred to the Panel for reconsideration.

[24] Of the 39 appointments made under FK (25) Special 18, all were associated with the FAST Government or Party, namely, 30 were FAST MPs and nine unsuccessful FAST candidates who were appointed ahead of the elected Members of Parliament from HRPP, Samoa United Party ("**SUP**") Member, or an Independent Member ("**IND**").

[25] The remaining 12 Districts included eight that had returned HRPP Members at the General Election 2025 - Vaelua Senetenari Samau, Leota Sami Leota, Lealaipule Rimoni Aiafi, Loau Keneti Sio, Lefue Lelevaga, Lenata'i Tamapua, Taioaliiseu Aumaasu, and Lima Graeme Tualaulelei (affecting the districts of Faasaleleaga 2; Faasaleleaga 3; Faleata 3; Sagaga 1; Sagaga 4; Vaimauga 2, Vaimauga 3, Vaimauga 4). The other four districts returned either SUP or INP members.

[26] The Panel reconsidered the 12 recommendations as directed and arrived at a further 12 sole chairperson recommendations, which were submitted to Cabinet and considered on 21 December 2025.

[27] The Panel recommended sole chairpersons, which included the appointment of: [16]

(a) Fiame Naomi Mata'afa the elected MP for Lotofaga and leader of the SUP;
(b) Faalogo Asuao Faaloogo, the IND Member for Siumu;
(c) Tuia Pua Fuatogi Letoa elected HRPP Member for Safata 2; and
(d) Motupuaa Seve Papalii – the IND Member for Vaisigano 2.

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14 RB 290.
15 RB 64.
16 FK (25) 1520 (RB 88 and 89).

[28] On 21 December 2025, Cabinet accepted the Panel recommendations to appoint four FAST Party members or supporters to hold sole chairperson positions, however, it rejected the Panel's recommendations to appoint the four opposition MPs to sole chairperson roles.[17] The FAST sole chairperson appointments related to the districts of Anoamaa 2, Lepa, Falelatai & Samatau and Faleata 1. Cabinet gave no reasons for the acceptance of recommendations involving FAST supporters whilst at the same time rejecting recommendations involving Opposition Members.

[29] The second round of appointments is distinguished by the unexplained reason for appointing ahead of sitting Members of Parliament from the opposition, who appear to satisfy the initial criteria and the added criteria of recognised leadership, unsuccessful FAST candidates.

The co-chairperson roles

[30] The second round of appointments is also distinguished by the introduction of co-chairperson A and co-chairperson B arrangements in some districts. Wherever that arrangement was applied, a FAST member or supporter was appointed co-chairperson A and the elected HRPP, SUP or IND Member was appointed co-chairperson B. The model is not previously alerted to in any of the earlier policy documents submitted to Cabinet.

[31] Although Cabinet adopted a co-chairperson's arrangement on 21 December 2025, the evidence does not establish when it was formulated or by whom.

[32] The co-chairperson arrangement was publicly described on 13 January 2026. Although the co-chairpersons were expected to work consultatively, co-chairperson A held decision-making authority over the District Council's bank accounts and the power to select a majority of its members. The powers of co-chairpersons A are materially the same as those possessed by sole chairpersons.

[33] It is noteworthy that the adoption of the co-chairperson model appears to have caught out some of the applicants for chairperson positions. The Hon. Fiame Mata'afa claims she applied for the position of chairperson of her District of Lotofaga. However, she asserts she was not interviewed by the Panel but was notified by the Ministry on 14 January 2026 that she had been appointed a co-chairperson B to the unsuccessful FAST candidate Fiaola Iosua Lole appointed co-chairperson A.[18]

Why the change of policy?

[34] The Respondent has not provided a clear explanation of why the Policy was changed. The Ministry noted in PK (25) 1389 the Government was reviewing an "emerging situation", which was not explained, and that the Government intended to:[19]

> *"…**[r]eorganise the procedures** for establishing district development committees **to ensure that this important government development is properly and effectively managed**".*
>
> (emphasis added)

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17 FK (25) Special 19 (RB 83).
18 Affidavit Fiame Naomi Mataafa 1 April 2026, para 10 and 11, and RB 298.
19 RB 36.

[35] The succinct observation, although not referred to directly in submissions, appears to be the factual basis for the Respondent's argument of the proportionality of the Government's actions to appoint only FAST Members and supporters to the controlling chairperson leadership roles to ensure the success of the Government's Program.

[36] For completeness, the Ministry did not discuss why the existing oversight and accountability arrangements set out in the Manual were considered insufficient to ensure the Program's success.

THE APPLICANT'S COMPLAINTS

[37] The applicants' third amended statement of claim ("**3ASOC**") pleads three grounds of challenge:

> **(1) Breach of Article 15 of the Constitution**
>
> a. The DDC chairperson appointments breached Article 15 of the Constitution.
>
> i. The non-appointment of HRPP members of Parliament as DDC Chairpersons were by reason of their political or other opinion, namely their HRPP allegiance.
>
> ii. The appointment of HRPP members as co-chairpersons rather than sole Chairpersons were by reason of their political or other opinion, namely their HRPP allegiance.
>
> iii. The appointment of FAST Party members of Parliament and/or FAST Party unsuccessful candidates (or supporter) as sole DDC Chairpersons were by reason of their political or other opinion, namely their FAST Party allegiance.
>
> iv. The appointment as co-chairpersons of unsuccessful FAST Party candidates (or supporters) were by reason of their political or other opinion, namely their FAST Party allegiance.
>
> b. The intended consequence or in the alternative, the practical effect (if unintended) of the challenged DDC Chairpersons appointments was either directly or indirectly (in its practical application) to subject HRPP members of Parliament to disability or restriction, and/or to confer on the FAST Party member of Parliament a privilege or advantage, by reason of their respective political or other opinion.
>
> c. The appointments are accordingly unlawful and invalid; and the Applicant's seek the following relief:
>
> i. A declaration that all (or alternatively some) of the relevant appointments and non-appointments are unconstitutional and invalid;
>
> ii. An order by way of certiorari quashing all (or alternatively some) of the appointments;
>
> iii. An order pursuant to Article 4 of the Constitution directing the appointment of each of the 14 HRPP members of Parliament as sole chairpersons.

(2) The appointments were predetermined/apparent bias

a. The Prime Minister made public statements that demonstrated a predetermination in favour of FAST Party members of Parliament along political party allegiance lines;
b. Further or alternatively, the Prime Minister's public statements demonstrate that the decision making has been tainted by actual or apparent bias against HRPP members of Parliament by reason of political party allegiance;
c. Accordingly, the chairperson appointments or those adversely affecting HRPP members of Parliament were unlawful and invalid and the applicant's seek the same remedies, in essence, that it sought in relation to the alleged breach of Article 15.

(3) Breach of Legitimate Expectation.

a. The updated criteria for chairperson appointments required and conveyed to applicants that decisions on appointments would be based on merit (in particular the merit as listed in the updated criteria), and therefore not be appointments based solely or predominantly on FAST Party allegiance and/or allegiance to a political party other than the FAST Party.
b. Further or in the alternative, the updated criteria for appointments authorised and contemplated only appointments of sole chairpersons and not co-chairpersons;
c. The challenged chairperson appointments, or alternatively those adversely affecting the HRPP members of Parliament were inconsistent with the updated criteria:
    i. By failing to have regard to the merit-based requirements of the updated criteria for appointments;
    ii. In so far as the appointments were not made in accordance with the updated criteria for appointments;
d. The failure to apply the terms of the updated criteria was a breach of the HRPP members of Parliament and/or HRPP unsuccessful candidates who applied for chairperson positions;
e. Further or alternatively, if the appointments were made or directed by Cabinet, that they were not made in accordance with the "updated process";
f. Accordingly, the challenged chairperson appointments or in the alternative those adversely affecting HRPP members of Parliament were unlawful and invalid, and the same relief as is sought in relation to the cause of action based on alleged predetermination is sought.

[38] Separately, the SUP member for Faleata 2, Leatinuu Wayne Fong Sooialo ("**Mr Sooialo**"), was granted the opportunity to act as an intervener. He did not file his own statement of claim, relying instead on the Applicant's 3ASOC and the complaint he discusses in his affidavit of 10 July 2026. Mr Sooialo's claim do not give rise to any new issue beyond those already before the court.

[39] The Respondent, and the FAST Party intervener, deny many of the applicant's allegations of fact, and interpretations of the legal principles alleged to be involved. These responses and conflicts are discussed in detail below.

[40] The Court notes that no Independent Member sought to join the proceedings or be heard. The scope of the constitutional challenge, the determination of the court will necessarily impact them, except as to costs. However, they are not involved in the other challenges concerning bias and predetermination and breach of legitimate expectation, and nothing in this determination should be construed as determining those issues in respect of these grounds and Independent Members. It is not necessary for the Court to join them because the Court has sufficient evidence before it to effectually and completely settle all questions involved in the action.

[41] The Court now turns to deal first with the Constitutional challenge.

CONSTITUTIONAL CHALLENGE – THE BREACH OF ARTICLE 15(2)

[42] There are two constitutional provisions that are relevant, and are set out in full for convenience:[20]

[43] Article 4 relevantly provides:

> ***4. Remedies for enforcement of rights - (1)*** *Any person may apply to the Supreme Court by appropriate proceedings to enforce the rights conferred under the provisions of this Part.*
> ***(2)*** *The Supreme Court shall have power to make all such orders as may be necessary and appropriate to secure to the applicant the enjoyment of any of the rights conferred under the provisions of this Part.*

[44] Article 15 then relevantly provides as follows:

> ***15. Freedom from discriminatory legislation - (1)*** *All persons are equal before the law and entitled to equal protection under the law.*
> ***(2)*** *Except as expressly authorised under the provisions of this Constitution, no law and no executive or administrative action of the State shall, either expressly or in its practical application, subject any person or persons to any disability or restriction or confer on any person or persons any privilege or advantage on grounds only of descent, sex, language, religion, political or other opinion, social origin, place of birth, family status, or any of them.*
> ***(3)*** *Nothing in this Article shall:*
> > *(a) prevent the prescription of qualifications for the service of Samoa or the service of a body corporate directly established under the law; or*

[20] Initially the court understood that an art. 2 (2) issue might have been included in proposed revised pleadings (challenging the consistency of the Districts Development Act 2026 with the Constitution). This is why two Supreme Court Justices were allocated to hear the proceeding. However, an art. 2 issue was not raised in the third amended statement of claim (the final version of the applicant's claim). However, by then both Judges had presided individually on different parts of the interlocutory preparation for the hearing; accordingly, for the sake of consistency both Judges heard the substantive argument.

(b) prevent the making of any provision for the protection or advancement of women or children or of any socially or educationally retarded class of persons.

[45] The term "law" is defined in article 111, and includes legislation, English common law and equity, any custom or usage that had acquired force of law in Samoa under any Act or judgment of a court of competent jurisdiction.[21]

[46] There are well-established principles for interpreting constitutional provisions in relation to human rights. First adopted in the Court of Appeal's decision of ***Attorney General v Olomalu***,[22] Samoa's approach is to give the provisions a fair large and liberal construction to attain the object of the constitutional protection.[23] The Learned Judges affirmed that a constitutional instrument is sui generis, a Latin phrase meaning 'of its own kind'. In other words, a constitutional instrument is unique and unlike other legislation. In relation to human rights, the Constitution should be given a generous interpretation, which is respectful of traditions and usages that have given meaning to the language; it is an interpretative task approached with an open mind that still gives primary attention to the words used but guarding against any tendency to interpret them in a mechanical or pedantic way.

[47] The court in ***Olomalu*** considered whether art. 15 applied to matai-based voting rights claimed to be discriminatory. The Court concluded that the freedom from discrimination did not extend to a right to vote, which was provided for in another part of the Constitution; art. 15 therefore did not apply.

[48] In ***re the Constitution, Pita v Attorney General***,[24] the Court of Appeal reaffirmed the position in Olomalu that art. 15 did not govern parliamentary electoral qualifications because they were a special subject that was outside the provisions of art. 15.

How has the Court interpreted art 15 generally?

[49] There is a paucity of authority in this area. They all point to the application of ***Olomalu***. The Court of Appeal in ***Mulitalo v Attorney General***,[25] relied on by the respondent, applied ***Olomalu*** and Pita that matters of electoral qualifications are a special subject, outside of the purview of art. 15. The court in ***Mulitalo*** rejected a submission that the phrase "political opinion" in art. 15(2) encompassed a situation involving the prescription of qualifications for members of Parliament.

[50] In ***Samoa Party v Attorney General***,[26] the Court of Appeal held that art. 15(1) should not be read in isolation from art. 15(2), and that when read as a whole, art. 15 deals with familiar human rights problems of discrimination by reference to deep seated personal characteristics. Th Court

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21 "Law" being in force in Samoa; and includes this Constitution, any Act of Parliament and any proclamation, regulation, order, by-law or other act of authority made thereunder, the English common law and equity for the time being in so far as they are not excluded by any other law in force in Samoa, and any custom or usage which has acquired the force of law in Samoa or any part thereof under the provisions of any Act or under a judgment of a Court of competent jurisdiction.

22 ***Attorney General v Olomalu*** [1980-1993] WSLR 41 (26 August 1982); [1982] WSCA 1.

23 Acts Interpretation Act 2015 s. 7(4)(b).

24 ***In re the Constitution, Pita v Attorney General*** [1995] WSCA 6; (18 December 1995).

25 ***Mulitalo v Attorney General*** [2001] WSCA 8 (20 December 2001).

26 ***Samoa Party v Attorney General*** [2010] WSCA (7 May 2010).

rejected a challenge to changes to the Electoral Act so that only those who obtained more that 50% of the votes of the successful candidate could bring an election petition. The Learned Judges considered that the argument was inconsistent with the Court of Appeal's earlier decisions of Olomalu and Pita, that in electoral matters the right to vote was a matter for Parliament and not the Courts.

[51] The decision of Nelson J in ***Jackson v Attorney General***[27] involved an application for an order of inconsistency under art. 2 and a claim of discrimination under art. (15)(1) and (2). As to art. 15(2), His Honour identified the causation link between the discrimination and the grounds prohibited under art. 15(2) and held the applicants needed to bring themselves within the prohibited categories however were unable to show discrimination by way of disability or restriction of driving a left-hand drive vehicle on the left side of the road based on descent, sex, language, religion, political or other opinion, social origin, place of birth or family status. This decision is authority for limiting the grounds of discrimination to those that are expressly stated in the Constitution. In other words, there is no room to expand prohibited grounds by analogy.

The Court's analysis of article 15(2)

Interpreting the words

[52] Article 15(2) begins with the phrase "except as expressly authorised under the provisions of this constitution" and relates not only to the provision itself, refer arts. 15(3) and 15(4), but also to other provisions of the Constitution. These include express exceptions that include:

(a) art. 15(3), which permits the prescription of qualifications for the service of Samoa or the service of a body corporate established under law; and
(b) art 18(2)(b), which permits the Legislative Assembly to prescribe the qualifications required of the appointee to the role of Head of State; and
(c) art. 45(1)(b), which provides that a person shall be qualified to be elected as a Member of Parliament unless disqualified under the Constitution or any Act.

[53] Where there is no exception, the constitutional protection is engaged when a law, executive or administrative action of the State:

(a) expressly, or in its practical application;
(b) subjects any person or persons to disability or restriction; or
(c) confers on any person or persons any privilege or advantage;
(d) on the grounds only of:
(e) of descent, sex, language, religion, political or other opinion, social origin, place of birth, family status or any of them ("the discriminatory grounds").

The Samoan language version of art.15

[54] The Courts have generally interpreted the English language version of the Constitution. However, art. 112 of the Constitution provides that the English and Samoa versions of the Constitution are equally authoritative, but in a case of difference the English version shall prevail.

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27 ***Jackson v Attorney General*** [2009] WSSC 122 (28 August 2009).

[55] Article 15(2) appears in the Samoan language in the following terms:

> **15.** ***Saolotoga mai tulafono faailoga tagata***:
>
> (1) *E tutusa tagata uma i luma o le tulafono ma e tofu tatau ona maua le puipuiga tutusa i lalo o le tulafono.*
>
> (2) *Vagana ai e pei ona faatagaina manino e lenei Faavae, e leai se tulafono ma e leai se gaoioiga a le Malo tau le pulega faatonu po o le tausiga o le a, po o lona faamatalaina manino ai pe faatino mai ai se mafatiaga o so o se tagata po o ni tagata i so o se itu e le mafai ai po o le faasaina po o le tuuina atu i so o se tagata po o ni tagata so o se tulaga aloaia po o le tulaga taugamalie ona o le avea ma mafuaaga lona tupuaga, tane pe se fafine, gagana, lotu,* ***taofi tau upu fai o malo po o se isi lava taofi****, mafuaaga faale-vafealoai, nuu na fanau ai, tulaga faale-aiga, po o nisi lava o ia mea.*
>
> …
>
> (emphasis added)

[56] The phrases "either expressly or in its "political or other opinion" has been translated into the Samoan language as - taofi tau upu fai o malo po o se isi lava taofi. The word taofi in this context means opinion; the word tau in this context means concerned with; and the phrase tau upu fai o malo in this context refers to politics or political.

[57] The Samoan version is perhaps more explicit about the meaning of the phrase "political opinion" – that it refers broadly to opinions about politics or political matters. But the Court does not consider the difference material having regard to the background circumstances.

[58] Dr J. Davidson explained the intent behind art. 15(2) at 1960 Constitutional Convention in the following way:[28]

> *Clause 2 gets out some of the details relating to the equality of people before the law, it sets out that* ***not only the law itself but any action carried out by the government under any provisions of the law must avoid discriminating between people on certain grounds set out here.*** *It is set out that no person should be subjected to any disability or given any privilege* ***on grounds*** *of descent, language, religion, political or other opinion, social origin, place of birth, family status, or any of them. That means for example, that a person cannot be given any privilege in court because he holds a title or does not; nor can he be discriminated against because he does not speak English or belongs to one church rather than another.*
>
> (emphasis added)

[59] The passage underscores an intention that the constitutional protection against discrimination should be broadly available. The view is not Samoa centric. Recent high English authority suggests a wide meaning should be given to the phrase political opinion.

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[28] Legislative Department, Mulinuu "Official Report of the Proceedings of the Constitutional Convention of Western Samoa (16 August, 1960) at 225.

[60] Lady Hale, with whom Lord Mance, Lord Kerr, Lord Hodge and Lady Black agreed, discussed this in the judgement of the Supreme Court of the United Kingdom in ***Lee v Ashers Baking Co Ltd***:[29]

> Political opinion is not defined in the legislation, but in McKay v Northern Ireland Public Service Alliance [1994] NI 103, it was defined as "**an opinion relating to the policy of government and matters touching the government of the state**" (Kelly LJ at p 117) and in Ryder v Northern Ireland Policing Board [2007] NICA 43, it was said that "**the type of political opinion must be one relating to the conduct of the government of the state or matters of public policy"** (Kerr LCJ, at para 15). **There is no need for an association with a particular political party or ideology, although no doubt that would also count.** I see no reason to doubt that support for gay marriage is indeed a political opinion for this purpose.
>
> (emphasis added)

[61] The Supreme Court of Canada has also applied a broad definition of the phrase political opinion in the absence of a statutory definition in a human rights matter. In ***Attorney General v Ward***,[30] the Supreme Court of Canada in an asylum claim by a person who refused to participate in the execution of hostages, instead helping them to escape, held:

> The more general interpretation of political opinion suggested by Goodwin-Gill, supra, at p. 31, i.e., "**any opinion on any matter in which the machinery of state, government, and policy may be engaged**", reflects more care in embracing situations of this kind.
> (emphasis added)

[62] The phrase political opinion is not defined in Samoa's Constitution. However, giving to the phrase wide meaning is consistent with the court's well settled approach of giving a generous interpretation to a fundamental human right under the Constitution. It is also in keeping with modern approaches from common law jurisdictions defining political opinion, notably the Supreme Court of England and the Supreme Court of Canada.

DISCUSSION OF THE CONSTITUTIONAL CLAIM

Analysis of the Individual decisions

The four HRPP Members who the Panel determined did not make applications

[63] The Panel determined that four HRPP members did not send in an application but a HRPP complaint letter only.[31] These four members were Tuilaepa Lupesoliai Sailele Malielegaoi, Lealailepule Rimoni Aiafi; Vaaelua Senetenari Samau; and Aeau Tima Leavai. At mentions on 3rd July 2026 however, Mr Keith noted his instructions that: "he (Mr Malielegaoi) hadn't applied but it turns out…that the panel committee treated him as having applied but rejected his application"

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29 ***Lee v Ashers Baking Co Ltd*** [2018] UKSC 29 at para 41.
30 ***Attorney General v Ward*** [1993] 2 SCR 689 (SCCC) at 746.
31 RB 72.

leaving then the letters submitted by Lealailepule Rimoni Aiafi; Vaaelua Samau; and Aeau Tima Leavai to be dealt with by the Court.

[64] The letters submitted by Lealailepule Rimoni Aiafi, Vaaelua Samau, and Aeau Tima Leavai each:

(a) Addressed the letter to the CEO of the Ministry as directed in the Ministry's letter dated 6 November 2025;
(b) Headed the letter – Tusi Talosaga mo le avanoa Ta'ita'ifono Komiti Fono Faavae Itumalo, which means – Application for the position of chairperson for District Council Committee.
(c) Contains the phrase – Ae ui i lea, e tu'uina atu pea la'u tusi talosaga e tusa ai ma le tusi a le Matagaluega o le aso 06 Novema 2025. O lo'o fa'apipi'i atu i lenei tusi la'u tusi talosaga. Translated, this means: – "Even though, I nevertheless give my application in line with the Ministry's letter of 6 November 2025. I attach to this letter my application."

(i) Faleata MP Lealailepule Rimoni Aiafi attached a letter asking that he be appointed as the chairperson of his district's District Council. He claims to have been elected five times in his District, and this attested to the faith of his District in him. He also says that there have not been any problems during his time as the chairperson of the District Council.[32] The Panel, however, did not accept this expression from the MP as an application.

(ii) Falealupo MP Aeau Tima Leavai attached a 6-page curriculum vitae outlining her legal and project management experience, consultancy work, international training and work experience as well as her employment record.[33] The Panel, however, did not accept the provision of the CV addressing the matters of competence raised in the 6 November 2025 letter (agavaa, tomai ma le poto masani i le tauaveina ai ole tofiga faa Taitaifono), which refers to a person's qualifications, skills and experience to carry out the role of chairperson.

(iii) Faasaleleaga 2 MP Vaaelua Samau attached a letter to appoint him as the chairperson of his district. He adds that his electoral constituency has placed their trust in him, as was the case for his predecessor.[34]

[65] The position in relation to Tuilaepa Sailele Malielegaoi differs. He sent the Ministry a letter dated 11 November 2025, which is headed "Application Letter – chairperson District Development Council". His letter states that he is the Member for Lepa and he is the chairperson for the District Council. Tuilaepa claims that the new process meant that unsuccessful FAST candidates would be made chairpersons to decide the allocation of funds, which he termed "special treatment type practice" (faiga faimea faapito).[35]

32 RB 117.
33 RB 100 – 105.
34 RB 112 – 113.
35 RB 164 and 165.

[66] On the basis of the evidence summarised above, the Court finds that the letters submitted by Lealailepule Rimoni Aiafi, Vaaelua Samau and Aeau Tima Leavai, read with their attachments, and the letter from Tuilaepa Sailele Malielegaoi were expressions of political views. However, what is clear is that the letters do not reject the Government's Program but object to the changes brought about by the new appointment of the chairperson policy. They were also applications for the positions of chairperson of their respective District Councils. Each of the applicants expressly described their letters as applications and they supplied supporting information relevant to the position. Their objections to the changed appointment process did not alter that character. The Panel was wrong to reject the applications.

[67] In the light of the Court's finding, the issue turns to whether the Panel's error was due to a genuine mistake or something else. It is instructive that the Panel's determination that no application was made is generally coupled, through words like "however" or "instead", with the Panel's determination that the candidate had submitted a HRPP party complaint letter. The Panel records:

a. Aeau Tima Leavai:[36]

Aeau Tima Leavai did not provide a full application, only the HRPP complaint letter been (sic) submitted.

b. Vaaelua Senetenari Samau:[37]

The Interview was not conducted as the candidate did not submit an application. However, he submitted an HRPP complaint letter and a separate letter informing the CEO and the Panel that he is the District Council Chairman. Its an insult to the government process and the Panel. (sic)

c. Lealailepule Rimoni Aiafi:[38]

The Interview was not conducted as the candidate did not submit an application. However, he submitted an HRPP complaint letter and a separate letter informing the CEO and the Panel that he is the District Council Chairman. Its an insult to the government process and the Panel. The candidate formally apologized to the panel and advised that he had taken to court this political position regarding the leadership of the District Council chairperson, believing that the elected Member of Parliament should automatically assume the role. As a result, no assessment of leadership could be made. (sic)

d. Tuilaepa Sailele Malielegaoi:[39]
Not interviewed. No application letter was submitted. The candidate refused to be interviewed and formally informed the CEO and the panel through a letter that he is the District Chairman, it an insult to the government process and the panel. (sic)

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36 RB 168.
37 RB 172.
38 RB 174.
39 RB 195.

[68] The Panel further explained in its interview report:[40]

> *During the assessment process, it was identified that four (4) individuals from four districts has not submitted formal applications as required under the approved guidelines. Instead, they submitted only HRPP party complaint letters and separate correspondence asserting entitlement to appointment as District Council chairperson.*
>
> *In line with principles of good governance, procedural fairness, and the approved recruitment requirements, the Panel determined that these submissions did not meet the eligibility criteria for interview, as no official application was lodged. The Panel resolved to formally notify these individuals of their ineligibility during the interview.*

[69] It is noteworthy that the Panel consistently draws a connection between its determination that no application had been made with its characterisation of what had been provided as containing a HRPP party complaint. The Court is satisfied that this is evidence of the Panel using the characterisation of the letters as political opinion as the basis for their rejection as applications.

The five other HRPP Members

[70] In relation to five other HRPP members, Faumuina Opapo Soanai Oeti MP for Faleata 1; Lupematasila Tologata MP for Falelatai & Samatau; Loau Solamalemalo Keneti Sio MP for Sagaga 1; Lauofo Fonotoe Nuafesili Pierre Lauofo MP for Anoamaa 2 and Lefue Perenise Lelevaga MP for Sagaga 4; the Panel said:[41]

> *"... five (5) applicants from five districts submitted both a formal application and an HRPP party complaint letter. While their official applications demonstrated support for the DDP and interest in serving as District Council chairperson, the accompanying complaint letters raised concerns due to contradictory positions and statements directed at the Government and the Panel.*
>
> *After deliberation, the Panel resolved to proceed with interviewing these applicants, recognizing their compliance with the formal application requirement.* ***However, the Panel agreed that these contradictions would be taken into consideration during final deliberations and scoring****."*
>
> (emphasis added)

[71] The Panel's interview report for the Falelatai and Samatau District, of which Lupematasila Tologata was the Member:[42]

> "*By majority decision, the Panel resolved to appoint Teleiai Christian Ausage as the chairperson. Despite Lupematasila Tologata as his strong*

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40 RB 72.

41 RB 73.

42 RB 191 and 192.

interview performance, the Panel considered the threat letter issued on behalf of his party as a factor that diminished his merit in terms of leadership"

[72] The Reports provide a direct documentary connection between the expressed views and an adverse consequence. None of these five were ultimately recommended or appointed to sole chairperson roles.

[73] The Court finds that by the Respondent's own evidence – the political views expressed by the five HRPP members counted against their applications.

[74] It is noteworthy that the Panel appears to have acted inconsistently in its treatment of political opinion as between different opposition party affiliation. It appears that the assertion of a contrary political opinion only counted against HRPP Members as discussed above. Fiame Naomi Mata'afa, the leader of SUP sent an application letter that was expressly critical of the Program, yet the Panel recommended her to be the sole chairperson of her district of Lotofaga.

Roadmap to determining the issues

[75] The Court frames the issues in this constitutional challenge broadly as follows:

(a) Is the thing complained about a law, executive or administrative action of the State?
(b) Does the thing complained about expressly or by practical application subject any person to disability or restriction or confer a privilege on a prohibited ground?
    - Is there express discrimination?
    - Is there discrimination in the practical application of the State action?
    - Was the discrimination only on the grounds of political opinion?
(c) What is the meaning of the phrase – on the grounds only?
(d) Is there a constitutional exception that applies?

(a) Is the thing complained about a law, executive or administrative action of the State?

[76] The matter in issue concerns the government's new chairperson appointment policy for the 51 District Councils. The Applicant contends that both the new process and criteria for appointment and the collective or individual decision-making, brought about a breach of its members constitutional rights. The new policy is not a law, as in form of legislation; rather, it forms a part of the Government's Development Policy Program that was first approved by Parliament in the Main Estimates for the Financial Year 2021/2022 (Appropriation Act 2021/2022).

[77] The Court is satisfied that the new selection policy is an administrative and an executive action of the State to appoint the chairperson of a body corporate, with whom the Government enters into binding contractual relations. This finding is based on:

a. the formation and implementation work that was carried out by or under the control of a Ministry of the Government;
b. oversight control exercised by a Steering Committee established by Cabinet for that purpose;
c. the establishment of the Panel to interview candidates and make recommendations to the Steering Committee;
d. the overall control vested in the Cabinet.

The Court also notes Mr Keith, for the respondent, accepts Cabinet is responsible for making the appointments.[43] It can fairly be said the Government established an integrated executive decision-making process.

(b) Does the selection policy expressly or by practical application subject any person to disability or restriction or confers a privilege on a prohibited ground?

[78] This issue involves a compound inquiry; (1) whether the thing complained about expressly or by practical application (2) subjects any person to disability or confers a privilege on a prohibited ground.

Is there express or practical application discrimination in the State's action?

[79] The first limb of the inquiry is whether the new appointment policy **expressly** or **by practical application** subjects a person to disability or confers a privilege.

[80] The Court has considered the relevant Cabinet Papers; the rationales that informed the approval of the new appointment policy; the relevant Cabinet decisions; the process and methodology described in the 6 November 2025 invitation to apply; the 17 November 2025 (and further guideline for the new appointment policy, and the 13 January 2026 Government Statement.

[81] The new appointment policy expressly reserves to the government the final decision on who is appointed chairperson. The earlier arrangement saw the chairperson chosen by the constituency in the election of their Member of Parliament.

[82] Such government control does not in and of itself suggest anything untoward. Indeed, in this case transparency was proposed to be achieved with the use of independent assessors and persons responsible for appointments, public communication of clearly defined and consistently applied eligibility criteria, the appointment process being undertaken in full accordance with established process, applying the principles of merit appointments and complying with the process of natural justice and fairness, and that no appointment would be made unless the process fully complies with legal, constitutional and policy requirements. The relevant documents do not suggest expressly suggest discrimination. Rather, it strongly suggests that the application of those principles and practices would ensure compliance. For those reasons, the Court does not consider that the process itself expresses discrimination.

[83] However, the second limb concerning 'practical application', is more difficult for the Government to overcome. Viewed as an integrated executive decision-making process, the practical application of the policy did not comply with the requirements of natural justice and procedural fairness. The evidence is that Government rejected some of the recommendations of the "independent" Panel with respect to districts with Opposition MP; the Panel and Cabinet acted contrary to the undertaking to clearly define, publicly communicate and apply consistently eligibility criteria, the Cabinet applied a co-chairperson leadership model and appointed only FAST persons to the co-chairperson A role; the Panel itself rejected applications that it characterised as HRPP political

[43] Notes of Evidence ("NOE") p 41 lines 12 – 14.

objections, and diminished other HRPPP applications for including the HRPP political objections in theirs applications; and Cabinet, the Steering Committee and the Panel all failed to comply with the rules of natural justice.

[84] The Court finds that the practical application of the selection policy discriminatory under the Constitution.

Res ipsa loquitor

[85] The thrust of the applicant's challenge is that, whether framed in terms of unconstitutional discrimination, predetermination, or bias, the results speak for themselves in terms of political bias and motivation – res ipsa loquitor; a Latin phrase that means – the thing speaks for itself. The phrase is a principle in tort law, which allows plaintiffs to meet their burden of proof with what is, in effect circumstantial evidence.

[86] The Court considers counsel to only use the Latin phrase as a metaphor, and does not seek to introduce the technical doctrine into Samoa's constitutional jurisprudence. Mr Harrison's argument, therefore in the context of the constitutional law issue, is that the pattern of appointments from the practical application of a facially neutral appointment policy is so striking that the only plausible inference the Court may draw is discrimination on the grounds of political opinion.

[87] Although Mr Keith acknowledges that appointments were based on "party affiliation",[44] he rejects the applicant's submission that the process was highly politicised. Mr Keith frames the question concerning appointments as: "The legal question is whether that's a legitimate criterion to use for the government to say or to act as though and the court can make this assessment under art 15. Is it proper? Is it legitimate? Say we only need co-chairpersons where the local MP is not one of ours"[45] Learned counsel further submits the outcomes cannot be looked at in isolation from the recorded reasons and processes that produced them. Counsel submitted the decisions concerning HRPP Members were carefully recorded and based on the documents supplied by the candidates and interviews conducted. Further, he submitted the assessment made by the interview panel of "complaint letters" followed from the strongly worded rejections of the government's District Development Program, and, therefore, the claim of partiality cannot be substantiated.[46]

[88] The court rejects Mr Keith's submission that the complaint letters are strongly worded rejections of the government's Program. The HRPP letters object to the change in the appointment of the chairperson - the new selection policy, but not the Program itself, which is a subtle but critical distinction. Mr Keith also submitted that the decision not to appoint nine HRPP MPs was not because of their party allegiance, but "from the opposition expressed by each of the nine Members to the DDP policy change".[47] Counsel goes on to submit:[48]

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44 NOE at p.64.
45 ibid.
46 Respondent's submissions ("RS") at para 17.
47 RS at 8.3 (a)(i).
48 RS at 8.3(a)(ii).

"That the reason, and the irrelevance of political party affiliation, can be seen in the decisions made by Cabinet to appoint those HRPP Members who did not submit the complaint letters."

[89] In summary the respondent's position is that the facts do not speak for themselves because there is an evidenced, non-discriminatory explanation for them. This leads to the next part of the discussion.

Was the discrimination on the grounds of political opinion?

[90] Mr Keith's submission was that there was a non-discriminatory explanation for the Government's actions. He argued the co-chairperson model was a proportional means to achieve Cabinet's objective of ensuring its Program was duly implemented. The Court cited earlier the Ministry's advice in PK (25) 1252 (RB 36), that the Government intended "to ensure that this important government development is properly and effectively managed". Counsel submitted proportionality is reflected in Cabinet appointing FAST members and a supporter as sole chairpersons and as co-chairperson A, and the opposition MPs to co-chairperson B roles. Mr Keith submitted in oral argument that Court needed to answer these questions:

(a) Is it a permissible differentiation for the Government to say that if they have a Government MP, then as the Program is a government program, then they may say that they want a Government MP in control?[49]
(b) Is it permissible for the Government to say that co-chairperson model is legitimate where the local MP is not a Government MP?[50]

Mr Keith submits that both his questions can be answered in the affirmative, this would therefore mean the applicant's constitutional claim fails.

[91] Mr Keith's argument however faces considerable headwinds when one considers the scope of Art. 15(2), which provides that there are two ways in which unlawful discrimination may occur. The first concerns discrimination that arises from subjecting any person to any disability or restriction on one of the prohibited grounds, which in this case is political opinion. The second sense of unlawful discrimination arises from an action of the State conferring or giving someone any privilege or advantage, on one of the prohibited grounds – that person's political opinion.

[92] Drawing on the English Supreme Court authority of ***Lee v Ashers Baking***, it could be argued in this case that opposition MPs have expressed in their letters their political opinion relating to the conduct of the government of the state or matters of public policy. The evidence is that the Panel categorised such letters as non-applications despite compelling evidence to the contrary on the face of the record. It supports political opinion as a strongly operative ground and discriminatory practical effect. Furthermore, the introduction of a co-chairperson model, which in practice enables the realisation of Government control in a district where the local MP is not a Government MP (as Mr

[49] NOE page 64 lines 9-10.
[50] NOE p. 64, lines 25-26.

Keith submitted) is, again, constitutionally barred because it confers on the FAST party candidate or supporter appointee a benefit or advantage as a government supporter.[51]

[93] In the absence of evidence from the government, that political affiliation was an operative consideration in the allocation of the controlling role may be reasonably inferred from the appointment of former Prime Minister, Fiame Mata'afa, to a co-chairperson B role behind the unsuccessful FAST candidate who stood in the same constituency. Furthermore, former Cabinet Minister, Leatinuu Wayne Fong was appointed co-chairperson B to Muaaufaalele Mary Faafouina Ta'eu, appointed co-chairperson A for Faleata 2. Ms Taeu was not a candidate at the 2025 General Election, having been disqualified by the Supreme Court from contesting the election as she failed to meet the qualifications requirements under s 8 of the Electoral Act 2019. Despite probing from the Court, no satisfactory answer was offered to explain this anomaly and how Ms Taeu was more qualified than the sitting member.[52]

[94] The Court considers that the evidence supports the conclusion that the practical effect of Cabinet's appointments were discriminatory on the grounds that they were either a disability or restriction on Opposition Members (including HRPP MPs), or they conferred a privilege or an advantage upon FAST members and supporters on the grounds of political opinion – extending to them preferential treatment to appointment as chairpersons or co-chairperson.

(c) The phrase 'grounds only'

[95] Discrimination under art. 15(2) arises where the disability or restriction or privilege or disadvantage arise on grounds only of descent, sex, language, religion, political or other opinion, social origin, place of birth, family status, or any of them. The question that needs to be considered, given the Respondent's proportionality defence, is what if the discrimination also arises from non-discriminatory and therefore lawful grounds. In other words, were the Court to have wrongly decided the proportionality issue and that the FAST appointments were a proportional response, then what if there is a discriminatory ground, and how does art.15 not apply?

[96] The first point to make is the word 'only' in the provision is used as a linking word between two concepts - discrimination with the prohibited grounds of descent, sex, language, religion, political or other opinion, social origin, place of birth, family status, or any of them. In other words, the word identifies a closed category of prohibited grounds, rather than requiring the prohibited ground to be the sole factual cause of the decision. This means art. 15 does not prohibit every form of differentiation, but only differentiation connected with the listed ground.

[97] A more difficult question arises where discrimination is based on a prohibited ground, and on genuinely independent non-prohibited grounds. Might the word "only" in this context mean that the Constitutional right can only be protected if it is the sole basis for the discrimination?

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51 A benefit, privilege or opportunity not extended to non-FAST candidates in FAST Party held seats and a potential advantage at the next general election.

52 This co-chairperson appointment, in Faleata 2, demonstrates Cabinet acting inconsistently with initial eligibility criteria in Faleata 2. The initial eligibility criteria were limited to elected members and unsuccessful registered candidates at the General Election 2025. Ms Taeu was neither an elected member or an unsuccessful registered candidate. She had been disqualified by the Supreme Court as candidate at the 2025 General in ***Sooialo v Taeu*** [2025] WSSC 59 (15 August 2025). Chairperson B in this district was a former Cabinet Minister for SUP.

[98] Having regard to the text, purpose and constitutional principles discussed above, Court finds that the constitutional protection in art. 15(2) in cases involving multiple grounds (that include genuinely independent non-prohibited grounds) is triggered by a finding that the prohibited ground is an operative or material ground of the disability, restriction, privilege or disadvantage, and it need not be the exclusive ground. Whether an incidental breach raises the constitutional protection is a question that does not need to be answered in this case. The Court is satisfied that prohibited grounds are an operative cause of disability, restriction, privilege or disadvantage.

[99] The Court considers the Constitution has specifically provided a right to be protected from discrimination on certain or a closed group of prohibited grounds; if the discrimination is the cause of disability, restriction, privilege or disadvantage on one or more of those grounds, then it would be repugnant to that fundamental right and should be the subject of a remedy from this Court.

(d) Is there a constitutional exception?

Art. 15(3) - Prescribed qualification –

(a) "service of Samoa"

[100] Mr Keith submitted that the December appointments and non-appointments are not discriminatory under the Constitution because art 15(3)(a) provides an exception to art. 15(2). Mr Keith's argument is that the State may prescribe "qualifications" for the "service of Samoa". Counsel submits the phrase "service of Samoa" is defined in the Constitution as "service in any capacity of Samoa".[53] Then in reliance on ***Mulitalo***, which held that qualifications for Members of Parliament do not come within the ambit of art. 15, Counsel submits, without conceding that the chairperson appointments were based on political opinion, that therefore an appointment of a chairperson or co-chairperson made on the basis of political opinion similarly falls within the scope of art. 15(3)(a) and therefore excepted from the operation of art. 15(2). The Court does not agree with Mr Keith's submission.

[101] The definition of "service of Samoa" as "service in any capacity of Samoa" in art. 111 is not exhaustive but includes the capacities set out in art. 83 (a) to (k) - the Head of State; a Member of the Council of Deputies; Prime Minister or a Minister; Speaker or Deputy Speaker; a Member of Parliament; a Judge of the Supreme Court; the Attorney General and officers and employees of the Office of the Attorney General; Controller and Auditor General; Police Officer. It is the types of office holders in art. 83 (a) to (k) that article 15(3)(a) contemplates.

[102] Even assuming that the District Council Chairpersonship amounts to "service of Samoa", art. 15(3) protects the prescription of qualifications. It does not authorise a discriminatory application of otherwise lawful qualifications on the ground of political opinion. Were that the case, then similar appointment process would similarly circumvent the constitutional protection.

(b) or "established directly under law"

[103] The respondent alternatively relies on the second part of the exception in art. 15(3)(a). They submit that the prohibition against discrimination does not apply to appointments to the District

[53] Constitution of the Independent State of Samoa 1960, art 111.

Council because a District Council is a "body corporate directly established under the law", with the consequence that art 15(1) and (2) are inapplicable.

[104] The Court does not accept that submission. A District Council is constituted pursuant to the statutory framework established by the Ordinance. However, it does not follow that it is a body corporate "directly established under the law" for the purposes of art 15(3)(a). The Court considers the expression is concerned with corporations whose legal existence derives directly from an enactment itself, that is, corporations which Parliament creates by statute. It is not directed to every incorporated body whose existence can ultimately be traced to legislation.

[105] The distinction is between a corporation created by the statute itself and a corporation constituted, incorporated or otherwise brought into existence under a statutory scheme. A corporation falling within the former category owes its existence to the direct operation of the legislation. By contrast, a corporation falling within the latter category owes its existence to steps taken pursuant to powers or procedures established by legislation.

[106] The Samoa Trust Estates Corporation provides an example of a body corporate directly established by law. The Samoa Trust Estates Corporation Act 1977 provides:

> *3. Continuation of the Corporation – (1) There shall continue to be the body corporate called the Samoa Trust Estates Corporation which shall be the successor to the Corporation, of the same name, established under the Samoa Amendment Act (Nos. 2) 1956 (NZ) and continued under the Samoa Trust Estate Corporation Ordinance 1961.*

[107] The language of s 3 is significant. The statute itself creates and continues the corporation. Its legal personality derives directly from the enactment. It is, in the ordinary sense, a body corporate established by law.

[108] Further support for this interpretation is found in the Constitutional Convention debates. When discussing art. 15(3)(a) at the Constitution Convention in 1960, Dr Davidson observed:[54]

> *"The purpose of subclause (a) is to make clear that the reference to non-discrimination in this article does not apply to the prescription of necessary qualifications for people holding positions in government* ***or*** *in bodies incorporated under the law (of which W.S.T.E.C, is the only example at the present time, I think)*"
>
> (emphasis added)

[109] The reference to W.S.T.E.C. is telling. Dr Davidson identified as the relevant example a statutory corporation created directly by legislation. Nothing in his explanation suggests that the exception was intended to extend generally to bodies merely constituted, elected, registered or incorporated pursuant to legislative procedures. Moreover, if the Respondent's interpretation were correct, the word "directly" would do little or no work. Any incorporated entity could be said, in some ultimate sense, to be established under law because its incorporation depends upon legislation. Such a

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[54] Above n 28, page 222.

construction would substantially expand the exception and deprive the word "directly" of practical effect.

[110] In the present case, the Ordinance does not itself create the District Councils in the way that the Samoa Trust Estates Corporation Act creates and continues W.S.T.E.C. Rather, it provides a legal framework under which District Councils may be constituted and incorporated. Their existence therefore derives from incorporation under the statutory scheme. The Court concludes that the District Councils are not bodies corporate "directly established under the law" within the meaning of art 15(3)(a). The Respondent's reliance upon that exception is misconceived. Neither limb of art 15(3)(a) is satisfied.

BIAS AND PRE-DETERMINATION

[111] The Applicant's second ground alleges that the District Council chairperson appointments and non-appointments were predetermined or affected by actual or apparent bias. These are distinct grounds. Unlike the art. 15 constitutional issue that asked whether political opinion was an impermissible ground of discrimination: the predetermination issue asks was the outcome already fixed: the apparent bias question asks whether knowing that political opinion entered the treatment of candidates, what would the informed observer reasonably apprehend about impartiality?

[112] The general principles relevant for the court to consider is that to succeed in a claim of predetermination, the applicant needs to show more than a previously expressed preference. In other words, it must show the decision-maker had closed its mind to a genuine consideration of the matter.[55] A challenge on the basis of predetermination must show actual predetermination rather than the appearance of the same.[56]

[113] To succeed in its claim for actual bias, the Applicant must establish that the decision-maker cannot bring an impartial mind to the issues before them. A decision will be affected by apparent bias where a fair-minded lay observer might reasonably apprehend that the decision-maker might not bring an impartial mind to the determination of the matter. The apprehended bias must be a real, and not a remote possibility.[57]

[114] The political character of the decision-maker is also relevant. Ministers may approach a decision with policy preferences and a predisposition towards a particular outcome. They must nevertheless remain genuinely willing to consider the relevant material and whether a different outcome is appropriate. The distinction is between a permissible predisposition and an outcome that has become a fait accompli,[58] meaning that the outcome has become a forgone conclusion. Moore J in *Save Chamberlain Park Incorporated v Auckland Council*[59] explained:

> *[180] Much of this is explicable by the fact predetermination is conceptually distinct from an allegation of bias. While predetermination is concerned with*

55 Vandervis v Dunedin City Council [2022] NZCA 219 at [38]–[39].

56 Franklin v Minister of Town and Country Planning [1948] AC 87 (HL) at 103; see also Travis Holdings Ltd v Christchurch City Council [1993] NZLR 32 (HC) at 47

57 Reupena v Senara [2017] WSCA 1 (31 March 2017).

58 *Save Chamberlain Park Inc v Auckland Council* [2018] NZHC 1462 at [175]–[182].

59 ibid., at [180].

"closed mind" decision-making, bias is concerned with public perceptions as to impartial decision-making. As the learned authors of Administrative Law state:

> *The significance of the conceptual distinction between predetermination and the apprehension of bias lies in the fact that administrative decision-makers, unlike judicial decision-makers, will often, quite rightly, be influenced, formally or informally, in their decision by policy considerations. They will naturally approach their task with a legitimate predisposition to decide in accordance with their previously articulated views of policies. The fair-minded observer knows this, appreciates that there is no question of personal interest, and does not apprehend bias where there is simply a predisposition to decide one way rather than the other in accordance with previous policies. But where the question is whether the decision-maker has closed his mind and slipped from predisposition to predetermination it seems unnecessarily complication to involve the fair-minded lay observer.*

[115] The Applicant relies on statements attributed to the Prime Minister in the Samoa Observer report exhibited to Mr Rimoni Aiafi's affidavit of 30 January 2026, and in a transcript of a purported Radio New Zealand interview included in his affidavit evidence. The affidavits and supporting documents were tendered by consent. Their admissibility is therefore not in issue. The Applicant further relies on the FAST appointments made and the HRPP appointments made as Co-Chairs and not made to ground their allegation of predetermination, that is, the results speak for themselves – res ipso loquitor. The Court adds its findings that the Panel used the expression of political opinion to reject or diminish applications from HRPP applicants.

[116] The Respondent relies on *Ririnui v Landcorp Farming Ltd*.[60] That decision recognises that some exercises of public power involve policy, political and fiscal considerations that are properly the responsibility of the executive. This Court agrees. However, it is also noteworthy that the principle does not establish that every decision within such a setting is beyond judicial review. The discussion at [89] of that judgment must be read with [90]–[91], they recognise that the particular exercise of public power may remain reviewable for breach of public-law principle. The decision does not prescribe a separate or higher evidential threshold for establishing predetermination.[61]

[117] Furthermore, at paragraph 22.2 of the Respondent's submissions, the Respondent relies on Cabinet's appointment of five HRPP members as co-chairpersons as evidence of an open mind. Those appointments weigh against an allegation that HRPP members were categorically excluded from any chairing role; though they do not conclusively answer the issue concerning exclusion from sole or controlling chairperson roles.

[118] The Court has considered the statements attributed to the Prime Minister in October 2025 were that only FAST party supporters would be appointed as district council chairpersons and that no HRPP Member of Parliament would become a district council chair. The evidence demonstrates, five HRPP party members were ultimately appointed to the post of chairperson, albeit in a co-chairperson arrangement. This result evolved over time and suggests that the Government had not closed its mind and predetermined the issue of appointments for HRPP Members.

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[60] *Ririnui v Landcorp Farming Ltd* [2016] NZSC 62.

[61] ibid., at [89]–[91].

[119] Considering the evidence as a whole, the Applicant has not established that the appointment outcomes were predetermined. There is an immeasurable involvement of what is euphemistically called "politicking" at play with claims of predisposition and bias and their resulting responses. The Court concludes that that there is not enough evidence before the Court and it is accordingly dismissed.

Actual and apparent bias

[120] Actual and apparent bias require separate consideration. For actual bias, the Applicant must show the Government has been in fact biased. Where the claim is apparent bias, it is unnecessary for the Applicant to show the Government was biased, but it must establish an apparent bias sufficient to vitiate the Government's decisions. It requires establishing of circumstances from which a fair-minded and informed observer might reasonably apprehend that the decision-maker might not bring an impartial mind to the relevant question. It is not simply a matter of characterising political predisposition as in and of itself disqualifying bias.[62] The Court requires the applicant to show both the alleged partiality and its connection to the concern about a departure from proper decision making.

[121] The Court's conclusions on apparent bias do not follow from its finding that the appointments breached art. 15(2). The two grounds are legally distinct. Article 15(2) is concerned with whether law, executive or administrative action subjected persons to disadvantage, on a prohibited ground. Apparent bias is concerned with whether the circumstances would cause a fair-minded and informed observer reasonably to apprehend that the decision-maker might not bring an impartial mind to the decision.

[122] There is, however, an important factual connection between the two grounds. The Court has found that political opinion was not merely part of the background against which Cabinet exercised its functions. It operated within the appointment process itself when HRPP applicants were excluded or marked down because of political views expressed in their applications; Cabinet also departed from recommendations involving opposition Members holding sole chairperson's roles; and, in the co-chairperson arrangements, controlling positions were uniformly conferred upon FAST Members or supporters while opposition Members were appointed to the subordinate co-chairperson B role.

[123] Those findings do not necessarily establish that Cabinet had closed its mind in advance. Predetermination requires more, and as noted above, the Court is not satisfied the claim has satisfied the required evidential foundation. However, the evidence is material to apparent bias. A fair-minded and informed observer, knowing that political opinion had in fact operated as a consideration affecting the HRPP applicants, might reasonably apprehend that the appointment decisions were not made with the degree of impartiality by the process that the Government itself had represented would be based upon merit and consistently applied criteria.

[124] This is more than a permissible political predisposition. Ministers and Cabinet are entitled to hold and advance political policies. What gives rise to the appearance of bias here is that political predisposition appears to have moved beyond policy preference and became relevant to the treatment of individual candidates for appointment. In those circumstances, the Court is satisfied that a fair-

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62 *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* [2009] NZSC 72 at [3]–[5]; as to the importance of the political and decision-making context, Hart v Marlborough District Council [2025] NZHC 47 at [183]–[187]: see also Chamberlain – [179] – [184]

minded and informed observer might reasonably apprehend that the Cabinet would not bring an impartial mind to the comparative assessment of FAST Members and supporters and opposition Members.

[125] The Court accordingly finds for the applicant on the challenge of apparent bias.

BREACH OF LEGITIMATE EXPECTATION

[126] This judicial review claim for discretionary remedies relies on the decision of McGechan J. in Mansell v Commissioner of Police;[63]

> *I accept that, when the Commissioner publishes a detailed job description and personal specification, applicants have a legitimate expectation that their job applications will be considered in terms of that publication. At the very least, if there is some departure, notice will be given sufficient to allow additional or changed material and further preparation for interview. It is a matter of simple fairness.*

[127] The dispute in Mansell concerned a challenge to a decision of a selection panel declining his application for a senior post in the police. The High Court identified procedural defects leading to the appointment of the successful candidate. These defects included a change to the criteria for selection, part way through the selection process. The facts in this case also raise the same type of defect – the addition of a further and unpublished criteria about letters of complaint; the enlarging of eligibility criteria; and the addition of the co-chairperson model are three of the more prominent examples.

[128] The Respondent sought to distinguish ***Mansell*** on the basis that the appointment in that case involved a public office whereas the appointment in this case involves a Body Corporate and as such judicial review is not available to the Applicant. The Court rejects the Respondent's argument. There is good authority that Bodies Corporate may be judicially reviewed in terms of the Body Corporates compliance with its rules. The Court relies on ***New Zealand Association for Migration and Investments Inc v Attorney-General*** [2006] NZAR 45; ***Sanders v Hepatitis C Support Group (NZ) Inc*** [2010] NZHC 1845; and ***R (Beer) v Hampshire Farmers Markets Ltd*** [2003] EWCA Civ 1056, [2004] 1 WLR 233. Further, these appointments involved direct involvement of government, including Cabinet and Cabinet Ministers, in the decision-making at various levels.

[129] The Respondent referred to the high authority of the Privy Council in ***United Policy holders v AG (Trinidad & Tobago)***;[64]

> "In the broadest of terms, the principle of legitimate expectation is based on the proposition that, where a public body states that it will do (or not do) something, a person who has reasonably relied on the statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts. Some points are plain.

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63 ***Mansell v Commissioner of Police*** [1994] NZAR 76, [1993] 2 ERNZ 646 (HC) at 650.

64 ***United Policy Holders v AG (Trinidad & Tobago)*** [2016] UKPC 17 [2016] 4 LRC 433.

> First, in order to found a claim based on the principle, it is clear that the statement in question must be '**clear, unambiguous and devoid of relevant qualification**'. … Secondly, the principle cannot be invoked if, or to the extent that, it would interfere with the public body's statutory duty. … Thirdly, however much a person is entitled to say that a statement by a **public body** gave rise to a legitimate expectation on his part, circumstances may arise where it becomes inappropriate to permit that person to invoke the principle to enforce the public body to comply with the statement."
>
> (emphasis added)

[130] The first statement of principle in ***United Policy Holders*** is that the representations need to be clear, unambiguous and devoid of relevant qualification.

[131] In this case, the Government represented in its public statement of 17 November 2025:

(a) Eligibility criteria would be clearly defined;
(b) They would be publicly communicated;
(c) Be applied consistently; and
(d) Applications were invited for the office of chairperson.

[132] Applications had however already been invited by the Ministry's 6 November 2025 letter, which set out in broad terms the criteria for a merit-based appointment of chairpersons for District Councils. The difficulty lies with the update of the appointment criteria published on 17 November 2025 referring to applications being invited. In fact, no new applications were invited, and no extension of time was given to those who answered the 6 November 2025 invitation to address the matters raised in the 17 November 2025 public statement.

[133] The Court is satisfied that the Applicant's legitimate expectations for procedural fairness were breached. The evidence demonstrates the Panel applied the updated criteria and other criteria that were not published – such as the adverse treatment of HRPP applications with complaint letters, to the applications received:

(a) In relation to the updated criteria released on 17 November 2025, the applicants were not given an opportunity to address these and any nuance or political idiom;
(b) As to the unpublished vetting procedure carried out by the Panel, in which it treated unfavourably the HRPP applications it categorised as political objections. Such unfavourable treatment amounted to adverse treatment and the HRPP candidates who provided those letters were entitled to be heard before their applications were either dismissed or treated unfavourably.
(c) In relation to the co-chairperson roles, the government did not publish the relevant criteria, nor did it invite applications for the new roles. Once the government materially changed the nature of the office, affected opposition Members had an expectation of notice of the materially changed roles and criteria, and a fair opportunity to address their suitability before appointments were made.

[134] In these circumstances the Court does not consider the second and third limbs of the ***United Policy Holders*** require further analysis because there is no evidence that invoking the principle

interferes with the Government's duties or there are circumstances that make it inappropriate to apply the principle.

[135] The Court finds the Respondent breached the Applicants legitimate expectation to be assessed according to the publicly communicated criteria, and that material changes to those criteria or to the nature of the office being filled would not be applied adversely without notice and an opportunity to respond. Further, the Applicants legitimate expectation to be advised about the Co-chairperson model and the criteria for selection as either Co-chairperson A or Co-chairperson B, and that they would be given the chance to apply for the roles were breached.

DECISION

Constitutional Challenge

[136] The Constitutional challenge concerns four categories of complaints:

(a) Four HRPP Members who submitted what the Panel termed "complaint letters"; Tuilaepa Sailele Malielegaoi MP for Lepa; Lealailepule Rimoni Aiafi MP for Faleata 3; Vaaelua Senetenari Samau MP for Faasaleleaga 2; and Aeau Tima Leavaiseeta MP for Falealupo.
(b) Five HRPP Members who also submitted complaint letters but who the Panel considered had sent application letters as well.
(c) HRPP Members, and Intervenor 2 Leatinuu Wayne Sooialo, appointed co-chairperson B for their District.
(d) FAST Members or supporters appointed as sole chairpersons in opposition-held constituencies in preference to the elected opposition Member.

[137] The Court finds for the Applicants on the Constitutional challenge. The Court is satisfied that:

(a) The Panel formed a view that certain letters submitted by HRPP Members contained statements that it categorised as HRPP Party objections. The court finds that these letters were applications, and the Panel wrongly excluded HRPP candidates for chairperson appointment from the interview process.

(b) Categorisation of the letters as political objections operated as the basis for excluding the HRPP candidates when they had in fact lodged applications.

(c) In the circumstances, the Court finds that the Panel's categorisation of HRPP letters as political statements, was the basis for its determination that the HRPP candidates had not provided a formal application, and they were accordingly dismissed. The use of political opinion in this way is a breach of art 15(2) because the Panel has subjected the HRPP Members to a disability or restriction on the grounds of their political opinion. The disability or restriction being their disqualification from the appointment process.

(d) The Panel, moreover, determined that other HRPP letters were characterised as applications accompanied by the HRPP Party political objection. In those circumstances the Panel determined that it would take account of the political

objections after the interviews had taken place, during the marking phase. In one case, the Panel has marked down the HRPP candidate, determining that the "threat" letter issued on behalf of HRPP party was a factor that diminished the candidate's merit in terms of leadership. That HRPP Member was not recommended to be appointed chairperson of his district. The Panel's determinations in these circumstances breach art. 15(2) because political opinion has been expressly used to diminish the applicant's chances to be appointed.

Cabinet reserved for itself the power to depart from the recommendations of the Panel endorsed by the Steering Committee. In doing so, Cabinet entered into the fray, as it were, by itself directly establishing and applying the co-chairperson model. There is no evidence of Cabinet receiving advice about the model, its rationale or complementarity with the established sole chairperson process that was decided on 31 October 2025. No non-discriminatory explanation was provided which satisfactorily accounted for the uniform allocation of controlling positions according to political affiliation.

(e) The practical effect of Cabinet's work comes to this; co-chairperson A was given to a FAST person, whereas co-chairperson B to an opposition MPs; and the co-chairing model was only applied in opposition-held districts. The Court considers that the criteria spelled out in the 13 January 2026 public statement do not on their face explain why every co-chairperson A was a FAST person, and in particular in the Faleata 2 district, explains why a FAST person who was not eligible to be appointed a chairperson, was appointed co-chairperson A.

[138] The Court finds however that having regard to (1) the pattern of all the other appointments; (2) the treatment of political opinion elsewhere in the selection process; (3) Mr Keith's submission that the Respondent is entitled to say that it can appoint its own people because it is a Government Program: the Court is satisfied that political opinion, including political party affiliation was an operative ground upon which advantage was conferred on the FAST appointee and corresponding disadvantage imposed on the opposition Member.

[139] The finding in relation to co-chairperson appointments is not inconsistent with rejection of the pre-determination issue discussed earlier. The pre-determination that was rejected earlier was concerned with utterances allegedly made and reported in a newspaper article and whether the result was fixed beforehand. The art. 15(2) issue asks what grounds actually operated in the decisions made.

Bias and Predetermination

[140] For the reasons given above, the evidence is insufficiently reliable to establish predetermination and this ground is dismissed. However, the Court finds for the applicant in relation to the second ground of challenge of apparent bias.

Legitimate Expectation

[141] The Court is satisfied that the Respondent has breached the Applicant's legitimate expectation to be advised of the eligibility criteria updated on 17 November 2025, told of the adverse treatment

for applications that were accompanied by letters of complaint; advised of the Co-chairperson roles and the criteria for appointment to the two co-chairperson roles.

REMEDY

[142] The Applicant seeks orders that all HRPP Members should be appointed as sole chairpersons. The Court cannot place itself in the position of the Cabinet, which is constitutionally mandated under art 32(1) to have the general control and direction of the executive government. Cabinet must accordingly make the appointments, consistent with the law.

[143] The principal dispute concerns the districts who have HRPP, SUP and IND Members. The remedies should therefore be limited to these districts. Although the Independent Members have not sought to join the proceedings, their Constituencies are included because they were not appointed to sole chairperson roles but to chairperson B roles. All those decisions are in principle unconstitutional and unlawful, whether the Members are before the court, and they are therefore all set aside.

[144] The Court pursuant to art. 4 makes the following orders to secure for the applicants the enjoyment of their right not be subject to discrimination only on the grounds of political opinion:

(a) The making of a Declaration that sole chairperson and co-chairperson appointments made on 17 and 21 December 2025, in relation to Districts with HRPP, SUP and IND Members of Parliament, were appointed in breach of art. 15(2) of the Constitution, are unconstitutional and unlawful, and set aside.

(b) The matter now rests with the Honourable members of Cabinet to decide the process of appointing chairpersons of these Districts that complies with art. 15(2). The appointment criteria and process is required to comply with the relevant by-laws of each Society, the principles of natural justice and fairness, the Districts Development Act 2026 and art 15(2) of the Constitution.

(c) Costs should follow the event. The parties are invited to settle this, and if they cannot they are to submit memoranda within 3 weeks of this decision.

PERESE CJ

CLARKE J

THE SEAL OF THE SUPREME COURT SAMOA