

Transcript: Legal challenges, law reform and legal education – an interview with Lalotoa Mulitalo

Cain: My name is Tess Newton Cain. I'm a Research Associate at the Development Policy Centre. And this morning, I'm visiting the Law School at USP. And I'm actually in what was my office last time I worked at USP. So it's always a big dangerous coming back in case someone gives me a job to do.

But the reason I'm here this morning is to have a conversation with my friend, Telei'ai Lalotoa Mulitalo, who is currently a lecturer here. So good morning Toa and welcome to Pacific Conversations.

Mulitalo: Good morning Tess and thank you for this opportunity.

Cain: You're very welcome. Thank you for making the time. So for our listeners, perhaps you could start by telling us something about yourself, your background, your experience, and what your current role is.

Mulitalo: Alright. My name is Lalotoa Mulitalo. Telei'ai that I currently use in front of Lalotoa is a chiefly title in Samoa, and it was given to me in 2007. In any case, my name is Lalotoa Mulitalo. I was a law student here at the Emalus Campus Law School. And after a student, after graduating here, I worked for 10 years in Samoa for the government of Samoa. And after working in Samoa I took up 3 and half years to do a PhD in Brisbane, at the University of Queensland.

And that was completed last year, 2013. And this year, I am here to teach. My experience, I have had working experience with government in the Office of the Attorney General. Before that I worked in the Ministry of Justice for 4 years. And then the Attorney General's Office after the law degree.

And yes, I was mainly involved in legislative drafting, heading the Legislative Drafting Division as Parliamentary Counsel in my last 5 years. Before this I was involved in both criminal prosecution and civil litigation. Like every small Pacific Island states, you tend to do many things in the Office of the Attorney General. And after that, I did PhD, research. And now, today, I am a lecturer since February of this year.

Cain: Okay, can you tell us what you did your PhD research on?

Mulitalo: The topic of my thesis is entitled "The Consequences of Law Reform for Legal Pluralism." I investigated, looked at possible ways of carrying out, of addressing the conflicts or accommodation of the Western legal system together with the traditional legal system. And I looked at one of the ways to address that and that was through law reform.

Cain: Okay, great. Well we might come back to law reform issues in a little while. But before that, based on your observations as a practitioner, a researcher, and an educator, what do you think are the most significant constitutional and legal challenges that Pacific island countries are facing at present?

Mulitalo: In relation to constitutional challenges, I think the biggest constitutional challenge is how to address traditional values that we try to uphold in the provisions of the constitution in reality.

In saying this, I refer to many constitutions of the Pacific islands that uphold customary values and at the same time have entrenched provisions on fundamental rights. I speak for Samoa in particular. Recently the challenges to the constitution in relation to electoral laws, candidacy, and how we can perhaps include the traditional Matai system into candidacy as a member of parliament.

And so every time we have a general election, every 5 years, at the end of each general election, we have a commission of inquiry into how we can better the electoral system. And it's usually to try and accommodate the fa'a Matai or the traditional chiefly system. And even up to today, recent amendments were in 2009 to the Electoral Act. And in addition, the international obligations of gender neutrality and upholding women's status, we've amended our constitution recently to include a women's quota, the number to be in parliament every year.

Cain: But my understanding of the situation in Samoa is that that quota will not necessarily be brought about through an election. That there will be women representatives appointed to Parliament. Is that correct?

Mulitalo: It was to be through a general election. So there are 49 members of Parliament in Samoa. If the general election is completed and there are 5 women already from that general election, that provision is not invoked. Should there be less than 5 women, then the women that had highest votes - there will be a ballot. So there must always be 5% women.

So at certain times there will be probably 49+5, 54 members of Parliament.

Cain: Okay. Well that's an interesting way of addressing that issue.

So staying within the context of your home country of Samoa, what do you think are the particular issues that you're looking at or thinking about in terms of legal reform as a way of supporting development in your country?

Mulitalo: Legal reforms? The challenges, I believe the biggest challenge to law reform in Samoa is changing attitudes of the people, the general population to what's accommodating of the Western legal system.

It's so very well in the urban area where there's understanding of how this works. But of course, a majority of the population, there needs to be a lot of public awareness on the laws. What are laws? And how they play a part in it. And to encourage involvement and to make them believe that they have a role, a responsibility to take part in law making in Samoa.

So in saying that, to take the law out, or to legal literacy, to carry out public education, is quite - we need a lot of resources for that. And also the people responsible for reform will need to be able to speak in language and explain in the Samoan language how the legal system, the Parliamentary system works and the law enforcement system works.

But I think if there is a general understanding of how people can fit into the legal system in Samoa then there will be some help towards educating the public in having a say, encouraging them to have a say in law-making.

Cain: Do you think there are any areas of law that are in particular need of reform currently in Samoa?

Mulitalo: Yes. Right now, in particular, land and family laws. And these are the two main areas that go to the core of a Samoan person. Samoan family and the relationship with land. At the moment we're going through a - the government has put into place a commission - it's called The Customary Land Advisory Commission to look at ways to perhaps make use of customary land for economic developments. And this is not really going very well.

But the idea is that we make use of the customary land that is not being used and benefits go to the customary land owners. But it is difficult to make the villager understand that they are not losing their land that way as they, we haven't done this before, so it's a new thing. It's going to take a bit of time. So we'll see what happens. But a number of surveys have been carried out for the last 10-20 years. We're looking at other jurisdictions, how we can use customary land in a beneficial economic way. But we will see how that goes.

In relation to family laws, recently Samoa has appointed a family court judge. So that's a good development for Samoa. Also we're going through the motions of how do we encourage the people to bring family matters before this family court. If we had not been so successful before in a district court, what makes us think a family court - just to call it family court - will make any difference. But this is also again a new development for us. So hopefully we'll see how we go.

Cain: Okay. So is there an expectation or does the evidence indicate that that court will be expected to deal with a significant number of family-violence based cases as well as other issues to do with family law?

Mulitalo: Yes, absolutely. We've recently passed Family Safety Act. Well, this is not too recent - 2008. We also passed a Family Court Act 2014. But implementation of the Act, we hope that this court will - and it has to do with domestic violence, yes. So every matter of family legislation in Samoa that is existing at the moment, this is the court that will deal with family matters.

Cain: Okay, good. Thank you. So turning to the issue of legal education in our region, what do you think of the current opportunities and challenges in this area?

Mulitalo: I'll first start with challenges [*laughter*]. Resources. Lecturers and teachers do need a lot of support generally everywhere, but yes, in the University of the South Pacific School of Law, there's a lot of need for this to get an environment of perhaps an environment that makes you want to teach, look forward to coming to, and knowing that you are on par with your other colleagues in the system or in the school.

So if there is a lot of support systems for the lecturers, then there will be perhaps a lot more cheerfulness to take the challenges of lecturing each day. It's quite, this is the first year for me to teach full time. I've tutored a few times, but it's not the same.

Cain: The first year is always the worst.

Mulitalo: It is? As I found out.

Yes, but if there were. And if the resources were also readily available. Like right here at Emalus Campus for the law lecturers. Where in this - but it's difficult at the moment with things having to be approved from across the seas in Fiji. And it delays matters. And you're unsure. But if there was perhaps a better or speedier communication. And it's up to Human Resources. If we were able to get answers as soon as possible from human resources division, that would be very helpful for the lecturers here.

Also, there's a need for lecturers here. So if there was a lot more budget, perhaps there would be a lot more, we could afford a lot more lectures to assist, to take up the teaching load. It's quite, yes. Because having a heavy load would be too heavy a load. You will probably not enjoy teaching. But and I found it's difficult to write other articles or take up those other teaching or lecturer's responsibilities because you have to focus on the teaching material each week.

Also another challenge is keeping up with technology. Well first of all we need a - how do you say? - the broadband, because we're now teaching online. We teach online. And we need not to break the communication with students. But in saying keeping up with technology, I talk about having to educate yourself also with the system, how to both teach face to face and also online.

And how do you deal with certain issues when the internet is down or perhaps training nearly every day to keep up with the - and to know what's available, like Moodle, on the internet to assist you with the teaching.

In relation to opportunities, there needs to be more researchers in the Pacific Islands to research on areas that need to be brought up and taken to the world of literature. I think it's one of the under-researched regions globally. We need good researchers and good literature from this research to inform our legal systems, the judiciary, and parliaments. So yes, the full system in the Pacific Islands. I think we do need a lot of researchers.

And I say this, I am the third person to have done a PhD in law from and in Samoa. There's a number of Samoans outside of Samoa. But I found that there was not much literature that one can rely on when you really want to research in depth in a Pacific island country. So we do need a lot more research.

Cain: Yes, more local content. Okay, so my final question is to ask you whether you think there are any particular issues that affect women as legal practitioners or as legal educators in the region? And if so, how can they be addressed?

Mulitalo: Firstly, in relation to women as legal practitioners, I don't believe - this is my personal view - I don't think that there are any particular challenges. Women have the same opportunities as men. And in fact, in Samoa if I remember right there's a lot more women practitioners than men. And year after year, the number still stays the same or increases for women.

I remember Chief Justice Sapolu saying a number of times after admission when he gives his speech at admission at the bar, he would say, there's at times it's only women graduates, women being admitted to the bar. And he would say, this is what the judiciary of this country will look like in the future, perhaps all made of women. So in relation to opportunities in the legal world, legal system, it's not...

As educators, again, there's, we women have the same and are given the same opportunities as men. At times, I believe because women decide not to or have circumstances that perhaps make, they don't think of going, taking up for their education because their priority is with the family. And so it is not a matter of big importance to them. So there is generally in my view no challenges or there's opportunities for everyone. And I think systems allow for that.

Cain: Okay, great. Thank you so much Toa for your thinking and being with us on Pacific Conversations.

Mulitalo: Thank you very much, Tess. It's great talking with you, especially as a former lecturer of mine. I am privileged to be interviewed by you.

Cain: Yes. It feels a bit odd to be sitting on this side of the desk. Thank you very much.

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