

**Codification and creation of community and customary laws in the South Pacific and Beyond Australia
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Creating village by laws and the exclusion of women and persons with disability from holding chiefly titles in Samoa.

Abstract:

Governance is the exercise of authority (political, economic, administrative) necessary to manage a group or organisation's affairs. It encompasses the decisions made about resources, the processes through which decisions are made, the principles which guide these, the implementation of decisions, the decision makers as well as accountability of later for former. It is relevant to all levels of organisations from families to villages, churches and countries.

Good governance requires that those who are affected by decisions have a chance to be part of or contribute to the decision making processes. The composition of the government group should ideally reflect the makeup of those they govern. It is the principle that if decisions are participatory or if all affected by decisions are included in their making, the decisions will reflect their concerns, values or respond to their needs and will thus more credible and effective.

Similarly, the inclusion of the needs of all groups in policies, plans or program is critical to the latter's relevance and legitimacy. Traditionally, decision makers and decision making are dominated by those who hold authority, are powerful, well resourced and influential. In the case of Samoa, the decision makers are predominantly men; women and persons with disability are excluded or have very little say.

This paper will discuss the process of creating village bylaws in Samoa on the issue of Inclusion of women and persons with disability in the very important decision making platform, the village council with a specific focus and discussion on creating bylaws to ban women not to hold matais within the 7 villages.

Introduction:

Samoa is one of the countries of the Polynesia group of islands in the South Pacific, home to 192,126 people (Government of Samoa, 2017) in which 98,663 are men and 93,463 are women. The chiefly system/faamatai governs the daily operation of every individual and safeguards peace and security within society. The faasamoa/Samoan culture is inclusive in its nature. Every individual is born into a family and is entitled to a family land and a family chiefly title. In decision making processes with regards to family resources every individual participates as an heir, not as a man or a woman and not necessarily a chief. That is the theoretical understanding however with the many developmental phases Samoa has been through, from colonization to

Christianity, ideas and concepts were introduced, adopted and practiced on a daily basis and caused people to believe that such is culture.

This paper will discuss the process of creating bylaws which ban women and persons with disability from getting matai/chiefly titles in the seven villages as per findings of the Ministry of Women, Community and Social Development. This paper is based on data collected whilst doing my PhD and my experience of working with the Ministry of Women, Community and Social Development for thirteen years. The discussion will explore how these bylaws were done, whose voices were excluded and then conclude with a snapshot of what has been done thus far, in Samoa's efforts to responding to UNCEDAW recommendations from her first and second CEDAW Periodic Reports.

Discussion

The Village Fono Act 1990 stipulates the authority to the village council to document all village proceedings, punishments and all decisions regarding the daily operation, peace, harmony, order and stability within every village. In the National Population Census 2011, the matai/chiefs population recorded was 16,787 people (Government of Samoa, 2011), 89% of the total population was men and only 11% were women. The figures clearly indicated imbalances between the number of men and women. It translated that the equation is not equal, that the decisions are made predominately by men and as one of the participant stated, "so the men had the opportunity to document what matters to them, according to their interests"(Participant 13). The process of creating village bylaws was a colonial idea and it has a huge colonial influence on the matters documented or how these laws were phrased and according to the study participants of the seven villages with such bans, none of the village matais of the time/when the bylaws were created were women or persons with disability hence the no objection. The same participants went on further stating that it has been the practice now for many years and villagers particularly women are now accepting it as the culture.

When the women from the seven villages were asked the question of whether they were involved in any of the processes the majority responded LEAI/NO. Furthermore when they were asked whether they would like to hold matai titles these were some of the responses:

"Oi loe ou te fia matai aua o au o le Suli/Yes indeed, I should be given a matai title because I am an heir of my family"

"IOE...Ou te iloa o au o se tamaitai Samoa ou te au i le suafa matai, ou te fia matai foi ia ae ua sili foi le iai o le tulafono aua ua taugata tele/YES, I know as a Samoan woman I have equal rights to a chiefly title, I want to become a matai but having such bylaw is best because the exercise of getting a matai is getting expensive"

la o le mea lava lena na ou ola mai o iai leni nuu /This law has been there since I was born

From the data, it is obvious that the women and persons with disability were excluded, their voices were not heard. They know and have firm beliefs of who they are, their status within society, and that they are just the same as their male counterparts but as the practice of getting a matai title is getting expensive most of them are withdrawn from getting titles. Some of the other women's responses indicated some form of disempowerment and lack of understanding of who they are hence the no reaction.

On the contrary when the men were asked why women are been discriminated against, almost all the male participants responded,

They are not been discriminated, we men value the spacial relationship/va fealoai as it is in the feagaiga concept/brother and sister covenantal relationship, they are the tamasa/the sacred sibling, we men are to give utmost respect, serve them no matter what to the extent of losing our lives for them. Having them in the council of chiefs will be an insult for us because there are matters where we men will need to use offensive language but we can't just because we do not want to disrespect the our sisters in the house.

It it the respect that we have for them as the tama e tai iai faaaloaloga/the sibling that we serve and deserves the highest/best token of our appreciation in various forms. They are our princesses, it's disrespectful for us to have the sacred child/our feagaiga to carry out matai responsibilities that are of masculine nature.

Only a few responded: E le tatau na matai ni fafine, e leai se agavaa, /They can't be matais because they don't have the skills.

From the discussions and responses during this study, it is obvious that women and persons with disability didn't have the chance to be part of decisions regarding their interests, their concerns, values and those that respond to their needs. It was also noticed that the power given to the council of chiefs was misinterpreted and misuse by the authorities of the time.

What has been done thus far?

With the power that the village fono had under the Village Fono Act 1990, to document bylaws almost all the villagers especially women were seen as perpetrator's and the village entity as the victim, the Ministry of Women, Community and Social Development were flooded with complaints, people seeking refuge and assistance from the Ministry of Women, Community and Social Development for assistance, as some of them were banished from the vicinity of their own homes. Therefore with the assistance of the CLGF Project/Commonwealth Local Governance Fund Project, the MWCSO worked closely with villages in drafting by laws using the principles of good governance where village council were encourage to include women and persons with disability at all levels of drafting bylaws and that inclusion be evident in documenting bylaws that protect the rights of women and persons with disability.

Whilst the processes were undergoing the MWCSO at the same time had to ensure that such is stipulated in the legal framework, hence the amendments of the Village Fono Act 1990, 1993 and 2016 where villages are encouraged to have the bylaws formally registered with the Modern Legal system.

In Samoa's attempt to ensuring social inclusion, gender equity and gender equality obligation under the Convention on the Elimination of any Form of Discrimination against Women, the Ministry of Women, Community and Social Development carried out a lot of public awareness and advocacy work to change the mindset of people on protecting the interests and rights of women within the society, understanding the true underline principles of the faasamoa. So far two of the villages that prohibit village women to hold matai titles have lifted that ban. It is hoped that the number of villages with bylaws banning women and persons with disability to hold titles will drop to zero through continuous and the hard by the Ministry of Women, Community and Social Development through the District Development Plan process currently going where ownership is given to village members to develop by laws by themselves and for themselves.

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