

“Codification of customary regulations by village councils in Samoa: Some social and gender issues”

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Samoa is an independent Polynesian nation located in the South Pacific with the majority of its population of approximately 190,000 residing over two larger islands. With a history that dates back over 3000 years, the traditional structures were transformed in the 19th century by the adoption of Christianity and the influences of foreign settlers, and in the period 1900-1962 by successive German and New Zealand colonial administrations. Samoa possesses two parallel systems through which social order and justice are maintained; these are the formal western judicial and legal system and the traditional justice mechanism provided by the village *fono* (councils) comprising the village matai (chiefs and orators). Local government in Samoa is administered by the Ministry of Women, Community and Social Development (MWCSD) through traditional¹ village councils, and similar local government structures have been established in new settlements and suburban areas, albeit without historical traditional authority.

Village councils play an integral role in maintaining social order and passing judgement on offences in the traditional villages in Samoa supplementing the work of the police. Since Samoa became an independent state in 1962 there have been many instances of village councils exceeding the limitations on their authority imposed by the state legal system. In order to clarify the extent of authority of village councils (and compensate village matai for their loss of exclusive voting rights when universal suffrage was introduced) the Village Fono Act was passed in 1990. This limited the authority of the council to matters of social and economic development of the village, however problems of conflict between customary authority and law persisted in relation to issues such as banishing wrong doers and their families from villages, and preventing the establishment of new churches in villages. After national consultations by the Samoa Law Reform Commission, amendments to Village Fono Act were passed by parliament in 2016, which expanded the authority of village councils and encouraged them to codify customary and other forms of regulation to which villages are subject. This paper will discuss several social and gender issues which may emerge due the codification.

Efforts to assist villages to put their by-laws in writing commenced before the amendment of the Act, under the Good Governance Project (2014-2015) through the Division of Internal Affairs at the MWCSD. The project aimed to raise awareness in village councils on by-laws that were non-compliant with the state law. Currently, under the Act, the Ministry requires all traditional villages submit their by-laws for documentation. This process is voluntary and will not seek to alter the by-laws which are non-compliant with the law.

As noted in the research report *Political Representation and Women’s Empowerment in Samoa Women in Samoa* (Meleisea et. al. 2015) many village have unwritten laws which deny recognition to matai titles held by women, and conventions that exclude women *matai* from participating in

¹ A traditional village is one which comprises a territory and has an historically grounded *fa’alupega* (statement of chiefly precedence) and which serves as a seat of extended families and their matai titles.

village councils. In 2015, the report made three recommendations to parliament concerning the forthcoming amendment to the Village Fono Act for the recognition and inclusion of women *matai* in village councils and consultations with village women's committees, in keeping with Article 15 of the Constitution of Samoa. These recommendations were presented to the Select Committee of parliament that made a detailed consideration of the Bill for amending the Village Fono Act, but were ignored.

Although in the modern aspects of government and business women have made many strides towards equality, women are largely invisible in local government, and hold few seats in Parliament. Recent legislation provides that a minimum of 10% of seat in Parliament are to be held by women. In the 2016 elections, four women won seats in the 50 seat parliament and one woman was appointed to make up the quota. Research (see SPC, 2006 and MWCSD, 2017) shows that wife beating (and the beating of children) is common in Samoa; and is widely condoned by custom and by Samoan understandings of Christian teaching. In the 2017 Samoa Family Safety Study, an estimated 60% of women between the ages of 20-49 who had ever been in a relationship had experienced spousal abuse in their lifetime, with 46% of women in this category, having been abused by their spouse in the last twelve months. prevalence of abuse by partners for women between the ages of 20-49 years was 60%. As Samoa's Ombudsman and Commissioner for Human Rights, Maiava Ulai Toma has pointed out on a number of occasions; the key institutions in addressing this social problem are village councils and village churches. Given prevailing attitudes in village, however (See Schoeffel, Percival & Boodoosingh, 2018) it may be difficult to persuade village councils to tackle family violence and the exclusion of women

The new requirements of Village Fono Act 2017 require the MWCSD to support villages in documenting their by-laws have led to a significant change in the Ministry's programming approach. Each village has two representatives to liaise between the village and the national government, the village council representative (*su'i o le nu'u*) a *matai* elected by the village council to and a women's committee representative (*su'i tamaitai*) elected by women's committee. These were managed by two different divisions, the Division of Internal Affairs and the Division of Women. Under this restructure, these two functions have been merged under a new Division of Governance and Leadership. Issues related to different salaries for representatives, and the lack of systematic work processes and policies must now be addressed by the newly merged unit. Community directed project processes are documented in Community Sector Plan 2016 – 2021, and under this new shift in approach, communities are empowered as initiators. It remains unclear as to how the gender issues of violence and political exclusion will be addressed in the new system. Without addressing systemic issues which are already documented, it may not stimulate change towards practices that reinforce gender inequality at the village level.

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